

A background image showing a view of the Chicago skyline through a window. The view includes several tall skyscrapers, a bridge with a clock tower, and a river. The text is overlaid on this image.

Medical Malpractice 2025:

View from Local Illinois Counsel

HALL PRANGLE LLC

MEDICAL MALPRACTICE 2025

View from Local Illinois Counsel



- Strategies to combat aggressive Cook County plaintiff's bar
- Strategies for arguing damages in catastrophic injury cases
- How to make sense of the Illinois med mal “nuclear verdicts”
- Importance of PMK depositions & trial admissions strategy

STRATEGIES TO COMBAT AGGRESSIVE ILLINOIS PLAINTIFF'S BAR



- Why so aggressive? \$\$\$\$\$
- Cook County → “Judicial Hell Hole”
- The rise of med mal “nuclear verdicts” in Illinois
- The rise of “reptile tactics” in Illinois
- Covid court closures + Cook County chaos
- Confidence crisis + ↑ settlement values

COOK COUNTY JUDICIAL “HELL HOLE”



- *American Tort Reform Association (ATRA)*
- Cook County moves up to #2 in 2023
- Reputation for “nuclear verdicts” (>\$10M)
- ITLA campaign contributions
- Large volume of litigation
- Plaintiff-friendly legislative environment
- Illinois Pre-Judgment Interest Act



