



Delivering the
DIFFERENCE

MMTA Safety Conference 2021

Nuclear Verdicts – Can They Be Avoided?

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September 20-21, 2021



Disclaimer

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“Understanding the Impact of Nuclear Verdicts on the Trucking Industry”

- *American Transportation Research Institute (ATRI)*
June 2020

A free copy is available at: www.truckingresearch.org
(Click “Research Hot Topics” - “Economic Analysis”)

NUCLEAR VERDICTS

Data included:

- 600 truck-involved crashes
- Verdicts totaling \$10 million or more

Concluded from 2010 – 2018:

- Nuclear verdicts against motor carriers increased dramatically.
- The average verdict rose from \$2.3 million to \$22.2 million, an increase of 967%

- ATRI June 2020



Nuclear Verdicts

Factors Influencing Large Verdicts

- Prevention
- Crash-related details
- Post-crash/Pre-litigation stage
- Litigation strategies
- Unfavorable practices
- Additional factors

- ATRI June 2020

NUCLEAR VERDICTS

The Report Concluded:

- Litigation preparation is complex and costly.
- Case vulnerabilities and potential liabilities must be acknowledged and vetted against realistic financial damage projections.
- Certain types of accidents and injuries effectively guarantee a large jury verdict.
- Strictly adhering to safety and operational policies is essential to staying out of court.
- Almost any failure to adhere to federal regulations or company safety policies will be the focus of plaintiff arguments.

- ATRI June 2020

Reptile Theory

Legal Strategy

- Stoke fear and anger in the jurors.
- Aim for huge awards.
- Focus on emotions and survival instincts in the “reptile brain.”
- Argue that a company poses a danger to the community.
- Use the “safety rule,” the idea that there is a right way to behave, and the motor carrier broke it.
- Point out past problems to show a pattern.

Source:

- *Reptile – The 2009 Manual of the Plaintiff’s Revolution; David Ball & Don Keenan*
- *Fleet Owner – Driven, Second Quarter 2020 “Strong Safety Culture is a Fleet’s Best Deterrent to Mega Verdicts” – John Hitch*
- *Transport Topics – Plaintiff Attorneys often use “Reptile Theory” to Win Nuclear Verdicts*



Venues and Litigation Risk

Some Venues are Notorious for Lawsuits.

- Venues are known as plaintiff-oriented venues.
- Knowing this can be an advantage in preparing for litigation.
- Companies may price their services to account for the added risk.

