

The Commercial Insurance Market and Litigation Reform – Connecting the Dots

Over the past year, I have been given the opportunity to present at multiple industry events on a variety of topics. The two items that keep coming up in discussion and seem to be on the mind of all facets of the transportation industry, are insurance costs and the litigious operating environment. At a high level, I will attempt to provide an update on each.

COMMERCIAL INSURANCE MARKET

It's not good – next topic.

No seriously, during my 30 years in the insurance industry, this is about the toughest operating environment I have witnessed. That is true for both the trucking companies and the insurance carriers. The rules we have long played by are shifting and costs are rising for all that are involved. By and large, the insurance carriers that provide auto liability and excess coverage to the trucking industry have lost money since 2010, and in general have performed even worse than business auto insurers.

We don't often think about it, but insurance companies buy insurance too. They too lament over and must deal with insurance renewals of their own. I am referring to their reinsurance agreements or the "treaties" that insurance carriers use to protect their businesses and spread risk. Reinsurance renewals occur throughout the year, just as truck insurance renewals vary. However, the two main dates are July 1st and January 1st. In July

2019, we saw a couple of truck insurance carriers experience significant reinsurance rate increases; increases in retained risk and reductions in reinsurance capacity. The result? Those companies became less competitive, and in several cases, offered less insurance capacity to the trucking industry in Q3 and Q4 as a result.

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In January, a majority of those in the rest of the truck insurance industry had their day of reinsurance reckoning. I have heard insurance executives describe their reinsurance renewals as "almost unfair", "a real shit show," "pretty punitive," and in a multitude of ways, describe how it has hindered their ability to do business or support their customers. These conversations sound eerily similar to the comments trucking companies often make about the insurance renewals they are going through. And that is the point, something has got to give to ebb the tide of increasing claim costs and larger settlements or verdicts.



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“-- everyone is working harder for less.”

You may have seen the recent Freightwaves article on the size of legal awards against trucking companies. The below chart is telling. The bottom line: according to the CaseMetrix data, the average verdict against a trucking company in 2012 was about \$2.6 million. Now it's more than \$17 million.

Willis Towers Watson (“WTW”) recently updated their Insurance Marketplace Realities 2020, pointing to “Social Inflation” as a contributor to spiking auto liability and general liability rates.

Driven by the severity of claims and a reduction in insurance capacity, WTW predict excess insurance costs to increase dramatically, stating that accounts with large commercial fleets are still seeing significant increases in the lead umbrella pricing (25%+) after already enduring several years of increases. These increases are also putting upward pressure on the following excess layer pricing.

Excess capacity continues to contract, and many motor carriers are finding it difficult to fill out their excess towers. Just as trucking companies try to protect their balance sheets by purchasing excess coverage, so do the excess underwriters by reducing the amount of risk they take in any one loss or for any one client.

Motor carriers are now finding themselves competing for excess capacity as opposed to excess underwriters competing for their business.

Nationwide recently released what they have termed to be the “Big 3” loss types that are driving the majority of commercial auto claims:

1. Lane Departures : A factor in 60% of all road fatalities
2. Rear-end collisions: 34% of all vehicle crashes annually
3. Hitting pedestrians or cyclists: Nearly 6,000 fatalities in 2016

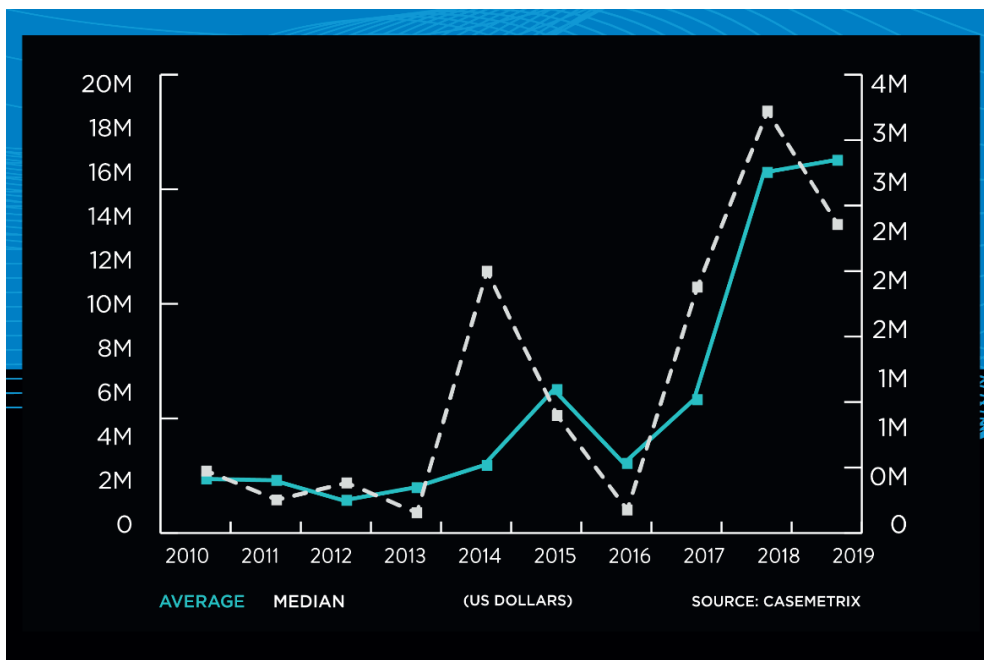
When I think about those statistics a few things come to mind:

1. These claims all normally involve legal representation
2. What difference would it make if there were video footage?
3. How seldom the professional truck driver is at fault and needs to be defended

THE SLOW PAINFUL PROCESS

How many times have you hear someone say, “if I am going to die, I hope I do so quickly”? Unfortunately, right now, the insurance renewal process has become slower, longer and more painful. Due to poor financial performance, reduced market capacity and the general inability to accurately predict loss costs in this litigious environment, everyone is working harder for less. I sat at an underwriting desk 25 years ago, during a hard market. Self-preservation meant that I asked a lot more questions, performed a great deal more analysis and was significantly more selective as an underwriter - job #1 “document the file and cover my”

Due to the increased frequency of large losses, this approach has now extended to the excess underwriters, with many reducing limits offered or exiting the market entirely. Where just a year ago getting excess quotes was a matter of days, it is now a matter of weeks or months. Much of the same detailed work, including actuarial review, that was the purview of the primary underwriters is now being performed by the excess underwriters as well. It is a slow slog, often requiring repeated re-underwriting as added limits are requested or underwriters get involved.



LEGAL & TORT REFORM INITIATIVE

The current legal and social environment is not sustainable from a commercial standpoint. It is adversely, and in many cases, unfairly driving outcomes that are hurting the transportation industry today and will ultimately hurt the economy and consumers directly.

Improving the situation will be hard, but since we are in trucking, we have a shared affinity for doing hard things. ATA has stepped forward to assume a leadership role, addressing what is now a Tier One priority for the association.

Strategies include:

- Federal: legislation, regulatory, education and coalitions
- State: centralized “what works” library, state legislative and ballot advocacy, state courts and support grants
- Education: supporting ATA Members - Member Education Hub
- Public Affairs/Communications: educating the general public

The trucking industry is not in this fight alone and the coalition of supporting partners is growing. The issues are not limited to trucking, but rather affect all companies operating commercial autos. The detrimental impact upon business and consumers is staggering. It is time to stand up.

We can't undervalue the importance of public affairs and education. At a recent meeting, which ATA held with several executives from transportation insurance carriers, there was broad agreement that any successful attempt at litigation reform must include a strong public education component. Consumers need to know that in the end, many are paying to enrich the few.

This effort will not end quickly, nor will some of the results appear until well down the road. That said, there are opportunities to get wins. State associations like IMTA are already stepping forward to offer their support of specific issues where we can get a foothold and create a template for other states to follow.

The strategy will also not be cheap. A key to success will be for all of those affected to contribute and to do so in a way that we can leverage our resources towards common objectives. It will take contribution from the trucking companies themselves, the insurance carriers, the OEMs and other associated companies that benefit from their affiliation with the transportation industry. It will also require aligning these resources with other industries and national groups that recognize the harm that run-away litigation is causing to our industry, our country and the communities that we serve.

You can directly track the negative impact that this legal environment is having on investment and perhaps most importantly, jobs. It drives up the cost of insurance for all drivers, not just those in trucks, and makes consumer products more expensive. It is time to get that word out!

BEST PRACTICES IN A HARD INSURANCE MARKET

Think about the commercial slide deck that your sales and executive team have built to present your company's service offerings to your best and largest prospects. Or the one you wish you had, but haven't take the time to develop. Do you have something similar relative to risk? How do you present yourself in a distinguishing way to the insurance market? Are you getting full credit for investments that you have made in safety and the culture you have created?

The financing of risk is no longer just a purchasing activity, nor can it be an activity that a motor carrier undertakes once a year leading up to a renewal date. You must actively work your management of risk and your relationships with your underwriting facilities. As underwriters become fewer, partnerships become more valuable.

So yes, the insurance market is hard, but someone always gets the best deal. That is true when it comes to buying commercial insurance or for that matter reinsurance. As I look at our benchmarking data, I see a vast difference between the customers that have the lowest rates and similar companies who pay significantly more. Why is that? It is often driven by the motor carrier's



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approach, their control over the process, who they partner with, and how proactively they drive results. Are you getting the best deal that you have earned? Have you earned the best deal that is being offered?

The difficult insurance market in part ties to the poor litigation environment. In the short term, neither is likely to improve soon or without a collaborative long-term reform effort. In the meantime, managing risk and the financing of risk as core components of your organization's operating strategy can help you get the “best deal” available.

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