Insurance Buyers' News

Barker Phillips Jackson
Insurance and Other Financial Services
www.bpj.com

Springfield
PO Box 4207, Springfield, MO 65808
Phone: 800-422-5275
417-887-3550 • Fax: 417-887-3252

Rolla
PO Box 1258, Rolla, MO 65402-1258
Phone: 800-364-2212
573-364-8888 • Fax: 573-341-2257

West Plains
PO Box 964, West Plains, MO 65775
Phone: 800-400-3896
417-256-6162 • Fax: 417-256-6165

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How to Control Distracted Driving

Ten percent of fatal crashes and 15 percent of injury crashes in 2015 involved distracted driving. It may actually be more. Here are some tips to help eliminate distracted driving.

Distracted driving is a major problem on our roads and highways. Ten percent of fatal crashes and 15 percent of injury crashes in 2015 involved distracted driving, according to the National Highway Traffic Safety Institute. But those numbers are understated, says the National Safety Council. The NSC estimates cellphone use alone caused 27 percent of car crashes in 2015.

Here are five things you need to do if you want to reduce or eliminate distracted driving:

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This Just In

Property/casualty rates paid by insurance buyers in the United States rose two percent in the first quarter of 2018, according to MarketScout, a Dallas-based insurance exchange. This continues the upward trend from the fourth quarter of last year.

Only workers compensation, with a two percent drop, posted lower rates. It was also the only insurance line that did not have a year-over-year rate increase.

Rates were one percent higher the fourth quarter of 2017 for business interruption, inland marine and professional lines. Employment practices liability insurance rates leveled slightly.

For medium-sized accounts of $25,001 to $250,000 in premium total rates increased from up two

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1. Consider the Full Extent of the Problem

There are three types of distraction:

Visual — taking your eyes off the road. Example: Looking at a GPS device or trying to read something in your car.

Manual — taking your hands off the wheel. Example: Reaching for something on the floor or in the back seat

Cognitive — taking your mind off driving. Example: Falling asleep.

The most prevalent form of distracted driving, texting, involves all three distractions. Some people might think distractions like texting are okay when they do it themselves, because they will do it "responsibly" and make the distraction brief enough to avoid any problems. But they should consider how they would probably react to someone they saw texting while driving. Most people would probably instinctively engage their best defensive driving skills at that point and try to distance themselves from the texter as soon as they could.

2. Use Technology

Some experts think technology offers the best solutions for reducing distracted driving.

Cell phone blocking: Blocking apps can keep people from using their cellphones while driving. These apps can be downloaded and activated to the cellphone or installed in vehicles as a "geofence" or virtual barrier around drivers, preventing them from sending or receiving transmissions. Many providers permit certain white-listed incoming phone numbers and will allow the driver to make an outgoing call in an emergency.

Telematics: GPS can provide real-time information about a vehicle's location and rate of speed, and even whether drivers are using a seat belt.

On board cameras or car "black boxes": Some units, called dash cams, record drivers ("cabin view") as well as the front view of the road ahead and can be useful in a variety of ways. The recorded video can be used to monitor driving habits, including ensuring that drivers refrain from cellphone use, as well as providing evidence in the event of a traffic accident.

Eye-tracking software: Car companies such as Audi have been developing ways to mitigate driving without awareness (DWA), or subconscious driving with little or no conscious attention paid to the surrounding traffic.

3. Hire safe drivers

It may seem obvious, but many times employers hire people whose driving responsibilities are only incidental to the job. So they often never bother to obtain those employees' driving records or if they do, don't critically review them.

Nevertheless, employers should obtain motor vehicle records (MVRs) for all job candidates who might be driving. Frequent moving violations and of course driving under the influence violations are red flags. If you decide to give only minimal weight to a candidate's poor driving record because of more important considerations, then at least impose restrictions on their ability to drive for work.

If driving is a big part of the job, you should include a road test as part of the interview process. Focus on evaluating the candidate's safe driving behavior and defensive driving techniques.

This Just In

percent in the fourth quarter to up three percent in the first quarter.

First quarter rates for professional liability increased two percent, and directors and officers liability rose one percent in the same period.

Service contractors, public entities and energy accounts experienced larger rate increases in the first quarter of 2018 than in fourth-quarter 2017. Transportation account rates went up four percent from five percent, quarter over quarter.

