

Nuclear Verdicts in CA Employment Law:

What Your Company Can Do to Avoid a \$10M+ Jury Verdict

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Introduction & Overview

- What is a “Nuclear Verdict”?
- Nuclear Verdicts In Employment Cases:
 - Headline-Grabbers
 - Minimal Lost Wages & Huge Emotional Distress Damages
 - Punitive Damages: State vs. Federal Law
 - Federal Court Cap on Punitive Damages
 - Jurisdiction-Dependent
 - California vs. other states

What is a “Nuclear Verdict”?

“Exceeds what many consider to be reasonable damages”

- Jury awards above \$10 million; OR
- Award of substantial non-economic damages (emotional distress)
- AKA “Catastrophic Loss”



Why Is There An Increase In “Nuclear Verdicts”?

- Pre-COVID (2015-March 2020)
 - Slowly on the rise
 - Changing attitudes amongst jurors
 - More access to Information
- Post-COVID (April 2020 -present)
 - Attitudes about corporations and working conditions have changed
 - Higher non-economic damages awards
 - Exorbitant punitive damages awards (nearly a dozen \$10M + awards since 2021)



Post-COVID Nuclear Verdicts

“Tesla must pay \$137 million to a Black employee who sued for racial discrimination”

“JURY AWARDS \$14 MILLION IN GENDER DISCRIMINATION LAWSUIT”

“Jury awards \$41M in discrimination, wrongful termination case”



A Nuclear Verdict – Case Study #1

Roque v. Octapharma Plasma, Inc.

Case Study #1 – Roque v. Octapharma Plasma, Inc.

Facts & Circumstances:

- Alice Roque sued Octapharma for age and disability discrimination, failure to accommodate, and wrongful termination
- Roque was 74 years old; worked for the Company for 19 years
- Back pain' asked to sit to perform her duties; later received a doctor's note placing her off work and filed a WC claim
- Company terminated her based on her verbal resignation
- Roque denied she gave verbal notice of her voluntary resignation

Case Study #1 – continued

The Result:

- Jury 1: awarded Roque over \$11M
 - \$1.05M for physical pain and suffering
 - \$1.155M for emotional distress
 - \$9M in punitive damages
 - Roque waived economic damages at trial

What This Tells Us:

- Jurisdiction – this trial was in San Diego Superior Court
- A low-wage earner does not necessarily equate to a low damage award
- Facts and witnesses matter
- The nature of these verdicts lead to drawn out appellate processes

Strategies Used By Plaintiffs' Counsel

The Reptile Theory:

- Appealing to the primitive part of the minds of jury members to influence the outcome of a case
- Akin to the “Golden Rule”
- Traditionally in personal injury & products liability
 - Increasingly popular in employment litigation

The Gatekeeper Effect:

- The judge is the gatekeeper
- **Who** a jury hears information from can be more influential than the substance of the information
- How does the gatekeeper affect expert witness credibility and testimony?

Combating the Reptile Theory & Gatekeeper Effect

Pre-Trial Options:

- Motions in Limine
 - A motion in limine can be brought to exclude reptile arguments
 - Will this be helpful?
 - Effects of making the objection in front of the jury during trial
- Controlling who the gatekeeper of certain evidence/testimony will be
- Bifurcation of Punitive Damages
 - Consider whether it will be beneficial to separate testimony and evidence on damages from the determination of liability

Case Study #2 – Pinter-Brown v. UCLA

Pinter-Brown v. UCLA

Case Study #2 – Pinter-Brown v. UCLA

Facts & Circumstances:

- Pinter-Brown was an oncologist at UCLA from 2012-2015, who alleged she was subjected to gender discrimination
- Pinter-Brown complained regarding alleged gender discrimination
- In 2015, Pinter-Brown resigned due to the alleged work conditions
- Pierre earned over \$700k/year
- After resignation, immediately found a comparable job at UCI, with similar salary

Case Study #2 – Continued

First Trial Result in 2018:

- Jury award: \$13M
 - \$3.0M in economic damages
 - \$10.0M in emotional distress

*Verdict was reversed on appeal in 2020

What This Tells Us:

- Jurisdiction Matters – Los Angeles Superior Court
- Gatekeeper Effect
- Even when a Plaintiff has mitigated damages, still risk of significant damages awards

Case Study #2 – Continued

Second Trial Result in 2024:

- Jury award: \$14M
 - \$2.1M in back pay
 - \$2.5M in front pay
 - \$9.4M Emotional Distress
 - \$3.9M in attorney's fees and costs

What This Tells Us:

- Reptile Theory
- Must understand opposing counsel trial style and track record
- Even when a Plaintiff has mitigated damages, still risk of significant damages awards

How To Avoid Catastrophic Losses

Investing Upfront

- Hiring Practices
- HR Procedures
 - Investigations
 - Terminations & Layoffs
 - Accommodations
- Up-to-Date HR Policies
- EPLI Insurance?

How To Avoid Catastrophic Losses

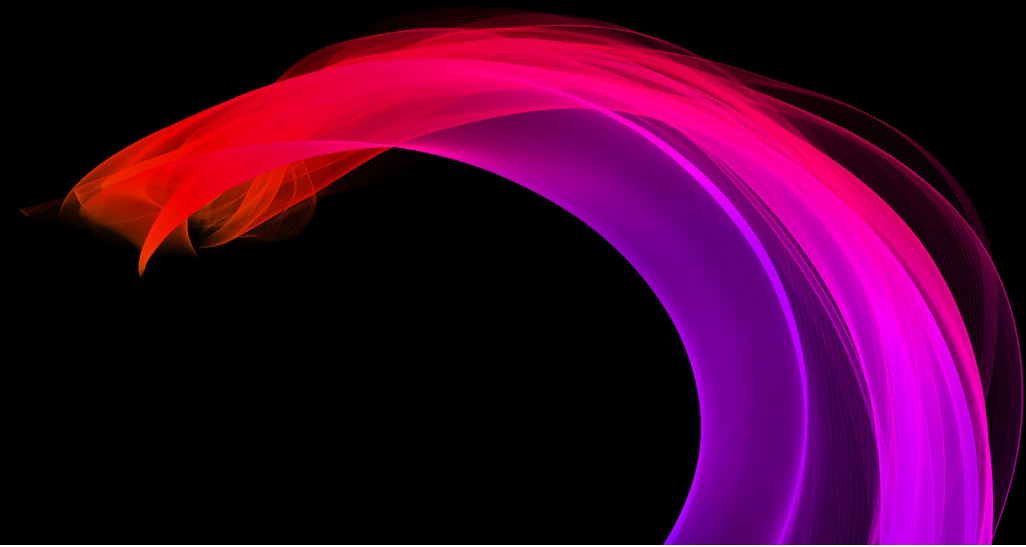
Five Step Action Plan for Trial

- (1) Assemble your defense team.
- (2) Stay involved with pre-trial strategy.
- (3) Select the best company representative to be present at trial.
- (4) Establish a protocol for keeping informed of the trial's key developments.
- (5) Ensure potential opportunities for settlement are not overlooked.

Key Take-Aways

1. Know Your Audience: Court & Jurisdiction is Highly Relevant
2. Have A Trial Action Plan In Place
3. Invest Upfront: Think Prevention Rather Than Mitigation

Questions?



Thank you

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