



## A Wild Ride—Trends in Commercial and Personal Auto

by Diane Hyland, Gen Re

It's been impossible over the last year or two to pick up an industry journal without reading some startling news about the Commercial Auto line. We've seen adverse development start out in the trucking field and move to other segments within Commercial Auto, Personal Auto and even Umbrella. While some of the trends resulting in the adverse development are unique to trucking, many are not. So how did we get here?

Industry experience for the Commercial Auto calendar year development shows a dramatic and swift deterioration of reserves beginning in 2012. In 2013 we saw carriers, such as Progressive, begin to announce late emergence and higher frequency and severity in their trucking books. By 2014 we saw many carriers—such as the Hartford, Travelers and WR Berkeley—beginning to talk about increased frequency of severe claims, higher than expected large losses and deteriorating loss ratios. These were recurrent themes expressed by a number of companies that cited their trucking books as the main source of their deterioration.

This continued into 2015 with companies including Zurich and AIG talking about increased severity trends in trucking as well as primary and excess Commercial Auto. Also in 2015 we saw Zurich announce plans to shut down its North American trucking unit, and in early 2016 AIG announced the decision to withdraw from the Excess Auto market for trucking. These were stunning announcements as Zurich and Lexington were major players in the trucking field. In 2015 almost \$1 billion of Commercial Auto-related adverse development for calendar year 2015 was from Zurich and Lexington alone. Trucking was the most affected segment but many other segments felt the impact as well.

### Contents

Trucking Segment Trends	2
A Changing Legal Climate	2
Other Factors at Play	2
Claims Challenges	2
Pricing Deficiencies	2
Personal Auto Trends	3

### About This Newsletter

Created for our clients, our *Insurance Issues* publication provides an in-depth look at timely and important topics on insurance industry issues.

## Trucking Segment Trends

In the trucking segment, we saw multiple forces at work. Why was this happening? A driver shortage affected the quality of the driver pool: There are more young, inexperienced drivers operating trucks. This shortage directly contributed to driver turnover. Additionally, vehicle utilization levels increased as a result of an improved economy and lower gas prices. It may not be surprising that for-hire trucking was especially affected as our U.S. economy began to recover. More trucks were on the road more often, clocking more miles, and there was a driver shortage post-recession. Some of these same trends had an impact on the non-trucking Commercial Auto segment as well. These factors could explain the increase in accident frequency, but how do we explain the unexpected severity?



Here an additional set of factors were at work. Again going back to the trucking segment, we saw a shift to the greater availability of safety data on motor carriers. While this would typically be seen as positive, this has actually provided attorneys with an opening for claims of “negligent entrustment.” Attorneys are using this information to target Commercial Auto cases and successfully win

them, resulting in another emerging trend, the “nuclear verdict” (a verdict over \$10 million). Rather than focusing on the facts of the case, this strategy shifts attention away from the person behind the wheel to the employer. For example, did the employer put the victim in danger due to a practice that disregards safety? These are powerful and emotional arguments that have successfully produced large jury awards.

With improved quality and availability of data on insureds, what trends are showing up in other segments within Commercial Auto? Will we see a greater standard of responsibility imposed on commercial insureds and on individuals driving their service and delivery vehicles? Will the emotional arguments put forth by attorneys be successfully used in other segments?

## A Changing Legal Climate

Also coming from the transportation area has been the emergence of “super lawyers.” These attorneys have been attracted to Commercial Auto as other practice areas have been affected by tort reform. At stake is the potential for large awards and sometimes big limits. The pull of limits is particularly prevalent in cases where a Commercial Umbrella policy can also be accessed. Unlike the products liability cases of the past, these

cases are easy to find and inexpensive to develop. Auto cases can be settled or litigated more quickly than products liability cases, which involve years. The themes used in products liability cases are transferable to Auto and other liability lines as well. Equally important, anger is playing a role in the system; social attitudes increasingly affect awards and settlements.

## Other Factors at Play

Additional factors contributing to increased frequency and severity for both Commercial and Personal Auto liability (as well as other lines) have been:

**1—Increase in vehicle miles traveled (VMT)**—The NHTSA reports that in 2015 VMT increased by 3.4% compared to 2014. The police-reported crash rate per VMT for 2015 was up 3.8% from 2014.

**2—Increase in Traumatic Brain Injury (TBI) claims**—Impacting severity, if an attorney can find an expert to allege a traumatic brain injury, verdicts can be driven to higher levels. CDC data suggests approximately 15% of accidents with injuries involve TBI. Recent large verdict data suggests a much higher percentage of approximately 33%. The “super experts” are winning TBI arguments in front of today’s jurors.

