

# To The Point

## Nuclear Verdicts – Trucking Industry

CHUBB®



Nuclear verdicts are changing the trucking industry, and not in a good way. To say that nuclear verdicts are an issue right now would be an understatement. Nuclear verdicts pose a threat to trucking companies and their insurers. A so-called “nuclear” verdict is generally defined as a jury award exceeding \$10 million or surpassing a reasonable amount, given the circumstances.

### Nuclear Verdict Trends

The National Safety Council (NSC) states that the number one cause of fatalities in the workplace is transportation-related fatalities, which account for 40% of all workplace fatalities. Preliminary 2020 NSC data indicates 42,000 people died in motor vehicle crashes.

Large trucks and buses accounted for 155,585 crashes, 76,705 injuries, and 4,751 fatalities in 2020, according to Federal Motor Carrier Safety Administration (FMCSA) statistics. When considering verdicts of more than \$1 million, the average size increased nearly 1,000% from 2010 to 2018, rising from \$2.3 million to \$22.3 million, according to a study by the American Transportation Research Institute (ATRI).

Some of the larger jury verdicts against trucking companies result from issues such as:

- Lack of driver training
- Operating a commercial motor vehicle without the proper license
- Negligent hiring
- Mobile phone use
- Log-book violations
- Amphetamine use by drivers
- Pre- and post-trip inspections not being completed
- Maintenance-related deficiencies

This sampling of nuclear verdicts from recent years illustrates the raised payouts.

\$1 B to a FL family whose teenager was killed by a distracted driver on his cell phone, over his hours-of-service limit, and without a commercial driver’s license (August 2021).<sup>1</sup>

\$120 M to a CA driver injured in a crash. The driver was distracted by her mobile telephone and hit the plaintiff’s car at a two-way stop (August 2021).<sup>2</sup>

\$411 M to a FL motorcyclist who was paralyzed when a tractor-trailer truck driver lost control due to bad weather (October 2020).<sup>3</sup>

## Risk Engineering Services

\$89.6 M verdict for a TX family. During a 2014 winter storm, the driver of a pickup truck lost control, crossed the median, and crashed head-on into a tractor-trailer. Even though the pickup driver was considered at fault, a verdict was given based on systemic disregard for safety and training policies for their student drivers during icy weather (May 2018).<sup>4</sup>

\$31.6 M to a man from East Texas who gets in a minor fender bender between a tractor-trailer and his pickup truck due to negligent hiring. The tractor-trailer driver had prior driving violations/crashes and significant amounts of marijuana and metamphetamines in his system while driving the truck (August 2018).<sup>5</sup>

## **Trucking Industry Best Practices**

Ample data suggests truckers are not usually the cause of fatal crashes. However, ATRI's nuclear verdict study makes it seem the opposite is true. Below are best practices a company should follow before a crash even occurs.

**Create a Culture of Safety** – Every driver must be aware that unsafe acts will not be tolerated. This message must come from the top.

**Have a Robust Recruiting Plan** – Ensure drivers can read and understand road signs. Hire experienced drivers, conduct reference and background checks, and verify their commercial driver's license (CDL).

**Onboarding** – Be specific with expectations and discuss disciplinary actions for safety violations. Some important policies include:

- Initial and continuous motor vehicle record (MVR) monitoring.
- Establish criteria for qualifying/disqualifying drivers and identifying high-risk drivers.

- Utilize FMCSA clearinghouse queries.
- Conduct alcohol and drug screening.
- Establish a pre-employment screening program (PSP).

**Avoid the Reptile Theory** – The Reptile Theory is a common plaintiff tactic in which they establish a pattern of risky driver behavior prior to a crash. Eliminate this by rewarding safe drivers and holding unsafe drivers accountable for their actions.

**Driver Incentives** – Setting up incentive programs to acknowledge and reward drivers with superior performance can significantly influence safety.

**Inspection/Maintenance Program** – Daily inspections and preventative maintenance.

**Provide Driver Training** – Mobile phone use, fatigued driving, road rules, post-incident crash, etc.

**Invest in Telematics and Collision Avoidance System** – Designed to prevent or reduce the severity of the crash and monitor fatigued driving and driver behaviors. Telematics include artificial intelligence technology and forward-facing cameras and dashcams.

**Driver Coaching** – If telematics data is obtained, use it for daily coaching to develop and maintain a safety culture.

**Obtain Data** – Do not just collect data, but put the data to work (e.g., FMCSA and crash data, telematics, in-cab cameras, vehicle maintenance, CSA scores, and CAB reports).

**Policy Enforcement** – Implement disciplinary procedures for not following regulations, seat belt use, speeding, impaired driving, distracted driving, over-hours of service/violations, etc.

