Trucking Litigation: A Forensic Analysis

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ATRI American Transportation Research Institute

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ACRONYMS

ATRF	American Tort Reform Foundation
BJS	Bureau of Justice Statistics
CDC	Centers for Disease Control and Prevention
CDL	Commercial Drivers License
CMV	Commercial Motor Vehicle
COVID-19	Coronavirus Disease 2019
CSP	Court Statistics Project
DOT	Department of Transportation
EMT	Emergency Medical Technician
FAAAA	Federal Aviation Administration Authorization Act of 1994
FAIR	Forum Accountability and Integrity in Roadway
FMCSA	Federal Motor Carrier Safety Administration
FMCSR	Federal Motor Carrier Safety Regulations
GPS	Global Positioning System
HOS	Hours-of-Service
HR	Human Resources
ILR	Institute for Legal Reform
MCMIS	Motor Carrier Management Information System
MPH	Miles per Hour
NHTSA	National Highway Traffic Safety Administration
NM	Non-Medical
NRF	Norton Rose Fulbright
PS	Pain and Suffering
RAC	Research Advisory Committee
SIR	Self-Insurance Retentions
TBI	Traumatic Brain Injury
TPL	Third-Party Litigation
TPLF	Third-Party Litigation Funding
VIUS	Vehicle Information Use Survey

INTRODUCTION

Litigation has become increasingly costly for commercial defendants and the trucking industry in particular. Plaintiff awards have increased at an accelerated rate, leaving many industries exposed to heightened financial risk brought on by rising litigation costs.[1] Moreover, there are concerns that many awards are incommensurate with the ostensible levels of damage or negligence as argued by plaintiffs.

Verdicts of $10 million or more – commonly referred to as "nuclear verdicts" – increased in frequency and median size from 2013 to 2022 across all fields of tort litigation according to a report by the U.S. Chamber of Commerce Institute for Legal Reform (ILR). The median nuclear verdict in 2022, $36 million, was approximately 50 percent higher than the median nuclear verdict in 2013.[2] During the same timeframe, the share of verdicts exceeding $50 million rose by 6.4 percentage points.[3]

Many firms experience the ramifications of large verdicts and increased litigation costs, especially those operating in industries such as product development, automotive, and medical. These three industries represented approximately two thirds of all nuclear verdicts between 2013 and 2022.[4] Research from Norton Rose Fulbright (NRF) revealed that organizations' litigation expenses (excluding awards) increased by six percent from 2023 to 2024, and approximately half of surveyed corporations were expecting more litigation in 2025 than 2024.[5]

The trucking industry is especially prone to large jury awards. Motor vehicle accidents in general were the second most common type of case to result in a nuclear verdict from 2010 to 2019 according to the ILR.[6] These costs are born by the American consumer and economy. Over the next decade, the ILR found that commercial vehicle litigation is expected to contribute 15 percent to the inflation of food prices, and every $1 million increase in commercial vehicle tort costs is associated with a $2 million reduction in U.S. gross domestic product.[7]

Previous ATRI research investigated verdict and settlement trends for cases above $1 million and below $1 million over a decade (2009-2018).[8] Recognizing the ongoing pressure of litigation on the trucking industry, ATRI's Research Advisory Committee (RAC) prioritized an updated and expanded study of litigation trends from 2019 through 2024.[9] Given the extensive role and impact that litigation has on commercial auto insurance costs, this same RAC also

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[1] U.S. Chamber of Commerce ILR, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* (May 30, 2024), https://instituteforlegalreform.com/research/nuclear-verdicts-an-update-on-trends-causes-and-solutions/.
[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] Norton Rose Fulbright, "2025 Annual Litigation Trends Survey" (January 2025), https://www.nortonrosefulbright.com/en-us/knowledge/publications/cc043475/2025-annual-litigation-trends-survey.
[6] U.S. Chamber of Commerce ILR, *Roadblock: The Trucking Litigation Problem and How to Fix It* (July 14, 2023), https://instituteforlegalreform.com/research/roadblock-the-trucking-litigation-problem-and-how-to-fix-it/.
[7] U.S. Chamber of Commerce ILR, *Tort Costs in America – Commercial Auto* (October 2025), https://instituteforlegalreform.com/research/tort-costs-in-america-commercial-auto-an-analysis-of-the-economic-impact-of-commercial-automobile-tort-costs/.
[8] Dan Murray, Nathan Williams, and Erin Speltz, *The Impact of Nuclear Verdicts on the Trucking Industry*, ATRI (June 2020), https://truckingresearch.org/2020/06/understanding-the-impact-of-nuclear-verdicts-on-the-trucking-industry/; Claire Evans and Alex Leslie, *The Impact of Small Verdicts and Settlements on the Trucking Industry*, ATRI (November 2021), https://truckingresearch.org/2021/11/the-impact-of-small-verdicts-and-settlements-on-the-trucking-industry/.
[9] ATRI's Research Advisory Committee RAC is comprised of industry stakeholders representing motor carriers, trucking industry suppliers, government agencies, professional truck drivers, law enforcement, and academia. The RAC is charged with annually recommending a research agenda for the Institute.

prioritized a research update to its previous research on the *Impact of Rising Insurance Costs on the Trucking Industry*.[10] The data and analysis developed in this litigation research will also be an important input into the 2025 RAC-selected insurance research.

This litigation research has three core objectives:

1) Estimate the total number of trucking tort cases in state and federal courts as well as the negative impact of improper venue on the defense bar.
2) Evaluate trends in litigation circumstances (injury types, negligence types, etc.) and tactics (settlement vs. trial, anchors and counter-anchors, etc.) alongside their impact on awards.
3) Promulgate expert perspectives on the latest legal developments in the areas of third-party litigation funding (TPLF), Federal Motor Carrier Safety Regulations (FMCSRs) as "minimum standards," extraneous evidence, and product liability in the trucking litigation space.

[10] Alex Leslie and Dan Murray, *The Impact of Rising Insurance Costs on the Trucking Industry*, ATRI (February 2022), https://truckingresearch.org/2022/02/the-impact-of-rising-insurancecosts-on-the-trucking-industry/.

BACKGROUND

While inflation in medical care costs is a key contributor to the increased size of litigation awards, numerous social and legislative factors disproportionately exacerbate the number of trucking litigation cases and their costs.

Social Factors Driving Increased Litigation and Costs

The social factors that contribute to litigation in excess of general inflation often are termed "social inflation." These include an increasingly litigious society, third-party litigation funding, anti-corporate attitudes, and manipulative plaintiff strategies such as "reptile theory" tactics.[11] According to the Swiss Re Institute, the rate of social inflation reached a 20-year high of seven percent in 2023.[12]

Increased litigiousness leads to higher litigation expenses by causing more cases to go to trial instead of settling. In a NRF study, nearly all surveyed firm respondents (92%) thought settling was an effective strategy to reduce the likelihood of an excessive jury award. Over half of the respondents (56%), however, noted that it has become more difficult to reach a settlement.[13] The proliferation of TPLF also contributes to social inflation and the reluctance to settle in particular. TPL funders negotiate for a percentage of future awards as a condition of their financial support and are thus incentivized to maximize awards.

Trucking litigation is typically managed by insurers, who thus bear the initial brunt of its costs. Rising litigation expenses and awards have been a primary contributor to the persistent unprofitability of the commercial auto insurance segment over the past decade.[14] In response, insurers pass these costs on to all motor carriers in the form of higher premiums. As ATRI research has shown, auto liability premiums have grown by 37.8 percent on a per-mile basis over the past 10 years.[15]

This dramatic spike in insurance costs has forced many fleets to reevaluate policy stacks; from 2018 to 2020, a majority of fleets reduced coverage levels and raised deductibles.[16] Larger trucking companies have more financial and legal tools at their disposal to mitigate this increased exposure, including the use of self-insurance retentions (SIR). Yet smaller carriers – whose liability premiums are even higher on a per-mile basis – are often forced to choose between financially prohibitive premiums and the increased possibility that a single crash could bankrupt the company.

Legislative Factors Driving Increased Litigation and Costs

Laws pertaining to litigation differ widely by jurisdiction, and many states have laws that unfairly favor plaintiffs, typically by banning certain types of evidence or allowing manipulative tactics.

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[11] "Reptile theory" generally refers to the idea that plaintiffs can secure higher awards by targeting the human brain's primal or "reptilian" fear response: that the defendant endangers jurors and can be limited only by large verdicts.
[12] Swiss Re Institute, "Social Inflation: Litigation Costs Drive Claims Inflation" (September 7, 2024), https://www.swissre.com/institute/research/sigma-research/sigma-2024-04-social-inflation.html.
[13] Norton Rose Fulbright, "2025 Annual Litigation Trends Survey" (January 2025), https://www.nortonrosefulbright.com/en-us/knowledge/publications/cc043475/2025-annual-litigation-trends-survey.
[14] U.S. Chamber of Commerce ILR, *Roadblock: The Trucking Litigation Problem and How to Fix It* (July 14, 2023), https://instituteforlegalreform.com/research/roadblock-the-trucking-litigation-problem-and-how-to-fix-it/.
[15] Alex Leslie and Dan Murray, *An Analysis of the Operational Costs of Trucking: 2025 Update*, ATRI (July 2025), https://truckingresearch.org/2025/07/an-analysis-of-the-operational-costs-of-trucking-2025-update/.
[16] Alex Leslie and Dan Murray, *The Impact of Rising Insurance Costs on the Trucking Industry*, ATRI (February 2022), https://truckingresearch.org/2022/02/the-impact-of-rising-insurancecosts-on-the-trucking-industry/.

The American Tort Reform Foundation refers to such courts as "judicial hellholes."[17] The following paragraphs describe several common regulatory issues, recently passed state tort reforms, and proposed federal legislation. Fortunately, there is evidence that such reforms can have immediate and substantive effects on both litigation and insurance.[18]

Litigation Reform at the State Level

Enhancing Third-Party Litigation Funding (TPLF) Transparency. Quantifying the scale of TPLF is difficult since most jurisdictions do not require disclosure of TPLF. A number of states have enacted bills to increase the transparency of TPLF, including Colorado, Kansas, Montana, Arizona, Indiana, Louisiana, and Georgia.[19]

Eliminating Phantom Damages. Plaintiffs often misleadingly seek medical damages that reflect the initial medical *bill* rather than the amount actually *paid* for medical care. This practice is often referred to as "phantom damages," and legislation has been introduced in multiple states – including Georgia, Arkansas, and Montana – to curtail it.[20]

Instituting Damage Caps. Two states – Oklahoma and Iowa – have enacted legislation instituting noneconomic damage caps aimed at curtailing excessive damages in categories like pain and suffering, which in some cases dwarf economic medical and financial damages.[21]

Permitting Admissibility of Seat-Belt Usage. Many states have a "seat belt gag rule" that prohibits the defendant from disclosing during litigation whether or not the plaintiff used a seatbelt. By failing to use a seatbelt – required by law in all states but New Hampshire – plaintiffs can significantly worsen their injuries in the event of a crash. Omitting this information can thus make the defendant appear more at fault than was the case. In 2025, Georgia enacted legislation permitting the admissibility of whether or not the plaintiff used a seatbelt.[22]

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[17] American Tort Reform Association, "Judicial Hellholes" (accessed on October 17, 2025), https://judicialhellholes.org/wp-content/uploads/2025/01/ATRA_JH24_text_04b_smaller.pdf.

[18] Editorial Board, "Florida Pays a Tort Reform Dividend," *Wall Street Journal* (November 11, 2025), https://www.wsj.com/opinion/florida-insurance-tort-reforms-ron-desantis-auto-home-rebates-state-farm-progressive-dc6f413d?.

[19] Colorado General Assembly, *House Bill 25-1329*, 2025 Regular Session, 75th General Assembly (accessed on November 17, 2025), https://leg.colorado.gov/bills/hb25-1329; Kansas Legislature, *Substitute Bill for Senate Bill 54,* 2025-2026 Legislative Sessions (accessed on November 17, 2025), https://www.kslegislature.gov/li/b2025_26/measures/sb54/; Montana Legislature, *Senate Bill 511,* 69th Legislature 2025 (accessed on November 17, 2025), https://bills.legmt.gov/#/laws/bill/2/LC2979?open_tab=sum; Arizona Legislature, *Senate Bill 1215*, 2025 – Fifty-seventh Legislature, First Regular Session (accessed on November 20, 2025), https://apps.azleg.gov/BillStatus/BillOverview/82560; Indiana General Assembly, *House Bill 1160*, 2024 Session (accessed on November 17, 2025), https://iga.in.gov/legislative/2024/bills/house/1160/details; Louisiana State Legislature, *Senate Bill 355*, 2024 Regular Session (accessed on November 17, 2025), https://legis.la.gov/legis/BillInfo.aspx?i=246636; Georgia General Assembly, *Senate Bill 69*, 2025-2026 Regular Session (accessed on November 17, 2025), https://www.legis.ga.gov/legislation/69757.

[20] Georgia General Assembly, *Senate Bill 68,* 2025-2026 Regular Session (accessed on November 17, 2025), https://www.legis.ga.gov/legislation/69756; Arkansas State Legislature, *House Bill 1204*, 95th General Assembly - Regular Session, 2025 (accessed on November 17, 2025), https://arkleg.state.ar.us/Bills/Detail?id=hb1204&ddBienniumSession=2025%2F2025R; Montana Legislature, *Senate Bill 251*, 67th Legislature 2021 (accessed on November 17, 2025), https://bills.legmt.gov/#/bill/20211/LC3148?open_tab=sum.

[21] Oklahoma State Legislature, *Senate Bill 453*, 2025 Regular Session (accessed on November 17, 2025), https://www.oklegislature.gov/BillInfo.aspx?Bill=sb453&Session=2500; Iowa Legislature, *Senate File 228,* 90th General Assembly 2023 (accessed on November 17, 2025), https://www.legis.iowa.gov/legislation/BillBook?ga=90&ba=SF228.

[22] Georgia General Assembly, *Senate Bill 68,* 2025-2026 Regular Session (accessed on November 17, 2025), https://www.legis.ga.gov/legislation/69756.

"Anti-Reform" at the State Level

Advocates of "anti-reform" legislation – legislation that counteracts tort reforms in order to favor plaintiffs in litigation – have also been active. Recently passed anti-reform bills include expanding the applicability of punitive damages (Illinois), increasing noneconomic damage caps (Colorado), and raising punitive and compensatory damage caps (Maine).[23] These anti-reform successes underscore the fluid and contentious nature of public policy in the field of litigation.

Proposed Federal Tort Reform

No federal tort reform legislation was enacted between 2021 and 2025, but three notable bills have recently been introduced.

Forum Accountability and Integrity in Roadway (FAIR) Trucking Act. This legislation would require certain cases involving tractor-trailer crashes – namely, when the amount requested is more than $5 million – to be tried in federal courts on the basis of their involvement in interstate commerce.[24]

Lawsuit Abuse Reduction Act of 2025. Targeting lawsuit abuse more broadly, this legislation would discourage "frivolous lawsuits" through sanctions.[25] Moreover, it would include restitution of legal fees for the defendant and penalties for the plaintiff in frivolous lawsuits.

The Litigation Transparency Act of 2025. If enacted, this legislation would require the disclosure of all parties financially invested in the outcome of a civil case.[26]

[23] Illinois General Assembly, *House Bill 219,* 103rd General Assembly (2023-2024) (accessed on November 17, 2025), https://www.ilga.gov/Legislation/BillStatus?DocNum=219&GAID=17&DocTypeID=HB&SessionID=112&GA=103; Colorado General Assembly, *House Bill 24-1472*, 2025 Regular Session, 75th General Assembly (accessed on November 17, 2025), https://leg.colorado.gov/bills/hb24-1472; Maine Legislature, *LD 1423*, 131st Maine Legislature, First Special Session (accessed on November 17, 2025), https://legislature.maine.gov/legis/bills/display_ps.asp?LD=1423&snum=131.

[24] U.S. Congress, House, *FAIR Trucking Act* H.R. 5268, 119th Congress (introduced September 10, 2025), https://www.congress.gov/bill/119th-congress/house-bill/5268/.

[25] U.S. Congress, House, *Lawsuit Abuse Reduction Act of 2025* H.R. 5258, 119th Congress (introduced September 10, 2025), https://www.congress.gov/bill/119th-congress/house-bill/5258/.

[26] U.S. Congress, House, *Litigation Transparency Act of 2025* H.R. 1109, 119th Congress (introduced February 7, 2025), https://www.congress.gov/bill/119th-congress/house-bill/1109.

METHODOLOGY

For convenience, this report uses the term “case” when discussing settlements, verdicts or both and the term “award” when discussing combined settlement amounts and verdict awards.

Data Collection

The data used in this analysis came from cases concluded during 2019 to 2024 in which a tractor-trailer driver or company was a named defendant and that settled for or had a verdict award of at least $100,000. To obtain robust trucking litigation data, two reputable sources were used: a tractor-trailer tort journal and an extensive online legal database. This process yielded data for 162 cases under $1 million, 260 cases over $1 million, and 32 defense victories.

As a prerequisite for inclusion, case data needed to include total award, whether it was a settlement or a verdict, type of injuries, and alleged negligence. Wherever available and/or applicable, the research team transcribed additional data under set guidelines for award categories, apportioned fault, defense strategy, plaintiff anchors, and more.

Statistical Methods Used

Data on total awards in trucking industry torts has a strong right skew. Namely, many cases result in awards around $1 million (a de facto minimum commercial auto liability policy), but case frequency rapidly declines as awards increase. As such, raw litigation data does not meet the assumption of normal distribution that underlays standard linear regression and t-tests.

Instead, analysis was performed with log-transformed award amounts when transformed awards were approximately normally distributed. This condition was met for the log-transformed dataset as a whole and most subsets. For subsets where the assumption of normality was not met, the Wilcoxon rank-sum test was used to assess whether two subsets of awards differed, as this non-parametric test does not require normal distributions. For subsets where the assumption of normality was met, log-transformed t-tests were used to corroborate results.

Multivariable regression was conducted with delineated categories of independent variables – e.g., issues brought against defendants and injuries resulting from the crash – and with log-transformed award amounts as the dependent variable. Only variables with 10 or more observations were used in these analyses. Stepwise variable selection was not used in the multivariable regression because the purpose of these analyses was to evaluate individual variables rather than to achieve a best-fitting model.

Given the highly contingent nature of civil litigation and the vast number of variables influencing its outcome, a *p*-value of 0.1 was used as the threshold for whether to include a finding in the report. For transparency, *p*-values over 0.01 are reported directly.

