

Trends in Truck Crash Liability

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The issues around liability in truck crashes have been at the forefront in several high-profile truck crashes over the past few years. Two of the most noted crashes (Walmart and comedian Tracy Morgan; FedEx and the bus in California) have been settled by the parties out of court. The amounts and terms of settlement are confidential. However, several other crashes that were subject to court proceedings have underscored some important trends in the size and scope of liability for truck crashes.

Until 2017, the five truck crashes that resulted in the largest settlements for the plaintiffs were summarized in an article posted at: <https://www.frg-law.com/blog/biggest-truck-crash-settlements-united-states/>

1. Joe Fried's \$80 Million Verdict

Back in 2016, our very own Joe Fried made history when his \$80 million truck accident settlement became the biggest dollar amount settlement in history.

The accident in question involved a [truck driver near Savannah, Georgia](#) slamming into a line of cars that had stopped due to a previous accident. The driver, who denied falling asleep and distracted driving, never hit his brakes. As a result, five nursing students were killed and two more were badly injured.

2. \$42 Million Settlement

In 2011, a man was killed in 2007 by a truck driver running a stop sign. The jury awarded the deceased's widow \$40.2 million, and the case was eventually settled for \$42 million in 2014.



3. \$10 Million Settlement Recognized worldwide due to Tracy Morgan's involvement, in 2014, a Wal-Mart Stores Inc. truck injured several people and killed one. The deceased's children received a \$10 million settlement, while Morgan and Wal-Mart later reached an undisclosed settlement.

4. Undisclosed Settlement

A jury awarded \$281 million to family in Texas in 2013, after a man was struck and killed by a truck's drive shaft that had detached and smashed through the windshield. Deemed "improperly maintained," the judgement was later reduced to \$105 million, before the case was settled for an undisclosed amount.

5. \$34 Million Settlement

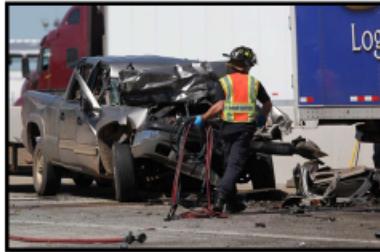
In 2014, a truck accident case in the State of Ohio settled for \$34 million. Due to a confidentiality agreement, specifics of the case cannot be discussed.

Since that report was published there have been several other significant jury awards in truck crashes that illustrate a growing concern with safety in the trucking industry. In 2018 a Texas court awarded \$89.6 million to a plaintiff against Werner (the award is under appeal) but the findings in the trial are important because they underscore the duty that trucking company managers have to ensure that their drivers follow the directions in their CDL training and that the company have policies in place that are based upon safe driving standards.

Texas Jury Award \$89.6 m

"According to court documents, the collision occurred on I-20 in Texas during freezing rain and black ice conditions. Every state's Commercial Driver's License (CDL) manual instructs 18-wheeler drivers to slow to a crawl and get off the road during icy conditions. Shiraz Ali, the Werner student truck driver in this case, did not get off the interstate. Instead, Ali averaged in excess of 60 mph for the 52 miles he was driving in icy conditions prior to the crash, and was traveling over 50 mph seconds prior to the collision. It was undisputed that had Ali complied with the CDL manual the crash would not have occurred..."

At 2:50 p.m., one hour and 40 minutes prior to the collision, the National Weather Service issued an updated Winter Storm Warning stating the freezing rain had developed. Yet Werner never communicated this update to its student driver, allowing Ali to average over 60 mph while driving unsupervised through the icy conditions because Ali was on a Just-In-Time (JIT) load, requiring delivery to California by the next day. A JIT delivery is one with an expedited delivery deadline. These are priority deliveries for which Werner expects its drivers to provide 100% on-time delivery."



Crash near Odessa Late 2014 Jury Award May 18, 2018

Werner's primary post-verdict statement on the jury's action came in an 8-K filing with the Securities & Exchange Commission, filed when a company has a material event that could affect its financial conditions. In the 8-K, Werner said its maximum liability for the accident is \$10 million, with "premium-based coverage above this amount." That \$10 million will be accrued in its second quarter earnings. Werner's net income in the first quarter was \$27.8 million.

<https://cdllife.com/2018/werner-slapped-with-90-million-verdict-by-texas-jury/>
<https://www.freightwaves.com/news/werner-verdict-texas-crash>

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A year earlier a jury in New Mexico awarded \$165 million to a plaintiff in a crash that involved a FedEx truck. This award was upheld on appeal by the New Mexico Supreme Court in 2018. This case is important because it apportioned 65% of the responsibility to the shipper.

New Mexico appellate court affirms record-breaking \$165M award for FedEx crash victims

An appellate court in New Mexico has affirmed an enormous jury award for the family of a mother and daughter killed in a crash involving a FedEx driver. The \$165 million award is the largest ever in New Mexico.

The mother's husband, Alfredo Morga, filed a wrongful death suit against FedEx in July 2012. A jury decided that FedEx's fault for the crash was 65 percent, all three FedEx contractors named were responsible for 10 percent each and the mother's fault at 5 percent.

The jury determined the following compensatory damages:

- For the wrongful death of the daughter, \$61 million
- For the wrongful death of the mother, \$32 million
- For personal injury and loss of consortium for his mother to the 19-month-old son, \$32 million
- For emotional distress from physical/psychological injury, \$40.125 million
- For the loss of consortium of his daughter, to the husband and father, Alfredo Morga, \$208,000
- For the loss of consortium of her daughter to the mother, \$200,000.



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Another high visibility crash in 2019 was the runaway crash on I 70 near Denver in which 4 people were killed, 6 others injured, and 28 vehicles damaged or destroyed. The truck that caused the mayhem belonged to a small company in Houston that carried only the required minimum in liability coverage - \$750,000. The trucking company has few assets and it is expected that it will declare bankruptcy and turn the claims over to the insurance carriers.

Runaway Crash on I-70 near Denver

April 25, 2019, four deaths, six injured, 28 vehicles damaged or destroyed



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The driver in this crash faces 40 felony counts including 4 counts of vehicular homicide. In addition, multiple civil lawsuits can be expected to be filed against the trucking company, the driver, perhaps the company that owned the cargo in the shipment and perhaps the truck and brake manufacturers. The crash may also lead FMCSA to issue an update that will require expanded liability coverage.

Conclusion:

Trucking companies, managers, owners, drivers and shippers must put additional attention on safety. New safety technologies should be tested and adopted. Driver training needs to be improved and recurrent training needs to be required. Managers should provide daily oversight of driver performance with incentives for high performers and follow up for sub standard performance.

In our opinion, big changes are on the horizon for the surface transportation industry.

