

BIG TRUCKS

AN AVOIDABLE PUBLIC SAFETY CRISIS



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INTRODUCTION AND SUMMARY

On a clear July morning in 2016, 58-year-old grandmother Judy Madere, her twin sister Trudy, her daughter Carrie and Carrie's children — seven-year-old Trinity and four-year-old Jaxson — were traveling in Carrie's SUV on Alabama's U.S. 80, returning to Louisiana after visiting relatives. A large Schnitzer Steel Industries truck pulling scrap metal was traveling on the opposite side of the road when it crossed the center line and smashed head-on, at highway speed, into the SUV. Never breaking as the driver was apparently asleep, the truck hit the car with the force of half a million pounds.¹ Trudy, Carrie and the children were all instantly killed. Judy lived for only a short time, struggling for life in that car surrounded by her dead daughter, grandchildren and twin sister.

The fatigued truck driver, Kenneth Cathey, was charged with five counts of criminally negligent homicide. Turns out Schnitzer had asked him to drive despite his long record of unsafe driving for the company, including prior crashes (which is one of the strongest predictors for future crashes²). In fact, in the previous three years, Cathey had four serious wrecks, not to mention numerous traffic and Federal Motor Carrier Safety Regulation violations.³ The company had already settled a lawsuit after Cathey's near fatal crash three years earlier, while keeping him driving and taking no corrective training or safety steps in violation of its own company rules and safety regulations. In other words, for Schnitzer, the settlement was a mere cost of doing business. Nothing was remedied.

This story reflects a number of themes explored in this report. First, the crash, which killed three generations of family members, is the nightmare scenario we all fear when it comes to sharing the road with large trucks. The trucking industry's own studies show that crashes are increasing⁴ while government oversight is weakening.⁵ Surveys show that most people have real safety concerns driving past large commercial trucks because of their size, their blind spots and other visibility restrictions and their tendency to drift out of their lane.⁶ But safety concerns would undoubtedly grow if the public were aware of the extent to which trucking companies are knowingly disregarding public safety, as in this case, and using their economic clout to weaken critical safety standards. This leads to the second point.

Sometimes lawsuits, which are extremely rare following truck crashes (less than 2% of trucking insurance claims turn into lawsuits⁷), and large jury verdicts, which are rarer still, are necessary to get a bad company's attention and sometimes to alert an entire industry. Prior incidents and lawsuits against Schnitzer obviously had not worked. While the trucking company responsible for hiring Kenneth Cathey, Schnitzer Southeast, admitted liability, publicly-traded Schnitzer Steel Industries — which operated as a joint venture with Schnitzer Southeast and controlled it⁸ — denied responsibility. This forced remaining family members to sue. On August 23, 2019, a Georgia jury rendered its verdict: \$280 million, which included \$30 million for Judy's pain and suffering and \$100 million in punitive damages. Clearly, this local jury was trying to send a message to the company and to the industry: Reckless disregard for public safety will not be tolerated in their community. Rendering verdicts after hearing both sides of a case is the jury's role. Awarding punitive damages in cases of egregious misconduct is also their long-standing role, "to serve as a means for punishing the defendant and deterring others from committing similar actions."⁹ This leads to the third theme of this study.

Four decades ago, corporate PR operations and “tort reform” groups¹⁰ created the trope of the “out of control,” irrational or “runaway” jury verdict (today referred to as “nuclear verdict”). In the early 2000s, there was much grumbling within the “tort reform” community about large verdicts against tobacco and pharmaceutical companies.¹¹ In the 1980s and 1990s, the complaints were about other kinds of cases.¹² Sometimes, their complaints were about cases that never even existed.¹³ As explained by authors William Haltom and Michael McCann in their 2004 book, *Distorting the Law: Politics, Media and the Litigation Crisis*, the “tort reform” community’s playbook is always the same¹⁴:

- Point to some extraordinary occurrence – some exaggerated or fabricated “horror story” – to symbolize what is “ordinary” about the tort system.
- Discuss the outcome of the case in a way to violate notions of common sense.
- Highlight large compensatory and punitive awards with exaggerated frequency.
- Ignore any post-trial discussion, where the majority of verdicts are reduced or never paid.

In this case, for example, Georgia lawmakers had already largely stripped juries of their power to award punitive damages (irrespective of any verdict) when they capped them at \$250,000, a fact rarely if ever mentioned in coverage of the case. Thus an observer, whose only knowledge of litigation is gleaned from industry articles and reports, would wrongly believe that the trucking industry — or the nation as a whole — is being besieged by runaway juries doling out “nuclear verdicts” to plaintiffs regardless of the merits of a case.

Take the telling of the *Madere* case by the U.S. Chamber of Commerce’s “tort reform” branch in its new report on so-called “nuclear verdicts.” Here’s how the organization describes the case¹⁵:

[I]n August 2019, a Muscogee County [GA] jury returned a \$280 million verdict against a trucking company in just 45 minutes. The plaintiffs claimed the driver, who swerved across the center lane, fell asleep at the wheel, while his employer claimed the driver swerved to avoid a dog on the road. Whatever the cause, the amount of wrongful death damages awarded can only be viewed as extraordinary: \$150 million for economic damages, \$30 million for pain and suffering, and \$100 million in punitive damages.

It’s a callous and cynical description. It omits mention of a single victim let alone five victims, including two children, or their gruesome deaths. There is no mention of the driver’s unsafe driving history, or the company’s decision to keep putting him on the road despite several earlier crashes and numerous violations, or its settling of an earlier near fatal case with no change in safety practices. On the other hand, the Chamber somehow found it important to mention the company’s “dog” defense, which was disproven in court.

Also omitted is what trucking industry attorneys actually believe about verdicts like this: They are entirely of the industry’s own making. A recent report on “nuclear verdicts” from the industry’s research arm, the American Transportation Research Institute (ATRI), made the obvious point¹⁶:

Pre-Crash Actions by Motor Carriers are Critical

- Both attorney bars emphasized that crash avoidance is everything and that strictly adhering to safety and operational policies is essential to staying out of court and/or reducing award sizes.

This theme was repeated throughout ATRI's report. For example,¹⁷

Multiple interviewees prefaced remarks with variations of "the only way to prevent nuclear verdicts is to prevent the crash from happening in the first place."... Interviewees generally concurred that the 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* [emphasis added].

Similar observations came from leading trucking journalist Deborah Lockridge, who published an article following a large 2021 trucking verdict with similarly horrific facts,¹⁸ noting that the way to avoid such verdicts is by "defusing" what she called "Nuclear-Verdict Detonators." That's a gimmicky way of identifying preventable safety problems, calling on companies to address safety issues "long before there's a crash." She writes about the 2021 verdict,¹⁹

[As to the driver], there was no background check, no verification of a [Commercial Driver's License] or prior violations, and the other driver ... allegedly was not able to read road signs and was apparently over hours of service. As one attorney put it, "These are all vulnerabilities, systemic and individual, that companies need to identify and rectify before the accidents. And nuclear verdicts rarely, if ever, occur absent such correctable detonators."

She also observed, "[T]he overwhelming amount of this verdict was reported to be for punitive damages ... 'The purpose of those damages are to punish outrageous conduct that has occurred and deter such in the future.'" And, she wrote, "Bad Actors Are Bad for Trucking."

So are bad lawyers apparently. Parts of the ATRI and U.S. Chamber reports try to explain large verdicts by insisting that jurors are manipulated by plaintiffs' lawyers.²⁰ These groups make jurors sound like blubbing idiots who don't listen to evidence from both sides of a case but are rather enchanted by bewitching plaintiffs' lawyers, suggesting that judges are irresponsible for allowing victims' lawyers (never corporate or insurance lawyers) to flood jurors' minds with misleading information. Of course, this is ridiculous and untrue. The real explanation for large verdicts isn't plaintiffs' lawyers. It's rather the horrific nature and avoidable causes of these crashes combined with the apparent incompetence of the companies' own attorneys. In some fairly embarrassing admissions to ATRI, defense lawyers confess that they're just not very good.²¹ According to a survey of both plaintiff and defense lawyers, "73.3 percent said that plaintiff attorneys were doing better, 20.0 percent said both, 6.7 percent said neither, with no one saying defense attorneys did better."²² As the saying goes, perhaps they should clean up their own house before pointing the finger at others.

Finally, while corporate and defense lawyers have long complained about jury verdicts when they lose significant cases, the term “nuclear verdict” is a relatively new PR term. It began appearing often in insurance industry publications in late 2019 along with the term “social inflation,” an umbrella PR term to describe an amalgam of disconnected complaints that the insurance industry and corporate lawyers have always had about juries, lawsuits and plaintiffs’ lawyers who win cases.²³ Most complaints have little to do with trucking lawsuits.²⁴

Frequent use of these terms began towards the end of 2019 as the insurance industry decided to flip the nation into a “hard” insurance market, burdening businesses with premium hikes after years of stable rates. According to the *Wall Street Journal*, they made this move for two main reasons: “several years of large catastrophe [e.g., weather, wildfire] losses and continued low interest rates, which have weighed on their investment returns.”²⁵ Analysts said that the industry’s “record levels of policyholder surplus” were “sufficient to absorb” such catastrophes without raising rates.²⁶ But one thing was clear — these unnecessary rate hikes were not caused by anything to do with lawsuits or juries. Nonetheless, as they had at the start of prior hard markets, insurance executives and consultants began focusing all of their blame on the legal system.



Turns out, this focus has done a terrible disservice to trucking owners and drivers seeking rate relief because the cause and solutions to their insurance problems lie squarely with the insurance industry, not the legal system. As this report will show, the insurance industry has seen some upward loss movement — *i.e.*, claims — for a decade due to increasing numbers of truck crashes, the growing “epidemic” of distracted driving and more drivers on the road.²⁷ While some gradual premium increases might be expected, the data show that the insurance industry has been over-correcting through excessive reserving and unnecessary rate hikes for years. Commercial auto liability policyholders are being price-gouged.

As ATRI put it, “Survey respondents generally agreed that nuclear verdicts are not common, and do not directly cause motor carriers to go out of business.”²⁸ However, “increasing insurance costs” and price-gouging does.²⁹ In other words, there are two critical problems facing the trucking industry and “verdicts” is not one of them. One is the trucking industry’s failure to prioritize safety, as is illustrated throughout this report. The second is the insurance industry’s mismanaged underwriting practices. The solutions to that problem are better regulation, oversight and transparency of the insurance industry.

