



Whitepaper

# Avoiding Nuclear Verdicts: How Fleets Can Protect Themselves in an Era of Rising Risk

**Strategies to build a safety culture and reduce litigation exposure in the modern trucking landscape**

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## Industry at a Tipping Point: The Escalation of Nuclear Verdicts

The trucking industry is understandably shaken by the dramatic rise in nuclear verdicts. Though the odds of any one fleet being the victim of one are long, there's no reason to celebrate. All fleets are dramatically impacted by the growth in nuclear verdicts and should take steps to insulate themselves from the worst of their effects. The stakes of ensuring a water-tight safety and compliance program have never been higher.

The term "nuclear verdicts" is used to describe awards of \$10 million or more. The advent of exceptionally large verdicts, those over \$100 million, has given rise to a new term: "thermonuclear verdicts." Both are increasing at an alarming pace and triggering a number of harmful impacts.

Here are a couple examples:

### **WASHINGTON V. TOP AUTO EXPRESS, INC.**

In October 2020, a Florida jury ordered trucking company Top Auto Express to pay \$412 million for damages stemming from a July 2018 crash in which a motorcyclist ran into the back of one of their trucks that had stopped in the emergency lane.

### **MADERE V. SCHNITZER SOUTHEAST**

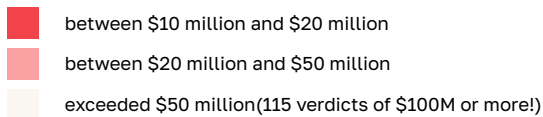
In August 2019, a jury awarded the plaintiff \$280 million after one of Schnitzer's trucks crossed over the center line of U.S. 80 in Alabama and struck another vehicle head-on, killing all five of its occupants.

## **THE TREND**

According to a U.S. Chamber of Commerce study<sup>1</sup> of 1,288 nuclear verdicts between 2013 and 2023, there was a steep increase in the frequency nuclear verdicts at all levels.<sup>2</sup>

Approximately half of nuclear verdicts during the Chamber's study period were between \$10 million and \$20 million, and over one-third were between \$20 million and \$50 million. The remaining nuclear verdicts exceeded \$50 million and included 115 "thermonuclear" verdicts of \$100 million or more!<sup>3</sup> According to another source, in 2023 courts awarded more than \$14 billion in nuclear verdicts -- a 15-year high.<sup>4</sup> The mean nuclear verdict in the Chamber's study was \$89 million, which was considerably higher than the median of \$21 million due to extreme thermonuclear awards.

## Nuclear Verdict Amounts



The Chamber's findings are consistent with previous research by the American Transportation Research Institute (ATRI), a non-profit research organization that focuses on the trucking industry. In a study of 600 trucking cases between 2006 and 2019, ATRI saw a similarly steep climb in the amount awarded to plaintiffs in post-crash litigation. For example, from 2006 to 2011 there were only 26 cases over \$1 million, but in the last five years of the study period (2015-2019), there were nearly 300 cases over that mark. In addition, the number of nuclear verdicts nearly doubled in that time. These jury awards far outpaced inflation and the increase in medical costs. Specifically, the size of verdict awards grew 51.7 percent annually, but standard inflation only grew 1.7 percent annually, and healthcare costs grew only 2.9 percent annually.

The increase in the number and size of nuclear verdicts is due, in part, to the questionable practice of litigation financing. Recognizing the potential windfalls presented by nuclear verdicts, third parties are underwriting the costs of litigation in return for a guaranteed portion of the outcome. The result is that plaintiffs' attorneys often have larger cash arsenals and resources to draw from than defense attorneys. Also, the pressure to produce results for the investors may be deterring plaintiffs from accepting settlements for lesser amounts.

## THE IMPACT ON INSURANCE

Perhaps the most profound reverberation from nuclear verdicts has been the increase in insurance premiums. The reasons behind these increases are multifold. First, insurers must increase their capacity (i.e. reserves) to pay

the aggregate cost of these claims. It is not unlike when a series of hurricanes strike the gulf coast; homeowners across the country - even in landlocked states - can expect to pay higher rates to cover the costs of these losses. In 2024, for example, natural disasters cost over \$112 billion, sparking increases in average homeowner insurance rates nationwide.<sup>5</sup>

Also, insurers have had to increase rates to guard against the potential that any one of its insured fleets, no matter how small, could be the victim of a nuclear verdict. Previously, underwriters could reasonably predict the best- and worst-case scenarios for their insureds and set rates accordingly. Now, however, they must account for the possibility - even if remote - that their insureds could be the subject of an unpredictable thermonuclear verdict.

In addition, insurers now feel forced to settle claims, even ones that are seemingly frivolous, rather than taking them to court and risking a massive judgment. Some recent thermonuclear verdicts have been handed down in cases that previously seemed almost certain to be found in the trucking company's favor. Now, because they have lost the leverage of challenging these claims in court, fleets are settling more cases and for higher amounts than ever before. Moreover, nuclear verdicts have distorted the range of what would be considered reasonable compensation for a standard claim.

