



RICK GUNDRUM

STATE REPRESENTATIVE • 58TH ASSEMBLY DISTRICT

Testimony on Assembly Bill 647

Assembly Committee on Transportation | January 9, 2023 | Room 2 North

Chair VanderMeer, Vice-Chair Hurd, and members of the Assembly Committee on Transportation, thank you for giving me the opportunity to testify on Assembly Bill 647. Last year I was made aware of an issue called “nuclear lawsuits” by a trucking company in my district. The company is E.H. Wolf & Sons, Inc. which was established in Slinger in 1941 and has been around ever since. The company strives to teach their drivers the importance of driving safely on the roads to keep themselves safe and other drivers safe. It also monitors their drivers to make sure they are driving safely.

Despite the hard work and efforts of E.H. Wolf & Sons to improve road safety, they have to deal with the risk of a nuclear lawsuit. A nuclear lawsuit occurs when the jury award is an exceptionally high amount. Some consider it a verdict where the jury award exceeds \$10 million. This has become a rising problem for the transportation industry. The average verdict size for a lawsuit above \$1 million involving a truck crash has increased nearly 1,000% from 2010 to 2018, rising from \$2.3 million to \$22.3 million according to a study by the American Transportation Research Institute.

Additionally, a report from Marathon Strategies has found that the median verdict greater than \$10 million against corporate defendants grew by 55%. Since 2020, the sum of corporate nuclear verdicts nearly quadrupled from \$4.6 billion to over \$18.3 billion in 2022. The median verdict from \$21.5 million in 2020 to \$41.1 million in 2022. The trucking industry was at the forefront of this report.

While a plaintiff hurt in an accident with a trucker certainly has the right to file lawsuit, the problem with the rise in nuclear verdicts is that they are now seriously beginning to damage the trucking industry. It leads trucking businesses to pay higher insurance rates, redirect their resources away from investing in their workforce, prolongs the purchase of new equipment, and worsens supply chain issues.

What I desire with Assembly Bill 647 is to find a balance for the trucking industry and those who would file a lawsuit. I authored AB 647 with Representative Spiros and Senator Tomczyk to create a reasonable cap on noneconomic damages of no greater than \$1 million. Those damages would include compensation for pain or suffering. They are different from more direct damages, such as medical expenses for treatment. I believe this cap will provide a middle ground that is necessary to keep the trucking industry afloat in Wisconsin. I thank you for your time today and I hope you support this bill.



CORY TOMCZYK

STATE SENATOR • 29TH SENATE DISTRICT

Testimony – AB 647

Assembly Committee on Transportation

Tuesday, January 9, 2024

Chair VanderMeer and Members of the Assembly Committee on Transportation,

Thank you for taking the time to hear AB 647.

In recent years, the commercial trucking industry has seen an accelerating increase in large scale litigation. A July 2023 report from the US Chamber of Commerce Institute for Legal Reform highlighted that despite a decline in fatal crashes of more than 34% over the past two decades, there has been a significant inflation in the valuation of verdicts and settlements with the average settlement award reaching \$27.5 million.

These lawsuits, often referred to as “Nuclear Lawsuits”, result in costs to both small businesses and the consumers they serve. The mere threat of these lawsuits have increased insurance costs and have served as tools to bloat settlement agreements due to threat of sky high litigation; settlements that may not reflect the actual value of damages occurred due to an unfortunate accident.

AB 647 addresses this rising problem by placing a reasonable cap on noneconomic damages, those including pain and suffering, of no more than \$1 million. This bill however does not include limits on direct damages such as medical expenses. This reasonable cap strikes an important balance between delivering justice for plaintiffs and preventing arbitrary and unreasonable damages to small businesses.



January 9, 2024

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Trucking Bills are An Attack on Public Safety and Wisconsinites' Rights

AB-647/SB-613 should be opposed. The bill is an attack on Wisconsin citizens' ability to obtain justice after experiencing catastrophic injuries and death on Wisconsin roadways.