LARGE TRUCKS ARE EXTREMELY DANGEROUS

There is no question that our economy is deeply dependent on the commercial trucking industry, which transports 72% of all products shipped in the United States, with goods valued at more than \$10 trillion.³⁰ As a global economics correspondent for the *New York Times* wrote, “Without long-haul trucking and the people behind the wheel, huge enterprises like Walmart, Amazon and Home Depot simply could not function.”³¹

There are over 13 million commercial trucks on the nation’s roads, nearly three million of which are tractor-trailers.³² A “large truck” is defined as one weighing more than 10,000 pounds.³³ As explained by the Insurance Institute for Highway Safety,³⁴ “Large trucks often weigh 20-30 times as much as passenger vehicles. They are taller and have greater ground clearance than cars, which means that lower-riding vehicles can slide beneath truck trailers, with deadly consequences.”



For motorists forced to share the road with large trucks, whatever appreciation they may have for yesterday’s on-time Amazon delivery can be quickly overtaken by terror. There is nothing more frightening than seeing an 80,000-pound tractor-trailer suddenly appear in the rearview mirror barreling ahead at highway speed. There’s good reason to be concerned.

Large truck crashes are far too frequent, horrific and costly.³⁵ Recent grim news headlines tell some of the story: “One

student dead, six injured when semi truck rear-ends school bus in slowed traffic,”³⁶ “Eight month old child dead after semi truck crashes into home, Wisconsin sheriff says,”³⁷ “Report: Semi did not stop before it hit slow traffic, killing 4, injuring 10 in Phoenix,”³⁸ “Florida truck driver arrested after deadly multi-car crash on Interstate 80.”³⁹

According to preliminary figures released by the National Highway Traffic Safety Administration (NHTSA), in 2021, more than 5,600 people were killed in crashes involving large trucks, “the largest number in almost four decades....”⁴⁰ NHTSA said, “Deaths in crashes involving trucks hit a ‘crisis’ level and reversed a downward trend in place before the pandemic,”⁴¹ increasing by 13% from 2020 to 2021 and constituting a 52% increase in truck crash fatalities since 2010, a record high.⁴² And in the first three months of 2022, according to preliminary federal data, there were already more than 40,000 crashes involving large trucks as reported by states, killing more than a thousand people and injuring nearly 17,000.⁴³

The Insurance Institute for Highway Safety reports that in two-vehicle crashes with a large truck that killed occupants of passenger vehicles,⁴⁴ 30% of passenger deaths were the result of head-on collisions caused by a truck while 25% of passenger deaths were the result of side collisions caused by a truck.⁴⁵ A large majority of those injured in large truck crashes are occupants of other vehicles.⁴⁶ In fact, “[n]inety-

seven percent of vehicle occupants killed in two-vehicle crashes involving a passenger vehicle and a large truck in 2020 were occupants of the passenger vehicles.”⁴⁷

Adding to the public safety risks is the fact that some large trucks carry hazardous materials. In 2020, the most recent year for which data are available, 556 large trucks carrying hazardous materials were involved in crashes where their dangerous cargo was released. Among the releases cited: flammable liquids (290 trucks), gases (69 trucks), corrosives (41 trucks), explosives (13 trucks), “poison & infectious substances” (6 trucks) and radioactive material (1 truck).⁴⁸

When it comes to the frequency and severity of crashes, some states are worse than others. The percentage of large trucks involved in fatal crashes, as a proportion of all vehicles, was 10% or higher in 17 states in 2020.⁴⁹ Rural states experience the highest crash fatality rates.⁵⁰ Texas stands out as particularly unsafe. For example, in 2020, Texas had not only the highest number of large trucks involved in fatal crashes and the largest number of total vehicles involved in fatal crashes but also the highest number of deaths of occupants in other vehicles.⁵¹

E-COMMERCE DEMANDS AND DRIVER SHORTAGES ARE CREATING NEW SAFETY PROBLEMS

The advent of e-commerce and demands for quick home deliveries altered the trucking industry in obvious ways, like increasing the need for more long- and short-haul trucks on the road.⁵² However, of all the ways the industry has changed in recent years, improved safety isn’t one of them. In fact, these new demands have created new and more serious dangers.

Take Amazon, which has now captured about 40% of the e-commerce market.⁵³ As recently reported by the *Wall Street Journal*,⁵⁴

- “Between February 2020 and early August 2022, more than 1,300 Amazon trucking contractors received scores worse than the level at which DOT [U.S. Department of Transportation] officials typically take action....”
- “One trucking company that worked exclusively for Amazon, the now-defunct Condor Riders Corp., had an unsafe driving score that placed it among the most dangerous trucking companies in the nation in March and April 2020.”
- “Companies continued hauling Amazon freight even after their scores grew worse than Amazon’s internal threshold.”
- “The data show companies that ‘frequently haul Amazon’s freight are systematically more likely to have poor driving safety scores,’ said Jason Miller, a Michigan State University professor who

studies transportation safety and validated the Journal’s methodology and findings. The result, he said, is that ‘American motorists are put at greater risk.’”

The need for more drivers has led to failures to hire safe drivers or adequately train new ones. Yet this is not a new problem. The turnover rate in the industry is extraordinarily high: Of the nation’s more than 3.3 million truck drivers,⁵⁵ roughly 300,000 leave the profession annually.⁵⁶ But these numbers only tell part of the story. The “average trucking company [has] a turnover rate of roughly 95 percent, meaning that it must replace nearly all of its work force in the course of a year.”⁵⁷

The industry representing big trucking companies has repeatedly framed its dilemma as a “driver shortage crisis”⁵⁸ that impacts the nation’s supply chain, when in fact others point out, “there is no shortage of people who want to get into truck driving, nor is there a shortage of people who have obtained commercial driving licenses (CDLs). ...[But once on the job], they find the job pays much less than they’d been led to believe, and that working conditions in the industry are terrible.”⁵⁹

To begin, long-haul truck driving is one of the most personally difficult occupations in the United States. Imagine 60- to 70-hour workweeks (or longer), driving on average 400 to 700 miles a day, sitting for hours on end, limited food options, stress, living out of a truck with little time for rest or sleep while pressured to meet employer deadlines, long stretches away from home, family and friends and loneliness.⁶⁰

Women, who make up about 7% of over-the-road drivers, have it especially bad.⁶¹ Research shows “more than half reported that while on the job they have received verbally offensive comments more than once, 28% have received multiple verbal threats, 39% have been subject to an unwanted physical advance more than once, and nearly 4% have experienced rape.”⁶²



This is appalling not only for the survivors of such incidents but also for the driving public. Women are generally safer drivers. As ATRI recently found, “[M]ales continue to be more likely than females to have violations, convictions and crash involvement for all statistically significant events.”⁶³ (Notably in the recently-passed Infrastructure Investment and Jobs Act, Congress took some preliminary steps to try to “Promote women in the trucking workforce.”⁶⁴)

Driving itself can also be incredibly hazardous. According to recent federal data, heavy and tractor-trailer truck driver deaths accounted for 16% of fatal work injuries recorded in the U.S. in 2020.⁶⁵ This rate is consistent with previous years.⁶⁶ Drivers are often asked to drive large trucks with vehicle deficiencies. From October 1, 2021 through June 30, 2022, inspectors placed 23% of evaluated trucks out of service for failing to meet federally-mandated standards.⁶⁷ This rate is consistent with previous years.⁶⁸ Brake system failures are far too common.⁶⁹

Compounding the personal safety risks and difficult working conditions is the fact that drivers are grossly under-compensated. Today, they receive about 40% less than they did in the late 1970s even though they are twice as productive.⁷⁰ While the U.S. trucking industry brings in annual revenue of more than \$700 billion,⁷¹ the median annual pay for tractor-trailer drivers in 2021 was \$48,310.⁷² Since truck drivers are typically paid by the mile, weather or traffic delays that extend their day don't increase their compensation but instead increase pressures to keep driving in unsafe conditions.⁷³ This pay structure also means they receive no compensation for the time it takes to load or unload their trucks, or "for their 'off time,' even though they're miles and miles away from home."⁷⁴

As if this weren't bad enough, it is common practice for trucking companies to deliberately misclassify their workers as independent contractors instead of employees. That type of classification exempts employers from fair wage requirements or providing benefits, unemployment insurance, workers' compensation insurance or paying into Social Security.⁷⁵ New drivers or independent contractors may have to pay for their own training fees, maintenance and fuel.⁷⁶ And then there are predatory truck leasing agreements, which is a type of indentured servitude.⁷⁷

As summed up by Steve Viscelli, a sociologist at the University of Pennsylvania who studies the trucking industry,⁷⁸

[T]hrough political lobbying, legal activism and harsh business practices, big trucking companies have made a difficult job even harder, especially for entry-level truckers. He says the companies have been "systematically degrading trucker working conditions." Scholars have referred to trucks as "sweatshops on wheels." Viscelli says the industry is rife with minimum wage violations and what he calls "debt peonage." Basically, new drivers become indentured servants, going deep into debt to get training and to lease trucks from their employers.

Finally, in the rush to get new drivers on the road, driver training has dangerously suffered, greatly increasing roadway hazards. For example,⁷⁹

In most states, aspiring barbers have to spend 1,000 hours or more in training before they get a license. To drive a 40,000-pound truck, though, there's no minimum behind-the-wheel driving time required, no proof of ability to navigate through mountains, snow, or rain. There's just a medical exam, a multiple-choice written exam, and a brief driving test — which in some states can be administered by the school that drivers paid to train them.... "We don't want to do the hard things in this industry, which is spending extra money, taking extra time to train people to safely operate trucks," says Lewie Pugh, who owned and operated a truck for 22 years and is now executive vice president of the Owner-Operator Independent Drivers Assn.

