

The Threat of Commercial Vehicle Litigation

Alex Leslie, Ph.D.
Senior Research Associate
American Transportation
Research Institute

ATRI

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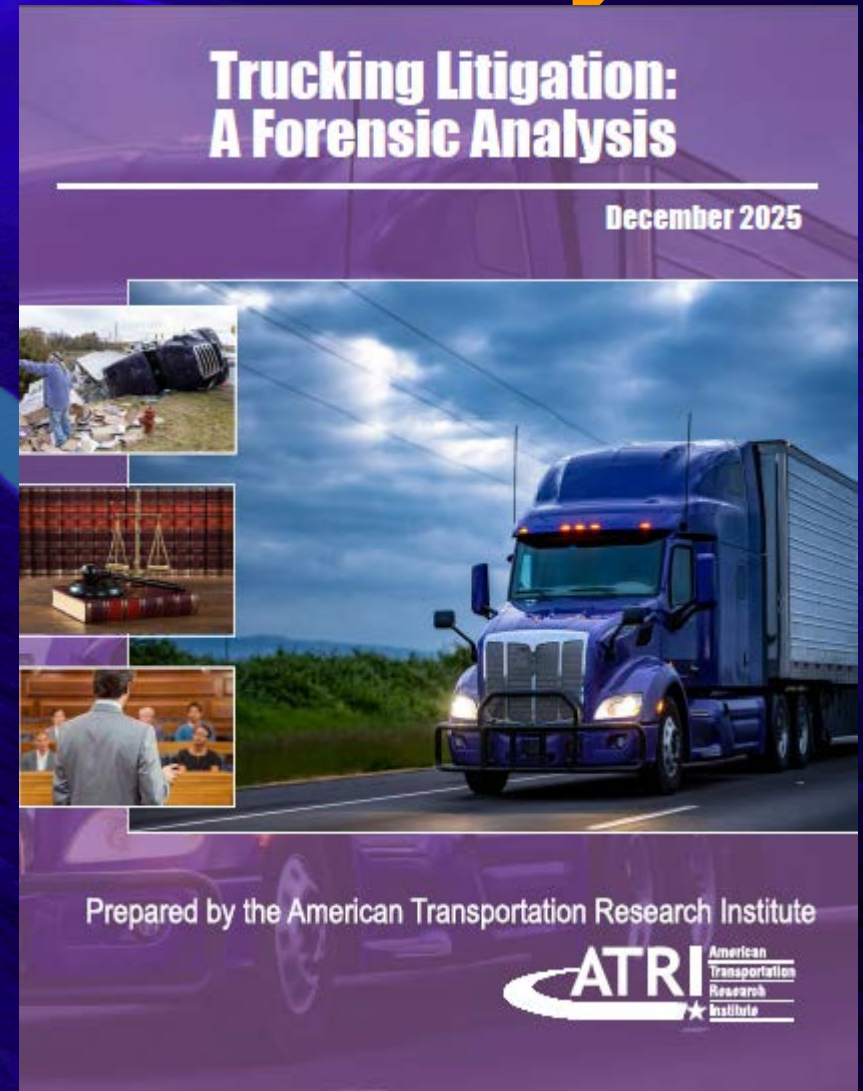


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Trucking Litigation: A Forensic Analysis