Trucking is Dangerous. Large trucks weigh between twenty and thirty times as much as passenger cars and trucks. Their large wheels, height, and significant ground clearance present additional, grave safety dangers when involved in crashes with passenger cars.

- In 2021, there were 5,788 people killed and 154,993 injured nationally in traffic crashes involving large trucks. This was a 17-percent increase from 4,945 in 2020. The National Highway Transportation Safety Administration (NHTSA) had previously declared it a "crisis" level safety concern in 2021 when the number hit 5,600 (with a 13 percent increase).
- Large trucks are more likely than other vehicles to be involved in multi-car crashes.
- In 2021, an estimated 523,796 large trucks were involved in police-reported traffic crashes nationwide.
- There was a 52% increase in truck crash fatalities between 2010 and 2021. Seventy-two percent (72%) of people killed in large-truck traffic crashes in 2021 were occupants of other cars.
- Heavy and tractor-trailer truck driver deaths account for sixteen percent (16%) of fatal work injuries recorded in the U.S. in 2020.

Damage Caps Target the Most Seriously Injured and Harm Vulnerable Groups. Caps on non-economic damages, by definition, target the most seriously injured people by reducing the obligation that negligent truckers face for the harm they have caused.

These Bills Undermine Wisconsinites' rights to a Civil Jury Trial. Article I, § 5 of the Wisconsin Constitution establishes that Wisconsin citizens have the right to a civil jury trial. Article I, § 9 establishes that citizens also have a right to remedy for wrongs done against them. Stepping in to protect an inherently dangerous industry unnecessarily puts that industry above the wants, needs and rights of Wisconsin citizens and anybody else who travels on our roads by interfering with their ability to invoke their constitutional rights.

Truck Drivers Work Incredibly Long Hours; Are Susceptible to Lack of Sleep and Distraction. Typical long-haul truckers endure 60- to 70-hour workweeks (or longer), driving on average 400 to 700 miles a day.

Drivers of Large Trucks are More Likely than Other Drivers to Have Prior Crashes. According to NHTSA, drivers of large trucks involved in fatal traffic crashes in 2021 had a higher percentage (20.8%) of previously recorded crashes compared to drivers of other vehicle types (motorcycles, 19.9%; passenger cars, 18.2%; and light trucks, 17.2%).

Trucking Companies Frequently Put Unsafe Trucks on the Road. Between October 1, 2021 and June 30, 2022, roughly 1/4 of inspected trucks were forced out of service for failing to meet federal safety standards.



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Neal Kedzie
nkedzie@witruck.org

January 9, 2024

Submitted to: Assembly Committee on Transportation

RE: Support for AB 647 – Limiting the recovery of noneconomic damages from a commercial motor vehicle

Dear Chairperson VanderMeer, Vice Chair Hurd and Members of the Committee:

Thank you for the opportunity to testify before you today in support of **AB 647**, legislation that will limit (per victim) the total amount of noneconomic damages that a person may recover from a commercial motor vehicle carrier to \$1 million.

I am Neal Kedzie, President of the Wisconsin Motor Carriers Association (WMCA). We are a trade association with more than 1,200 members that serves as the voice of the trucking industry. Our primary focus is on the safe, efficient and legal operation of commercial motor vehicles within the State of Wisconsin. I am here today in support of **AB 647** and hope to briefly explain why it is so critically needed by the motor carriers that transport 72 % of essential products and 95% of all manufactured goods to the residents and businesses of Wisconsin.

If you are not aware, the trucking industry has become a frequent target of lawsuits that have resulted in what is known as "nuclear verdicts". A nuclear verdict is defined as an exceptionally high jury award that surpasses what should be a reasonable or rational amount. An American Transportation Research Institute (ATRI) study found there was an 867% increase in the average size of verdicts against trucking companies between 2010-2018. The most alarming nuclear verdict occurred in 2022 when a Florida jury handed down a billion dollar decision involving two trucking companies.

