

WHITE PAPER

Your 6-Step Nuclear Verdict Protection Plan

How to Protect Your Fleet
From Multi-Million Dollar
Lawsuits by Creating a
Culture of Safety

Free Protection Plan Checklist Inside!

FOLEY



Introduction

In 2014, a for-hire truck driver in the area of Odessa, Texas was driving in inclement weather when a car traveling in the opposite direction lost control of their vehicle and ended up in the truck's path. Despite keeping his speed under the posted limit to account for the difficult driving conditions, the trucker ended up in a head-on collision with the vehicle. The accident tragically resulted in the death of a 7-year child and the paralysis of his older sister.

Four years later, a jury awarded the family \$90 million in damages for the deadly crash – finding the driver and the company he worked for guilty of negligence.

There is no discounting the horrific nature of this accident – and the impact it has had (and will continue to have) on both the family and the truck driver. But if you operate a trucking company, or are responsible for your business' safety and compliance, a verdict like this might not sit well with you – and you'd be right to feel concerned.

A statement issued by the trucking company involved in the accident might sum up your feelings on the matter well:

”

If an accident like this is the fault of the driver who was hit by the out-of-control vehicle, think about what that means for every motorist on the roads.



A Growing Industry Problem

Over the past decade, nuclear verdicts like these have become a big issue for the trucking industry. According to a study by the American Transportation Research Institute (ATRI), these judgements have risen sharply – increasing by a whopping 967% between 2010 and 2018.

Help on the Way?

Both the insurance and trucking industries have been lobbying federal and state lawmakers for lower caps on settlements and greater restrictions on these types of lawsuits. And while there is still quite a bit of work to be done, there are currently bills making their way through the Texas and Iowa legislatures aimed at helping trucking companies in those states.

For million-dollar lawsuits involving a truck crash, it's pushed the average verdict size to \$22.3 million.

Consider these other recent examples:

- In August 2021, a **\$1 billion verdict** was issued against two trucking companies after a crash near Jacksonville, Florida resulted in the death of a college student.
- In November 2019, the nation's second largest RV and motor home transportation provider was forced to close following a **\$26.6 million** verdict in a wrongful death suit.
- In October 2020, a Florida jury ordered one trucking company to pay **\$411 million** to a motorcyclist who was injured in a 45-vehicle pileup.

Not only are these verdicts putting companies out of business, but they're causing insurance premiums across the industry to skyrocket. **According to the ATRI report on this issue, one motor carrier was forced to close its doors after its single-year insurance rates nearly doubled from \$340,000 to \$700,000.** And they haven't been the only casualty of the insurance hike – there have been many other fleets and family-owned businesses that have been forced into closure, as well.

In addition to overall higher premiums, this trend is rising prices and limiting access to Truckers Auto Liability Insurance and Excess Liability Insurance – both of which serve as critical protection for trucking companies in the event of a crash.

The bottom line? These verdicts are making essential insurance programs out of reach for motor carriers – at a time when they’re more necessary than ever.

To combat the high premiums, some carriers are finding it necessary to cut back on their insurance coverage. Though this is a dangerous gamble that makes companies even more susceptible to the financial damages of legal action.

How Reptile Theory Plays a Role

One of the reasons these verdicts are thought to be so effective, is because of a litigation tactic known as “reptile theory.” Introduced in 2009, the strategy behind this approach is to **play on the jurors’ emotions by eliciting feelings of anger and fear** – which then translates into these massive nuclear verdicts.

It’s become a go-to strategy in trucking cases because of how effective it is with jurors. Words like “safety,” “training,” “community,” and “accountability” all point to the plaintiff’s attorney putting this reptile theory tactic into action.

The plaintiff’s attorney has a job to do – to win. And they’ll go to great lengths to get there. As a trucking company, there’s nothing you can do to prevent these tactics in court.

But what you can do, is ensure you’re prepared.

What Information Will be Used Against You?