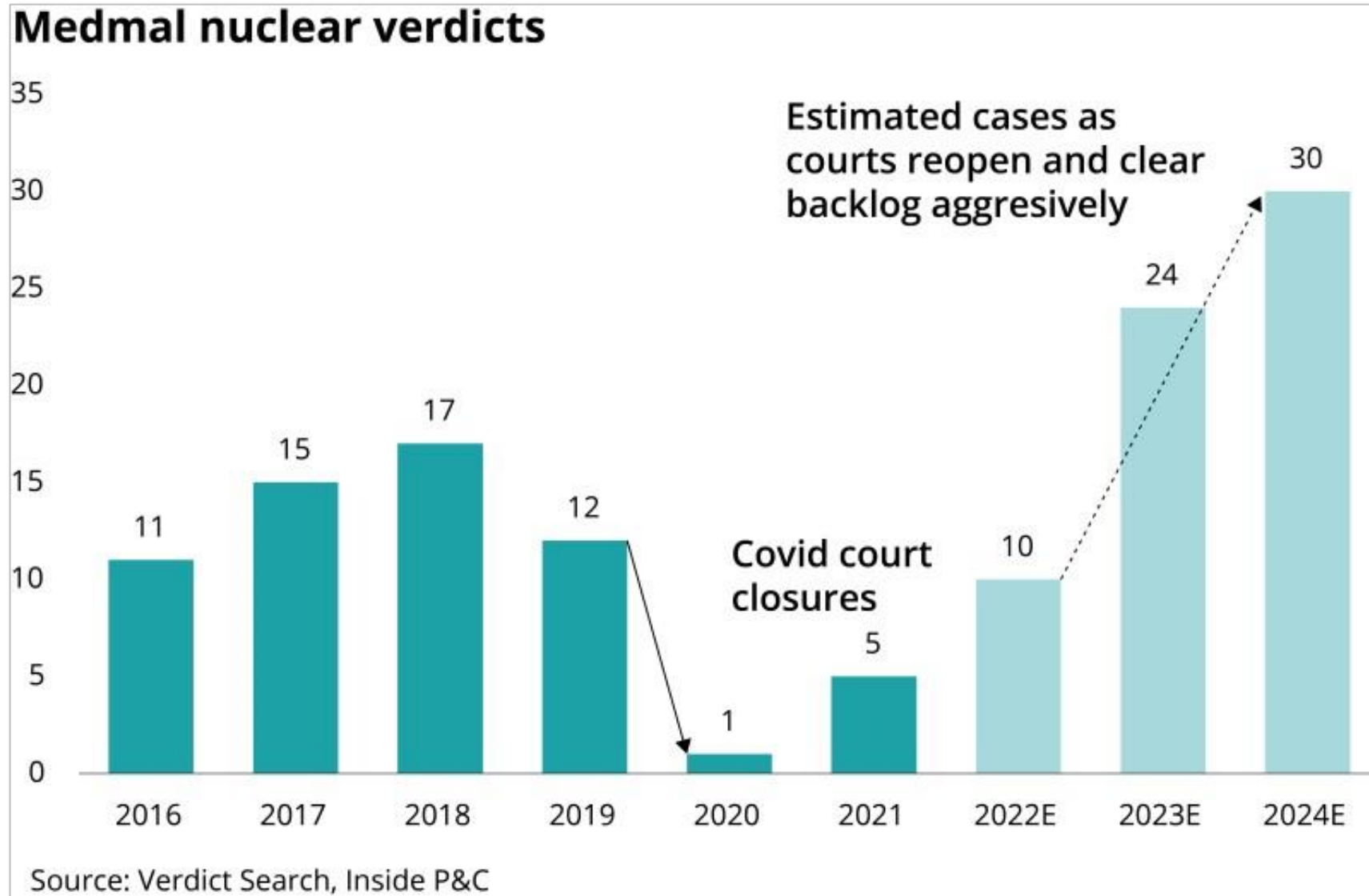


ILLINOIS “NUCLEAR VERDICTS”

- *US Chamber of Commerce – Institute for Legal Reform*
- Nuclear verdicts increasing both size + frequency
- Illinois → approx 40% in medical liability cases
- Approx 70% of nuclear verdicts in Cook County
- *ATRA* reports 13 nuclear verdicts in IL since 2022
- Estimations regarding invisible “tort tax”