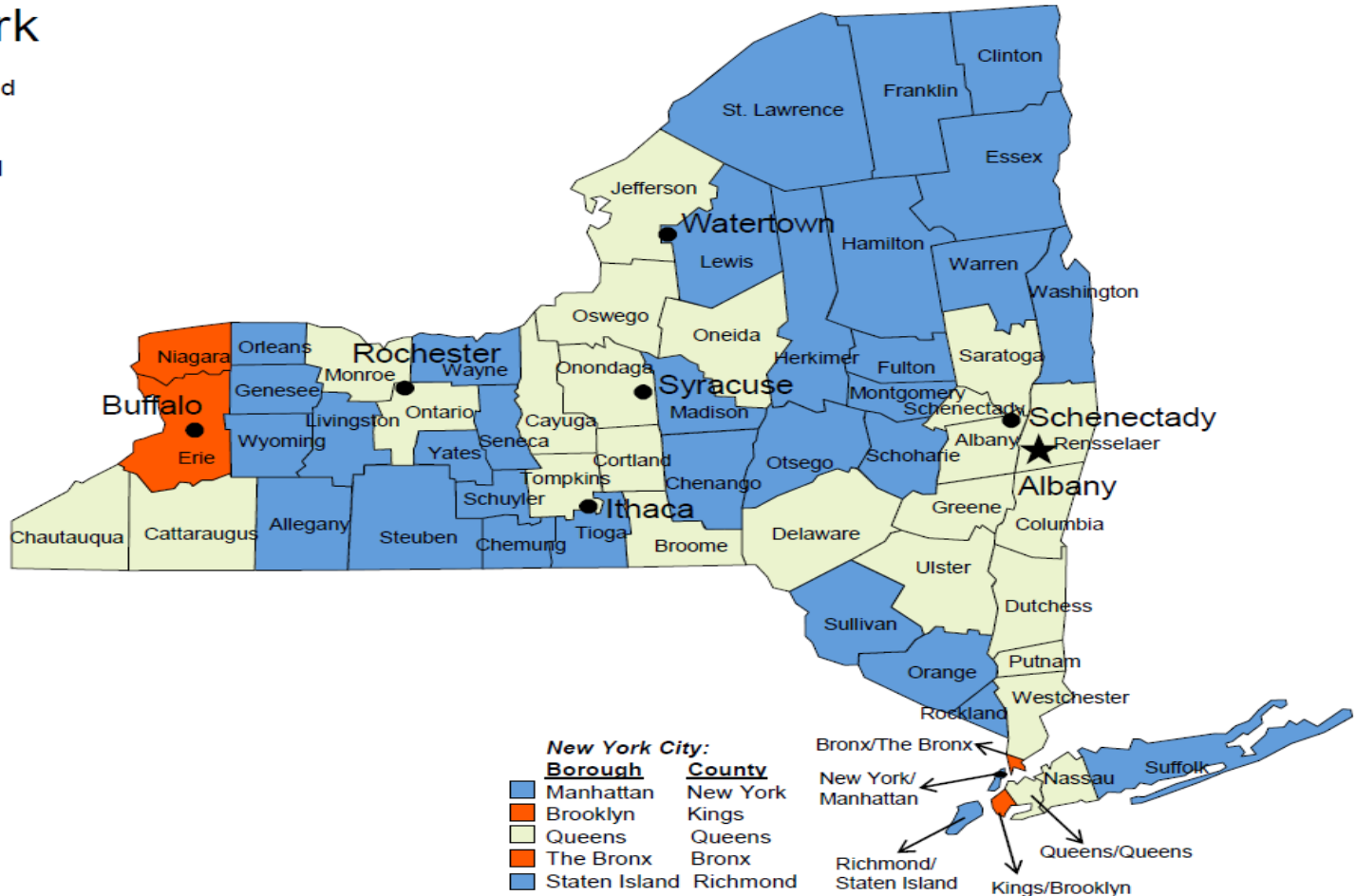
Tools

- Websites track and map these locations (shown on following slides). www.harmonie.org

