

Crisis Management, Emergency Preparedness, and Response in the Energy Industry

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ACC ONLINE SEMINAR

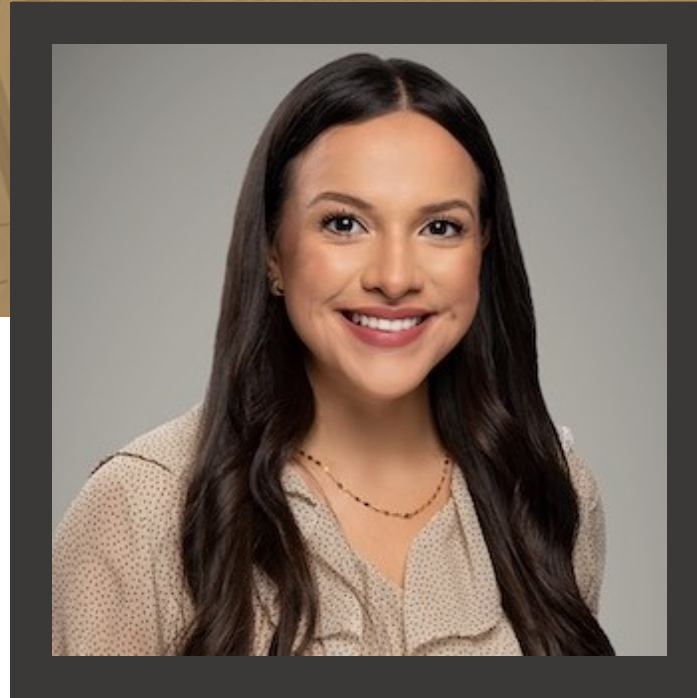
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Presenters



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Agenda:

Why?

Emergency
Preparedness

Emergency
Response

Why?

"Nuclear" to "Thermonuclear"

- Term "nuclear" arose pre-pandemic, signifies plaintiff wins with > \$10M damage
- Average verdicts in Top 100 surged from **\$64M** (2015) to **\$214M** (2019)
- Verdicts > \$100M now termed "thermonuclear"
- Total sum of plaintiff verdicts soared to **\$18.3B (2022)** from **\$4.9B (2020)** post-pandemic
- Largest singular verdicts surged from **\$1.1B (2020)** to **\$7.3B (2022)**

Litigation Trends: Crazy Nuclear Verdicts

Date	Award	County	Facts
01/29/2024	\$ 2.25 Billion	Philadelphia County (PA)	Type: Products Liability – Chemicals/Toxins Award Breakdown: \$250 Million Compensatory, \$2 Billion
11/20/2023	\$ 165 Million	King County (WA)	Type: Products Liability – Chemicals/Toxins Synopsis: School building was contaminated with PCBs, produced by company, through caulking and light ballasts
11/30/2023	\$175 Million	Philadelphia County (PA)	Type: Products Liability – Chemicals/Toxins Award Breakdown: \$25 Million in compensatory damages, \$175 Million in punitive damages.
06/07/2023	\$63 Million	Santa Barbara County (CA)	Type: Toxic Tort Primary Injury: Cancer caused by benzene exposure Award Breakdown: \$22 Million in compensatory damages; \$41 Million in punitive damages;
07/29/2023	\$209.2 Million	Dallas County (TX)	Type: Workplace negligence Primary Injury: Wrongful death
04/26/2023	\$860 Million	Dallas County (TX)	Type: Construction negligence Primary Injury: Wrongful death
03/03/2023	\$557 Million	Harris County (TX)	Type: Pedestrian-Railroad Primary Injury: Severed leg and brain damage Specific Liability: Pedestrian instituted negligence action against rail line
11/02/2023	\$40 Million	Jackson County (MO)	Type: Vehicular Negligence Specific Liability: Wrongful death Award Breakdown: Punitive damages not addressed on verdict form. \$40 million rendered as compensatory damages.

Emerging Thermonuclear Verdicts: *What Is Changing?*

- Post-pandemic trends indicate societal standards for corporate responsibility are changing.
- Aside from corporate mistrust, the public, juries, and judges are desensitized to larger numbers, runaway verdicts reported in Media, Social Media enhancement, high consumer inflation, stock market valuations increasing, social pessimism, erosion of tort reform, public desensitization to large numbers, overall anchoring in all aspects of life including lawsuits, shifts in jury pools, etc.

