

HOW JURIES RESPOND TO TRUCKING INDUSTRY RECKLESSNESS

Four decades ago, corporate PR operations and “tort reform” groups created the trope of the “out of control,” irrational or “runaway” jury verdict. Today this is referred to as the “nuclear verdict,” arbitrarily defined by industry groups as a verdict of \$10 million or more.¹

Though it happens rarely, a jury will sometimes render a large verdict to get a particularly bad company’s attention after repeated instances of misconduct. At times juries are trying to alert an entire industry to a dangerous industry-wide practice.

Given the horrific nature of many large truck crashes, the type and degree of misconduct that causes these crashes, economic and medical inflation, and even factors like the growth of costly “long-term injuries rather than fatalities,”² an increasing number of larger verdicts may be no surprise.

But is it even true? The following fills in some of the important details.

Lawsuits against trucking companies are extremely rare following truck crashes, and jury verdicts are rarer still.

- Less than 2% of trucking insurance claims turn into lawsuits.³
- The civil jury system has already been “nearly eradicated” in this country,⁴ with jury researchers finding, “In 2019 — the last complete pre-pandemic fiscal year — juries disposed of just 0.53% of filed federal civil disputes” and “the trend is mirrored in state courts.”⁵
- When the pandemic hit, jury trials stopped nearly everywhere.⁶ The trucking and insurance industries were apparently so fully invested in an anti-jury PR strategy that they complained about jury verdicts when there weren’t any.⁷
- Today, the backlog of cases is so large that “the already rare civil jury trial is likely to lay dormant for the foreseeable future.”⁸

Trucking industry representatives believe that large jury verdicts in trucking cases are entirely of the industry's own making.

- Following a large 2021 trucking verdict with horrific facts,⁹ a leading trucking journalist argued that large verdicts do not happen without significant and dangerous company misconduct, and the only way to avoid large verdicts is by preventing safety problems “long before there’s a crash.”
- Similarly, attorneys on both sides of trucking cases say:
 - “[C]rash avoidance is everything and that strictly adhering to safety and operational policies is essential to staying out of court and/or reducing award sizes.”¹⁰
 - “[T]he only way to prevent nuclear verdicts is to prevent the crash from happening in the first place’.... [T]he more safety activities motor carriers engaged in to prevent crashes the lower the likelihood that a nuclear verdict would result. It was also commonly noted that motor carriers typically do not allocate enough resources toward safety and crash prevention.”
 - For example, a recent American Transportation Research Institute (ATRI) survey found that “prior crash involvement had a 113 percent increased likelihood of a future crash,” yet companies continuously put drivers on the road with prior crash histories.¹¹

Organizations like ATRI and the U.S. Chamber of Commerce Institute for Legal Reform (ILR), which claim large verdicts are skyrocketing, use every opportunity to skew jury verdict data in one direction — high.

- There is no scientific database of jury verdicts, so ATRI and ILR created their own uncheckable databases largely pulled from self- or media-reported cases, which skew high.¹²
- To slant the numbers even higher, ATRI and ILR consistently calculate “means” or averages (downplaying “medians,” which are substantially lower¹³), which are inappropriate to determine jury trends because “means” are skewed by outliers.¹⁴
- These calculations do not take into account “0” dollar verdicts where juries award nothing and the case is resolved in favor of the trucking defendant.¹⁵
- Another ATRI report, which examined the far more typical case of “less than \$1 million,” found that those cases have been *decreasing* since 2010, with an “insurance industry professional” telling ATRI that there has been “a recent decline in the incident per truck rate.”¹⁶

- Trucking companies and insurance carriers voluntarily settle cases in amounts that are typically *higher than jury verdicts*.¹⁷

Despite any so-called trend, there is a large gap between what juries award and what defendants pay or victims actually receive, which is far less.

- It is common for groups like ATRI or ILR to mislead by describing a verdict and then burying — or taking no note of whatsoever — any post-verdict activity.¹⁸
- In fact, large verdicts are almost always appealed and often substantially reduced by trial judges or appellate courts, which is exactly how the system is supposed to work.¹⁹

Verdicts and settlements are critical because they can force a company to make needed safety improvements.