Venue Map

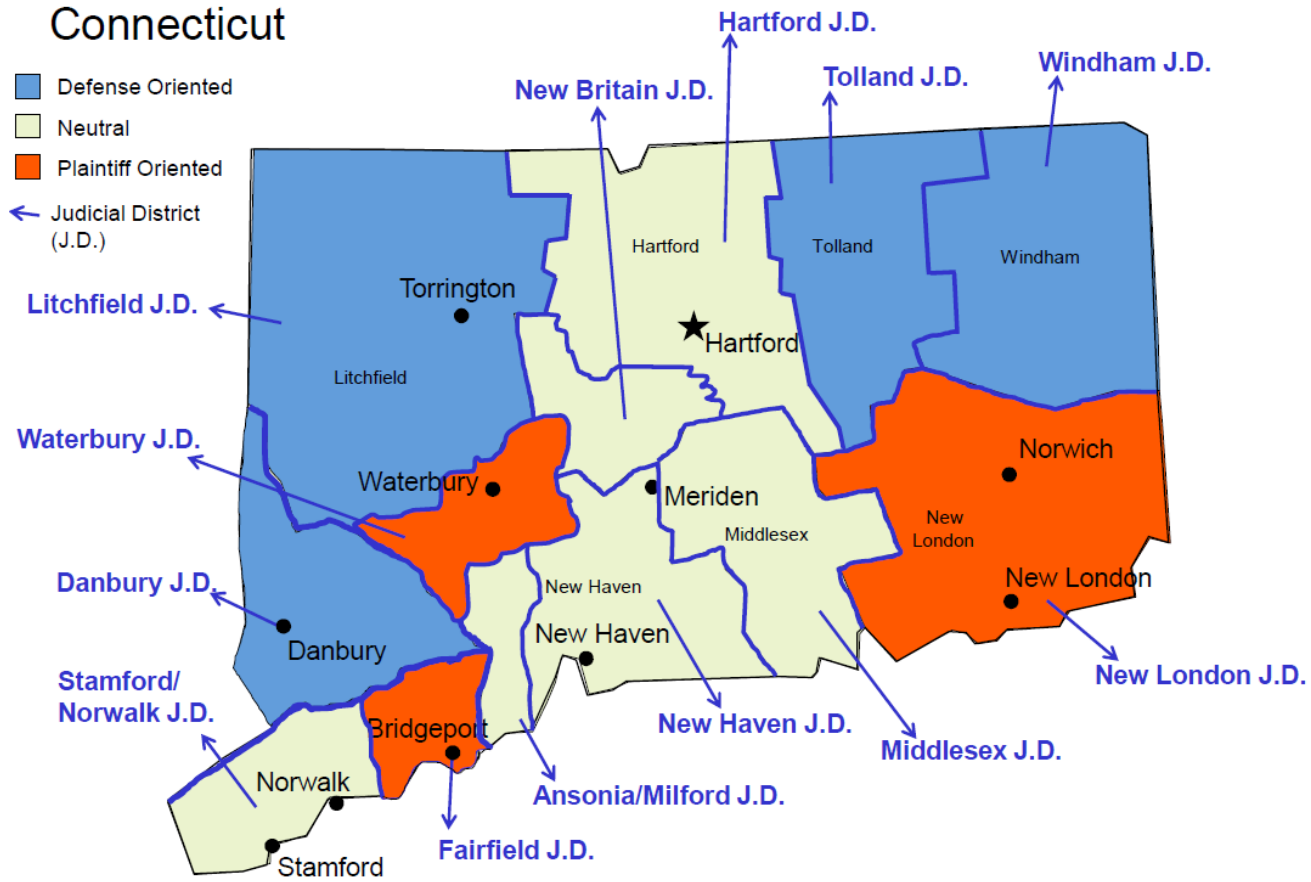
New York

- Defense Oriented
- Neutral
- Plaintiff Oriented



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Venue Map



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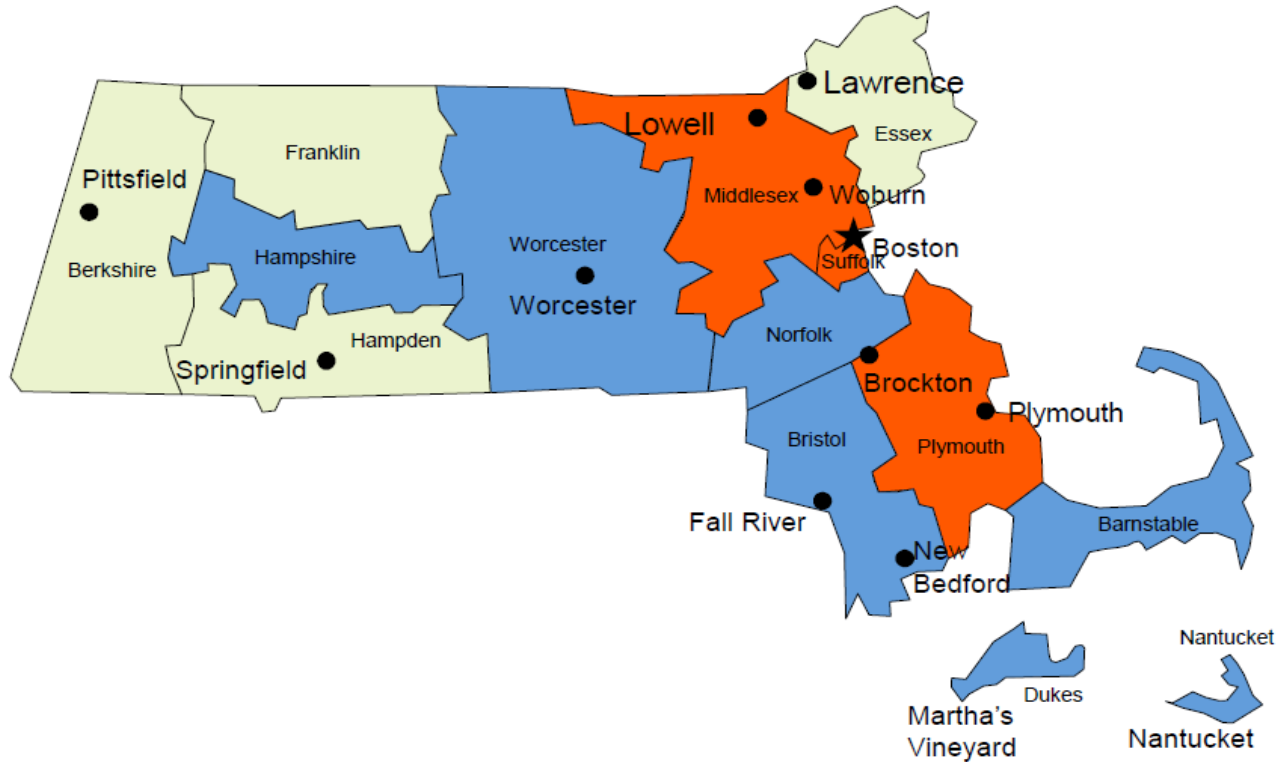
The Difference is Service®

