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A few industries drive commercial insurance rates higher for everyone

KIM PALMER 



Contributed photo

Chris Mikolay, vice president of national accounts for National Interstate Insurance

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Businesses across the board are paying more in insurance premiums. One of the main drivers is an increase in the size of jury verdict awards that are overwhelming the commercial auto industry.

The "nuclear jury verdict" (a verdict of \$10 million or more) phenomenon is having ramifications for all commercial insurance. Fortune 500 companies reported 50% or higher premium hikes last year, and small to midmarket companies experienced 10% to 25% year-to-year increases. Industries particularly hard hit, such as commercial trucking, saw rates jump 100% or even quadruple over the last three to five years.

The commercial trucking (or carrier) industry is helping drive the overall rate hikes in commercial insurance, according to Chris Mikolay, vice president of national accounts for [National Interstate Insurance](#). He added that over the past five years, trucking insurance liability has been the poorest-performing segment in the property and casualty insurance industry.

"It is really exasperating," Mikolay said. "There is a decoupling, it seems, of the advancements in technology helping vehicles become safer — front-end collision avoidance, lane departure, speed limiters — and what owners are paying in insurance because of a spike in total dollars spent to pay for insurance claims."

In less than a decade, jury verdicts against the trucking industry have increased by more than 550%, with an average award going from \$2.6 million in 2012 to more than \$17 million in 2019.

Verdict amounts that would have been considered rare or unusual several years ago are happening more frequently.

"You're starting to routinely see \$25 million and \$75 million verdicts. There was a \$280 million verdict in Georgia last year," Mikolay noted.

He added that the issue is compounded by a recent trend of private equity and hedge funds investing in law firms that specialize in accident lawsuits against trucking companies — bankrolling attorneys and helping with litigation costs in expectation of profiting from a nuclear verdict.

According to Eric Zalud, an attorney at [Benesch Friedlander Coplan & Aronoff](#) who specializes in litigation and transportation, the phenomenon of punitive damages exceeding compensatory damages arises from a profound shift in how accident cases are litigated.

"These verdicts come about because of new tactics used by the plaintiffs where they vilify the entire company and then seek punitive damages," Zalud said. "During the trial, the company's entire history and safety record is used to expand far beyond what happened during the actual accident."

Some carriers have been able to mitigate huge verdicts, Zalud pointed out, with training and safety technology to prevent accidents or by maintaining meticulous safety, inspection and driving records to be used as evidence at trial.

Bill Strimbu, a third-generation trucking company owner, said technology advances have led to a slight drop in the number of crashes over the last couple of years, even as business grows and his employees are driving more miles.

"It is phenomenal the role of technology. It helps to manage our fleet and to drive up our safety numbers," said Strimbu, who has worked at [Nick Strimbu Inc.](#) in Brookfield Township since the early 1980s. "The number of our claims have declined tenfold, but the severity has increased, especially if it is a bad accident."

Trucking companies like Strimbu's, which need to buy insurance in pools or segments, have faced paying higher premiums for lower coverage amounts or buying less insurance, which exposes the company to greater risk.

As is, Strimbu said he gets insurance from a number of different providers. He has a \$1 million federal minimum for a basic auto liability policy, with the first \$100,000 paid out of pocket. He adds to that an extra \$2 million to \$5 million in coverage for an umbrella policy, cargo loss insurance at \$100,000 with \$25,000 out of pocket, and another \$5 million umbrella policy for his drivers.

"We also have a fund on the side for out-of-pocket cost because we don't want it to hit the profit-and-loss statement," he explained. "If you have a couple of accidents, the costs — it could bankrupt you if it is not structured properly."

Strimbu's company is dealing with two out-of-state lawsuits, but it has only seen a modest premium increase recently because of its emphasis on driver training and cameras that monitor both the driver and the road.

"We were one of the pilot programs that National Interstate had 15 years ago, when accident event recorders first came out," Strimbu said. "The ones we have today — and we have them in every truck — are monitored by a third party and the data is transmitted electronically within minutes after the incident happens."

Early on in the program, cameras caught one of Strimbu's drivers reading [The Wall Street Journal](#) while driving the Dan Ryan Expressway in Chicago. "That was the last day he worked for me," Strimbu said.

He added that if much more in the way of insurance costs are piled onto the trucking industry, which saw a slowdown from an epic year in 2018, he thinks profit margins will be squeezed enough that those costs will be felt by consumers. The higher costs could also be compounded by a wave of global firms walking away from insuring the trucking industry altogether.

"We are seeing our publicly traded competitors now dealing with thinking they were charging enough premiums three years ago, but as the claims wash through, realizing they did not collect enough money and trying to figure out what to do," Mikolay said.

Zalud said that a confluence of tort reform, defense lawyers adapting to plaintiff tactics and further developments in safety could avert a rise in claims. However, it remains to be seen where the breaking point will be.

"Currently, there is no tort reform to prevent a \$50 million verdict," he said.

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