It should be acknowledged that litigation is highly idiosyncratic. In theory, findings of statistical analysis over a sufficiently large sample should account for this idiosyncrasy, but in reality myriad case variables make it difficult to normalize the effects. The results of this analysis are specific to the 2019-2024 time period; while general data findings and trends can be applied to subsequent years, it should be understood that litigation variables are continuously evolving.

PART 1: ESTIMATING TRACTOR-TRAILER TORT CASES AND STATE VS FEDERAL TRIALS

The full extent of civil tort cases brought against the trucking industry is not generally known due to the fragmented nature of litigation data. This section utilizes multiple national data sources as well as the tractor-trailer litigation dataset to estimate the total number of state and federal court cases and trials involving motor carriers. As noted in this section, state courts are generally less favorable to the trucking industry than federal courts, yet many trials eligible for removal to federal court are tried instead in state courts.

Estimating the Total Number of Tractor-Trailer Tort Cases: State Courts

In 2022, a total of 279,976 motor vehicle tort cases or filings commenced in state courts in the 31 states (plus Washington D.C. and Puerto Rico) tracked by the Court Statistics Project (CSP); these 31 states represent 61.6 percent of the U.S. population.[27]

Rates of motor vehicle litigation vary widely by state, as shown in CSP data. Nonetheless, if the *overall* rate of motor vehicle litigation in this sample is assumed to be nationally representative relative to population, the 19 unreported states would include an additional 174,497 commenced motor vehicle tort cases for a nationwide total of 454,473.[28]

An approximate 23.9 percent of defendants in motor vehicle tort trials were businesses according to the Bureau of Justice Statistics' (BJS) 2009 *Civil Justice Survey of State Courts* report, its most recent.[29] This is consistent with – and the median of – equivalent percentages found in two earlier reports using a narrower sampling methodology.[30] This trial-based percentage is used in this research analysis in lieu of an equivalent case-based percentage.

Based on this percentage, there were an estimated 108,619 motor vehicle tort cases with business defendants that commenced in state courts in 2022 (23.9% of 454,473). This estimate includes all businesses; it is not limited to motor carriers.

Estimating the number of these cases that involve tractor-trailers requires several assumptions. Tractor-trailers hauling freight made up 5.9 percent of all vehicles involved in business-related activities according to the Census Bureau's latest Vehicle Information Use Survey (VIUS).[31] Tractor-trailers hauling freight are more exposed to crashes, since they spend significantly more time operating on roadways than other business-related vehicle types. A comparison of equivalent samples in VIUS and Federal Motor Carrier Safety Administration (FMCSA) Motor Carrier Management Information System (MCMIS) data suggests that tractor-trailers, compared to other business-related vehicles, run more than three times the annual mileage while only being twice as likely to be involved in a crash – despite the fact that passenger vehicles are

[27] Court Statistics Project, "CSP STAT Civil" (accessed on April 22, 2025), https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil.
[28] Note that rounding is used in this report and, as such, not all figures may be directly reproducible as printed.
[29] Thomas H. Cohen, "Tort Bench and Jury Trials in State Courts, 2005," U.S. DOJ Bureau of Justice Statistics (November 2009), https://bjs.ojp.gov/content/pub/pdf/tbjtsc05.pdf.
[30] Ibid. The immediately preceding report, based on 2001 data, found that 22.0 percent of motor vehicle tort trials had businesses among their defendants, and the prior report based on 1992 data found the same percentage at 25.9 percent. Thomas H. Cohen, "Tort Trials and Verdicts in Large Counties, 2001," U.S. DOJ Bureau of Justice Statistics (November 2004), https://bjs.ojp.gov/content/pub/pdf/ttvlc01.pdf; Steven K. Smith et al., "Tort Cases in Large Counties," U.S. DOJ Bureau of Justice Statistics (April 1995), https://bjs.ojp.gov/content/pub/pdf/TCILC.PDF.
[31] U.S. Census Bureau, *Vehicle Information Use Survey* (2021), https://www.census.gov/programs-surveys/vius.html.

responsible for the majority of tractor-trailer crashes.[32] As such, tractor-trailer crashes would equate to 11.8 percent of crashes that involved business-related vehicles. It is further assumed that business-related vehicle crashes are litigated at an equivalent rate across all business-related vehicle types.

Based on these methodological assumptions, the total number of tractor-trailer tort cases commenced in 2022 is estimated to be 12,817 (11.8% of 108,619).

The majority of tort cases are disposed prior to trial, i.e. by settlement or dismissal. The BJS *Civil Justice Survey of State Courts* report found that only 3.4 percent of motor vehicle tort cases were disposed by trial in 2005; CSP data from 2022, while limited to 15 states after removing outliers, shows that a very similar figure of 3.8 percent of motor vehicle tort cases were disposed by trial.[33]

At a 3.8 percent trial rate, an estimated 487 tractor-trailer tort cases that commenced in 2022 were disposed by trial – assuming that disposition by trial is equally common among cases with business defendants and cases with individual defendants in lieu of more detailed additional data.[34] The vast majority of tractor-trailer tort cases are disposed by settlement between the parties (96.2%).

Table 1 summarizes these estimates of tractor-trailer tort cases, trials, and plaintiff victories in state courts. BJS data on state court motor vehicle tort trials determined that courts found in favor of plaintiffs in 60 percent of trials in 1992, 61.2 percent of trials in 2001, and 64.3 percent of trials in 2005 (its final and most robust report) suggesting an increase in the rate of plaintiff victories.[35] Due to the subsequent rise of "reptile theory" (defined earlier) and more negative jury dispositions toward commercial litigants, this 64.3 percent plaintiff judgment rate is likely a conservative estimate in the current litigation environment. An estimated 313 tractor-trailer trials resulted in plaintiff victories in state courts in 2022, based on this rate.

Table 1: Estimated Tractor-Trailer Torts in State Courts, 2022

Commenced Motor Vehicle Tort Cases	Commenced Business Motor Vehicle Tort Cases	Commenced Tractor-Trailer Tort Cases	Tractor-Trailer Tort Trials	Tractor-Trailer Plaintiff Trial Victories
454,473	108,619	**12,817**	**487**	**313**

[32] Tractor-trailers hauling freight make up 53 percent of crashes involving business-related vehicles with a gross vehicle weight rating (GVWR) of more than 10,000 lbs., the threshold of inclusion in MCMIS crash data. Tractor-trailers hauling freight make up 26.6 percent of all vehicles with a GVWR of more than 10,000 lbs. according to VIUS estimates. Whereas the average annual mileage for tractor-trailers hauling freight is 61,900 according to VIUS estimates, the average mileage for the remaining business-related vehicles with a GVWR over 10,000 lbs. was only 18,455. ATA, "Relative Contribution/Fault in Car-Truck Crashes" (February 2013).

[33] Both figures include both bench and jury trials. Thomas H. Cohen, "Tort Bench and Jury Trials in State Courts, 2005," U.S. DOJ Bureau of Justice Statistics (November 2009), https://bjs.ojp.gov/content/pub/pdf/tbjtsc05.pdf; Court Statistics Project, "CSP STAT Civil" (accessed on April 22, 2025), https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil.

[34] The trials themselves, of course, did not necessarily occur in 2022.

[35] Thomas H. Cohen, "Tort Bench and Jury Trials in State Courts, 2005," U.S. DOJ Bureau of Justice Statistics (November 2009), https://bjs.ojp.gov/content/pub/pdf/tbjtsc05.pdf; Thomas H. Cohen, "Tort Trials and Verdicts in Large Counties, 2001," U.S. DOJ Bureau of Justice Statistics (November 2004), https://bjs.ojp.gov/content/pub/pdf/ttvlc01.pdf; Steven K. Smith et al., "Tort Cases in Large Counties," U.S. DOJ Bureau of Justice Statistics (April 1995), https://bjs.ojp.gov/content/pub/pdf/TCILC.PDF.

Federal Venues and Their Benefits Compared to State Venues

While plaintiffs file most civil torts in state courts, they can originate in or be removed to federal court if they:

1) pertain to federal law; or
2) involve a) disputes over amounts greater than $75,000 and b) complete "diversity of citizenship" (all defendants are residents of different states than the plaintiff), so long as the defense files a notice to remove within 30 days.[36]

When a notice is filed to remove a case from state court to federal court, typically by the defense, it cannot be ruled on at the state level until the federal court determines jurisdiction.[37]

The tractor-trailer litigation dataset shows with a high level of statistical significance ($p < 0.05$) that trial verdict awards in federal courts were lower than trial verdict awards in state courts during the period from 2019 to 2024.[38]

In federal courts, the median trial verdict award for cases at or exceeding $1 million was $2,517,500. In state courts, the median trial verdict award for cases at or exceeding $1 million was $3,600,000 – $1,082,500 higher than the federal court median.

There are many reasons why federal courts often yield more equitable verdicts than state courts, including:

- Federal courts draw from a larger juror pool and are thus less susceptible to potential geographic biases among constituents at the county level; and
- Federal judges are appointed rather than elected (as many state judges are), providing additional protection against any possible conflicts of interest.

Trucking may be more vulnerable to these potential state court biases than other industries during litigation due to the fact that trucking firms operate in a wide range of locales in which they have no continual presence or physical base. Without these more obvious forms of local involvement, jurists may fail to appreciate trucking's role in their community and mistakenly view trucking companies as outsiders. Even within a particular state, defendants are often subject to suit in the state court that plaintiffs consider most plaintiff-friendly, regardless of crash location.

Estimating the Total Number of Tractor-Trailer Tort Cases: Federal Courts

In 2022, 4,994 motor vehicle tort cases commenced in the federal court system.[39] This number increased to 5,868 in 2024, but 2022 federal court data is used here for consistency with the available state court data.

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[36] United States Courts, "Covering Civil Cases – Journalist's Guide" (accessed on April 22, 2025), https://www.uscourts.gov/data-news/reports/handbooks-manuals/a-journalists-guide-federal-courts/covering-civil-cases-journalists-guide; *U.S. Code 28* (2023), § 1332 (accessed on November 18, 2025), https://www.govinfo.gov/app/details/USCODE-2023-title28/USCODE-2023-title28-partIV-chap85-sec1332; *U.S. Code 28* (2011), § 1446 (accessed on November 18, 2025), https://www.govinfo.gov/app/details/USCODE-2023-title28/USCODE-2023-title28-partIV-chap89-sec1446.

[37] Ibid.

[38] A Wilcoxon rank sum test and a log-transformed t-test were used to determine significant difference in distribution and sample means. To ensure rigor, multiple other tests were evaluated, including a cap on award amounts to limit skewness and the inclusion of additional award data from the preceding five years to expand the sample.

[39] United States Courts, "Caseload Statistics Data Tables: C-2" (2022 and 2004), https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables.

The vast majority of these federal motor vehicle tort cases, 4,646, were in federal court due to diversity of state citizenship with disputes exceeding $75,000, while the remainder pertained to federal law.

Assumptions for estimating tractor-trailer tort cases commenced in state courts do not apply to estimating those in federal courts because defendant businesses are more likely than defendant individuals to meet the conditions of diversity of citizenship and amounts in disputes exceeding $75,000. Furthermore, the requirement of complete diversity of citizenship makes businesses engaged in interstate activities – such as trucking – more likely to be eligible for federal venues than other businesses.

Due to the much smaller number of federal trials, however, it is possible to establish a numerical range of the total tractor-trailer tort cases disposed by trial at the federal level.

In 2022, 76 motor vehicle tort cases – of all vehicle types – in federal courts disposed by trial (1.6% of federal cases disposed that year); this total dropped to 49 in 2024 (1.0% of cases disposed that year).[40] It should be noted that the trial rate for federal courts is less than half of that for state courts (1.6% versus 3.8% in 2022), indicating that cases are more likely to settle when removed to federal court.

The tractor-trailer litigation dataset contains 12 federal trial plaintiff victories in 2022 and 10 in 2024. The true number of tractor-trailer torts disposed by trial thus lies somewhere between 12 and 76 in 2022 and between 10 and 49 in 2024.

Estimating the Number of Tractor-Trailer Tort Cases Eligible for Federal Court but Denied

As an industry fundamentally engaged in interstate commerce, trucking consistently dispatches drivers across state lines, making the industry unique compared to other types of commercial tort defendants. The same factors that make trucking firms more vulnerable to potential bias in state courts – being widely engaged across state lines – thus make trucking firms more eligible for federal court.

In practice, however, procedural difficulties and plaintiff manipulation prevent cases from removing to federal court that otherwise satisfy the official conditions for doing so.

If the plaintiff files suit but does not stipulate or document the amount in dispute within the 30-day window to file for removal, the defense is often unable to obtain federal venue – even if the injuries in question uniformly result in damages over the $75,000 minimum threshold. Plaintiffs may also include improper joinders to prevent defendants from asserting diversity of citizenship; even when state courts dismiss these improper joinders, it may not be soon enough for the defense to file for removal to federal court unless the court finds that plaintiffs acted in bad faith.

Using the tractor-trailer litigation dataset, it is possible to estimate the percentage of cases that are improperly kept in state courts by identifying those which should be eligible for removal to federal court *on the basis of diversity of citizenship* – given that the overwhelming majority of tractor-trailer tort cases involve an amount in dispute over $75,000.

[40] Note that the numbers and percentages for cases disposed in any given year do not match the number of cases commenced in the same year due to the fact that cases commenced in any given year may not be disposed until a subsequent year. United States Courts, “Caseload Statistics Data Tables: C-4” (2022 and 2004), https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables.

Complete diversity of citizenship requires that all parties are residents of different states, including the motor carrier as well as the driver. In the dataset of tractor-trailer litigation, 66.2 percent of defendant motor carriers litigated in state courts were headquartered in a different state than that in which their trial took place.[41]

If just 50 percent of all defendant truck drivers for non-resident defendant motor carriers were themselves non-residents, then 33.1 percent of crashes with state court trial verdicts would meet diversity of citizenship requirements and thus should have been eligible for removal to federal court. VIUS data corroborates this estimate: on average, 30.1 percent of each freight tractor-trailer's miles occurred outside its home base state.[42] This analysis uses the more conservative 30.1 percent.

Of the estimated 12,817 tractor-trailer cases commenced in 2022 in state courts (Table 1), an estimated 3,858 – 30.1 percent of trucking cases in state courts – met the criteria for removal to federal court and thus could have been venued accordingly. It should be noted that, while plaintiffs choose the court in which a suit is initially filed, defendants may leave a federally eligible case in the state-filed court under some circumstances (such as greater familiarity with local rules or officials). As such, the totals in this section should be considered upper bound estimates.

Of the estimated 487 tractor-trailer cases commenced in 2022 that were disposed by trial in state courts (Table 1), an estimated 147 – based on the same 30.1 percent diversity of citizenship estimate – met the criteria for removal to federal court and thus could have been venued accordingly.

Table 2 summarizes these estimates of tractor-trailer tort trials that took place in state courts but could have removed to federal courts.

Using the conservatively estimated plaintiff victories rate of 64.3 percent, referenced above, approximately 95 of these 147 state trials that could have been in federal court were plaintiff victories.

Since the median trial award in state courts was $1,082,500 higher than in federal courts, the trucking industry lost as much as $102,837,500 due to eligible cases not being removed to the more equitable federal court system in one year alone.

Table 2: Federally Eligible Tractor-Trailer Tort Trials Not Removed to Federal Courts, 2022

Tractor-Trailer Tort Trials (Table 1)	State Trials Eligible for Federal Court	State Trial Plaintiff Judgements Eligible for Federal Court	Difference in Median Trial Award, State over Federal Court	Estimated Excess Trial Awards Due to Non-Removal
487	**147**	**95**	$1,082,500	**$102,837,500**

[41] State headquarters were determined via FMCSA records. Carriers for whom records were unlocatable were not included. In accord with the complete diversity of citizenship requirement, cases with multiple named defendants were considered to be headquartered in the same state as the trial if even just one defendant was. Any defendants that were dismissed prior to trial were not included. FMCSA, "Safety and Fitness Electronic Records System: Company Snapshot" (Accessed: November 18, 2025), https://safer.fmcsa.dot.gov/CompanySnapshot.aspx.

[42] VIUS defines "home base state" as the location where the vehicle is usually parked when not running. U.S. Census Bureau, *Vehicle Information Use Survey* (2021), https://www.census.gov/programs-surveys/vius.html.

Caseload Impacts in Federal Courts

These additional 3,858 tractor-trailer cases eligible for federal courts, if removed to the federal level, would represent a 1.2 percent increase in the 2022 federal district court civil caseload of 317,368 disposed cases.[43] They would represent a 77.3 percent increase in the 4,994 motor vehicle-specific cases in the federal court system that year.[44] In other words – since motor vehicle cases include non-trucking cases – approximately 43.6 percent of trucking torts eligible for federal courts did not reach them.

A much larger share of motor vehicle torts disposed prior to trial in federal courts than in state courts. In 2022, 3.8 percent of state motor vehicle tort cases disposed by trial versus 1.6 percent of federal motor vehicle tort cases. Accordingly, if the estimated 3,858 additional state cases that were eligible for federal court had in fact removed to federal court, 57.8 percent fewer (62 cases versus 147 cases) would have proceeded to trial in the federal court system. This greater likelihood to settle could further reduce litigation time and expense, while reducing the overall workload of the combined court systems.

Nonetheless, many federally directed cases that dispose by settlement or dismissal still involve some level of court action, though the amount of work for courts can vary considerably based on when and how settlement or dismissal occurs. Table 3 summarizes the number of motor vehicle tort cases pertaining to diversity of citizenship in 2022 by the level of court action taken and, based on the existing share of total cases, the estimated additional tractor-trailer cases at each level of court action that may have been improperly excluded from federal court.[45]

Table 3: Additional Tractor-Trailer Cases Disposed by Level of Court Action, 2022

Court Action Taken	Number of Motor Vehicle Tort Cases, 2022	Percent of Motor Vehicle Tort Cases, 2022	Estimated Additional Tractor-Trailer Cases Improperly Excluded
No action	956	20.1%	775
Before trial	2,444	51.4%	1,983
During or after pretrial	1,281	26.9%	1,038
During or after trial	76	1.6%	62
Total	**4,757**	**100%**	**3,858**

Of all federal motor vehicle tort cases in 2022, 20.1 percent required no court action according to federal caseload data (19.3 percent in 2024). An additional 51.4 percent of federal motor vehicle tort cases in 2022 required some level of court action (such as motions to compel, in limine, or for summary judgement) but disposed prior to pretrial hearings.

