

# TREACHEROUS TURNS

VARIOUS SAFETY MEASURES SUGGESTED TO STEER CLEAR OF GROWING EXPOSURE TO SIZEABLE WORKERS' COMP CLAIMS INVOLVING AUTO ACCIDENTS IN COMPANY VEHICLES

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ewer people are getting injured on the job as loss-control strategies improve, according to Keith Coleman, EVP for Beard Construction Group, Inc. However, concern is mounting about self-insured workers' comp exposure to a troubling trend. "The biggest liability for us now is having employees in company vehicles on the road," he reports.

While the frequency of automobile accidents has declined, it's becoming a greater percentage of work comp claims, says Linda Howell, SVP of actuarial services for Midwest Employers Casualty (MEC), a Berkley Co.

"We have seen a growing number of motor vehicle claims," she reports. "That could be because we don't attach at zero dollars.

We attach at a higher limit, and so that's a function of perhaps the claims being more severe and getting into our layer."

WRITTEN BY BRUCE SHUTAN

### TREATING TRAUMA

One explanation for a steep rise in severity of auto accident claims is that they usually involve traumas to multiple body parts not typically seen with other traumatic injuries. Over the past 15 years traumatic injury treatment and survivability has vastly improved, observes Dennis Gagliardi, VP of claims for MEC.

He says these injured parties now survive more often and with significantly more complex injuries across multiple body parts, requiring significant acute and post-acute medical interventions and rehabilitation services. Many times these claims involve the neck, which Howell says “is one of the most expensive body parts.

Employees who drive company vehicles represent one of the most difficult work comp exposures to control. “You can eliminate a dangerous practice, procedure, operation or situation at your workplace. It’s a lot tougher to do that in a vehicle,” explains Tony Hughes, commercial auto project manager at Safety National, a leading specialty insurance and reinsurance provider.

With 14% of U.S. drivers carrying no auto liability insurance, he says there’s a good chance some of them use their vehicles for work. That means employer-provided liability coverage that sits on top of personal insurance “might have to drop down and pay from dollar one if there’s a liability loss,” he says.

There has been a reduction in the frequency of auto liability claims nationwide as the number of accidents and alcohol-related crashes decline, Hughes reports. Reasons include better enforcement and education, as well as speed and traffic signal cameras, and better loss controls in place from organizations. However, he says there has been an increase in severity of auto accident claims. They largely stem from an increase in jury verdicts, plaintiff-friendly venues and medical inflation.

### LITIGATION TARGET

There’s obviously a business imperative to steering employees out of harm’s way. Without a pristine safety record, for example, Coleman says his firm would lose out on opportunities to bid for work. Also, a lost or suspended driver’s license, as well as moving violations, could result in lost driving privileges with Beard, whose workers’ comp rates have trended down for the past dozen or so years alongside peer contractors in the group captive program.

But even with the right checks and balances in place, sometimes a massive claim is unavoidable. The legal climate of a region is a significant cost driver that cannot be underestimated. Case in point: Beard Construction Group ended up settling an out-of-court work comp case for nearly \$500,000 in 2018 involving a five-car collision.

One of its employees was seriously injured at no fault of his own by a third party whose auto insurance policy carried the bare minimum coverage level in Louisiana,



Dennis Gagliardi



Keith Coleman



Linda Howell



Tony Hughes



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which was \$15,000. But because the Beard employee was in a company owned pickup truck, an aggressive injury attorney knows the potentially huge payout by virtue of a commercial vehicle being involved.

Excess and umbrella policies with higher insurance limits place a target on the backs of commercial drivers. To make matters worse, the injured worker's medical treatment continues to escalate since future medical expenses weren't in the settlement.

"We settled for considerably less than they wanted," Coleman reports, noting how these incidents can easily drive up an organization's experience modification. "You wind up settling because you find it very challenging to go to court and win these types of cases."

One potential solution is to have some type of tort reform, though he believes that's something that will be challenging

to overcome as well and highly unlikely in the near future.