Yet things are getting even worse:

- In September 2022, the Federal Motor Carrier Safety Administration (FMCSA), the federal agency that regulates trucks, granted UPS's request for a 5-year exemption from commercial driver's license (CDL) regulations, allowing the company "to conduct behind-the-wheel training for commercial learner's permit (CLP) holders in twin 28-foot trailers, instead of waiting to conduct

the training until after the individuals receive their Class A CDL and pass the required knowledge test to obtain the double/triple trailer endorsement.”⁸⁰

- In February 2022, FMCSA “said it would allow trucking schools in all states to administer the written portion of CDL tests for drivers, in addition to the driving test, a reversal of previous guidance, which could get new drivers on the roads faster.”⁸¹
- In January 2022, Congress mandated that FMCSA establish a pilot program to allow teenagers as young as 18 to drive big rigs on interstate highways.⁸² “You take an 18-year-old kid from Florida who has never seen snow, never seen the mountains, and you’re going to put him in an 80,000-pound truck and send him to Colorado in December or January,” commented Owner-Operator Independent Drivers Association Executive Vice President Lewie Pugh during a July 2021 interview. “What do you think is going to happen?”⁸³

One company that devotes resources to driver training programs is Werner Enterprises, one of the largest trucking companies in the United States employing approximately 10,000 drivers and operating over 7,400 trucks. Its driver turnover rate is typically high — around 80%. Of the 8,000 drivers it hires each year, half start out with no commercial driving experience.⁸⁴

Werner puts potential new drivers into its wholly-owned subsidiary truck driving schools. Roadmaster is one of them. Felipe “Jose” Johnson was a prospective new driver sent to Roadmaster for a four-week CDL preparation course. At school, he received Cs in areas like “Safety,” “Road Driving” and “Defensive Driving.” He twice flunked portions of his CDL exam before being given a “waiver.” Once he got his CDL, he started working for a Werner subsidiary as part of Werner’s Student Driver Training Program. He had never driven a truck over a road before. Although he was supposed to be observed by an instructor and in fact was not allowed to operate Werner’s equipment without an instructor present, he drove for several days largely unsupervised. His trainer “had been disciplined two previous times as a Student Driver Trainer and was on felony probation.”⁸⁵

On his eighth day of work in February 2017, he was behind the wheel of an 80,000-pound Werner truck. The truck crossed four lanes of traffic and a concrete median on I-10 near Las Cruces, New Mexico, striking the Honda Pilot driven by Kathryn Armijo head-on, killing her. Armijo’s family sued.⁸⁶ In October 2019, a jury rendered a \$40.5 million verdict against Werner, a company worth \$2.5 billion.⁸⁷ A quarter of that verdict was for punitive damages.⁸⁸ While some industry publications responded with screaming headlines and articles about a “nuclear verdict,”⁸⁹ the family’s lawyers hoped it would have a positive impact on public safety, saying:⁹⁰

The trial evidence shows Werner, and its truck driving school, are doing the bare minimum to prepare new employees to safely drive 18-wheeler trucks, which are typically carrying 80,000 pounds of freight.... This is a pervasive problem across the industry — fleet operators must make a collective commitment to fix this dangerous dynamic and make major improvements in safety and employee retention.

SELF-DRIVING TRUCKS

Questions around driver shortages and unsafe drivers have also generated a new industry push for experimental, self-driving trucks.⁹¹ Many safety groups and some states have expressed well-founded concern about this development.⁹² California has banned self-driving trucks weighing over 10,001 pounds.⁹³ But other states, like Texas, have already allowed companies to test such trucks on their roads.⁹⁴ Texas's "collaborative approach" with industry has alarmed safety advocates like Texas Watch's Ware Wendel, who warned that "[r]ushing this technology to market using regular drivers as beta testers in real-world driving conditions puts potentially everyone at risk..."⁹⁵

For example, in March 2022, an autonomous Kodiak Robotics self-driving 18-wheeler spent more than five straight days running around the clock, hauling goods between Dallas and Atlanta.⁹⁶ New "safety drivers" were rotated in daily in case anything went wrong. In fact, they often did go wrong, with drivers



forced to grab the wheel "multiple times."⁹⁷ As Alex Rodrigues, chief executive of the self-driving-truck start-up Embark, put it, "his company has yet to perfect what he calls evasive maneuvers. 'If there is an accident in the road right in front of the vehicle,' he explained, 'it has to stop itself quickly.'"⁹⁸ Of course, the consequences of failing such "maneuvers" can be catastrophic.

Carnegie Mellon engineering professor and autonomous vehicle expert Phil Koopman explained that in the race to deploy autonomous technology in large trucks, "[e]ven if (the companies) have the best of intentions, they face unimaginable economic pressure to cut corners" at serious risk to the public. Some companies are not just cutting corners. Safety has taken a back seat to financial interests. Take TuSimple. As reported by the *Wall Street Journal*,⁹⁹

- The company's safety drivers "have flagged concerns about failures in a mechanism that didn't always enable them to shut off the self-driving system by turning the steering wheel, a standard safety feature...."
- In March 2021, TuSimple's former top safety official filed a lawsuit after allegedly being fired when he "refused to sign off on safety standards that he said the company had yet to meet."
- In December 2021, the company completed an 80-mile driverless truck trip in Arizona after conducting less than half of the 500 practice runs it had planned and without informing its safety teams.

- In late 2021, a group of employees contacted TuSimple’s legal department, claiming “failure to check software regularly for vulnerabilities and use of unencrypted communications to manage trucks, which could provide an opening for hackers to intercept data going between engineers and the vehicles’ systems...”
- On April 6, 2022, a heavy-duty truck fitted with TuSimple technology “suddenly veered left, cut across the I-10 highway in Tucson, Ariz., and slammed into a concrete barricade.”¹⁰⁰ While an internal company report blamed the engineer and safety driver on board, Carnegie Mellon University researchers “said it was the autonomous-driving system that turned the wheel” and that “[c]ommon safeguards would have prevented the crash had they been in place...”¹⁰¹

Waymo is another company testing its self-driving truck technology with some disturbing results. In February 2022, a Waymo semi going 50 mph in a 75-mph zone collided with a box-truck while attempting to change lanes in a small town in Arizona.¹⁰² Three months later, one of its heavy-duty trucks operating in autonomous mode with a human safety operator behind the wheel was forced off I-45 after another truck entered its lane.¹⁰³ The Waymo driver suffered injuries and was taken to the hospital. The incident was only reported because the federal government required reporting. Texas law did not.¹⁰⁴

Crashing into cars, hitting pedestrians, privacy and hacking dangers are currently known autonomous vehicle problems and ongoing risks that are far from being resolved. Companies in charge of autonomous truck technology, manufacturing and deployment must be legally responsible for the harm caused by driverless trucks or this technology will never be safe. Yet many critical liability questions are still up in the air.¹⁰⁵

TRUCKERS VS. THE TRUCKING INDUSTRY

It may be easy to point the finger at truck drivers for creating the public safety crisis of truck crashes. More than 21% of drivers of large trucks involved in fatal crashes in 2020 had previously recorded crashes.¹⁰⁶ In addition, “[a]lmost 19 percent of all large-truck drivers involved in fatal crashes had at least one prior speeding conviction...”¹⁰⁷ Federal data show that in recent years, speeding — including on roads with extremely high speed limits — is the top reason drivers of large trucks were involved in fatal crashes.¹⁰⁸ Moreover, a recent ATRI report found not only that “prior crash involvement had a 113 percent increased likelihood of a future crash” but also that the “top five most stable predictors of future crashes” were a past crash, a reckless driving violation, failure to use/improper signal conviction, failure to yield right-of-way violation and an improper or erratic lane changes conviction.¹⁰⁹

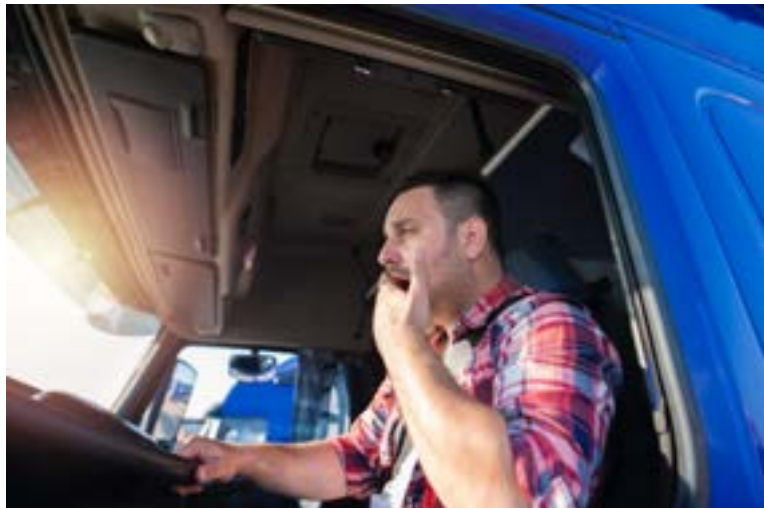
But digging further reveals how much responsibility the trucking industry bears for creating conditions that lead to far too many serious crashes. Training cutbacks described earlier are certainly a major problem. But that is by no means the only one.

THE ISSUE OF DRIVER FATIGUE

The driver who killed Judy Madere, her twin sister, her daughter and two grandchildren fell asleep at the wheel after getting only four to five hours of sleep the night before the crash. The general public may have become familiar with the problem of truck driver fatigue in 2015, when a truck crash critically injured comedian Tracy Morgan and killed his friend after their vehicle was hit from behind by a Walmart truck driver who hadn't slept for over 24 hours.¹¹⁰

Research shows that sleep disruption creates “cognitive impairments” that cause drivers to crash.¹¹¹ And truck drivers experience unique working conditions that cause too many sleep disruptions. These include, for example,¹¹²

[E]xcessive nighttime driving, inconsistent and variable schedules, “just-in-time” customer delivery expectations, and sometimes unpredictable delays due to road and weather conditions, traffic, and availability of warehouse staff to unload freight. In addition to these factors, truck drivers have a higher prevalence of obstructive sleep apnea (OSA) compared with the public. Because OSA involves a cycle of repeated upper airway obstruction, oxygen desaturation, and arousal, the person with OSA experiences fragmented and nonrestful sleep.



