Betting on your fleet

Managing risk sounds like a job for James Bond. It rings of danger, uncertainty, gambles and losses—the stuff of film noir not daily routine. For today’s truck fleets and the companies that insure them, however, it has become just that—a tense, high-stakes game of you-bet-your-business played all day, every day. As a result, more and more fleets are tightening their control over every possible risk factor to help reduce the cost of loss.

“Insurance costs are variable and controllable,” says Dave Melton, director of transportation services for Liberty Mutual Group. “Even today, loss costs are not just a part of doing business. We look for accountability and responsibility in managing safety, just as with any other part of a business. Trucking companies that are the...
TORT REFORM

Pie in the sky or worth the try?

There was a time when the only tort most truckers cared about was spelled “torte” and it had plenty of whipped cream on the side. Today, any discussion of tort typically comes with a suggestion of reform and is offered to the trucking industry following a heavy conversation about the cost of insurance. Just dessert has become just desserts, and it is no treat anymore.

A tort is any wrongful act, excluding breach of contract, for which a civil lawsuit can be brought. The tort system in the United States is the most expensive in the world, more than double the average cost of other industrialized nations that have been studied, according to Council of Economic Advisers (CEA). Direct costs for the year 2000 were $180 billion, or nearly $650 per year for every U.S. citizen and only 20% actually went to claimants for economic damages.

To the extent that tort claims are excessive, notes the CEA, they act like a tax on individuals and companies, paid through higher prices, reduced wages and/or decreased investment returns. The enormous cost of tort claims is frequently cited by the insurance industry as one of the primary factors behind steadily escalating insurance rates, and nobody hears this more often than truck fleet operators.

“We see the reality of unfair and excessive tort claims against truck fleets every day,” says Beasy McClothlin, vice president of transportation underwriting for the St. Paul Companies. “If you look at the number of civil cases that go to court as a whole, about 53 percent of the verdicts are decided in favor of the plaintiff. If you consider only those cases involving trucks, 80 percent of the verdicts are decided in favor of the plaintiff. Something has to change.”

Meaningful tort reform is not likely, however, at least not in the near term according to most analysts. “It would require federal legislation to create meaningful tort reform on a national level,” says Rocky Roemer, president of Wellington E. Roemer Insurance, Inc., a company specializing in insurance services for the trucking industry since 1934. “A great many of our legislators are attorneys and the plaintiffs bar is extremely powerful and influential. When it comes to the tort system, we have essentially elected the foxes to guard the hen house.

“Having said that, the way the system works today is appalling,” he adds. “In our civil justice system, there are two basic kinds of damages-compensatory damages for economic loss, including pain and suffering, and punitive damages designed to punish the wrong-doer. In my opinion, punitive damages are simply not appropriate in civil litigation.

“Victims of crime are not entitled to inflict personal punishment on others; the government does that through the penal system. So how can it be that plaintiffs and their attorneys can extract punishment in the form of dollars in a civil lawsuit? Roemer, himself a licensed attorney in Ohio and Florida, asks. “It is the moral equivalent of allowing a victim to personally beat a convicted criminal. The law prohibits that. At the very least, any money exacted as a punishment during a civil suit should never go to plaintiffs or their attorneys. It should be spent toward remedying related problems.”

Roemer and McClothlin are just two voices in a growing chorus of business leaders, insurers and others calling for change in the country’s tort system, and there are small signs that these voices are being heard. In Florida, for example, 60% of any punitive damages awarded in a civil suit now go to the state and there are statutes of limitation for filing some types of claims according to trial attorney Edward Nicklaus, managing partner of Nicklaus, Hyatt & Pena, P.C., based in Coral Gables, FL. The firm specializes in insurance coverage defense, transportation defense and catastrophic personal injury defense.

Changes like these, even on the state level, encourage those working for tort system reform to keep up their efforts. “It will be a long battle,” says McClothlin, “but it can be done. It is being done.”
trophic losses. Because the cost for losses comes right out of our bottom line, we set ourselves to a higher standard when it comes to safety.

“Every location has a safety manager on site and we all try to do the same things,” he explains. “We review our Safer statistics every month, for instance, and watch for changes or trends. Risk is just there. It is part of the business of trucking, so we make it part of our business to manage it. We do it by the book here, or we don’t do it at all.

“For example, we hire only quality drivers with good records, good log audits and good roadside inspection histories, and we review their driving records twice a year once they join Merit,” Hodges continues. “If we see problems emerging with a driver, we try to fix them. As part of our company culture, we believe that most people really want to do things right.”

