



Preventing Nuclear Verdicts:

In Court and the Back Office



WHITEPAPER

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What is a Nuclear Verdict?

The term “Nuclear Verdict” doesn’t have a standard definition; it’s used in different ways by different people. [Some refer](#) to a nuclear verdict as any trial that results in a fleet paying damages in excess of \$10 million. [Others say](#) a nuclear verdict is a trial that leads to a fleet paying any amount of damages that is “disproportionate” to the offense they were found guilty of. [Still more](#) say that

a nuclear verdict is any trial that results in the payment of damages that a fleet simply can’t afford.

Essentially, there’s no clear standard for what constitutes a nuclear verdict, but the above definitions all have one thing in common: a fleet is ordered to pay a crippling large amount of money, and oftentimes shuts down as a result.

Even the most fiscally responsible fleets can face serious hardships or even a shutdown after a nuclear verdict. And, more often than not, the payment amount alone isn’t what leads to a shutdown. The post-verdict insurance increases make continuing operations untenable.



Fleet Shutdown

In 2018, [Carney Trucking](#) had a crash that resulted in a fatality. When they went to renew their policy with their insurer, the fleet was given a substantially higher quote that they simply couldn’t accept.

“We had a major accident last year,” David Carney, one of the family owned business’s owners, told [FreightWaves](#). **“Once we got the insurance quote, we tried to make it work, but we just couldn’t.”**

Carney Trucking’s **shut down after 36 years operating** is only one example of the dozens of fleets that have been shut down in the last five years after a fatal crash.

What makes a Traditional Verdict Go Nuclear

Crashes That Go Nuclear

There are countless fatal, crash-related trials each year that don't result in a nuclear verdict, so what makes a crash go nuclear? There are two main components:

- **A serious injury was sustained**
- **The fleet was found to be negligent**

A serious injury was sustained

[According to John Pion](#), a transportation lawyer who serves as President of Pion, Nerone, Girman, Winslow & Smith, PC, most nuclear verdicts result in high payouts because a serious injury was sustained.

"If it's a catastrophic event and there's a loss of life, there's a burn, there's an amputation, or there are multiple people involved, that should have set off a thousand whistles that there's the potential for this to become a nuclear-sized situation."

The fleet was found to be negligent

Before a jury makes a decision on whether a fleet failed to prevent a crash due to negligence, the judge will read the legal definition of negligence for the jury to base their decision on. Each state has its own definition of negligence, but they are [generally worded to say](#) "A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances."

In plain English, negligence means "Failing to do what a reasonable person would have done" to prevent an event.



The Courtroom of a Nuclear Verdict: Before and During

Fleets need to understand exactly what happens in a courtroom proceeding so they know what to expect if one of their drivers is involved in a serious crash. Any legal proceeding that goes to trial can be broken up into two easy-to-understand phases: before a trial and during a trial.

Before a Trial: What to Expect

Discovery

In the discovery phase of a legal proceeding, the plaintiff's attorney will ask for your driver data, internal communications, and any and all records they think will help them prove your fleet was negligent.

Though you may be reluctant to hand over the data requested, you and your lawyer are not the ones who decide what is authorized for disclosure in discovery. The plaintiff's attorney will submit a list of requested materials to the judge and he or she will make a ruling on which of their requests are legitimate. Generally speaking, judges will approve most materials requested by the plaintiff's attorney.

Authorizing Corporate Witnesses

Next, you will have to submit a list of people who will be testifying for you as witnesses. If they are relevant to the case, the judge will most likely agree to the selections. More often than not, fleets will pick a member of their safety team. This person can attest that the fleet has safety procedures in place and follows them faithfully.

While the main goal of a corporate witness is to demonstrate a fleet's adherence to safety policies, the secondary goal is to demonstrate to the jury that a fleet is kind, caring, and professional. To that end, regardless of if one's witnesses are on the safety team, fleets should select individuals who are knowledgeable about their policies, can produce evidence that shows the policies follow full compliance, and will be able to clearly articulate that the policies were adhered to.

During a Trial: What to Expect

Jury selection

Though it varies by location, juries are composed of groups of six to twelve people, who are selected by a process known as “voir dire,” in which the judge and the attorneys for each side question potential jurors to determine if they are suitable to serve in the case.

