



Nuclear Verdicts

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Nuclear verdicts are a real and present danger to our industry. While individual verdicts have decimated companies, the collective impact has sent insurance costs soaring to the expense of all.

From an outrageous verdict for a spilt cup of coffee being too hot (it's coffee—that's what it is), the fallout of nuclear verdicts has blown into our industry and contaminated the values of our verdicts.

A recent ATRI study found that since 2010, verdicts over \$1 million have increased by 967%. Moreover, there were 93% more verdicts over \$10 million from 2014 to 2018 than there were from 2006 to 2010. And ATRI found that these increases were greatly disproportionate to the increase in inflation or even medical costs. You can download a copy of the study at truckingresearch.org.

However, just because a verdict is large doesn't make it a nuclear verdict. Large verdicts are often not surprising. They are usually the product of the economic damages caused by the accident—medical expenses, care for years to come, lost wages compounding into the future.

So what makes a verdict "nuclear"? I like the definition of Bob Tyson, an attorney who wrote the book, appropriately titled "Nuclear Verdicts". He defines a "nuclear verdict" as "one in which the non-

economic damages are disproportionate to the economic damages."

OK, so that is what it is. How does it get there? What makes a case combust into a seismically expensive event?

There are a number of potential detonators. First, it can be the nature of the case. The facts of the accident.

The ATRI study found that higher verdicts can be due to the nature of the accident, such as a rollover. Similarly, the nature of the injury (traumatic brain or spinal) or person injured (particularly children) can foretell the potential of a "nuclear verdict".

Second, it can be geography. ATRI President, Rebecca Brewster noted that an important factor in "nuclear verdicts" is, "like in real estate, location, location, location." A starting point for such "locations" are the jurisdictions designated as "Judicial Hellholes" by the American Tort Reform Association in their annual listing.

So for 2019-20, who is their number 1? The Philadelphia Court of Common Pleas. First the Super Bowl... This time, we'll pass on the foam fingers and Broad Street parade.

A third potential detonator is juror anger. Arousing that anger is the latest strategy of the billboard attorneys that sue you. They seek to unleash emotion

to generate the anger to accelerate the verdict beyond the bounds of medical and wage expenses. And what is their focus to accelerate that anger? Our witnesses. Our driver, safety director, management... Their goal is to present, or more accurately misrepresent, them as uncaring and incompetent. As putting profit over safety.

OK, that's what causes a "nuclear verdict." So what do we do? What can we do? A lot. And start **TODAY**.

Today, shore up your fundamentals, the things you hear me talk about in my presentations.

- **Data**—know what data your units generate, determine what is indicative of unsafe practices, and act on it;
- **Hiring**—hire defensible drivers. The person you have sitting in the driver seat will be potentially sitting beside you at trial. Is that the person you want? Train and retrain if there are any problems in their record or while they are with you. and document doing so;
- **Accident response preparation**—prepare before the accident happens. The occurrence of an accident is a time for action, not planning. The time for planning is NOW;
- **Execute Immediate accident response**—our greatest asset is immediacy. No one knows about that accident before we do. If you fail to take advantage, you are squandering your greatest asset.

Bottom line—perfect the fundamentals. Control what you can control. But what about the other factors?

Evaluate the case early. Look, we may not be able to change the facts that inflate the verdicts—children, traumatic brain injury, spinal injuries, or even the geography. BUT you can identify these detonators early and seek to defuse the potential verdict by an early settlement if reasonable. Know and appreciate your risk early

What about geography? When possible, I sue them first in a less "plaintiff friendly" jurisdiction. If fault is arguable and our client suffered damages (to the truck or cargo), I sue first where the accident happens before they can sue you in a "Judicial Hellhole."

In Pennsylvania, as in many states, the case can remain where the first suit is filed. I file suit in the conservative county where the accident occurred before the advertising attorney brings suit against you in a "Judicial Hellhole." Their basis for doing so is that you do business there—you're a trucking company. And those courts earn "hellhole" status by, among other things, keeping cases for the most tenuous of reasons.

Insurance companies often can't grasp the concept of me suing first ("we are

defendants" or "there is nothing about this in the policy") despite the fact it a strategy that can **SAVE THEM MILLIONS**. However, not only does my suing first neutralize a potential nuclear detonator, it gives us the jump in discovery and may even preclude their personal suit is we get a decision the other driver was at fault.

What about our witnesses and the potential that they will trigger jury anger? We can do something about it. Again, start early, identify our witnesses (driver, safety director,..) and determine if they may have a problem as a witness.

If so, get them help. Dr. Bill Kanasky, a behavioral psychologist with Courtroom Sciences, Inc., notes that jury anger based on our witnesses is "highly preventable and highly controllable." Do something.

And do it **BEFORE THEIR DEPOSITION**. Their deposition can be game, set, match. Their testimony, and demeanor, in depositions captured on video and can be played to the jury.

This is a problem you can do something about. Do it. Evaluate the witnesses early. If needed, get a professional to work with them. The ROI on that investment will be immeasurable.

"Nuclear verdicts" happen. Don't let it happen to you. Tighten up your fundamentals. Evaluate a case early and head-off the potential. Do what you can to avoid bad jurisdictions. And defuse the potential anger triggered by your witnesses by investing in training.

"Duck and cover" is not a strategy. Action is. Act now to protect your company... and yourself.

DRIVER *of the* YEAR

The Pennsylvania Motor Truck Association and the Safety Management Council is excited to announce Mark Ivan from Pitt-Ohio has been named the 2019 Driver of the Year.

Ivan, from North Huntingdon, has been driving since 1988 and with Pitt-Ohio since 1991. He has travelled approximately 2.4 million miles in his career with more than two million of them coming with Pitt-Ohio.



In his 32 years, Ivan has never had a preventable or non-preventable accident. With Pitt-Ohio, in 2006 he received a One-Million Miles Safe Driving Award and his Two-Million Miles Safe Driving Award in 2017. In 2019, he received a 27-Year Safe Driving Award.

In 2018, Ivan was named to the PMTA Road Team and in 2014 was appointed a driver trainer at the Pittsburgh Terminal for City Operations. He was also certified as a Smith System Driver Trainer Instructor in 2014.

"Mr. Ivan plays a vital role in the training and development of new and advancing drivers at the Pittsburgh terminal," said Nathan Wilson, Senior Safety Specialist at Pitt-Ohio. "Mark teaches new drivers how to safely operate Commercial Motor Vehicles and to conduct themselves professionally with the customers and public.

Numerous new hires and beginners have approached me to advise that they were thankful to have Mark as a trainer."



When he's not driving, he enjoys riding his motorcycle and participating in charity rides such as the MDA, Pittsburgh Blue Knights, along with various local veterans charity rides as he is a veteran himself. He and his wife Palma have two sons, Tyler and Austin.

Normally, the Driver of the Year is honored in March at the annual banquet, but COVID-19 cancelled those plans. This year, the Drivers of the Month were honored at the virtual Safety Day Conference and, should restrictions be lifted by next March, all of the Drivers of the Month from 2019 and 2020 will be honored at a banquet at that time.