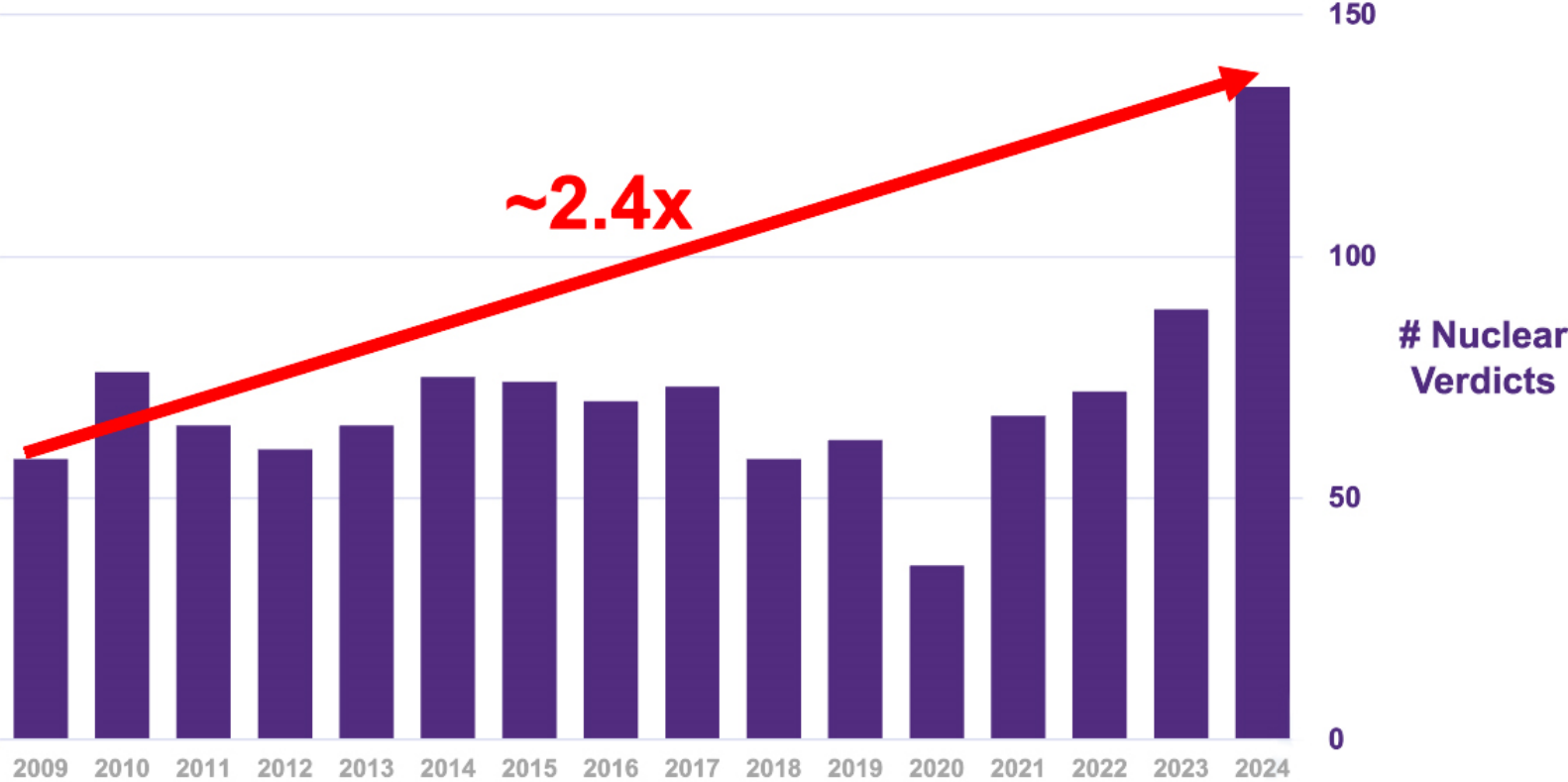


ILLINOIS VERDICT TRENDS



NATIONAL VERDICT TRENDS

The Number Of Nuclear Verdicts
2009-2024



Source: Marathon Strategies

Why More Nuclear Verdicts in Illinois???

- Juror anger?
- Reptile Tactics?
- Post-COVID phenomenon?
- Increased attorney advertisement?
- “Profits over people” messaging?
- More conspiratorial mindset since March 2020?
- The “Serial Effect”
- Defense counsel reluctance to argue damages

HOW TO COMBAT COOK COUNTY REPTILES?



- Witness preparation
- Diligent clarification of legal SOC definition
- Coordination among defense counsel
- Aggressive MILs
- Jury selection strategies
- AI jury selection? → “Sentiment Analysis”





STANDARD OF CARE DEFINITION

- REASONABLE CARE under the circumstances
- 1 Reasonable 2 Circumstances
- Depends upon the clinical situation
- Policies \neq Standard of Care
- Ob/Gyn and labor induction has many variables
- Risk-Benefit Analysis / mother and baby
- Every case different. Every clinical situation unique
- DEFENSE THEME #1: *Compliance with the SOC*



"Me? I'm just one of those shadowy figures who inhabit the mysterious twilight world where the medical and legal professions meet."

The “MYSTERIOUS TWILIGHT WORLD” of medical malpractice litigation



MEDICAL

“health care brain”



LEGAL

“court room brain”



Different Mindset
Different Language
Different Reality

HEALTHCARE BRAIN ERRORS

Common MD and RN Deposition Mistakes



- 1** TMI → too much information
- 2** Volunteering information not asked for
- 3** Jumping the gun
- 4** *Agreeing with the “Lawyer Word Games”*

PSYCHOLOGICAL DEP PREP

Needs to start at the very beginning of the litigation process



- *How to think about the litigation process*
- Need for emotional control / detachment
- Deposition is theatre → MD/RN needs to perform
- MD/RN needs to play a role → convince them!
- Calm / composed / professional / empathetic
- Concept of defendant hindsight bias
- Third-person thought experiment

PSYCHOLOGICAL DEP PREP

“Systematic Desensitization”



