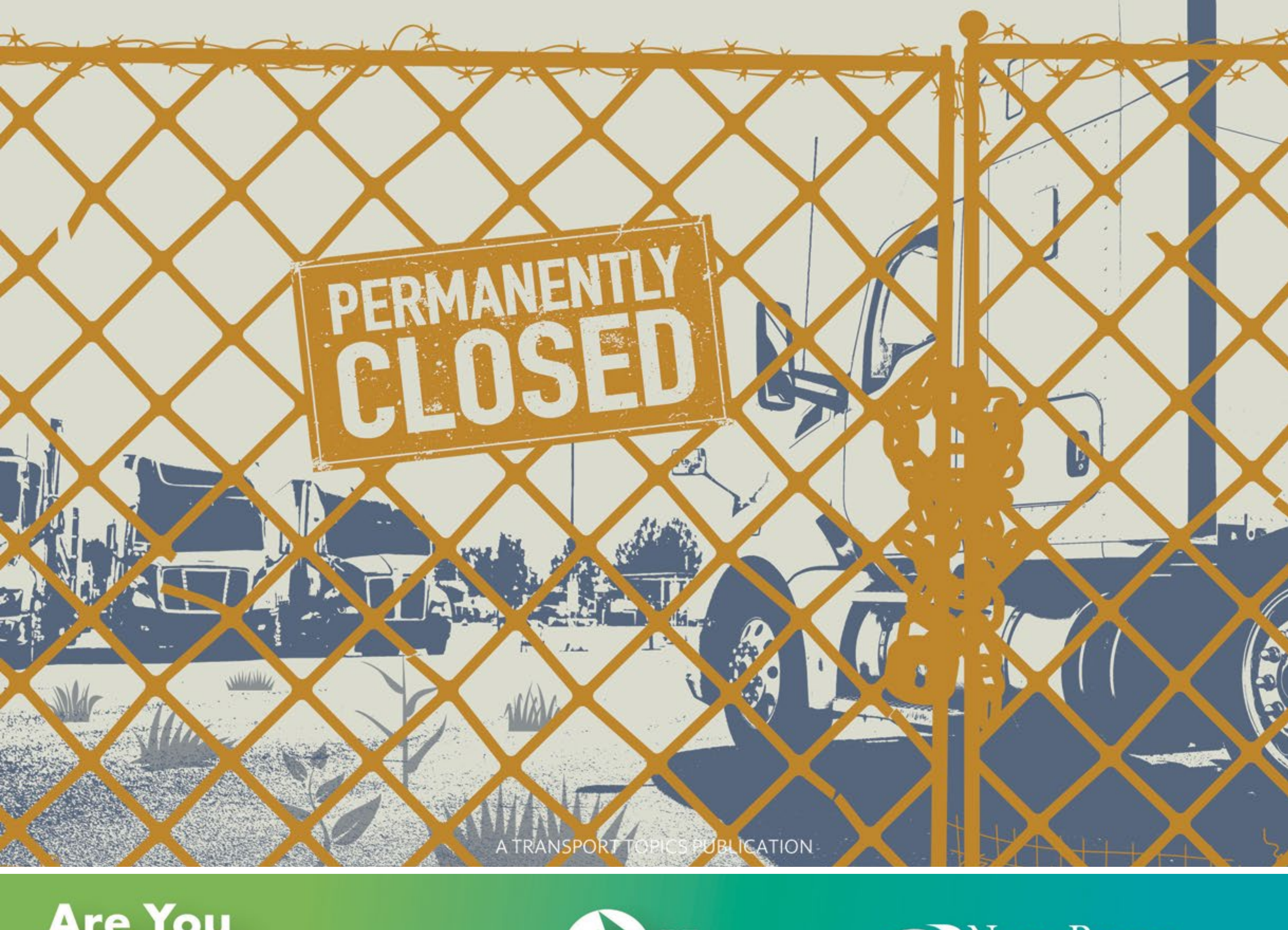
Transport Topics

Threat of Nuclear Verdicts Looms Over Fleet Insurance



A TRANSPORT TOPICS PUBLICATION

The Future of Trucking Insurance Unfolds

Michael Freeze
Features Editor

For several years, Transport Topics has provided insight from industry leaders about the pain points of trucking insurance. During that time, with fleets facing rising litigation from nuclear verdicts and industry disruption from new technology like artificial intelligence, the industry now stands at a crossroads.

So, in this year's special report, we want to look at how these factors are colliding and what it means for carriers, insurers and the courts.

It's not hyperbole to say that verdicts reaching into the tens of millions against carriers while regulators and insurers are trying to make sense of AI's role are currently creating a seismic shift in the way that insurance policies are developed and nurtured.

