

8 Essential Considerations for Protecting Your Fleet from Costly Litigation

Respondeat Superior is a doctrine that holds an employer or principal legally responsible for the wrongful acts of an employee, if such acts occur within the scope of employment.

Under this doctrine, safety professionals have a critical role in implementing safe operations and establishing a culture of safety across their fleet. This is especially important given the increase in driver risk and the growing threat of nuclear verdicts, or damages awarded in excess of \$10 million.

The “Reptile Theory” is often cited as one of the main reasons for the rise in these skyrocketing awards. This is a litigation strategy designed to appeal to jurors’ primal instincts and emotions, rather than their ability to reason and evaluate evidence objectively. In an attempt to sway a jury in their favor, plaintiffs present evidence showcasing how the defendant’s actions posed a threat to public safety, appealing to jurors’ desire to protect themselves and their community from harm.

But often the cause of costly verdicts is as much about the systemic issues that exist within a company as it is about the specific details of a crash. The Reptile Theory approach has been used to argue that a company’s failure to adequately train or supervise its employees posed a threat to public safety, and that this negligence directly led to the crash – resulting in injuries or fatalities. By framing the case in this way, plaintiffs can appeal to jurors’ fears and emotions, rather than their ability to evaluate evidence in an unbiased manner.

How can companies combat these litigation tactics and protect their drivers, reputation and bottom line?

“Nuclear verdicts, damages awarded in excess of **\$10 million**, pose a growing threat.”

8 Proactive Strategies for Combatting Nuclear Verdicts

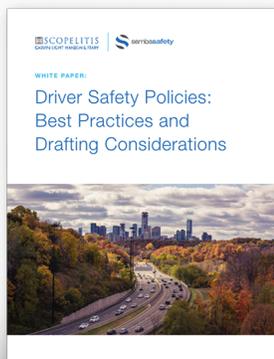
1. CREATE A DEFENSIBLE CASE BEFORE THE CRASH

A defendant's overall commitment to safety, from its safety culture to its operational plan and decisions, are primary factors in large verdicts.

Companies should establish a proactive baseline of fundamentals to ensure that their risk management processes support legal defensibility. These fundamentals include:

- A good faith effort in ensuring that the company has explored and implemented all possible tools and processes for mitigating risk and maintaining a strong safety culture
- Clear, comprehensive driver safety policies that are frequently updated
- Procedures and processes that clearly showcase how these policies are directly enforced
- Audits that demonstrate the follow-through and effectiveness of each of these components

Pro Tip: A well-crafted driver safety policy creates a solid foundation for your overall safety program. Communicating driver responsibilities from the get-go sets a company-wide standard for how you define driver safety. And by effectively enforcing your safety policy, you will inevitably experience a lower incidence of preventable crashes and claims – reducing costs and defending your company from future litigation.



NEED TO CRAFT OR ENHANCE YOUR SAFETY POLICY?

Check out our white paper:
“Driver Safety Policies: Best Practices and Drafting Guide”

[EXPLORE DRAFTING GUIDE](#)

2. PROACTIVELY MITIGATE RISK

The best defense against the rise in costly litigation is to take timely, proactive steps to mitigate risk. This should include establishing and regularly updating a comprehensive driver safety policy, implementing consistent hiring protocols, monitoring ongoing driver behaviors and violations, investing in proactive and remedial driver safety training and instilling a strong safety culture across the entire organization. By taking these steps, companies can minimize the likelihood of an employee-involved crash and reduce the potential for legal action.

One of the most critical aspects of proactively mitigating risk is leveraging driver violations and specific driving behaviors to predict and prevent crashes. For decades, SambaSafety has evaluated the risk of millions of drivers. Our team conducted a crash prediction study correlating MVR events with insurance claims. We've identified the top 38 violations that increase the probability that a driver will be involved in a claim within the next 12 months.

Violation	Increased Probability of a Claim within 12 Months (by %)	Violation	Increased Probability of a Claim within 12 Months (by %)
Fail To Signal Lane Chg Or Turn	112.6	Failure To Obey Stop Sign	37.4
Speed 21-25 Over Limit In A 60	82.2	Failed To File Future Proof Of FR	36.4
FTA/Complete Required Courses	71.8	Speed 1-5 Over Limit	36.1
Show Or Use Improperly Reg Or Title	71.8	Administrative Per Se For .XX Bac	35.6
Failed To Show DL/Permit/ID	68.2	Inattentive Driving	35.3
Failed To File Reqd Doc Or Report	59.1	FTA For Trial Or Court	34.7
Driving While License Suspended	55.6	Failed To Show Evidence Of FR/Ins.	32.6
Suspension	55.5	FTO Traffic Signal Or Light	31.8
Fail To Pay Child Support	53.6	Safety Belt Not Used Properly	31.6
Refused To Submit To Test	51.5	Following Too Closely	29.7
Following Improperly	49.8	Expired Or No Registration Or Title	29.1
Speed 16-20 Over Limit In A 65	49.6	Fail To File Medical Certification	28.6
Failed To File Change Of Addr/Name	48.1	Equipment Used Improperly	28.4
Expired Or No DL/Permit/ID	47.5	Court Orders/Administrative Actions	26.9
Failure To Appear	45.8	General Miscellaneous	26.5
DUI Of Alcohol And/Or Drugs	42.1	Fail To Comply With Fr Laws	23.8
Speed 6-10 Over Limit	40.6	Speeding	22.1
Fail To Pay Fine And Costs	40.0	FTO Sign Or Traffic Control Device	18.9
DUI - BAC Over .08%	39.8	Accident	8.4

Without mitigation, every mile an employee drives after receiving any of the violations highlighted above puts companies at greater risk. It's critical that drivers who receive violations receive immediate, highly-targeted training to correct behaviors and prevent crashes and costly claims.