Positive Developments Cutting Against the "Nuclear Verdict"

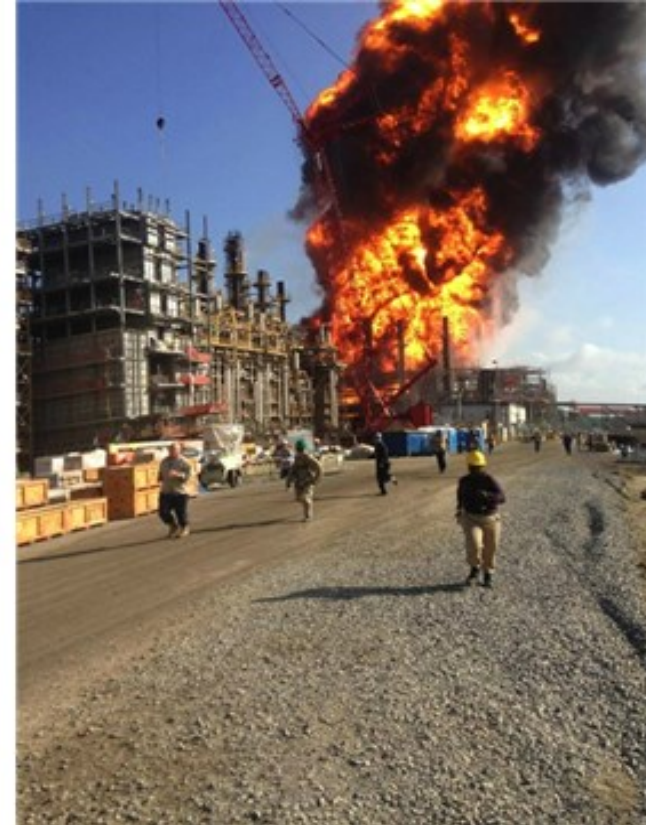
- Some pushback by trial judges and appellate courts. Pendulum perhaps about to swing back?
- **"Hollow" victories:** Grossly excessive jury awards can be set aside or reduced

How can your organization enhance its emergency preparedness, response procedures, and overall defense strategies in response to Massive Verdict Inflation?

Emergency Preparedness

WHY ARE ENERGY CLIENTS “SPECIAL?”

- Large dollar value involved
- Dangers associated with the work
- Internal policies and procedures
- Regulatory oversight and inspections
- High self-insured retentions
- Sophistication of parties



Preparedness: Goals

Have a plan/checklist at the ready

Have appropriate equipment, personnel, and protocols in place to provide a quick and accurate assessment of on-site and off-site impact

Have a process for internal and external communications

Be prepared for regulatory requirements and future litigation

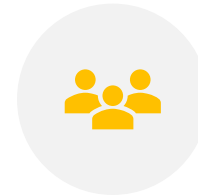
Preparedness: Goals



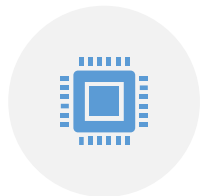
Crisis management plan



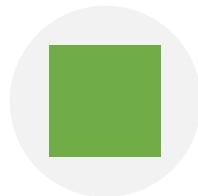
Plan for securing incident scene, data, documents, and other potential evidence, and documenting it



Pre-arranged relationships with consultants



Pre-defined off-site air monitoring protocol



Building Strong Relationships

Preparedness: Litigation Planning

Training for investigation team members and on-site employees

Contracts in place with protective language

Policy on use of personal and company devices

On-site personnel organization chart

Root Cause Analysis

“Root Cause” Investigation

Non-Privileged Internal Root Cause Investigation	Privileged Litigation Investigation
<ul style="list-style-type: none">• Required by OSHA for hazardous chemical accidents (29 CFR 1910.119 (m))• Other Federal regulations "strongly encourage" that all accidents be investigated to determine root cause• Generally Contained In Company Policy• Done by team of company employees <p><i>Must begin within 48 hours.</i></p>	<ul style="list-style-type: none">• Must be at direction of in-house or outside legal counsel• No communications or distribution of documents/reports outside privileged group• No overlap between privileged and non-privileged investigation teams• Be careful using consultants who are potential testifying experts

NON-PRIVILEGED Internal “Root Cause” Investigation: Considerations & Recommendations



CORPORATE EXECUTIVES



INVESTIGATION TEAM

“Root Cause” Investigation

- **Subsequent remedial measure?**
 - Measures taken to diminish likelihood of re-injury is inadmissible to prove negligence, culpability, defect, or need for warning
- Carefully research the law in your jurisdiction.
- **Most common outcome:** excluding only evidence of the actual implementation of a safety improvement, but not the reports or memoranda that lead up to the improvements.