Even with the news about the Texas Supreme Court's reversal of a $100 million verdict against Werner Enterprises earlier this year, the overall legal environment still tilts against trucking. The toll of the nuclear verdict has driven premium rates higher while insurers are pulling back coverage limits, forcing fleets into higher deductibles. Even worse, smaller operators are feeling the most pain. As a result, safety investments such as ADAS and cameras along with better hiring practices serve as green flags for insurers to even consider coverage.

In addition, AI and telematics data are transforming risk assessment and claims, even if the pace is slowed by regulation and insurer caution. For instance, some newer firms are pushing an "AI-first" approach, using real-time fleet data such as ELDs and dashcams to price policies based on actual risk, while traditional players are using it more conservatively as a support tool to help their teams work more efficiently.

These challenges may be sobering, but they also present opportunities. With the hardening of insurance policy writing, there is plenty of innovation to be discovered. However, the big question will be how fleets will successfully adapt to the new future. We hope this special report offers a roadmap for where insurance in trucking is headed next.

Cover design by: Brian Kelly

Big Verdicts, Bigger Premiums

The Trucking Industry Still Faces Soaring Insurance Costs Fueled by Nuclear Verdicts Against Carriers

By Steve Brawner
Special to Transport Topics

The recent reversal of a $100 million verdict against Werner Enterprises by the Texas Supreme Court gave the trucking industry a big win in a legal environment that is often stacked against it — and where "nuclear" verdicts along with smaller settlements are raising insurance rates ever higher.

In that decision, the court reversed a verdict that had been upheld on appeal after a fatal crash in 2014 when a pickup truck lost control in icy interstate conditions, crossed the median and collided with a Werner truck that was traveling below the speed limit and braked before impact.

The original verdict is an example of a plaintiff's attorney persuading a jury to decide on emotion and ignore the facts, said Jay Starrett, a partner with the Scopelitis law firm that represents truckers, adding that trucking clients know they might need to appeal to a higher court for a just result.

Pam Bracher, deputy general counsel at American Trucking Associations, said the reversal could set a precedent in Texas and create boundaries on "proximate causation," meaning the determination that the defendant caused the event. The court said the Werner driver couldn't be blamed for being in the wrong place at the wrong time.

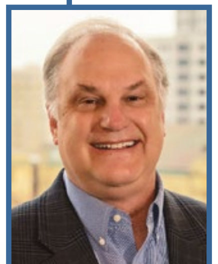
The frequency of court claims has decreased since 2020, yet the severity of claims has risen, Bracher said. The potential for a nuclear verdict is leading defendants to settle at rising amounts.

"We splash these headlines of these large verdicts, and nobody ever talks about all the defense wins, and there's a lot out there," she said. "But this sort of threat of this large verdict creates a fear that drives up settlement values."

Trucking companies are being targeted by personal injury lawyers, said Starrett and fellow Scopelitis partner Andrew Marquis. Truckers presumably have money and insurance, both said, adding that juries may not hear about the millions of dollars they spend on safety. Studies have shown that most accidents between a trucker and passenger car driver are caused by the latter. Nevertheless, truckers often are presumed to be at fault.

Noting that technology is a helpful tool for carriers, Starrett said he knows if a client is in legal trouble quickly based on dash cam video evidence. Marquis said he might send a favorable video to the plaintiff's attorney and ask if they want to take a flawed case. Sometimes they don't. The passenger car can provide speed and hard-braking data.

Plaintiff's attorneys often employ a legal strategy known as the "reptile theory" in which they tell jurors they are guarding the community against unsafe truckers. ATA's Bracher said they often will use a carrier's forward-facing documents, social media postings and website against it. Trucking companies must know what their documents and postings say and must consistently adhere to their protocols. Smaller companies that don't have an in-house claims or legal staff should partner with their insurance carriers.



"There is a trend where if you have the right facts and if you're willing to try the case, the defense bar is having success in defending the industry."

Jay Starrett
Scopelitis

Starrett of Scopelitis said the industry has an obligation to stand up for itself despite the costs and risks.

"There is a trend where if you have the right facts and if you're willing to try the case, the defense bar is having success in defending the industry," he said.

Jerry Gillikin, executive vice president for Hub Transportation insurance, said the Werner reversal "gives us all hope" that the legal climate can improve.

Nevertheless, Gillikin, whose company insures many midrange companies, called the situation "desperate." Insurers spread the costs of nuclear verdicts throughout the industry. With rates having increased for the fifth year in a row, he noted, the situation is hitting new ventures hardest.

While nuclear verdicts are a major factor in rate increases, so are the many smaller judgments and settlements. Gillikin said one of his clients was recently hit with a million-dollar claim.