Common Issues in Nuclear Verdict Cases

- Hours of service noncompliance
- Drug and/or alcohol use
- Bad driver histories
- Driver disqualification
- Driver fatigue
- Cellphone use
- Rear end collisions
- Crashes in construction zones

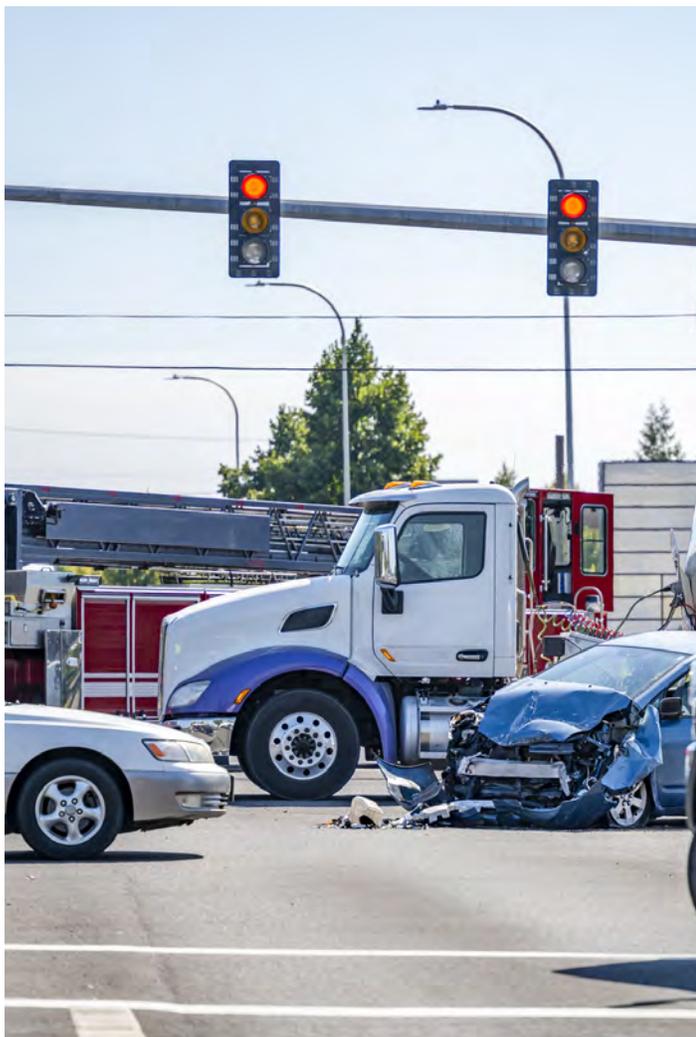
When it comes to proving a company's negligence, the plaintiff's attorney will look at information from the accident, as well as the company's:

- CSA score and safety rating
- Driver hiring, training and supervision
- Tuck maintenance

And if an accident involves an hours-of-service issue, drug and/or alcohol abuse or the driver was disqualified for any reason, you can almost guarantee a verdict in the plaintiff's favor (ATRI).

This means that full compliance is essential. But keep in mind that if all you're doing is the bare minimum, it won't necessarily be enough to protect you.

Creating a Culture of Safety



Although not all accidents can be prevented, **data from the FMCSA found that only 3 percent of all crashes were the result of environmental factors.** A whopping 87 percent of crashes were the result of driver error and 10 percent were due to mechanical issues with the truck.

In other words? By creating a **culture of safety and compliance** in your company, you'll not only make it much less likely that your drivers will be involved in an accident, but you'll be **creating a solid shield of protection** to fight back against claims of negligence should you find yourself sitting in a courtroom someday.

It's without a doubt, the simplest and least expensive way to protect the future of your company.

Not sure where to start? Here is a step-by-step strategy to build up your defenses.



Data from the FMCSA

- Environmental Factors
- Mechanical Issue
- Driver Error

STEP 1:

Have a Solid Hiring & Background Screening Program in Place

Of all the decisions you make in your company, those you make around who drives your trucks is perhaps the most important. Screen all prospective drivers carefully – and not just to fulfill the standard driver file requirements, but to really dig into a driver's history.



