



Negligent Hiring of Motor Carriers: Third-Party Transport Liability Risks



An organization may be held liable for **Automobile Negligent Entrustment** if it has failed to employ safe drivers. Employers can take steps to mitigate risks of negligent entrustment by ensuring the individuals they hire to operate vehicles are qualified, competent and responsible drivers. Current trends in litigation contribute to the rise of increasingly large verdicts and the need for organizations to take a proactive approach to limiting liability risks, including when utilizing third-party motor carriers.

In the event of an incident involving a motor carrier, plaintiffs may seek to place blame on not only the motor carrier but also on anyone the carrier was doing business with or for, which may include your organization. Recognizing terms such as those noted below may help organizations understand some of the potential risks when working with third-party transportation providers. Review the terms below and consider how they may impact your organization.



Concepts to Know:



Nuclear Verdict:

In the United States, an exceptionally high jury award surpassing a reasonable or rational amount is considered a nuclear verdict. Nuclear verdicts are typically defined as jury awards that surpass \$10M USD. These verdicts are often demanded when an auto accident involves a serious injury or death of a person(s)¹. The overall awards in these verdicts continue to increase, with a median award value increase of 63.2%, from \$15.2M in 2010 to \$24.8M in 2019².

Nuclear verdicts are rising both in terms of the number of verdict awards as well as the dollar figure associated with them. **The Institute for Legal Reform** cites that auto accidents involving trucks, primarily tractor-trailers, are particularly susceptible to nuclear verdicts, citing that about one in four auto accident trials involving a trucking company resulted in a verdict of \$10 million or more.



Reptile Theory:

Reptile theory is a trial strategy that utilizes fear and anger to solicit a higher award amount to the plaintiff³. Historically seen in mass litigation cases involving nationally or globally recognized names, this theory is often utilized among organizations of all sizes. The plaintiff's lawyers cite the organization's responsibility to have known better, and in pushing for nuclear-sized verdicts will set a precedent for other organizations not to act in the same manner as the defendant.

Social Inflation:



Social inflation includes rising litigation costs to defend a claim, beyond what is expected through general economic inflation. This has been attributed to the rising demands of plaintiffs and other factors such as supply chain and workforce shortages. Social inflation⁴ can drive up the costs of repair work and vehicle and equipment replacement and impact shipping timelines and fees.

Third-Party Litigation Funding (TPLF):



Outside investors pay claimants' legal fees for a portion of the potential award. The use of TPLF remains legal in many jurisdictions; however, the legal landscape continues to change⁵. TPLF tends to be utilized specifically in mass litigation cases or cases where a nuclear verdict may be awarded, such as in catastrophic motor vehicle accidents. Additional funding for claimants' legal fees allows counsel the opportunity to invest more in fighting the case and ultimately demand higher judgment awards.

¹ <https://truckingresearch.org/2020/06/understanding-the-impact-of-nuclear-verdicts-on-the-trucking-industry/>

² <https://instituteforlegareform.com/research/nuclear-verdicts-trends-causes-and-solutions/>

³ <https://www.verisk.com/blog/the-rise-of-nuclear-verdicts-and-how-to-rein-them-in/>

⁴ <https://www.iii.org/article/social-inflation-hard-to-measure-important-to-understand>

⁵ <https://www.uschamber.com/improving-government/pulling-the-curtain-back-on-foreign-influence-in-third-party-litigation-funding>

What your organization can do to address negligent entrustment claims:**1 Formalize & Implement Policies**

Outline your organization's best practices for reviewing and hiring third-party motor carriers. Ensure the protocol is implemented and all individuals responsible for hiring these carriers are held accountable for their responsibilities and actions. An organization may be found negligent not only when a policy does not exist but also when a policy does exist and is not adhered to. Simply put – do what you say and say what you do.