"Automobile and transportation exposures continued to experience the greatest rate increases due to increasing expenses and adverse claim development," said MarketScout CEO Richard Kerr. "Insurers are struggling with this segment of our industry. Part of the problem is actual underwriting results, part is expense ratios, and in our view, a larger part is the uncertainty of the long-term prospects for the auto insurance industry."

Traditional auto insurer opportunities, Mr. Kerr warned, "will shrink unless they adapt their business model to get in the middle of the autonomous vehicle parade."

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4. Everyone Should Drive Safely

Review employee MVRs annually. Prepare and distribute to all of your employees safe-driving policies. In particular,

- Stress the importance of good defensive driving skills and highlight for everyone your company's "no texting while driving" policy.
- Explain that if a GPS device needs to be programed, you expect the driver to pull off the road to set it.

5. Be Prepared When Accidents Happen

Accidents will happen, whether from distracted driving or not. Include an accident kit in your company vehicles. In addition to flares and signage, such kits used to include disposable cameras and a list of phone numbers. With cell phones these items are not necessarily important to include anymore.

But give employees appropriate phone numbers to call to report the accident and advise them to take pictures. Tell them to avoid discussing fault but work with police to document the accident.

Try to use an accident as a "teachable moment," gleaning from it tips on how to avoid similar situations in the future.

If everyone in the firm commits to reducing distracted driving, not only will accidents decrease, but your auto insurance rates should decrease as well. Please give us a call if there's anything we can do to help. ■

Why 'Side A' Is Critical if You're a Director or Officer

There are three parts to a D&O Policy—Parts A, B and C. In recent years exposure to Part A risks have increased dramatically.

To protect themselves, anyone considering joining a board of directors should find out the extent the corporation will indemnify them for results of any decisions they may help make while serving. Indemnification is just a starting point, though. In order to attract the best talent for their boards, corporations (including nonprofits) should purchase the highest quality directors and officers insurance, perhaps including a "Side-A-Only" policy as well as a basic, traditional D&O policy.

The Three Parts of a D&O Policy

The typical D&O policy contains three parts. Let's look at them to understand why Part A or "Side A," as it's usually called, is the most important section of the policy for an individual director or officer.

Part C, or **"entity coverage,"** covers the corporation itself when it is named in a lawsuit or claim. Insurers began adding entity coverage to their D&O policies in the 1990s, in response to a spate of securities and employment practices liability lawsuits that named the corporation as

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a defendant along with the directors and officers.

Part B reimburses the corporation when it reimburses its directors and officers for legal defense expenses they incur resulting from their official duties, when permitted by state law or as required by its corporate charter or bylaws to do so.

Part A (or "Side A") covers directors and officers, reimbursing them directly for claims of liability that arise from their corporate duties.

The Advantages of "Side A" Coverage

But why is Side A needed if Part B exists to reimburse the corporation for paying claims on behalf of its directors and officers? Doesn't that imply that directors and officers are already covered by agreement with the company they're serving?

Not necessarily. Side A coverage is vital in these three instances:

(1) When the corporation is financially unable to indemnify its directors and officers. This may occur due to the company's bankruptcy or insolvency.

(2) When the directors and officers must pay a settlement or judgment in a shareholder derivative lawsuit. D&O policies exclude "shareholder derivative" lawsuits; otherwise the corporation would be reimbursing its directors and officers for the harm they were legally determined to have caused the corporation, creating a circular effect where the corporation is not actually made whole for its loss.

(3) When a claim is made against the directors and officers when bylaws, state or other laws do not require the corporation to provide indemnification.

Want to Super-Size that Side-A Coverage?

Beginning in the early part of the 2000s, exposure to Side-A risks became so great that there are now Side-A only policies (also called "Side A DIC" policies).

They are issued in conjunction with the primary D&O policy and exist to:

- Provide "excess" (or additional) limits of coverage if the limits of the primary form are exhausted by claim payments and defense costs. D&O policies are written with one limit for all three parts; if policy limits are depleted by Part C "entity coverage," there may be no funds left to pay other claims.
- "Drop down" over primary forms when an exclusion or other coverage restriction that would otherwise defeat coverage applies. For example, most traditional D&O policies may be rescinded if "inside" directors and officers (i.e., directors and officers who are also employees of the corporation) commit fraud. Traditional D&O policies also bar coverage when there has been fraud or concealment by a corporation's CEO or CFO in providing information in the application for D&O coverage.

These exclusions do not appear in Side-A Only policies. To find out more about D&O insurance and how Side-A coverage helps protect the corporation and its directors from costly liability claims, please contact us.

