

Medicolegal Sidebar: Nuclear Verdicts—Should Orthopaedic Surgeons Be Concerned?

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Nuclear verdicts are large jury awards with outsized punitive damages components that often make for sensational headlines. As one example from 2018, William Lee, a 41-year-old real estate broker, was rushed to Westchester County Medical Center after collapsing at home. A head CT was read as negative by radiology and neurology residents, who were the only physicians available at the time. About 3 hours later, an attending radiologist diagnosed a basilar artery occlusion.

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Despite a thrombectomy, the patient was left with permanent brain damage. At trial, the jury returned a verdict of USD 120 million; a record sum that is consistent with a general trend toward large awards in medical malpractice cases [3]. Large awards usually result from punitive damages that can reflect juror anger and inflamed passions, especially if the misconduct is egregious. Other factors may contribute as well, such as funding of plaintiffs' lawyers by private equity firms, the erosion of tort reform efforts, the anchoring effect of publicized large verdicts on jurors, lifecare plans that also serve to anchor large monetary figures in jurors' minds, and increasingly sophisticated trial techniques used by plaintiffs' lawyers to sway jurors [2].

Despite the sensationalism attendant to large jury verdicts in medical malpractice cases, orthopaedic surgeons should not be concerned. As a practical matter, these high-dollar verdicts end up being reduced substantially, or eliminated entirely, on appeal.

Social Impact

Large verdicts for economic damages may be needed when medical errors result in lifetime expenses, profound disability, and loss of income. And punitive damages serve as a deterrent,

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encouraging physicians and healthcare institutions to reduce errors through safe practice and quality improvement initiatives. By contrast, large jury verdicts add system costs from higher malpractice insurance premiums and increased expenses for patients. Fear of financial loss can drive healthcare providers to avoid high-risk cases and certain subspecialties, reducing access to care. Malpractice concerns can also lead to provider burnout and drive unnecessary testing from defensive medical practices.

Nuclear verdicts can result in unpredictable monetary outcomes for cases with similar facts. This uncertainty and the fear of financial ruin may encourage defendants to prematurely settle malpractice lawsuits when a strong defense may have been a better option. Without a relationship between malpractice settlement amounts and the merits of the underlying cases, public confidence in the legal system is undermined as well.

Nuclear Verdicts in Medical Negligence

The fact patterns leading to large jury verdicts are of relevance to orthopaedic surgeons who encounter a variety of injuries and treat high-risk patient populations, such as professional athletes. Other medical specialties also encounter high-risk scenarios, as the following example will illustrate. The largest known jury verdict in a medical

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malpractice case occurred in the case of *Byrom v Johns Hopkins Bayview Medical Center Inc.* Sixteen-year-old Erica Byrom was 25 weeks pregnant when she was transferred from an outside facility to Johns Hopkins because of abnormal fetal heart monitoring. Physicians advised Ms. Byrom that the baby was at high risk, and presented her with several options. Based on the choices presented, Ms. Byrom chose not to have a C-section, and she delivered a child with severe cerebral palsy. In the lawsuit that followed, a jury returned a verdict of USD 229 million, a figure that was reduced to USD 205 million by the judge for procedural reasons [7].

Like OB-GYN cases, athletic injuries carry substantial risk for team physicians, where economic damages in high-profile players may alone result in an outsized verdict [5]. As an example, former Philadelphia Eagles captain Chris Maragos made headlines after his knee injury was treated by James Bradley MD at the Rothman Institute. Initially diagnosed with a posterior cruciate ligament sprain, Maragos was later found to have a torn meniscus as well. Among the allegations was premature return to aggressive knee rehabilitation, presumably with the goal of returning Maragos to play quickly. Instead, further damage to the knee occurred, effectively ending Maragos' NFL career.

A day after the Eagles lost to the Kansas City Chiefs in Super Bowl LVII, the jury returned a verdict, finding Dr. Bradley to be 67% negligent (USD 29.2 million), with Rothman Orthopaedics responsible for the other 33% (USD 14.3 million). Maragos' lawyer commented after the verdict that the case may force team doctors to rethink their emphasis on returning injured players to play and focus instead on their long-term well-being [6].