**Social Media** – Understand how an organization is portrayed on social media. Drivers are a customer-facing department whether they directly interact with customers or not.

**Speed Limits** – Obey speed limits, even if roads are clear and traffic is light.

**Regulations** – Follow state and local directives and stay off the roads if officials have directed drivers to do so.

**Pedestrians** – Be aware of the increased number of pedestrians, bicycles, scooters, skateboards, etc., particularly in urban areas.

**Report and Document** – Drivers must report and document a crash as soon as possible. Drivers need to be trained on proper reporting and documentation procedures. Ensure Management understands their roles during a crash.

**Have a Post-Crash Protocol** – Review data after a crash. Video, telematic, CAB Reports and CSA scores, ELD data, as well as applicable supporting documentation.

**DOT Investigation** – A DOT investigation will follow, so secure all data specific to the driver, including training records, disciplinary action, rewards, MVRs, and drug and alcohol test results. Retain all documentation of vehicle repair and maintenance records.

The bottom line is nuclear verdicts can and will put an organization out of business. Data is critical to improving driver performance and helps prevent a once-in-a-lifetime nuclear verdict. Developing a fleet safety culture from the top down and having robust fleet safety policies, robust hiring criteria, and operational practices are essential. Robust means best in class.



## Resources

---

### Occupational Health & Safety (OHS)

[ohsonline.com/Articles/2021/09/09/NSC-road-deaths.aspx?m=1&Page=2](https://ohsonline.com/Articles/2021/09/09/NSC-road-deaths.aspx?m=1&Page=2)

### American Transportation Research Institute (ATRI)

[truckingresearch.org/wp-content/uploads/2020/08/ATRI-Nuclear-Verdicts-One-Page-Summary-07-2020.pdf](https://truckingresearch.org/wp-content/uploads/2020/08/ATRI-Nuclear-Verdicts-One-Page-Summary-07-2020.pdf)

[truckingresearch.org/2020/06/23/new-research-documents-the-scale-of-nuclear-verdicts-in-the-trucking-industry/](https://truckingresearch.org/2020/06/23/new-research-documents-the-scale-of-nuclear-verdicts-in-the-trucking-industry/)

### National Safety Council (NSC)

[injuryfacts.nsc.org/motor-vehicle/road-users/large-trucks/](https://injuryfacts.nsc.org/motor-vehicle/road-users/large-trucks/)

[www.nsc.org/road](https://www.nsc.org/road)

[injuryfacts.nsc.org/motor-vehicle/overview/preliminary-monthly-estimates/](https://injuryfacts.nsc.org/motor-vehicle/overview/preliminary-monthly-estimates/)

### U.S. Bureau of Labor Statistics (BLS)

[www.bls.gov/news.release/pdf/cfoi.pdf](https://www.bls.gov/news.release/pdf/cfoi.pdf)

### Federal Motor Carrier Safety Administration (FMCSA)

[www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-10/FMCSA%20Pocket%20Guide%202020-v8-FINAL-10-29-2020.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-10/FMCSA%20Pocket%20Guide%202020-v8-FINAL-10-29-2020.pdf)

### Nuclear Verdict References

---

1. [www.thetrucker.com/trucking-news/the-nation/inside-a-nuclear-verdict-florida-jury-renders-1-billion-ruling](https://www.thetrucker.com/trucking-news/the-nation/inside-a-nuclear-verdict-florida-jury-renders-1-billion-ruling)
2. [theavtimes.com/2021/08/19/parris-law-firm-obtains-120m-verdict-in-lancaster-traffic-crash/](https://theavtimes.com/2021/08/19/parris-law-firm-obtains-120m-verdict-in-lancaster-traffic-crash/)
3. [sawanandsawan.com/florida-jury-411-million-dollar-injury-verdict-zoom](https://sawanandsawan.com/florida-jury-411-million-dollar-injury-verdict-zoom)
4. [cdllife.com/2018/werner-slapped-with-90-million-verdict-by-texas-jury/](https://cdllife.com/2018/werner-slapped-with-90-million-verdict-by-texas-jury/)
5. [www.yahoo.com/now/texas-appeals-court-wipes-31-201307628.html](https://www.yahoo.com/now/texas-appeals-court-wipes-31-201307628.html)

### Connect with Us

---

For more information about protecting your fleet, contact your local Chubb Risk Engineer, email us at [RiskEngineeringServices@chubb.com](mailto:RiskEngineeringServices@chubb.com), or visit [www.chubb.com/engineering](https://www.chubb.com/engineering).

Chubb. Insured.<sup>SM</sup>