"[Claims] that used to be a hundred thousand are now a million dollars," he said. "How many of those can you pay?"

Nick Saeger, assistant vice president of pricing and products for transportation specialties at Sentry, compared the insurance industry's preparation for a nuclear verdict to the sense that a tornado might happen somewhere generally, but nobody knows where and when.

"We know that they're going to happen across the industry," he said. "We don't know which companies are going to have them happen. So you have to sort of price for it across the broader industry, and the prices just have to increase for everyone, whether you've had that bad claim or not."

Taylor Walker, chief insurance officer at Loadsure, a transportation insurance company that primarily focuses on cargo insurance, agreed that increases are driven by not just severity but also additional losses through regular claims.

"The big claims — that's what's going to make markets pull out," he said. "The small claims are going to be what drives the price up."

That combination creates a "perfect storm where the market will all of a sudden really get hard," Walker explained.

Some insurers are reducing their exposure by offering $1 million primary limits after giving as much as $10 million eight to nine years ago, said Dan Cook, principal and transportation practice leader at insurance firm TrueNorth. Likewise, excess insurance providers have reduced their coverage limits per contract. Many will no longer attach coverage at lower levels, forcing motor carriers to decline coverage, accept more risk or absorb more cost.

Matthew Payne, U.S. transportation practice leader for Lockton, which focuses primarily on insuring large fleets, said the rate environment has "calmed down to a degree this year," noting that rate increases are significant but not as severe as they have been. More large fleets are taking increased deductibles and potentially starting their own captives. They can get a quicker return investing in safety than they can by waiting for insurance prices to fall, Payne added.

However, he said the current situation is not sustainable. The number of insurance carriers willing to play in the industry and provide excess coverage is falling, and prices are rising. Larger fleets are finding it more difficult to obtain insurance. The costs make it difficult for midsize fleets to turn a profit.

Alan Riels, president of Arkansas-based Dedicated Logistics, an 80-truck carrier, simply stated that truck insurance prices are just too high.

Dedicated Logistics

"Even if you're operating perfectly, you're going to have increasing insurance rates. … It's punishing everybody because the insurance carriers spread the risk across all their insureds," he said.

Smaller companies with as few as one truck are facing the same challenges as larger ones, including the threat of a nuclear verdict, said Sentry's Saeger. Sentry insures many owner-operators and other small operations.

"All of that stuff is impacting both fleets and smaller fleets/owner-operators alike," he said, "Nobody's really immune to it."

Saeger said that while larger and midsize fleets are purchasing policies with higher deductibles, the practice is less common for smaller ones that would struggle to cover a $5,000 claim.

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Scott Richardson, the fleet's safety manager, noted that one cause of the high insurance rates is the low minimum liability insurance rates required of passenger car drivers in many states. Last September, a passenger car driver suffered a heart attack, drove across two lanes of traffic and a middle turning lane, and struck a Dedicated Logistics truck head on. The passenger car driver's $25,000 policy didn't come close to paying for replacing the burned-out truck and repairing the damaged trailer, the $45,000 bill for cleaning up the diesel spill, or the $20,000-plus tow bill. Dedicated Logistics' insurance covered most of the rest, but the costs ultimately will be passed down to the trucker in the form of higher premiums.

The carrier avoided a lawsuit in that accident, but it hasn't always been so fortunate. Several years ago, its truck was struck by a drunken driver who tried to pass on an exit ramp shoulder. Police arrested the woman for driving under the influence. Nevertheless, a billboard lawyer sued the firm. Ultimately, the insurer settled for a low amount in a court-ordered mediation "to get them to go away," Richardson said.

Gillikin said Hub is trying to help its motor carriers deal with the rising costs. It's putting its best clients in a group captive or large retention policy with a large deductible. It is helping others take on more risk.

Lockton's Payne said the first key for motor carriers in this environment is hiring the right driver. The second is having technology, including collision avoidance, lane departure warnings and cameras that alert a driver who is getting distracted or drowsy. Payne described it as "the price of poker."

"To get insurers interested, you need to have strong driver hiring guidelines, strong driver qualification process, training, and then, again, have your fleet equipped with the most up-to-date technology," he said.

"Even if you're operating perfectly, you're going to have increasing insurance rates."

Matthew Payne
Lockton

Sentry's Saeger said fleets that invest in cameras and other technology will "definitely" see better rates than those that don't.

"Insurance is a bit of a show-me type industry, so just to have the technology doesn't necessarily mean that you'll have less claims," he said. "A lot of times it does work that way. But as you apply it, and it leads to less claims, you will see, we'll call it 'better rates relative to your peers.' Not necessarily lower rates because again, until we stop having nuclear verdicts, I don't see a horizon where rates will be decreasing."

