

Insurance Attorneys Address the Impact of Nuclear Verdicts, Property Casualty 360, featuring Eric Stern, Sept. 30, 2021

Many policyholder attorneys believe that nuclear verdicts are a response to a crisis and therefore justify premium increases and more numerous policy exclusions. Meanwhile, the insurance industry maintains that nuclear verdicts and social inflation, which Berkshire Hathaway CEO Warren Buffett once described as “a broadening definition by society and juries of what is covered by insurance policies,” pose tremendous issues.

Juries will likely continue to render nuclear verdicts at a significantly increased rate, often far outpacing inflation, resulting in higher premiums charged to consumers to avoid potentially catastrophic losses in one fell swoop.

As the topic of nuclear verdicts surges, the editors at the Insurance Coverage Law Center have capitalized on our relationship with several insurance-industry thought leaders and members of our Editorial Advisory Board to help illuminate the growing trend...

Eric Stern is a partner at Kaufman Dolowich Voluck: “Due to the risk of nuclear verdicts, insureds should be sure to provide notice of claims and lawsuits to their entire tower, even if the damages do not seem to indicate the likelihood of the excess limits being implicated. The potential for a nuclear verdict may mean that excess insurers, even high-level excess insurers, may be triggered. As a result, excess insurers should be notified, updated on the progress of litigation and invited to participate in settlement discussions.

Moreover, while the causes of nuclear verdicts differ, oftentimes the driver of nuclear verdicts is a high award of punitive or exemplary damages. Insurers should work with competent coverage counsel to make sure that they are aware of the policy’s coverage obligations with respect to punitive or exemplary damages as well as whether the applicable jurisdiction has laws or public policy against coverage for such damages.

Of course, the last stop of protection for an insurer against a large verdict is its policy limits. Regardless of the size of a verdict awarded, the insurer does not owe more coverage than afforded by the policy.

When purchasing insurance, insureds should be aware of the potential for nuclear verdicts and procure enough insurance to cover them for such a loss.”