Drivers often face pressure from employers to continue to drive when they're too tired, even though a 2016 FMSCA rule explicitly prohibits motor carriers, shippers, receivers and transportation intermediaries from threatening “to withhold work from, take employment action against, or punish a driver for refusing to operate in violation of certain provisions of the Federal Motor Carrier Safety Regulations,”¹¹³ including driving over the hours-of-service (HOS) limits. Said Thomas Corsi, academic director for supply chain management at the University of Maryland's Robert H. Smith School of Business:

I serve as an expert witness on accident cases which overwhelmingly occur when drivers are working on not enough sleep and end up plowing into a car because they're working way too many hours. They're on very strict time commitments that a broker or a carrier made to a client, but there are huge safety implications. These guys clearly are really stretched.¹¹⁴

Unfortunately, federal HOS rules are not nearly as strict as they should be. Drivers of large trucks can be behind the wheel for up to 11 hours at a stretch per workday,¹¹⁵ or up to 77 hours a week.¹¹⁶ And recent

changes to truck driver HOS rules have exacerbated the situation. One recent change took away the 30-minute break requirement.¹¹⁷ Advocates for Highway and Auto Safety, the Teamsters and other safety groups unsuccessfully challenged these regulations in federal court,¹¹⁸ noting the longstanding problem of FMCSA “bow[ing] to special trucking industry interests at the expense of highway safety, seeking longer workdays for drivers who are already being pushed to the limit.”¹¹⁹

The industry has also pushed FMCSA to intrude on a state’s authority to provide safe working conditions for commercial drivers. In December 2018, violating its own precedent,¹²⁰ FMCSA preempted California’s state meal and rest break laws in response to a trucking industry petition.¹²¹ More than 20 states have such laws. This understandably alarmed highway safety advocates, truckers¹²² and their union, the Teamsters, which called the agency’s decision a “giveaway to the trucking industry at the expense of driver safety.”¹²³

Similarly in April 2019, Washington State’s trucking industry petitioned FMCSA for the same result, seeking to override state rules that, like California, “called for at least 30 minutes of off-duty mealtime for every five hours of work and a 10-minute rest period for every four hours of work for drivers transporting property.”¹²⁴ On November 17, 2020, the agency once again sided with the industry over drivers and safety.¹²⁵

Legal challenges to FMCSA’s state meal and rest determinations have been unsuccessful. In October 2021, the U.S. Supreme Court let stand a 9th Circuit decision¹²⁶ upholding the agency’s order that California’s meal and rest break rules were preempted by FMCSA’s hours-of-service rules.¹²⁷ In August 2022, citing California’s experience in the courts, Washington State agreed to dismiss its appeal of the FMCSA preemption.¹²⁸

OTHER WAYS THE TRUCKING INDUSTRY INFLUENCES GOVERNMENT

There are two federal agencies responsible for overseeing large truck safety, both housed within the U.S. Department of Transportation (DOT): the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA). NHTSA issues standards regarding the manufacture of large trucks and large truck equipment, implements and enforces laws related to large truck safety and promulgates and enforces all federal large truck safety standards. FMCSA is charged with regulating more than 500,000 commercial trucking companies.¹²⁹ Part of its mission is “to reduce crashes, injuries and fatalities involving large trucks....”¹³⁰

Unfortunately, these agencies often bow to industry pressure to weaken existing regulations, fail to remedy urgent problems in a timely manner or do anything at all. As the Commercial Vehicle Safety Alliance (whose members include local, state and federal truck safety officials)¹³¹ recently told DOT, FMCSA “has fallen behind on its core responsibility of maintaining the federal safety regulations’ — the agency’s primary method of improving truck safety.”¹³²

Of course Congress also plays a safety role. In the recently-enacted Infrastructure Investment and Jobs Act, Congress took a few important steps to require these agencies to tackle some obvious and lethal safety problems created by large heavy-duty trucks. But many things that safety and victim advocates were hoping for were not accomplished. As Jackie Gillan, veteran safety advocate and President Emerita of Advocates for Highway and Auto Safety put it, “It’s been a constant battle of the trucking industry against even the weakest safety standards. ...No significant safety standards for cars and trucks have occurred without Congress mandating actions by the agencies in the last 30 years.”¹³³

It’s no secret that the trucking industry has much influence over federal regulators and lawmakers. However, this industry is not a monolith, with organizations sometimes disagreeing about safety issues or driver working conditions. For example, big trucking companies and freight brokers¹³⁴ allege that a driver shortage exists, but as noted earlier, small business owner/operators dispute this.¹³⁵ Big trucking companies and freight brokers support lowering the interstate truck driving age to 18, but as noted earlier, small business owner/operators do not.¹³⁶ Big trucking companies oppose a bill to guarantee overtime to truckers; small business owner/operators support it.¹³⁷ Small business owners support more transparency in freight transactions involving brokers, which brokers oppose.¹³⁸

The largest entity representing the trucking industry in Washington, D.C. is the American Trucking Associations (ATA), which advocates for big U.S. trucking companies.¹³⁹ ATA spent over \$2 million on lobbying in 2021 and has spent over \$1.6 million in 2022 to date; it spent more than \$11.7 million lobbying Congress over the past five years (2017-2021).¹⁴⁰ ATA has also deployed 46 lobbyists in 2022 — its highest number since 2002¹⁴¹ — 69% of whom are former government employees.¹⁴²

The Owner-Operator Independent Drivers Association (OOIDA), representing small business truckers, is also extremely important. OOIDA “represents roughly 150,000 members who own and/or operate more than 240,000 individual heavy-duty trucks and small truck fleets.”¹⁴³ OOIDA spent over \$1.3 million lobbying Congress in 2021, a 47% increase from the previous year.¹⁴⁴ Over a five-year period (2017-2021), the association spent over \$5.1 million.¹⁴⁵ And in the year to date, OOIDA has spent over \$1 million¹⁴⁶ and deployed 5 lobbyists, 80% of whom are former government employees.¹⁴⁷

Also influential are the freight brokers, which serve as intermediaries that arrange for transportation of goods between shippers and truckers. The Transportation Intermediaries Association (TIA) is the “nation’s largest advocate for truck brokers.”¹⁴⁸ In 2021, the group spent over half a million dollars on lobbying.¹⁴⁹ In the year to date, it’s spent \$410,000.¹⁵⁰

In addition to these lobby groups, package delivery companies like FedEx and United Parcel Service (UPS) also spend substantial amounts in Washington.¹⁵¹ In the year to date, FedEx and UPS have spent more than \$14.7 million combined on lobbying.¹⁵² In 2021, the companies spent more than \$17.7 million combined¹⁵³; from 2017-2021, they spent over \$91 million combined.¹⁵⁴ Moreover, in 2022 to date, FedEx has deployed 62 lobbyists, 69% of whom are former government employees,¹⁵⁵ while UPS has deployed 43 lobbyists, 60% of whom are former government employees.¹⁵⁶

The following are some ways that the industry’s influence has had an impact.

UNDERRIDE CRASHES

Truck underride crashes are “collisions in which a car slides under the body of a truck — such as a tractor-trailer or single-unit truck — due to the height difference between the vehicles.”¹⁵⁷ These are extremely violent crashes for motorists. In 2020, “over 70% of the deaths in [truck] underride crashes were occupants of other vehicles.”¹⁵⁸

Current federal regulations do not require large trucks to have front or side underride guards; only rear underride guards are mandated.¹⁵⁹ Though NHTSA recently issued an updated rule following Congress’s direction in the 2021 Infrastructure Investment and Jobs Act¹⁶⁰ (scheduled to go into effect on January 11, 2023), safety advocates say the rule is grossly insufficient and in some ways counterproductive. As Joan Claybrook, former NHTSA Administrator and Citizens for Reliable and Safe Highways Chair, put it,¹⁶¹

The final rule amounts to nothing less than regulatory malpractice. It would have been better if NHTSA had not acted at all. Instead of improving protections to reduce underride fatalities and injuries, the agency has gone backward by issuing a rule that 94% of trailers already meet. As such, NHTSA has lowered the bar on public safety instead of ensuring it. This is an affront to the families of underride victims who have been working so hard to have the standard updated.

Citizens for Reliable and Safe Highways Board Member Jennifer Tierney called the new rule “exasperating and heartbreaking.”¹⁶² Cathy Chase, Advocates for Highway and Auto Safety President, said, “Unfortunately, today’s action allows trucking companies to choose a less safe course of action at the expense of road user safety. With large truck fatalities on the rise, the Agency responsible for the safety of our nation’s roads needs to be taking action to improve, not imperil, protections for road users.”¹⁶³

BRAKES

Braking technology can significantly reduce crash risk for large trucks.¹⁶⁴ This technology includes forward collision warning systems (FCW), which prepare drivers to brake when they are dangerously close to the vehicle in front, and automatic emergency braking systems (AEB), which “identify when a possible collision is about to occur and responds by autonomously activating the brakes to slow a vehicle prior to impact or bring it to a stop to avoid a collision.”¹⁶⁵

For example, such technology would likely have prevented a recent horrific Florida crash¹⁶⁶ — one that led to a very large jury verdict. In that case, a truck driver slammed into cars stopped on a highway from an earlier crash. The driver “was traveling on cruise control at 70 miles an hour” and “didn’t hit his brakes until one second before impact, despite passing signs set up by Florida law enforcement alerting to a crash ahead.”¹⁶⁷

Notably, the National Transportation Safety Board (NTSB) has long recommended implementation of both AEB and FCW systems for commercial vehicles.¹⁶⁸ But as NTSB reported to Congress in May 2022, “NHTSA’s progress in this area continues to be extremely slow.”¹⁶⁹ The 2021 Infrastructure Investment

and Jobs Act requires the federal government — NHTSA in conjunction with FMCSA¹⁷⁰ — to issue an AEB requirement for heavy duty commercial vehicles.¹⁷¹ A new proposed rule is expected in early 2023.¹⁷²

SPEEDING

Installing speed limiters on heavy trucks continues to be on NTSB’s “Most Wanted List” of safety improvements.¹⁷³ In a May 2022 report to Congress, the agency criticized NHTSA and FMCSA for failing to establish “performance standards for advanced speed-limiting technology for heavy commercial vehicles,” including trucks, and “require that all newly manufactured heavy vehicles be equipped with such devices” to mitigate “speeding’s role in crashes and crash deaths.”¹⁷⁴



In April 2022 — nearly six years after publishing a Notice of Proposed Rulemaking (NPRM) that would require 26,000-plus pound trucks operating in interstate commerce to be equipped with a speed limiting device¹⁷⁵ — FMCSA announced that it would issue a proposed speed limiter rule.¹⁷⁶ The agency is now moving ahead with a proposal that is expected by June 2023,¹⁷⁷ but given the “pushback by a significant portion of the trucking sector”

(and notable opposition by OOIDA¹⁷⁸), its strength remains to be seen.¹⁷⁹ Notably, in ATRI’s most recent survey of truck drivers, owners and industry executives, the possibility of rulemaking to prevent speeding with “speed limiters” catapulted the issue into the top 10 of the trucking industry’s greatest concerns.¹⁸⁰

BLIND SPOTS

In a 2013 safety study, *Crashes Involving Single-Unit Trucks that Resulted in Injuries and Deaths*, NTSB made a number of recommendations to NHTSA to improve visibility and eliminate blind spots.¹⁸¹ There’s been little progress in the nine years since those recommendations were made.¹⁸²

CHAMELEON CARRIERS

Chameleon carriers are trucking companies that seek to hide their former identity and evade federal penalties and fines — as well as legal liability — by registering and operating under a new name.¹⁸³ “According to the FMCSA and trucking industry experts, chameleon carriers have been a part of the trucking industry for decades, creating safety hazards on the roadways.”¹⁸⁴ Despite repeated calls for

FMCSA oversight¹⁸⁵ — with the U.S. General Accountability Office (GAO) telling Congress as far back as March 2012 that 18% of chameleon carriers were involved in severe crashes, three times more often than legitimate new applicants¹⁸⁶ — the problem still remains. Today, “[i]t’s unknown exactly how many chameleon carriers are working in the trucking and transportation industry.”¹⁸⁷ As reported by *FreightWaves*,¹⁸⁸

There are currently a reported 996,894 for-hire carriers across the country. In 2021, the FMCSA granted 109,340 new carrier authority applications, 84% more than in 2020, according to data from FTR Transportation Intelligence.

