

Insurance Insights

by Ken Furst and Jason Schiciano

Levitt-Furst Associates



A Review of How You Can Help "Put the Brakes" on Accelerating Commercial Auto Insurance Premiums

YONKERS

If you are a Construction Contractor, Property Manager, or Landlord, you likely own one or more commercial automobiles (company-owned private passenger vehicles, vans, trucks, etc.). Even many Condominium and Co-op Apartments may own a maintenance vehicle or two.

New York is one of the top five most expensive states to insure an automobile. When your Auto Insurance Premium arrives in the mail - and it's time to write that painful check to pay the premium - you may say something along the lines of: "This is ridiculous! Why am I paying so much for this auto insurance!?"

The answer may surprise you - The insurance industry loses money on auto insurance. In fact, Commercial Auto Insurance is the worst-performing major line for insurance carriers.

Commercial Auto Insurance Carriers paid-out 9 percent more in claims and claims-related expenses than what they took-in in premiums (Fitch). If you were losing 9 percent on your business, you'd likely be out of business.

What's more, Commercial Auto Insurance has produced an average 6 percent underwriting loss from 2011 to 2015 (Fitch). Most Commercial Auto Insurance carriers are not "folding-up-the-tent," but, recently, they are increasing premiums on average by 7 percent (Fitch).

The trend toward increased premiums is likely to continue until carriers reverse the unprofitable performance of this business segment.

About now, you may be thinking: "But, I haven't had any commercial auto losses - why are my premiums going up?" Well, as the saying goes: "a rising tide lifts all boats."

The poor performance of the segment as a whole results in premium increases for all policyholders. If you do have poor loss experience (accidents causing damage to vehicles and/or

injuries, high claims frequency, or a single severe loss), then look out - your premiums will probably increase a lot more than 7 percent.

What can you do to keep your company's Commercial Auto Premium Increases to a minimum? Implement policies that help reduce accidents and promote vehicle and passenger safety.

A recent Chubb report, "Keeping Pace With Auto Risks: Overlooked Risks May Lead to Large Losses" (by Nicholas Davis and Stephanie McMullen) highlights ways to help reduce the risk of Commercial Auto Losses (thereby helping to keep your premiums as low as possible). Here are some excerpts:

Texting and Cell Phones

- Cell Phone Use, including hands-free calling and texting, accounts for approximately a quarter of all car accidents nationwide (National Safety Council).
- Prohibit the use of cell phones while driving and provide hands-free phone equipment.
- Even Hands-Free Calling can be a significant distraction, so consider requiring that calls only be made while the vehicle is still parked. It's not convenient, but it could help reduce accidents.

Alcohol and Drugs

- Nearly one-third of traffic-related deaths involve alcohol impairment.
- Perform background and motor vehicle checks on drivers to find records of drug or alcohol use.
- Random Alcohol and Drug Testing can reduce risk.

Aggressive Driving

Actions characterized as aggressive driving were reported in more than half of fatal crashes between 2003 and 2007, according to a study by the American Automobile Association

Continued on p. 5

Co-op and Condo Corner



By Diana Virrill, Chair,
The Cooperative and Condominium
Advisory Council (CCAC)

Reviewing the Many Aspects of Major Capital Improvements for Your Building

WHITE PLAINS

The Cooperative and Condominium Advisory Council (CCAC) is proud of its Membership Meetings and the important topics that are covered at those events.

The latest example of the CCAC dealing with a key issue came during our Membership Meeting of Jun. 14 at the Crowne Plaza Hotel in White Plains.

More than 75 CCAC members - including members of The Building and Realty Institute (BRI), our affiliate organization - attended the CCAC's review at the meeting of the Major Capital Improvement (MCI) process. The many important sectors of the process were covered in an outstanding panel presentation that was entitled "Major Capital Improvements - The Ramifications of Needed Work."

Building and realty industry representatives who composed the panel and addressed the crucial topic were:

- ◆ Barry Korn, Barrett Capital (financing options for co-ops)
- ◆ Vincent Mutarelli, Capital One (financing options for condos)
- ◆ Mario Mouzouris, Merritt Engineering (interior issues)
- ◆ Rich Williams, Insite Engineering (exterior issues)
- ◆ Gregg DeAngelis, The Westchester/Hudson Valley Chapter of the American Institute of Architects (the architectural components of the process)
- ◆ Pat Clair, Levitt Furst Associates (insurance aspects associated with MCI's)

Each panel member delivered informative and important presentations to the CCAC/BRI members who attended the seminar. As proof of the popularity of the topic, the event's Question-and-Answer Period had to be suspended close to 9 p.m. after a series of many lively and in-depth questions from the audience!