The analysis in this section shows that there are strong financial and equitable reasons for removing tractor-trailer tort cases to federal court. It also shows, however, that plaintiff manipulation of procedural hurdles keeps a substantial number (as many as 3,858 in 2022) of

[43] United States Courts, "Caseload Statistics Data Tables: C-4" (2022 and 2004), https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables.
[44] This total includes both cases pertaining to federal questions and cases pertaining to diversity of citizenship.
[45] United States Courts, "Caseload Statistics Data Tables: C-4" (2022 and 2004), https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables. Note that the number of disposed cases does not match the number of commenced cases; see footnote 40.

eligible tractor-trailer cases out of federal court each year. The federal court system has a legal obligation to process the cases that meet its jurisdiction, and the current inability to do so represents a significant cost and inequity to the trucking industry. Furthermore, the federally excluded yet eligible tractor-trailer cases would constitute a relatively small increase in the total caseload for the federal court system if they were no longer excluded from it.

PART 2: LITIGATION TRENDS IN CASE DATA

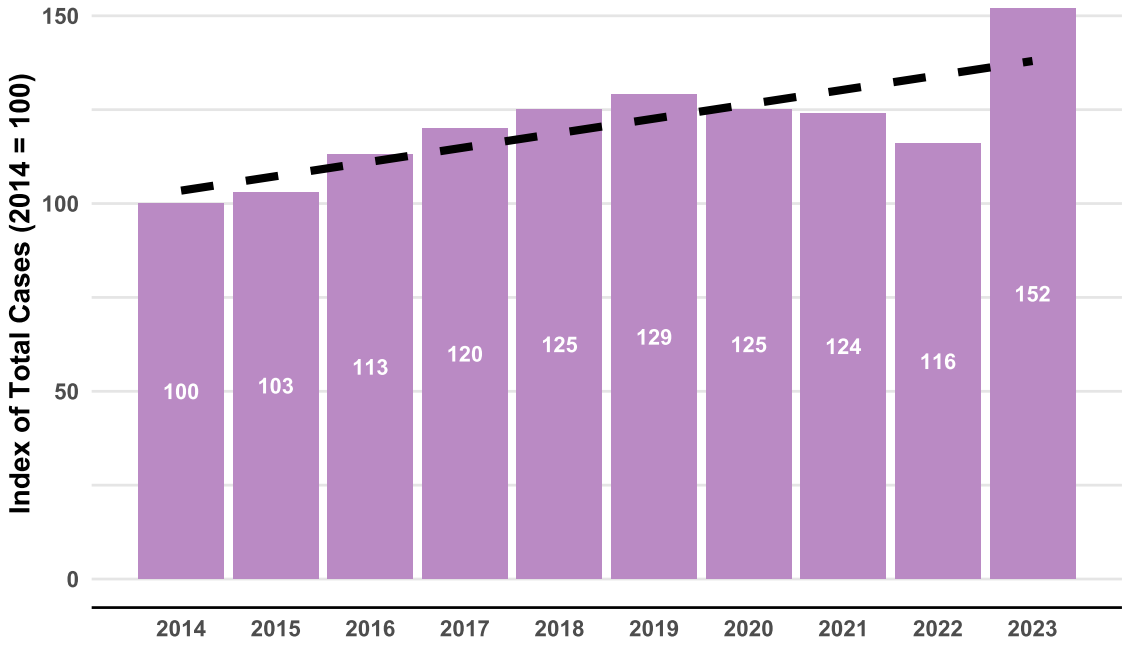
This section utilizes ATRI's transcribed dataset of tractor-trailer tort cases to reveal trends and tendencies in litigation. Unfortunately, these cases are on the rise, and many factors disproportionally increase award sizes.

Number of Cases Rising

CSP data indicates that the number of incoming motor vehicle civil litigation cases have trended upward over the past decade. Figure 1 shows the estimated total number of tractor-trailer tort cases per year in the 20 states for which data was available from 2014 to 2023.[46] As CSP data represents all motor vehicle torts, this estimate uses the same assumptions – applied uniformly across all years – as outlined in the "Estimating Tractor-Trailer Tort Cases" section above.[47]

Since 2014, the estimated number of filed cases has increased at an average rate of 3.7 percent per year (231 cases in the 20-state sample) – depicted in Figure 1 as a dotted line. This rate of increase in litigation was slightly higher than the rate of increase in nationwide large truck injury and fatal crashes during the same period, which rose by 3.6 percent per year according to the National Highway Traffic Safety Administration (NHTSA).

Figure 1: Estimated Annual Tractor-Trailer Torts in 20 Available States, 2014-2023



[46] Court Statistics Project, "CSP STAT Civil" (accessed on April 22, 2025), https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil. 2023 is the most recent year for which data was available. The 20 states with data available for analysis were: Alaska, Arizona, Colorado, Connecticut, Florida, Georgia, Iowa, Maryland, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, South Carolina, Texas, and Wisconsin. Georgia data for 2018 was missing but imputed as a simple average of the adjacent years.

[47] Namely, that business defendants constitute 23.9 percent of auto torts and that tractor-trailers represent 11.8 percent of crashes involving business-related vehicles.

It should be noted, however, that data from the past five years (Figure 1) have not yet coalesced into a uniform litigation trend. Four key related factors were at play:

1. In the period from 2014 through 2019, annual truck crashes and litigation both increased at steady rates. The COVID-19 pandemic disrupted this trend, as the resulting reduction in passenger vehicle mileage caused a reduction in large-truck crashes. As litigation is often not initiated until well after a crash, this reduction in crashes had a lagging impact on the number of incoming cases. For this reason, the total number of incoming cases in 2022 was atypically low.

2. Pandemic-related public safety protocols and social attitudes contributed not only to case backlogs but to filing delays as well.[48] The median time that passed between a case's crash and docket closure rose from 3.0 years in 2019 to 3.3 years in 2021 to 4.0 years in 2023.

3. Increased litigation activity in 2023 corresponds with a return to more typical highway conditions from 2022 onward as well as a push by the plaintiff bar in several states to file cases prior to the passage of substantial tort reform legislation (including in Florida and Georgia, two highly litigious states).[49] For this reason, the total number of incoming cases in 2023 was atypically high and may experience a downward correction in subsequent years as conditions normalize.

4. Crashes declined once again in 2023 – in both raw total and frequency per 100 million truck miles – with preliminary data showing an additional decline in 2024.[50] This factor could also result in a decrease in incoming cases over the subsequent years.

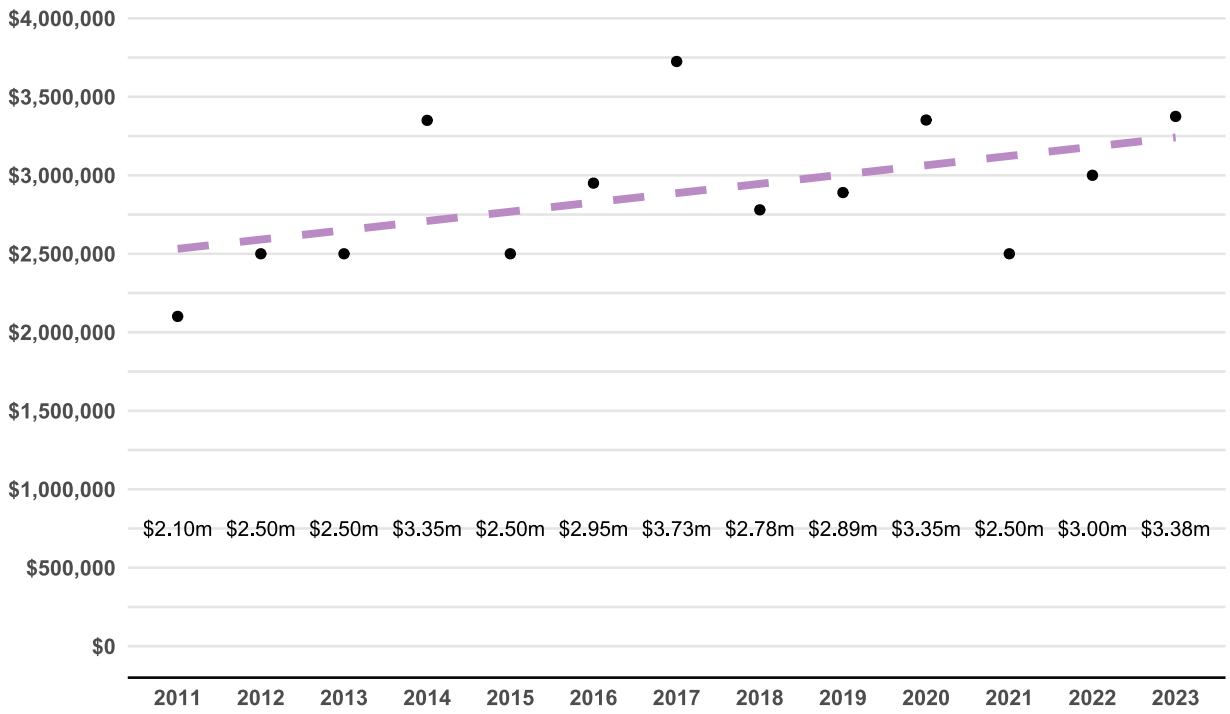
Accordingly, it is not presently possible to predict the volume of tractor-trailer torts in consequent years. As the past five years have shown, improvements in crash totals or changes in tort regulations can have meaningful though lagging impacts on the total scale of litigation.

Total Award Amounts Rising – Especially Among Highest Award Cases

Litigation awards have trended upward over the past decade as well. Figure 2 shows the median award amount for cases of $1 million or more for each year from 2011 to 2023.[51] Since 2011, the median award has increased at an average rate of $59,122 per year, depicted in Figure 2 as a dotted line.

[48] Amanda Hernandez, "Shortage of prosecutors, judges leads to widespread court backlogs," *Stateline* (January 25, 2024), https://stateline.org/2024/01/25/shortage-of-prosecutors-judges-leads-to-widespread-court-backlogs/.
[49] Stephen J. Henning, "Reshaping the Landscape: Tort Reform Efforts Around the States in 2023," *Claims and Litigation Management* (January 31, 2024), https://www.theclm.org/Magazine/articles/tort-reform-bills-around-the-states-2023/2821; "Georgia Lawmakers Approve End to Direct Action Suits Against Trucking Insurers," *Insurance Journal* (March 19, 2024), https://www.insurancejournal.com/news/southeast/2024/03/19/765573.htm.
[50] FMCSA, "A&I Crash Statistics Summary Report" (accessed on September 8, 2025), https://ai.fmcsa.dot.gov/CrashStatistics/.
[51] 2024 is excluded from timeseries analysis because data was still incomplete during data collection in spring 2025.

Figure 2: Median Total Awards Increasing, 2011-2023



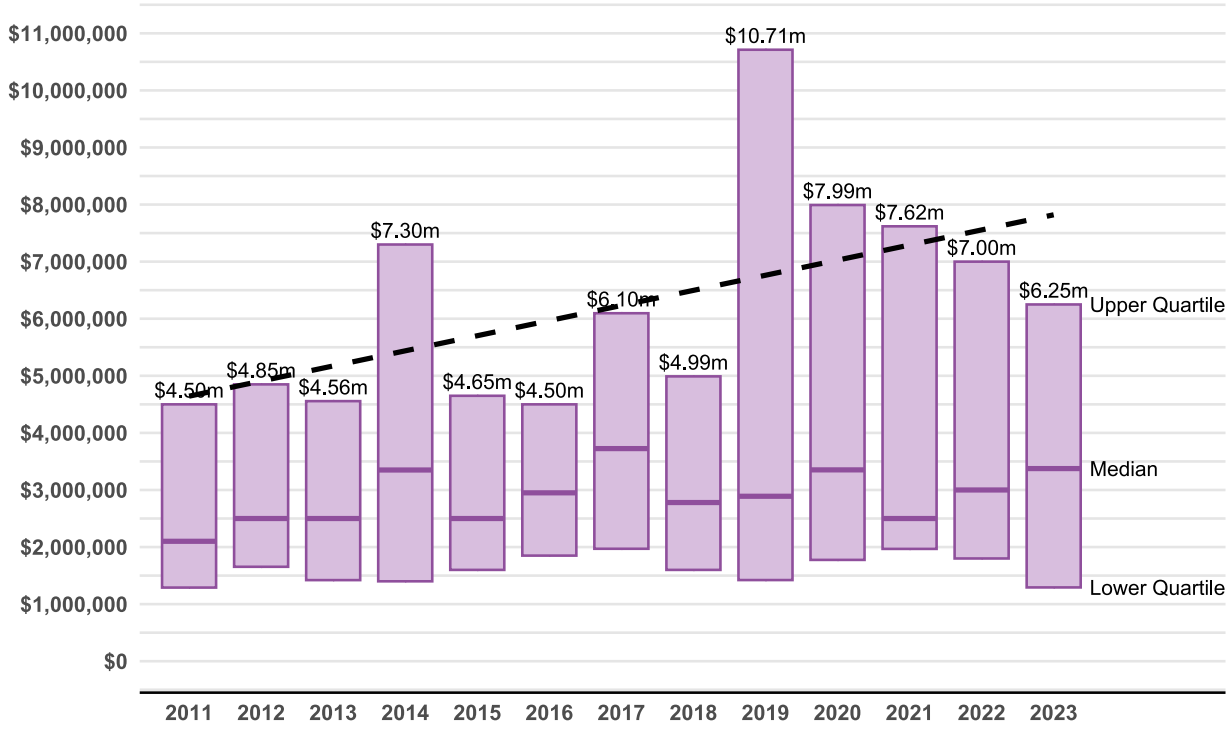
Medians provide a more useful sense of overall award trends over time because they are less susceptible to skew from outsized awards, which are often irregular in occurrence. For example, one year may witness multiple awards over $100 million while the next may witness none.

Yet it is important to evaluate trends in excessively large awards as well, because high awards and their proliferation represent a particularly distinct challenge to the industry.

Upper quartiles – the point separating the highest 25 percent of values from the lower 75 percent – demonstrate how the highest awards in particular have trended upward over time. The boxplot in Figure 3 depicts upper quartiles for each year as the top of each box, the lower quartiles as the bottom of each box, and the median as a bold horizontal line.

Since 2011, the upper quartile award has increased at an average rate of $264,789 or 5.7 percent per year. This trend is clearly signaled by the fact that the atypical highs of the period before 2019 (in 2014 and 2017) became typical beginning with 2019.

Figure 3: Size and Volatility of High Awards Increasing, 2011-2023



The conclusion evident in these two trends over time is that, while the number of awards in trucking litigation are increasing in general, the upper 50 percent of awards are increasing at a particularly alarming rate. This confirms the general marketplace perspective that litigation volatility and large awards are escalating even faster.

Types of Negligence Brought Against Defendants

Tort cases are filed on the basis of a plaintiff alleging negligence on the part of a defendant. In tort litigation, negligence is understood as a failure to exercise reasonable care, whether by action or inaction, that leads to injury or harm.[52] There are two generally accepted degrees of severity for negligence. With ordinary negligence, an individual failed to exercise the level of care expected from a *reasonable person*.[53] Gross negligence implies a heightened degree of recklessness along with a willful disregard for potential repercussions.[54]

Most Frequent Types of Negligence Differ in Nuclear vs Non-Nuclear Cases

In the litigation dataset there were 21 distinct types of negligence brought against defendants, one or more of which occurred in each case. Some types of negligence describe the specific driving act that triggered a crash, such as failing to yield, while other types of negligence describe actions that preceded the crash, such as substance abuse or driving while intoxicated.

[52] Legal Information Institute, "Negligent Tort" (accessed on August 28, 2025), https://www.law.cornell.edu/wex/negligent_tort.
[53] Ibid.
[54] Legal Information Institute, "Gross Negligence" (accessed on August 28, 2025), https://www.law.cornell.edu/wex/gross_negligence.

Any given type of negligence could qualify as gross negligence, but no type of negligence is inherently gross negligence.

Table 4 summarizes 1) the percentage of cases for each negligence type that resulted in a nuclear award and 2) the percentage of cases in which each negligence type was the sole alleged cause of the crash. Failure to stop, failure to keep a proper lookout, improper turn, and improper onboarding were the most common. The least common types of negligence in the dataset were fatigue, tampering with evidence, cell phone usage, and hours-of-service (HOS) violation.

Table 4: Frequency of Nuclear Awards and Sole-Cause Cases per Type of Negligence

Type of Negligence	Occurrences in Sample	Percent of Total Occurrences	Percent of Cases with Awards of $10m or More	Percent of Cases as Sole Cause of Negligence
Failure to stop	76	12.8%	12%	51%
Failure to keep proper lookout	69	11.6%	9%	32%
Improper turn	49	8.3%	10%	43%
Improper hiring or onboarding	46	7.8%	33%	11%
Speeding	43	7.3%	21%	16%
Improper merge	42	7.1%	2%	60%
Failure to yield	38	6.4%	13%	21%
Inadequate equipment or trailer	29	4.9%	10%	38%
Safety regulation violation[55]	29	4.9%	10%	17%
Running red light	28	4.7%	11%	57%
Failure to maintain lane	25	4.2%	8%	40%
Employer negligence	23	3.9%	39%	0%
Failure to maintain control[56]	23	3.9%	17%	4%
Gross negligence	16	2.7%	25%	13%
Substance abuse	11	1.9%	45%	0%
Wrongful parking	11	1.9%	18%	45%
Fleeing the scene	10	1.7%	10%	0%
Fatigue	8	1.3%	63%	0%
Tampering with evidence	7	1.2%	14%	29%
Cell phone usage	6	1.0%	67%	0%
HOS violation	4	0.7%	75%	25%

While most types of negligence arise from *truck driver* actions or inactions, 15.2 percent of cases involved some form of *employer* negligence. While only an employer can commit improper hiring or onboarding, many other types of negligence – such as inadequate equipment, tampering with evidence, or HOS violation – can involve employers, drivers, or both.

[55] This type of negligence is a grouping of violations that can lead to a crash but do not directly trigger it, such as not using headlights under appropriate conditions.
[56] This type of negligence refers specifically to when a truck driver was negligent in maintaining control of their vehicle in response to some external stimuli, such as another driver swerving, weather conditions, or roadway debris.

The “employer negligence” category in Table 4 denotes employer involvement in any of these other non-hiring/onboarding types of negligence.

As Table 4 also shows, the types of negligence with the largest percentage of awards at or above $10 million were also among the least common: HOS violations, cell phone usage, and fatigue. Among types of negligence with more than 10 occurrences in the data, substance abuse, employer negligence, and improper onboarding most often resulted in awards at or above $10 million. Plaintiffs typically present these high-award types of negligence as broader, systemic negligence within a company.

Cumulative Number of Negligent Behaviors Impacts Outcome and Award

Most Common Sole Negligence Types. A negligent behavior’s capacity to generate a plaintiff award on its own – without any other negligence committed – is another indicator of its severity and influence with juries (Table 4). Improper merge was the sole type of negligence in 60 percent of cases in which it was alleged, making it the most frequent sole cause of plaintiff awards. It was followed by running a red light (57%), failure to stop (51%), and wrongful parking (45%). These types of negligence are generally sufficient to generate plaintiff awards on their own.