Components of those verdicts are split between three categories: economic damages, non-economic damages, and punitive damages. A 2022 study by the U.S. Chamber of Commerce's Institute for Legal Reform found that *non-economic* damages make up 42% of total verdicts and more often than not far exceed the amount of economic damages awarded. In fact, it is not uncommon for plaintiffs' attorneys to focus entirely on non-economic damages. They urge juries to issue non-economic damages for things like pain and suffering to send a message or punish the defendant, even though non-economic damages are intended to be compensatory and not punitive. They choose non-economic damages to circumvent limitations on when and how much punitive damage may be imposed. **AB 647** is about setting reasonable limits to curb the growing abuse of non-economic damages.

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Non-economic damages are awards for amorphous, difficult-to-quantify things like pain and suffering, emotional anguish, and loss of consortium. Because they are difficult to quantify and are not subject to guardrails established by the Supreme Court on punitive damages, they can be unfettered. Judicial review of non-economic damages awards also uses imprecise standards. These factors combine to drive up verdicts, increasing costs for trucking companies, and ultimately affecting services and at times, literally driving carriers out of business - particularly small motor carrier companies. It should be noted that 92% of motor carriers have 10 or fewer trucks and are small businesses. Those costs are paid by all consumers, who are overwhelmingly dependent on trucking to deliver their goods.

A 2023 study by the Institute for Legal Reform of trucking accident litigation trends showed the various ways that non-economic damages are used to artificially inflate verdicts. One method is through anchoring – that is where the plaintiff’s attorney suggests a method for or amount of damages without putting on evidence to justify that amount or method of calculation. Another is where a doctor that is part of a plaintiff’s attorney’s referral network and thus has a biased interest, testifies as to subjective items like pain and suffering as “evidence” of the amount of the award. While each of these problems merit their own approaches, **AB 647**’s cap on non-economic damages is a targeted measure that would mitigate the overall harm of nuclear verdicts.

Let me be clear, nothing in **AB 647** would limit economic damages. Those are damages intended to compensate for actual and objectively verifiable monetary losses, such as loss of past and present wages, or past and present medical bills owed. Additionally, nothing in **AB 647** would change Wisconsin law on the availability of punitive damages. The bill is solely focused on non-economic damages.

The fact of the matter is that the trucking industry has made meaningful safety improvements over the last twenty years. During that period of time, over which verdicts have been skyrocketing, the rate of fatal crashes per 100 million miles traveled has decreased by 34%. And the overwhelming majority of crashes are not the fault of the truck driver. A University of Michigan Transportation Research Institute study found that passenger vehicle drivers alone contribute to 70% of the fatal crashes involving trucks.

Admittedly, as the industry strives for zero accidents, trucking companies are not perfect. Accidents do happen. For that reason, Wisconsin trucking companies want to ensure a civil justice system that facilitates prompt and fair compensation for those injured or killed in an accident where the trucking company is at fault. But a healthy Wisconsin trucking industry cannot survive where purely subjective, non-economic damages depart from being compensatory to being a litigation jackpot.

Your support of **AB 647** is encouraged and greatly appreciated. Thank you for your consideration.

Respectfully submitted,



Neal Kedzie
President
Wisconsin Motor Carriers Association



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Promoting Fairness and Equity in Wisconsin's Civil Justice System

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Kristine Hillmer
*Wisconsin Restaurant
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To: Chairperson Nancy VanderMeer
Members, Assembly Committee on Transportation

From: R.J. Pirlot, Executive Director

Date: January 9, 2024

Re: Please support AB 647, limiting the recovery of noneconomic damages from a commercial motor vehicle carrier.

The Wisconsin Civil Justice Council and its members work together to promote fairness and equity in Wisconsin's civil justice system, with the goal of making Wisconsin a better place to work and live. Our positions are set by WCJC's board that consists of representatives from Wisconsin's leading business and professional organizations.