If either attorney believes there is information that suggests a juror is prejudiced about the case, he or she can ask the judge to dismiss that juror for cause, and each attorney may request the for cause dismissal of an unlimited number of jurors. Additionally, each attorney has a specific number of peremptory challenges, which can be used to excuse a potential juror without stating a cause. Typically, attorneys use their peremptory challenges to strike jurors who may not be sympathetic to their case.

Presentation of cases

The presentation of cases begins with opening statements. Here, the plaintiff’s and defendant’s attorneys will attempt to frame the dispute at the heart of the trial. Next, the plaintiff presents the evidence for their case and uses the data obtained in discovery to argue that the fleet was negligent in its handling of the crash. The plaintiff is allowed to cross examine the witnesses authorized by the court and will ask about the dispute, as well as solicit the

opinions of expert witnesses on the matter at hand.

After the plaintiff’s cross examination, the defense will present their evidence. Additionally, the defendant’s attorneys will also present witnesses, cross examine them, and re-cross examine previous witnesses. The plaintiff’s attorneys are then allowed to rebut the conclusions reached by the defendant’s attorneys’ arguments.

Questions

YOUR ATTORNEY MAY ASK

“Have you or any members of your family been involved in a trucking crash before?”

A PLAINTIFF’S ATTORNEY MAY ASK

“Have you or anyone in your family worked for a trucking fleet?”

The trial concludes with closing arguments: one last opportunity for the plaintiff to appeal to the judge and the jury and one last opportunity for the defense to appeal to the judge and jury, with a closing argument rebuttal from the plaintiff. The judge will then issue instructions to the jury on rendering a verdict, after which the fate of your fleet rests in the jury’s hands.

Tactics the Plaintiff's Attorney Will Use

It's impossible to predict what will happen in a trial, but there are several strategies plaintiff's attorneys use against fleets.

01

Reptile Theory

Lexisnexis, a leading provider of legal, government, business and high-tech information sources, provides the following definition of reptile theory:

“Engaging the most primal part of a juror’s mind to provoke the feeling that if a defendant’s actions are allowed to continue, then the community and even the jury itself may be in danger.”

The way this works in practice is that an attorney relying on the Reptile Theory will cite statutes, employee handbooks, or industry standards to the jury, and explain that these standards were put in place to protect the larger public.

Then, the Plaintiff’s attorney will argue that adhering to these safety standards is a systemic problem within the fleet, and that the motoring public is not safe near drivers who work for the fleet. Importantly, the jury themselves are members of the motoring public, and so the plaintiff’s attorney is essentially arguing “You and your community are not safe because of the practices of this fleet.”

This argument primes the jury to return a verdict with high damages, because it’s not an abstract third-party that is in danger—it’s the jury themselves. By engaging the fear centers of the jurors’ brains, the plaintiff’s attorneys can increase the odds the fleet receives a nuclear verdict.



Tactics the Plaintiff's Attorney Will Use

02

Making the Driver the Victim

Another tactic plaintiff's attorneys will use is to frame the case so that the driver appears to be the victim of a negligent fleet. They will try to argue that the fleet put a helpless driver on the road with minimal training or safety standards, and thus set them up to fail.

The thinking behind this strategy is that **it's harder for a jury to blame a driver who is clearly remorseful than it is for a jury to blame a faceless corporate entity**. They will try to turn the driver against their fleet, and put the fleet's safety team on trial rather than a sympathetic driver who could be suffering post-traumatic stress after their crash. By making the case about a systemic problem within the fleet, rather than the actions of an individual, it becomes easier for the jury to believe that negligence led to the crash.

To mitigate this tactic, fleets must do everything they can to treat their driver with respect after a crash and keep them on their side. They must make sure the driver doesn't feel abandoned by their fleet, both out of respect for the driver and concern that they may justifiably cooperate with the plaintiff.

03

Say the Fleet Prioritized Money Over Lives

Often paired with making the driver the victim, plaintiff's attorneys may argue that the fleet on trial is greedy, having decided to put profits ahead of safety. By doing so, they can moralize the crash further than it otherwise would be, making it easier for the jury to blame the fleet and justify a ruling with high punitive damages that "teach the fleet a lesson" and deter the action from happening again.

