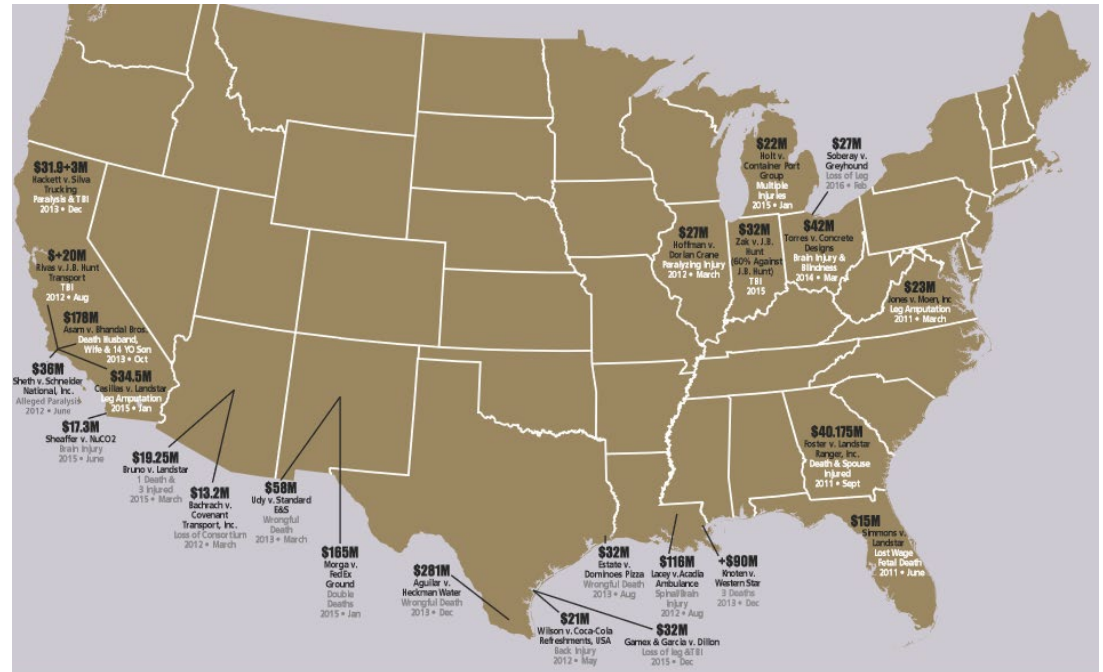


Nuclear Jury Verdicts Can They Be Avoided?



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Definition of Nuclear Verdict

Verdict in excess of \$10.0 million?

Verdict in excess of policy limits?

Verdict in excess of \$1.0 million?



ATRI Study

- Safety
 - Does not improve roadway safety
 - As insurance increases, safety budget decreases
 - Prompts more prescriptive safety regulations
 - Investments in surveillance v. safety technology
 - Limited circumstances: settlement agreements requiring improvements in safety.

Motor Carrier Costs

- Insurance carriers are increasing premiums.
- Stricter underwriting standards (more selective who they insure)
- All motor carriers are experiencing an increase in premiums regardless of size and experience in industry
- Motor carriers are declaring bankruptcy or closing their doors



Insurance Costs per Mile by Fleet Size

< 5	\$0.165
5-25	\$0.152
28-100	\$0.092
101-250	\$0.069
250-1000	\$0.069
> 1000	\$.049

Jury Perceptions of Trucking Industry

Do you feel unsafe near large trucks?

70% Agree

Are you worried about distracted truck drivers?

75% Worried

Do you agree that a truck driver should take every precaution?

85% Agree



More Perceptions

Do you agree that trucking companies and truck drivers should be held to a higher standard than government regulations?

85% Agree

Do you agree that the best way to get trucking companies to behave properly is through punitive damages?

81% Agree

Even More Perceptions

Do you believe a company should pay an injured person even it not liable?

66% Agree



Trucking Specific Issues

Are you concerned that truck drivers operate large trucks while fatigued?

65% Concerned

Do you feel truck drivers work too many hours?

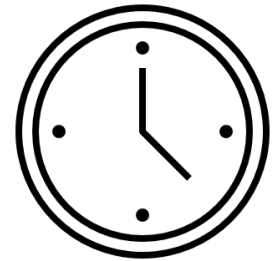
23% Agree

69% About the right amount

Do feel that truck drivers are well trained?

15% Agree

81% About the right amount





Effect of Covid?

- Covid deniers and anti-vaccers are more conservative.
- Covid concerned jurors might not want to serve.
 - More liberal the more want off jury.
 - Older persons (more susceptible) may want off jury (rogue grandparents?)
- More Covid concerned = More Safety concerned.
- Millennials?



Reptile Theory

- What is the Reptile Theory?
 - Trucking Companies do not care about the safety of our community.
 - Incite fear and anger with jurors with trucking company conduct.
 - The more \$\$ that is awarded, the more the community will be protected.