And, the positive feedback from those in attendance after the event ended offered definitive proof of the thorough presentations of the panel. Simply put, the meeting was a success and the latest in a series of Membership Seminars that our members have found to be informative and useful.

On a related note, please know that the Board of Directors of the CCAC is always interested in hearing from the CCAC membership on possible topics for future Membership Meetings of our organization.

Those suggestions can be e-mailed to Jeff Hanley, Associate Executive Director of the CCAC/BRI, at jeff@buildersinstitute.org. Or, CCAC members can always call Jeff - or Albert Annunziata, executive director of the

Continued on p. 3



From the Editor's Desk

Hanley's Highlights

by Jeff Hanley

Associate Director, Building and Realty Institute (BRI), "Impact" Editor

A Look at "A Sensational 70th" and a Variety of Important Building and Realty Industry Issues

ARMONK

The most appropriate phrase to describe this issue of IMPACT is probably "a definite and diverse mix."

From issues affecting the building, realty and construction industry, to a review of the Apr. 21 "Birthday Bash" of The Builders Institute (BI)/Building and Realty Institute (BRI) that commemorated the 70th anniversary of the formation of the BI-BRI, this edition has a series of important reports that touch on many sectors of our industry.

A report and complete photo montage in the centerspread covers the Apr. 21 Birthday Bash of the BI-BRI at the Glen Island Harbour Club in New Rochelle. More than 185 members of the building, realty and construction industry attended the gala celebration to mark the impressive milestone for our association. Most in attendance agreed that the event was something special.

Other reports in this edition include:

- ◆ A Page One summary of the recent announcement from New York State Workers Compensation Group 458, the compensation insurance group of the BI, of its 25 percent dividend. The report also covers the announcement of New York State Workers Compensation Group 530 - the compensation insurance group for The Cooperative and Condominium Advisory Council (CCAC), The Apartment Owners Advisory Council (AOAC) and The Advisory Council of Managing Agents (ACMA) of the BRI - of its 20 percent dividend. Levitt-Furst Associates, insurance manager for the BI-BRI, is the manager of both groups.

- ◆ A comprehensive Page One report on the aggressive actions of the BRI and the CCAC in stopping proposed legislation from the New York State legislature that would have imposed strict time limits on Boards of Directors of co-ops for reaching their respective decisions on the acceptance of proposed shareholders. The proposal also called for the mandatory acceptance of proposed shareholders if boards did not reach their respective decisions within 45 days.

- ◆ A report in Insurance Insights on the noteworthy acceleration of Commercial Auto Insurance Premiums. The article was written by Jason Schiciano and Ken Furst of Levitt-Furst Associates. Levitt-Furst is the Insurance Manager for the BI/BRI and its affiliate groups.

- ◆ Reports from The National Association of Home Builders (NAHB) on the recent and noteworthy trends in the building and remodeling sectors.

- ◆ A Page One summary on the recent decisions of The Westchester County Rent Guidelines Board regarding guidelines for renewal leases affected by The Emergency Tenant Protection Act (ETPA). The report covers the decisions and their impacts on members of the AOAC of the BRI, as well as the entire building and realty industry.

- ◆ An analysis in Counsels' Corner about the U.S. Department of Housing and Urban Development (HUD) issuing a warning about the use of criminal records in screening processes. The report was prepared by Finger and Finger, A Professional Corporation. The firm is Chief Counsel for the BI/BRI and its affiliate groups.

Continued on p. 3

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Regulatory Costs Account for Nearly a Quarter of the Price of a New Home, Building Industry Report Says

WASHINGTON, D. C.

According to a new study by the National Association of Home Builders (NAHB), regulations imposed by all levels of government on average account for 24.3 percent of the sales price of a new single-family home, .

Breaking down the total regulatory costs further, the study revealed that three-fifths of the figure—14.6 percent of the final house price—is due to a higher price for a finished lot resulting from regulations imposed during the lot's development. The other two-fifths—9.7 percent of the house price—is the result of costs incurred by the builder after purchasing the finished lot.

