



Preventing Nuclear Verdicts: Stop Your Data From Working Against You

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The State of Nuclear Verdicts Today

- COVID-19 led many Nuclear Verdict cases to be placed on the back burner due to in-court capacity issues.
 - While this took the industry's focus away from Nuclear Verdicts, the problem has not gone away.
- **Important statistics on Nuclear Verdicts:**
 - Verdicts over \$1 million have increased by 967% in the past five years.
 - Verdicts over \$10 million have increased by over 100% in the past five years.
 - While inflation was 2% annually, Nuclear Verdict damages have increased by 51% annually.
- Nuclear Verdicts have wreaked havoc on the trucking insurance industry.
 - Well-run, safe fleets have seen **premiums increase by 20-30%** in a single year.
 - Many fleets have had to drop their excess liability coverage because Nuclear Verdicts have made the rates on this type of coverage unaffordable.
- Even settlements have bankrupted fleets in recent years, as they too can exceed a fleet's excess liability coverage.
- In 50-75% of large-truck crashes, passenger vehicles are the at-fault party.
 - Despite this, fleets should prepare to treat every crash as though it could go nuclear, because it can.

How Trucking Fleets Have Been Hurt by Their Data

- The “**Dirty Five**” types of data plaintiff’s attorneys always ask for:
 - Drivers under the influence
 - Drivers experiencing fatigue
 - Inexperienced drivers
 - Improper vehicle maintenance
 - Distracted driving
- **Expert Advice:** Most liability problems start with hiring the wrong driver.
 - Many fleets have high turnover, causing them to hire drivers that occasionally do not meet their standards. This is a huge mistake and can explode a fleet’s liability after a crash.
- **In 100% of Nuclear Verdicts cases** where a fleet tried to hide their data, destroy it, or otherwise spoil it, the fleet lost their case.
 - Fleets can’t hide their data from plaintiff’s attorneys, but the way a fleet **messages and manages** their data can change the course of a case.
- Fleets that hide from their data are unlikely to stay in business over the long-haul.
 - Proper data management practices don’t just reduce liability; **they’re good business practices.**

How Trucking Fleets Have Been Hurt by Their Data

- **Audience Question:** “In your Nuclear Verdicts research, were fleets with more technology less likely to suffer a Nuclear Verdict?”
 - In ATRI’s research, there was no clear trend regarding which types of fleets do better or worse.
 - **Key takeaway:** Don’t think just because you have technology means you’re safe from litigation.

How to Use Driver Data in Your Favor

- **Expert Tip:** Organize your data, rank your drivers from best to worst, and terminate the ones who are truly unsafe.
 - **Note:** Often, training will be enough to turn some of a fleet's lowest-performing drivers into high-quality drivers. Not all drivers with underwhelming records need to be terminated.
- Keeping a **clear paper trail** can be the difference between a Nuclear Verdict and a small settlement.
 - If a fleet provides training for drivers but doesn't document it, then they won't get the liability reduction from having done so.
- The most effective way to reduce Nuclear Verdicts is through tort reform, but this is unlikely to occur.
 - Until tort reform is passed at the federal level, plaintiff's attorneys will have an advantage against fleets.
- Plaintiff's attorneys look for systemic issues in a fleet's driver data because **they're not suing the driver; they're suing the fleet.**
 - If fleets have disparate data, a mix of paper and digital files, and are operating out of multiple platforms, they are at major risk of a Nuclear Verdict.
- **Audience Question:** "Given that settlements are private record, does ATRI have data on settlement inflation?"
 - ATRI has a forthcoming study on verdicts and settlements under \$1 million. Because smaller settlements are less likely to be private, they will be able to study settlement inflation under \$1 million.

How to Use Driver Data in Your Favor

- A strong safety culture can help ward off Nuclear Verdicts, but it needs executive buy-in.
 - If fleet executives don't abide by the safety culture they extoll, then their subordinates won't abide by it either.
- Consistent, high-quality engagement with drivers is key to reducing liability.
 - **How to achieve consistent, high-quality engagement:**
 - Use driver data to personalize conversations
 - Schedule regular check-ins with drivers
 - Ensure managers have strong working relationships with their drivers

Looking Forward: How the State of Nuclear Verdicts Will Change

- There has been a major jump in the adoption of advanced/automatic driving systems, which will change how liability is discussed in the courtroom.
- Fleets need to put in a good-faith effort to promote themselves as **responsible members of the community** before they get into a serious crash.
 - These actions can influence the jury in favor of the defense over the plaintiff.
 - Sponsoring local events, joining the rotary club, and becoming involved members of the trucking community can look favorable in court.
- Driver engagement will become more central to fleet's defense strategies against Nuclear Verdicts.
 - Properly onboarding drivers will significantly minimize a fleet's odds of getting into a crash in the first place.
 - Technology can help fleets more effectively engage with drivers.
- When any corporation goes to trial, the entity with the deepest pockets is generally the one who pays.
 - This trend is likely to continue and puts mid-sized and large fleets at risk, as in most trials, they will have the deepest pockets.
- Fleets who are resistant to technology will have to change their attitude moving forward.
 - **Example:** Inward-facing cameras are controversial, but if they can prevent one verdict they'll have been worth it.

Steps You Can Take Today

- Fleets must **properly onboard their drivers** to reduce liability.
 - Proper onboarding can turn a problematic driver into a productive one, or weed out drivers who can't be trained.
- Investing in technology and **utilizing data properly** can yield a high ROI for fleets.
 - If a piece of technology prevents just one crash, it will almost certainly have paid for itself.
- Fleets should subject their Safety departments to intensive audits.
 - These audits can reveal a safety program's weakest links, whether those be a lack of technology, improper onboarding, or anything else.
 - **Fleets can't shy away from the weakness they have.** Instead, they have to acknowledge them and tackle them head-on before a crash occurs.

Q&A