- ATRI reported on a case where “a trucking company was required to implement automatic braking technology on all of their units as part of a settlement agreement.”²⁰
- The civil justice system, including so-called “nuclear verdicts,” have protected motorists for decades:
 - In 2014, Vernon O’Tuel was rear-ended by a Unifi tractor-trailer, which had not slowed down because the truck driver had been distracted on his cellphone. Vernon was seriously injured. Unifi settled a lawsuit in 2016, which included the company agreeing to ban drivers from using cellphones altogether while their trucks were on the road.²¹
 - In 2011, Daniel Van Dyke and Richard Hannah were killed by a Celadon tractor-trailer that rear-ended Van Dyke’s car. The trucking company had trained employees to use cruise control on icy roads to save money on truck fuel, flouting multiple federal safety regulations. After a so-called “nuclear” verdict of \$18.5 million, Celadon changed company policy, re-training drivers and prohibiting them from using cruise control in inclement weather.²²
 - In 1994, Rev. Duane Scott Willis and Jane Willis lost six children after their minivan ran over a mud-flap/tail light assembly that had fallen off a truck. During the lawsuit, whistleblowers revealed a bribery scheme involving the sale of commercial driving licenses (CDL) run through the Illinois Secretary of State’s office. The driver involved in the Willis accident had purchased his CDL with a bribe. The case prompted a federal investigation of the bribery scheme, resulting in over 30 criminal convictions. In addition, “thousands of truck drivers in Illinois and other states have had to undergo retesting or risk losing their licenses.”²³

For more information, see Center for Justice & Democracy, *Big Trucks: An Avoidable Public Safety Crisis* (November 2022), <https://centerjrd.org/content/study-big-trucks-avoidable-public-safety-crisis>

NOTES

¹ The trucking industry arrived at the \$10 million figure based on responses of less than half of those surveyed, and only a “majority” of those. American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>

² Ibid.

³ American Transportation Research Institute, *The Impact of Small Verdicts and Settlements on the Trucking Industry* (November 2021), <https://truckingresearch.org/wp-content/uploads/2021/11/ATRI-Impact-of-Small-Verdicts-11-2021.pdf>

⁴ Richard L. Jolly, Valerie P. Hans and Robert S. Peck. *The Civil Jury: Reviving an American Institution*. U.C. Berkeley School of Law, Civil Justice Research Initiative (September 2021), https://civiljusticeinitiative.org/wp-content/uploads/2021/09/CJRI_The-Civil-Jury-Reviving-an-American-Institution.pdf

⁵ Ibid.

⁶ See, e.g., Benjamin Gideon, “Maine Voices: To delay resuming civil trials is to delay justice,” *Press Herald*, April 30, 2021, <https://www.pressherald.com/2021/04/30/maine-voices-civil-trials/>

⁷ See, e.g., Amwins, “The Ripple Effect of Social Inflation and Nuclear Verdicts on the Insurance Industry,” December 8, 2020, <https://www.amwins.com/resources-insights/article/the-ripple-effect-of-social-inflation-and-nuclear-verdicts-on-the-insurance-industry>; Christina Commendatore, “Nuclear Verdicts Continue to Push Commercial Auto Rates,” *Claims Journal*, July 1, 2020, <https://www.claimsjournal.com/news/national/2020/07/01/297958.htm>

⁸ Richard L. Jolly, Valerie P. Hans and Robert S. Peck. *The Civil Jury: Reviving an American Institution*. U.C. Berkeley School of Law, Civil Justice Research Initiative (September 2021), https://civiljusticeinitiative.org/wp-content/uploads/2021/09/CJRI_The-Civil-Jury-Reviving-an-American-Institution.pdf

⁹ See *Dzion v. ADJ Business Services, Inc.*, Case No. 2018-CA-000148 (Nassau County Cir. Ct., Fla.), discussed in Center for Justice & Democracy, *Big Trucks: An Avoidable Public Safety Crisis* (November 2022), <https://centerjd.org/content/study-big-trucks-avoidable-public-safety-crisis>

¹⁰ American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>

¹¹ American Transportation Research Institute, *Predicting Truck Crash Involvement: 2022 Update* (October 2022), <https://truckingresearch.org/wp-content/uploads/2022/10/ATRI-Predicting-Truck-Crash-Involvement-2022.pdf>

¹² The Chamber says, for example, “While the sources used to develop the ILR database likely capture verdicts over \$10 million at a high rate, no jury verdict database captures all verdicts in every court.” U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts; Trends, Causes, and Solutions* (September 2022), https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf

¹³ The Chamber admits, “While the median nuclear verdict is about \$20 million, the mean is substantially higher — \$76 million.” Ibid. ATRI says, “In the 451 observations analyzed, the mean dollar value for jury awards over this 14-year period was approximately \$3.1 million, with a median value of \$1.75 million. These two measures of central tendency are relatively disparate, indicating the presence of outliers. With a standard deviation of \$7,199,699, the spread of verdict size is large, considering the mean of \$3,162,571. The range of values is \$91 million, further indicating both a large spread and the presence of outliers. Outliers were not removed or mitigated in any manner, as to more accurately capture the variation in the observed sample.” American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>

¹⁴ Laerd Statistics, “FAQs – Measures of Central Tendency,” <https://statistics.laerd.com/statistical-guides/measures-central-tendency-mean-mode-median-faqs.php#:~:text=What%20is%20the%20most%20appropriate,be%20distorted%20by%20the%20outliers> (viewed November 4, 2022); “How Do Outliers Affect the Mean?” *Statology*, January 29, 2020, <https://www.statology.org/how-do-outliers-affect-the-mean/>

¹⁵ The Chamber only considers verdicts above \$10 million. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts; Trends, Causes, and Solutions* (September 2022), https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf. ATRI, in its 2021 jury verdict report, explains its

methodology in more detail, saying, “It is important to note that all cases in the dataset involved some form of litigation and concluded with either a settlement or a finding in favor of the plaintiff. The data did not include cases resolved in favor of the defendant...” American Transportation Research Institute, *The Impact of Small Verdicts and Settlements on the Trucking Industry* (November 2021), <https://truckingresearch.org/wp-content/uploads/2021/11/ATRI-Impact-of-Small-Verdicts-11-2021.pdf>

¹⁶ American Transportation Research Institute, *The Impact of Small Verdicts and Settlements on the Trucking Industry* (November 2021), <https://truckingresearch.org/wp-content/uploads/2021/11/ATRI-Impact-of-Small-Verdicts-11-2021.pdf>

¹⁷ Ibid.

¹⁸ See, Center for Justice & Democracy, *Big Trucks: An Avoidable Public Safety Crisis* (November 2022), <https://centerjd.org/content/study-big-trucks-avoidable-public-safety-crisis>

¹⁹ See, e.g., Center for Justice and Democracy, “The Myth of Nuclear Verdicts,” June 21, 2021, <https://centerjd.org/content/fact-sheet-myth-nuclear-verdicts> (“There is a large gap between what juries award and what insurers actually pay, which is far less.”)

²⁰ American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>

²¹ David Wren, “Lawsuit settlement could lead to more cellphone bans by trucking firms,” *Post and Courier*, November 21, 2016, https://www.postandcourier.com/business/lawsuit-settlement-could-lead-to-more-cellphone-bans-by-trucking-firms/article_20a0dd2a-b026-11e6-a6cf-5741c6d13e5b.html; *O’Tuel v. Unifi Manufacturing, Inc.*, Case No. 2015-CP-34-00069 (Marlboro County Ct. Common Pleas, S.C.) (amended complaint filed April 24, 2015).

²² Greg Grisolano, “Celadon Changes Cruise Control Policy After \$18.5 Million Award,” *Land Line*, August 12, 2013; “Trucking Company Reviews Policy Following Suit,” *93.1 FM WIBC*, August 9, 2013; Jeff Newman, “Celadon to pay \$18.5M settlement over fatal crash,” *Indianapolis Business Journal*, August 2, 2013; Samuel Barradas, “Celadon Cruise Control Crash Costs Them \$18.5 Million in Court,” *Truckers Report* (August 2013); *Hannah v. Celadon Trucking Services Inc.*, Case No. 64D01-1102-CT-001249, 2012 WL 7177082 (Ind. Super. Ct.) (verdict and settlement summary, December 13, 2012).

²³ Jo Thomas, “Illinois Drivers Face Retesting After U.S. Inquiry Finds Licenses Had Been Sold,” *New York Times*, November 8, 2000; Brian Ross, “Who’s At The Wheel,” *20/20 Friday*, April 28, 2000; Gary Marx, “Truck Bribe Whistle-Blower Tells of ‘Emotional Seesaw,’” *Chicago Tribune*, February 16, 2000; Ray Gibson and Bradley Keoun, “Ryan’s Wife Says She Doesn’t Recall Whistleblower Kin’s Note,” *Chicago Tribune*, February 6, 2000; Mike Robinson, “Couple settle for \$100 million in death of six children,” *Associated Press*, August 27, 1999.