"Some of the largest severity claims are driven by not multiple employees being in a van that rolls over, but just the single-occupant employee driving a car or truck," observes Duke Niedringhaus, SVP for JW Terrill Inc., a Marsh & McLennan Company, and active member of SIIA's Workers' Compensation Committee.

He recalls working with a client that, prior to joining a group captive, generated an \$18 million work comp claim involving a woman in her mid-20s driving to an appointment who was seriously injured in an auto accident that likely will require lifetime care.

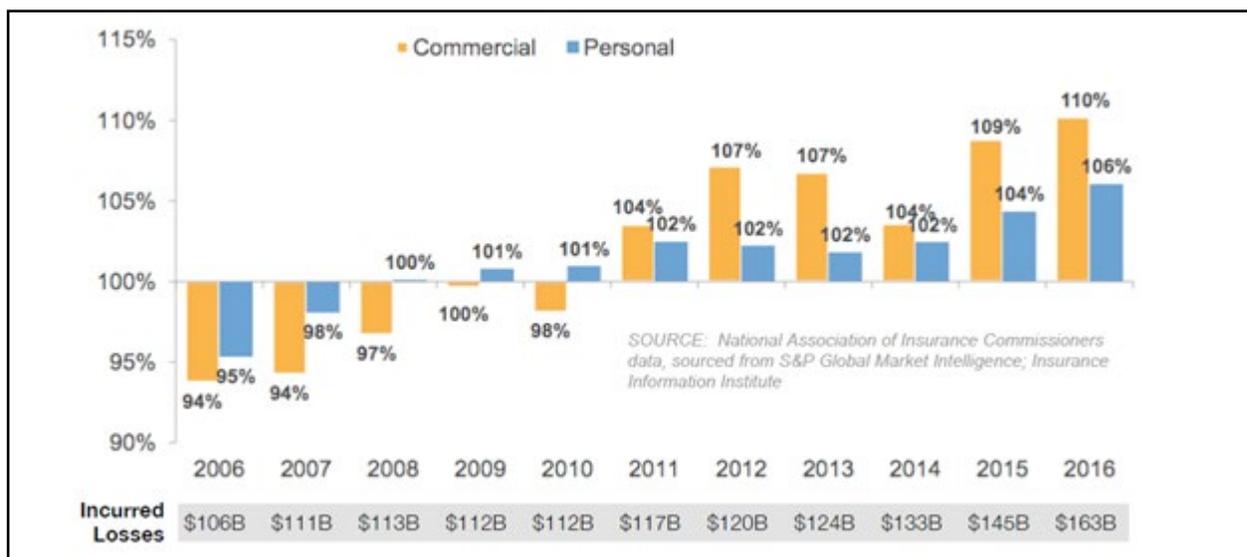
Many of the auto accident claims Howell is seeing involve government employees such as police or firefighters who are often on the road, as well as clerical workers who are the victim of careless drivers.

**DISTRACTED DRIVING**

Much of that carelessness is being traced to a technological change that is reshaping American culture. Texting while driving has emerged as a major safety concern that is spiking numerous auto claims, including those related to workers' comp.

"Most transportation companies, and certainly those that have a lot of people on the road, generally have safety programs in place that prohibit their employees from texting and talking on the phone," Gagliardi explains.

The trouble is that these precautions aren't being followed about 80% of the time for a number of reasons, he estimates. While a typical participant in a driver



*Note: this chart illustrates the combined operating ratio by year since the iPhone was released.*

## Treacherous Turns

safety program might abide by these restrictions fresh out of training, he says they typically start talking on their phone by the third month and texting by the fourth month. In such cases, he suggests that companies continually repeat safety messages around the hazards of distracted driving to reduce the frequency of auto accidents.

Despite technical strides that have made vehicles safer, Howell notes a “strong correlation” between smartphone advances and an increase in the number of motor vehicle accidents. She considers distracted driving the chief culprit.

In 2016, the National Highway Traffic Safety Administration estimated that

as many as 3,450 people were killed by distracted driving. At least 27% of crashes involve drivers who text or talk on cell phones, according to the National Safety Council.