On behalf of our sixteen members, we request you please support AB 647, authored by Rep. Gundrum and Sen. Tomczyk. AB 647 would cap the total amount of noneconomic damages that a person may recover from a commercial motor vehicle carrier for injury, death, or other loss resulting from an act or omission by an employee of the commercial motor vehicle carrier while acting within the scope of employment to \$1 million. Each plaintiff under AB 647 could be awarded up to \$1 million in non-economic damages, meaning the cap is a per-victim cap and is not a per-accident or per-incident cap. Non-economic damages are, for example, awarded for experiencing pain, emotional suffering and mental anguish, worry, loss of enjoyment of activities, loss of consortium, or loss of society and companionship as a result of one's injuries. Economic damages would remain uncapped, that is, damages awarded to compensate for past and future medical expenses, lost wages or lost earning potential, property damage, and any other out-of-pocket costs.

Trucking is at the heart of our economy, moving nearly three-quarters of domestic tonnage shipped. Not only is trucking an economically-efficient way to move goods in the United States, the industry has steadily made safety improvements. For example, according to the Federal Motor Carrier Safety Administration, though the number of fatal crashes involving large trucks has been fairly steady since 1975, the earliest year listed in the most recent FMCSA pocket guide, the rate of fatal crashes per 100 million vehicle miles traveled has been dropping. In 1975, the rate of fatal crashes per 100 million vehicle miles traveled was 4.58. In 2000, it was 2.23. In 2021, the latest year in the most recent pocket guide, it was 1.57.

Yet, despite the improvement in trucking safety, the size of verdicts against trucking companies in civil suits are increasing. An American Transportation

Research Institute study of verdicts over \$1million calculated a nearly 900 percent increase in the average size of verdicts in the trucking industry between 2010-2018. This nearly 900 percent increase is not due to overall inflation or healthcare cost inflation, both of which increased at much lower rates of 16 percent and 26 percent, respectively.

And let's not let anyone be comforted by a notion that these verdicts are against "just big businesses." Over 90 percent of motor carriers have ten or fewer trucks and are small businesses. Now, to be fair, motor carriers do have some protection from insurance, with federal law generally requiring most carriers to have at least \$750,000 in insurance, with a large majority of carriers having \$1 million or more of coverage. The problem is that as the size of verdicts have gone up, understandably, the insurance premium cost per mile has gone up, too, with the American Transportation Research Institute pointing to the cost of litigation, the size of verdicts, and the desire to settle cases putting upward pressure on premiums. And to be clear, the insurance companies aren't the bad guys here. As verdicts and settlements increase, insurance costs understandably increase.

To help control the growth in these verdicts and to help ensure premiums remain reasonable, AB 647 would cap non-economic damages at \$1 million per plaintiff. Economic damages would remain uncapped, so plaintiffs can continue to be made whole for their medical expenses, lost wages, lost earning potential, property damage, and any other out-of-pocket costs. Plaintiffs will continue to be able to receive reasonable compensation for their economic losses.

Capping damages is not unusual. Wisconsin already caps non-economic damages in medical malpractice cases to help keep medical malpractice insurance affordable. The limit on non-economic damages in medical malpractice cases is \$750,000. Wisconsin also caps other types of damages. For example, in a wrongful death suit, Wisconsin caps compensation for loss of society and companionship at \$350,000 for the loss of an adult and \$500,000 for the loss of a child.

Trucking and the movement of goods affects all of us, just as the growing size of verdicts against trucking companies affects all of us in the form of, ultimately, higher prices and potentially reduced access to goods. AB 647 would be a positive step towards addressing the increasing size of these verdicts.

If you have any questions, please do not hesitate to contact me at 608-258-9506.



(262) 644-5030

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501 Kettle Moraine Dr. S,
Slinger, WI 53086

M.A. WOLF TRUCKING, INC.

An E.H. Wolf & Sons, Inc. Company

January 9, 2023

To whom it may concern;

My name is Craig Wolf, third generation owner of M.A. Wolf Trucking Inc. and E.H. Wolf and Sons Inc., based in Slinger Wisconsin. I am here today to ask for your support of Assembly Bill 647.