If just 1% of the carriers granted authority in 2021 have chameleon characteristics, that could be up to 1,100 new transportation companies that are operating on the roadways that pose safety risks.

BROKERS/SHIPPERS

Freight brokers serve as intermediaries that arrange for transportation of goods between shippers and motor carriers. Their hiring decisions have enormous safety implications. They are already incentivized to cut safety corners with normal rules in place, such as hiring the cheapest contractor available. In fact, they have a terrible record when it comes to hiring safe carriers or drivers.¹⁸⁹

Legislation has been introduced to direct FMCSA to do far more to help brokers determine if a trucking company is safe. However, the bill’s language fails to ensure the broker’s legal responsibility in the event of a crash and could result in immunity for these companies.¹⁹⁰

The bill is being pushed by multiple trade associations and large broker companies,¹⁹¹ including the nation’s top broker *C.H. Robinson*,¹⁹² which recently lost an attempt to avoid legal responsibility for a horrific crash. More specifically, in June 2022, the U.S. Supreme Court allowed personal injury claims to go forward in state court against C.H. Robinson, which was negligent in choosing the motor carrier who caused a 2016 collision that left an innocent driver paralyzed.¹⁹³

INSURANCE MINIMUMS

In 1980, Congress established a requirement that interstate big rigs transporting non-hazardous cargo carry a minimum of \$750,000 per accident in insurance liability coverage. It also gave DOT authority to regularly examine this limit with the idea of increasing it as other costs rose. But to this day, the insurance minimum remains \$750,000.¹⁹⁴

When there is a serious crash, this insurance limit essentially functions as a cap, providing a single fund of sometimes woefully inadequate available compensation that is indifferent to the number of victims hurt or killed.¹⁹⁵ For years, some in Congress have tried to increase this minimum. Most recently, the U.S.

House of Representatives voted to increase the limit as part of the 2021 Infrastructure Investment and Jobs Act. However, the Senate refused to include this provision and it was not enacted.¹⁹⁶

Trucking industry positions vary as to their views of such legislation, with OOIDA fully opposing any rise fearing premium increases, while ATA is more ambivalent.¹⁹⁷ One consistent industry theme, however, is that increasing the limit is unnecessary. To reach that position, groups like ATRI rely on data which, interestingly, run completely counter to allegations of excessive litigation by crash victims. As ATRI puts it¹⁹⁸:

[L]ess than 2% of reported insurance claims generate any litigation action. In other words, insurance companies take care of most crash-related disputes without the need for litigation. This backs up data that suggest less than 1% of truck-involved crash cases exceed \$750,000, which is the current insurance minimum.

Whether or not those statistics are accurate, the problem is not minor crashes but rather ones that cause severe harm. The Biden Administration's FMCSA itself pointed out that when "catastrophic and severe/critical injury crashes do occur, the costs of resulting property damage, injuries, and fatalities can significantly exceed the minimum levels of financial responsibility."¹⁹⁹

As the agency also noted, "The decreasing real value of the current minimum levels of financial responsibility is effectively removing the function of insurance in covering catastrophic crashes."²⁰⁰ Indeed, it is the insurance industry that's blocking FMCSA from taking action. In its May 2022 report, the agency explained²⁰¹:

In order for FMCSA to adequately assess the sufficiency of the financial responsibility requirements, the Agency would need access to more detailed information from the insurance industry, including anonymized claims data. To date, efforts to obtain this information under existing legal authorities and through requests for voluntary disclosure have been unsuccessful.

One thing is clear: The liability limit fails to incentivize insurers to make safer practices a condition of insurance coverage.

STATE LIMITS ON VICTIMS' RIGHTS

The trucking and insurance industries have significant influence at the state level as well. This is particularly true when it comes to laws that restrict the legal rights of truck crash victims, which are governed by state tort law.

First, it should be noted that many general tort restrictions already benefit the trucking industry. For example, some states broadly cap compensatory damages in injury cases.²⁰² Juries are typically not told

about these caps when rendering verdicts. News coverage of verdicts, particularly large verdicts, rarely mention these state laws even though they act to significantly reduce jury awards.²⁰³

Other laws limit punitive damages, which are awarded when wrongdoing is particularly egregious. Of the 45 states that allow punitive damages, at least one-third have enacted some form of cap. More than 30 state legislatures have made it more difficult for injured consumers to prove punitive damages by raising the standard of proof required for awarding them. Several states order victims to pay a portion of punitive damages into state-designated funds. Other states require or permit bifurcated trials where the injured person is forced to essentially try a case twice, first proving liability and second arguing the size of the award. And in some states, juries are prevented from deciding the amount of a punitive damages award — only the judge is permitted to do that.²⁰⁴



Beyond this, some state tort limits have been enacted at the specific behest of the trucking industry. Recent laws include:

Texas. In September 2021, a law went into effect that forces injured or killed victims and their families to establish truck driver negligence in court before they're able to take legal action against a trucking company that caused avoidable death or harm.²⁰⁵ This two-tiered system, pushed by the state's trucking industry,²⁰⁶ "limits corporate liability and throws roadblocks into the recovery process for grieving families," explained Adrian Shelley, Director of Public Citizen Texas.²⁰⁷

Montana. In May 2021, the governor signed legislation backed by ATA-affiliate Motor Carriers of Montana and other business groups, allowing wrongdoers to escape responsibility for paying the full cost of victims' medical bills.²⁰⁸ More specifically, the new law impacted the state's long-standing collateral source rule, which had left it up to juries to decide what damages are reasonable without consideration of payments from sources unrelated to the wrongdoer (like health or disability insurance for which the injured party has already paid premiums or taxes) so as not to unfairly influence the verdict.²⁰⁹ American Trucking Associations "cheered the legislative action,"²¹⁰ with an ATA spokesman saying, "We applaud Montana's leadership and look forward to more states following their lead..."²¹¹

Louisiana. In July 2020, the "Civil Justice Reform Act" was signed into law after heavy lobbying from the trucking industry.²¹² The Act, similar to Montana's law, allows wrongdoers to reduce their financial responsibility for injuries they caused, lets juries hear about payments from outside sources unrelated to the wrongdoer and prevents juries from learning that the defendant has insurance coverage.²¹³

INSURANCE PRICE-GOUGING OF TRUCKING COMPANIES

Volcanic eruptions in insurance premiums for businesses (some increases more severe than others) have occurred four times in the last 50 years — in the mid 1970s, again in the mid-1980s, in the early 2000s and now today. When angry policyholders have understandably complained about this, it's common for insurance companies to try to deflect blame and point the finger at others.

Historically, the most common story presented by industry leaders has been to allege that the insurance industry is financially beleaguered and cannot pay claims because of lawyers, lawsuits and juries which, they say, have suddenly become more “aggressive.” To buy this argument, one would have to accept the notion that lawyers became “aggressive” while juries (coincidentally at the same time) engineered large awards in the mid-1970s, then stopped in complete sync for about eight years, then started again in the mid-1980s, then stopped for 13 years, then started again in 2002 and stopped in 2006. And now, 13 or 14 years later, they have somehow started again. Such an assertion seems and is ludicrous. It is also demonstrably untrue. At no time did claims or payouts spike during any of these past periods and it is certainly not happening now.²¹⁴

The following explains in more detail what is behind insurance rate hikes and what can be done to bring them under control.

INSURANCE INDUSTRY OVERVIEW

In 2019, rates in several lines of commercial insurance began jumping up. That included the Commercial Auto Liability line, which is dominated by trucking.²¹⁵ The rise in commercial auto rates shared many characteristics with rate hikes occurring for other businesses but differed in other respects.

As far as similarities, as noted earlier, it has been a phenomenon of the last 50 years that every 10 to 15 years or so, insurance premiums for businesses suddenly rise, sometimes drastically and seemingly for no reason, after being stable for years. This is known as a “hard market.” A hard market is preceded by a longer “soft market” period of stable rates. This up-and-down cycle is a predictable and well-recognized phenomenon.²¹⁶