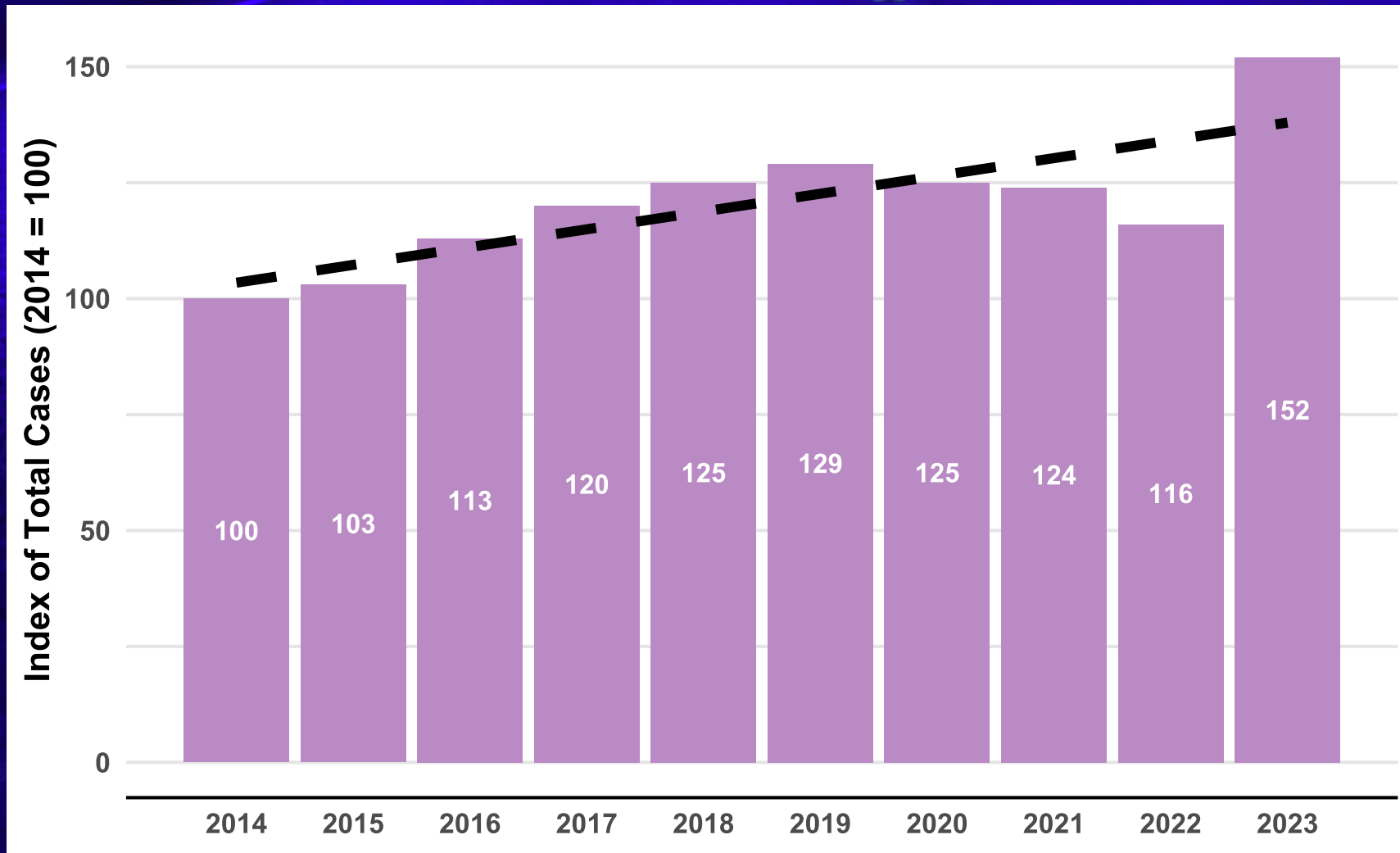
- 2024 RAC priority
- First-of-kind estimates of nationwide trends in the number and size of tractor-trailer torts, including cases prevented from federal venue
- Analyzes truck-tractor litigation trends in a dataset of verdicts and settlements from 2019 through 2024
- Includes legal expert assessments of four key areas of concern:
 - ◆ Third-party litigation financing
 - ◆ Use and mitigation of extraneous evidence
 - ◆ Whether Federal Motor Carrier Safety Regulations represent full compliance or minimum standards
 - ◆ New plaintiff tactics based on product liability suits