## Claims Challenges

Today’s claims departments face a real challenge from the increased involvement of “super lawyers,” their use of “super experts,” and their strategy of TBI allegations. Just as powerful has been plaintiff attorneys’ use of “Reptile theory,” which focuses on the defendants’ behavior rather than attempting to gain sympathy for the plaintiff. Portraying the defendant as dangerous is intended to elicit a gut reaction from jurors so that they each feel personally threatened and that the defendants—the driver, the employer and the broker who placed the driver with the employer—is a danger to his or her community and safety. Recognizing red flags—such as high limits exposed, an available Commercial Umbrella policy, and sophisticated lawyers acting on the behalf of the plaintiff—should signal to insurance company claims departments that they need experienced defense attorneys, investigators and claims handlers, and tight strategies for the best outcomes.

## Pricing Deficiencies

In addition to the troubling frequency and severity trends are the now obvious rate deficiencies for this line of business. According to A.M. Best, many industry observers believe the Commercial Auto line has been underpriced for the last five to seven years, with rate increases at insufficient levels to catch up with the

adverse trend. The rate levels needed were camouflaged due to the recession; it was difficult for companies to recognize the level of rate increases that were actually needed, and the pace of increased frequency and severity was far greater than any rate corrections taken. This was the case in many segments within Commercial Auto, although it is most apparent in trucking.

The projected 2015 loss ratio for Commercial Auto of 65.9 was altered to 70.1, and the forecast for 2016 is 69.5%. The frequency and severity trends continue to be at play in Commercial Auto and are surfacing in Personal Auto. The projected 2015 Personal Auto loss ratio of 73.7 has been amended to 75.5%, and the forecast for 2016 is 75.7%. Clearly not a good trend for Personal Auto—and Umbrella.

### Personal Auto Trends

We saw Personal Auto beginning to weaken in 2014 and that trend has continued through 2016. Some of the same factors we saw in Commercial Auto—such as rising frequency and severity, improved economic conditions, and increased vehicle miles traveled—have all played a role. Rising medical costs seem to be the greatest driver, but contributing factors include lower gas prices, the increased number of cars on the road and driving at higher speeds, more expensive cars with associated repair costs, distracted driving, as well as the weather.

These factors are having an impact on loss ratios at a time where prior-year reserve releases have diminished. We are also hearing that some companies are recognizing the impact of attorneys on Personal Auto severity trends.

Of course we see many insurance companies increasing rates, but many are wondering what else they can do. What is different about this environment? Claims that three years ago a company could settle reasonably, and with a high degree of certainty of the outcome, are now behaving differently. The worst cases involve Bodily Injury, and we see the super lawyers coming in on these cases. Here again, we see instances where high limits or a personal umbrella are attractive targets.

Claims departments need to be prepared. They will want to be proactive. Once a demand and expert is lined up, it's often too late. Clearly, the picture is still developing for 2017. ■



“The frequency and severity trends continue to be at play in Commercial Auto and are surfacing in Personal Auto.”

#### About the Author



**Diane Hyland** is a Treaty Account Executive for National and Multinational Companies, based in Gen Re's Stamford office. She may be reached at Tel. 203 328 5848 or [dhyland@genre.com](mailto:dhyland@genre.com).

*This article originally appeared in Your NY Connection, Spring 2017, Issue 18. Results numbers have been updated.*

## UM/UIM LAW SURVEY

### Special Client Access

Auto clients in North America have access to our UM/UIM State Law Survey.

- > Provides the state UM and UIM laws in the U.S. on limits, stacking, trigger, offset and Umbrella coverage
- > Updated monthly only for clients on [genre.com](http://genre.com)



If you don't receive our quarterly email highlighting the recent cases and legislation, ask your Gen Re representative for it!

See other topics we are writing about at:  
[genre.com/auto](http://genre.com/auto)



The difference is...the quality of the promise.

[genre.com](http://genre.com) | [genre.com/perspective](http://genre.com/perspective) | Twitter: @Gen\_Re

*This information was compiled by Gen Re and is intended to provide background information to our clients, as well as to our professional staff. The information is time sensitive and may need to be revised and updated periodically. It is not intended to be legal advice. You should consult with your own legal counsel before relying on it.*

© 2017 General Re Life Corporation, Stamford, CT

iiapc1708