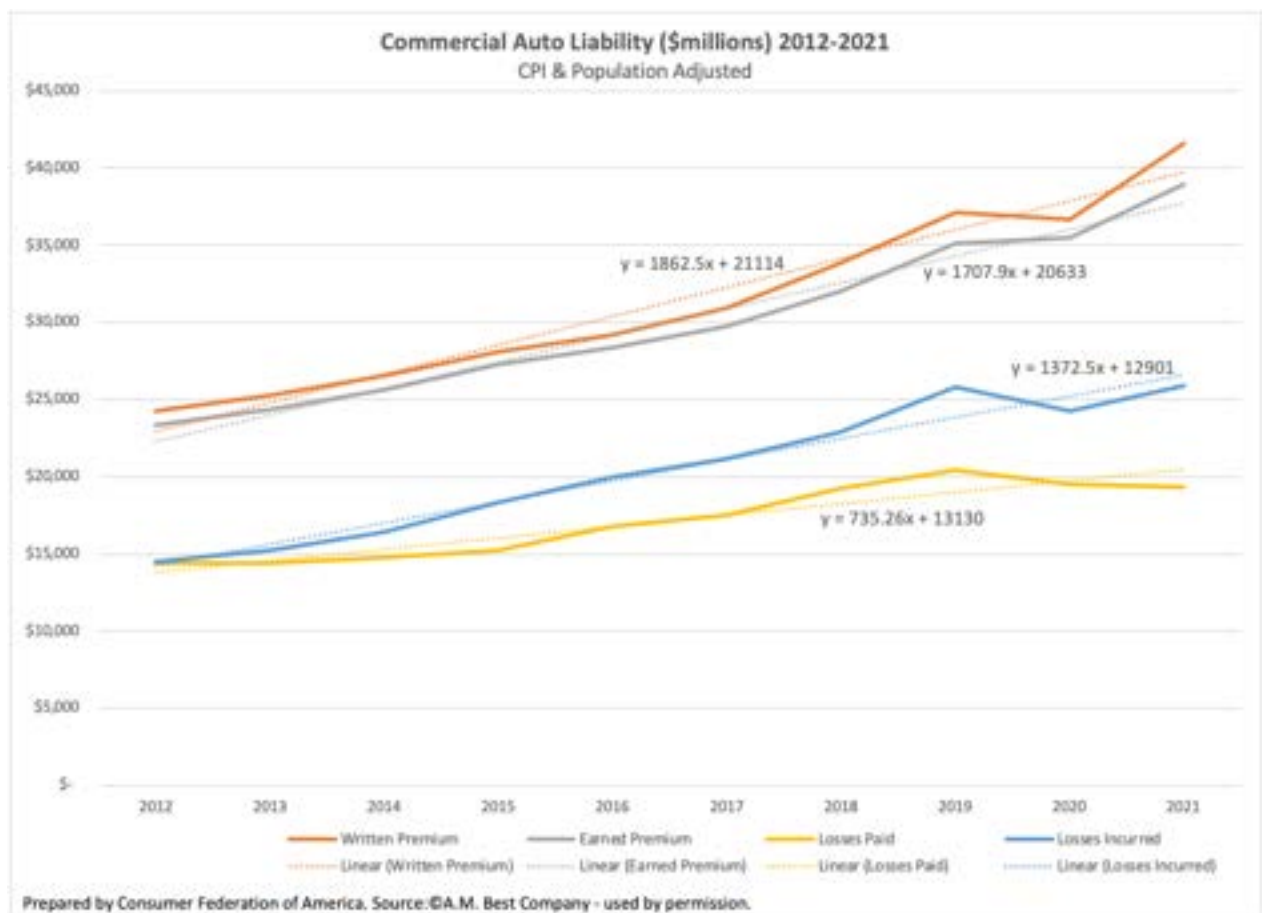
During hard markets (when rates are increasing), insurers will inflate their “incurred” losses to justify rate hikes. An “incurred” loss is not what an insurer has actually paid out. It includes estimates of future claims and guesses about claims they don't even know about yet (called “incurred but not reported” or IBNR). As one might expect, these figures are extremely easy for insurance companies to exaggerate in order to justify rate hikes.

During hard market periods, insurers will increase “incurred losses” by padding their reserves — the money set aside to pay claims — despite, at the same moment, experiencing no commensurate increase in payouts or any trend suggesting large future payouts. This “over-reserving” is often politically-inspired

and used by insurers as a way to show poor income statements, which in turn is used to justify imposition of large premium increases.²¹⁷ In other words, reserves — and incurred losses — are manipulated for reasons having nothing whatsoever to do with actual paid claims. There is no accountability within the system to prevent insurers from doing this. In fact, it happens at the start of every hard market.²¹⁸

COMMERCIAL AUTO LIABILITY INSURANCE

The following chart, which is adjusted for inflation and population growth,²¹⁹ shows exactly what has been happening in the Commercial Auto Liability line of insurance over the past decade.



The chart is based on a Consumer Federation of America review of data from A.M. Best, *Best's Aggregates & Averages* – (Property/Casualty). It includes “Written Premiums” (the amount of money that insurers collected in premiums during that year), “Earned Premiums” (the portion of premium collected that applies to the expired portion of a policy), “Losses Paid” (what insurers actually paid out that year to people who were injured — all claims, jury awards and settlements), and “Losses Incurred,” which as explained earlier, includes *paid losses plus* reserves to cover estimated losses for reported but not paid and not yet reported (IBNR) claims.

Here are a few key observations from the data:

- In 2012, reported incurred losses jumped slightly ahead of paid losses for the year, and they have grown at a faster pace than paid losses ever since. In other words, while there has been some actual upward loss movement over the past decade, *it appears that the industry is significantly over-correcting through excessive reserving and unnecessary rate increases.*
- During the ten-year period 2012-2021, paid losses increased by an average of 3.2% per year on an adjusted basis, while incurred losses increased by 7% annually. Over the entire period, paid losses increased by 34% on an adjusted basis while incurred losses increased by 78%. *On an unadjusted basis, paid claims rose 68%, but the incurred claims used for determining rates increased by 122%.*
- In 2012, the industry reported incurred losses for commercial auto of about \$11.654 billion dollars, about \$133 million, or 1.2%, more than the \$11.521 billion in losses paid in that year. By 2021, the spread between incurred losses and paid losses had grown to 34% — reporting \$6.27 billion more incurred losses than paid losses.
- While the data show that paid losses turned higher in 2016 and then again in 2018, *paid losses have not come close to catching up with the incurred losses* insurers have been reporting over the past decade, and the dramatic spike in incurred losses in 2019 has not materialized in paid losses in the years since then, with *paid claims actually falling in 2020 and 2021, due in part to the pandemic but also because the 2019 incurred losses appear to have been overstated.*
- The increase in losses recorded in 2016 has precipitated *an incommensurate growth in the premiums charged for commercial auto insurance.* On an adjusted basis, annual paid losses grew by \$4.072 billion (27%) from 2015 to 2021, but the insurers' written premium during that period grew by \$13.417 billion (48%) during the same period.
- Pulling back and looking at the entire 23-year period, the graph above illustrates the problem: Slopes in the premium increase trends are larger than the slope for the incurred loss trend line and significantly larger than the paid loss trend, illustrating that *premiums are rising out of sync with loss increases.*

This chart shows a gradual growth in paid claims. The question is: What could be behind this trend? One need look no further than the hottest topic in auto insurance industry discussions before the hard market kicked in — distracted driving compounded by the impact of more drivers on the road. For example, in early 2020, the *Wall Street Journal* reported²²⁰:

[C]ar insurers like Allstate have won approval from many state insurance departments for rate increases on a fairly steady basis since 2015, when a spike in traffic deaths caught the industry by surprise. At that time, more drivers were suddenly on the road with increased mileage amid the economic recovery and distracted driving was growing as a concern.

When it came to commercial auto insurance, those concerns had been evident for a long time. In its Q3

2019 commercial insurance report, the Council of Insurance Agents and Brokers wrote²²¹:

The possible causes for Auto's increased claims — distracted driving and more people on the road — have been discussed before, but they remain important as ever. For example, just last year an estimated 60% of all drivers in the United States used their phone while driving, going hand in hand with the second time U.S. motor-vehicle deaths surpassed the 40,000 mark.



Even industry consultants Willis Towers Watson wrote in November 2019, “A strong economy means more vehicle traffic, leading to more accidents, especially when the plague of distracted driving continues to be a factor.”²²²

Knowing the nation's been in the midst of an “epidemic” of distracted driving,²²³ the insurance industry has had a real opportunity to use its influence to raise public awareness about it and weaken its terrible toll on the driving population. But in the fall of 2019, the commercial auto

liability insurance industry largely stopped talking about this and began coordinating messaging with the rest of the insurance industry around so-called “social inflation,” trying to convince policyholders that extremely rare, large jury verdicts were responsible for industry-wide rate hikes.²²⁴ The change in rhetoric was sudden and unmistakable.

For example, in October 2019, W.R. Berkley's chief executive Robert Berkley, Jr. raised the social inflation argument, declaring, “We have for two-and-a-half or three years been beating the social inflation drum [and] as much as four or five years ago in commercial auto [with] these type of awards coming out of the legal system.”²²⁵ Yet, when making his case for a hardening market just a few months earlier, Berkley made no mention of litigation issues at all.²²⁶ By the end of 2019, the widely-accepted problems of distracted driving and more drivers on the road were no longer being highlighted. Now the issue had become the competence of juries in cases involving catastrophic injuries caused by large truck crashes.²²⁷

The irony of focusing so much rhetoric on juries is that the civil jury system has already been “nearly eradicated” in this country.²²⁸ Jury researchers found, “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.” Of the limited number of states that do report jury statistics, “in 2019, juries disposed of a median of only 0.09% of civil disputes. Hawaii reported just a single civil jury trial that year; Alaska reported zero.”²²⁹

What's more, when the pandemic hit, jury trials stopped nearly everywhere.²³⁰ Yet the industry was apparently so fully invested in their anti-jury PR strategy that they never stopped complaining about jury verdicts — even when there weren't any.²³¹ Today, the pandemic-created backlog of civil cases is so large that "the already rare civil jury trial is likely to lay dormant for the foreseeable future."²³²

Researchers also point out²³³:

High damage awards in civil jury trials make the news because of their unusual man-bites-dog quality, but their appearance still leads readers to overestimate their frequency and in turn causes risk managers to overestimate liability exposure. Seizing on these news reports, corporate groups looking to tamp down verdicts against their sponsors circulated skewed and fictionalized stories about runaway juries giving large verdicts to undeserving plaintiffs to create a political environment primed for jury-restrictive legislation while blaming plaintiffs' lawyers and juries for a broken civil justice system.

Like the term "social inflation," the term "nuclear verdict" was developed as a PR gimmick by industry groups. They actually defined it themselves, arbitrarily giving it a \$10 million value.²³⁴ Such verdicts are rising, they insist. They also insist that all verdicts above \$1 million are rising. Given the horrific nature of many 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,"²³⁵ this may be no surprise. But is it even true?

An examination of both ATRI and U.S. Chamber of Commerce Institute for Legal Reform data raises real questions about their conclusions. In their recent jury verdict reports, both organizations use every opportunity to skew their data in one direction — high. First, as there exists no nationwide scientific database of jury verdicts, their analyses are based entirely on their own private databases, which no one can check.²³⁶ The Chamber explains that its jury database is largely pulled from self- or media-reported cases, which skew high.²³⁷ To slant the numbers even higher, ATRI and the Chamber consistently calculate "means" or averages (downplaying "medians," which are substantially lower²³⁸), which is inappropriate to determine jury trends because "means" are skewed by outliers.²³⁹ And to skew the numbers even higher, 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.²⁴⁰

Their data set is also infected by subjective decision-making. For example, the year ATRI assigns to a verdict — important for determining any "trend" — may be completely wrong because of a "lack of uniformity in available dates of crashes, filings and award publication dates."²⁴¹ Instead, verdict years are arbitrarily assigned by ATRI's hardly-impartial staff.

