

# THE PLAINTIFF'S ATTORNEY AND THE RISKS OF SUPERCHARGED LITIGATION

**IT'S NO SECRET** that nuclear verdicts are on the rise. We recently discussed litigation funding, part of an increasing trend of incident lawsuits against corporations seeking big payouts by playing towards jury sympathies. By investing in plaintiff litigation expenses, financial firms stand to reap big rewards from large settlements. The result is a supercharged prosecution ready to vilify big defendants.

Now plaintiffs are financially empowered to push for the biggest possible verdicts. Data compiled by the American Transportation Research Institute (ATRI) shows that the trucking industry has seen an exponential increase in both the amount of lawsuits and the size of their verdicts. Over the past decade, inflation has grown at an average of 1.7% per year, while mean verdict awards have increased an average rate of 51.7% per year. Trucking litigation is on the rise—with no signs of slowing down.

## EVER-TOUGHER LITIGATION TACTICS

Sophisticated plaintiff's attorneys are a major contributor to this increase in litigation. Specialist attorneys who possess trucking industry expertise are well-prepared to build advanced cases. These attorneys use their knowledge to paint the defendant as an apathetic company that employs careless, unqualified drivers.

They'll use all the tools at their disposal, including Federal Motor Carrier Safety Regulations, state regulations, and the Commercial Driver's License Manual, to make their case. They can even comb through your own safety manual to build evidence against you.

Plaintiff attorneys are also stepping beyond their expertise to appeal to jurors' survival instincts. Reptile theory is a

popular prosecution strategy where plaintiffs attempt to appeal to jurors' morality by painting their clients as innocent victims and defendants as callous, profit-driven villains. Since the public currently perceives corporations unfavorably, reptile theory has effective potential.

## READINESS IS THE BEST DEFENSE

The best way for insureds to defend themselves from supercharged plaintiff attorneys is to be prepared and proactive. Thorough risk management programs can help keep companies from scrambling when incidents happen.

Risk management will keep you from scrambling in the event of an incident:

- **Telematics and dash camera systems** can provide real-time incident data and evidence so you can quickly assess fault and act accordingly.
- **NBIS preferred contract language** is a proven tool in your risk-management kit that increases your protection by successfully getting the responsible party to indemnify and defend you when an accident occurs.
- **Keeping up-to-date records**—from drivers' logs, to contracts, to training completion, it's all potential evidence. Take ownership over your documentation so you have full control over your company's narrative.

Taken at surface level, rising litigation in specialized transportation can be a source of anxiety for companies, insurers, and fleet managers alike. Remember, though, that nuclear verdicts might make good headlines but aren't inevitable. By working together with their insurance providers, companies can do a lot to help avoid these types of situations.



One of the best ways for insureds to defend themselves is with a state-compliant rental agreement that includes the strong protections of NBIS Preferred Contract Language.



## THE AUTHOR

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