Negligence Types that Do Not Cause Crashes by Themselves. Some types of negligence are rarely, if ever, the sole type of negligence alleged in plaintiff victories because they occur outside of a crash event itself. These behaviors, such as fatigue (0%) or substance abuse (0%), are significant crash risks but cannot result in a crash by themselves.

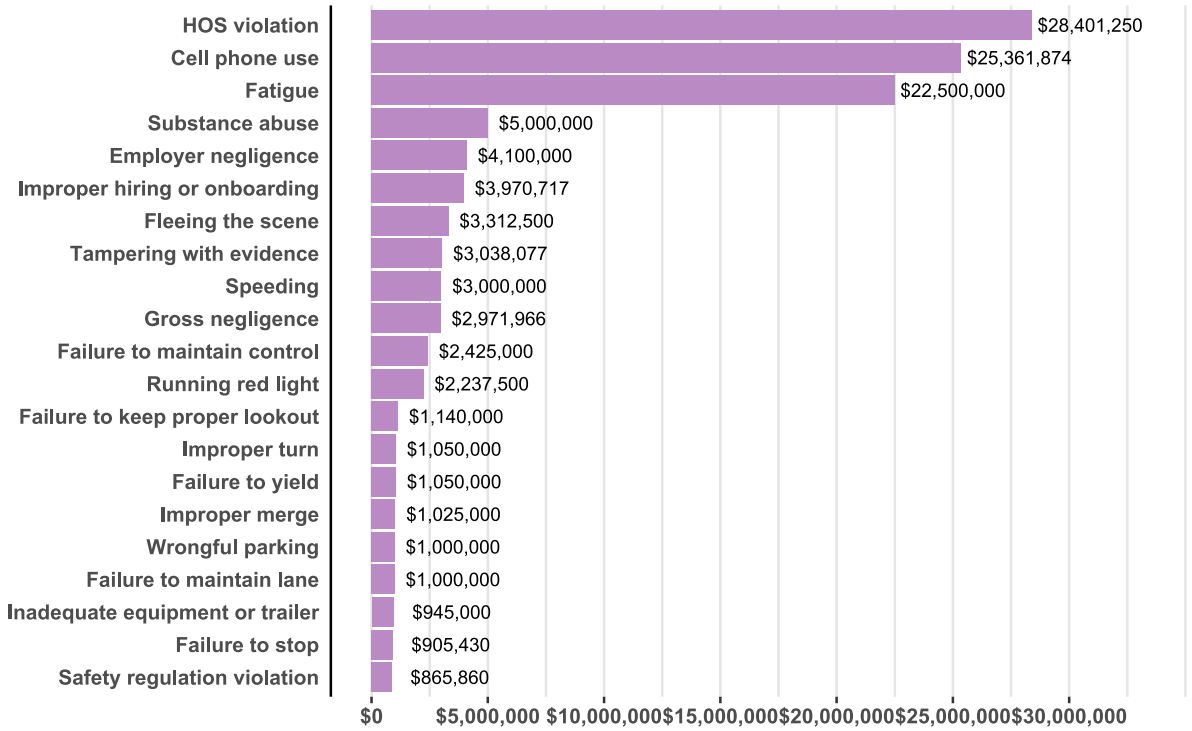
Least Common Sole Negligence Types. By contrast, some types of negligence can be the sole cause of a crash but are infrequently so in plaintiff victories. These types of negligence include speeding (16%), failure to yield (21%), and failure to maintain control (4%). It may be that these types of negligence are infrequently the sole cause of a crash. Alternatively, it may be that these types of negligence are less likely to result in plaintiff victories when they *are* the sole cause of a crash. Juries may be more inclined to perceive these behaviors as “just an accident” than outright negligence. Though inconclusive, this distinction between frequent and infrequent sole negligence types may designate cases that are more favorable to defendants.

The majority of cases (55.3%) alleged more than one type of negligence. There was a statistically significant linear relationship ($p < 0.01$) between the number of negligent behaviors alleged in a case and the resulting total award. While there was considerable variability in awards especially in cases with just one negligent behavior, each additional negligent behavior increased expected total awards by approximately 86.5 percent. Cases with fewer types of negligence are likely to be more favorable for defendants.

Type of Negligence Significantly Impacts Total Awards

Figure 4 plots the median award for each of the 21 types of negligence.

Figure 4: Median Award by Type of Negligence



Twelve types of negligence had a median award greater than the national median of $1.3 million (Figure 4). Of these, the highest – HOS, cell phone use, and fatigue – were very uncommon. Among types of negligence with at least 10 occurrences, substance abuse, employer negligence, and improper hiring or onboarding had the three highest median awards. By contrast, the types of negligence in Figure 4 with the lowest median award tended to be the most common (Table 4).

To expand on the analysis of the impact that different forms of negligence have on the total award, a multivariable linear regression model was utilized for the common types of negligence (i.e. those with 10 or more occurrences). Table 5 includes forms of negligence brought against defendants that had a statistically significant impact on award, along with their expected increase in total award when present versus not.

Table 5: Types of Negligence with Statistically Significant Impact on Awards

Negligence Brought Against Defendant	Expected Percentage Change in Total Award
Substance abuse	340.7% ($p < 0.01$)
Improper hiring or onboarding	272.3% ($p < 0.01$)
Gross negligence	193.4% ($p < 0.01$)
Speeding	56.1% ($p = 0.075$)

Substance abuse or driving while under the influence had the greatest expected increase in total award (340.7%), when controlling for all other forms of negligence.

Improper hiring or onboarding had the second highest expected increase in total award, at 272.3 percent. In many cases with improper hiring or onboarding, the defendant employer had some level of prior knowledge and still proceeded negligently. In these instances, employers were typically accused of one of the following negligent hiring or onboarding procedures: hiring the driver despite an extensive history of unsafe driving, failing to thoroughly vet or verify prior employment, knowingly hiring the driver from an illegitimate CDL school, not conducting a road test because technically not required for CDL holders, or failing to properly train the driver.

Gross negligence refers to cases in which the defendant was explicitly accused of knowingly and recklessly disregarding the safety or rights of others. Gross negligence is expected to result in a 193.4 percent increase in total award when controlling for all other forms of negligence.

Speeding resulted in a 56.1 percent increase in expected award size. While speeding is infrequently the sole type of negligence in a plaintiff victory (Table 4), it thus significantly increases awards when combined with another type of negligence.

Some types of negligence with very high median awards were not included in the analysis because they were too uncommon in the dataset – including HOS violations, cell phone usage, and fatigue – despite being likely contributors to high awards.

Plaintiff Injuries Significantly Impact Awards

Plaintiff injuries – their type, degree, and number – are a primary subject of litigation in trucking tort cases and can have a significant impact on total award.

Severe Injuries Had Higher Awards than Soft-Tissue Injuries in Cases Over $1 Million

Nonfatal injuries were classified into two categories based on whether or not surgical intervention was necessary: severe injuries and soft-tissue injuries. In cases with awards of $1 million or more, cases with severe injuries had significantly higher total awards than cases with soft-tissue injuries ($p = 0.038$).[57] The median award for cases with severe injuries was $3.0 million, while the median award for cases with soft-tissue injuries was $2.0 million. In cases with awards under $1 million, however, there was no statistically significant difference in the total award for cases with severe injuries versus cases with soft-tissue injuries.

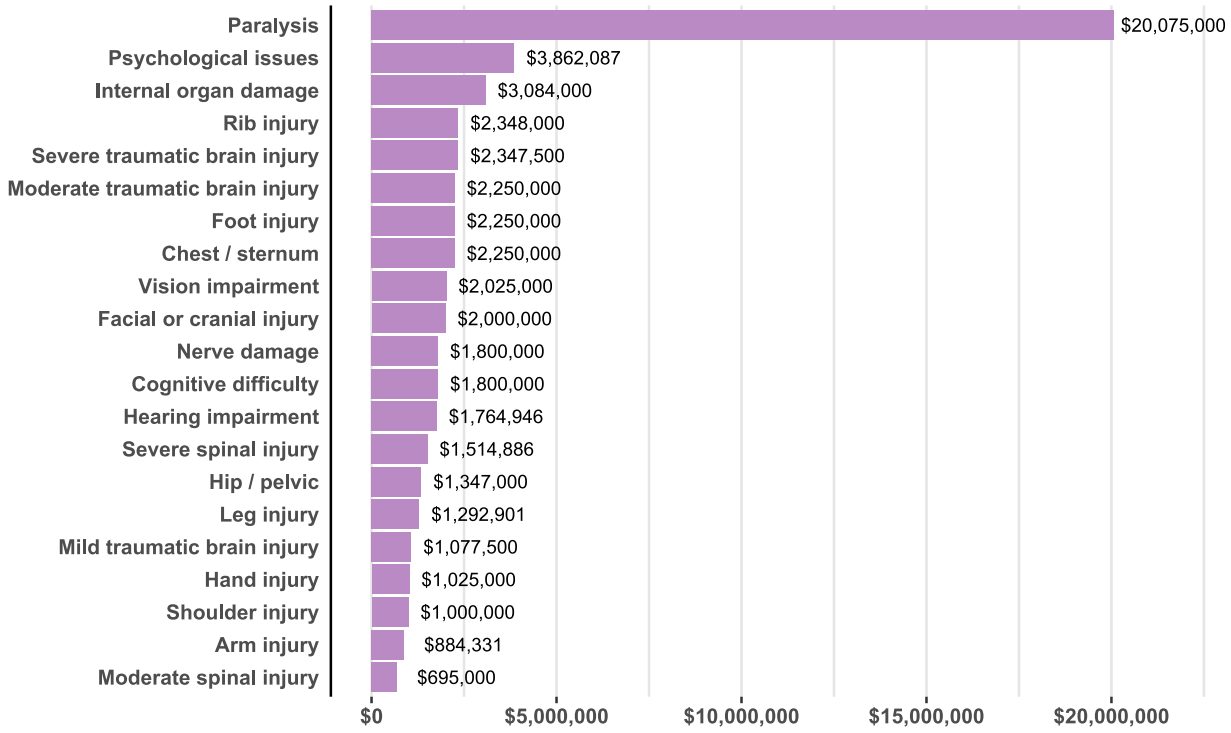
One explanation for this discrepancy is that severe injuries were more common in cases of $1 million or more (78% of cases) and less common in cases under $1 million (58% of cases). This difference is highly statistically significant ($p < 0.01$), highlighting the increased likelihood of cases with severe injuries resulting in awards at or above $1 million.[58]

Median Award by Plaintiff Injury Types

Injuries were categorized into 24 unique types across all cases in the litigation dataset. All injury type variables were dichotomous and nonexclusive, meaning that multiple injuries could have occurred in one case. Cases with fatalities can include other injuries if they occurred before the fatality or to another party in the same crash. Figure 5 plots the median award for each injury type.

[57] The non-parametric Wilcoxon ranked sum test was utilized for both findings in this section.
[58] A chi-squared test was utilized to analyze the frequencies of severe and soft-tissue injuries.

Figure 5: Median Award by Injury Type



Fifteen types of injury each had a median total award greater than the national median of $1.3 million, from psychological issues to hip / pelvic injuries. Paralysis, psychological issues, and internal organ damage had the highest median total awards. These three costliest injury types were among the least common in the dataset.

Shoulder, arm, and moderate spinal injuries were the injury types with the lowest median awards. In general, injuries with less costly awards than average – leg, shoulder, and moderate spinal injuries – tended to be the most common.

Severity Matters: Spinal and Traumatic Brain Injuries

Most injury categories are straightforward (e.g., arm injuries), while others, such as non-paralytic spinal injuries and traumatic brain injuries, require more nuance. Non-paralytic spinal injuries are one of the most common injuries experienced in motor vehicle crashes, but their severity and treatment vary significantly. Severe spinal injuries – those which involve surgical intervention but do not result in paralysis – resulted in a median award of $1.5 million, above the overall median award. By contrast, moderate spinal injuries that did not require surgery had a much lower median award of $695,000.

Traumatic brain injuries (TBI) are one of the most common injuries experienced in motor vehicle crashes. TBI vary widely in cause and outcome, ranging from mild concussions with symptoms lasting less than 24 hours to severe damage occasioning surgery and lasting impairment. While medical authorities such as the U.S. Centers for Disease Control and Prevention (CDC) define various gradations of TBI, these definitions often rely on medical imaging technology or

symptom timelines that are rarely available in public litigation documents.[59] TBI were classified as belonging to one of three relative severity categories based on their repercussions:

- **Mild TBI** was limited to concussions for which the only lasting impact, if any, was headaches (regardless of degree). Cases with mild TBI had a median award of $1.1 million, below the overall median of $1.3 million.
- **Moderate TBI** included concussions that resulted in more complex side effects such as impacted vision or hearing so long as the defendant still had use of these faculties without surgery. Other side effects that qualified TBI as moderate were difficulty with recollection, word retrieval, or emotional regulation, so long as these were not debilitating and did not constitute a distinct disorder. Cases with moderate TBI had a median award of $2.25 million, making it one of the costliest injuries.
- **Severe TBI** occurred when there was substantial and potentially life-threatening physical damage to the brain that required surgery or medical intervention, such as intracerebral hemorrhage or brain bleed, or debilitating side effects pertaining to mental, sensory, or emotional processing. Despite this increased severity, severe TBI cases had a median award of $2.35 million, an amount only slightly higher than that of moderate TBI cases.

Severe TBI can lead to permanent side effects on an individual's mental acuity or personality, which are classified in this report as "cognitive" and "psychological" injuries, respectively.

Eight Injuries Had Significant Impact on Total Award

To investigate the most influential plaintiff injuries on total award, a multivariable linear regression model was constructed with total award as the response variable and injuries as explanatory variables.[60] Table 6 shows the expected percentage change in total award associated with each of the eight injury types that had a statistically significant impact on total award size.

Table 6: Injuries and Total Award Regression Results

Injury	Expected Percentage Change in Total Award
Death	380.4% ($p < 0.01$)
Psychological	290.4% ($p < 0.01$)
Severe TBI	158.9% ($p = 0.023$)
Foot	89.4% ($p = 0.069$)
Moderate TBI	83.8% ($p = 0.014$)
Severe Spine	67.0% ($p < 0.01$)
Arm	-79.3% ($p = 0.057$)
Cognitive	-120.9% ($p = 0.078$)

[59] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Report to Congress on Traumatic Brain Injury in the United States: Epidemiology and Rehabilitation* (2015), https://www.cdc.gov/traumaticbraininjury/pdf/tbi_report_to_congress_epi_and_rehab-a.pdf; Mayo Clinic, "Traumatic brain injury" (accessed on August 22, 2025), https://www.mayoclinic.org/diseases-conditions/traumatic-brain-injury/diagnosis-treatment/drc-20378561.

[60] Four variables were excluded from this analysis because they did not have a minimum of 10 occurrences. Award data was log-transformed to better approximate a normal distribution. All 20 injury variables that met the minimum threshold were included in the analysis and thus controlled for.

The three most influential injuries on total award size were death, psychological issues, and severe TBI. A case's total award was expected to increase, on average, by over 380 percent if it involved a death. Lingering psychological issues, such as personality-altering depression, anxiety, or panic attacks raised awards by 290 percent.

The total award for a case was expected to increase by 158.9 percent if it involved severe TBI, and moderate TBI also led to significantly higher total awards (83.8% increase). Mild TBI, by contrast, did not have a statistically significant impact on total award, underscoring the importance of clearly delineating the symptoms and degree of TBI experienced in an incident with EMT exams, MRI scans, etc.

Similarly, spinal injuries had a statistically significant impact on total award when they involved surgical intervention – increasing it by 67.0 percent – but spinal injuries that did not involve surgical intervention were not found to have a statistically significant impact on total award.

Only two statistically significant injuries were expected to negatively impact total award: cognitive injuries (including memory or concentration impairments) and arm injuries. This means that, when controlling for other injuries, the presence of either cognitive or arm injuries was expected to reduce the total award by 120.6 percent and 79.0 percent respectively.

The subjective nature of cognitive injuries means verifying severity and extent of the injury is difficult. As such, plaintiffs without a strong position may claim cognitive injuries in lieu of other injuries, such as spinal injuries, with the hopes of securing a larger award.

Number of Injured Plaintiffs and Number of Unique Injury Types Impact Awards

Logically, the number of unique injuries and injured parties plays a key role in the negotiation and deliberation of a case, and both had a statistically significant impact on total award.[61]

For every additional unique injury type in a case – regardless of which – average total awards were expected to increase by 9.1 percent with statistical significance ($p = 0.079$).

On average, cases had 2.3 unique injury types. Most injury types with the highest awards (Figure 5) also tend to occur in cases with numerous unique injuries. For example, cases with internal organ damage or with rib injuries each had an average of 4.6 unique injury types, and cases with psychological issues had an average of 4.2 unique injury types.

For every additional injured passenger in a case (regardless of injury type), average total awards were expected to increase by 53.5 percent with a high level of statistical significance ($p < 0.01$). That said, 80.8 percent of cases had only one injured passenger.

Settlement versus Trial: Making the Tough Call

The decision of whether to pursue a settlement or go to trial is one of the most consequential factors in civil litigation.

There are many reasons why defendants may pursue a settlement. They may seek to avoid the negative publicity and higher legal expenses of protracted litigation. Defendants may also settle due to insurance limits (especially small fleets with less coverage) or policy layers within their

[61] Analysis in this section uses linear regression of log-transformed total awards. It was not possible to test the impact of the raw injury count due to the lack of necessary data in most court reporting.

coverage stack, sometimes under pressure from insurers. Other considerations include degree of negligence and the volatility of juries.

Whatever factors may be at play in the decision to settle, a key incentive for defendants is the assumption that the proposed settlement award is smaller than (or equal to) the award that a trial jury might return. However, this section shows that settlements are not always preferential.

Settlement Effectiveness Varies by Award Amount

The efficacy of settling a case depends on its award size.

- In cases with total awards at or above $5 million, settlement amounts were lower than verdict awards with a high level of significance ($p < 0.01$).[62]
- By contrast, in cases with total awards under $1 million, settlement amounts were higher than verdict awards with a high level of significance ($p < 0.01$).
- In cases with total awards between $1 million and $5 million, there was no statistically significant difference between settlement amounts and verdict awards. In other words, there was no overarching advantage to settling or going to trial in this range of cases.

Accepting *settlements* under $1 million is likely to result in defendants overpaying for a case, though at these lower award levels the legal fees of bringing a case to trial may exceed the savings of a verdict. By contrast, when a case has a proposed settlement or is likely to yield a verdict award over $5 million, *going to trial* is likely to result in defendants overpaying.