Tractor-Trailer Torts by the Numbers: 2022

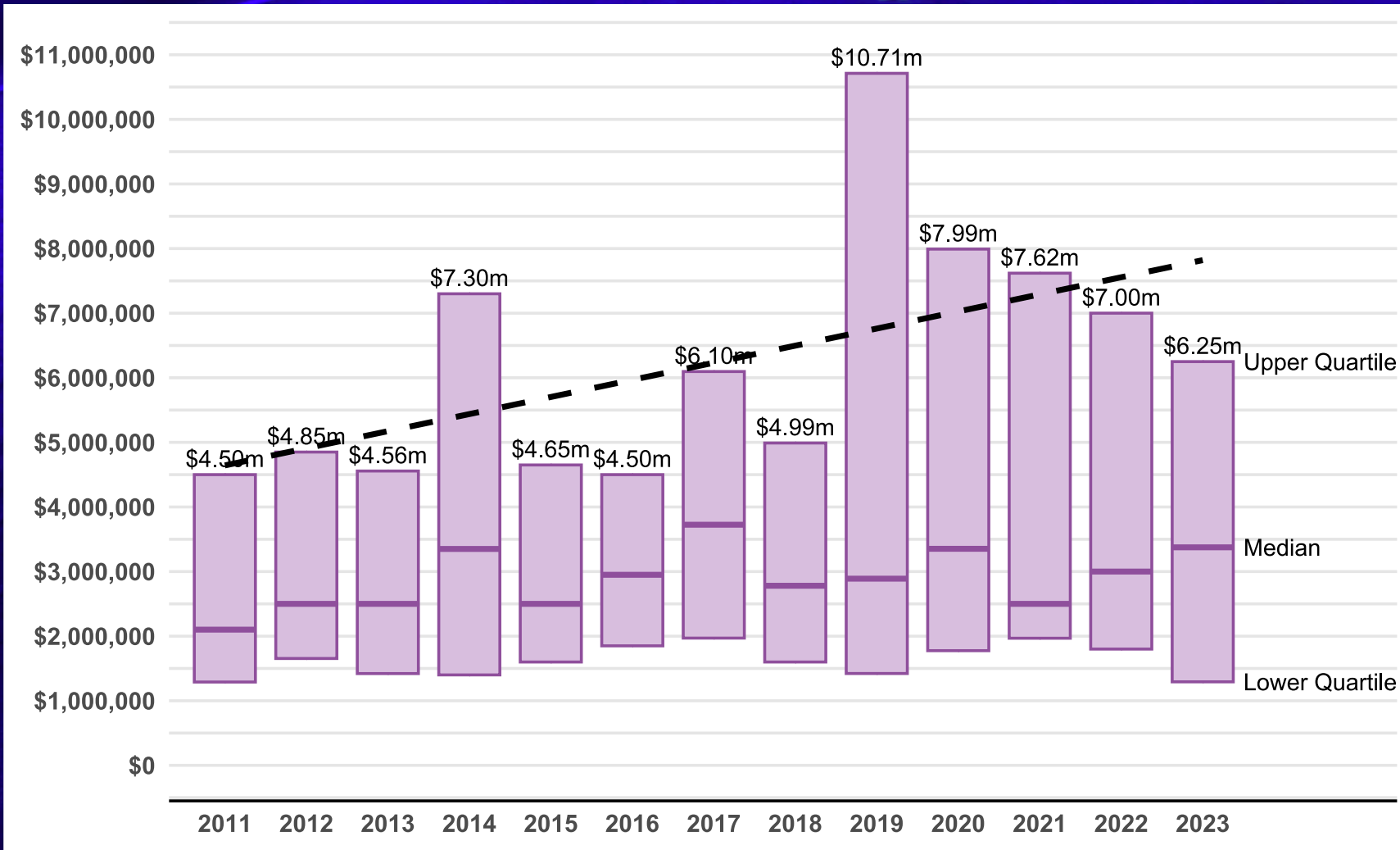
- 12,817 state cases; majority of which were settled prior to court
- 487 state cases concluded by verdict (64% plaintiff victories)
- 147 state verdict cases were eligible for federal court but not removed there – often due to plaintiff interference
- Federal courts preferable: in state courts, trials are twice as frequent and median awards \$1.1M higher
 - ◆ \$102.8M in excess awards in 2022 from federally-eligible cases remaining in state courts

Number of Cases Increasing



- Cases increased at an annual rate of 3.7%
- Recent years vary due to COVID court delays and traffic impacts as well as legislative activity