3. INVEST IN TECHNOLOGY

Investing in technology such as dashcams and telematics systems, and identifying violations and behavior through telematics, MVR and CSA monitoring allows companies to uncover risks and provide near-real-time feedback – preventing crashes before they happen with targeted, remedial training. Technology can also be leveraged to inform and administer ongoing, proactive training as an effective attempt to keep safety skills top of mind for drivers company-wide.

When it comes to establishing a rock-solid defense against the Reptile Theory, the use of these technologies as both a proactive monitoring tool and intervention strategy offers clear proof that there is no negligence in ensuring that the company is doing everything in its power to mitigate risk.

4. DOCUMENT CONSISTENTLY

Nuclear verdicts are often caused by a combination of poor safety statistics and insufficient documentation of hiring and training. To counter this, record-keeping must be used to show that there is no systemic failure.

Going above and beyond to document ALL safety measures demonstrates a company's unwavering commitment to safety in the event of a lawsuit. This includes keeping highly accurate and detailed records of hiring and individual driver records, safety protocols, driver training (both ongoing and remedial), equipment purchases as well as any maintenance and inspection records for vehicles. In this day and age, it's best practice to document all of this critical information within a single digital platform, with the ability to keep track of all steps taken and audits performed in a way that quickly and clearly showcases a company's due diligence.



5. PROMOTE YOURSELF AS A LEADER IN SAFETY

Building and maintaining strong relationships with customers, vendors and employees can help demonstrate a commitment to safety and responsible business practices. Customer ratings alone have an impact on a company's ability to establish trust and a good reputation with those they work with in the industry. Asking customers to share their positive experiences on Google or other relevant customer rating sites can help companies build goodwill in the event of a lawsuit.

6. ESTABLISH CLEAR RESPONSIBILITIES ACROSS THE ENTERPRISE

It's critical to establish a well-organized and coordinated group within the company that is responsible for managing operations, safety, accounting and legal matters – all working together to mitigate risk. Often, the most harmful gaps in a safety program arise from the simple fact that no one was directly responsible.

Companies should also consult with their insurance broker and carefully consider their insurance coverage and policy limits. It is important to have sufficient coverage to protect against large verdicts, but also to review and understand the terms and conditions of the policy to ensure that it provides adequate protection in the event of a lawsuit.

In the event of a crash or incident, companies should be prepared to respond quickly and effectively. This includes already having a response plan in place, as well as a team of experienced legal professionals who can help navigate the legal process. The various players involved must be properly managed and coordinated to minimize risk and maximize the company's legal defenses.



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CONSULT INSURANCE
BROKER AND REVIEW
COVERAGE



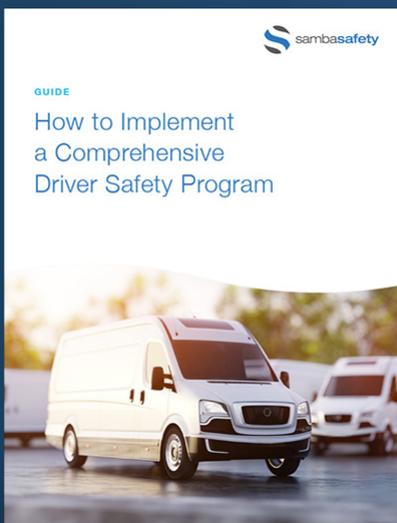
PREPARE LEGAL
RESPONSE AND
COORDINATE PLAYERS

7. PROACTIVELY PREPARE FOR POTENTIAL LITIGATION

Because some crashes are unavoidable, every company should have a proactive plan to defend itself against the Reptile Theory. This can include anticipating the plaintiff's argument and preparing expert witnesses to testify about industry standards, training protocols and other relevant factors that speak to the company's ongoing commitment to safety. Companies should conduct a thorough internal investigation, including interviews with all parties involved in the crash, reviewing driver logs and training records and analyzing any relevant video or data. This allows the company to identify potential weaknesses in its defense and take proactive steps to address them in an effort to bring the jurors back to reality.

8. UNDERSTAND THE STAKES

Companies should understand that if used, litigation strategies such as the Reptile Theory can lead to large verdicts that can have significant financial and reputational implications. By recognizing the stakes, companies can take a more proactive approach to litigation and invest the time and resources needed to mount an effective defense and work to better prevent these costly incidents from happening in the first place.



To discover more about how leading companies are establishing rock-solid safety cultures that work to defend their fleets against expensive crashes and deceptive litigation techniques, explore our guide, “How to Implement a Comprehensive Driver Safety Program.”

[DOWNLOAD GUIDE](#)