



NUCLEAR VERDICTS

What are they, what do they affect and what can be done to try to avoid them?

Nuclear Verdicts Growing in Popularity

While the number of deaths and injuries from trucking accidents have decreased over the years, nuclear verdicts are worrying many trucking companies. More and more companies have experienced nuclear verdicts.

It's hard to predict nuclear verdict because many times the amount awarded does not match the damages. This makes it hard to predict if a case will end up becoming a true nuclear verdict.

Nearly all cases don't make it to trial. If there is not a settlement before the court date, the jurors decide the amount awarded. When an individual is killed or

serious injuries result, the jurors consider the dependents of the individual. Since its hard to put a value on human life, the prices of nuclear verdicts are high. The amount of punitive damage has increased due to the consideration of social expectations. There has been the expectation that the punitive damage should be able to sustain the victim and their dependents for the rest of their lives in addition to the compensation for the suffering.

One of the reasons nuclear verdict settlements are increasing is due to the higher cost of medical bills. The lawyers of the victims often blame corporate



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What is a Nuclear Verdict?

A nuclear verdict is defined as a jury award in which the penalty exceeds \$10 million. The majority of the award is due to punitive and compensatory damages, and have been increasing in the trucking industry over the past several

years. There are only about five to ten massive nuclear verdict cases per year in the U.S. The cases are brought to trial after an accident occurs and someone is severely injured or even killed. Nuclear verdicts are one of the main causes of

oversight and inadequate safety procedures and regulations. In the past, the driver was typically blamed for the accident due to these factors.

carrier bankruptcies, along with rising insurance premiums. Some insurance companies are avoiding the trucking industry altogether due to the increased risk of accidents resulting in nuclear verdicts.

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Causes Behind Nuclear Verdicts

Only about 5% of nuclear verdicts actually go to trial. In order to win a case, the plaintiff tries to trigger the emotional side of the jurors' brains to allow them to see the damage that has been done, not only physically, but also emotionally. Often times, the plaintiff tries to win their client enough money to cover medical bills and emotional distress. They use a number of different strategies to win over the jury. However, the

defendant preaches the facts and rationality to the jury. The most influential side will win the case, as with a normal trial.

There are numerous causes of trucking accidents that qualify as nuclear verdicts. Some of which may be distracted driving, driving under the influence, lack of training/experience, etc. Nuclear verdicts occur because the jury determines that the defendant is willfully or

purposely denying any responsibility or involvement in the accident.

Unfortunately, nuclear verdicts are unavoidable. There are ways to decrease the cases, but eliminating them is nearly impossible. Precautions such as adequately training drivers, making sure they have a clean driving record, keeping track of their speed while driving, etc. can be taken in hopes of avoiding life-threatening accidents.

What happens to drivers after Nuclear Verdicts?

After looking over the research that Bowling Green State University (BGSU) has collected over several weeks on nuclear verdicts in the United States, we saw some commonalities in the data. Unfortunately, one of those commonalities is that in nuclear verdict cases, the drivers' job security is left out of the case write up, but was something that we wanted to know more about. For many drivers, unfortunately, passing away in such horrible accidents is very common. All too often what causes these accidents is driver error; whether they fall

asleep at the wheel, fall victim to distracted driving, or sometimes it is strictly machine failure. We found that when a company is tagged with a nuclear verdict case, chances are they will go bankrupt if they are not big enough to handle the financial burdens that are placed on a company. From research we found instances where over 500 drivers lost their jobs when one driver made a mistake and the whole company went down because of it. We found when asking the question- "What happens

to the drivers involved in nuclear verdict accidents?" there are resounding negative consequences, whether a driver passes away in the accident, loses their job for failure to drive safely, or the company goes bankrupt. The aftermath of such a verdict has a lasting effect on not only the people involved in the accident, but all the employees and families of the whole company.



Insurance Rates in the Trucking Industry

Despite the fact that the number of deaths and injuries from accidents involving large trucks has been declining, nuclear verdicts have been a consistently increasing theme in trucking over the past several years. As a result, carriers are enduring endless cost pressure of rising insurance premiums.

