



TRUCKER

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Focus



FIGHTING

LAWSUIT ABUSE

DEFENDING AGAINST UNJUST NUCLEAR VERDICTS



Truckers have a lot to worry about. But, according to Nevada Trucking Association CEO Paul Enos, there's one concern that tops all others.

"When I talk to our members, what keeps them up at night isn't the

economy. It's not the price of diesel. It's whether they can survive if they wind up on the losing end of a nuclear verdict."

A nuclear verdict describes a jury award that surpasses a reasonable or rational amount for the actual damages caused. According to a recent study by **The American Transportation Research Institute**, the size of jury verdicts against truckers grew over 50 percent annually over a decade.

"That's nearly a one thousand percent increase in verdict amounts in a decade, including the industry's first \$1 billion verdict in 2021," Enos says.

Several factors are driving the nuclear verdict trend, including increasingly sympathetic juries and litigation financing, where investors fund lawsuits against truckers in hopes of a big investment return via a share of a jury award. However, the biggest influence is the use of the reptile theory by plaintiffs'

attorneys. The reptile theory manipulates jurors' instinctive and emotional responses, essentially arguing that no matter the facts of a case, a trucker is simply too dangerous to be allowed to operate and must be punished.

"In far too many cases, it's no longer about providing just and fair compensation for injuries and damages. It's become 'jackpot justice,'" Enos says. "Unfortunately for truckers on the losing end of that jackpot, it can end up taking away everything they have worked to build—their ability to get insurance, to keep operating, to care for their families."

To defend against the reptile theory, Enos led the development of the mongoose method. The method involves a multi-faceted approach to legal defense, including recognizing traps set by plaintiffs' attorneys and avoiding falling into those traps on the witness stand or across the deposition table. It also focuses on training motor carriers on proactive strategies they should employ before an accident occurs.

"Truckers should go through every page of their safety program, every word in their employee handbook, and every statement on their website, because plaintiffs' attorneys will look for any error or inconsistency," Enos says. "Don't wait for a lawsuit to be filed to discover those—if you say you are doing something, be sure you actually are. If you're not, either start doing it or get it out of your handbook," Enos says.

Acuity works hard to protect our trucking clients and benefit the trucking industry. We recently hosted Paul during our 2024 strategic planning sessions, reflecting our partnership and ongoing strategy around defending against lawsuit abuse. And the trucking industry is doing its part to improve safety as well. According to the **American Trucking Associations**, the industry invests at least \$10 billion in safety, including safety technologies, safety training, driver safety incentive pay, and compliance with safety regulations.

“The frustrating part about the increase in nuclear verdicts is that truckers continue to lead the way in safety despite how they are being cast by plaintiffs’ attorneys,” says Enos.

“The goal of the mongoose method is not to avoid paying compensation or to escape liability if a trucker is indeed at fault. However, the pendulum has swung so far away from fairness to the extreme,” Enos says. “It’s about restoring balance to the justice system.”

To learn more, visit www.mongoosemethod.com.



Motor Carrier TOOLBOX

Acuity’s Motor Carrier Toolbox serves as a one-stop shop for resources that help trucking businesses become more compliant and run more efficiently. It includes a wealth of information and provides access to tools, programs, and policies designed to help motor carriers comply with CSA and other FMCSA/DOT regulations.

Check out this useful reference on common FMCSA violations. It’s available without a sign-in at www.acuity.com/mctb under the FMCSA & CSA menu.

Common Violations
The following tables categorizes some of the most common violations cited during roadside inspections conducted in 2021. To find additional data, visit [FMCSA's Analysis & Information \(A&I\) website](https://www.fmcsa.gov/analysis).