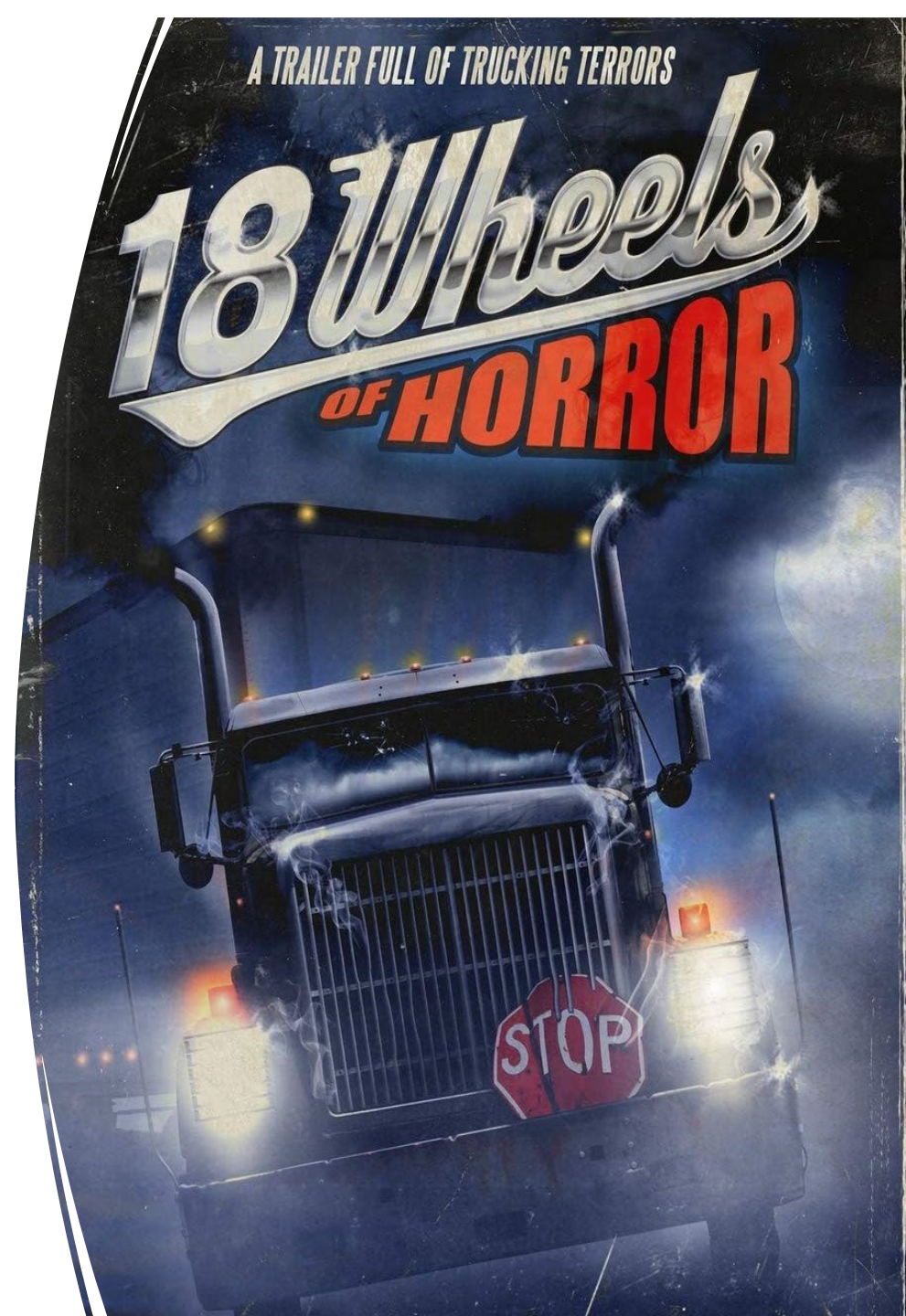
What Can Motor Carriers Do?

- Do not panic (we can slay the reptile)!
- Aggressively Handle Claims/Investigation
- Admit and Take Responsibility (when appropriate)
- Get our own house in order
- Invest your time and energy in the litigation (not just an insurance issue)
- Improve our public image



Specific Themes of the Reptile

- How likely was it that truck driver's conduct would hurt someone?
- How much harm could it have caused (not what it did cause)?
- How much harm could the trucking company's conduct cause in other situations (not in this situation)?
- Everyone is directly threatened by the way the trucking company operated.



The Venom of the Reptile



Establish a safety rule and then get safety director or trucking company representative to admit it was violated.