Most Injury Types Have No Impact on Settlement Amounts

Only one injury type led to a significant difference between settlements and verdicts. In $1 million to $5 million cases without spinal injuries, settlement amounts were lower than verdict awards with a moderate level of significance ($p = 0.066$). Thus, in this range of cases, settlement offers were typically more advantageous for defendants than going to trial.

Benefits of Settling Differ by Type of Negligence

Six types of negligence resulted in lower settlement amounts than verdict awards, with statistical significance, in cases over $1 million (Table 7). In cases alleging these forms of negligence, defendants were likely to find settlements preferential.

Table 7: Negligence Types with Lower Settlements than Verdicts in Cases over $1 Million

Negligence Type	Median Settlement	Median Verdict
Failure to keep a proper lookout ($p = 0.034$)	$1.55 million	$2.37 million
Failure to stop ($p < 0.01$)	$2.50 million	$9.29 million
Improper hiring/onboarding ($p = 0.032$)	$3.97 million	$10.50 million
Improper turn ($p < 0.01$)	$1.50 million	$3.31 million
Employer negligence ($p = 0.042$)	$3.55 million	$49.16 million
Failure to yield ($p = 0.057$)	$1.40 million	$3.73 million

[62] All statistical analysis in this section utilizes the non-parametric Wilcoxon ranked sum test unless otherwise stated.

Four other types of negligence had no significant difference between settlements and verdicts in cases over $1 million: speeding, improper merge, running a red light, and failure to maintain control. In cases alleging these forms of negligence, defendants were not likely to have incentive to settle. All other types of negligence had too few settlements or verdicts for analysis.

Settlements Lose Financial Advantage Over Time

As more time passes between an incident and the conclusion of its case, there is increasingly less difference between settlements and verdict awards.

For cases that were resolved in less than three years, settlement amounts were lower than verdict awards with a high level of significance ($p < 0.01$). This remained true even for cases resolved between two and three years after the incident ($p = 0.035$).

Belated settlements made after this three-year mark are likely to be as high as verdicts. As such, barring unexpected revelations or irregularities, defendants who have already invested time and money in litigation are unlikely to achieve a lower award by settling late in the game.

Mediating Settlements Does Not Impact Award Amounts

Contrary to the opinion that mediation is more equitable, there was no statistically significant difference between mediated and unmediated settlement amounts, even when confined to specific severity levels, award amounts, and other potentially influential variables.

There are several possible reasons for this lack of improved value for defendants in mediation. Mediations are generally not binding, meaning that either party can reject a mediated settlement if they consider it to be out of proportion with other similar settlements. Alternatively, the lack of financial differences between mediated and unmediated settlements may indicate that mediators successfully mollified hitherto uncompromising parties.

Location of Trial

State laws and attitudes vary widely, thus impacting award size and the decision whether to settle or go to trial. ATRI's litigation dataset includes cases filed in 34 different states. There were only six cases in which the crash occurred in a different state than the trial was held. Table 8 shows the 10 states with the highest median awards and had at least 10 total cases.

Table 8: States with Highest Median Awards

State	Total Cases	Median Award	Upper Quartile Award
California	29	$3.21 million	$8.00 million
Georgia	14	$2.80 million	$19.52 million
Michigan	18	$2.50 million	$5.52 million
Florida	26	$2.00 million	$8.22 million
Missouri	13	$2.00 million	$4.10 million
Indiana	10	$1.75 million	$5.47 million
New York	17	$1.67 million	$3.25 million
Texas	59	$1.56 million	$6.25 million
Alabama	10	$1.38 million	$1.99 million
Louisiana	25	$1.26 million	$3.04 million

California had the highest median total award at $3.21 million. Georgia had the highest upper quartile award at $19.52 million (the national upper quartile award was $3.4 million). Texas was another standout, with the most total cases of any state along with above-average awards.

The top two states in Table 8 – California and Georgia – were designated as "judicial hellholes" by the American Tort Reform Foundation (ATRF) in 2025. ATRF defines judicial hellholes as legal environments in which "judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants."[63]

States with the Most Nuclear Verdicts

Of the states in Table 8, seven had a case with a total verdict of $10 million or more. Table 9 summarizes these nuclear verdicts by state.

Table 9: Top Seven States of Trial by Percent of Nuclear Verdicts

State	Percent of Nuclear Verdicts	Median Nuclear Verdict
Georgia	35.7% (5 of 14 cases)	$27.0 million
California	24.1% (7 of 29 cases)	$13.2 million
Michigan	22.2% (4 of 18 cases)	$17.9 million
Indiana	20.0% (2 of 10 cases)	$41.4 million
Texas	18.6% (11 of 59 cases)	$30.0 million
Florida	15.4% (4 of 26 cases)	$213.2 million
Louisiana	12.0% (3 of 25 cases)	$43.3 million

Florida had the largest median nuclear verdict ($213.2 million), approximately five times greater than the state with the second-largest median nuclear verdict, Louisiana ($43.3 million).

States in Table 9 were responsible for nine of the ten highest verdicts in the entire litigation dataset and included all three ATRF judicial hellhole states – Georgia, California, and Louisiana. This finding suggests that these states' legislative environments are more prone to nuclear verdicts.

Nuclear verdicts have been on the rise in both frequency and award size, according to the ILR's 2024 study.[64] After analyzing more than 1,200 nuclear verdict cases over ten years, the ILR report identified the ten states with the most nuclear verdicts per capita across all tort litigation: Florida, New York, Washington, Georgia, New Mexico, Rhode Island, Wyoming, California, Illinois, and Missouri. Though this ranking included non-tractor-trailer cases, researchers noted that motor vehicle crash cases were one of the most common to result in a nuclear verdict, and many of the factors that contribute to litigious environments are common to all tort types.

Nuclear Verdicts Representative of Higher Statewide Payouts Overall

Nuclear verdicts, though comparatively less common, are not just outliers or flukes resulting from atypical cases or rogue juries. States with a higher propensity for nuclear verdicts are also

[63] ATRF, *Judicial Hellholes 2024-2025* (January 2025), https://judicialhellholes.org/wp-content/uploads/2025/01/ATRA_JH24_text_04b_smaller.pdf.
[64] U.S. Chamber of Commerce ILR, *Nuclear Verdicts – An Update on Trends, Causes, and Solutions* (May 2024), https://instituteforlegalreform.com/wp-content/uploads/2024/05/ILR-May-2024-Nuclear-Verdicts-Study.pdf.

more likely to produce higher total awards for all other non-nuclear tractor-trailer verdicts and settlements. To investigate this relationship between nuclear verdicts and tractor-trailer awards overall, award medians and distributions (to avoid skew) were compared between ILR's top ten states for nuclear verdicts versus all other states.

In ATRI's litigation dataset, the median award for tractor-trailer cases tried in one of ILR's top ten nuclear verdict states was $3.0 million, while the median award for tractor-trailer cases in all other states was $1.2 million – with a statistically significant difference in the distribution of awards ($p < 0.01$).[65] This significant difference demonstrates that total awards were approximately 150 percent higher in the states with the most nuclear verdicts per capita when compared to total awards for cases tried in all other states.

Nuclear verdicts should therefore be understood as representative of their state litigation environment more broadly. The conditions that cause state litigation environments to generate more nuclear verdicts also generate higher verdicts overall and vice versa.

Verdict Award Categories

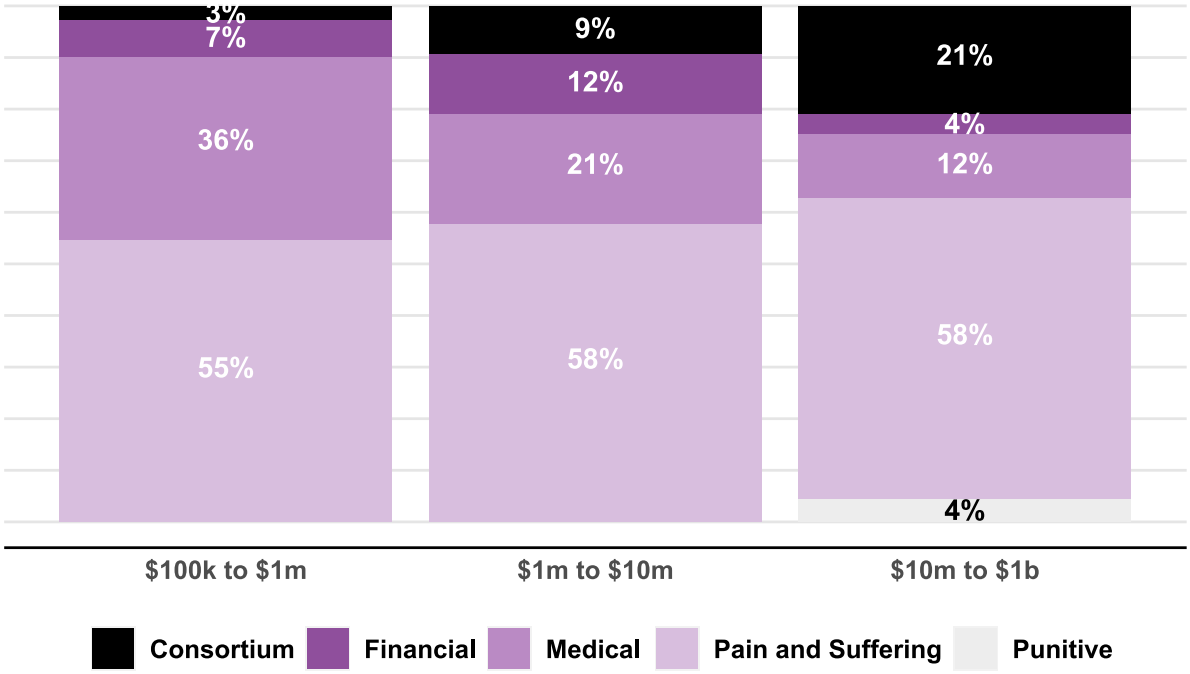
Juries award plaintiffs for damages in several categories based on the nature of the negligence committed and injuries sustained. For this analysis, five damages categories were used.

- **Medical (M) Damages** include compensation to plaintiffs for past medical care received and for future medical care deemed necessary as a result of the defendant's negligence. In some cases, plaintiffs demand (and receive) the total billed amount for medical care rather than the amount actually paid, which is often considerably less; these inflated amounts in excess of the real damages have been dubbed "phantom damages."
- **Financial Damages** include compensation only for loss of past and future earnings, and loss of earning potential/capacity or, in the event of death, of lost accumulation.
- **Pain and Suffering (PS)** includes compensation for past and future physical pain, mental anguish, disfigurement, and physical impairment (when not already covered by financial damages or medical expenses, such as reconstructive surgery).
- **Consortium** includes compensation for lost companionship as well as services to a defendant's household or familial relations, past and future.
- **Punitive Damages**, also known as "exemplary damages," include any additional award amount that is explicitly intended to punish the defendant's negligence as a deterrence and which does not correspond to any plaintiff expenses, losses, or suffering.

Figure 6 shows an average breakdown of total awards by award type and total dollar amount, illustrating how award type breakdowns change with case value.

[65] A Wilcoxon rank sum test was utilized for this analysis. Cases in federal courts were excluded from this analysis.

Figure 6: Percent of Total Award by Award Type



In cases with total awards under $1 million, M awards make up more than one third (36%) of the total award. M awards progressively diminish in larger cases, to 21 percent in cases with total awards from $1 to $10 million and to just 12 percent in cases with total awards over $10 million.

By contrast, consortium awards grew steadily as total awards grew, from just 3 percent in cases with total awards under $1 million to 9 percent in cases totaling from $1 to $10 million and 21 percent in cases over $10 million.

PS awards maintained a consistent share of the total award on average, ranging from a 55 to 58 percent majority in each total award size bin.

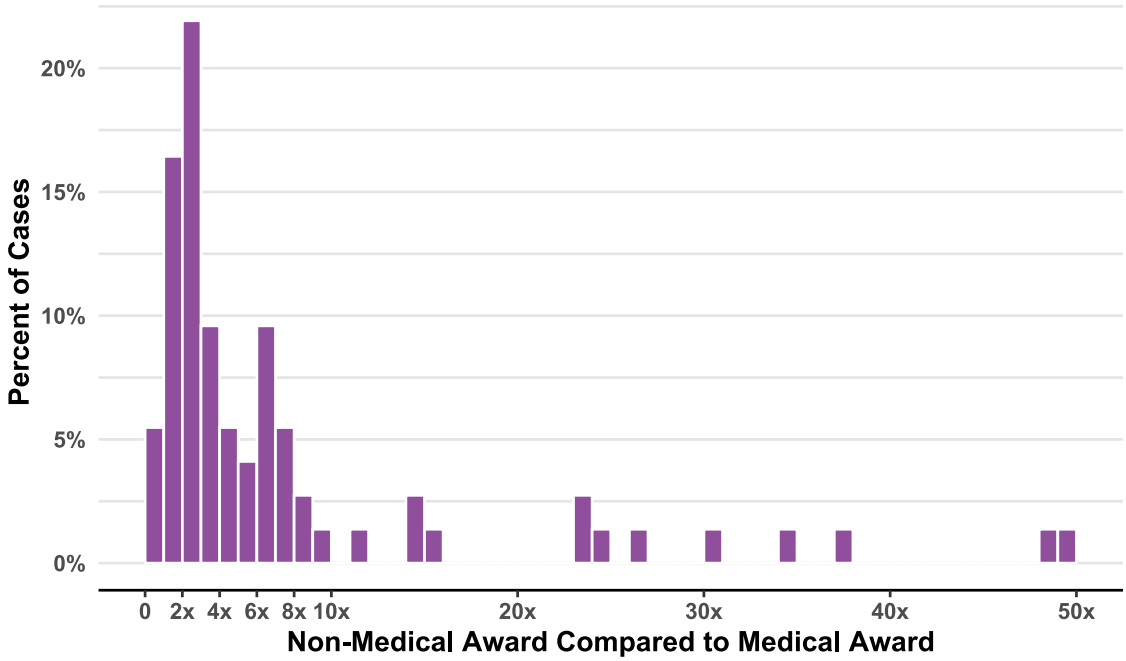
On average, punitive awards only represent a small share of the total award for the most expensive cases, yet this primarily reflects the rarity of punitive awards rather than their size. Just 4.3 percent of all cases in the dataset involved punitive awards, but the median punitive award in these cases was a towering $7.1 million.

Ratio of Medical to Non-Medical Awards

PS and consortium awards (to a lesser extent) can be highly variable. Every crash is unique, and some result in disproportionately high PS relative to the value of the medical awards. In some cases, however, plaintiffs sway juries to award exaggerated PS damages due to the fact that these damages are based on experiences that are difficult to accurately quantify or verify.

To track the frequency of potentially exaggerated claims, all non-medical (NM) award types in each case were analyzed as a ratio of M awards (NM awards divided by M awards). Figure 7 depicts the distribution of ratios as a percentage of all verdicts of $1 million or more.

Figure 7: Non-Medical Awards Multiple Times Higher than Medical Awards



A majority (53.4%) of $1+ million cases had NM awards that were less than four times their M awards, and another 28.8 percent of $1+ million cases had NM awards that were between 4 and 10 times their M awards.

The steep drop-off in cases above this 10:1 threshold suggests that cases with NM costs more than 10 times higher than M costs may be exaggerated, barring any truly atypical injury circumstances. Furthermore, there were no discernable differences in injury types in the cases above versus below this threshold.

Based on the analysis, it seems reasonable to conclude that defendants should oppose plaintiff demands for NM awards that are more than 8 to 10 times higher than M awards, because the data shows successful precedent for doing so and because any increase in NM awards above this threshold would further exacerbate social inflation.

Anchors Versus Awards

In many trials, plaintiff attorneys explicitly suggest a specific dollar amount for juries to award their clients – an "anchor" – and defendants respond to these figures with "counter-anchors" of their own. Plaintiff anchors and defendant counter-anchors play two roles in trials.

1. Plaintiff anchors and defense counter-anchors can ostensibly represent the respective party's assertion of the real value of the case, and litigants seek to convince juries that they should award this amount in the final verdict.

2. Anchors and counter-anchors can be deployed as a rhetorical tactic to sway jurors' deliberations with a dollar figure that is significantly higher (plaintiffs) or lower (defendants) than a case's actual value. This tactic can be particularly effective when

dealing with the large dollar figures and ambiguous repercussions associated with commercial auto torts.[66]

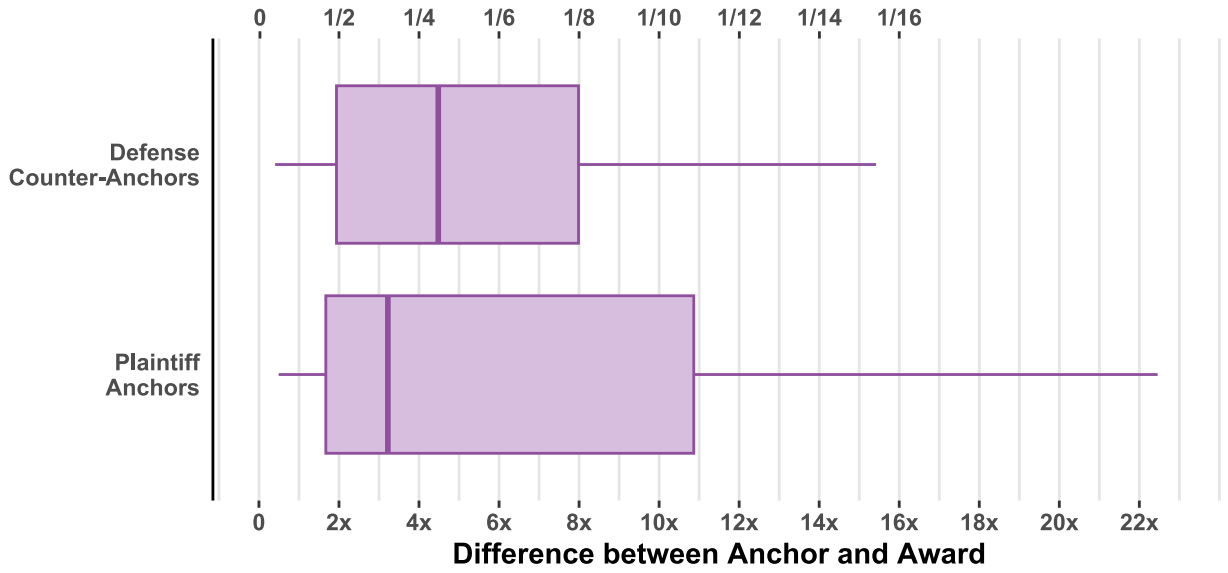
Accordingly, analysis of anchors in relation to awards can shed light on litigation tactics and jury response during the period of analysis.