The increase in insurance costs is further compounded by other factors such as the rising costs of medical care and vehicle repair. Not only are fleets paying higher compensatory damages for pain and suffering, but also higher "hard/direct" costs to reimburse people for the treatment of their injuries. Similarly, technology added to modern vehicles makes them much more costly to repair in the event of a crash.

All fleets will see insurance rate increases as a result of these factors, some more than others. Those that have poor safety records and gaps in compliance will pay much more than the average. Yet even fleets that improve their safety programs or have enviable safety records will see premium increases. Some will find the premiums intolerable and will take on higher deductibles and self-insured retention levels in order to achieve affordable premiums. These fleets quickly realize they have, in a sense, actually become insurance companies in the process. They are responsible for paying claims (up to a threshold) and must set aside reserves accordingly. These claims initially show as liabilities on the balance sheet and - when the claims are closed - show as losses on the P & L.





**25%**

**One in four auto accident trials that resulted in a verdict of \$10 million or more involved a trucking company.**

## **THE STAKES HAVE BEEN RAISED**

The stakes of having robust safety and compliance have never been higher. One in four auto accident trials that resulted in a verdict of \$10 million or more involved a trucking company.<sup>6</sup> Even those not involved in these cases are seeking to limit inevitable insurance premium hikes as much as possible. Those that take on high deductibles and self-insured retention levels will be especially concerned about limiting claims since they are betting their own money – and in some cases, lots of it.

What can fleets do to limit the impact? For starters, fleets need to take a hard look at their vulnerabilities. They can all too easily be lulled into a false sense of security when they reasonably think they have strong compliance programs. This is especially true of fleets that simply “go through the motions” required by the regulations (e.g., conducting background checks) but not considering the gotchas discussed below.



## Building Legal and Operational Resilience: Strategies for Fleets

### KNOW THE “GOTCHAS”: COMMON PITFALLS AND HOW TO AVOID THEM

The need to have a robust safety and compliance program is obvious. However, fleets should pay particular attention to the “gotchas” that – even if only episodic- could come back to haunt them. Here are some examples:

- A roadside inspection record reflects an observed vehicle defect such as a brake out of adjustment. The fleet has a record it was repaired but not until several days and many trips later.
- A driver reports in his log/ELD to have been off duty from 3-4 p.m., but a fuel receipt shows that the driver was fueling the vehicle (an on-duty activity) at 3:15 p.m.
- An applicant fails to include the name and contact information for one of his past employers (e.g., for all of 2023) on his application and the fleet fails to notice a time period (e.g., the year 2023) for which no employment is reported. A subsequent investigation by a plaintiff attorney finds the driver had two truck crashes in 2023 and had failed an employer-administered drug test in that same period.
- A driver’s medical examiner’s certificate expired on the first day of the month. He got it renewed on the 15th, but logs show he was permitted to drive a truck on the 10th of the month.

Though none of these violations may have specifically contributed to a crash, they all point to a lax compliance

program and a culture of indifference. The picture they paint is unflattering during insurance renewals and can be catastrophic in post-crash litigation.

### ACT ON YOUR DATA

Fleets have a wealth of data at their fingertips to identify risky drivers, behaviors and environments. However, fleets that gather this data and do nothing with it find themselves in a very perilous place. A large collection of actionable safety data, upon which you failed to act, screams indifference towards risk. Imagine a plaintiff’s attorney in a speed-related crash evaluating your telematics data only to find hundreds (thousands?) of previous speeding incidences that had not been addressed. In other words, you had knowledge of the risk but failed to do anything about it and, in effect, condoned it to happen.

### MONITOR DRIVER BEHAVIOR AND SEEK TO IMPROVE IT

The most successful and safest fleets are the ones that recognize that changing driver behavior is at the core of any effective safety program. They use telematics data to identify risky drivers, behaviors, and trends - and set out to address them. They also continuously monitor other data sources, such as roadside inspection reports and motor vehicle records, to spot red flags. In doing so they create a great narrative about how they are never satisfied and always seeking to improve.



## INVEST IN TRAINING AND CONTINUOUS IMPROVEMENT

A narrative that your fleet is never satisfied and always seeking improvement is a core component of a strong litigation defense. To create one, fleets should invest in a Learning Management System (LMS) that focuses on constantly improving drivers' defensive driving skills. By monitoring driver behavior (i.e., near misses and risky behaviors), fleets can identify drivers most in need of improvement. A strong LMS will include metrics that show your record of improvement.

## EXCEED THE MINIMUMS

There's no shortage of fleets that proudly boast their strict compliance with safety regulations. Their pride is often not justified, however. The regulations set the minimum standard for safety.

To quote them, directly: "Nothing in this subchapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health." In other words, if regulatory compliance is your safety program, you are doing the very least. Every fleet should have hiring standards and safety practices that exceed the baseline.

