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The explosion of nuclear verdicts

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How these massive payouts are affecting businesses nationwide

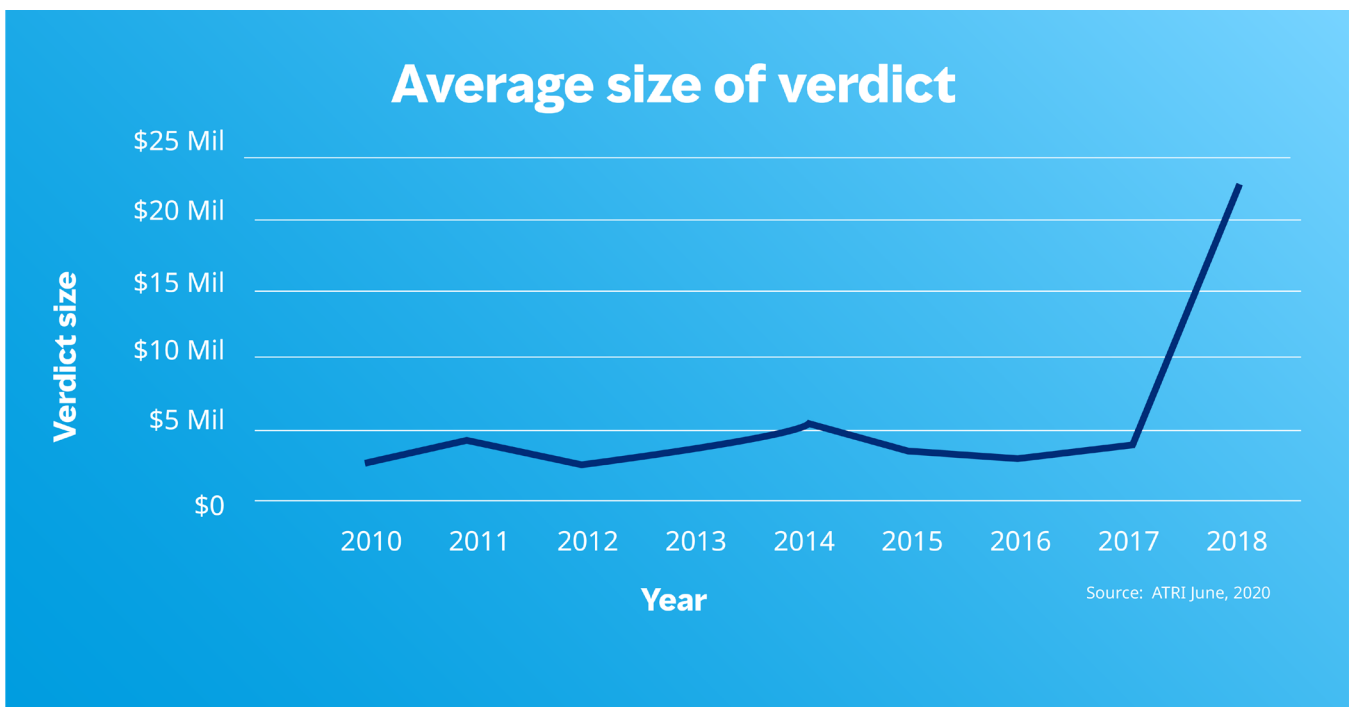


Nuclear verdicts—or large and unexpected verdicts typically exceeding \$10 million—handed out by juries have skyrocketed while the insurance marketplace is running for cover in a hard market.

In some ways, nuclear verdicts may distort the rule of law as attorneys play on a juror's emotion rather than focusing on the facts of the case. This leads to the difficult consideration of knowing when it makes sense to settle and when to take cases to trial.

Unfortunately, nuclear verdicts are not isolated by region or state. They are happening everywhere in the U.S., impacting many industries and businesses. One sector reeling from the impact is the trucking and transportation industry as they have become a flashpoint for the issue. High profile crashes have paved the way for these nuclear verdicts. Juries, who are especially sympathetic to families whose children were killed or injured, have awarded victims huge sums in an effort to financially punish those responsible. As a result, insurance renewals are continuing to see significant automobile liability premium increases.

The average size of verdict from 2010 to 2018 increased from \$2,305,736 to \$22,288,000—an increase of 967%, according to the [American Transportation Research Institute \(ATRI\)](#).