This tactic can also tie into reptile theory. Plaintiff's attorneys can argue that the behavior of the fleet is a threat to the public and should be disincentivized. If the jury is concerned that a fleet prioritized profits over safety, they can be convinced that they should pay high damages—rendering them unprofitable—to show that safety cannot be compromised for profits.

Practical Steps You Can Take to Protect Your Fleet

Once you understand the way a plaintiff's attorney will argue against your fleet during a trial, you can begin to take steps to bulletproof your fleet against their arguments.

As a disclaimer: it's important to understand that you can never predict

the outcome of a jury trial, so nothing will guarantee immunity from a nuclear verdict. The simple fact of the matter, however, is that in the event of a major crash, whether your driver was at fault or not, some fleets have an 80% chance of suffering a nuclear verdict while others have

only a 5% chance. You need to be the fleet with a 5% chance of suffering a nuclear verdict.

Fortunately, there are four practical steps your fleet can take to reduce your liability in the event of a serious crash.

Go the Extra Mile With Compliance

Compliance is meeting the regulatory standards required of every fleet. Since these are definitionally common practices, if you meet basic compliance standards, it's easy to argue in court that you acted as a reasonable fleet would in that regard.

However, if you want to bulletproof your fleet against claims of negligence, you have to move

beyond compliance. There are very few arguments more compelling than the declarative statement of "We did more than what was asked of us, because we care about safety more than anyone else."

As an example, under the [FMCSA BASICS](#) system, a fleet enters the "intervention threshold" for the crash indicator BASIC when they hit a percentile

of 65%. If you set as official policy for your fleet to intervene proactively to keep scores below a percentile of, say, 30%, you can argue in court that you hold yourself to a higher standard of compliance than other fleets.

Arguments like these can establish the credibility that your fleet prioritizes safety and holds itself to a higher standard than most.

Review Your Policies and Procedures

One of the first things a plaintiff's attorney will ask for in discovery is a copy of your safety handbook. These handbooks are often used against fleets with devastating effectiveness. For some fleets, these can be well over 100 pages long, which presents two problems for their defense:

- **The more rules there are to follow, the less likely it is that your drivers follow all of them.**
- **The more rules there are in your handbook, the more inconsistencies there will be between them.**

Either one of these shortcomings can be weaponized by a plaintiff's attorney. If your drivers aren't following the rules you've included in your handbook, then they'll use that as evidence that your management team hasn't been able to hold your fleet to its own stated policies. **This begins to make the case that your fleet is negligent.**

If there are inconsistencies in your handbook, then a plaintiff's attorney will say that you failed to design a workable system. A system that doesn't work is almost by definition unreasonable, which can also be portrayed as negligent to a jury. Further, inconsistencies in your handbook can lead to a driver following one of your fleet's rules, and in doing so, violate another.

While having an extraordinarily long handbook might make you feel as though your fleet is going above and beyond, the truth is that a short, simple, and to-the-point handbook that can be easily followed by those it's intended for can significantly reduce your liability.



Invest in the Technology That's Available

Investing in the latest safety technology can not only shield your fleet against claims of negligence, but some safety-specific platforms are designed to reduce crashes in your fleet altogether.

When making technology purchases to prevent nuclear verdicts, there are three things fleets should consider:

Collect Your Data

The biggest misconception a fleet manager can have is that collecting more data than they are required to increases their fleet's liability. On the contrary, you need data on your driver's performance, your training efficacy, and your ability to manage both, to begin taking the steps necessary to reduce your liability. Not only will full visibility into your fleet allow you to carry out the steps outlined in this paper, but failing to collect your driver data opens you up to further claims of negligence.

ELDs, cameras, training software, pre-hire solutions, violations tracking, and asset management systems are increasingly in standard use by fleets. Not having one or two of those systems may not be detrimental in court, but having as many as possible can strengthen the case that your fleet cares about safety.

Organize Your Data

Once you've established a set of third-party systems to collect data for your fleet, you need to focus on organizing that data so it can be interpreted sensibly and so you don't have to worry about inconsistencies among your systems emerging.

As discussed previously, inconsistencies in a fleet's data are often used by plaintiff's attorneys to make their case. Their goal is to show that you had the data on hand to prove a driver was at-risk, but because you were careless with it, you failed to recognize the signs of risk that were right in front of you.

