

The fallout

Joseph Doerr discusses how to protect your company from nuclear verdicts.

In October 2016, the Wall Street Journal published an article titled “Nuclear Verdicts Have Insurers Running from Trucks.” The article, which highlighted a concerning trend where massive financial payouts were awarded to families of accident victims, has brought to light some of the major concerns trucking companies are facing as a result of these so-called “nuclear” verdicts.

Even though, according to the U.S. Department of Transportation, the number of people killed in accidents involving large trucks fell 20 percent over the last 10 years, nuclear verdicts have made the financial consequences of those crashes harder to predict. Fleets, even those with stellar records, are now having issues obtaining insurance coverage due to certain major insurance carriers pulling completely out of the for-hire trucking insurance market.

This is largely because settlements in nuclear verdict cases have taken much of the predictability out of managing risk. According to the Wall Street Journal article, carriers such as American International Group (AIG) and Zurich Insurance Group AG have dropped their for-hire fleet programs entirely, triggering what some have called a panic in the industry. The article reports that it has not been uncommon to see the remaining for-hire fleet insurers mandate rate increases of between 10 and 30 percent. But for as disturbing as this has been for the trucking industry as a whole, it doesn't end there. The fallout from nuclear verdicts can affect nearly any company that utilizes commercial vehicles, as well as commercial vehicle drivers, within the course of their business.

Impact on auto insurance

With media reporting substantial increases in commercial auto insurance premiums from some insurers, there has been a lot of confusion for companies that have never had a claim within their commercial auto policy. A common misconception about insurance in general is that it operates on a “one to one” principle, meaning: if a company has



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million dollars wouldn't be nearly enough coverage and could leave a potential insured's personal assets at risk.

The sad reality of nuclear verdicts is that, most likely, they will be a thorn in the side of our industry for years to come. I believe that we are only seeing the beginning of some complicated and frustrating insurance trends that will likely bring additional rate increases and more stringent underwriting guidelines. Add in the rapidly changing regulatory climate, more vicarious liability suits and criminal punishments for negligent hiring, entrustment and retention issues, and no sight of any real tort reform on the horizon, and it is possible we could be looking at a problem that persists for the

never had a loss and pays its premiums on time it will be immune from rate hikes. But as most of you know, this simply isn't true. Even when risk is measurable and predictable, there still exists an unknown factor: two claims of similar features can have two completely different outcomes. For example, think of instances where one claim settles for \$900,000 and another nearly identical claim settles for \$2 million.

Additionally, I foresee a second issue arising from this nuclear verdict crisis – the amount of coverage needed to protect your company could drastically increase. The Federal Motor Carrier Safety Administration (FMCSA) requires a minimum of \$750,000 in coverage, but many companies elect to carry \$1 million. At first glance, this seems like a positive step, and for the most part it is. But judging from some of the nuclear verdicts and corresponding settlements we have seen within the last five years, a



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foreseeable future.

Protect yourself

Of course, it's not all doom and gloom, and there are real, tangible ways you can protect yourself and your company. I believe that the most effective way to guard your organization is to make sure that managers, dispatchers, drivers, staff, mechanics and anyone else who works for the company are properly trained (with easily producible documentation) and consistently engage in refresher training courses germane to your business. For commercial auto exposures, this means knowing and understanding federal motor carrier safety regulations, and for crane companies it means remaining

educated and conversant in all the relevant OSHA rules, including those that are crane and rigging specific, as well as the responsibilities defined in the ASME B30.5 standard.

It is also important to understand that we live in a data-driven world, and FMCSA's CSA (compliance, safety, and accountability) program tracks all trucking violations within a two-year period. Due to these record-keeping practices and requirements, CSA data and other compliance standards can leave a paper trail that is discoverable, making this data a powerful tool for plaintiff attorneys to use against you. When CSA violation data is isolated and given a colorful backstory, it can paint a negative image of your

company. Patterns and trends in CSA scores, even when they are a stretch, can demonstrate a lack of commitment to safety, giving plaintiff attorneys just the ammunition they need to push for higher-than-reasonable settlements.

These days, it sometimes appears as if business owners and business are seen simply as a means to a financial end, and not as the hard working, safety-focused people and businesses they truly are. Plaintiff attorneys often engage in a new strategy of attack where they call into question the character of the company instead of the facts of the case. This means that companies need to be vigilant when it comes to implementing and enforcing safety and training programs. It is the duty of all of us in the industry to raise our standard so we can reverse the nuclear verdict trend.

At NBIS, we define ourselves as a complete risk management company. We understand the struggles of running a business in today's incredibly challenging business climate, and we have made it our mission to provide our policyholders with tools to help make the needed strategic adjustments less painful and time consuming. Some of these services include:

- A risk management kit that provides assistance with policies, procedures, safety programs, risk management guidelines and compliance
- Online training courses for testing and tracking both over-the-road and operational exposures
- Safety consultations and evaluations
- Contractual assistance
- Safety seminars

We believe that success for both policyholders and insurers are intricately entwined and can only be achieved when we work together. We are all part of the same sophisticated, fun and incredibly rewarding industry – and if we want it to thrive we must be vigilant in the management of our processes, policies and employees' behavior. ■

Three nuclear verdicts and settlement amounts.*

Torres v. Concrete Designs

\$42 million awarded in state court

March 2014 – Cleveland, OH

Injuries: Allegations of TBI for two passengers, one of whom was blind in one eye.

Liability: questionable – Driver of passenger vehicle had previously pled guilty to negligent assault arising out of accident

Unusual Fact: \$2 million limits on truck; truck's insurer offered only \$100,000

Morga v. Fed Ex Freight

\$165 million awarded in state court

January 2015 -Santa Fe, NM

Injuries: Death of a 22-year-old mother and four-year-old daughter

Liability: Very questionable – substantial evidence that mother was either stopped or barely moving on heavily traveled interstate at night

Unusual Fact: Trial Judge recuses herself after ex parte communication with plaintiff's attorney; new judge denied motion for new trial and awarded five percent pre-judgment interest and 15 percent post-judgment interest; case on appeal

Dallas v. Bass Logging

\$16.5 million awarded in state court

March 2015 – Washington County, GA

Injuries: Mostly soft-tissue with \$125,000 in medical bills

Liability: Probable – the trucking company denied liability throughout, though it pulled out from stop sign

Unusual Fact: Plaintiff was a well-known senior attorney married to the county clerk and the county has a population of fewer than 6,000

*Data obtained from the Trucking Industry Defense Association (http://c.ymcdn.com/sites/www.tida.org/resource/resmgr/2015_Annual_Seminar/2015_Annual_Sem_Presentations/Ten_Nuclear_Verdicts_Present.pdf)

Contact the experts at NBIS today to learn more about managing your risk the right way, 877.860.RMSS.