"This study demonstrates the type of over-regulation our industry is facing," said NAHB Chairman Ed Brady, a Home Builder and Developer from Bloomington, Ill. "Not only is it inhibiting builders' ability to produce competitively priced homes in a still recovering housing market, but this regulatory burden trickles down to the consumer level and prices many would-be buyers out of the market."

While NAHB's previous regulatory estimates in a 2011 study were fairly similar, the price of new homes increased substantially in the interim, the study said. When applying these percentages to Census Data on new home prices, the data show an estimate that regulatory costs in an average home built for sale went from \$65,224 to \$84,671 — a 29.8 percent increase during the roughly five-year span between NAHB's 2011 and 2016 estimates, according to the report.

Meanwhile, disposable income per capita in the U.S. increased 14.4 percent during that same time period, meaning that the average cost of regulation embodied in a new home is rising more than twice as fast as the average American's ability to pay for it, the study said.

Builders and Developers, the report said, can expect to feel the impact of additional regulations in the near future, and the rate of increase in regulatory costs embodied in the price of a new home will likely be accelerated. A substantial number of regulations have been implemented recently, or are in the process of being implemented or actively considered by key policymakers, NAHB officials said.

The full study can be found at: www.nahb.org/costofregulation, association officials added.

"Put the Brakes" on Accelerating Commercial Auto Insurance Premiums

Continued from p. 2

(AAA) Foundation for Traffic Safety.

- Reinforce proper driving habits in safety manuals.
- Consider "How Is My Driving?" signs.
- Driver-Tracking Devices can help provide feedback on poor driving habits, such as excessively hard braking or speeding, and encourage improvement.
- Drive Dash Cams can provide crucial documentation in the event of an accident, including the road conditions and the actions of all the drivers involved. This could show that a company driver was at fault, or that a false claim has been submitted. In either case, it can help to reduce the time to settle a claim and the associated legal costs.
- While there is a cost associated with such technology, avoiding just one accident can save far more money (think "insurance premiums") than the outlay for the equipment and monitoring capabilities.

Vehicle Maintenance

- Delayed Maintenance can increase the chance of accidents.
 - Common issues include worn brake pads and underinflated tires that could rupture and cause a driver to lose control, or worn tires that perform poorly in snow or rain.
 - Vehicles should be brought to a reliable vendor for regular servicing, whether on a set mileage or elapsed-time basis.
 - Employees should be encouraged to report any problems with their vehicles.
- *Older vehicles should be replaced with newer vehicles featuring enhanced safety technology.

Accident Protocol

- In the event of an accident, the employee manual should outline what Documentation/Reporting Protocols to follow, as well as to whom to report it at the company.
- Designate personnel to notify the Insurance Carrier and Broker. Early Notification is vital for effective Claim Handling.

Background Checks

- Motor Vehicle Record Checks can ascertain if a potential employee has any violations or accidents.
- Because drivers may be reluctant to report violations after they're hired, companies may want to reorder Motor Vehicle Record Checks on an annual or other regular basis.

Reward Systems

- Consider rewarding employees for safe driving records.

For more information on Commercial Auto Insurance or Safe Driving Programs, call your insurance broker or Levitt-Fuirst Associates at (914) 457-4200.

Editor's Note: Levitt-Fuirst Associates is the Insurance Manager for The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and the Mid-Hudson Region. The firm can be reached at (914) 376-2500.

Counsels' Corner

HUD Issues a Warning about the Use of Criminal Records in Screening Scenarios



Ken Finger

By Kenneth J. Finger, Esq., Carl L. Finger, Esq. and Daniel S. Finger, Esq., Finger and Finger, A Professional Corporation, Chief Counsel, Builders Institute (BI)/Building and Realty Institute (BRI)

WHITE PLAINS

On Mar. 16, 2016 the New York State Division of Licensing released "A Notice to All Real Estate Brokers and Sales People Guidance Regarding Prohibited Discriminatory Practices."

Within the guidance the notice listed a variety of criteria upon which discrimination in housing was not permitted under New York State Civil Rights Law including "Conviction Record."

Shortly thereafter, on or about Mar. 25, 2016, the New York State Division of Licensing issued a revised guidance which removed the reference to "Conviction Record."