My industry, the trucking industry, is under attack by the trial attorneys. Everyone sees the billboards, the TV advertisements and hears the radio ads. "One call that's all," with a picture of a truck in the background. "You don't pay unless we win." "If you're injured by a trucking company, we will make them pay," and it goes on and on and on.

Support of AB 647 will not prevent me from paying what I am liable for or the compensation for the wrongful actions of my company. I should be held accountable if I or any motor carrier acts wrongfully and fair compensation should be made for all injuries and property damage. However fair compensation has been overtaken with profiteering due to excessive verdicts which has created an environment for fraud. Because there is no cap on damages, specifically non economic damages, the messaging of huge settlements has created a dangerous environment. Many of these so called trucking accidents are being staged. This has placed a target on professional drivers and trucking companies like my own.

Last year one of my drivers was picking up a bulk load. While waiting for the traffic light on the offramp to change so he could make a right turn, he made impact with a car that was supposedly parked on the shoulder of the road next to the drive lane my truck was in. My driver told the police he never saw the car. He received a moving violation ticket.

The driver of the car told the police she and 3 other occupants were parked on the side of the road so they could adjust the seat for a child in the vehicle. They told the officer that my truck crossed the white line and impacted their vehicle. Within a few days we were notified by our insurance carrier that they received an accident and personal injury claim from the individuals in this car. Shortly after that we were notified by a law firm that they were hired to proceed with a lawsuit for the 3 occupants in the car.

Thankfully we had forward, inward and side facing cameras on the truck. The cameras showed the car pulling up after my truck stopped at the intersection and proceeded to park in his blind spot. The camera also showed that as my truck proceeded to make the right turn, the driver of the car drove forward across the solid white stripe of the drive lane my truck was in and made impact with my trailer.

If we didn't have the cameras, we would not have been able to prove we were not at fault. This could have been a huge settlement for an accident we were not responsible for. This is unfortunately the reality of the world we live in.

What we are asking for is a reasonable limitation on the non economic damages to help minimize the fraud relating to truck driving accidents and lawsuits. This limitation is not dissimilar to current legislation limiting non economic for the medical industry Legislation. Limiting non economic damages for the trucking industry has also been recently passed in Iowa. Please support AB 647.

Steve Kreuser is our company Environmental, Health and Safety Officer. Steve will go through the additional details of how this staged accident has impacted our auto insurance and Federal Motor Carrier Safety Administration score.

CRAIG WOLF

President

M.A. Wolf Trucking, Inc. | E.H. Wolf & Sons, Inc.



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501 Kettle Moraine Dr. S,
Slinger, WI 53086

M.A. WOLF TRUCKING, INC.

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January 9, 2023

To whom it may concern;

My name is Steve Kreuser. I am the Environmental Health and Safety Officer for MA Wolf Trucking and EH Wolf & Sons. Craig Wolf is exactly correct. The accident he referred to was staged, it was a set up. The other party lied to the officer and thank God we had the cameras to protect our driver and our company.

Now while every accident isn't a set-up, this is an example of what the trucking industry is up against. In addition to all the time invested to investigate the incident, fight the ticket that my driver was given, take the initial steps to fight the potential lawsuit, have the ticket removed from our Federal Motor Carrier Safety Administration score, the crash still impacted our FMCSA score and our insurance premiums.

Fraudulent claims and excessive non-economic judgements have had a huge impact on our insurance premiums. We have seen a 14% increase in our auto insurance over the last 3 years. The more painful increase came with the umbrella coverage that we purchase. We have seen a 71% increase in the cost of our umbrella coverage over the last 3 years. Because we are a hauler of petroleum products, we are required to have a minimum umbrella coverage of \$5 million dollars. With the threat these excessive non-compensatory judgements pose to our company and the 85 families employed by us, we purchased an additional \$5 million in coverage. The cost of the additional coverage is \$43,000 per year. Given the very thin freight margins in the trucking industry, it is unfortunate that under the current environment, this is a necessary expense.