Fame and glamor are not always necessary for a large jury verdict. In 2022, Anuj Thapa, a 17-year-old Nepalese foreign student who was studying at St. Cloud University in Minnesota, suffered a lower extremity fracture during a game. After undergoing operative fixation at St. Cloud Hospital, Thapa was discharged home. Six days later, he returned with compartment syndrome, and multiple additional surgical procedures followed. At the trial, a federal jury awarded Thapa more than USD 111 million, the largest personal injury award in Minnesota [9]. The breakdown was USD 1 million for past and future medical expenses, with USD 10 million for pain and suffering, and USD 100 million allocated to future pain and suffering.

US Supreme Court Sets Limits

Legal challenges to excessive jury awards have been raised on the grounds that they violate the due process clause of the 14th Amendment. The resulting case law provides guidance to appellate courts who review nuclear verdicts, and it helps our understanding of the legally permissible limits of punitive damages.

A landmark case involved a new car purchase by a physician from an Alabama BMW dealer. After finding out that the new car had been repainted, the physician sued BMW, alleging fraud. After a jury trial, the Alabama Circuit Court awarded USD 4000 in compensatory damages and USD 4 million in punitive damages. BMW filed a motion, citing the punitive damages as grossly excessive and in violation of its 14th Amendment protections. The punitive damages were reduced to USD 2 million because of a jury miscalculation, and the case ended up before the US Supreme Court.

In a 5-to-4 reversal of the jury award, the US Supreme Court clarified that although states can impose punitive damages, the 14th Amendment serves as a check against excessive verdicts. The opinion cited the unreasonable 500-to-1 ratio between the jury's punitive and actual damage awards, the relatively insignificant amount of actual damage incurred, and the lack of state statutory fines that could justify the award's magnitude [1].

Later cases have also supported limits on punitive awards. In a 2002 case, Curtis Campbell and his wife were driving on a two-lane highway in Utah when Campbell decided to pass multiple vehicles at high speed. Oncoming driver Todd Ospital was forced to swerve to avoid a head-on collision, and he ended up hitting another vehicle driven by Robert Slusher. Ospital was killed, and Slusher was rendered permanently disabled; the Campbells escaped unscathed.

State Farm refused settlement offers from Slusher and Ospital's estate for the policy limit of USD 50,000 and took the case to court, over the advice of its own investigator who found that Campbell had caused the accident. State Farm assured the Campbells that it would represent their interests, with no need for them to hire their own attorney. A jury determined that Campbell was indeed at fault, and returned a verdict for USD 185,849, much higher than the amount initially offered in settlement.

When State Farm refused to cover the USD 135,849 in excess liability, the Campbells sued State Farm alleging bad faith, fraud, and intentional infliction of emotional distress. After several legal twists and turns, a jury awarded the Campbells USD 2.6 million in compensatory damages and USD 145 million in punitive damages, which the trial

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court reduced to USD 1 million and USD 25 million respectively. On appeal, the Utah Supreme Court reinstated the USD 145 million punitive damages award, leading to the interesting outcome wherein the driver at fault stood to collect from State Farm.

On appeal, a 6-to-3 verdict from the US Supreme Court struck down the punitive award of USD 145 million as unreasonable, disproportionate, and in violation of the 14th Amendment [8]. Cases such as *BMW* and *State Farm* have identified the outer limits of punitive damages that will survive appellate court review in medical malpractice cases. As a general rule, jury awards that exceed a single-digit ratio between punitive and compensatory damages will violate due process and are likely to be struck down on appeal. Thus, if a jury awards USD 1 million in actual damages to an injured patient, the punitive damages should not exceed USD 10 million.

Discussion

Large jury verdicts in medical malpractice and other personal injury cases grab headlines, but should be of little

concern to orthopaedic surgeons. As case law shows, beyond the sensational dollar figures generated by nuclear verdicts, cooler heads usually prevail during appeal. After the USD 111 million jury award in *Thapa* [9], a magistrate judge for US District Court in Minnesota reduced the amount for pain and suffering down to USD 10 million, giving the plaintiff the option for a new trial. As of late 2023, *Thapa* had decided to take his chances with a new trial [10]. In the birth defect case of *Byrom*, an appellate court in Maryland struck down the entire USD 205 million verdict, leaving the plaintiff with nothing [4]. As for the 2023 case related to Maragos' NFL career, the ruling is too recent to know the outcome of its appeal; it is possible that the award will be reduced or struck entirely.

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