Parts & Accessories Violations (vehicle violations)	Relevant Code
Not having required operable lamps	393.9
Clamp/roto-chamber type brake(s) out of adjustment	393.47(e)
No/discharged/unsecured fire extinguisher	393.95(a)
Inoperative turn signal	393.975
Tire-flat and/or audible air leak	393.75(a)
No/defective lighting devices/reflective devices	393.11
CMV manufactured after 10/19/94 has an automatic airbrake adjustment system that fails to compensate for wear	393.53(b)
Windshield wipers inoperative/defective	393.78
Tire tread depth less than 2/32 of an inch	393.75(c)
No/insufficient warning devices	393.95(f)
Vehicle Maintenance Violations (vehicle violations)	Relevant Code
Operating a CMV without proof of a periodic inspection	396.17(c)
Parts or accessories in disrepair	396.3(a)(1)
Oil or grease leak	396.5(b)
Brakes out of service: the number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combination. Brakes General. Brake system pressure loss.	396.3(a)(1)
Failure to correct defects noted on previous inspection report	396.9(d)(2)
Hubs - oil and/or grease leaking from hub - outer wheel	396.5(b)
Tires (general)	396.3(a)(1)
A liquid fuel system with a dripping leak at any point.	396.3(a)(1)
Hubs—wheel seal leaking	396.5(b)
Unsafe operations forbidden	396.7
Universal joint with loose, broken, or missing component, or bearing strap	396.3(a)(1)
Driver Qualification Violations (driver violations)	Relevant Code
No medical certificate in driver's possession, and operating a property-carrying vehicle without possessing a valid medical certificate	391.41
Expired medical examiner's certificate	391.45
Driver does not have a valid operator's license for the CMV being operated	391.11
Driver cannot read or speak the English language sufficiently to respond to official inquiries	391.11
Driver lacking physical qualification(s)	391.11

ASK THE CONSULTANT

Cliff Johnson
is Acuity's Trucking
Consultant. Have a
question for Cliff?
Reach him at
cliff@acuity.com.



Ask Cliff

How can I protect my trucking operation from distracted drivers?

Truckers are aware that hauling freight comes with a certain level of risk, and we see examples on the road every day. As a professional driver, you and your company have taken precautions to mitigate risks as much as possible.

One of the more challenging risks today comes from other drivers who are distracted. With ever-increasing technology available to the motoring public, the situation is getting worse. Statistics show that at any given time, as many as 660,000 drivers are using their phones while operating a vehicle. The National Safety Council reports that cell phone use while driving leads to 1.6 million crashes each year, and the **National Highway Traffic Safety Administration (NHTSA)** reports that distracted driving accounts for 8.1 percent of all car crash fatalities, along with nearly 325,000 injuries annually.

There are three types of distracted driving to be aware of:

- 1 Visual Distraction.** *Traveling at 55 mph, looking away from the road for just 4 seconds is enough time to travel more than the length of a football field.*
- 2 Manual Distraction.** *This involves removing one or both hands from the steering wheel to perform non-driving tasks, such as dialing a cell phone or adjusting the radio. Manual distraction often leads to visual distraction.*
- 3 Cognitive Distraction.** *The most dangerous form of driver distraction involves any activity that causes a driver to take their mind off the task of driving. According to NHTSA, daydreaming is a common form of cognitive distraction.*

Protect yourself from becoming a distracted driver by planning ahead of time. Set up your in-cab technology to be hands-free and be sure all information you need for your trip is loaded before you turn a wheel. Organize your cab to minimize clutter and limit eating or drinking behind the wheel. Even talking to other people using hands-free devices can create a distraction, so be vigilant.

You can't control other drivers on the road, but you can become a defensive driver. Defensive driving techniques allow you to react quickly when other drivers become distracted and drive in an unsafe manner that could cause a crash. If your fleet isn't familiar with defensive driving yet, there are many materials available. Acuity partners with J. J. Keller to offer our customers free **distracted and defensive driving training videos** in both English and Spanish that can be accessed from our website. Several defensive driving programs are available in the market as well.



WIN \$100!

FIND THE FLAGPOLE TO BE ENTERED!



Acuity is proud to hoist a 70- by 140-foot American flag on a 400-foot flagpole at our headquarters in Sheboygan, WI. Visit www.acuity.com/flag to learn more.

To enter, find the flagpole hidden in this issue and send an email with the location to flagcontest@acuity.com. We'll randomly choose a winner from the correct entries received by July 31, 2023.



WINNER

of last issue's contest was:

Tammie Peterson

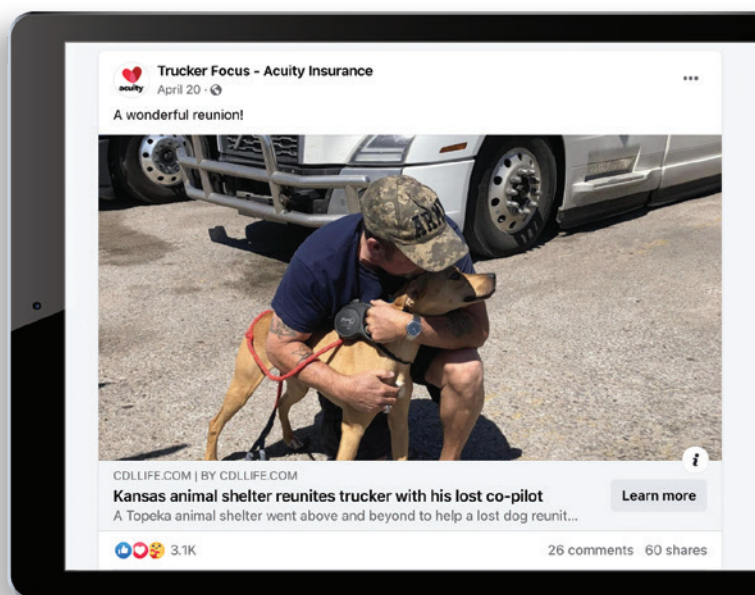
TRICOR, Inc.
Black River Falls, WI

This contest is not open to employees of Acuity or their immediate family members. For a complete list of rules, visit www.acuity.com/flagcontestrules.

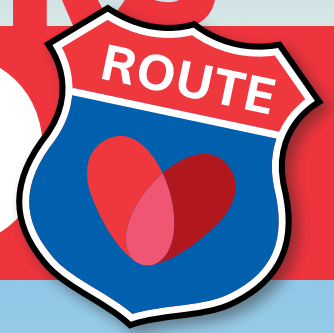
JOIN THE CONVERSATION

 facebook.com/acuitytrucking

Read about how a Kansas animal shelter helped reunite a trucker with his beloved cab companion, and check out other interesting news and information on our trucking Facebook page, facebook.com/acuitytrucking.



THE TRUCKERS' ROAD



Being a truck driver is a demanding yet rewarding profession that allows you to witness the beauty of different landscapes across the country. While long hours on the road are the norm, a reset provides an opportunity to rest, recharge, and explore intriguing destinations. In this article, we'll highlight a few places you might find interesting during your downtime.

I-80 TRUCK STOP: A HAVEN FOR TRUCKERS

Located in Walcott, Iowa, the I-80 Truck Stop is a trucker's paradise and a must-visit destination. As one of the largest truck stops in the world, it offers a wide array of amenities to make your stop comfortable and enjoyable. From multiple dining options to a massive convenience store stocked with supplies and essentials, the I-80 Truck Stop has it all. While there, you will want to check out the Iowa 80 Trucking Museum, a free-admission museum of trucking history with antique models, vintage memorabilia, and a gift shop. This amazing collection is open to the public.

NATIONAL CORVETTE MUSEUM: A TRIBUTE TO AUTOMOTIVE EXCELLENCE

If you have a passion for automobiles, a visit to the National Corvette Museum in Bowling Green, Kentucky, should be on your bucket list. Celebrating the iconic American sports car, this museum showcases the history, design, and engineering marvels of the Corvette. Marvel at the stunning collection of classic and modern Corvette models, learn about their evolution, and even witness rare prototypes. You can also take a guided tour of the adjacent General Motors Corvette Assembly Plant to witness the craftsmanship that goes into building these remarkable vehicles.

HOOVER DAM: AN ENGINEERING MARVEL

The Hoover Dam, located on the border of Nevada and Arizona, is a sight to behold. Take a guided tour to witness the sheer magnitude of this dam that tames the mighty Colorado River. Learn about its construction, walk along the observation deck, and marvel at the breathtaking panoramic views of the surrounding desert and Lake Mead.

GRAND CANYON: A NATURAL WONDER

No visit to Arizona would be complete without a trip to the awe-inspiring Grand Canyon. As one of the world's most magnificent natural wonders, this colossal canyon stretches for miles, showcasing breathtaking vistas and layers of geological history. Take a leisurely stroll along the rim, go on a thrilling helicopter ride, or even embark on a hike down into the canyon to experience its grandeur up close.

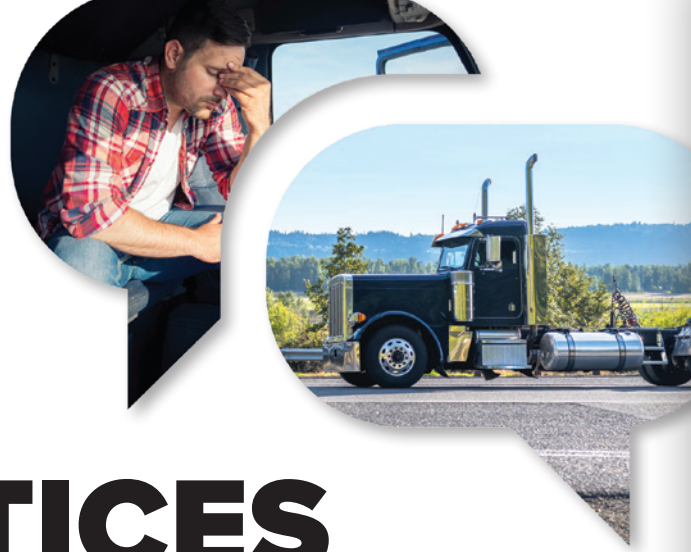
It's important to make the most of your time and explore the hidden—and not so hidden—gems that lie along your route. What trips and locations have you visited? Share them with us at:

cliff.johnson@acuity.com.

Safe travels!



BEST OF THE BLOG



BEST PRACTICES FOR SECURING A TOW DURING A DISABLEMENT

In recent years, towing and labor costs have steadily increased. While most towing companies operate fairly and honestly, the industry has experienced some predatory towing practices where companies overcharge, illegally confiscate, or prevent release of trucks or cargo, often resulting in financial issues for the trucking company.

Having a plan for how you'll secure a tow following a vehicle breakdown or disablement can help prevent the likelihood of a headache later. Consider these best practices:

IDENTIFY AND BUILD RELATIONSHIPS

Having preexisting relationships with reputable towing companies in your area could better position you to avoid unfair or inflated charges. Establishing agreements with a regional or national towing company can alleviate some of the stress of finding a reputable tow in a moment of need.

BE CAUTIOUS OF THE FIRST TOW TRUCK ON THE SCENE

Be on the lookout for tow trucks that respond quickly and unprompted. Scammers may create hazards that lead to a disablement where their services might be needed.

NOTIFY THE AUTHORITIES

Notifying the police and other necessary emergency services during an accident should be routine. Local police will often know of reputable towing companies in the area for you to utilize if you do not have one in mind.

AVOID VERBAL AGREEMENTS

Prior to consenting to a tow, get the quoted price in writing with all charges and fees clearly disclosed and itemized. This will help ensure you are not overcharged when it comes time to release your vehicle.

INCORPORATE DISABLEMENT PLANNING INTO YOUR TRAINING

A disablement can be jarring, and a driver may not think clearly in a moment of panic. By training your drivers ahead of time and having protocols in place, you can be confident the tow will be handled appropriately. This can include coordinating tows through managers or designated employees or dispatchers.

REPORT SUSPICIOUS ACTIVITY OR EGREGIOUS BUSINESS PRACTICES TO LOCAL AUTHORITIES

If you or your drivers fall victim to a predatory towing incident, report the event to local officials for support. By reporting bad actors, you help reduce and eliminate these types of operations from preying on other vulnerable motorists.



TEAR ALONG THE PERFORATION LINE



Acuity Knows Trucking!

Check out our dedicated trucking-focused online channels!



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acuity.com/trucker-focus



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youtube.com/acuityinsurance
(Trucker Focus playlist)



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TRUCKING QUESTIONS?

Acuity's on-site trucking consultant provides over 30 years of industry experience to your business.



Email

trucking.news@acuity.com



Phone

800.242.7666, extension 1740





COMMUNICATION IS KEY

TRUCKER TALK AHEAD ↗

Industry: Long Haul Trucking

Occupation: Flatbed Truck Driver

Task: Transferring Load

A 45-year-old flatbed truck driver was assisting in the transfer of his load. When the third stack of material was being loaded, the truck driver realized the 2x4 dunnage was not adjusted correctly. He made eye contact and hand signals with the forklift driver, who stopped loading.

The truck driver adjusted the right side of the dunnage and then went to adjust the front. As he was adjusting the front, he hit the back of the dunnage and had to readjust it. He could not reach it, so he went under the load to get to it. At that moment, the forklift driver placed the 1,000-pound load of steel on top of him.

The truck driver screamed. Breathing became difficult as his body was crushed. The forklift driver then realized he had put the load on him and raised it. The driver suffered major injuries to his neck, hips, and back. The driver was off work for over a year and the financial cost to care for his injuries was more than \$120,000.

Following simple procedures and communicating clearly could have prevented this injury.



INJURY PREVENTION TIPS FOR WORKING WITH FORKLIFTS

- Stay away from your truck's trailer when a forklift loads or unloads freight.
- If you must assist in loading or unloading, have a communication plan with the forklift driver and a safe area to stand.
- Never walk or crawl under a loaded forklift.



focused on truckers

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Focus



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