More specifically, insurance costs are one factor contributing to the difficult operating conditions for truckers as the rates for trucking fleets are soaring. According to research done by the American Transportation research institute, the cost of truck insurance

premiums rose 12%, on average, to 8.4 cents a mile, in 2018 from the previous year. This was the second-highest increase among all carrier expenses after fuel in 2018.

By and large, nuclear verdicts are certainly driving some insurance companies out of the market. This will tighten the insurance capacity. As a result, the fact that remaining insurance companies are able to charge higher rates it is forcing a lot of smaller trucking companies out of business if these companies cannot afford to pay the rates.

Premium Growth

The average cost of truck insurance premiums rose 42% from 2010 to 2018.

Average annual cost per mile for truck insurance premiums



Source: American Transportation Research Institute

Why Insurance Rates Keep Rising

One of the reasons, according to top trucking executives and transportation attorneys, is the rise in so-called "nuclear settlements" either awarded by a jury or negotiated by attorneys in a wrongful death lawsuit involving a heavy truck. The median verdicts have gone from \$23 million to \$44 million over the last two years. Carriers report that insurance premiums for long-haul trucking companies have basically doubled in a few years. The leading cause is that plaintiff attorney tactics have become more and more sophisticated and aggressive, while at the same time defense and insurance company trial preparation tactics are geared toward cost control and being more reactive than proactive. It involves approaches that are more concerned with protecting relationships and protecting record for appeal, as opposed to winning. Insurance is one of the biggest reasons in the estimated

450 bankruptcies and other closings among heavy truck fleets. Some companies either have already or are going out of business due to higher-than-expected insurance increases. In one example, a Georgia case involving a head-on collision with a tractor-trailer in 2016 that killed five members of a family resulted in a \$280 million jury award last year against the trucking company. In another example in Indiana, \$35 million was awarded to a quadriplegic man battling his insurance company after being hit by a drunk driver. In another example, RCX Solutions fought a legal battle that resulted in a \$23 million "nuclear verdict" in 2017, showing that insurance rates

can rise by three times after an accident. After a week-long trial, the jury found that RCX was "using motor vehicle(s) it did not own to transport property under an arrangement." A jury found RCX liable and awarded the plaintiff around \$23 million. While the Court of Appeals found the jury award to be "excessive" and lowered it to \$7.5 million, it was too late.

Another reason for the increase in insurance premium rates is the fact that shippers demand higher limits for their motor carriers. Some of the firm's trucking customers are paying twice as much for policies that offer half the coverage limit they previously held.





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Proven Ways to Avoid Nuclear Verdicts

Nuclear verdicts are a frightening and daunting scenario that can be played in our minds over and over again. It might appear that nuclear verdicts are inevitable in the trucking industry. The question everyone is wondering is *How can we avoid nuclear verdicts?* Avoidance in and of itself has not been solved by one answer, but there are preventative measures that can be taken in order to decrease the likelihood. The idea with nuclear verdicts is to be proactive versus reactive.

According to research done at BGSU, there are many necessary precautions available to slim the chances of having a large nuclear verdict case in court to settle. Although it sounds like common sense, one major precaution is to follow all the laws regarding drug and alcohol use while

operating a vehicle. Similarly, it is crucial to obey the rules of the road. Texting and driving are absolutely unnecessary and have proved to be deadly. Requiring more discipline to the rules, such as the speed limit, stopping at red lights and carefully changing lanes would greatly decrease dangerous accidents.

The weather can affect the way a vehicle drives in a variety of ways, for example, hydroplaning or sliding on ice. Clearly, the weather is something out of our control. But how we decide to adapt our driving during inclement weather is something we can control. During inclement weather, vehicle speed should be reduced, and hazards should be used if visibility is difficult.

From research, it was found that failure to comply

with the U.S. Department of Transportation (DOT) regulations caused many accidents to have greater potential to turn into nuclear verdicts. This includes but is not limited to: falsifying driving logs and driving more hours than the maximum limit which ultimately causes fatigue. Companies should expect their drivers to follow these regulations and driver safety should be the utmost of importance. Driver training should be ample for the drivers to feel safe in their jobs and have time to gain experience.

While nuclear verdicts are unnerving to ponder, taking these precautions will aid companies in steering clear of them.



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