Award Size on the Rise

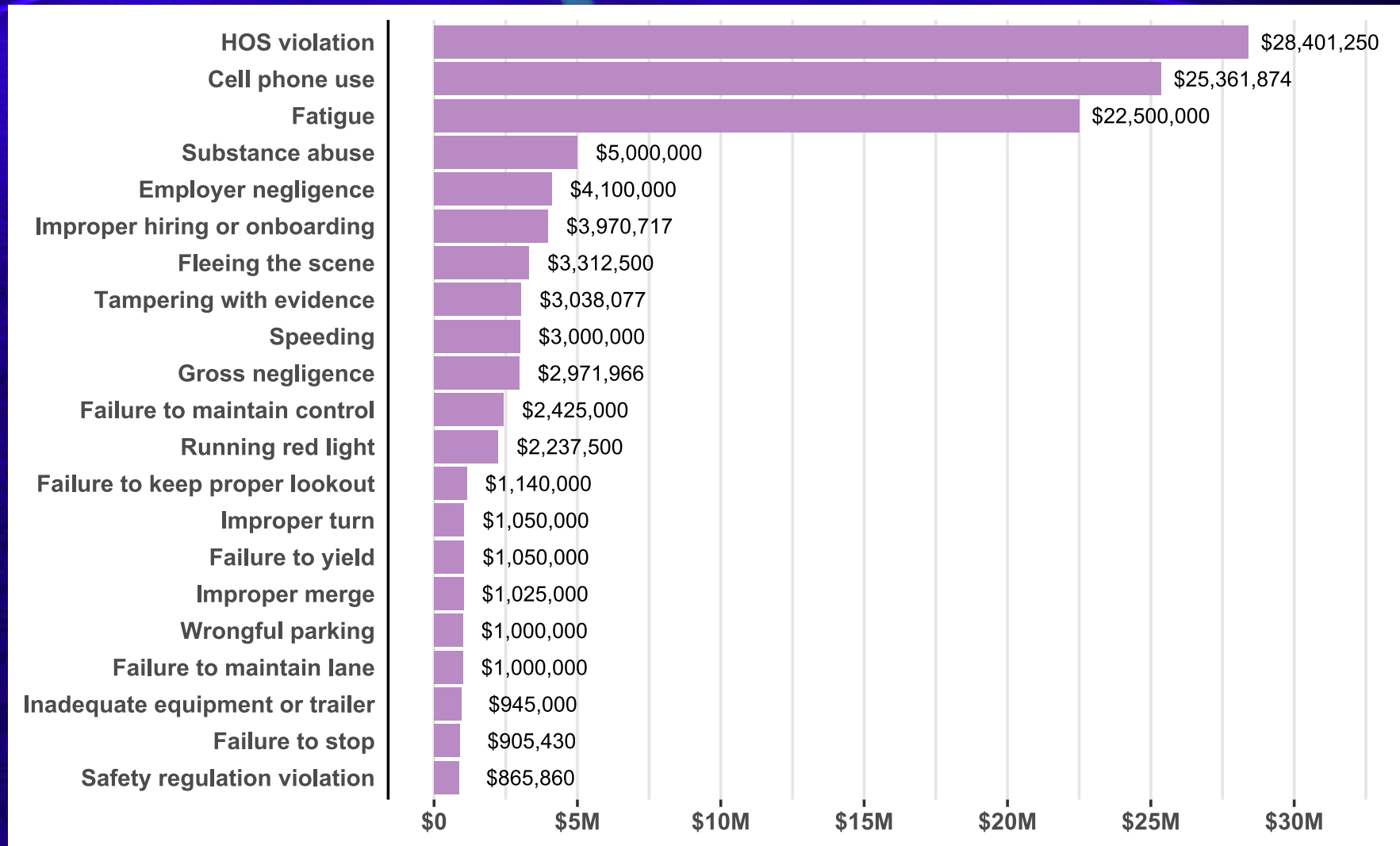


- The upper half of awards increased at an annual rate of 5.7%

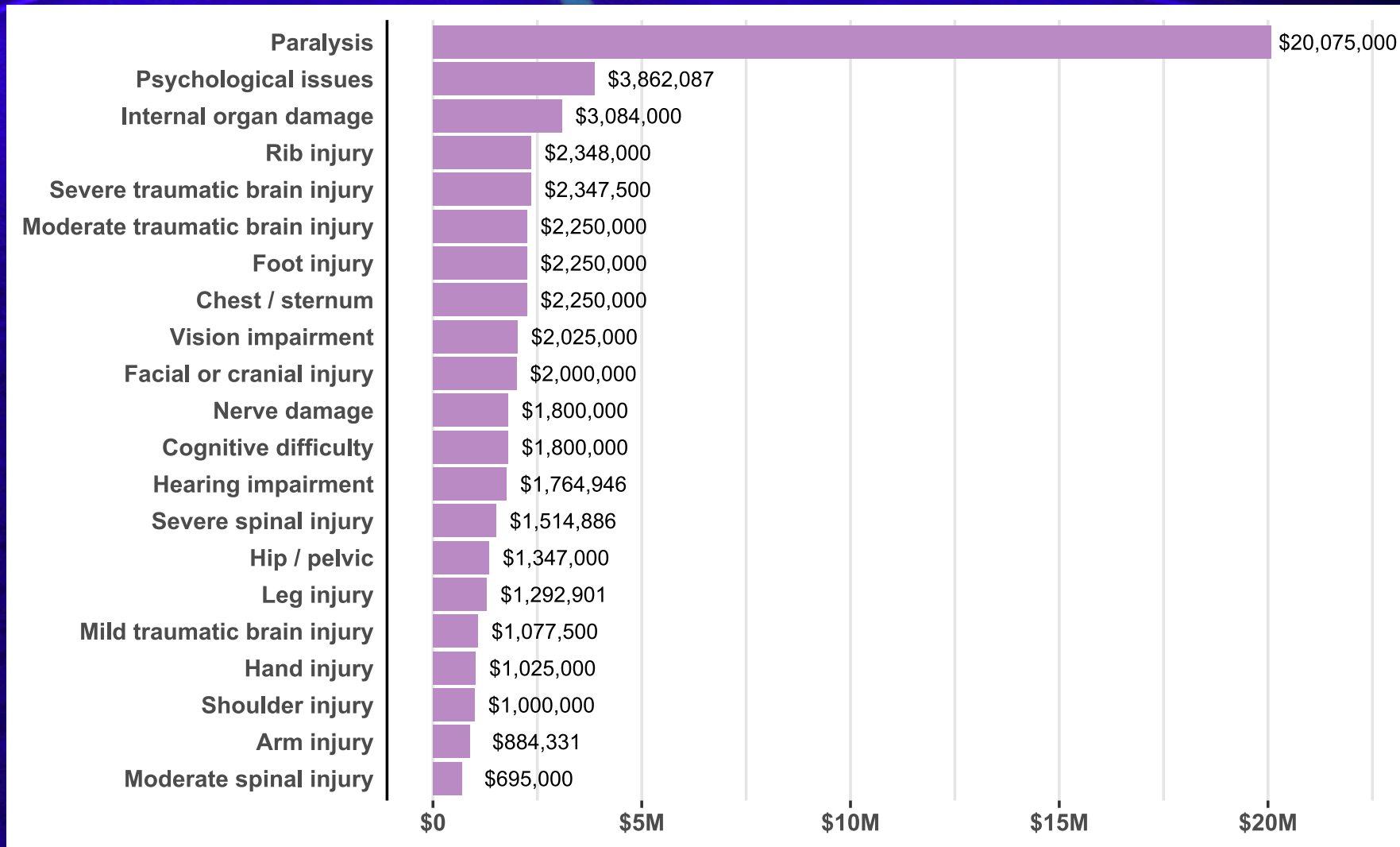
States with Highest Awards

| State | Total Cases | Median Award | Upper Quartile Award |
|------------|-------------|--------------|----------------------|
| California | 29 | \$3.21M | \$8.00M |
| Georgia* | 14 | \$2.80M | \$19.52M |
| Michigan | 18 | \$2.50M | \$5.52M |
| Florida* | 26 | \$2.00M | \$8.22M |
| Missouri* | 13 | \$2.00M | \$4.10M |
| Indiana* | 10 | \$1.75M | \$5.47M |
| New York | 17 | \$1.67M | \$3.25M |
| Texas* | 59 | \$1.56M | \$6.25M |
| Alabama | 10 | \$1.38M | \$1.99M |
| Louisiana* | 25 | \$1.26M | \$3.04M |