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Venue Map

Massachusetts

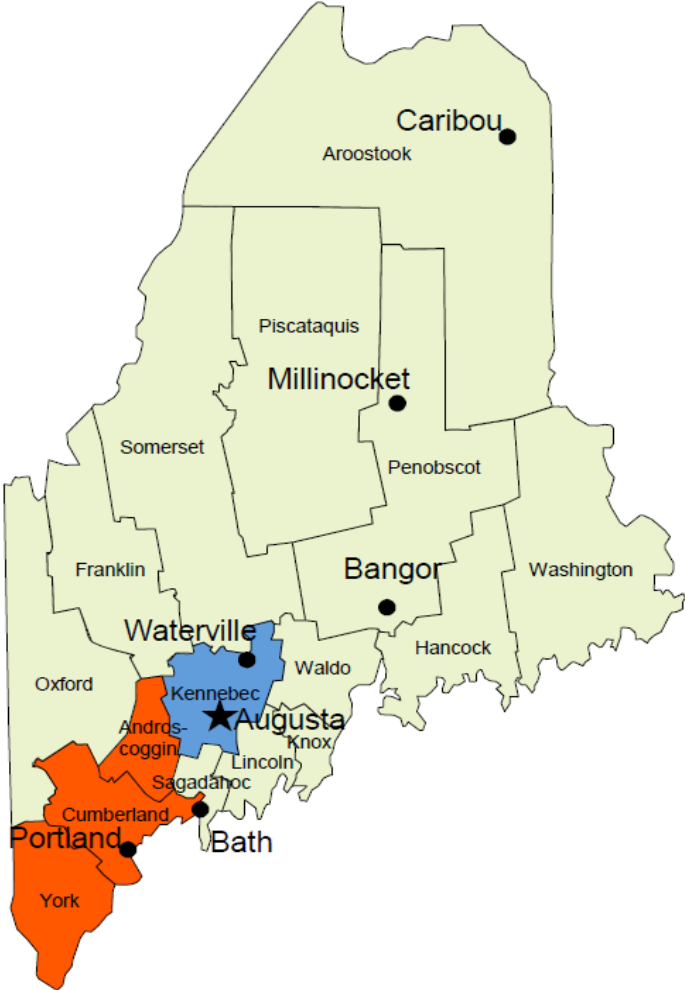
- Defense Oriented
- Neutral
- Plaintiff Oriented



Venue Map

Maine

- Defense Oriented
- Neutral
- Plaintiff Oriented



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Nuclear Verdicts

Culture

- Culture is a convergence of people and processes.
- An excellent culture exists when people and process are in harmony with the company's vision and values.
- Companies with a successful culture often have a competitive advantage.

Safety Culture

- Safety Culture is a subset of the organization's culture; they are really one and the same.
- It must be embedded into all departments and operations.
- Accountability is fundamental to a strong safety culture.
- Safety should be an organization's core value.

Nuclear Verdicts

No Silver Bullets

- Maintain a culture of safety over profits.
- Develop a well-documented safety plan.
- Enforce the safety policy.
- Develop minimum driver-hiring and retention standards.
- Ensure all background checks have been completed.
- Train and supervise drivers (must be documented).
 - Topics for training and supervision include defensive driving, driver distractions, fatigue prevention, adverse weather conditions, etc.
 - Road test before hiring drivers and on an annual basis.



Nuclear Verdicts

Go beyond Compliance with Technology

- Use in-cab cameras (outward and inward).
- Employ crash-avoidance alerts and speed detection.
- Pay attention to technology-generated information.
cost of ignoring
- Technology can provide a solid defense.
- The lack of technology can improve plaintiff's case.
appearance of profits over safety

Nuclear Verdicts

Demonstrate a Strong and Consistent Culture of Safety

- Build safety performance into all departments.
- Hold managers/supervisors accountable.
- Create organizational accountability.
- Encourage safe driving through:
 - Awards.
 - Competitive pay/bonus programs.
 - State/national truck driving championships.

Nuclear Verdicts

Key Takeaways

- A **strong safety culture** is a motor carrier's best defense.
- Regulatory compliance is a minimum standard.
- Establish safety policies and procedures that, at a minimum, address fatigue prevention and driver distractions.
- Establish minimum hiring standards and ensure they are implemented and used.
- Invest in technology that helps identify unsafe behaviors and provides relevant coaching.
- Hold management accountable.

Questions?