Violation of safety rules =
Liability

Where the Reptile Hides

Universal Safety Rules

- FMCSA Regulations
- Driver/Employee Manual
- State specific CDL Manual
- Corporate Representative Deposition
- National Council of Safety publications
- FMCSA Publications (Large Truck Study)
- ATRI Publications
- Company Web site
- Trade Journals



Scene Investigation

Photographs

- Final Rest of Vehicles
- Physical Damage to Roadway or other Objects

Identity of Witnesses

Identity of Investigating Officers

Identity of Parties Involved

Identity of Insurance Provider

HOS Logs (30 days)

Driver Qualification File (make sure everything is up to date)

Maintenance Records (12 months)

Annual Inspection

Safety Manual

Training Documents

Communications with Driver

Preservation Letters



To send or not to send?



Responding to preservation letters from attorneys

Recommend defense counsel respond

Send defense counsel all documents placed in litigation hold



What to save and place on litigation hold



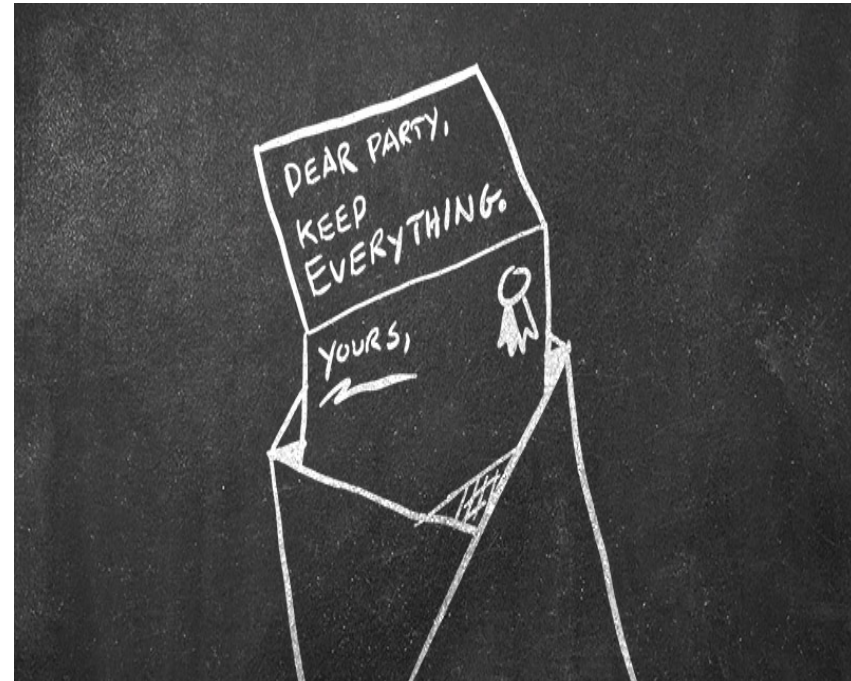
Consequences for not preserving

Adverse inference

Exclusion of certain evidence

Potential liability for spoliation

Blistering cross-examination



Sources of Post-Accident Information

Police Report

Major Crash Recon
Report

Dash Cam

Downloaded Data
from vehicles
involved

Police body cams
(need to send
preservation
request)

911 calls (also a
good source for
witnesses)

Cameras in the
area (need to send
preservation
request)

DOT post-crash
inspection report

Driver and witness
photos and videos

Social Media
(including You
Tube)

Cell Phone and cell
phone apps

Garmin (GPS)

Post-Accident Investigation



- Internal Accident Report
 - Follow Safety Manual format
 - Review with litigation in mind
- Motor Carrier post-accident investigation
 - Police report
 - Driver statement
 - Witness statements
 - Statement from injured parties
 - Insurance carrier investigation
 - Accident File
- Preventability Determination
 - What does Safety Manual provide?
 - What is your usual custom and practice?
 - Preventability Defined?
 - Not to be confused with fault or liability
- Termination of Driver
 - Reasons
 - Termination Document

Compliance Issues

- DQ File
 - Application
 - Past Employers
 - Felonies
 - Accidents
 - Traffic Violations
 - Truthfulness
 - Employment Verification
 - MVRs
 - Medical Card/Long Form
 - Annual Reviews
- HOS Logs
 - Past violations
 - Speed issues
- Maintenance Records
- Annual Inspections
- Roadside/OSS issues
- OP 1
- Compliance Reviews
- FOIA Requests



Litigation Questions

Admit liability and accept responsibility?

Admit partial fault, but also point out that the claimant driver was partially at fault?

Timing as to when to address issue.