Background screen should include:

- ✓ A Motor Vehicle Report in each state they've held a CDL
- ✓ A criminal background check
- ✓ A Commercial Driver's License Information System (CDLIS) search
- ✓ A Pre-Employment Screening Program (PSP) screen
- ✓ A DOT Clearinghouse query
- ✓ A previous employer verification
- ✓ A DOT pre-employment drug test
- ✓ A hair follicle drug test

There's a reason why so many of the larger trucking companies send their drivers for **two drug tests before they make a hiring decision – because it provides a much more in-depth look at the driver's history of substance abuse.**

While the DOT urine test is required and does a good job of showing recent substance abuse, it fails to show the historical patterns of use like a hair follicle drug test does. With six months of history at your fingertips, these tests are a much more reliable way to determine a driver's use of prohibited substances.

Having a record of this thorough process, as well as the results of each screen, will show your commitment to not just basic FMCSA compliance, but the overall safety of our roadways.

Takeaway:

Have stringent background screening procedures in place and be very selective about who you trust with the responsibility of operating a commercial motor vehicle for your company. Moreover, **make sure you're working with a background screening vendor that is knowledgeable in both FCRA and FMCSA compliance processes** so that all the screens you run are completed correctly.

STEP 2:

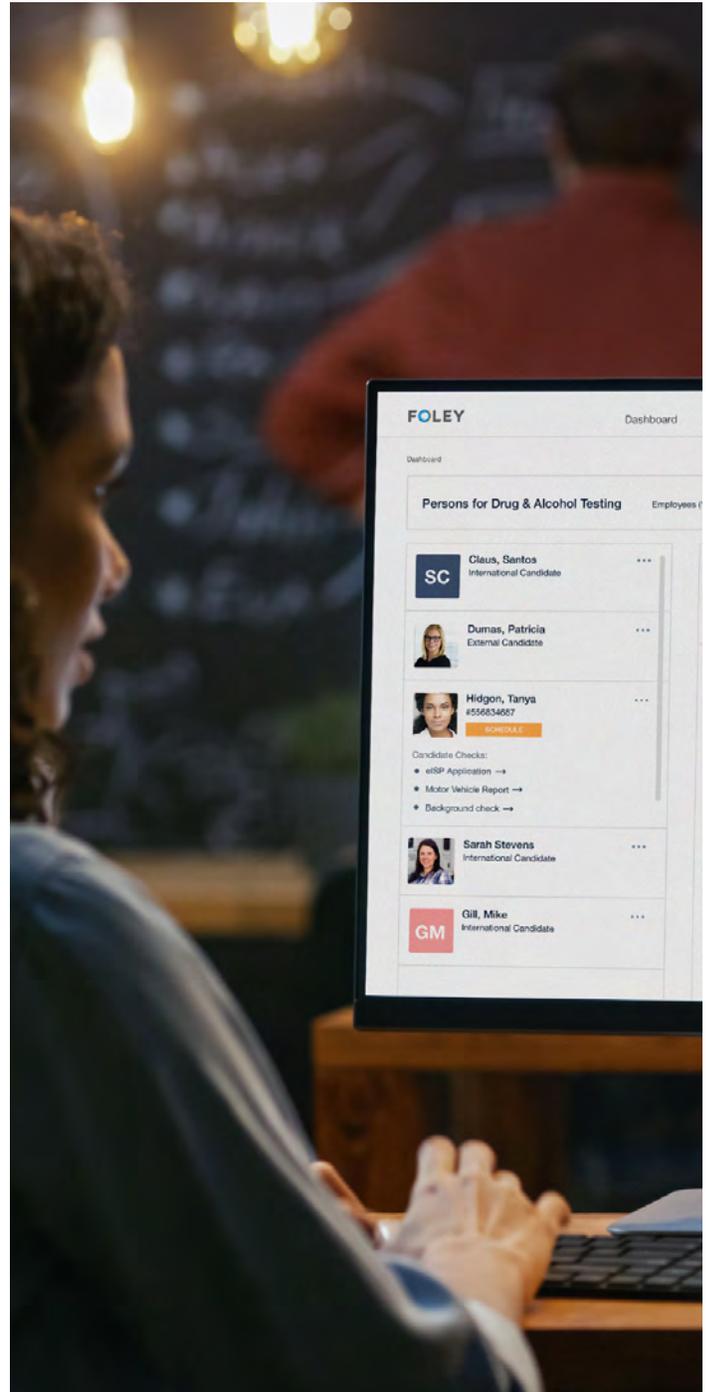
Create & Maintain Compliant Driver Files

According to the ATRI report, in every case where the driver's history played a role in the accident, the defendant was found guilty of negligence. However, it's also an area that is completely avoidable – both by having thorough background screening processes in place and by maintaining compliant Driver Qualification Files.