## COMPARE POLICIES TO REALITY

Well-meaning fleets often draft comprehensive safety policies, practices, and procedures, but then fail to follow them routinely. Plaintiff's attorneys eagerly exploit these discrepancies and hold them up as an example of a lax safety culture. Periodically reconciling safety policies with reality is an important step in limiting litigation risk. For instance, does your policy require drivers to cease operating in icy weather – yet they were recently allowed to do so anyway? Does it require employees to wear personal protective equipment, yet an unannounced visit to your facility yields a finding that non-compliance is rampant?

## DEFINE YOUR SAFETY CULTURE

Legal experts often point to the importance of having a safety culture, but the term is neither consistently defined nor well understood. In this context, it means that safety is a core value and a priority from the top of the organization down. Said another way, the business does not put profits



before safety when it comes time to making difficult decisions. Also, leaders constantly strive to reduce losses and don't see crashes as an "inevitable cost of doing business." They don't view the safety team as a cost center, but rather a group that fosters the prioritization of safety across the organization.

Wondering if you truly have a strong safety culture? Ask yourself these questions:

- Does our company perceive the role of the safety department to continuously reduce accidents and injuries, or merely to stave off enforcement actions and satisfy their insurance carrier?
- Does our company see tighter hiring criteria as a means to reduce risk, or something that will make driver recruiting even more difficult?
- Would our company insist on meeting a customer commitment (e.g., deliver a load) even if it meant violating safety regulations or company safety policy?
- Do fellow employees take safety policies seriously, or see them merely as unenforced guidelines?

## INVEST IN TECHNOLOGY

There are a host of various systems and tools that have a now-proven ability to help prevent crashes and reduce crash severity. These include automatic emergency braking, lane departure warning, forward collision warning, adaptive speed/cruise control, and driver-centric in-cab alerts to promptly change behavior. Fleets that chose not to deploy these systems miss out on an opportunity to improve their safety record. More importantly, they send a loud message professing their prioritization of profits over safety.

## HAVE A FATIGUE MANAGEMENT PROGRAM

Plaintiff's attorneys often paint trucking companies as greedy entities that push their employees to work long hours to maximize profit. It is probably the most common and successful tactic they use. In keeping with this theme, they often show that trucking companies do little more than simply comply with hours-of-service limits. Instead, they should have programs that seek to reduce the potential of fatigued driving. Such programs focus on things like sleep apnea testing and treatment, work scheduling that accounts for drivers' daily sleep cycles, and awareness of their personal activities that can impact alertness at work (e.g., second jobs; long commutes).

## Conclusion

All fleets are impacted by the dramatic rise in the number of nuclear verdicts and the sum total of their awards – even those that never enter a courthouse.

Insurance rates are rising dramatically as underwriters are forced to replenish their reserves and prepare for future cases. To cope with these increases, fleets are taking on higher self-insured retention levels (i.e. deductibles) that serve to keep their premiums affordable. In doing so, they are betting their own money on their safety and compliance programs. As such, the stakes on safety and compliance have never been higher.

Fleets that take deliberate steps to limit their risk of a nuclear verdict and minimize insurance rate increases will surely be more competitive and successful.

## READY TO PROTECT YOUR FLEET FROM NUCLEAR VERDICTS?

Building a robust safety culture is no longer optional—it's essential. With industry-leading technology and a dedicated team of compliance experts, Fleetworthy can empower your organization to go beyond basic compliance standards, reduce litigation exposure, and safeguard your operations against the devastating impact of nuclear verdicts.

Contact Fleetworthy today to discuss how we can help you assess your safety program, close compliance gaps, and build legal and operational resilience.

**Visit [Fleetworthy.com](https://fleetworthy.com) or call 1-888-988-1590 to get started.**

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### Endnotes

- 1 Nuclear Verdicts: An Update on Trends, Causes, and Solutions, U.S. Chamber of Commerce Institute for Legal Reform, May 2024.
- 2 This excludes a downward trend during the Covid years when courthouses were temporarily closed and trials were delayed.
- 3 This does not include the pandemic years when many courthouses were closed.
- 4 Nuclear verdicts are on the rise: How can you minimize your risks?, Marsh, September 2024.
- 5 Spotlight on: Catastrophes - Insurance issues | III
- 6 Nuclear verdicts are on the rise: How can you minimize your risks?, Marsh, September 2024.







## About Fleetworthy:

Fleetworthy is redefining road readiness with trusted solutions that deliver fleet safety, compliance, and efficiency. With the only technology suite combining safety, compliance, toll management, and weigh station bypass, we enable fleets to simplify operations and perform at their best.

Already trusted by 75% of the top fleets in North America, Fleetworthy offers the largest bypass network and the most complete and adopted toll management solution. Our technology helps fleets reduce delays, cut operating costs, and gain critical financial visibility. Going beyond regulatory requirements, our compliance capabilities enhance fleet safety, reduce risk, and support proactive audit readiness.

Fleetworthy supports millions of vehicles and drivers and is recognized across the industry for innovation and leadership. We are defining the future of road readiness. Learn more at [fleetworthy.com](https://fleetworthy.com).

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