- Personalize the trucking company.
- Examine case from driver's perspective.
- Demonstrate company's commitment to safety.
 - Safety Program
 - Safety Budget
 - CSA scores
 - Driver training program

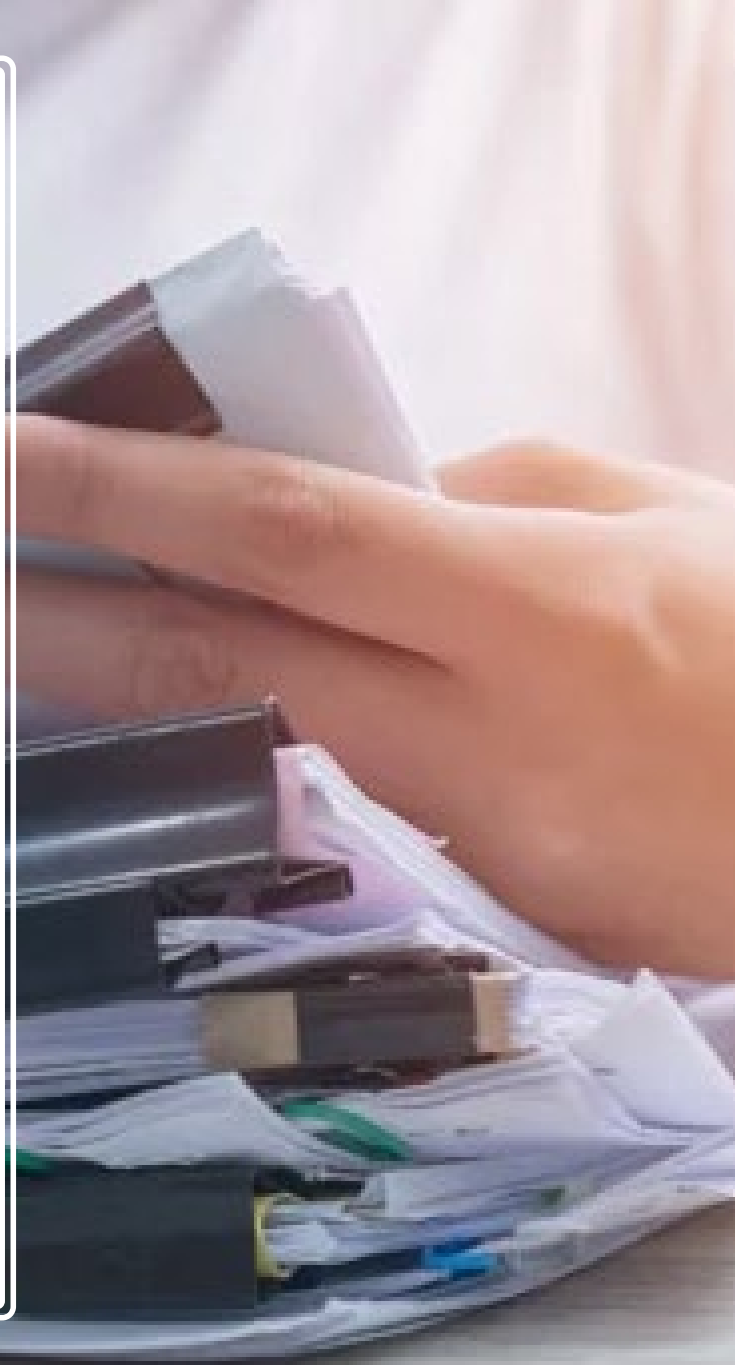
Depositions

- Corporate Representative
 - Decide who will testify
 - Prepare, prepare and prepare more
 - Invest time
 - Train someone to be designated representative
 - Prepare for Reptile Questions
- Driver
 - Prepare, prepare and prepare more
 - Get driver invested in outcome
 - Compensate driver for time and travel
 - Invest time
 - Professionalize driver



Preparation for Depositions

- Must invest time
- 1-2 days (if not more)
- Prepare for Reptile Questions
- Review depositions taken by claimant's attorney (lawyers are lazy)
- Practice cross-examination
- Videotape cross-examination
- Review videos of other drivers/corp reps



Getting to Know the Trucking Company and Driver

- Trucking Company
 - Facilities
 - Awards
 - Safety Incentive Program
 - Driver Training Program
 - Driver Monitoring
 - Safety Technology
 - Safety Budget
 - Driver Retention Program
 - CSA Scores and Safety Rating
- Driver
 - Background and family
 - Training throughout career
 - Military experience
 - Safety Awards
 - Safety Record
 - Miles Traveled
 - Life on the Road
 - Difficulties Encountered driving large trucks
 - Professionalize driver

Other Considerations

- Experienced trucking attorney
 - Must know the industry and the regulations
 - Trucking litigation experience
 - Seasoned trial lawyer
 - Good negotiator
- Focus Groups/Mock Trials
- Know how, where and when to “Fold Them”



Financial Considerations

- How much insurance do you need?
- Place corporate structure in defensive mode
 - Non-asset company
 - Observing corporate formalities
 - Do not mix assets and keep companies separate
 - Have written agreements between companies
 - Beware of indemnity agreements in customer and broker contracts
- Retain your own counsel



Questions



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