Remarkably, ATRI's later report about the far more typical cases 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."²⁴² As one publication explained, "[V]erdicts and settlements of any kind are rare. Additionally, the price tag of the average verdict under \$1 million is trending downward."²⁴³

Even more stunning, trucking companies and insurance carriers voluntarily settle cases in amounts that are typically *higher than jury verdicts*.²⁴⁴ Specifically:

Approximately 50.3 percent of all settlement cases in ATRI's data had payments exceeding \$500,000, while only 31.5 percent of all verdict cases resulted in payment of this size. Payments between \$100,000 and \$500,000 represented about the same percentage of both verdicts and settlements.

While there may be a good deal of doublespeak in these reports, there is one thing on which they agree: When it comes to deaths, injuries, claims and lawsuits, the trucking industry has no one but itself to blame. As noted earlier, with regard to "nuclear verdicts," ATRI says²⁴⁵:

Multiple interviewees prefaced remarks with variations of "the only way to prevent nuclear verdicts is to prevent the crash from happening in the first place."...Interviewees generally concurred that the 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* [emphasis added].

ATRI's smaller verdicts report echoes that same sentiment²⁴⁶:

After poor driver history, phone use, HOS violations, falling asleep at the wheel and equipment failure had the highest average payments. Carriers should make the elimination of these issues a top priority in order to lower litigation payments.

Whether the goal is to reduce deaths, injuries, claims, lawsuits, or to cut insurance premiums, focusing on jury verdicts rendered after a preventable crash is clearly misguided and solves nothing. Truck owners and operators who are making a strategic choice to ally with insurers in hopes of a trickle down of lower rates are hoping for an answer that will never arrive. The trucking industry must demand insurance industry accountability. They should begin by asking state insurance commissioners to do a better job of reviewing commercial auto liability rates and prevent insurers from price-gouging. And they should call on lawmakers to do more to ensure commercial auto insurance rates are subject to transparency and oversight, especially by requiring prior approval of commercial auto premiums.

THE MISLEADING REPORTING OF JURY VERDICTS

Anecdotal descriptions of a few atypical lawsuits or verdicts described in a way as to shock the public have been the cornerstone of the movement to limit victims' legal rights since at least the 1980s. Focusing on a few rare, anecdotal cases, instead of the majority of cases that pass through the courts each year, feeds into false and dangerous perceptions about the civil justice system. One way a false impression of the civil justice system happens is by describing a verdict and then burying — or taking no note of whatsoever — any post-verdict activity.

POST-VERDICT DEVELOPMENTS

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.²⁴⁷ Yet the public is given the false impression that a plaintiff received a windfall, a defendant was financially ruined or the system failed.

Take, for example, two so-called “nuclear” trucking verdicts in Texas described in a recent report by the U.S. Chamber of Commerce Institute for Legal Reform.²⁴⁸ After expressing seeming outrage at the results, the following are buried in endnotes: The first case, against trucking giant Werner Enterprises, is still on appeal so not a dime has been paid by Werner to victims of a crash that happened eight years ago. The second case “appears to have settled while on appeal,” presumably for a smaller amount.

APPELLATE DECISIONS

It’s also true that sometimes appeals do not work because courts don’t believe a company has valid arguments or that the jury did anything incorrectly. Take the *Morga* case,²⁴⁹ which resulted in what industry groups would define as a “nuclear verdict.”



On June 22, 2011, at 1:30 a.m., a semi hauling two FedEx trailers slammed into a GMC passenger truck on Interstate 10 near Las Cruces, New Mexico. The pickup truck was in the far right slow lane, with the FedEx truck behind it going 60 to 65 miles per hour. Distracted, the driver did not break and ran right over the pickup truck. Inside were Marialy Morga, 22, and her two young children, on their way to visit her husband at his worksite. Morga and her 4-year-old daughter were killed as was the semi driver. Morga’s 19-month-old son was critically hurt and airlifted to a hospital suffering severe head, back, lung, leg and ankle injuries as well as internal harm.

Morga’s husband and parents sued. In January 2015, the jury issued a \$165.5 million verdict: \$32 million and \$61 million for the wrongful deaths of Morga and her daughter, respectively; \$40.1 million for harm to her husband; \$32 million for injuries suffered by her son; and \$408,000 for the loss experienced by her parents. FedEx appealed even though prior to trial it stipulated that it would “pay for any damages attributed to [FedEx] and the other named [D]efendants.”

In May 2022, a unanimous New Mexico Supreme Court affirmed the award, stating, “[W]e conclude under our current law that substantial evidence supported the verdict and the record does not reflect that the verdict was tainted by passion or prejudice.”

FACTS AND CONTEXT

As noted in the Introduction, usually special interest groups like the U.S. Chamber of Commerce discuss large verdicts by talking about money without presenting facts or context. In some cases, they use collections of distorted descriptions to try to smear an entire state. Sometimes this even includes whining about other types of litigation that they lost years ago.

Here, for example, is how the U.S. Chamber recently described two large Florida trucking verdicts²⁵⁰:

This mix of cases and award types reflects Florida’s continuing, unique tobacco litigation as well as the aggressiveness of the state’s personal injury bar in auto accident cases. This trend continues, with record-breaking verdicts in Florida trials against trucking companies following the survey period, including \$411.7 million in October 2020 and \$1 billion in August 2021.

As with the *Madere* case described in the Introduction, these are cynical and callous portraits of horrifying, avoidable crashes. The following descriptions paint a fuller picture of each case:



Washington v. Top Auto Express, Inc.²⁵¹ On July 24, 2018, former career Army sergeant Duane Washington, 42, was riding home on his motorcycle on I-10 near Tallahassee, Florida when he encountered a 45-plus vehicle pile-up caused by a Top Auto Express tractor-trailer, which was speeding despite bad weather. Washington tried to drive his bike into the emergency lane but ended up colliding with a stopped truck

that didn’t have its lights on. He was thrown from his bike and suffered unimaginable injuries: His “pelvis was torn away from his spine bilaterally and had to be patched together with metal rods, plates and wires; he sustained severe colon and urethral damage, resulting in permanent bladder and bowel incontinence; experienced a loss of sexual function with paralysis; had a colostomy bag installed during his six month hospital stay; suffered atrophy of his right leg, required a special arm crutch to walk as well as 24 hour care.” According to reports, despite the fact that Washington’s immediate medical expenses alone totaled close to \$750,000, the company

refused to settle the case for \$1 million. Top Auto's attorneys withdrew from litigation months before trial citing "irreconcilable differences, including issues related to client cooperation"; the company decided to proceed without legal representation, "did not put up any witnesses and did not submit any exhibits, according to court records. It also was hit with a default liability judgment in August [2020] after a judge said it 'abandoned' its defense." In October 2020, after a damages-only trial, the jury handed down a \$411.7 million verdict.

Dzion v. ADJ Business Services, Inc.²⁵² On the night of September 4, 2017, ADJ semi driver Russel Rogatenko, going about 85 miles per hour (15 mph above the speed limit) and distracted by his cell phone, crashed into an RV towing a car. Turns out Rogatenko had been hired without a background check or even a commercial license to drive a truck. When he was hired, he already had numerous moving violations, including "running weigh stations, logbook violations, rear-end crashes, distracted driving, following too closely, and a speeding violation for traveling 95 mph."

When Rogatenko's truck hit it, the towed car burst into flames and the ADJ truck flipped over, blocking traffic for hours. Eighteen-year-old Connor Dzion, a University of North Florida freshman, was in that line of stopped cars when a Kahkashan Carrier Inc. (KCI) tractor-trailer barreled into his car, crushing it and killing Connor. That driver, Yadwinder Sangha, who had trouble reading English, "was traveling on cruise control at 70 miles an hour," "didn't hit his brakes until one second before impact, despite passing signs set up by Florida law enforcement alerting to a crash ahead" and "was on his 25th hour of a road trip that took him from Quebec all the way down the Eastern Seaboard, all the way to Palm Beach."

In August 2021, the jury handed down \$86 million in compensatory damages against KCI and \$916 million in damages against AJD — \$16 million for emotional distress and \$900 million of which were punitive "based on its finding that the New York-based company's wrongful conduct was motivated by 'unreasonable financial gain.'"

Yet the likelihood of this verdict being nearly paid is nil. AJD's insurer paid only its \$1 million policy limit. And according to one report, "AJD apparently is no longer in existence and failed to participate in the proceedings for at least the last two years," so "the reality of trying to collect is that 'there is nothing there.'"

While there was much media coverage of the *Dzion* verdict (and almost nothing about post-verdict developments), some within the trucking industry took a hard look at this case. Rather than denigrating the jury, they rather sought to learn lessons from it. There was a general acknowledgement that the industry brings such verdicts on itself. In this case:

The driver for whom there was no background check, no verification of a CDL or prior violations, and the other driver who allegedly was not able to read road signs and was apparently over hours of service. As one attorney put it, "These are all vulnerabilities, systemic and individual, that companies need to identify and rectify before the accidents. And nuclear verdicts rarely, if ever, occur absent such correctable detonators."²⁵³

SETTLEMENTS

It's also important to note that to the extent large claims are paid, they are often not awarded by juries at all. Instead, as discussed earlier, they are voluntarily paid by culpable companies as part of settlements.

For example, the U.S. Chamber of Commerce Institute for Legal Reform describes in its typically dismissive manner one "extraordinary" Texas verdict as follows: "A \$730 million award (including \$480 million in compensatory damages and \$250 million in punitive damages) in 2021 to a great-grandmother who had a collision with an oversized-cargo truck hauling a propeller for a navy submarine."²⁵⁴

The full facts are these²⁵⁵:

On February 21, 2016, Landstar Ranger was trying to haul a 197,000-pound submarine propeller across a narrow bridge in Titus County, Texas using an oversize-cargo truck for this 16' wide load. Leading the truck was an escort vehicle, owned by 2A Pilot Cars. When 73-year-old Toni Combest rounded a blind curve before entering the narrow bridge, the tractor and load was almost completely within her lane going 65 mph. The load hit her, ripped off the top of her car and killed her.

There were numerous basic public safety steps that the culpable companies and drivers failed to take that all contributed to Toni's entirely preventable, violent death. Those included maintaining a proper lookout, driving at a safe speed, communicating within the convoy about oncoming traffic, figuring out a plan in advance to deal with expected hazards like narrow bridges, asking local authorities for help or actually having the front pilot car function as it was put there to do.

A week before trial, Landstar voluntarily settled the case for \$50 million — an amount that is five times the industry's own definition of "nuclear." This fact was typically omitted in any industry description of this case.

HOW TRUCKING VERDICTS AND SETTLEMENTS MAKE US SAFER

Verdicts and settlements are critical because they can force a company to make needed safety changes. For example, ATRI reports²⁵⁶:

[O]ne plaintiff attorney ... referenced his own settlement clause in a truck-involved crash that involved multiple fatalities and multiple injured people. *The trucking company was required to implement automatic braking technology on all of their units as part of the settlement agreement* [emphasis added].

