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The Biggest Trucking Injury Awards Of 2018

By **Y. Peter Kang**

Law360 (December 17, 2018, 4:13 PM EST) -- The trucking industry found itself increasingly in the crosshairs of plaintiffs attorneys well versed in so-called reptile theory trial techniques and in federal and state trucking regulations, which taken together have contributed to an unprecedented number of nine-figure jury awards in 2018.

Here, Law360 looks back at the five biggest transportation injury payouts of the year.

FedEx Shells Out \$165M in NM Big Rig Wreck

A New Mexico appellate court in February upheld a record \$165 million jury award to the family of a mother and 4-year-old child killed when a FedEx Corp. tractor-trailer collided with a small pickup truck.

While the three-judge Court of Appeals panel acknowledged the award was greater than any award in a similar case in New Mexico history, the panel said assigning a monetary value to the loss of a loved one was up to juries and there was no sign the jury in this case was swayed by "passion or prejudice."

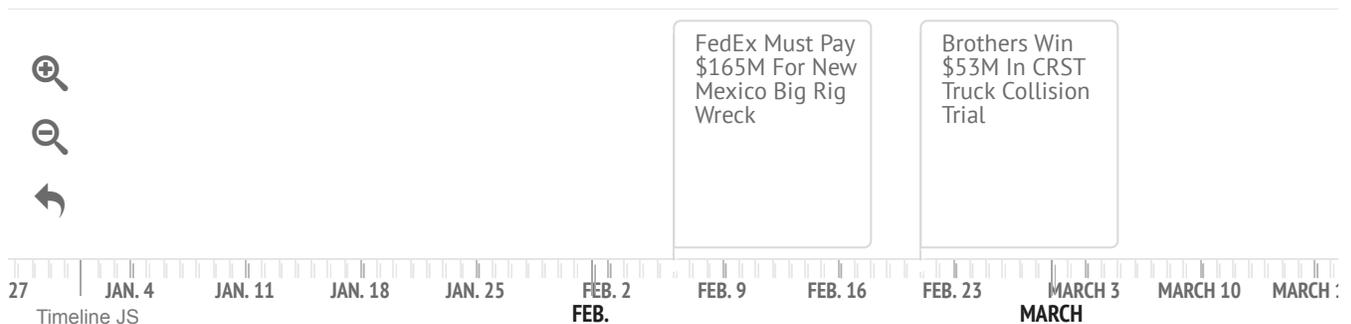
"We agree that the damage awards in this case were very large," Judge Timothy L. Garcia wrote in the unanimous decision. "However, when an experienced district court judge, who is familiar with juries in his community, properly reviews the record and evaluates a motion for new trial and a motion for remittitur; the fact that plaintiffs' awards are large does not transform plaintiffs' undisputed evidence into something illogical or insufficient."

The case is Alfredo Morga et al. v. FedEx Group Packages System et al., case number A-1-CA-35001, in the Court of Appeals of the State of New Mexico.

THE YEAR IN TRUCKING INJURY AWARDS



FEDEX MUST PAY
\$165M FOR NEW
MEXICO BIG RIG
WRECK



Calif. Jury Awards \$53M to Brothers Injured in Truck Collision

Also in February, a California jury awarded nearly \$53 million to two brothers whose pickup truck was hit by the driver of a CRST Inc. commercial big rig that crossed over the center line of a two-lane highway.

The Los Angeles County Superior Court jury awarded \$33.6 million to driver Matthew Lennig, the younger brother who bore the brunt of the crash, and \$19.2 million to Michael Lennig. Though the verdict was solely against driver Hector Contreras, CRST is ultimately responsible as his employer.

On July 7, 2014, Contreras, headed for Los Angeles, crossed the center line of Route 14, a two-lane highway in the middle of California's Antelope Valley, and sheared past the entire driver's side of the Lennigs' pickup, headed north to Mammoth with ATVs in tow.

Punitive damages were initially requested, but that possibility was snuffed out by the judge at the end of trial, according to Michael Lennig's lawyer, Brian Panish of Panish Shea & Boyle.

CRST opted not to lodge an appeal and instead agreed to a post-trial settlement for an undisclosed amount, according to Fred Blum, an attorney for Contreras.

Bradford Hughes, a trucking defense partner with Clark Hill PLC in Los Angeles, **told Law360** earlier this year that plaintiffs attorneys have benefited by using the reptile theory trial technique to score big wins. Hughes was not involved in the CRST case.