Median Award by Type of Negligence



Median Award by Type of Injury

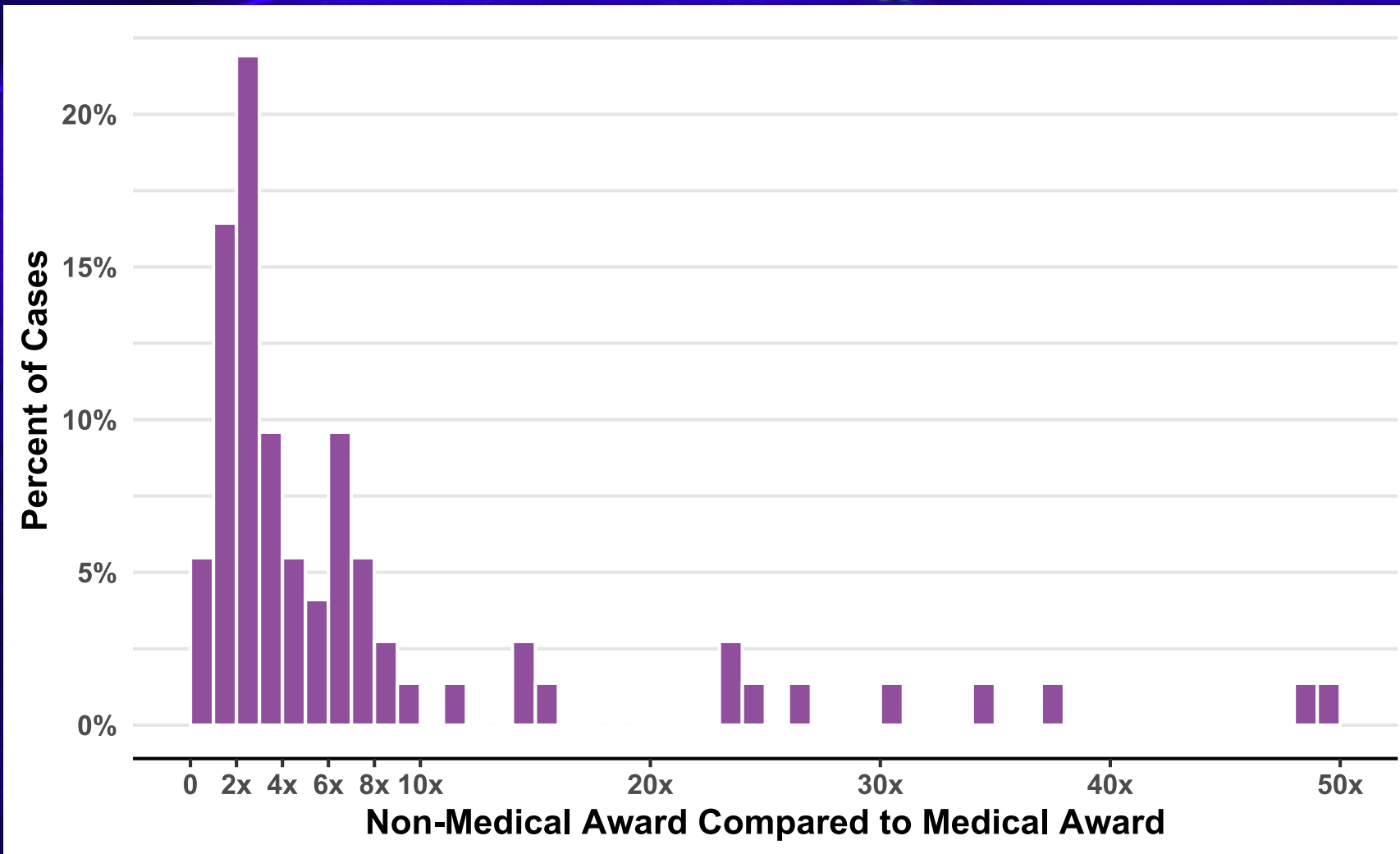


Benefits of Settling Differ by Negligence, Size

- In general, verdicts were *lower* than settlements in cases below \$1M but *higher* than settlements in cases above \$5M
- Six types of negligence had lower settlements than verdicts in all \$1M+ cases with statistical significance

| Negligence Type | Median Settlement | Median Verdict |
|----------------------------------|-------------------|----------------|
| Employer negligence | \$3.55M | \$49.16M |
| Improper hiring/onboarding | \$3.97M | \$10.50M |
| Failure to stop | \$2.50M | \$9.29M |
| Failure to yield | \$1.40M | \$3.73M |
| Improper turn | \$1.50M | \$3.31M |
| Failure to keep a proper lookout | \$1.55M | \$2.37M |