Emergency Response

First 48-hours: *Initial Steps for Company*

Avoid interference with emergency response

Follow incident command

Verify that all agency notifications have been made

Ensure Compliance with Immediate Legal Requirements

Initial Document Collection

First 48-hours: *Initial Steps for Company*

Hire Outside TRIAL Counsel

Develop a Media Strategy

Retain Necessary Experts

Coordinate with Potential Co-Defendants

Explore Early Settlement

LOCAL PLANT LEADERS AND PERSONNEL: *Establishing Trust*

Address Concerns	Empathize	Encourage	Develop Witness Lists
Address injuries, fears, stress	Let them know you understand and that you care about them.	Encourage counseling	Develop lists without interrogation

Preserving the Evidence: Site Security

- Numerous parties want access:
 - Plant personnel:
 - scope of damage
 - root cause team
 - estimate down time
 - Agency investigators
 - Contractor investigators
 - Insurance adjusters
 - Personal injury lawyers
 - Potential defendants



Preserving the Evidence: Site Security

- Benefits of retaining a third-party expert as the scene and evidence custodian:
 - Control
 - Efficient and secure site access
 - Provides additional protections in preserving evidence.

EVIDENCE AND SITE CONTROL AGREEMENT

The parties to this Evidence and Site Control Agreement ("Agreement") shall be the [REDACTED], LLC, the Occupational Safety and Health Administration ("OSHA"), and the U.S. Chemical Safety and Hazard Investigation Board ("CSB").

As a result of an incident that occurred at the [REDACTED], LLC on [REDACTED], [REDACTED], LLC, OSHA, and CSB have initiated separate investigations. As part of those investigations, potentially relevant evidence will need to be secured, removed and stored. The Parties have identified and continue to identify potential items of evidence. The intention is to secure and remove these items in order to preserve the evidence while the parties conduct their on-going investigations.

The purpose of this Agreement shall be to ensure that the Parties: (1) have the opportunity to access the physical evidence and accident site itself in its original condition; (2) agree in advance to an orderly effort by which evidence will be collected, stored, and preserved for additional documentation, testing, and analysis; and (3) to establish basic principles for testing, subject to the future development of specific protocols. Additionally, this evidence removal and site control protocol addresses the collection and removal of loose items on the ground that may have potential relevance to the incident on [REDACTED].

Preserving the Evidence: Case Study in Disaster



INCIDENT: WELLHEAD
BLOWOUT AND EXPLOSION
CAUSES PERSONAL INJURIES.



**PROBABLE
CAUSE:** DEFECTIVE
WELLHEAD
EQUIPMENT. LOCKDOWN
SCREWS SECURING THE
WELLHEAD ARE CORRODED.



QUERY: ADEQUACY OF
METALLURGICAL
DESIGN WITH REGARD TO
SHEAR RESISTANCE AND
BRITTLENESS.

- **Subsequent events:** Suspect portions of equipment are sent to an expert who conducts destructive testing and the evidence is not replicable.
- **Consequences:** Motion for sanctions, judgment against the manufacturer of the wellhead equipment and a significant chance of punitive damages award.
- **Result:** Settlement greatly exceeds the expected settlement value.

Preserving the Evidence: Utilizing State of the Art Technology

- **3D High-Definition Laser Scanning (HDLS)**
 - Provides 360-degree high-definition image of accident scene
 - Allows for precise measurements
 - Provides accurate and complete image of scene and evidence
- **Off-Site environmental monitoring/air dispersion modeling**
 - May assist in defending future exposure claims

Preserving the Evidence: Best Practices



LITIGATION HOLD



MANAGE EXPECTATIONS



DATA CONTROL SYSTEMS



STATIONING PERSONNEL
WITH LEGAL TRAINING (E.G.,
PARALEGAL)

Final Points – Top 3

1. Calm before battle.
2. Involve your trial attorney.
3. Complying with reporting requirements.

KEAN | MILLER
YOUR COUNSEL

Thank You

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