The reptile theory, a courtroom strategy developed by an attorney and a jury consultant in 2009, is an effort to activate a juror's brain into reptilian survival mode by suggesting that defendants are a danger to the community and must be punished to prevent future misconduct.

"It's a broader approach and becomes about putting an entire industry on trial," Hughes said. "Trucking is really susceptible to this because we are heavily regulated with statutory authority and that creates opportunities for good plaintiffs lawyers to use reptile strategy and put the entire trucking industry on trial."

The case is Lennig v. CRST et al., case number MC025288, in the Superior Court for the State of California, County of Los Angeles.

Houston Jury Awards \$90M to Family in Trucking Death Case

In May, a Texas state court jury hit Werner Enterprises Inc. with a nearly \$90 million verdict, finding the trucking company was responsible for a 2014 collision that killed a 7-year-old and paralyzed a 12-year-old, according to the family's attorneys.

A Harris County District Court jury awarded the Blake family of Houston more than \$89.5 million in damages for their physical pain and suffering, mental anguish and future medical expenses, according to an attorney for the family. The jury did not award any punitive damages.

The suit stemmed from a 2014 collision on Interstate Highway 20 during what the family says was freezing rain and "black ice" road conditions. The family alleges a student driver for Werner was driving an average of 60 miles per hour in icy conditions before the crash, instead of slowing to a crawl and getting off the road. The Blakes allege Werner didn't provide its student driver, Shiraz Ali, access to basic safety equipment like a temperature gauge or radio that would have alerted him to the dangerous road conditions.

Joseph A. Fried of Fried Rogers Goldberg in Atlanta **told Law360** earlier this year that he and his fellow plaintiffs attorneys now know to focus on trucking industry regulations and policy violations. Fried was not a part of the Blake case.

"Ten years ago these cases would have [gone] to trial as a big car wreck case without all the compliance issues. Now the systemic issues are the focus of the trial," he said. "That's what you're seeing with the increase of verdicts in Texas and elsewhere — you're seeing well-educated presentations by lawyers who are now much more sophisticated and collaborative; at the same time, on the defense side you don't have the same advancement."

The case is Blake et al. v. Ali et al., case number 2015-36666, in the 127th District Court of Harris County, Texas.

FTS Int'l Must Pay \$101M for Texas Truck Accident

In July, a jury in Upshur County, Texas, awarded \$101 million in a suit accusing oil services company FTS International Services LLC of being responsible for a motorist's severe injuries when an FTS truck driver under the influence of drugs rear-ended his car in 2013.

The jury earmarked \$75 million for punitive damages after attorneys for plaintiff Joshua Patterson argued the company disregarded its own policies in hiring the driver, despite multiple driving violations prior to his hiring and his involvement in three accidents while at FTS.

A drug test had found Acker had marijuana and methamphetamines in his system at the time of the accident, Patterson's attorney said. Evidence presented at trial showed Acker had three moving violations within a year and a half before he was hired by FTS, was involved in three accidents while employed by the shipping company and was on probation, according to Patterson's counsel.

"This is one of the most egregious liability cases that I've seen and I think it exposes what's going on in the trucking industry as a whole," a spokesperson for Patterson's counsel at Goudarzi & Young LLP said. "The guy never should have been hired in the first place, per the company's policies and procedures."

The case is Patterson v. FTS International Manufacturing LLC et al., case number 356-15, in the District Court of Upshur County, Texas.

Texas Jury Awards \$260M After Man's Death in Crash

A Texas state jury in November awarded \$260 million to the family of a man killed when his van collided with a tractor-trailer positioned across all four lanes of a highway, according to the family's attorneys.

Riley McPherson was driving a 2008 Chevy van in the early morning hours in February 2016 when a tractor-trailer driven by Eric Wayne Jefferson suddenly pulled out of a private driveway, positioning itself to back in once more, according to McPherson's parents' lawyers. As Jefferson's semi sat blocking the two northbound and two southbound lanes, 21-year-old Riley McPherson slammed into the side of the trailer and died.

Jefferson had at that point been driving for 17 hours, much longer than the maximum allowed by federal law, the parents' lawyers said in a statement after the verdict.

The jury awarded father Eddie McPherson \$80 million for past and future loss of companionship and \$60 million for past and future mental anguish, according to court papers. It awarded mother Karen Pearson \$60 million for past and future loss of companionship and \$60 million for past and future mental anguish.

The case is McPherson v. Jefferson Trucking et al., case number 16-00247, in the District Court of Upshur County, Texas.

--Additional reporting by Emma Cueto, Mike Curley and Cara Salvatore. Editing by Pamela Wilkinson and Marygrace Murphy.