Plaintiff Anchors and Defense Counter-Anchors vs Total Awards

The boxplot in Figure 8 compares plaintiff anchors and defendant counter-anchors in each trial as a factor of the trial's final total verdict award.[67] For example, a plaintiff anchor that was four times greater than the final award and a defendant counter-anchor that was one fourth of the final award each differ from their final award by a factor of four. The thick vertical lines in Figure 8 denote the median anchor/counter-anchor, and each box represents the middle 50 percent of anchors/counter-anchors. The horizontal lines on each end represent the lowest and highest 25 percent of anchors, with outliers removed.

The median plaintiff anchor for all cases was higher than the final award by a factor of 3.2, while the median defendant counter-anchor was 4.5 times lower than the final award.

Figure 8: Comparison of Plaintiff Anchors and Defense Counter-Anchors vs Final Award



This finding – that defendant counter-anchors differ from final awards more than plaintiff anchors do – can be interpreted in two ways, each of which likely holds some validity.

1. The finding may suggest that plaintiffs' anchors were more aligned with the warranted compensation than defendants' counter-anchors. For example, defendants may have a tendency to make "lowball" counter-anchors in trials, possibly as part of a rhetorical insistence that they were not negligent.

[66] For an overview of a variety of neuroscientific studies on this topic, see Lindsey Hasak and Elizabeth Y. Toomarian, "Brains are bad at big numbers," *The Conversation* (March 31, 2022), https://theconversation.com/brains-are-bad-at-big-numbers-making-it-impossible-to-grasp-what-a-million-covid-19-deaths-really-means-179081.

[67] There was not sufficient data to conduct similar analysis of settlements. Cases were only included in this analysis if an actual demand was made, i.e., no defense demands of $0 were included.

2. The finding may suggest that plaintiffs were more effective at swaying juries than were defendants – resulting in final awards that were closer to plaintiffs' anchors – through their use of tactics such as those associated with reptile theory.

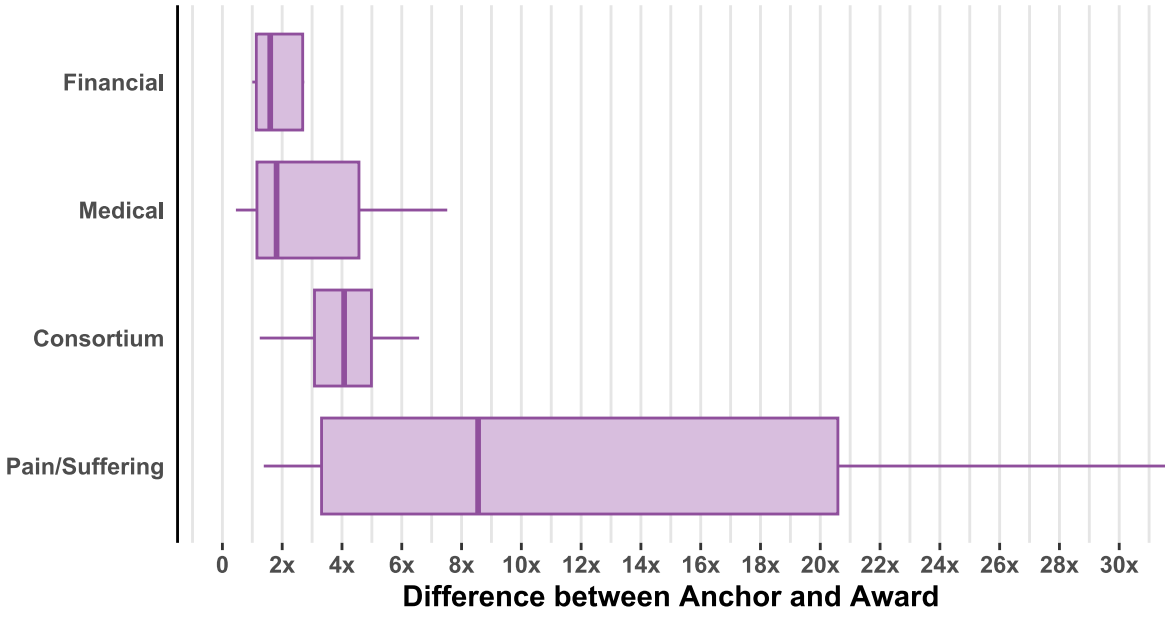
As Figure 8 also reveals, however, plaintiffs were more likely than defendants to make anchors that were *highly* divergent from final awards. The lowest 25 percent of defendant counter-anchors relative to final awards differed by a factor of between 8.0 and 15.5. By contrast, the highest 25 percent of plaintiff anchors relative to final awards differed by a factor of between 11.0 and 22.5 – nearly 50 percent more than defendants.

In one sense, these highly divergent anchors are unsuccessful in their stated aims (for example, a plaintiff receiving only one twentieth of what they sought). The fact that plaintiffs were more likely to make such anchors, however, suggests that they had a basis for doing so: namely, that disproportionately high anchors were successful in other cases. Therefore, this finding also lends credence to the second interpretation above, that plaintiffs swayed juries more effectively.

Plaintiff Anchors Vary by Award Type

The difference between plaintiff anchors and final awards varies considerably by award type as illustrated by Figure 9, which includes all verdicts in the dataset with anchor data available.[68]

Figure 9: Comparison of Plaintiff Anchors Relative to Final Award by Award Type



Plaintiff financial *anchors* were a median of just 1.6 higher than their final *award*, with a narrow range of variation. Since financial damages are largely tied to verifiable and comparable income figures, anchors and awards in this category correspond closely.

Plaintiff M *anchors* were a median of 1.8 times higher than their final *award*. The upper half of plaintiff M anchors was skewed considerably higher than the median (up to 4x higher),

[68] It was not possible to conduct similar analysis of defendants in the data due to the fact that defendants were significantly less likely to make specific counter-anchors by award type.

indicating plaintiffs' use of inflationary tactics like speculation on non-essential future care and phantom damages.

Plaintiff consortium *anchors* were 4.1 times higher than their final *award*.

PS had the greatest delta between plaintiff *anchors* and final *awards* by far. Plaintiff PS anchors were a median of 8.6 times higher than their final award. Even with outliers removed, plaintiffs' PS anchors could be up to 31.5 times higher than final PS awards. Clearly, plaintiffs were aggressively engaged in inflating PS anchors. While defendants were often successful at influencing juries toward more reasonable PS awards, this widespread plaintiff practice likely distorts jury perceptions and contributes to social inflation, and defendants should combat it vigilantly.

Both PS and consortium damages can be notoriously difficult to quantify, and in severe cases they are typically much higher than M or financial awards. The fact that PS *anchors* and *awards* diverge by a much higher factor than consortium anchors and awards suggests that plaintiffs are more effective at influencing juries with consortium awards than with PS awards.

Defense Strategy: Limits of Counterclaims, Risk of Stipulating Liability

A defendant may adopt one of several primary strategies for responding to a suit's allegation of negligence based on a wide variety of factors, including the crash itself, the available evidence, concern over publicity, or potential venue bias. These strategies were organized into three categories for analysis:[69]

- **"Accept"** indicates that the defense acknowledged or stipulated to liability for the purpose of litigation. It does not necessarily mean that the defendant stipulated to negligence per se or that the defendant was guilty in matters of fact.
- **"Deny"** indicates that the defense denied the accusation of negligence without accusing the plaintiff of negligence. Such cases may involve a negligent third party, conditions beyond the defendant's control (e.g. weather), or defendant actions that did not constitute negligence (i.e. did not lack reasonable care).
- **"Counterclaim"** indicates that the defense not only denied the plaintiff's accusation of negligence but asserted that negligence on the part of the plaintiff specifically caused the crash. In this report, it does not necessarily indicate that defendants sought damages.

Table 10 summarizes total awards based on defendant strategy in cases that went to trial.

Table 10: Defense Liability Strategy

Strategy	Share of Total Cases	Median Award	Mean Award
Accept	35.3%	$1.0 million	$25.9 million
Deny	38.2%	$1.4 million	$8.6 million
Counterclaim	26.5%	$1.5 million	$5.3 million

[69] If defendants altered primary strategy over the duration of a case, the final strategy pursued in court was recorded.

There was not a statistically significant difference in award size between the three defense liability strategies. In fact, counterclaims in the sample had a higher median total award than the other two primary strategy categories.[70] Even when the analysis was focused on case subsets of the same injury types, there was still no statistically significant difference in total award amounts between accepting, denying, and counterclaiming.

This finding is unexpected, as counterclaims should in theory lead to lower awards by bolstering the defendant's position with evidence of plaintiff negligence. The fact that counterclaims do not result in lower awards likely underscores the bias that motor carriers encounter among many juries – particularly in the high-consequence cases where counterclaims are most common.

Another approach, accepting or stipulating to liability, may be adopted as an expediency strategy in court. This strategy may be especially prevalent in clear-cut or low-value cases, as an attempt to earn good-will among juries and plaintiffs. The low median award for accepting versus denying may give some credence to the latter approach, but this difference was not statistically significant in the sample. Furthermore, the fact that awards for cases in which defendants accepted some level of liability had a substantially higher mean than median – given that means are more reflective of disproportionately high values – suggests that this strategy can also backfire badly by leaving defendants vulnerable to plaintiff accusations.

Apportioned Fault

To better understand the impacts and outcomes of counterclaims, the analysis next considered the apportionment of fault. In many cases, an outright defense victory may be impossible or highly unlikely, but a favorable apportionment of fault – in which a defendant is responsible for a percentage of the damages rather than their entirety – can still save millions of dollars. For this analysis, a counterclaim was considered successful if at least 5 percent of fault was apportioned to the plaintiff. There were 56 such cases in the dataset.

State laws differ widely on the matter of apportioning fault, with three broad paradigms:

1. Only four states (Alabama, Maryland, North Carolina, Virginia) and the District of Columbia require that a defendant be 100 percent at fault for a plaintiff to receive compensation, a paradigm known as **pure contributory negligence**.
2. By contrast, 11 states have a **pure comparative negligence** paradigm, in which fault and thus compensation can be apportioned to defendants at any percentage from 1 to 100 – in theory, based on their degree of negligence.
3. The remaining states (35) use a **modified contributory negligence** paradigm, by which defendants typically must be at least 50 or 51 percent at fault (depending on the state) for a plaintiff to receive compensation.

Defendants typically make a counterclaim when there is evidence for some level of plaintiff negligence, but just 44 percent of counterclaims yielded at least 5 percent fault apportioned to the plaintiff. The low percentage of counterclaims that result in any level of success suggests that juries are reluctant to apportion fault to plaintiffs even when there is reason to do so.

In pure comparative negligence states, plaintiffs were assigned less than 40 percent fault in only 22 percent of mixed-fault cases. This disparity suggests that juries are reluctant to apportion a

[70] Linear regression analysis was conducted but yielded no statistically significant findings.

majority of fault to plaintiffs, even in states with pure comparative negligence paradigms. The difference between 40 percent fault and, for example, 20 percent fault can amount to millions of dollars, making any bias of this kind impactful.

Of mixed fault cases in the sample, juries most often apportioned 50 to 59 percent of fault to defendants (21% of mixed-fault cases). Ostensibly, there is a risk that some juries may "round up" their apportionment of defendant fault to an amount over 50 percent so that plaintiffs still receive partial compensation, even if defendants were in fact less than 50 percent at fault.

Successful versus Unsuccessful Counterclaims

Table 11 compares the total awards of successful and unsuccessful counterclaims before and after apportionment – that is, before and after being adjusted for the relative negligence attributed to the plaintiffs and defendants. Median plaintiff awards in successful counterclaims were 50 percent lower than median awards in unsuccessful counterclaims, with a statistically significant difference (p = 0.09) between the two.[71] This result is instructive because it indicates that juries generally were not inflating awards in an attempt to offset any apportionment of fault to plaintiffs.

Table 11: Median Award in Successful and Unsuccessful Counterclaims

	Percentage of Counterclaims	Median Award Before Apportionment	Median Award After Apportionment
Successful counterclaim	44%	$1.2 million	$900,000
Unsuccessful counterclaim	56%	$1.8 million	$1.8 million

In fact, as Table 11 shows, the median total award in successful counterclaims *prior to apportionment* was 33 percent lower than the median total award in unsuccessful counterclaims – $1.2 million versus $1.8 million – with a statistically significant difference (p = 0.061). This poses a challenge for defendants, as the following paragraphs discuss.

To investigate why counterclaims with low pre-apportionment awards were more often successful, successful and unsuccessful counterclaims were compared in other important case attributes. As Table 12 shows, injury severity (surgical vs non-surgical) and fatality rates were largely consistent between successful and unsuccessful counterclaims, and the successful and unsuccessful counterclaims in the dataset were generally consistent in the types of negligence alleged and the relative frequencies of individual injury types.

Table 12: Injury Severity in Successful and Unsuccessful Counterclaims

	Soft Tissue Injury	Severe Injury	Fatality
Successful counterclaim	17%	60%	23%
Unsuccessful counterclaim	11%	66%	24%

Therefore, the delta between median pre-apportionment awards in successful and unsuccessful counterclaims was not explained by type of negligence, injuries incurred, or fatalities – the core

[71] Wilcoxon rank sum test was utilized for this analysis.

quantifiable attributes of a case. In other words, neither plaintiffs nor defendants had a clear inherent advantage based on the core facts of a case when it came to counterclaims.

Instead, it appears that counterclaims are more likely to be successful in cases that juries *perceive* as deserving lower awards regardless of the core facts of the case. Interestingly, defendants' tendency to pursue counterclaims more often when cases had the costliest injury types was at odds with this jury behavior. Defendants may thus experience greater success by pursuing counterclaims more actively in cases with less costly injuries as well.

Defense Victories

Additional analyses were conducted to identify overall characteristics of defense victories, though data from defense victories is sparser than that from plaintiff verdicts. As such, the 32 defense verdicts obtained in the data collection effort were combined with the 37 cases in which defendants were able to make a successful case for less than 75 percent fault, for a total of 69 cases. Though not all of these cases are outright defense victories, this expansion of the "victories" dataset allowed for instructive, statistically significant findings.

One type of truck negligence had a statistically significant correlation with plaintiff victories.

- Running red light (r = -0.09, p = 0.070)

This correlation suggests that cases involving running a red light had a greater likelihood of plaintiff victory than defense victory.

Three types of truck negligence had statistically significant correlations with defense victories.

- Improper turn (r = 0.15, p < 0.01)
- Improper merge (r = 0.10, p = 0.049)
- Failure to yield (r = 0.14, p < 0.01)

These correlations suggest that cases of improper turn, improper merge, and failure to yield were more likely to receive a defense victory than a plaintiff victory.

Notably, the three types of negligence correlated with defense victories involve the potential for ambiguity, subjective judgment, and greater potential for shared fault (whereas running a red light, for example, is a clear-cut infraction). This may be because frivolous plaintiff cases are more likely to allege one of these three types of negligence, or it may be because trucking defendants are less likely to be negligent (or more than 50% at fault) in these crashes.

Whatever the reason, defendants were more successful when bringing cases alleging these "he-said, she-said" types of negligence to trial, and accordingly defendants may want to be less inclined to settle such cases.

PART 3: LEGAL EXPERT ASSESSMENTS OF DEVELOPING AREAS OF CONCERN

The field of litigation is continuously evolving, with several developing legal concerns that motor carriers should monitor. This section provides expert perspective on four such concerns.

FMCSRS: Minimum Standards or Not?

Rob Moseley and Christian Fober; Moseley Marcinak Law Group

The Federal Motor Carrier Safety Administration (FMCSA) is responsible for the regulation and provision of safety oversight of commercial motor vehicles (CMV). Its mission is "to reduce crashes, injuries, and fatalities involving large trucks and buses."[72] Accordingly, FMCSA has issued Federal Motor Carrier Safety Regulations (FMCSRs) to facilitate and promulgate its mission. FMCSRs set forth mandatory safety standards for commercial motor vehicles.[73] For example, FMCSRs establish:

- minimum levels of financial responsibility (49 C.F.R. § 387.9),
- qualifications for drivers and related duties of motor carriers related to driver qualification (49 C.F.R. § 391), and
- qualifications for FMCSA certification of a medical examiner (49 C.F.R. § 390.101).[74]

Compliance with FMCSRs is paramount for motor carriers and drivers, as FMCSA has the authority to fine, penalize, and place out of service motor carriers, drivers, and/or commercial motor vehicles.

Most FMCSR requirements are a simple check box for compliance: did you do this, or did you not? However, some requirements have numerical obligations, such as checking an applicant's CDL driving history for three years.[75] FMCSRs related to driver hiring are stated to be "minimum standards."[76] While motor carriers are free to go above and beyond FMCSRs, they *must* comply with FMCSR requirements. Regarding compliance, FMCSRs state: "(1) [e]very employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations[;] (2) [e]very driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter[; and] (3) [a]ll motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter."[77]

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[72] FMCSA, "Who We Are" (accessed on November 19, 2024), https://www.fmcsa.dot.gov/mission/who.
[73] *U.S. Code 49* (1995), § 31136. https://uscode.house.gov/view.xhtml?req=granuleid:USC-1994-title49-section31136&num=0&edition=1994.
[74] "§ 387.9 Financial Responsibility, minimum levels," *Code of Federal Regulations*, title 49 (2013): 329-330, https://www.govinfo.gov/content/pkg/CFR-2013-title49-vol5/pdf/CFR-2013-title49-vol5-sec387-9.pdf; "Part 391—Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors," *Code of Federal Regulations,* title 49 (2011): 361-397, https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol5/pdf/CFR-2011-title49-vol5-part391.pdf.; "§ 390.101 Scope," *Code of Federal Regulations,* title 49 (2024): 461, https://www.govinfo.gov/link/cfr/49/390?link-type=pdf&sectionnum=101&year=mostrecent.
[75] "§ 391.23 Investigation and inquiries," *Code of Federal Regulations,* title 49(2008): 329-332, https://www.govinfo.gov/content/pkg/CFR-2008-title49-vol5/pdf/CFR-2008-title49-vol5-sec391-23.pdf.
[76] "§ 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers," *Code of Federal Regulations,* title 49 (2011): 362, https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol5/pdf/CFR-2011-title49-vol5-part391.pdf.
[77] "§ 390.3T General applicability," *Code of Federal Regulations,* title 49 (2018): 419-421, https://www.govinfo.gov/content/pkg/CFR-2018-title49-vol5/pdf/CFR-2018-title49-vol5-sec390-3T.pdf.