Exaggerated Non-Medical Claims



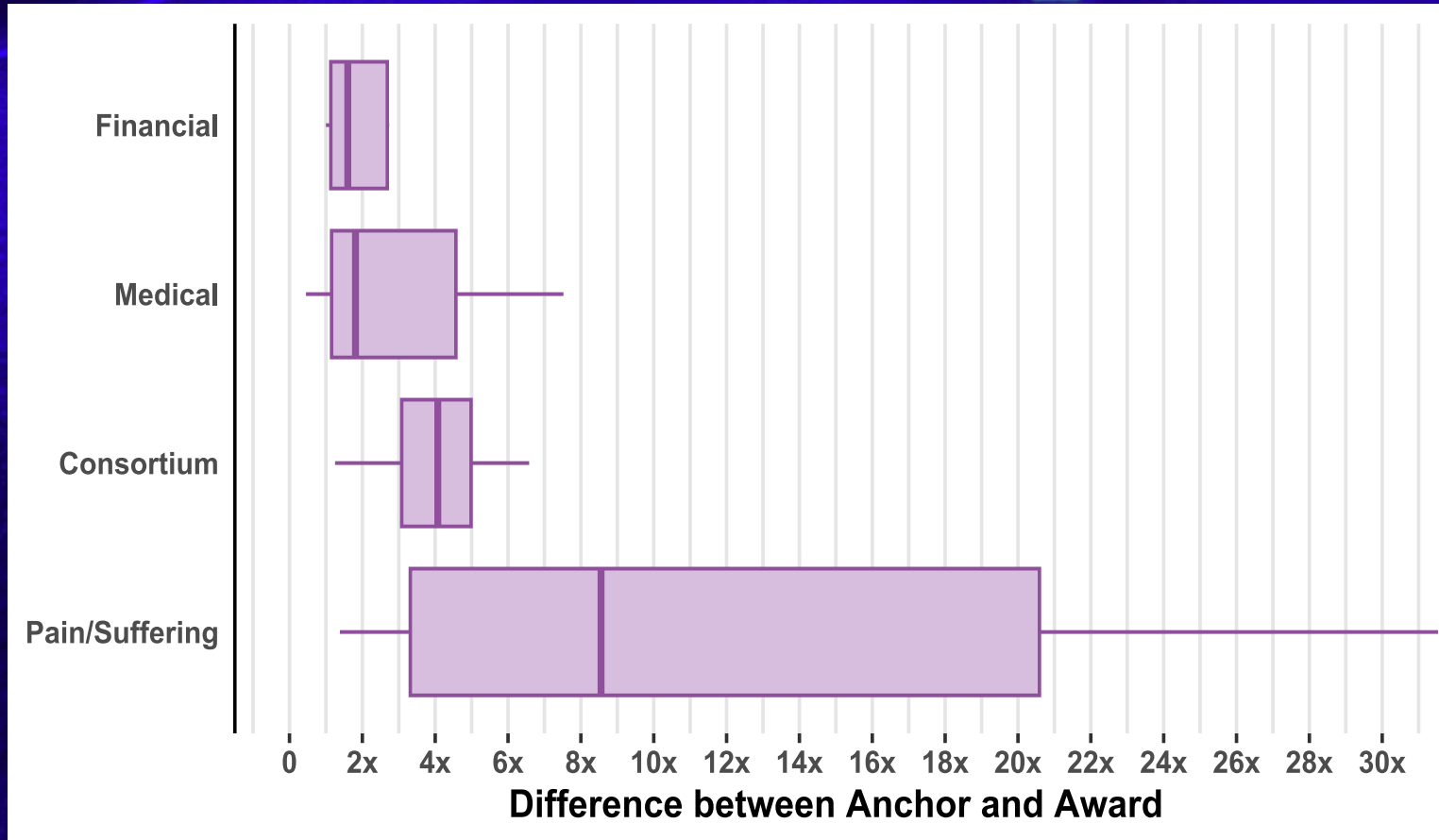
- 17.8% of cases had non-medical awards more than 10 times higher than medical awards