The following three cases provide additional illustrations of how the civil justice system, including the impact of so-called “nuclear verdicts,” has protected all motorists for decades:

- In 2014, Vernon O’Tuel was traveling down a Bennettsville, North Carolina road when he slowed down to turn into his driveway. He was rear-ended by a Unifi tractor-trailer, which had not slowed down because the truck driver had been distracted on his cellphone. He had been using his phone for seven hours during his nearly eight-and-a-half-hour driving shift. His employer was simply not enforcing its policy that limited driver cellphone use. Vernon was seriously injured. Unifi settled the lawsuit in 2016, and as part of the settlement, agreed to not just limit cellphone use but also to ban drivers from using cellphones altogether while their trucks were on the road.²⁵⁷

- In February 2011, Daniel Van Dyke, 44, and Richard Hannah, 47, were killed by a Celadon tractor-trailer that rear-ended Van Dyke’s car on I-94 near Portage, Indiana. Van Dyke had stopped to avoid colliding with a vehicle that spun out on the icy highway. The tractor-trailer was traveling on cruise control at 65 mph right before impact. The trucking company had trained employees to use cruise control on icy roads



to save money on truck fuel, flouting multiple federal safety regulations. The families sued, and 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.²⁵⁸

- On November 8, 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 discovery, whistleblowers revealed a bribery scheme involving the sale of CDLs run through the Illinois Secretary of State’s office. The driver involved in the Willis accident had purchased his CDL with a bribe. The Willises settled the case in 1999 for the so-called “nuclear” sum of \$100 million. 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.”²⁵⁹

CONCLUSION

Our economy relies on the trucking industry to function. But it is an industry with too many bad actors, who are knowingly disregarding public safety. It is also an extremely powerful industry, which uses its economic clout to weaken critical safety standards. Thus it comes as no surprise that large truck crashes in the United States are far too frequent, horrific and growing.

While the government may sometimes look the other way, juries clearly are not. Rare as they are, large verdicts against bad actors in the trucking industry mean that jurors are intolerant of reckless disregard for public safety. Even trucking industry lawyers admit that large verdicts are entirely of the industry's own making. They acknowledge that the only way to reduce jury verdicts or litigation generally is to allocate more resources to safety and prevent crashes from happening in the first place.

When it comes to insurance premiums, the problems and solutions lie with the insurance industry. Data clearly show that the trucking industry is being price-gouged. There are real steps that this industry could be taking to bring down rates, such as advocating for better regulation, oversight and transparency of the insurance industry. Anyone who claims that attacking juries is the way to lower premiums is doing a terrible disservice to trucking owners and drivers, who deserve rate relief today and into the future.

NOTES

¹ “Wrongful death trial begins in Columbus 3 years after an East Ala. vehicle accident,” *WTVM* (Columbus, Ga.), August 20, 2019, <https://www.wsfa.com/2019/08/21/wrongful-death-trial-begins-columbus-years-after-an-east-ala-vehicle-accident/>

² “[P]rior crash involvement had a 113 percent increased likelihood of a future crash.” 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>

³ The Federal Motor Carrier Safety Administration (FMCSA) is the federal agency charged with regulating more than 500,000 commercial trucking companies. U.S. Department of Transportation, “Federal Motor Carrier Safety Administration,” <https://www.transportation.gov/briefing-room/safetyfirst/federal-motor-carrier-safety-administration> (last updated May 2, 2018).

⁴ “Since 2011, both fatal crashes involving large trucks and total truck [vehicle miles driven] have seen an increase.” 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>

⁵ See, e.g., section entitled, “Other Ways The Trucking Industry Influences Government,” later in this paper. There are two federal agencies responsible for overseeing large truck safety, both housed within the U.S. Department of Transportation (DOT): the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA).

⁶ AAA press release, “Truck Safety Technology Can Prevent 63,000 Crashes Each Year,” September 21, 2017, <https://newsroom.aaa.com/2017/09/truck-safety-technology-can-prevent-63000-crashes-year/>

⁷ 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>

⁸ *Madere v. Greenwich Insurance Company*, 2017 WL 11424174 (Muscogee County Ct., Ga.) (complaint filed February 23, 2017).

⁹ U.S. Department of Justice, Bureau of Justice Statistics, “Punitive Damage Awards in State Courts, 2005,” NCJ 233094 (March 2011) (citing Black’s Law Dictionary, 1990), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pdasc05.pdf>

¹⁰ “Tort reform” laws make it more difficult for injured people to sue in civil court or limit the power of judges and juries to make decisions in tort cases. The word “reform” is a complete misnomer. These laws take away people’s rights to access the courts and be properly compensated, and they undermine the constitutional right to jury trial. Major trade groups pushing these laws include the U.S. Chamber of Commerce Institute for Legal Reform, American Tort Reform Association, American Legislative Exchange Council, Citizens Against Lawsuit Abuse and insurance industry trade associations like the American Property Casualty Insurance Association and Medical Professional Liability Association.

¹¹ James H. Gordon and Michael E. Bonner, Ansa Assuncao LLP, “The Self-Fulfilling Prophecy of Social Inflation,” *Lexology*, February 5, 2020 <https://www.lexology.com/library/detail.aspx?g=f87055ad-b2df-4837-8d94-df5d3772775d> (“[N]uclear verdicts are nothing new. For example, in 2002, a Los Angeles jury awarded Betty Bullock, a 50-year smoker, \$28 billion against a tobacco company. That same year, a Missouri jury awarded more than \$2.25 billion to a plaintiff, Georgia Hayes, in her suit against a pharmacist who diluted cancer drugs. There have been massive and well-publicized jury verdicts for decades.”)

¹² See Center for Justice and Democracy, “FAQ About the McDonald’s Coffee Case and the Use of Fabricated Anecdotes,” https://centerjd.org/system/files/FAQMcDonaldsEtc_0.pdf

¹³ *Ibid.*

¹⁴ William Haltom and Michael McCann, *Distorting the Law; Politics, Media and the Litigation Crisis*, University of Chicago Press, 2004.

¹⁵ 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

¹⁶ 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>

¹⁷ Ibid.

¹⁸ See *Dzion v. ADJ Business Services, Inc.*, Case No. 2018-CA-000148 (Nassau County Cir. Ct., Fla.), discussed later in this report.

¹⁹ Deborah Lockridge, “5 Takeaways From a Billion-Dollar Verdict,” *All That’s Trucking*, September 7, 2021, <https://www.truckinginfo.com/10150904/5-takeaways-from-a-billion-dollar-verdict>

²⁰ See, e.g., 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

²¹ They say they invest too little to win their cases, are too “secretive and competitive in their approaches and strategies — ostensibly a function of using a corporate business-oriented model,” are behind in the use of technology and are stuck with clients who keep information from them. 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>

²² Ibid.

²³ J. Robert Hunter, Joanne Doroshov and Douglas Heller, *How the Cash Rich Insurance Industry Fakes Crises and Invents Social Inflation*, Consumer Federation of America and Center for Justice and Democracy (2020), <http://centerid.org/content/study-how-cash-rich-insurance-industry-fakes-crises-and-invents-social-inflation>

²⁴ Ibid.

²⁵ Nicole Friedman and Leslie Scism, “Insurers Drive Up Prices for U.S. Businesses; Large catastrophe losses and low interest rates force insurers’ hand after years of no increases,” *Wall Street Journal*, February 11, 2020, <https://www.wsj.com/articles/insurers-drive-up-prices-for-u-s-businesses-11581417009>

²⁶ See, e.g., Kroll Bond Rating Agency press release, “KBRA Releases Research — U.S. Property and Casualty Insurance 2020 Outlook: Bedrock Capital Underpins Stability,” January 28, 2020, <https://apnews.com/Business%20Wire/7398fd73bc3045e599d8d1dbecb890a0>

²⁷ The National Association of Insurance Commissioners, calling distracted driving an “epidemic,” said, “With advancements in mobile technology and increasing reliance on and heavy use of smart phones, distracted driving is intensifying.... The higher the accident rate, the more claims insurers have to pay. Insurers in turn transfer these costs to customers in the form of higher premiums, often based on information about traffic violations and accidents from driving records. *Nationally, auto insurance premiums have increased 16% since 2011, correlating with the increase in distracted driving accidents* (emphasis added).” National Association of Insurance Commissioners, “Distracted Driving,” September 22, 2021, <https://content.naic.org/cipr-topics/distracted-driving>

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²⁹ Ibid.

³⁰ Peter S. Goodman, “5 Things You Might Not Know About Truckers,” *New York Times*, February 4, 2022, <https://www.nytimes.com/interactive/2022/02/04/business/truck-drivers-faq.html>; Office of the White House fact

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operate more than 240,000 individual heavy-duty trucks and small truck fleets. “If you have a business where [more than 90%] of your workforce turned over every year, how efficient or good a business would it be? Yet it’s commonplace in trucking, because they can’t keep workers. I don’t know how you classify that as a shortage.”)

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California’s law, which provided “truck drivers with a 10-minute rest break after four hours of driving and a 30-minute meal break after five hours,” noting that “[Federal Motor Carrier Safety Regulations] have for decades required carriers and drivers to comply with all of the laws, ordinances, and regulations of the jurisdiction where they operate.” International Brotherhood of Teamsters, “Teamsters Challenge DOT Preemption of California’s Meal and Rest Break Rules,” February 6, 2019, <https://teamster.org/2019/02/teamsters-challenge-dot-preemption-californias-meal-and-rest-break-rules/>

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²¹⁶ Insurers make most of their profits from investment income. During years of high interest rates and/or excellent insurer profits, insurance companies engage in fierce competition for premium dollars to invest for maximum return. That means insurers can severely underprice their policies and insure poor risks just to get premium dollars to invest. This is known as the “soft” insurance market. But when investment income decreases — because interest rates drop or the stock market plummets or the cumulative price cuts make profits become unbearably low — the industry responds by sharply increasing premiums and reducing coverage, creating a “hard” insurance market often degenerating into a “liability insurance crisis.” See J. Robert Hunter, Joanne Doroshow and Douglas Heller, *How the Cash Rich Insurance Industry Fakes Crises and Invents Social Inflation*, Consumer Federation of America and Center for Justice and Democracy (2020), <http://centerjd.org/content/study-how-cash-rich-insurance-industry-fakes-crises-and-invents-social-inflation>

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