A National Council on Compensation Insurance (NCCI) issue brief from last year noted that overall claims and motor vehicle accidents (MVA) claims decreased between 2000 and 2011. And while the frequency of all claims declined by 17.6% between 2011 and 2016, MVA claims actually increased by 5%. NCCI said the latter trend coincided with “the rapid expansion of smartphone ownership.”

“As a society,” Howell says, “we have to be aware that we can’t count on the other drivers to be paying attention. We almost have to be twice as present to protect ourselves.” The best way to combat this phenomenon is by passing laws that crack down on texting while driving, as well as employers focusing more on safety initiatives, she adds.

### TOUGHER PUNISHMENT?

Under Department of Transportation regulations, commercial motor vehicle drivers can be cited for up to \$2,750 if caught using their cell phone behind the wheel, while the employer can be fined up to \$11,000 for those violations.





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“I don’t think that those penalties are severe enough just because we’re having all these accidents,” opines Don Anchors, director of risk management of the Alabama Trucking Association Workers’ Compensation Fund. Several states ban cell phone use and/or text messaging.

He reports that distracted driving, speeding and following too close to another vehicle are three major culprits. Some safety violations are shocking to absorb. “It still befuddles me that we still have one in six to seven CMV [commercial driver license] operators that don’t wear their seatbelt,” Anchors says.

The trucking industry is responding in a number of ways, which include anything from progressive disciplinary action to termination depending on the severity of the incident or location (i.e., a construction zone).

Hughes was about to meet with a vendor whose product prevents texting and most cell phone uses while in a vehicle, hoping to use it as a tool for one of his larger accounts. During his 45-minute work commute, he notices about one-third of drivers misusing their cell phone in traffic. “We need to get a handle on it,” he says.

### CAMERAS AND REAR TIRE TREADS

Niedringhaus suggests the use of video cameras in all company vehicles as a deterrent to distracted driving and other safety concerns behind the wheel.

“Obviously, that carries over to the auto liability side, but it also would drive managing risk on the work comp side,” he explains. The tactic, while a hard sell to employees, can lead to post-accident teachable moments that promote a constructive dialogue between an employer and employee, he adds.

Another important safety measure is to ensure that there’s adequate rear tire tread depth on all company vehicles, which Niedringhaus considers “the most underappreciated factor of managing risk in an auto from a work comp standpoint.”

Without solid rear tires, he cites the possibility of fishtailing in inclement weather even if both front tires are new. “No matter how experienced of a driver you are, it’s incredibly hard to pull out of and most likely you’re just at the mercy of physics and whether or not you’ve got cars around you or you go off the highway,” according to Niedringhaus.

In addition, he says the Waze smartphone app, with its real-time satellite updates, can be a useful and free risk-management tool to help drivers avoid massive car pileups in snowstorms or other poor weather. “If I was managing a fleet of vehicles, I would want my employees using this app,” he adds.

The trouble with Waze, Hughes counters, is that it also uncovers speed traps and DUI checkpoints, and therefore appear to encourage drivers to break the law.

With the legalization of cannabis across a number of states, he notes that roughly half of people who are convicted of a DUI have more than one intoxicant in their system. A huge challenge is testing for cannabis given that the THC mind-altering compound dissipates at a different rate in the bloodstream and may go undetected.

Installing telematics can track vehicle data that includes anything from speeding and hard braking to even braking through a geo-fenced area, Hughes adds. He says soft approaches to addressing safety concerns on the road include having employees sign a pledge to wear a seatbelt or following the speed limit when driving for their company.

Between the growing commercial use of autonomous vehicles and drones, Gagliardi expects a decline in the frequency of claims involving auto accidents. Indeed, Warren Buffet recently predicted that safer vehicles will reduce the motor insurance industry by 60% over the next 25 years.

Irrespective of whether that actually comes to fruition, self-insured work comp programs still need to devise sound strategies for reducing both the frequency and severity of these claims. ■

Bruce Shutan is a Los Angeles freelance writer who has closely covered the employee benefits industry for more than 30 years.