Defense Litigation Strategy

| Strategy | Share of Total Cases | Median Award | Mean Award |
|--------------|----------------------|--------------|------------|
| Accept | 35.3% | \$1.0M | \$25.9M |
| Deny | 38.2% | \$1.4M | \$8.6M |
| Counterclaim | 26.5% | \$1.5M | \$5.3M |

- Making a counterclaim – presenting evidence of plaintiff negligence – did not result in lower awards, underscoring jury bias
- Stipulating to liability – sometimes adopted for expediency in court – did not have a statistically significant impact on awards and was associated with more nuclear verdicts

Plaintiff Anchors



- Plaintiffs using inflated anchors, especially in P&S but also medical (phantom damages)
- Anchors that diverge widely from final awards still influence juries and contribute to social inflation

Defense Victories

- One type of truck negligence had a statistically significant correlation with plaintiff victories:
 - ◆ Running red light
- Three types of truck negligence had statistically significant correlations with defense victories:
 - ◆ Improper turn
 - ◆ Improper merge
 - ◆ Failure to yield

Litigation Sidebar #1: FMCSRs: Minimum Standards or Not?

- FMCSRs set forth mandatory “standards”
- Compliance is sufficient for FMCSA compliance reviews, but...
- Plaintiff: FMCSRs = “minimum standard” of care
- Defense: FMCSRs = THE standard” of care
- Exceeding FMCSRs creates new ad infinitum standards AND new discoverable data
- Either way, adhere to your own policies & protocols!
- Ideal: new federal laws protecting carriers that exceed FMCSRs

Litigation Sidebar #2: The Impact of Extraneous Evidence on Lawsuit Value and Risk

- In theory, “extraneous” evidence should be irrelevant, but..
- “Relevant” evidence is often inadequate
- Extraneous evidence helps dramatize plaintiff narrative; draws jury away from less-compelling crash evidence
- Carriers must react / respond before crashes occur

Litigation Sidebar #2: The Impact of Extraneous Evidence on Lawsuit Value and Risk

- Broad discovery requests will find most electronic data
- Create and abide by strict data / material retention policies
- Federal guidance allows data the "right to be forgotten" & "defensible disposition" (deleting data no longer needed), and
- Secure and sophisticated destruction tools needed to prevent data recovery
- Be very wary of social media messages and claims

Litigation Sidebar #3: Litigation Funding Agreements in the Catastrophic Injury Space: Why Should the Trucking Industry Care?

- TPLF's business model is extremely costly to trucking litigants by:
 - ◆ TPLFs "force" plaintiffs to stretch out the time and expense needed to litigate / settle – but generally remain hidden
 - ◆ TPLF plaintiffs receive 43 percent of payouts on average, while plaintiffs in non-TPLF cases receive an average of 55 percent of payouts
 - ◆ Increases NVs and insurance premiums
- TPLF "white knights" generally oppose settlements to maximize ROIs
- Judge's position: "it is difficult to conceive of any stipulation more against public policy than a TPLF contract term requiring LPLF permission to settle the underlying litigation"

Litigation Sidebar #4: When Meeting the Standard Isn't Enough: Lessons from the Wabash Trailer Verdict

- VW car rear-ends truck trailer; stopped during WZ congestion
- VW driver and passenger killed; crash attributes:
 - ◆ Clear visibility
 - ◆ High speed
 - ◆ Driver intoxicated
 - ◆ Neither decedent wearing seat belts
- Trailer met all NHTSA safety regs
- New plaintiff strategy: product liability
 - ◆ No negligence; exceeded standard of care; "worsens" injuries even without crash causation
-- VW estate admitted fault!
- Jury award of \$462M later reduced to \$30M?

The ATRI Team



Rebecca Brewster
President and COO



Dan Murray
Senior Vice President



Jeffrey Short
Vice President



Carla Rose
Research Assistant



Alex Leslie, Ph.D.
Senior Research Associate



Andrew Fain
Research Analyst



Jack Spalding
Research Analyst



Audrey Clark
Research Analyst



Joy Miller
Contract Manager

Questions?

aleslie@trucking.org

www.TruckingResearch.org



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