- Progressive anxiety-invoking stimuli
- Relaxation techniques
- Mock cross examination / mock deposition
- Answer questions directly + without emotion
- Healthy cynicism – not a search for truth
- Emotional control → ability to detach

DEFENSE CHALLENGES TO ARGUING DAMAGES IN COOK COUNTY CATASTROPHIC INJURY CASES



- Emotional bias → plaintiff
- Sophisticated and well-funded plaintiff's bar
- Challenging to counter emotional appeals
- Attorney reluctance to argue damages
- Difficult to argue for cheaper care costs
- Difficult to argue non-economic damages

STRATEGIES FOR ARGUING ECONOMIC DAMAGES IN CATASTROPHIC ILLINOIS INJURY CASES



- Spend time humanizing the hospital
- Embrace empathy and concern
- Provide defense “anchor” early and often
- Defense “anchor” must be reasonable
- Whether to argue diminished life expectancy?
- Defense damages experts → LCP or case manager?
- Provide jury with “cushion” options

CALCULATING FUTURE CARE COSTS



- Acknowledge plaintiff deserves excellent care
- ***Emphasize*** → what care does plaintiff *need*?
- Contrast with plaintiff's LCP
- ***Emphasize*** → how will \$ *help* plaintiff + family?
- Focus on per-year-cost
- Trial battle → which LCP is more reasonable?
- ***Emphasize*** → “*fair and just*”

CALCULATING FUTURE CARE COSTS

Damage Experts Team → Three Components



- 1 Expenses per year
 - 2 Time frame (life expectancy)
 - 3 Return on investment
- Provide jury with reasonable options → “cushion”
 - If arguing LE, emphasize the “best case scenario”

DEFENSE CHALLENGES TO ARGUING DAMAGES IN COOK COUNTY CATASTROPHIC INJURY CASES



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HOW TO ARGUE NON-ECONOMIC DAMAGES

- Wrongful death damages are *compensatory*
- Not meant to punish the defendant
- Not meant to “send a message”
- Any damage award needs to be fair and just
- Award needs to be based on your collective good judgment
- *Damages need to be based upon actual evidence in the case*
- *Plaintiff’s attorney provided you with no basis for is “ask”*



WRONGFUL DEATH DAMAGES

- Any damage award is not meant to fix or make up for a loss
- Damage award not an assessment of the value of Stephen's life
- No amount of money damages can bring Stephen back
- *The damages are not to be calculated using emotion*
- *The damages are not to be calculated using sympathy*
- The damages are not calculated based upon the holiday season
- The law does not furnish fixed standards
- You must be governed by your own collective judgment
- What is fair and just?



WHAT DID THE EVIDENCE SHOW?

- Loss of society for family members
- Grief, sorrow, and mental suffering
- Decedent's pain and suffering before he died
- Decedent's emotional distress before he died
- What is a fair and just damage award?



THE NUCLEAR OPTION TO AVOID A NUCLEAR VERDICT

- GAL motion → *Guardian Ad Litem*
- 705 ILCS §405/2-17(b)(3)
- Only after “best and final” offer rejected
- Carefully weigh the risks and benefits
- *Low probability of success in Cook County*

Motion to Appoint *Guardian ad Litem*





IMPORTANCE OF PMK DEPOSITIONS & TRIAL ADMISSIONS STRATEGY

- Illinois Supreme Court Rule 206(a)(1)
- Corporate representative deposition
- PMK → “*person most knowledgeable*”
- Testimony binds the organization → party admission
- Importance to prepare re reptile strategy
- Need to find a strong representative
- Knowledgeable / articulate / confident / savvy



ADMISSIONS AT TRIAL

ILLINOIS SUPREME COURT RULE 801

- Strategic decision not to call defendant MD/RN
- Instead publish admissions from deposition
- Party admissions / statements by agent
- Regarding a matter within the scope of employment
- Impeachment versus Rule 801 admissions?
- Employed F2 subsequent treating physicians?

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"I don't feel quite as fulfilled when I've saved a lawyer."

Questions?

Thank You!



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