

Wheels of Justice

Trucking Targets Jury Awards

Experts Discuss Challenges of Reducing 'Nuclear' Verdicts

By Eric Miller
Senior Reporter

The trucking industry is making gains in its fight against the plaintiffs bar and the increasing size of jury verdicts levied against motor carriers, but those in the trenches say the battle is not over.

Last year, American Trucking Association's President Chris Spear announced that the trucking industry was waging war against excessive jury verdicts in accident litigation.

"We're growing very tired as an industry being picked on by the plaintiffs bar," Spear said during an interview with TRANSPORT TOPICS before an October 2019 ATA conference in San Diego. "We're growing very tired of padding the pockets of trial lawyers at the expense of trucking jobs, and we're just not going to stand for it anymore. It's an all-out assault against the industry, and we need to be in a position to fight back."

The ATA federation has notched some victories in that fight, scoring wins in Louisiana, Iowa and Missouri, Spear said.

In Louisiana, the Omnibus Tort Reform bill ended the state law banning trucking attorneys from introducing evidence of accident victims not wearing seat belts, and included a provision that would limit inclusion of certain medical bills from jury awards. Similar legislation has advanced in Iowa and Missouri, Spear said.

"The war rages on, but I think we are winning some battles, particularly at the state level," Spear told TRANSPORT TOPICS. "A key part of our strategy is to expose this profession and the adverse impact it is having on our industry, on the hardworking men and women in trucking, but also directly on the economy itself."

The American Transportation Research Institute in a June 80-page study detailed the rising stakes and, in some cases, specious jury logic attached to what it described as "nuclear" verdicts against the trucking industry. In studying data from 600 truck-involved crash court cases, ATRI concluded that nuclear jury verdicts against motor carriers — those generally totaling \$10 million or more — have increased steeply since 2010. From 2010-2018, the average jury verdict in trucking trials increased from \$2.3 million to \$22.2 million — a jump of 967%, ATRI said.

One case in particular underscores the stakes for fleets. In 2018, a Houston jury returned an \$89.7 million verdict against Werner Enterprises Inc. to the surviving members of a Texas family after a six-week civil trial. In this 2014 crash, which killed a child, severely harmed one passenger and injured two others, a pickup truck driven by a friend of plaintiff Jennifer Blake lost control on a slick interstate, traveled across the highway median and collided with a Werner tractor traveling on the opposite stretch of road.

Werner is appealing the verdict.

The study noted that litigation prepara-

tion is, and should be, complex and costly; motor carriers must make thorough and objective risk assessment during litigation preparation.

"Case vulnerabilities and potential liabilities must be acknowledged, and vetted against realistic financial damage projections," ATRI said. "A useful tool in developing realistic risk assessments is internal point-counterpoint/devil's advocacy debates."

ATRI concluded that certain types of accidents and injuries effectively guarantee a large jury verdict before attorneys even enter the courtroom. These include crashes that cause brain or spinal injuries, those with multiple deaths or the death of a child, or those in which multiple passenger vehicles are involved. It also found that certain types of crashes tend to land in court, including collisions, sideswipes, U-turns, stops and lane changes.

verdicts. Texas had the greatest number of cases studied — 86 — and 55.8% ruled for the plaintiff.

ATRI added that if a motor carrier decides that a settlement is likely the best solution to a lawsuit, the earlier the better. That is because it found that jury awards tend to increase the longer a case dragged on, regardless of the factors of the crash.

Another challenge motor carriers face is a common strategy of plaintiffs attorneys making emotional arguments, attempting to tug at jurors' heartstrings. The strategy, known as the "reptile theory," attempts to appeal to the primitive part of jurors' brains — putting themselves into the victim's shoes.

Michael Leizerman, a trial attorney and founder of the 700-member Academy of Truck Accident Attorneys, does not agree with the negative characterizations of his profession, and takes issue with the concept of nuclear verdicts. "I have to ask — is

against carriers with deep pockets.