For fleets self-insured and otherwise, “doing things right,” means doing things that manage safety right to the bottom line. Insurance providers share this practical viewpoint and look for hard evidence of doing things right. Besides scrutinizing the fleet’s financial statement, they examine driver hiring and training, vehicle maintenance practices and the carrier’s loss history.

HIRING AND TRAINING

“When it comes to screening and hiring drivers, simply meeting OSHA and DOT requirements will not do much to capture the favorable attention of insurance underwriters in today’s environment. At Liberty Mutual, those are considered minimums,” says Melton, and other insurers agree.

“At Motor Transport Underwriters, we especially love to see companies that require retraining and refresher courses,” says Jeffery Davis. “While new drivers have more accidents, they tend to be minor incidents like backing errors and side scrapes. It’s the drivers with one or two years’ experience who have the more serious accidents. They can get comfortable with the equipment and the job and get sloppy.

“Operations that are better for drivers are better safety risks, as well,” he adds. “Fleets that offer drivers more regular hours or let drivers decide when they are too tired to drive, for example, are generally safer fleets.

“Of course drivers are supported by their dispatchers or fleet managers, so we also look closely at how fleets involve dispatchers in their driver safety programs,” Davis continues. “For
instance, we like to see dispatchers at driver safety meetings. After all, they are the ones who have daily contact with drivers. They know what is going on, so we look for mechanisms within the company to help them recognize when a problem is emerging with one of their drivers so that the fleet can take prompt action to remedy the situation. Other good signs are when dispatchers are paired regularly with the same drivers so that they can get to know them, and when dispatchers’ bonuses are tied to driver safety.

**EQUIPMENT MAINTENANCE**

While dispatchers have a window on driver performance, the safety enforcement officials who conduct roadside inspections see first-hand the role good vehicle maintenance plays in reducing the total cost of safety and loss. “Our state and provincial safety enforcement officials conduct roadside inspections, and those inspection reports help to send the message that this fleet is actively promoting safety.”

“We have been working with insurance agencies and their fleet clients for many years,” says Jon Lovejoy, marketing manager for CA-based Intec Video Systems Inc., a 30-yr. supplier of vehicle visibility systems. “We also routinely remind our customers to make sure they tell their insurance underwriters about the Intec system they have installed on their fleet vehicles. These steps alone may not result in lower insurance premiums, but they help to send the message that this fleet is actively promoting safety.”

“We have had customers bring their insurance agents with them to visit our facility,” offers David Pierson, account manager at EatonVorad Technologies, LLC, a pioneer in radar-based collision avoidance systems. “There is great interest in anything fleets can do to improve their safety performance and lower insurance premiums. Most insurance companies, however, still want to wait and see results over a year’s time,” he observes. “They want fleet-specific data, not our cumulative research. Eventually, however, a carrier’s downward trend in accident rates speaks for itself.”

“Last year,” Pierson continues, “we had a 40% increase in number of units sold. Clearly, there are more and more fleets creatively and aggressively attempting to control accident-related costs.”

**SAFETY EQUIPMENT & TRAINING:**

Managing to the bottom line

Insurance providers support truck fleet safety, but do they support onboard safety equipment and driver training programs as well? The answer today is “yes” for carriers willing to translate equipment and training system investments into measurable results. What is more, there are new relationships emerging between suppliers and insurance providers that are bringing fresh options to the marketplace.

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Safety system suppliers are also getting creative, at least when it comes to making the case for the value of their products in reducing accident rates. In August, for example, DriveCam Video Systems announced a partnership with the National Interstate Insurance Company to market DriveCam’s Driving Feedback System to insured passenger transportation fleets. The system is designed to improve driving habits by recording what drivers see and hear during unusual driving incidents. According to DriveCam, NIIC will reimburse up to 50% of the cost of the DriveCam equipment for each insured fleet implementing the system.

This is not DriveCam’s first such partnership. In May, the company announced that the London American General Agency had initiated a 10% premium discount with the Scottsdale Insurance Co. for taxi fleets using DriveCam.

Indianapolis-based Transportation Safety Technologies (TST) also recently announced an innovative new partnership. According to Michael P. Coyle, president and CEO of TST, SafetyFirst has agreed to market TST’s ultrasonic Eagle Eye Obstacle Detection System, designed to alert a driver to any object within ten feet of his or her vehicle.