Setting the stage for nuclear verdicts

In 2014, a crash near Odessa, Texas led to one of the largest settlements in the history of the trucking industry. A truck driver employed by a for-hire motor carrier was driving under the posted speed limit in inclement conditions when a car traveling in the opposite direction lost control and veered into the truck's path. The resulting head-on collision killed one passenger, a seven-year-old, and injured three others—leaving one with traumatic brain injuries. The surviving members of the family sued the motor carrier in Texas and were awarded \$90 million in 2018. This verdict, while large, is not the largest verdict in the trucking industry.

The largest verdict for the trucking industry came from a truck-involved crash in Alabama in 2016. A truck driver for a scrap metal company was charged with five counts of criminally negligent homicide. After falling asleep at the wheel, the truck driver crossed the centerline of a two-lane highway, causing a crash that killed five individuals, including two young children. The driver, and by extension, the motor carrier, was found liable and ordered to pay \$280 million.

Another perspective from the same research conducted by ATRI in 2021 found that from 2010 to 2018, the size of verdict awards against trucking fleets grew 51.7 percent annually. At that same time, standard inflation grew 1.7% and healthcare costs grew 2.9%. This has fueled an extremely hard commercial automobile liability insurance market during the past few years.

A terrible toll

Of course, there is also a very tangible side to these verdicts as well. Tragically, the cost in human life also seems to be escalating, as revealed by the National Highway Traffic Safety Administration's (NHTSA's) [recently released estimate of traffic fatalities for 2021](#). NHTSA projects that 42,915 people died in motor vehicle traffic crashes last year, a 10.5 percent increase from the 38,824 fatalities in 2020. The projection is the highest number of fatalities since 2005 and the largest annual percentage

increase in the fatality analysis reporting system's history.

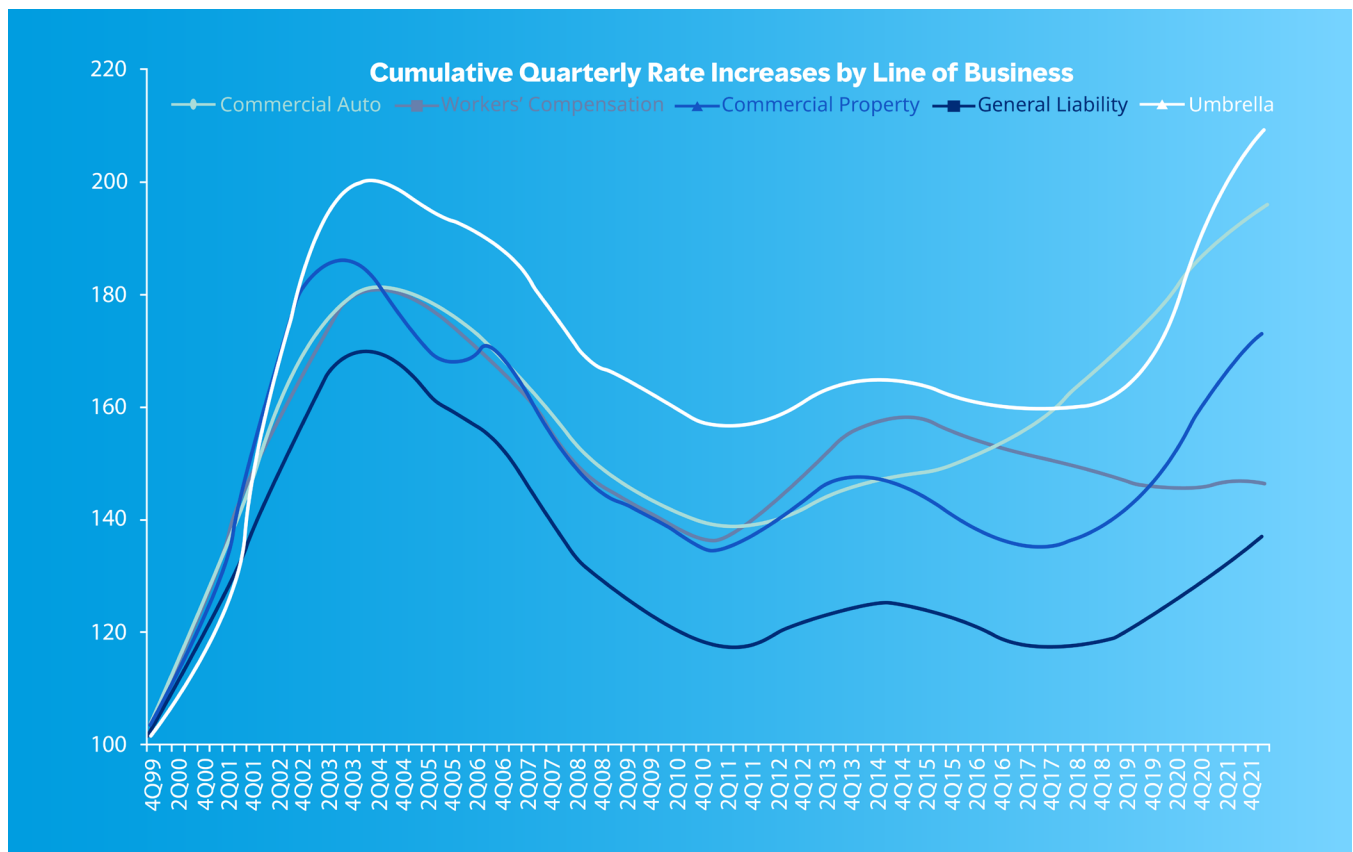
Children also play a large role in the size of the verdict. When children were involved in the crash and related litigation, verdict sizes increased 1600% on average regardless of fault.

