

# Truck Trailer Liability: A Cautionary Tale – Nuclear and Thermonuclear Verdicts

Litigation | Litigation & Dispute Resolution | Nuclear Verdict | Transportation and Logistics | Trucking

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Canadian trucking companies operating in the United States should take note of the most recent U.S. court decision awarding \$462 million to the families of two men for their deaths when they crashed into the back of a trailer.

In *Perkins et. al. v. Wabash National Corp.*[1] a St. Louis jury awarded \$6 million each in compensatory damages to the families of decedents Taron Tailor and Nicholas Perkins, who died in 2019 when their Volkswagen sedan slammed into the back of a trailer manufactured by Wabash National and slid underneath the trailer. An additional \$450 million was awarded in punitive damages. The claimants' lawsuit accused Wabash of using a rear impact guard they knew to provide inadequate protection against so-called "underride impacts." The company maintained they complied with federal safety standards, and that the crash occurred at a speed impossible for the men in the car to survive. The case is expected to be appealed.

The claimants' legal team argued that Wabash never performed effective crash testing on the two-post guard despite using it for nearly 30 years, and despite evidence from other similar accidents, that they posed a serious safety risk. They also argued that a 1998 federal safety standard for rear impact guards did not go far enough and its limitations were known to manufacturers. Some manufacturers had upgraded to a more modern four-post design.

The Wabash defence team stressed, with support from expert testimony, that the accident which occurred at 55 miles per hour would have resulted in fatalities even if the rig employed the most modern four-post rear impact guards. The defense team placed the blame squarely on the driver, who they said, "drove into the back of a trailer in broad daylight" on a clear sunny day. They argued that the human body cannot survive a deceleration from 55 miles per hour to zero "in the same amount of time it takes you to blink your eyes."

This "thermonuclear verdict" highlights three important considerations:

- Canadian trucking companies and equipment manufacturers must be adequately insured[2], have proper safety policies in place, and be properly set up corporately to withstand such a verdict[3];
- "Nuclear" and "thermonuclear verdicts" are on the rise in the U.S. and claimants' counsel are targeting the trucking industry; and
- Trailer operations can give rise to liability for operators, manufacturers, shippers and lenders.

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In 2023, the number of nuclear verdicts against companies increased by 27% compared to 2022, and thermonuclear verdicts jumped by 35%.[4] In 2023, there were 27 verdicts of more than \$100 million.[5]

In any truck accident investigation, it is important to evaluate the condition of both the cab and the trailer, as well as the load that the rig was hauling. Multiple parties may be at fault in a tractor trailer accident claim including:

### 1. The Truck Driver

The driver can cause the trailer to operate independently of the truck, and includes jackknife accidents, wide turn accidents, rollover accidents and override accidents (when the truck driver fails to see another vehicle in the blind spots on the side of the rig. The trailer may collide with the top of a smaller vehicle which becomes trapped underneath the trailer.

The driver must also inspect the trailer over the course of the transit. These include the brakes, tires and coupling devices.

### 2. The Trucking Company

All motor carriers are responsible for the systematic inspection, repair, and maintenance of the equipment they operate. If the company owns the trailer, it is responsible to perform these duties. If the trailer is owned by a third party, the trucking company must ensure that the owner has carried out those duties. It must also have policies in place with respect to the duties of the driver. These policies should include random inspections, audit of driver records and enforcement, especially after accidents. The company should also consider upgrading equipment (such as rear guards), if there is evidence that accidents related to that part have occurred.

### 3. Trailer Manufacturer

Motor vehicle equipment manufacturers must comply with legislation that deals with registration and safety standard certification. Manufacturers must consider whether compliance with the minimum statutory requirements is sufficient. Best practices may require the manufacturer to exceed those standards.

### 4. Equipment Lessors

Large trailer leasing companies often lease trailers to operating motor carriers. A trailer leasing agreement establishes key points such as which party is responsible for maintenance and insurance of the trailer. A lease agreement that is too specific on the duties may attract liability. A lease agreement that has minimal requirements may also attract liability to the lessor.

### 5. The Shipper

The company that loads a trailer has a duty to ensure that the cargo is properly positioned and secured on or within the trailer. Improperly loaded or improperly secured cargo can result in rollover accident[6], jackknife accidents, cargo spill accidents, tire blowout accidents and brake failure accidents.

### 6. Interchange Situations

A motor carrier that receives a trailer of cargo from another motor carrier (by interchanging the trailer on a through bill of lading) is also at risk. Many carriers accepting such trailers will do so utilizing an interchange agreement. The agreement will set out when, where, and how possession and use of the trailer transfers and the responsibilities that follow for damage, vehicle accidents and cargo loss or damage.

Motor carriers should ensure that, at a minimum, they carry liability coverage for the trailer, if the trailer causes damage or injury to someone else. At a minimum, such coverage will at least pay for the costs of defending an action.

Thermonuclear verdicts are here. If operating in the U.S., all parties involved in the transportation of goods must be aware of the risks and take appropriate actions to protect themselves.

It will be interesting to see what the appeals court does in the *Wabash* case. A PDF version is available for download [here](#).

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[1] Released September 5<sup>th</sup>, 2024 case number 2022-CC00495 in Missouri's 22nd Circuit Court in the City of St. Louis.

[2] Although getting sufficient insurance may be impossible.

[3] This requires isolating the U.S. business from Canadian business and assets.

[4] [Nuclear Verdicts Drive Rising US Liability Claims - Risk & Insurance : Risk & Insurance](#)



[5] Nuclear verdicts are on the rise: How can you minimize your risks? | Marsh

[6] The shipper is the party most knowledgeable about the center of gravity of the load.

*(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).*

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