



Idelic First Annual
**FLEET SAFETY
CONFERENCE**



Preventing a Nuclear Verdict: Proper Driver File Management



Agenda

01 Why Do Nuclear Verdicts Happen?

02 Document Management

03 File Management

04 Steps you can take today

Why Do Nuclear Verdicts Happen?

Why Do Nuclear Verdicts Happen?

- The standard definition of a Nuclear Verdict is a verdict of **\$10 million or more**.
- One of the biggest vulnerabilities for trucking fleets is juries.
 - Juries don't have exposure to the trucking industry, so plaintiff's attorneys can weaponize their lack of understanding and make them see a defending fleet as a threat to the motoring public.
 - This is known as "**reptile theory**."
 - Almost universally, plaintiff's attorneys claim that "**the fleet placed dollars over lives**."
 - They will try to argue that there was a relatively simple preventative measure the fleet could have implemented, but failed to so they could preserve their profits.
- Defense attorneys generally try to put a human face on a fleet and argue that they aren't a big, faceless corporate entity.
 - Plaintiff's attorneys often try to frame a case as an innocent person versus a giant corporation. To win a case, it's important that fleet push back against that characterization.
- For fleets, **prevention is the first step**.
 - The best defense against a Nuclear Verdict is to prevent a crash before it happens.
 - Cultivating a positive safety culture in your fleet can both prevent crashes and bolster your claim that you care about safety.

Why Document Management is So Easy to Get Wrong

Why Document Management is so Easy to Get Wrong

- The most common form of document mismanagement: **Out-of-date files.**
 - **Example:** Not having an up-to-date DVIR or medical file.
- The infrastructure of the trucking industry has not caught up to technology.
 - Trucking fleets have data coming in from so many different sources, that it's impossible to manage it all without the right technology solutions.
- There are certain behaviors that have a high likelihood of resulting in a Nuclear Verdict.
 - HOS/Log book
 - Driver History
 - Controlled Substance
 - Left the Scene of the Crash / Failed to Call 911
 - Health-related Issue
- **Important to note:** More often than not, the event that leads to a crash is caused by the car driver, not the truck driver.
 - Despite this, trucks can still be sued for millions of dollars if they are found negligent, regardless of who caused a crash.
- “Exception management” can help fleets manage their data.
 - It can be difficult to analyze all of your data, so focusing on the “exceptional” or “outlier” behaviors that most often lead to a crash can help mitigate your total number of crashes.

Why Document Management is so Easy to Get Wrong

- Camera technology can majorly help the safest fleets prevent Nuclear Verdicts.
 - These give you proof of exactly what happened.
 - Some of the newest cameras can warn drivers when they engage in an at-risk behavior, such as a lane departure.
- Fleets need to make sure drivers understand that the training they're receiving is to protect them.
 - If drivers feel training is punitive, they're more likely to not pay attention. You need to make sure they understand training is for their benefit.
- Fleets should perform internal audits on a regular basis.
 - This can help you plug gaps in your safety program before an outside party notices an issue.
- **Audience Question:** "When a crash happens in a work zone, what changes?"
 - The #1 issue with work zones is that the speed limit is dramatically reduced.
 - Sometimes, if there isn't active work happening in a work zone, drivers don't comply with the reduced speed limit. This is a major problem for fleets.
 - In a work zone, there are more potential parties that can sue you, such as the contractors working in the work zone.
 - **About 28% of all work zone fatalities involve a truck.**
 - About $\frac{2}{3}$ of all car-truck crashes that occur in a work zone involve a truck rear-ending a car.
 - About another $\frac{2}{3}$ of all car-truck crashes with a fatality that occur in work zone involve a car rear-ending a truck.
 - If an infrastructure bill passes, fleets should anticipate more work zones on our nation's highways.
 - Although work zones typically have more witnesses to a crash, which can give additional evidence to a safe fleet, fleets should **avoid work zones when possible**, as they're higher risk environments to drive through.



File Management



Best Practices
to avoid a Nuclear Verdict

File Management: Best Practices to Avoid a Nuclear Verdict

- What should fleets be doing to ensure proper file management?
 - First and foremost, every driver should have a DQ file that mirrors what federal regulations require.
 - Not having compliant DQ files is surprisingly common.
 - Fleets often add policies to their safety manual without updating their training and procedures to match it.
 - If you aren't in accordance with your own procedures, you're very likely to suffer a Nuclear Verdict.
 - Fleets tend to view meeting federal regulations as “being safe,” but plaintiff's attorneys often argue that meeting federal regulation is the bare minimum, and that fleets need to go above and beyond.
 - It's increasingly accepted by juries that **federal regulations are the minimum standard of safety and aren't enough anymore.**
 - Going the extra mile on safety not only preempts this attack, but is a good defense strategy too.
- What does the ideal document management system look like?
 - Consistency is key. Plaintiff's attorneys will point out inconsistencies to prove negligence.
 - Giving your mechanics and drivers recognition for displaying positive behaviors encourages them to repeat them
 - Safe fleets will often have management review every single incident to ensure the highest standards of safety are met.
 - This helps you proactively intervene with drivers, but also gives you evidence that you take safety seriously.
 - **If you can't manage your data, then it will only hurt you.** You have to be able to manage it proactively.
 - At the same time, if you're not collecting data then you're not meeting the highest standards of safety.
 - You will almost certainly lose your case if you have the ability to collect data but fail to.

**Steps you can
take today**

Steps You Can Take Today

- What are actionable steps that fleets can take today to manage their data and stay compliant?
 - Prevention is #1. Identifying and addressing behaviors that are more likely to cause a crash than others is the most important thing you can do.
 - Reading publications like ATRI research can tell you what behaviors are most likely to cause a crash.
 - Analyzing your own data can help you identify safety weaknesses that are more likely to cause a crash than others. Doing so will help you target your process improvements to these weaknesses.
 - Consistency is incredibly important. If you train your staff to view every piece of documentation as “something that will appear in front of a jury” then you will be much more likely to stay compliant.

Q&A



Q&A

- “How should we be managing files that are out-of-date but given leniency given FMCSA regulations related to COVID-19?”
 - “Files should not be out-of-date because of COVID-19. If there is some governmental function that you needed input on—like, for example—you can't get an MVR because the government office is closed, you'll still want to send a memo in the driver file from the person requesting it that says “On this date, I tried to get an updated MVR on this driver and I contacted this office or did X, Y, Z, and at every turn, I was confronted with a dead end.” You should not have a file out-of-date because of COVID-19, but if you do, **you better have an explanation.**”
 - “Don't let this be an excuse or reason. You should be just as buttoned up as you were before, because who knows when this is going to end? It's harder to get started again once you stop. You don't want to stop your processes and then have to start over again. **So just stay consistent.**”