2 Social Responsibility & Reputational Risk

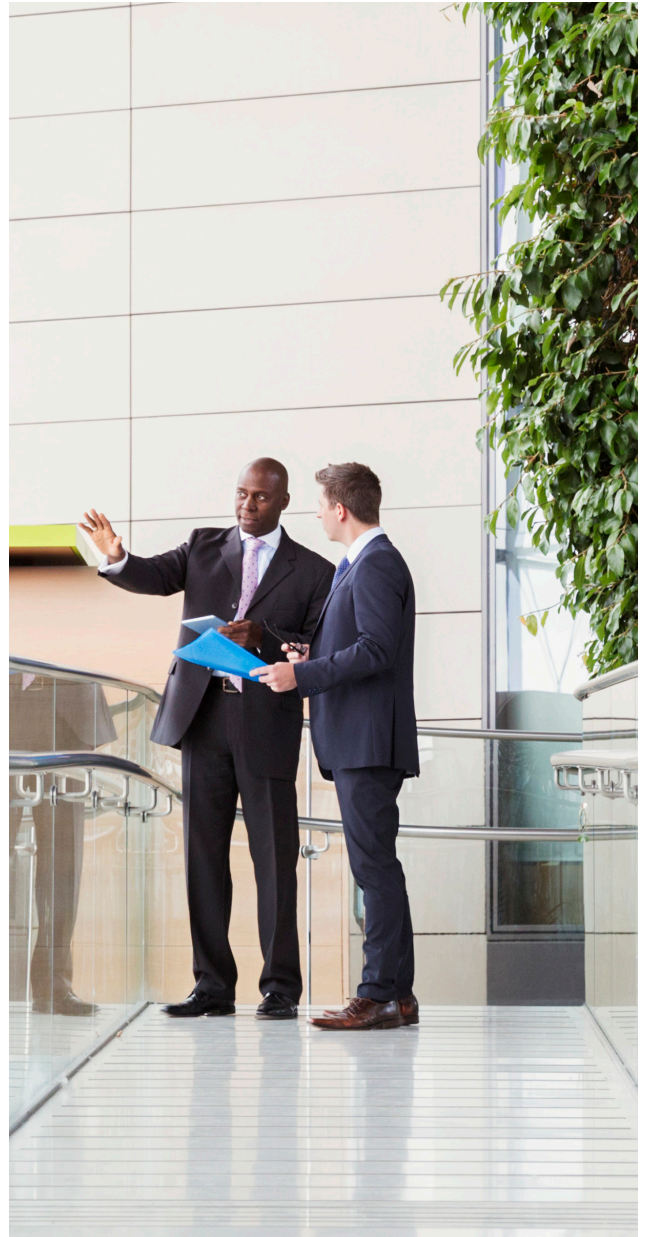
Understand your social responsibility to keep safe drivers on the road. This includes qualifying and hiring motor carriers who take action to ensure they not only have safe drivers, but also implement safety-focused training, ensure substance use monitoring and testing is in place, monitor both jurisdictional regulation and trends, and act to continuously improve their driving behaviors. Nuclear verdict-sized cases often make news headlines, and factors contributing to a company's negligence may be brought to light. The reputational risk associated with poor safety controls can severely impact the potential for businesses to continue operating.

3 Hiring & Selection Due Diligence

Motor carriers are responsible for employing qualified and safe drivers and showing they have protocols in place to monitor drivers' backgrounds, behaviors and regulatory compliance. Also, motor carriers should produce requested vehicle inspection and testing records and maintenance protocols. Due diligence in selecting a motor carrier that aligns with your business needs and your safety values is critical.

4 Contractual Risk Review

In conjunction with legal counsel, determine the level of protection your organization may require for shipping activities. This is based on several factors, including financial capabilities, impact of business operations, risk tolerance, and the type of motor carriers you plan to hire. Establish written contracts clearly outlining each party's responsibility for maintaining insurance with agreed-upon minimum limits, indemnity clauses, services provided and safety requirements relative to drivers, vehicles and securement activities.



Whether or not your organization has been involved in an incident, understanding these terms and taking the appropriate steps to manage these risks may aid in managing future litigation challenges.

To learn more about managing your risk and increasing efficiency, visit cna.com/riskcontrol.

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