Trucking Litigation: Current Climate and Foreseeable Trends in Light of the American Transportation Research Institute's Recent Study on Small Verdicts

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Last year, the American Transportation Research Institute (ATRI) published a comprehensive analysis on the notable increase in verdicts over $1 million in the trucking industry. ATRI's 2020 study, Understanding the Impact of Nuclear Verdicts on the Trucking Industry, received significant attention, ultimately prompting ATRI to investigate verdicts and settlements in the trucking industry under $1 million.[1] As such, last week, the ATRI published The Impact of Small Verdicts and Settlements on the Trucking Industry.[2] Unlike the sensational multi-million dollar nuclear verdicts, these "smaller" payouts seemingly have little effect on motor carriers and insurance agencies. However, there is a general consensus in the trucking industry that small settlements and verdicts are increasing in both frequency and severity.

ATRI's research focused on identifying the legal conditions that cultivate the small litigation cases in the trucking industry, assessing the relationship between small payouts and increasing insurance rates, and quantifying the impact of crash characteristics and litigation factors on both payment sizes and settlement timing.[3] In advancing these four objectives, ATRI analyzed litigation data from 641 cases, over the course of 14 years.[4] Notably, the study only considered data from cases involving some form of litigation; the data did not include pre-suit settlements.[5]

The Impact of Small Verdicts and Settlements on the Trucking Industry provides key insight into the current climate of the trucking industry while also anticipating future trends in trucking litigation. A few significant conclusions from the report stood out. For instance, the study showed that settlements in trucking cases were approximately 37.7% larger than verdicts.[6] The type of injury also affected whether a case settled or resulted in a verdict. Cases involving a fatality were 393% more likely to settle and cases with a severe injury were 217% more likely to settle than reach a jury.[7]

Furthermore, ATRI's investigation of how alleged driver infractions affected smaller payouts reinforces the importance of carrier safety practice.[8] Alleged driver infractions that resulted in the largest payouts did not uniformly relate to the accident giving rise to a plaintiff's claim.[9] ATRI noted that "[p]oor driver history and other alleged carrier infractions can prove especially costly because they spark additional jury sympathy on the basis of corporate ethics and culture."[10] The data also connected poor driver history with poor hiring practices, inadequate training, and vicarious liability.[11] This correlation reinforces the importance of motor carrier oversight through programs like driver onboarding and training programs to reduce payouts.[12]

ATRI also discussed how the venue of a particular case effected the payout value of smaller claims.[13] Deemed "judicial hellholes," states like California, New Jersey and Michigan all showed average payment sizes significantly above the national average.[14] For example, California had an estimated average payment size of $588,231, or 56.1% above the national average.[15] Interestingly, ATRI identified one state with predicted lower than average payments: Tennessee.[16] In making this distinction, ATRI noted that between 2011 and 2013, Tennessee enacted limits on noneconomic and punitive damages awarded to plaintiffs and further restrictions on attorney advertising.[17]

In this light, it is no surprise that lawsuit abuse reform is of growing interest in the transportation field as a way to help curtail the frequency and severity of these smaller payouts. In fact, ATRI ranked "lawsuit abuse reform" as the fourth highest issue of concern in ATRI's 2021 Critical Issues in the Trucking Industry list[18]—only behind driver shortage, driver retention, and driver compensation. In an effort to address lawsuit abuse concerns, ATRI proposed advocating

for the elimination of phantom medical damages and educating motor carriers and law enforcement on the identification of staged accidents.

Indeed, some states have already advanced trucking lawsuit abuse reform initiatives in 2021. For example, in June 2021, Texas Governor Greg Abbott signed House Bill 19 into law. This law intends to level the litigation playing field for truckers through a variety of initiatives such as widening the admissibility of photographs and videos of a vehicle involved in a collision. The Bill also included a provision bifurcating accident trials, where the first phase of a trial involves evidence on who is at fault in a crash and the second phase determines allegations of unsafe motor carrier safety practices. Similarly, in Iowa, legislatures have introduced a series of lawsuit abuse reform bills, one of which would limit recovery of noneconomic damages for personal injury or death in civil cases to $1 million for commercial motor vehicle owners in the case of an employee's negligence. Moving into 2022, we should expect to see more tort reform bills aimed at curtailing both the frequency and severity of small settlements and verdicts in the trucking industry.

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[1] D. Murray, N. Williams & E. Speltz, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry*, AMERICAN TRANSPORTATION RESEARCH INSTITUTE, June 2020.
[2] C. Evans & A. Leslie, *The Impact of Small Verdicts and Settlements on the Trucking Industry*, AMERICAN TRANSPORTATION RESEARCH INSTITUTE, Nov. 2021.
[3] ATRI identified crash characteristics as factors such as the number of vehicles involved in the crash, alleged faults on the part of the driver or motor carrier, and the injuries sustained by the plaintiff. Litigation factors included the presence of expert witnesses, the location of the crash, and whether the case was tried in state or federal court. *Id.* at 6.
[4] Id. at 10.
[5] Id.
[6] Id. at 32.
[7] Id. at 32.
[8] Id. at 18.
[9] Id. at 18.
[10] Id. at 18.
[11] Id. at 19.
[12] Id. at 19.
[13] Id. at 13.
[14] Id. at 13.
[15] Id. at 13-14.
[16] Id. at 14.
[17] Id. at 14.
[18] *Critical Issues in the Trucking Industry – 2021*, AMERICAN TRANSPORTATION RESEARCH INSTITUTE, Oct. 2021.

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