“SafetyFirst, perhaps best known for its “1-800-How’s my driving?” truck decals, has a unique relationship with the insurance industry, which makes them an ideal business partner for us,” explains Coyle. “The insurance companies make the SafetyFirst system a requirement for insurance coverage and provide the system at no cost to their fleet clients.”

Like TST and DriveCam, Instructional Technologies Inc. (ITI), Vancouver, WA, is forming working relationships with insurance companies to help bring their product, called TREAD-1 (Trucker Education And Development), to market. “TREAD-1 is a suite of 31 driver-training lessons based on the industry skill and curriculum standards developed by the Professional Truck Driver Institute (PTDI),” explains E. Bruce Weiss, senior vp-business development. “The computer-based driving training modules we have developed are designed to actively involve and engage the student as he or she learns to make appropriate driving decisions. They also teach to mastery,” he adds, “and we record and document results. This is important because it provides fleets with the data they need to prove a driver has actually mastered a particular skill. As a result, insurance agencies such as AON and the Hobbs Group have endorsed and are promoting TREAD-1.”

Insurance companies themselves are also involved in assessing the relative merits of truck safety systems and driver training programs. At Liberty Mutual Insurance Co., for example, research is under way to determine if drivers would respond well to in-cab, automated performance feedback systems,” says Dave Melton, director of transportation services.

The growth in partnerships and programs between insurers and the suppliers of safety-enhancing equipment and services is a promising trend indeed for fleets struggling to keep up with rising insurance costs. “Making your fleet as safe as possible is absolutely the right thing to do,” observes one manager. “Finally, however, we also have to see the results of our safety improvements written in black ink on the bottom line. Then we’ll have a double cause for celebration.”
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Thinking outside the black box
Ever since black boxes, onboard trip or event records, were introduced, they have stirred up anxiety on the part of some fleet owners. For others, however, the data has been like having an expert witness on retainer, always ready to go to bat for the fleet.

At Benjamin Franklin Plumbing in McKinney, TX, for example, the black box has been a white knight when it comes to managing loss. “In December of 2001 we installed VMI, the vehicle management system from Minorplanet, on all our trucks,” recalls Keresa Richardson, company president. “Not only did our productivity improve, but we’ve already used the data to help us support an insurance claim. “In January we had an ice storm,” Richardson explains. “One of our plumbers ‘totaled’ his truck. Thanks to the data recorder, we were able to show that our driver was only going 15 miles per hour at the time of the accident. It was not due to recklessness or driver error, and we had the documentation to prove it, so the insurance company honored our claim.”

Roadside inspection reports become part of a carrier’s Safer stats.
a company as a safety risk.”

**LOSS HISTORY**

The accessibility of detailed data on carriers and individual drivers, via Safer statistics and other records, has helped to wash poor safety risks out of the national fleet. According to some analysts, however, it has also helped to raise insurance rates for everyone else.

“Everyone is saying we [truck-]ing] have to raise the bar,” observes FLEET OWNER safety columnist and risk engineering consultant for Zurich Insurance, Jim York. “So insurance underwriters are turning to risk engineers to benchmark fleet safety performance. Those not toeing the line have to pay the price. Put another way, insurers are now tracking alongside the government in requiring greater safety performance.”

The only solution is to manage safety performance as tightly as fiscal performance and to make sure that the insurance underwriters understand and appreciate what your fleet is doing to keep safety, like profitability, trending ever upward.

“It is all about perception, about how your risk management team presents your company to the insurance market,” says Bill Prester.

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**Tips from a trial lawyer**

Edward Nicklaus, managing partner of Nicklaus, Hyatt & Pena, P.A., based in Coral Gables, FL is a trial lawyer with 31 years of experience, much of it defending truck fleets. This summer, for example, Nicklaus notes that his firm successfully represented Penske Truck Leasing in a $7.5 million negligence lawsuit. According to Nicklaus, there are several things fleet owners and managers can do to prepare themselves for the courtroom—long before they ever find themselves in a lawsuit.

“Even great truck fleets with great safety records will be involved in an accident someday if they drive enough miles,” Nicklaus says. “The law of averages just catches up with you. To make things tougher, the general public knows very little about trucks or trucking and years of bad press have made people—made juries—less than sympathetic to the trucking industry. There are, however, still things you can do to improve your odds of a favorable verdict:

1. **Select the right lawsuits to try.** If your driver was in the wrong, settle it and get on.