Non-compliant driver files are a big industry problem. In fact, they account for many of the top acute and critical FMCSA violations annually. It's not that these files are necessarily difficult to create upon hiring a new driver (though there's often steps missed in the process), but it can be difficult for companies to keep these files updated on an ongoing basis – and the more drivers they hire, the more difficult it gets.

Takeaway:

Create a fool-proof plan for creating and maintaining compliant driver files in your business so that you always know when annual MVR runs, CDL renewals and medical card renewals are due. **To comply with the FMCSA's offsite audit requirement, these files should be maintained in a secure, digital format.**



STEP 3:

Fight Driver Fatigue & Distraction

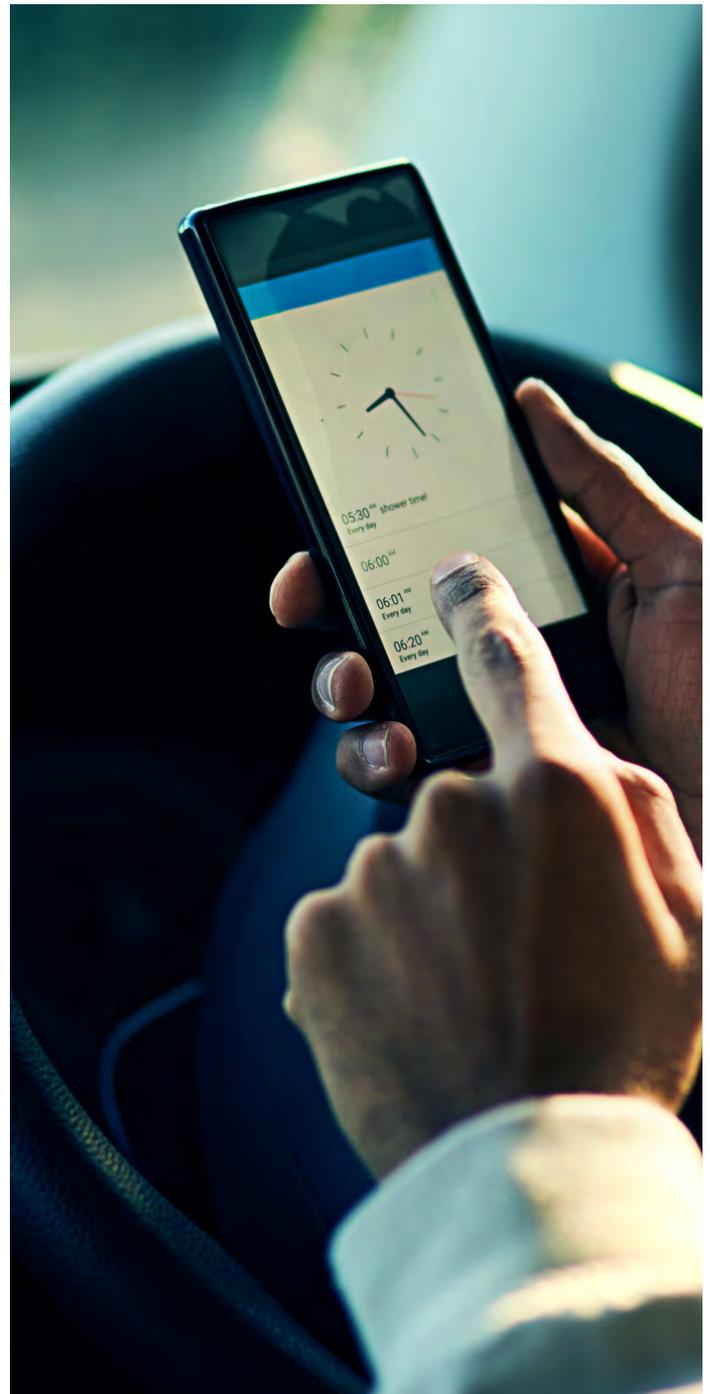
Driver fatigue and distraction remain two of the FMCSA's top industry concerns, as they are leading causes of truck accidents in the United States.