Active Shooter Insurance Now Available

Sadly, active shooter incidents have become so common there is now an insurance market to insure the liability of the entities where they occur.

Incidents involving an active shooter, defined by the FBI as "one or more individuals actively engaged in killing or attempting to kill people in a populated area," have been increasing around the country. According to a report released by the FBI last June, the number of mass shootings rose to 20 per year in both 2014 and 2015.

"The findings establish an increasing frequency of incidents annually," said an earlier FBI report. "This trend reinforces the need to remain vigilant regarding prevention efforts and for law enforcement to aggressively train to better respond to — and help communities recover from — active shooter incidents."

Unfortunately, insurance can't solve the problems behind active shooter in-

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cidents. But it does fill a real need. The problem is that if allegations of negligence are brought against entities such as Stoneman Douglas High School, Parkland, Florida (February 2018) and the Mandalay Bay Hotel, Las Vegas (October 2017), they may not have insurance available.

Gray Area

Claims arising from these incidents are not necessarily covered under any current insurance policies, according to John Powter, president of GDP Advisors in McKinney, Texas.

"Some are saying it's under GL and some are saying it's more of a professional liability 'failure to protect' type cover, but there is a little bit of confusion as to the response," Powter said. "There is a concern, or gray area, with the general liability policy — in reality it was never designed to cover an active shooter incident." "Insureds may also believe that active shooter incidents are automatically covered by terrorism insurance, all of which can lead to a debate between insureds and their carriers."

In the past couple of years, several markets have emerged that provide active shooter liability coverage, including through the Lloyd's Active Shooter Consortium in London.

Following the Parkland shooting, seven South Florida school districts purchased $3 million worth of active shooter insurance, according to a recent article in *Campus Safety Magazine*.

More than Insurance

These new active shooter policies are standalone, primary liability policies that will cover lawsuits arising from harm caused by attackers using deadly weapons. The policies usually also feature risk assessment and crisis management services, where experts make recommendations on how to make the premises less vulnerable. Policies also provide event responders and post-event counseling services when needed, including setting up an emergency call center, advising insureds on emergency communications, putting a recovery plan in place and arranging counseling services.

Insurers stress that no amount of preparation can make an entity such as a school completely ready for an active shooter incident, especially from an emotional standpoint. But "having the pieces in place to handle one of these devastating situations can help ease the burden if one occurs," according to Hugh Nelson, president of Southern Insurance Underwriters (SIU) in Alpharetta, Ga.

Coverage limits are available up to $25 million. Although originally designed for educational institutions like public and private schools and universities, other entities such as banks, hotels, sports venues and amusement parks have been purchasing the coverage. Now insurers will consider covering all classes of business, including

- Educational institutions
- Entertainment organizations
- Hotels
- Healthcare providers
- Religious institutions
- Retail organizations
- Rodeos, fairs and trade shows.

If your organization or company feels it may be vulnerable to an active shooter risk, please contact us and let us help you assess your situation.

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How Much Business Income and Extra Expense Coverage Do You Need?

Business income interruption can happen for a variety of reasons

Direct physical damage to your premises is not the only problem you'll face with a fire or other loss. Here are some important points to consider when evaluating your indirect damage:

- Start with a list of all possible sources of loss to your business, including losses that could result if an interdependent facility were destroyed — for example, destruction of your warehouse.
- If your business depends on suppliers or key customers, you can purchase "dependent location" business income coverage on them. You can also buy coverage if traffic to your store, for example, is dependent on a "leader property," such as large store located near you. As with other business income coverages, policies will pay only if the income loss results from a covered cause of loss to these locations.
- Don't underestimate the time to get back on line, or the impact of losing a key supplier or customer due to a disaster on their own premises. Determine whether stockpiling materials or supplies could reduce your exposure to a contingent loss.
- How long could your business operate without power, telephone, cable, water and other utilities? Virtually all property policies exclude coverage for utility service failures that occur off your premises or from transmission lines. You can buy a policy endorsement to add coverage for business income lost due to a utility service interruption at a utility service property named in the endorsement. Coverage will apply to service interruptions caused by a covered peril.
- Just as your property policy will not cover increased cost of construction to meet updated building codes, business income coverage will not cover any income lost due to the increased period of restoration required to rebuild to current codes. You can fill this coverage gap by adding an "ordinance or law" endorsement, which extends your period of restoration.

For help assessing your exposures to indirect loss and getting them covered, please contact us.