We are a trucking company that takes the safety of our drivers and the public very seriously. That's one of the primary reasons we invested in multi-view cameras in our trucks. While the cost of the camera systems isn't an insurance expense, the roughly \$50,000 per year we spend on the camera systems is a worthwhile expense to help protect us against a fraudulent claim like the one Craig described or other claims that in the end we may not have been responsible for.

Again, we are asking for your support of Assembly Bill 647. The bill would still provide that we are responsible for all economic expenses a trucking company is liable for along with reasonable non-economic damages that may be determined.

Thank you for your time.

STEVE KREUSER

Environmental Health and Safety Officer
M.A. Wolf Trucking, Inc. | E.H. Wolf & Sons, Inc.

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January 9th, 2024

Attention: Distinguished ladies and gentlemen of the Assembly and Senate,

My name is Christopher Greenberg, and I am the Chief Operating Officer of West Bend Transit in West Bend WI. We are celebrating our 113th continuous year in business. That could not happen without having an excellent team of professional drivers and staff adhering to our Make Safety a H.A.B.I.T. program.

The first tenet of that safety journey is that Everyone Returns Home Safely. Not just our employees but all who share the roads with our trucks.

We just completed one of the best truck safety and worker injury years in our history, yet our insurance policy was raised by 13%. When our insurance company was questioned, it was stated that insurance companies are fearful of the nuclear verdict. This is 13% that we cannot pass along to our customer in terms of higher rates, 13% that we cannot offer to our teammates in higher wages and 13% that is rarely negotiable. We were told to be proud of our good year or the percentage would have been much higher.

According to a Travelers Institute report, "nuclear verdicts" are extreme jury awards that exceed \$10 million. From 2015 to 2019, the average verdict in the National Law Journal's Top 100 Verdicts more than tripled from \$64 million to \$214 million. The rise of nuclear verdicts is driven by several factors, including social inflation, trial advertising, unregulated third-party funding, and a savvy legal strategy from plaintiffs' attorneys.

Social inflation is the phenomenon of unexpected rising insurance claim costs due to societal trends and views toward litigation. It is driven by factors such as increasing litigation, broader definitions of liability, more plaintiff-friendly legal decisions, and larger compensatory jury awards.

The actions of unsafe drivers and carriers coupled with the TV advertising ambulance chasers make the award of \$100,000 rise to \$1,000,000 and the \$1 million award rise to \$10 million. These do not qualify as "nuclear" as shown above but they are certainly felt by the industry as such.

While we, and the majority of our industry, do not subscribe to the "butt in a truck" philosophy of any applicant is a good applicant, the industry runs background checks, conduct driver tests and provides significant onboarding before a driver is allowed in a truck. We then provide regular monthly training, both in operational and safety topics.

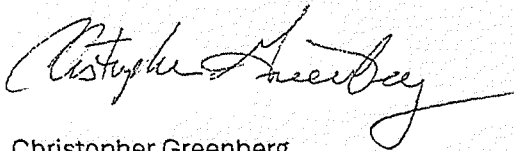
The trucking industry (nor any industry for that matter) can absorb these verdicts and continue to operate much less, operate profitably.

I am asking for two things. Continued support by law enforcement to get unsafe trucks off the roads and your support of the AB 647 and SB 613 bills which will compensate properly the injured while holding the trucking company responsible to their safety and training without putting otherwise good operating companies and their employees out of business.

Trucking companies have been recognized as essential workers through the pandemic and also worked through all of the supply chain challenges of 2022/23. The vast majority are professional, patriotic Wisconsinites who share the roads with not only your families, but mine.

Thank you for allowing me to share my comments and I am available at any time for any questions you may have. I wish you the best in your 2024 legislative sessions.

Regards,



Christopher Greenberg
Chief Operating Officer
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