Compliance with FMCSRs is sufficient with respect to a compliance review or other scrutiny from FMCSA. However, does a motor carrier meet the standard of care by complying with FMCSRs as it relates to truck accident litigation? A common source of friction that arises in truck accident litigation is whether FMCSRs set forth *the* standard of care for motor carriers and drivers or, as plaintiffs allege, merely a minimum level of care that can and should be exceeded: i.e. the argument that compliance with FMCSRs is the "floor" and not the standard.

A common argument from the plaintiff's position is that FMCSRs set forth *minimum* standards and mere compliance is inadequate because a motor carrier and/or driver that prioritized safety would go above and beyond the minimum requirements.[78] Conversely, the defense's position is that FMCSRs set forth *the* standard. In order for a plaintiff to make the argument that the motor carrier should have gone further, there must be expert testimony creating that obligation.

The following synopsis of a federal case involving a truck accident serves as an example of this friction. In *Monroe v. Freight All Kinds, Inc.*, the plaintiff's truck safety and compliance expert opined that the motor carrier did not have an adequate safety program and the driver was not properly qualified by the motor carrier.[79] The expert testified that FMCSRs set forth minimum standards for motor carriers and that "safe and prudent carriers go above and beyond that."[80]

The defendants contended that FMCSRs set forth the duties owed to the general public and that the expert could not identify any violations of FMCSRs by the motor carrier.[81] Defendants further asserted that the expert essentially opined that the motor carrier should have gone above and beyond FMCSRs. The plaintiff countered that its expert could opine on industry customs and practices, regardless of FMCSRs.[82] Another case, *Jones v. Wiseman,* granted a defendant truck driver's motion in limine prohibiting the plaintiff from cross examining him regarding his obligations under FMCSRs, which could influence the jury to impose a higher standard of care merely for being a "professional driver."[83]

Accordingly, the motor carrier finds itself in a dilemma: what if going beyond compliance creates evidence that is used against the carrier in litigation? For example, adopting new safety technologies in pursuit of enhanced safety could capture additional data that is used against a carrier in litigation. Coaching drivers on making improvements could similarly create additional documentation that can be used by plaintiffs as evidence, even if it improves safety outcomes overall. This data would not exist if the company did not care as much about safety.

When it comes to FMCSA, compliance with FMCSRs should protect motor carriers from penalties, fines, or harsher punishment by FMCSA. In this context, going above and beyond what is required should be protected and encouraged. There are reasonable arguments for establishing public policy that creates protections for motor carriers who go above and beyond the "minimum" in litigation, but such policy does not currently exist.[84]

When it comes to truck accident litigation, it seems logical that FMCSRs set the standard of care, whether considered "minimum" or otherwise, and compliance with the same thus shows

[78] This logic intersects with the infamous Reptile Theory often seen in truck accident cases.
[79] *Monroe v. Freight All Kinds, Inc., et al.*, No. 18-cv-03238-SRB, 2020 (W.D. of Mo. S.D. Nov. 10, 2020).
[80] Plaintiff's expert opined that "safe and prudent carriers" require a road test despite the applicable regulation allow a company to accept a CDL in lieu of a road test. Ibid.
[81] Ibid.
[82] Ibid.
[83] *Jones v. Wiseman,* No. 20-5105, 2020 (6th Cir. Dec. 22, 2020).
[84] For example, dash cameras are not required but many motor carriers have adopted them for various reasons.

that the standard of care has been met. Going above and beyond what is required in FMCSRs can still come back to haunt a motor carrier in the course of litigation, however, if there is evidence that the motor carrier (or driver) failed to comply *with its own policies and procedures* that go above and beyond what is required in FMCSRs.

In summary, to avoid confusion, compliance with FMCSRs, minimum requirements or not, is (and should be) the standard as it relates to FMCSA and arguably in truck accident litigation more broadly. If motor carriers in truck accident litigation have to meet a standard of care that goes above and beyond FMCSRs, they would be forced to hit a moving target on a case-by-case basis – an impossible task.

The Impact of Extraneous Evidence on Lawsuit Value and Risk

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While extraneous information should be irrelevant by definition, plaintiffs often concentrate on information which is unrelated to truck crash mechanics or damages allegedly suffered by the injured person in order to sway juries.

Relevant evidence in a crash includes, at least, the acts and omissions of the drivers throughout the collision sequence, vehicle maintenance or mechanical issues, and the "facts on the pavement," (tire marks, evidence of contact, coefficients of friction, etc.); almost anything else is irrelevant. However, in many cases the relevant evidence is not enough to get the plaintiff counsel's desired outcome, which is a high value (nuclear) verdict. Instead, plaintiffs pursue information outside of the actual crash facts and damages to dramatize their narrative.

Why is this effective? Because almost every juror has had the experience of being in a crash and understands the chaos and stress of those brief seconds. Plaintiffs use extraneous evidence to elicit fear, raise community safety concerns, tap into anti-corporate bias, and elicit extreme emotions from jurors – *which generally directs jurors' attention away from the relevant crash facts they should be focused on when deciding each case*.

Worse yet, this tactic is relatively risk-free to the plaintiffs because – if they get their nuclear verdict and the losing party chooses to base its appeal (in whole or in part) on the judge's decision to admit or exclude offensive extraneous evidence – the admission/exclusion of that evidence *will not result in a new trial*, unless the appellate court determines the evidence impacted a "substantial right" of the losing party. That is a high legal standard, and means that judges tend to see no downside to admitting evidence and just "letting the jury sort it out."

Because the liberal admission of evidence will almost always benefit the plaintiff, it is imperative for motor carriers to look at the copious amount of extraneous evidence within their walls, *before* an incident leads to litigation. Understanding what information may be sought in discovery and how it may be used against the company are the first steps in evaluating and then reducing the risk associated with it. Two broad categories of extraneous information are presented in this cursory overview, followed by strategies for reducing carrier risk, with each section including a real-life example.

Digital and Electronically Stored Information

Today's digital environment is a dynamic evidence-creating machine. Emails, websites, specialty apps, and social media are influential tools for communicating with current and potential employees and customers alike. Public-facing information is easily accessible and *certain* to be discovered, making the work of the plaintiff lawyer far easier than ever before. Electronic information likely to come flying across the table in a deposition include company websites and social media, interviews and press releases, and review or recruiting sites.

Information-gathering technologies can be found in private and government security cameras, toll devices, weather information systems, and more. Trucks have become mobile data centers with information stored and transmitted through in-cab telematics, cameras, engine and component control modules, and Global Positioning System (GPS) locators for cargo, etc. Internal information such as company policies and procedures, training materials, customer/vendor contracts, employee handbooks, applications for managing orders, employees, claims, or projects, and the ever-proliferating behemoth of email can and will be

used as evidence of company admissions in later lawsuits. A trucking company also makes discoverable statements through its experts and lawyers in lawsuit materials such as motions and other pleadings, discovery responses, expert reports, and exhibits which are available on public court records sites.

When these materials are produced in discovery and are inaccurate, out-of-date, include sloppy or profane language, or include performance criteria which are inapplicable, they provide easy arguments for plaintiffs to say the company is disorganized, mismanaged, and/or didn't even care enough to follow its own rules, potentially resulting in angry jurors and punitive damages.

FOR EXAMPLE: A third-party logistics provider is sued after a catastrophic multi-party accident in which it was only tangentially involved. Based on a complex web of claims, well-funded plaintiff lawyers create an expensive and painful discovery process, because this strategy often forces a bigger settlement contribution by the target company to "just stop the madness." Using broad discovery requests, plaintiffs uncover piles of information wholly unrelated to the accident itself and depose dozens of company personnel, unconstrained by a sympathetic judge. An extraordinary amount of time and money is spent trying to rein in the discovery process and explaining wild accusations created by the plaintiff based on these materials, all culminating in a settlement amount far greater than the original valuation.

Incident/Accident Investigation and Documentation

There are many data points to be documented and key questions to be evaluated following an incident, but it is in these early efforts that the danger of mixing relevant information with irrelevant information is greatest. Guesswork and/or "editorializing" by motor carrier personnel when documenting investigation work is likely to be misinterpreted as conclusive. Intermingling facts with speculation limits open exploration of available information, and relevant evidence can be missed due to opinion blindness.[85] For all these reasons, a brief consult with industry-specific legal counsel – before finalizing reports and under the protective umbrella of confidentiality/privilege – can prevent these missteps. Training key safety and operations personnel in the nuanced art of documentation is a worthwhile investment.

FOR EXAMPLE: A truck and passenger car collide between lanes of travel. The Safety Director documents: "Our truck was changing lanes and didn't allow enough room to safely complete the lane change." After the case is filed, defense counsel locates and interviews witnesses, evaluates control module data, and hires an expert to complete post-accident reconstruction. The facts are clear: the truck began the lane change, with signal, at legal speed, and the car sped up to pass, entering the truck's path of travel. Unfortunately, the motor carrier's early incident report is interpreted as admitting fault, when in reality the collision was 100 percent the

[85] Margaret Heffernan, *Willful Blindness*, (Walker Books, 2011).; Brian H. Bornstein., *et al.*, "Methodological issues in the study of eyewitness memory and arousal," *Creighton Law Review* 42, no. 4, p. 525–548 (2009), http://dspace.creighton.edu:8080/xmlui/handle/10504/40646; University College London, "How Believing Can Be Seeing: Context Dictates What We Believe We See," *ScienceDaily* (February 19, 2008), https://www.sciencedaily.com/releases/2008/02/080215103210.htm.; Benjamin Rebouillat,*et al.*, "People confabulate with high confidence when their decisions are supported by weak internal variables," *Neuroscience of Consciousness* 2021, no, 2021 (March 10, 2021), https://doi.org/10.1093/nc/niab004.; Susan Nolan and Michael Kimball,., "Why We Miss the Obvious," *Psychology Today* (June 22, 2021), https://www.psychologytoday.com/us/blog/misinformation-desk/202106/why-we-miss-the-obvious.; Kaja Glomb., "How to improve eyewitness testimony research: theoretical and methodological concerns about experiments on the impact of emotions on memory performance," *Psychological Research*86, p. 1-11 (February 19, 2021), 10.1007/s00426-021-01488-4.

fault of the passenger car driver. A better entry would have been: “Contact occurred between the vehicles after CMV driver began lane change. Investigation ongoing.”

A Solution: Advance Litigation Preparedness

Advance litigation preparedness brings a modicum of control back to defendants. If there is an internal data-creation monster that increases verdict risk, it should be identified and tamed before it bites.

Additionally, litigants have legal responsibilities to identify, secure, and protect potentially relevant evidence once there is a cognizable threat of litigation on the horizon; these are the concepts of Litigation Hold and Spoliation. Failures to properly implement a litigation hold or protect potentially relevant evidence may hand the plaintiff new “extraneous” arguments carrying significant risk. Claims that evidence was lost or intentionally destroyed will breathe life into “no-liability” cases or add fuel to the fire in already high-value cases. Understanding and monitoring data retention policies is critical in view of preservation requirements.

Identifying and addressing weakness in the corporate armor must also occur before litigation. Many plaintiff lawyers start settlement negotiations with “insurance limits plus ownership contribution” demands, creating an early fear of a nuclear verdict outcome. Thus, consideration should be given to ownership, corporate structure, and common-owned entity arrangements which can lead to arguments of corporate veil loss, fraudulent transfer of assets, and alter-ego liability, leaving owner and affiliate resources at risk.

It is critical to use experienced business-of-transportation lawyers with command of the complexity of the trucking industry and its regulatory environment, such as the government control arguments that underlie the expansive DOT / FMCSA regulations, Preemption (FAAAA and others), state-specific transportation-related exemptions and safe-harbor statutes. Industry experts are invaluable in navigating the complexities between accident litigation and the business-of-transportation, which may involve contracts, labor considerations, interpreting regulations, personnel training, evaluating potential corporate witnesses, and litigation preparedness assessments, all under cover of the attorney-client or litigation privileges.

FOR EXAMPLE: In personal injury litigation, human resources (HR) department emails about the employee driver and social media posts by the Safety Department were sought in discovery. Experienced transportation counsel, while gathering information and preparing witnesses, also reviewed social media, trained the content writers on phrases to avoid, and trained HR on how to better respond to and document employee matters by focusing written responses to “just the facts.” This work assisted the company in future litigation but was done in the pending lawsuit and protected by the attorney-client and litigation privileges, so it was not discoverable in pending or future litigation. In another instance, a carrier’s safety director brought in special counsel to train managers on documentation and deposition strategy using a hypothetical fact situation.

Litigation Financing Agreements in the Catastrophic Injury Space: Why Should the Transportation Industry Care?

Christina Trotz, Lee Mickus and Sierra Epke; Evans Fears Schuttert McNulty Mickus

Third Party Litigation Funding (TPLF) is a hot topic among clients and attorneys alike. A tool most often leveraged by plaintiffs who bring lawsuits, these arrangements are far from mainstream investments. To the untrained eye, it may be easy to conclude that the source of funding is irrelevant to the industry, but these funding agreements have a significant – and costly – impact on the trucking industry. TPLF increases the time and expense required to reach a settlement or trial, increases nuclear verdicts, boosts insurance premiums, and reduces transparency in litigation. Although these agreements themselves may be here to stay, it is imperative that the trucking industry continue to demand disclosure in litigation. Disclosure levels the playing field by providing both the court and the defendant with the information needed to effectively litigate the dispute.

What is Third Party Litigation Funding in the Catastrophic Injury Space?

The terms "TPLF," "litigation financing," "legal funding," or "alternative litigation financing" refer to the growing practice in which an outside party – often an alternative investment fund – invests money into a lawsuit in exchange for a portion of any lawsuit proceeds. The investor's return is thereby dependent upon the success of the lawsuit. In other words, the investor wants to see the highest settlement, or the highest verdict, possible. Because the plaintiff is also interested in the success of the lawsuit, the investor's and the plaintiffs' interests will always align, right? Not quite...

In the catastrophic injury space, it is most common to see personal litigation financing, where a funder invests in individual cases hoping to obtain a portion of the recovery. But a portion of the recovery is not all they seek. In order to maximize their returns, third-party investors want control over critical aspects of the litigation, including the review of documents and filings and, most troubling, deciding whether or not to settle the lawsuit. Despite this hands-on level of control, third party investors often remain hidden from both the court and the other litigants. Unfortunately, there are no uniform rules requiring the disclosure of third-party investors or the investor agreements, which prevents appropriate discovery. Any argument that this discovery is "irrelevant" should be met with considerable scrutiny. It is extremely relevant – and in fact critical – to understand who is making strategic decisions behind the scenes in a lawsuit.

The counterpoint most often levied in defense of TPLF is that the investors are a "white knight," providing access to justice for those otherwise unable to pursue their legal remedies. A closer look reveals that this is nothing more than a masquerade. For example, a litigation investor may refuse to approve a settlement – particularly a settlement the plaintiff otherwise intends to accept – for no reason other than to maximize *the investor's* profit. Forcing a plaintiff to remain in litigation when that plaintiff wishes to, or needs to, settle cannot be justified as an action taken "in the best interest" of the plaintiff. Although one court has recognized that "it is difficult to conceive of any stipulation more against public policy than a contract term requiring the litigation financier's permission to settle the underlying litigation,"[86] these terms persist.[87] The same court

[86] *Maslowski v. Prospect Funding Partners LLC*, 944 N.W.2d 235, 241 (Sup. Ct. Minn. 2020) (quoting *Huber v. Johnson*, 70 N.W. 806, 808 (Sup. Ct. Minn. 1897), abrogated on other grounds by *Maslowski*).
[87] See also *In re Pork Antitrust Litig.*, No. 18-CV-1776 (JRT/JFD), 2024 WL 511890, at *7 (Dist. Ct. Minn. Feb. 9, 2024), *aff'd*, No. CV 18-1776 (JRT/JFD), 2024 WL 2819438 (Dist. Ct. Minn. June 3, 2024).

went on to admonish that "[c]ourts and attorneys should . . . be careful to ensure that litigation financiers do not attempt to control the course of the underlying litigation."[88] Despite these well-articulated public policy concerns and a clear preference from the bench, these terms remain a frequent feature of investor contracts and obtaining disclosure of these agreements is an uphill battle. Furthermore, the rates of return-on-investment that often accompany TPLF agreements reach predatory levels. Cases with TPLF resulted in plaintiffs receiving 43 percent of payouts on average, while plaintiffs in non-TPLF cases received an average of 55 percent of payouts.[89]

Impacts of TPLF in Catastrophic Injury Cases

The sweeping impact of TPLF may be downplayed by plaintiffs and by the investors themselves, but it should not be ignored by the industry. A recent case, *In re Pork Antitrust Litigation*, highlights the many problems created by a third-party litigation investor that hides in the shadows.[90]

During the course of this lawsuit, the third-party litigation investor, Burford Capital, rejected a proposed settlement that had been approved by the plaintiff. This rejection resulted in a dispute between the plaintiff and Burford, which "generated an arbitration proceeding in New York, a New York state court action (later removed to the U.S. District Court for the Southern District of New York) to enforce the arbitration award, an action in the U.S. District Court for the Northern District of Illinois to stay the arbitration award, and a substitution motion in each of the Minnesota Multi-District Litigation cases, plus a substitution motion in *In re Broiler Chicken Antitrust Litigation*."[91] Needless to say, this dispute delayed the underlying action for many months. Most troubling, the court – and likely the defendants – did not learn about the dispute until months after it began. Third-party litigation investors make these demands and take this control without informing the defendant or the court of their involvement.

This example highlights negative consequences of TPLF for the trucking industry.

First, TPLF can make cases last significantly longer by forcing litigation when parties would have otherwise settled. In addition to controlling settlement decisions, third-party investors may demand additional discovery and document productions that further delay litigation and lengthen trials.[92] They may control motions, including motions to dismiss and motions for summary judgment. All these factors delay case resolution for defendants and plaintiffs alike.

Second, TPLF can make cases much more expensive for both parties. The tendency of TPLF to interfere with settlement and draw out litigation with spurious discovery and document requests results in much higher litigation expenses. The extra costs of litigation are initially born by the insurers responsible for managing lawsuits, but they are ultimately passed on to motor carriers in the forms of higher insurance premiums across the board.

[88] Ibid.
[89] Swiss Re Institute, "US Litigation Funding and Social Inflation" (December 2021), https://www.swissre.com/dam/jcr:7435a896-5f4b-463b-a1e6-7d4ec17db556/swiss-re-institute-expertise-publication-us-litigation-funding-and-social-inflation-december2021.pdf.
[90] *In re Pork Antitrust Litig.*, No. 18-CV-1776 (JRT/JFD), 2024 WL 511890, at *7 (Dist. Ct. Minn. Feb. 9, 2024), *aff'd*, No. CV 18-1776 (JRT/JFD), 2024 WL 2819438 (Dist. Ct. Minn. June 3, 2024).
[91] Ibid. at *1.
[92] Federal Rule of Civil Procedure 26(b)(1), which sets forth the appropriate scope of discovery, directs the court to consider the "the parties' resources." But how can a court properly consider a plaintiff's resources if the majority of those resources – the third-party litigation funding agreement – is a secret?