By investing in data organization technology, you can ensure you're catching the warning signs of a crash and addressing every driver who exhibits them.

Proactively Analyze Your Data

While organizing your data is critical, you also need to analyze your data to make sense of it and take action. Data analysis software—especially those powered by [AI and machine learning models](#)—can unlock value for your fleet that Excel-based analysis simply cannot.

Machine learning models, like those powering the [Idelic Safety Suite®](#), are trained with decades of data surrounding hundreds of thousands of drivers to uncover patterns of crash-risk that are hidden in every fleets' data. While today there is no mandate for fleets to invest in this next-generation technology, doing so now can help prove that your fleet has gone above and beyond with compliance and is taking safety seriously in a way that precludes negligence.

Never Burn Your Bridges

In a trial, your goal is to be the person who everyone can empathize with, and that's a lot easier if you treat everyone involved with respect and understanding. If you're facing a nuclear verdict trial, it's likely a third-party to the incident was seriously harmed by the actions—whether preventable or not—of your

driver. It is extremely important that you empathize with this person and take steps to display your empathy.

Though facing a nuclear verdict can cause stress to any fleet, lashing out at the plaintiff is the last thing you want to do. The vast majority of people who take

a crash-related incident to trial are not doing so to be vindictive—they are doing so to right a wrong. Juries understand this and will not look favorably upon a fleet who tries to portray themselves as the victim over a plaintiff who suffered genuine physical harm.

Conclusion

Nuclear verdicts are increasingly common, but it doesn't have to be this way. Though there's no surefire way to bulletproof your fleet against a nuclear verdict, once you understand why they happen and how you can protect yourself from the tactics of a plaintiff's attorney, you can become less susceptible to a devastating court ruling.

There are countless benefits to investing in safety software beyond reducing your liability. As an example, the [Idelic Safety Suite®](#) can help you:

01 Prevent Crashes

With industry-leading machine learning models that can spot risk hidden within your data

02 Reduce Driver Turnover

Through proactive onboarding, automated touchpoints, and performance management programs

03 Lower Insurance

By reducing the number of crashes you experience, as well enabling [data transparency](#) when working with insurers

04 Save Time

On double data entry and achieve faster daily operations because of Safety Suite's simple user experience

Idelic & Safety Suite

Idelic’s mission is to help bring every drivers home safe each night. We are a team of experienced industry and technology experts who were born from trucking, raised with an understanding of how fleets operate, and driven by a passion to help every

fleet save time, money, and lives. The Idelic Safety Suite is trucking’s premier driver management platform that offers the most advanced Driver Watch List in the industry, identifying and flagging drivers at-risk for a crash using proprietary Machine Learning models.

As the leader in data management and crash prevention, the Idelic Safety Suite has become the go-to tool for fleets wanting to reduce crashes, decrease turnover, and lower insurance premiums. Learn more at idelic.com.

Why Preventing Nuclear Verdicts?

These are just some of the ways Safety Suite can help your fleet save time, money, and lives. If you’d like a full rundown of how Safety Suite can help you implement the steps detailed in this whitepaper,

sign up for a demo of the trucking industry’s premier driver management platform [here](#).

Whether you choose to invest in a safety system or not, this whitepaper has

given you steps you can take right now to protect your fleet from a nuclear verdict. By implementing these steps, we can make the transportation industry a safer, more effective trade for all.

18:37 AM

Drivers

31-40

41-50

51-60

61-70

71-80

81-90

91-100

Risk Score

70

68

64

62

58

Plan Status

Plan Assigned Not Started

Plan Assigned Not Started

1 Task Past Due

Plan in Progress

Plan in Progress

Rows 1-5

Expiring Documents

Currently Expired

10

Expiring in 30 Days


15

Expiring in 60 Days

30

Record No.	Expiration Date	Employee	Terminal	Record
009007	07/28/2020	James Wilkson (009007)	Detroit	Perm
008341	07/29/2020	Michael Smith (008341)	Wheeling	MV
004112	07/01/2020	George Roberts (004112)	Cleveland	C
005009	08/05/2020	Mark Washington (005009)	Pittsburgh	C
007854	08/05/2020	Tim Smith (007854)	Tampa	C

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