Rob Moseley, a longtime trucking defense attorney with the Moseley Marcink Law Group, based in Greenville, S.C., said plaintiffs attorneys these days are more aggressive, share information about trucking companies with their colleagues, and are more shrewd than those who have practiced in the past. "Our opponent is much different," Moseley said.

Moseley also noted that strategy plays an important role; while many trucking defense lawyers try the accident, plaintiffs lawyers take aim at the trucking company.

"You've got to defend the trucking company, not the accident," Moseley said.

Bradford Hughes, a Los Angeles-based trucking and logistics firm defense litigator with the international law firm of Clark Hill, said trucking defense attorneys too often "fall in love with their liability defenses."

He said, "They can become too tunnel-visioned on their view of the case. By the time the case gets to the jury, they really appreciate for the first time the plaintiffs' view of the case. Sometimes it causes you to miscalculate the propriety of settling some of these cases early on."

Hughes said that the plaintiffs bar "has endorsed the concept of shoot for another universe, and you're still going to land on the moon."

He added, "There aren't enough trucking lawyers that are truly specialists in trucking being hired by a lot of different clients to defend these cases. Trucking law is a specialty area. It requires expertise, study and knowledge. You have to know what you're doing, be as savvy as the plaintiff bar is in these areas."

Daniel Murray, ATRI's senior vice president, noted that plaintiffs attorneys also tend to be good courtroom storytellers. "Trucking lawyers show up with rational arguments, highly technical subject-matter experts and weaknesses," Murray told TT, while plaintiffs attorneys, he said, often build their cases around emotional appeals regarding the victims' lives in the wake of the crash.

"You would think facts and logic would win out. But that's not always the case with juries today. So we need to start to mirror the strategies that the plaintiffs bar is using and winning with," Murray said.

Greg Feary, president of the Scopelitis firm, noted that some juries enter a trial with a bad image of the trucking industry, resulting in them seeking to punish the industry with large verdicts.

Feary, also vice chair of the ATA/National Accounting & Finance Council Risk Management & Insurance Advisory Committee, said the fight to reverse the trend of nuclear verdicts must therefore be fought in the trenches, at the state level.

"The long game is always convincing the American voting public at the state level to see trucking as a very positive thing," he said.

Cases With Nuclear Verdicts \$1 Million+



The report also noted that strictly adhering to safety and operational policies is essential to staying out of court and/or reducing award sizes. ATRI's research included interviews with trucking and plaintiffs attorneys.

The report added, "Almost any failure to adhere to [federal regulations] or company safety policies will be the focus of plaintiff arguments. The most common examples included failure to run proper background checks, failure to conduct or review drug testing, and tolerance of driver violations such as hours-of-service and log book citations."

ATRI said that solely from a litigation standpoint, motor carriers should consider federal requirements as minimum standards that can and should be exceeded, rather than assuming compliance is adequate. The ability of defense attorneys to document carrier or driver safety activities that exceed FMCSRs carries great weight with juries, it said.

ATRI also found that jury decisions vary by state. For instance, in Alabama, 92.3% of the 20 cases tried resulted in a defense verdict, while 97.1% of 34 cases in California resulted in plaintiff

it a case that has a nuclear injury?" he said.

Leizerman noted that a 27-year-old client of his was left a quadriplegic after an accident and will require \$20 million worth of medical care for the rest of his life. "The dispute may be, is it \$17 million or \$22 million? In that case, even the trucking attorneys are saying, 'Yeah, let's take care of this guy,'" he said.

This is a strategy that attorney Mike Langford described as "life care plans," which can increase awards to truck accident victims who will require expensive lifelong medical treatments. Langford, a top litigator in the Indianapolis-based law firm of Scopelitis, Garvin, Light, Hanson & Feary, and others who spoke to TT said plaintiffs attorneys are an increasingly formidable foe.

"When I started practicing 26 years ago, it was a very different landscape than now," Langford said. "There are better plaintiff attorneys handling trucking cases now than were handling the cases 25 years ago, or even 15 years ago." Langford noted that many states don't limit the amount juries can award in trucking crash cases, compelling some plaintiffs attorneys to hand-pick lawsuits