Third, TPLF can increase the likelihood of nuclear verdicts because the investors are less likely to accept a reasonable settlement offer that otherwise would allow for a predictable end to litigation. A case otherwise poised to settle may end up before a jury, even though neither the plaintiff nor the defendant want to go to trial.

Finally, the secretive cloak under which TPLF operates, and the resulting lack of transparency, hinders the industry defense bar from conducting appropriate investigations and prevents meaningful opportunities to settle. Simply put, "[t]he litigation burden caused by TPLF's efforts to maximize return-on-investment" is enormous.[93]

Recent Developments in TPLF Legislation

The nationwide legal framework around TPLF is anything but consistent. Legal authority and regulation vary significantly from jurisdiction to jurisdiction. For example, two states – Kentucky[94] and Alabama[95] – have outlawed TPLF altogether. Other states – Georgia,[96] Pennsylvania,[97] and Colorado[98] – are likely to void litigation financing agreements as champerty, usury, or as against public policy. But several states – Florida,[99],Texas,[100] New York,[101] California,[102] Illinois,[103] and New Jersey[104] – seemingly allow TPLF without oversight and without disclosure requirements.

At the very least, the trucking industry should advocate for disclosure of TPLF agreements in litigation, which would allow all parties to understand who is in control of the litigation and decision-making. Only five states currently require disclosure, yet obtaining this critical information can inform both the industry and the court about what is actually taking place in a lawsuit.[105]

The legal and regulatory landscape related to TPLF agreements continues to change at a rapid pace. Several states in 2025 enacted legislation that regulates TPLF arrangements, including Arizona, Colorado, Georgia, Kansas, and Oklahoma.[106] Common elements of the legislation include disclosure of TPLF arrangements, restriction on funder influence on litigation and settlement strategy, and limiting the involvement of foreign entities.

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[93] *In re Pork Antitrust Litig.*, No. 18-CV-1776 (JRT/JFD), 2024 WL 511890, at *7 (D. Minn. Feb. 9, 2024), *aff'd*, No. CV 18-1776 (JRT/JFD), 2024 WL 2819438 (D. Minn. June 3, 2024).
[94] Ky. Rev. Stat. Ann. § 372.060 (2024); *Boling v. Prospect Funding Holdings, LLC*, No. 1:14-CV-00081-GNS-HBB, 2017 WL 1193064, at *5-6 (W.D. Ky. Mar. 30, 2017).
[95] *Wilson v. Harris*, 688 So. 2d 265, 268-69 (Ala. Civ. App. 1996) (Litigation financing agreements are gambling).
[96] *Sullivan v. Curling*, 99 S.E. 533, 534-35 (Sup. Ct. Ga. 1919).
[97] *WFIC, LLC v. LaBarre*, 148 A.3d 812,818-19 (Pa. Super. 2016).
[98] *Oasis Legal Fin. Grp., LLC v. Coffman*, 361 P.3d 400, 409-10 (Colo. Sup. Ct. 2015).
[99] *Kraft v. Mason*, 668 So. 2d 679 (Fla. 4th DCA 1996) (allowing enforcement of a litigation financing agreement so long as the party providing financing did not prompt the litigation).
[100] *Anglo-Dutch Petroleum Int'l, Inc. v. Haskell*, 193 S.W.3d 87, 103-04 (Tex. App. 2006) (usury laws do not apply to litigation funding agreements).
[101] *Echeverria v. Estate of Lindner*, 7 Misc. 3d 1019(A), 801 N.Y.S.2d 233 (N.Y. Sup. Ct. 2005), judgment entered sub nom, *Echeverria v. Lindner* (N.Y. Sup. Ct. 2005) (litigation financing agreements are enforceable).
[102] *Abbott Ford, Inc. v. Superior Court*, 714 P.2d 124, 141, n. 26, 43 Cal. 3d 858 (1987) (California has never adopted the doctrines of Champerty and maintenance).
[103] *Miller UK Ltd. v. Caterpillar, Inc.*, 17 F. Supp. 3d 711 (N.D. Ill. E.D. 2014) (litigation financing agreements are valid and not discoverable).
[104] *In re: Valsartan N-Nitrosodimethylamine (NDMA) Contamination Products Liability Litigation*, 405 F. Supp. 3d 612, 620 (D.N.J. 2019) (litigation financing agreement is not relevant and not subject to disclosure).
[105] Wis. Stat. § 804.01(2) (2025); W. Va. Code § 46A-6N-6 (2025); Mont. Code Ann. § 31-4-108 (2023); Ind. Code § 24-12-11-5 (2025); La. Rev. Stat. § 9:3580.12(B) (2024).
[106] See footnote 19 for state-by-state citations.

Montana's legislature has been particularly active with legislation aimed at increasing transparency in the TPLF industry.[107] In 2023, it enacted the Litigation Financing Transparency and Consumer Protection Act that:

- requires disclosure in litigation,
- mandates that funders must register, and
- caps an investor's recovery to 25 percent of any judgment, award, or settlement.

In 2025, Montana went even farther by enacting SB 511. That bill prohibits investors from foreign nations, bars any investor from exercising control over lawsuit resolution or litigation strategy, and prevents investors from having access to proprietary materials produced during discovery.

The Path Forward

Litigation funding is likely here to stay, but there are steps that can be taken to level the playing field. First, always encourage your outside counsel to seek disclosure of TPLF. As noted above, only after disclosure can the defense bar begin to understand who, or what, is *really* controlling litigation outcomes. Along those same lines, comprehensive early case assessment should seek to identify cases that are likely to involve TPLF.

Next, trucking industry defendants and their outside counsel must educate courts and policy makers about TPLF. The factual scenario presented in *In re Pork Antitrust Litig.* is a perfect example of the pitfalls of litigation funding.

[107] Mont. Code Ann. § 31-4-101 et. seq.

When Meeting the Standard Isn't Enough: Lessons from the Missouri Wabash Verdict

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On May 19, 2019, on a clear, sunny day, a Volkswagen CC rearended a tractor-trailer on Interstate 44/55 in St. Louis, Missouri. The vehicle accident, in which the driver of the Volkswagen CC had an unobstructed view, was caused when it struck the back of a stopped 2004 Wabash trailer that was operated by GDS Express Inc., resulting in an underride accident and the tragic death of both occupants of the Volkswagen. The tractor-trailer was stopped because of road construction lane closures and accompanying traffic. Evidence showed that the Volkswagen driver was operating the vehicle at high speeds and intoxicated at the time of the accident. Neither the Volkswagen driver nor the passenger were wearing their seatbelt. On October 6, 2020, Wabash was named as a co-defendant, along with GDS Express Inc., in a lawsuit filed by the surviving family members, *Eileen Williams, Elizabeth Perkins, et al. v. Wabash National Corporation, et al.*, filed in the Circuit Court of the City of St. Louis, Missouri.[108]

On September 5, 2024, a jury awarded compensatory damages of $12 million and punitive damages of $450 million against Wabash, with judgement entered on November 22, after an offset relating to the settlement with GDS Express, Inc.[109] On March 20, 2025, the Circuit Court determined that the punitive damage award did not comport with due process requirements of the U.S. and state constitutions, ordering it to be reduced to $108 million with the compensatory damages award remaining unchanged. On October 9, 2025, after filing a notice of appeal, Wabash finalized a negotiated settlement with the plaintiffs to resolve the disputed claims, but the settlement does not constitute an admission of liability or wrongdoing by Wabash.

The verdict was exorbitant, unprecedented, and significantly impactful to the transportation industry. Typically, lawsuits filed against trucking companies are based on alleged negligence of the truck driver which caused injury or death. This case, though, was different – it was a products liability case against Wabash as the trailer manufacturer, and more specifically, this case was a "second collision case."[110] A products liability case focuses on the injuries caused by an alleged defective product, while a personal injury negligence case focuses on the injuries caused by a person's actions. One of the differences between a products liability case and a personal injury negligence case is the legal standard: products liability cases use a strict liability standard, meaning the manufacturer can be found liable even when they were not negligent or careless – even when they exercised great care – provided that the jury finds that the product was defective and the defect caused harm. And, in a "second collision case," a manufacturer can be found liable when an alleged product defect does not cause the initial accident but worsens the injury sustained in the crash. In this case, the Volkswagen driver's estate admitted

[108] Unlike other states, Missouri does not have a statute of repose on product liability claims. A statute of repose differs from a statute of limitation by setting an absolute limitation for filing legal claims against product manufacturers regardless of when the injury is discovered. Thus, the plaintiffs were able to bring their claims against Wabash even though the trailer was manufactured 15 years before the accident. GDS Express, Inc. ceased operations in approximately December 2019. Plaintiffs and GDS Express, Inc. reach a settlement in October 2023, prior to the 2023 trial, which resulted in a hung jury, and prior to the subsequent 2024 trial resulting in an exorbitant verdict.

[109] In 2020, Missouri passed a punitive damage cap (Mo. Rev. Stat. §510.265), however, it was not applicable to this case because the lawsuit was filed before the law went into effect.

[110] It is important to note that among the types of litigation that compromise these outsized jury verdicts, product liability ranks at the top, and product liability verdicts are rising in size far more quickly than other verdict types. See U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts An Update on Trends, Causes, and Solutions* (May 30, 2024), https://instituteforlegalreform.com/research/nuclear-verdicts-an-update-on-trends-causes-and-solutions/; Marathon Strategies, *Corporate Verdicts Go Thermonuclear* (2025), https://marathonstrategies.com/corporate-verdicts-go-thermonuclear/.

fault for the initial impact, the sedan hitting the rear of the Wabash trailer. But the plaintiffs were alleging that the deaths were due to the "second collision" of the occupants colliding with the sedan interior as a result of the rear impact guard failing to prevent the sedan's underride.

It was undisputed that the Wabash trailer fully complied with all applicable safety regulations and standards. Nevertheless, the plaintiffs filed suit, alleging that the trailer's rear impact guard was defectively designed and failed to adequately protect the Volkswagen driver and passenger. They further alleged Wabash could have implemented stronger safety standards to their rear impact guard design. Rear impact guards are designed to sustain a rear-end collision up to 35 miles per hour (MPH); they are neither intended nor able to prevent all possible underride accidents. Despite robust motion practice, the Circuit Court excluded from admissibility evidence relating to the Volkswagen driver's blood alcohol level, which was over the legal limit, and evidence relating to the fact that neither the driver nor the passenger was wearing a seatbelt.[111] Whether the Court improperly excluded the admissibility of the alcohol and seatbelt evidence would have been raised on appeal, along with other issues. However, depending upon state law, because of the strict liability standard in product liability cases, evidence addressing the plaintiff's contributory or comparative fault is not necessarily admissible.

The jury did hear evidence relating to the speed of the Volkswagen at the time of the crash. The plaintiffs argued that the sedan was traveling at approximately 42 to 47 MPH, while Wabash presented evidence that the speed was higher, at approximately 55 MPH. Despite the differing speed evidence, the plaintiffs were unable to identify a rear impact guard in existence currently that would have prevented the underride crash and the deaths of these young men.

The jurors ignored Wabash's compliance with federal safety regulations and evidence of its safety investment, holding Wabash to a higher, nonexistent standard and essentially second-guessing the determination of federal regulatory agency experts (which included comprehensive public commentary during the rulemaking process) as to the nationally uniform design and safety standards of a rear impact guard. Thus, one of the important lessons from the verdict is yet another demonstration of the shift in how juries and courts evaluate corporate liability: companies can be safe, comply with all federal safety standards, and still be found liable. The other important lesson pertains to the practical consequences of state law and the continued need for state civil justice reform. The verdict, at the very least, prompts valuable conversations about the merits of state seatbelt gag laws, state statutes of repose, and reasonable limits to punitive damage awards. A final important lesson is that verdicts like this one embolden certain plaintiff attorneys to consider strategies to add manufacturers as co-defendants in injury cases, which will only increase litigation costs for all parties and create a ripple effect on the U.S economy with costs borne by all of us.

[111] Missouri is one of many states that has a seat belt gag law. Under Missouri law, "failure to wear a safety belt in violation of this section shall not be considered evidence of comparative negligence. Failure to wear a safety belt in violation of this section may be admitted to mitigate damages" under certain limited circumstances, and if admitted, may reduce the plaintiff's damage reward by no more than 1% of the awarded damages. Mo. Rev. Stat. §307.178(4).

CONCLUSIONS

Exorbitant litigation has become increasingly challenging for the trucking industry. Social inflation has motivated plaintiff attorneys to increase litigation and made jury outcomes less favorable to trucking defendants. High awards, drawn-out litigation, and superfluous evidence requests are costly and time-consuming, diverting carrier resources and attention that would otherwise improve operations and safety. Ironically, the problem of excess litigation has been heightened by motor carriers' successful efforts to improve safety: many new safety technologies and policies generate additional data that plaintiff attorneys use as fodder for frivolous suits. In many states, plaintiff-biased laws – such as those banning the disclosure of plaintiffs' failure to wear seatbelts – further exacerbate the problem.

This report analyzed the scope and internal dynamics of tractor-trailer tort cases from 2019 through 2024, based on numerous federal and legal sources. The findings, summarized below, provide insight into a variety of key factors that influence case developments, outcomes, and awards that can help inform defense strategy.

Scope of Tractor-Trailer Torts *pg. 11*	In 2022, there were an estimated 12,817 tractor-trailer tort cases in state courts, of which 487 concluded by trial. While there were an additional 4,994 federal motor vehicle cases, it is not possible to determine how many involved tractor-trailers.
Improper Prevention from Federal Court *pg. 13*	As many as 147 of these 487 trials, however, were improperly prevented from reaching federal court, where stronger safeguards exist against biased procedures, judges, and juries result in more frequent settlements and fairer verdict awards. In 2022, the trucking industry lost as much as $102,837,500 in excess plaintiff awards due to federally eligible cases that remained in state courts.
Trends Over Time *pg. 18*	The number of tractor-trailer tort cases rose by an estimated average rate of 3.7 percent per year from 2014 through 2023 (33.3% in total). Tractor-trailer crashes rose by an average rate of 3.6 percent during the same period. The largest half of awards rose by an average rate of 5.7 percent per year from 2011 through 2023 (68.4% in total).
Types of Negligence and their Impact on Awards *pg. 21*	Four types of negligence led to significantly higher awards: substance abuse (+340.7%, $p < 0.01$), improper hiring or onboarding (+272.3%, $p < 0.01$), gross negligence (+193.4%, $p < 0.01$), and speeding (+56.1%, $p = 0.075$). While a majority of cases (55.3%) had just one type of negligence, each additional negligent behavior increased expected awards by 86.5 percent ($p < 0.01$).

Injuries' Impact on Awards *pg. 25*	Six injury types indicated a statistically significant increase in awards: death, psychological impairment, severe TBI, foot injuries, moderate TBI, and severe spinal injuries. For every additional unique injury, awards were expected to increase by 9.1 percent; for every additional injured passenger, awards were expected to increase by 53.5 percent.
When Are Settlements Advantageous to Verdicts? *pg. 28*	In cases with awards of $5 million or more, settlements were lower than verdicts ($p < 0.01$), but in cases with awards under $1 million settlements were higher than verdicts ($p < 0.01$). Settlements were also more advantageous to defendants in cases between $1 million and $5 million except when a spinal injury was involved. As time passes between an incident and the conclusion of its case, there is increasingly less difference between settlement and verdict awards: at three years, there was no statistical difference. Mediation did not make a statistically significant difference on settlement amounts.
Location of Trial *pg. 30*	California, Georgia, Florida, and Michigan had the highest median awards, as well as the highest upper quartile awards. The states with the most nuclear verdicts across all tort types also had higher awards in tractor-trailer torts below the $10 million level ($p < 0.01$), reiterating the fact that nuclear verdicts are associated with adverse state litigation environments rather than fluke juries or outlier crashes.
Exaggerated Claims *pg. 32*	Non-medical awards were often up to 10 times higher than medical awards (82.2% of all verdicts). Verdicts were much more sporadic above this 10:1 threshold, however, with some nonmedical awards as much as 50 times higher than medical awards. Defendants should oppose these cases to combat exaggerated claims.
Anchors versus Awards *pg. 34*	Plaintiff anchors were 3.2 times higher than final awards, while defendant counter-anchors were 4.5 times lower than final awards. Plaintiffs were more likely to make highly divergent anchors, however. The highest 25 percent of plaintiff anchors were 11.0 to 22.5 times higher than final awards – 50 percent farther from final awards than defendants' counter-anchors were.
Defense Strategies *pg. 37*	Stipulating to liability – sometimes adopted for expediency in court – did not have a statistically significant impact on awards and in fact was associated with more nuclear verdicts, suggesting that doing so can backfire badly.

	Making a counterclaim – presenting evidence of plaintiff negligence – did not result in lower awards (even when controlling for specific injury or negligence types), underscoring the jury bias faced by motor carriers. The only difference found between counterclaims that resulted in fault being apportioned to plaintiffs and those that failed to do so was that the former had lower pre-apportionment awards. This suggests that juries are more open to counterclaims in cases that they perceive to be less severe, regardless of the core facts of the case.
Defense Victories *pg. 40*	Three types of truck driver negligence had statistically significant correlations with defense victories: improper turn, improper merge, and failure to yield. Defendants were thus more successful when bringing such cases to trial.

Conditions in trucking litigation are continuously evolving. As such, this report also contains expert perspectives on four emergent issues facing the trucking industry and its legal partners:

- Plaintiffs misleadingly present compliance with FMCSR standards as inadequate – while using any above-and-beyond safety technologies or protocols against motor carriers in court and as proof that FMCSRs should be exceeded.
- Plaintiffs' use of extraneous "evidence" unrelated to the actual facts of a case delays the litigation process with superfluous discoveries and dispositions in order to manipulate or distract juries.
- Third party litigation funding, which fuels frivolous suits on the hope of a lottery-ticket award, interferes with defense-plaintiff negotiations and hand-ties plaintiff attorneys, thus preventing otherwise acceptable settlements.
- Lawsuits based on product liability claims pose a new threat to industry equipment manufacturers and suppliers.

The trucking industry, its legal partners, and its legislative advocates will need to address the myriad litigation challenges described herein, using both traditional and newly emerging strategies. The statistically significant research described in this report can provide important guidance for redressing unreasonable litigation filings and outcomes.

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