To fight **fatigue-related accidents in your company**, ensure that drivers keep good logs and follow all hours-of-service regulations. Providing driver fatigue training sessions on a regular basis, as well as reminding drivers of the dangers of drowsy driving are important steps to creating that culture of safety. Because drowsy driving can also be caused by health conditions, encourage drivers who suffer from sleep apnea or other sleep-affecting conditions to get the medical help they need.

In terms of **distracted driving**, the installation of **in-cab cameras to monitor driver's over-the-road habits**, as well as frequent training and reminders about the dangers of distracted driving, is key.

Takeaway:

Make driver fatigue and distraction a priority in your company by requiring drivers to keep accurate logs, installing in-cab cameras and providing regular training sessions and reminders about the dangers of drowsy and/or distracted driving.



STEP 4:

Monitor Your Drivers' MVRs

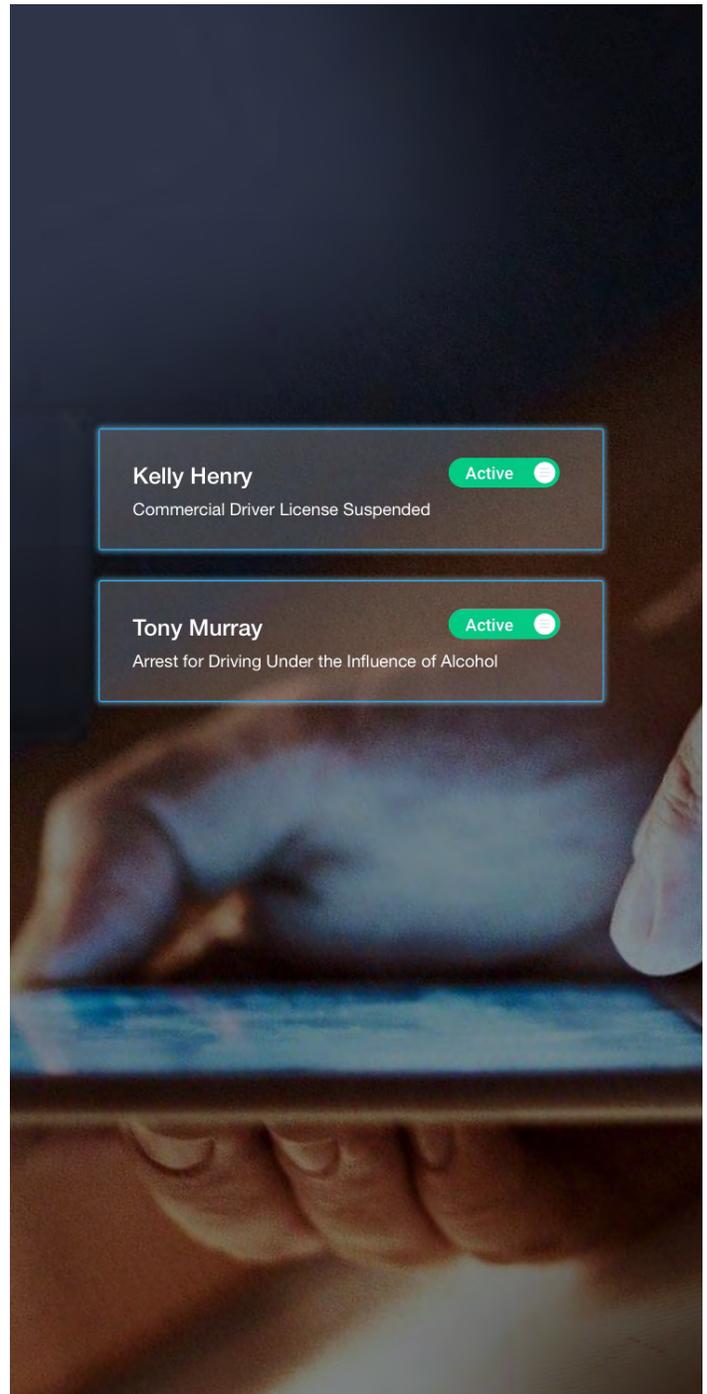
FMCSA regulations require you to run an annual motor vehicle report on each driver to check for violations and ensure they're still qualified to operate a commercial motor vehicle. But once that report is pulled, you could be in the dark for the next 364 days.