Coincidentally or not, on Apr. 4, 2016 the United States Department of Housing and Urban Development (HUD) released its "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate Related Transactions ("HUD Guidance")."

As discussed below, the elimination of "Conviction Record" from the list of prohibited discrimination categories in New York State was only a temporary reprieve. It should be noted that consideration of "Conviction Record" is not per se discriminatory and, as discussed below, unlike other types of discrimination, each instance of consideration of Conviction Record will require careful analysis.

The HUD Guidance explains that discriminatory impact or effect, without necessary intention of discrimination, violated the Fair Housing Act. This means that applying certain criteria, like conviction record, even though not having a discriminatory intention and even though a neutral policy, may be unlawful discrimination based on the impact of the policy.

Thus where a policy has a disparate impact on a protected class, such as individuals of a certain race, religion, national origin, and the like, it may be unlawful. The first step in the analysis will therefore be proof of impact on one of the protected classes. The determination of whether such a practice having a disparate impact is unlawful will be whether it serves a substantial, legitimate, non-discriminatory purpose of the provider.

The HUD Guidance confirms that restricting access to housing on the basis of criminal history which has disparate impact on a protected group and is not "necessary to serve a substantial, legitimate nondiscriminatory interest... or if such interest could be served by another practice that has a less discriminatory effect" is a violation of the Fair Housing Act.

Considering the above and the factual nature of any inquiry, the HUD Guidance goes on to explain the manner of determining whether a housing provider's use of criminal history results in unlawful discrimination.

The first factual determination to be made in each instance is whether the use of criminal history has a discriminatory impact on one of the protected classes of people. The HUD Guidance explains that the national statistics prove that racial and ethnic minorities are more likely to have a criminal record and thus implies that the use of criminal history must have a disparate impact. However, the HUD Guidance does reference possible differences in local and state statistics that a housing provider might be able to use to demonstrate a lack of disparate impact.

In the event that the impact of the policy is determined to have a disparate impact, the housing provider must prove that the policy is justified. A justifiable policy is one that "is necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider." For instance, the safety of other residents may be such a basis. However, the HUD Guidance states

that the effectiveness of the policy in achieving the stated goal must be provable "through reliable evidence."

In that regard the HUD Guidance specifically indicates that decisions based on arrests, not convictions, because they are not a finding that there was any conduct, cannot sustain such a policy. As to convictions, the HUD Guidance also particularly sets forth that a blanket rule precluding housing based on any conviction at any time for any conduct would not be sustainable. Rather the HUD Guidance suggests that the proscribed criminal conviction must be such that it relates directly to risks to the safety of other residents or their property.

If the housing provider fails to consider what the conviction was for, when the conviction occurred, what the person has done since the conviction, and the like, then it will not withstand scrutiny as to whether the policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest.

If the housing provider, such as a landlord, owner, cooperative, or the like, can establish the necessity of the policy, as set forth above, if it can then nonetheless be proven that the purpose could be achieved by a policy with a less discriminatory impact, then the practice still might be precluded. Again the HUD Guidance

"...unlike other types of discrimination, each instance of consideration of Conviction Record will require careful analysis."

indicates that this will be quite fact specific and the absence of a per se ban would seem to "have less discriminatory effect."

The examples provided by the HUD Guidance essentially suggest looking into more specifics surrounding the particular applicant, circumstances, and the particular conduct. Of course this creates a dilemma for housing providers who have most often been instructed to maintain clear criteria to avoid consideration of individual circumstances in order to prevent claims of discrimination.

In other words, a strict non-discriminatory rule has generally been considered a safe haven for decision making. The HUD Guidance now throws that concept into question.

While the HUD Guidance insists that each case is fact based and determination must thus be made on a case by case basis, and while it indicates that state and local statistics may be relevant to a determination of disparate impact, the HUD Guidance makes it clear that use of criminal records must be under a carefully crafted policy.

Such policy must take into account at least the nature of the criminal conviction, when it occurred, what has the applicant done since, and the relationship of the conviction to a substantial interest of the provider, including the safety of the other tenants. While the HUD Guidance views these all as rather simple straight forward considerations, most housing providers will no doubt lose sleep over the apparent inability to utilize a bright line rule in housing determinations.

Editor's Note: The authors are with Finger and Finger, A Professional Corporation. Finger and Finger is Chief Counsel to The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region.