



The best way for a trucking company to avoid an accident-related "nuclear verdict" — a judgment in excess of \$10 million — is to stay out of the courtroom. Post-accident response is key to minimizing risk and avoiding the lawsuits that lead to nuclear verdicts.

A nuclear verdict can put a trucking carrier out of business. From 2010 to 2018, the average size of jury verdicts in trials involving trucking companies rose from \$2.3 million to \$22.2 million. More than 300 verdicts over the last five years were in excess of \$1 million.<sup>1</sup>

To protect against nuclear verdicts, it's essential for drivers to know what to do immediately following an accident.

Drivers and carriers that act swiftly post-accident can help prevent a bad situation from getting worse. Follow these seven best practices to help put your drivers and transportation company in the best position possible should you be subject to a lawsuit.

## ☐ Report every incident.

Even the smallest incident can blow up into something much larger. Drivers must follow the same best practices protocol even after a minor accident. Report every incident and document the scenario, regardless of the apparent severity or time of day.

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<sup>&</sup>lt;sup>1</sup>ATRI, New Research Documents the Scale of Nuclear Verdicts in the Trucking Industry, June 23, 2020.

|   | Stay calm and gather information.  |  |  |  |  |  |  |  |  |  |  |
|---|--|--|--|--|--|--|--|--|--|--|--|
| Drivers should be trained to fill out a company accident form that details information regarding other vehicles and individuals involved. They must gather the following: |  |  |  |  |  |  |  |  |  |  |  |
|   |  | The name and contact information for each driver, including the cell phone number and photo of license plates of the vehicles involved |  |  |  |  |  |  |  |  |  |
|   |  | The name and contact information for all passengers  |  |  |  |  |  |  |  |  |  |
|   |  | Information about vehicle or property ownership  |  |  |  |  |  |  |  |  |  |
|   |  | The names of any witnesses   |  |  |  |  |  |  |  |  |  |
|   | <ul> <li>Police report specifics, including the police department, officer name and rep<br/>number</li> </ul>  |  |  |  |  |  |  |  |  |  |  |
|   | In the event of serious injuries or a fatality, drivers must wait at the scene for a company or insurance representative to help document information. |  |  |  |  |  |  |  |  |  |  |
|   | Document the accident with photos.   |  |  |  |  |  |  |  |  |  |  |
|   | Drivers should photograph every accident — even seemingly minor accidents — and forward the photos to the motor carrier immediately:                   |  |  |  |  |  |  |  |  |  |  |
|   |  | Use the phone's time-stamp feature to take detailed photos of the accident   |  |  |  |  |  |  |  |  |  |
|   |  | When possible, take a panoramic photo of the scene to help identify details or other witnesses later                                   |  |  |  |  |  |  |  |  |  |
|   |  | Forward photos to the motor carrier immediately  |  |  |  |  |  |  |  |  |  |
|   |  | Never share details or images on social media  |  |  |  |  |  |  |  |  |  |
|   | The driver and the carrier need to talk.   |  |  |  |  |  |  |  |  |  |  |
|   | The carrier should meet with the driver and get the facts written down as soon as possible, using a form designed for the purpose. Company             |  |  |  |  |  |  |  |  |  |  |

as soon as possible, using a form designed for the purpose. Company management — not drivers — should fill out forms. It is important not to use defamatory language in the form, and to stick to facts and not draw conclusions.

BE WARNED. **Any document in written form is discoverable.** Brevity is key — only note basic information to avoid ambivalence.

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Following the accident, motor carriers must perform an alcohol test within eight hours and a drug test within 32 hours of the incident. As this is a DOT mandate, don't rely on police to test the driver. Without this testing, a plaintiff's attorney could frame the absence of testing within the DOT mandate as an admission of guilt.

## ☐ Involve your claims organization immediately.

Get your claims team up to speed quickly, even if the accident occurs on the weekend or late at night, giving them all accident reports and in-cab video and data. Don't let your claims representative delay filing — too often, accidents can "go nuclear" before a carrier has responded. An immediate response can help squelch a lawsuit before it gets filed. Every accident involving an occupied vehicle must be considered serious and warrants an immediate response.

## □ Discovery can happen at any time.

Be prepared for discovery following any lawsuit filing. Carriers and their attorneys need to have access to all documents and records, including the in-cab video, the driver file and vehicle maintenance file. Discovery can happen soon after an accident, or it may take years. Carriers must be prepared for it at any time. Gather information quickly to avoid scrambling at the 11th hour.

Contact your HUB transportation specialist for more information on accident and incident investigation protocol and procedures.

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