The regulations are clear: ignorance is not bliss and you will be held accountable for driver violations and disqualifications even if you didn't know about them. With this in mind, employers should never fully rely on driver transparency. Not only will ignorance not be an acceptable excuse in avoiding a FMCSA violation, but it won't be accepted as a valid defense in court.

An MVR Monitoring program is not a federal requirement, but it is a smart program to put in place. At a basic level, it works like this: each driver's motor vehicle report is monitored on an ongoing basis. When new information appears – whether it's a moving violation, CDL suspension or DUI - you'll be the first to know.

Takeaway:

Building a culture of safety means going above and beyond what's required. **Not only is an MVR monitoring program easy to implement, but it's very cost effective.**

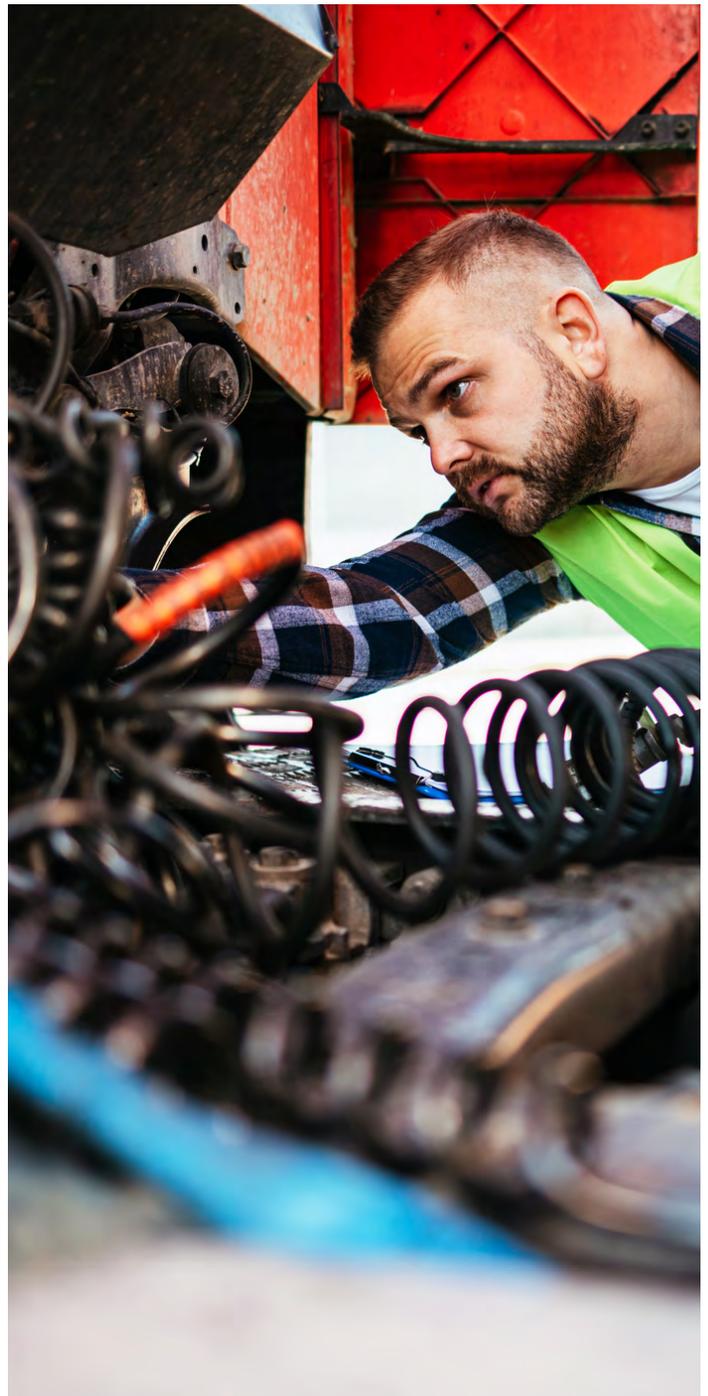


STEP 5:**Prioritize Inspections & Maintenance**