What makes this all the more tragic is that many of the issues that lead to nuclear verdicts are entirely avoidable. In fact, there are five particular factors identified by ATRI that always resulted in verdicts favoring the plaintiff—all of which are preventable by the defendant organization and its employees.

These issues are:

- 1 Hours-of-service (HOS) or logbook violations
- 2 Lack of a clean driving history
- 3 Driving under the influence of controlled substances
- 4 Fleeing the scene of the crash
- 5 Health-related issues

Because of all these factors, nuclear verdicts are often a lose-lose situation. No amount of money will bring a loved one back and the outsized verdicts spell significant trouble for the defendant organization and the larger insurance market. In addition to simply being born from awful, avoidable situations, these nuclear verdicts are driving significant losses, causing commercial automobile and excess liability rates to soar as shown in the illustration below from CIAB.



Beyond the trucking and transportation industries

As mentioned previously, while these industries certainly take center stage when it comes to nuclear verdicts, they certainly are not the only ones.

In June 2021, a Texas jury handed out a [\\$222 million](#) verdict to Kelli Henson, the widow of a Kansas man who died in a 2018 steam accident at Evergy's Jeffrey Energy Center power plant.

In December of 2021, a jury ruled in favor of Andrew Rudnicki—a former senior vice president at Farmers Insurance Group who was fired in retaliation for testimony he was set to give in a class pay bias lawsuit by the companies' female in-house lawyers—to the tune of [\\$155 million](#).

Even an EV auto manufacturer [found itself on the receiving end](#) of a nuclear verdict unrelated to their vehicles in a lawsuit over allegations of racism, though that verdict was [later dropped](#) from \$157 million down to \$15 million.

"Sensing opportunity as cultural attitudes shift, plaintiffs' attorneys use increasingly aggressive tactics to redirect focus away from the fundamental and necessary evaluation of liability in order to inflate the value of a claim in a given litigation," explains Travelers [in a recent blog post](#).

In other words, the pursuit of nuclear verdicts doesn't appear to be going away any time soon. So, what is to be done?

The need for reform

Beyond anything else, the implementation of proper safety and workforce management programs is likely to be the most impactful risk management activity any organization can undertake to avoid nuclear verdicts. Step back and take a careful look at your operations, identify the areas for improvement, and take action to fill the gaps where there are unaddressed risks.

Additionally, there is a clear need for national tort reform to address laws requiring a company



to pay for more than its share of liability for an accident or issue. Although many states are making progress in limiting the liability of trucking companies and/or lowering verdict and settlement sizes, the key to mitigating the effects of nuclear verdicts as a whole lies in tort reform at the national level.

The action *you* can take today is to ask your Marsh McLennan Agency representative for recommendations before an accident takes lives and places your company at risk. Our risk management specialists can help keep your organization rolling—and your workforce safe.

Data and statistics in this piece are compiled from ["Understanding the Impact of Nuclear Verdicts on the Trucking Industry."](#) MMA also acknowledges Daniel Murray, Senior Vice President at ATRI for providing additional information and technical support.

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