Litigation Funding: A Backseat Driver of Commercial Auto Rates

Businesses have experienced increases in auto premiums for 29 consecutive quarters, according to the third-quarter 2018 broker survey from The Council of Insurance Agents & Brokers (CIAB). Our Scott team discussed this trend in detail in a blog post in the fall of 2017 and again in our 2018-2019 Property & Casualty Outlook released last year, which noted:

> "Distracted driving is the leading cause of accidents and losses. Increased amounts of time spent on the road, inexperienced drivers, a significant rise in fatalities, increased medical costs and increased repair costs are also key factors."

Additionally, there has been an increase in the number of injury claims that reach litigation and settlements are rising. One factor that is impacting claims' litigation and, in turn, rising auto rates is the increase of litigation funding.

What is litigation funding?

Litigation funding is the process of a third-party investor financing some or all of a litigant's or claimant's legal fees. While this third-party is not a party to the case, the investor would receive a percentage of any future settlement or damages awarded.

"In the context of consumer lending, litigation funding is essentially a cash advance for individuals with personal injury claims," describes Christopher Stevens, Principal at Woods Rogers PLC in Roanoke. "The process is pretty well established and likely here to stay."

How is litigation funding impacting auto rates?

The rapid growth of third-party litigation funding in the U.S. is impacting commercial auto rates by increasing opportunity for litigation. On the surface, this seems like a good thing – opportunity and access for people who couldn't otherwise afford legal representation. However, in practice, litigation funding leads to an unnecessary inflation of settlements. Plaintiffs can utilize this funding to lengthen their time away from work and to seek unnecessary medical treatment, significantly increasing a potential settlement.

Additionally, a plaintiff's view of a proposed settlement may be different if they have received litigation funding. According to Stevens, a plaintiff may be influenced by a valuation process of the case by the funder. For example, if the funder values the case at $500,000, the plaintiff will be less likely to accept a potentially reasonable offer less than that value.

Litigation funding could also be impactful for other reasons. "The repayment terms of the loan can also impact how much compensation a plaintiff will accept in settlement," explains Stevens. "Therefore, the attorney representing the plaintiff may not have the same influence over the client that may exist with one that has not received a cash advance."

What should businesses do in response to increasing auto settlements?

While there isn't anything businesses can do to influence whether or not someone bringing litigation against their company utilizes litigation funding, there are ways to lessen the chances of litigation in the first place.

First and foremost, businesses should proactively work to prevent auto accidents by fostering a culture that values safety. This goes beyond simply implementing driving policies and procedures; however, starting with appropriate training and utilizing regular communication reinforcing safety as a priority is a good foundation. Companies may also want to consider installing collision avoidance technology and/or telematics on their fleet to help prevent accidents and improve driver behaviors.

Companies with fleet vehicles can also utilize technology to help their defense against litigation. Video cameras and telematics can provide meaningful evidence and data that can discredit false claims.

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