2. **Train all of your drivers to obey safety rules and know the rules so well they can recite them from memory, including everything required during a pre-trip, walk-around safety inspection.**

3. **Watch hours of service.** Plaintiff’s attorneys are going to ask, “Well, just how sleepy were you?” even if the case has nothing to do with fatigue. They will ask: “Were you in a hurry? Were you speeding to get one more load before you had to stop for the day?”

4. **Make sure each driver knows all about his or her truck.** “Are automatic slack adjusters on the truck?” a plaintiff’s attorney will ask: “What does that mean?”

5. **Maintain your equipment.** Whether or not brakes were a factor in an accident, for instance, it will go against you if the truck’s brakes are discovered to be out of adjustment.

6. **Keep good and thorough records, including maintenance records.** If you do the right things and have the data to document it, then you will be better able to defend the cases you should defend. Without the data, you may be right but you are at risk because you can’t successfully defend yourself.

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In civil cases involving trucks, 80% of the verdicts are decided in favor of the plaintiff.

7. **Hold regular safety meeting with your drivers and dispatchers.**

8. **Teach drivers how to respond if they are in an accident, including cooperating with the authorities, call the safety director or their supervisor, and don’t talk to anyone about the accident until your counsel arrives.**

9. **As a general rule, defend your drivers if they get a traffic citation and let them know that you will be there to help them.** Drivers are often very anxious and upset following an accident or other incident. As a result, they may plead guilty to a traffic violation even if they are not at fault. In Florida and some other states, a guilty plea is admissible as evidence in a civil case and may be offered by a plaintiff’s attorney as evidence of negligence. If the driver pleads “not guilty,” the violation is not admissible as evidence, even if he or she is later found guilty of the violation.

10. **Honesty is always the best policy.** In the event of an accident, if you have good drivers, the facts will support you.
“Lots of fleets simply present themselves wrong. Fifty percent of the insurance problem is the market, but the other half is how fleets manage the insurance process. The burden is on the fleet to make sure that the underwriters know about new safety initiatives, new equipment, improving trends.

“It is a very complex insurance market now,” he adds. “Carriers have to know their own insurance companies and the insurance companies, in turn, have to know the re-insurance companies and make sure they are brought into the picture well ahead of a fleet’s policy renewal date. Insurance has become very strategic. Who fleets go to for primary insurance, for example, can have a big impact on their ability to manage the cost of their umbrella coverage.”

“If fleets want to get more creative about controlling the cost of loss, then they have to work with more creative insurance providers, too,” Prester notes. “Dan Baker recently told an AON group, ‘Maybe instead of doing the same things better, it is time to start doing better things.’ In today’s marketplace, that may be the best advice for us all.”

Hate it? Change it.

The trucking industry is not powerless in the midst of the current insurance crisis, far from it. Collaborative work on the part of trucking industry members, insurance providers, safety-system suppliers, educators, manufacturers and others can initiate meaningful long-term change. Here is a list of action items for fleets ready to help change things industry-wide:

1. Some industries (such as the airlines) and some municipalities have caps on certain types of loss. These caps limit their financial exposure and risk and may provide templates for similar loss-limiting policies for trucking. Find out.

2. Begin to work for tort reform on the state level. According to many insurance insiders, it may be much easier and faster to get changes made at the state level first, before tackling national reform. Talk to your state insurance commissioner, your state trucking association and your state legislators. Look at other states, such as Pennsylvania and Florida, for ideas.

3. When it comes to national tort reform, think globally and look to other civilized nations of the world for possible models. Denmark, the United Kingdom, France, Canada, Australia, Switzerland, Spain and Japan have dramatically lower costs of tort as a percentage of the GDP. There are lessons to be learned.

4. Expand your own loss control team. Invite your insurance provider to “think outside the box” with executives from your fleet, their re-insurers, and the suppliers of any safety-enhancing technologies and/or driver screening and training tools you utilize. The insurer will probably not reduce premiums based solely upon the accident-reduction data the supplier offers, but they may be quite willing to reduce your premiums if you can demonstrate safety improvements over time. Establish a test period; agree on what actions will be taken if your company meets the target goals.

5. Visit the superintendent of public instruction in your state (or even the local high school principal) and have a serious talk about the drivers’ education programs. Is there a statewide program? Does it include mandatory information about sharing the road safely with trucks? Is there a way that fleets, manufacturers, suppliers or trucking organizations can help? Safer highways mean less loss.

“Don’t just get angry, get busy,” advise experts.