The safety of your drivers is only half the battle – you need to prioritize the safety of your equipment, as well. With that in mind, make sure your company has rock-solid policies in place around pre- and post-trip inspections. Secondly, make ongoing training around common maintenance issues a regular part of your company culture. The more well informed your drivers are around brake safety, tire maintenance and cargo securement, the safer they'll be on the roads.

Takeaway:

Approximately 10% of all accidents are a result of truck maintenance issues. Make sure pre- and post-trip inspections are part of your fleet's daily routine – and that your drivers know how to perform them correctly. Just as important is that your shop knows to address issues quickly so that problem areas are fixed before they create a hazardous situation.



STEP 6:

Invest in a Fully-Automated Safety & Compliance Solution

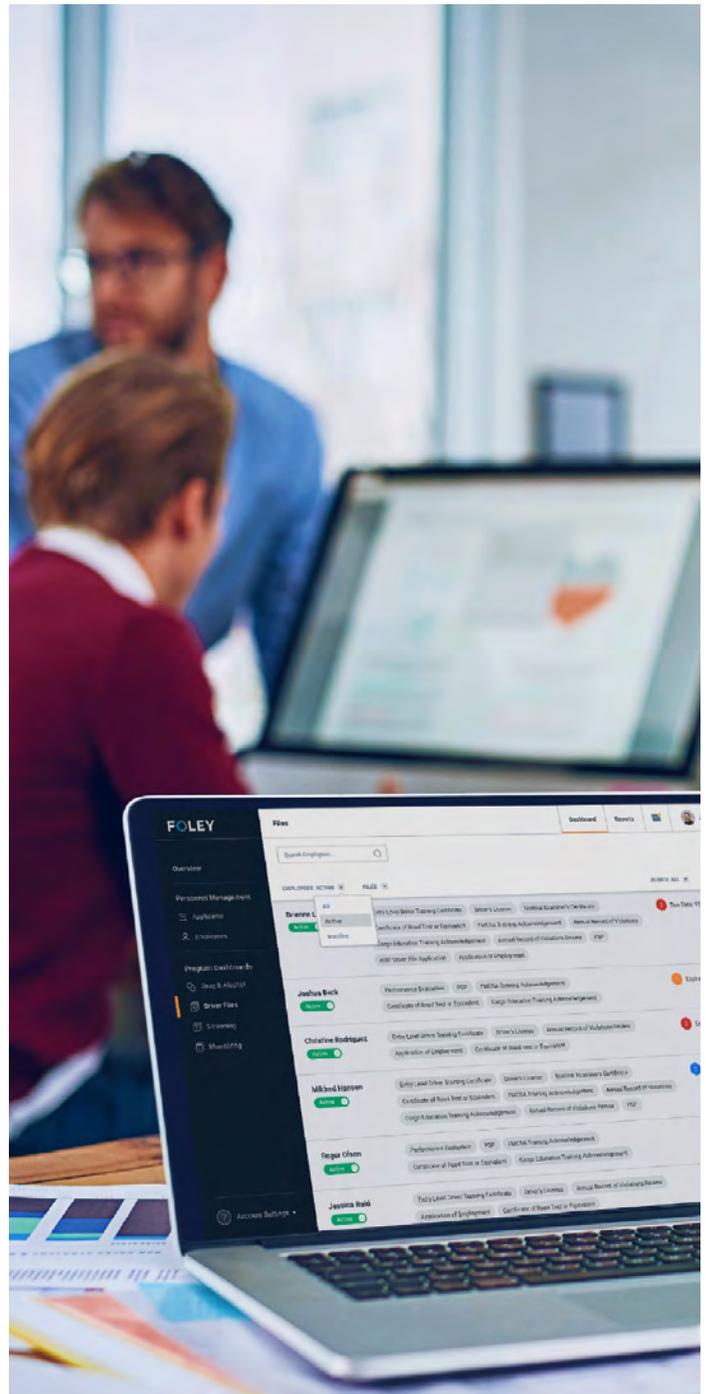
Managing a fleet of drivers is a big responsibility – and there’s a lot of balls to juggle to get the job done effectively. We’ve already seen what can happen when one of those balls drops – and the devastating consequences it can have on the business.

Our recommendation? Don’t go it alone.

A fully-automated safety and compliance solution such as the Foley platform will manage your core safety and compliance programs to ensure you’re making smart hiring decisions, getting drivers set up in their required compliance programs and then monitoring key deadlines and alerting you to important information on an ongoing basis.

Whether it’s an upcoming DOT physical reminder or a random drug testing alert, the **Foley platform will manage your drivers’ safety and compliance for you** – so that you’re free to focus on other important areas of the business (putting those training programs into place, for instance).

As an added bonus, because all of your safety and compliance documentation will be stored securely online, it will always be at your fingertips in the event of an audit or (worst-case scenario) if it’s required in court. Even better, you’ll know that your records will be fully compliant.



Takeaway:

Remember that **97% of accidents associated with nuclear verdicts are preventable**. As a company that employs professional CDL drivers, the best way to protect yourself is to be able to prove that you've taken every step necessary to promote a culture of safety and compliance in your business. When you have the programs (and documentation) in place to prove it, you'll be better able to fight back against litigation – and prevent a \$10+ million nuclear verdict.



97%
OF ACCIDENTS
Associated with nuclear verdicts are preventable.

Ready Put Your Nuclear Verdict Protection Plan into place?

At Foley, we'll both evaluate your current safety and compliance procedures and set you up with an automated compliance platform that will help keep your files organized and compliant.

[Learn More](#)

or call (860) 815-0764





Your 6-Step Nuclear Verdict Protection Plan Checklist

HIRING & BACKGROUND SCREENING PRACTICES



Have each new driver complete a DOT-Compliant Application

Run the following background screens on all new hires:

- *Motor Vehicle Report (in each state they've held a CDL)*
- *Criminal Background Check*
- *Commercial Driver's License Information System (CDLIS) search*
- *Pre-Employment Screening Program (PSP screen)*
- *A Pre-Employment DOT Clearinghouse Query*
- *Previous Employer Verification*
- *A DOT Pre-Employment Drug Test*
- *A Hair Follicle Drug Test*

DRIVER QUALIFICATION FILE CREATION & MAINTENANCE



Complete a Driver Qualification File for every driver

Complete a Safety Performance History for every driver

Have an alerts & notifications system for CDL, Medical Card and MVR due dates

Have a secure, digital location to store and maintain driver files

MONITOR DRIVERS' MVRs



Enroll all drivers in a Motor Vehicle Report Monitoring Program

Ensure drivers understand the consequences of unsafe driving practices

Install in-cab cameras to monitor driver behavior

FIGHT DRIVER DISTRACTION & FATIGUE



Ensure drivers understand (and follow) hours of service requirements

Insist drivers keep accurate and up-to-date logs

Provide driver fatigue training sessions

Install in-cab cameras to monitor driver behavior

PRIORITIZE INSPECTIONS & MAINTENANCE



Make pre- and post-trip inspections a priority

Provide ongoing training around common maintenance and vehicle safety issues

Create solid communication pathway between drivers and the maintenance team to ensure issues are addressed quickly

INVEST IN A FULLY-AUTOMATED SAFETY & COMPLIANCE SOLUTION



Convert all paper files into an electronic format

Use an automated system that tracks compliance issues for you

How Can Foley Help You?

The Foley platform maintains up to date and secure records for all of your DOT compliance programs – helping to ensure that you have everything you need to fight a nuclear verdict. [Click here](#) or call (860) 815-0764 to schedule your free software demo now.