If they do have an accident, they should report all claims quickly to their insurance company, Saeger said. The sooner the insurer can get in front of both their own drivers and others affected by the accident, the more likely they will at least think twice about getting an attorney.

"If we can make them understand that we're there to help them and pay them, help them get back to where they were before and pay them fairly, the better off I think all parties will be," he said.

Cook with TrueNorth said trucking companies that invest in safety, quality driver hiring practices and collision avoidance systems enjoy a clear return. That return is growing in relation to nuclear events.

"As simplistic as it sounds," he said, "the best option is still not to have the claim in the first place."

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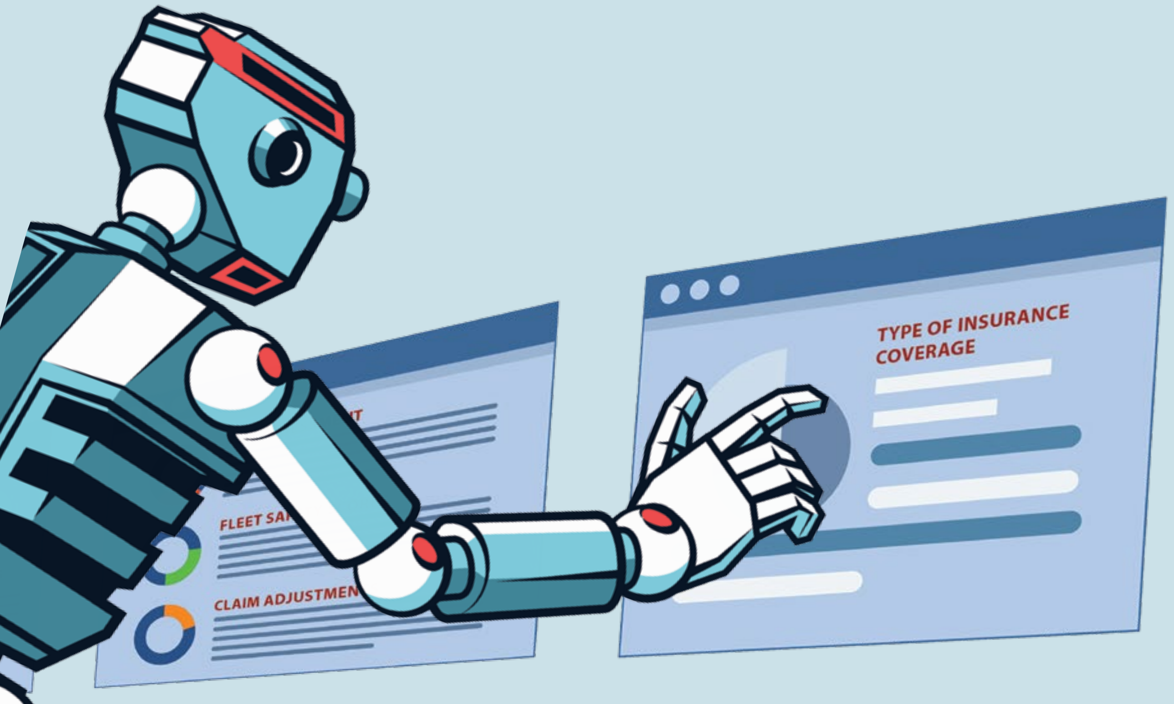


Underwriting's AI Upgrade

Insurers are moving beyond manual processes and embracing more precise, real-time risk assessment tools

By Amanda Smith-Teutsch
Special to Transport Topics

Artificial intelligence is becoming increasingly commonplace in modern life and in business, from aggregating search results and summarizing complex documents to acting as a personal assistant through smartphones.

In the trucking industry, insurance policies represent one of the new fields where AI is beginning to have an impact.

Some insurance firms, such as trucking insurance provider Nirvana, are taking an AI-first approach to risk assessment and underwriting.

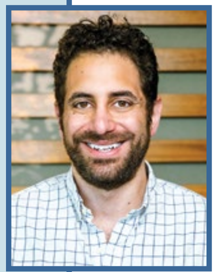
"There's something about insurance that is deeply flawed," said Bandar El-Eita, Nirvana's head of marketing. "In any cohort, you are going to blend the risk."

When pursuing an insurance policy from a traditional firm, companies are evaluated based on their industry profiles and placed into a cohort, he noted. The cohort then pools the risk and the insurance provider sets the rates accordingly.

In trucking, that approach means that the safest, best-run motor carriers in a cohort effectively subsidize the group's higher risk carriers, which have little incentive to improve, El-Eita said.

That's where Nirvana's technology comes in. Before setting a rate for a potential trucking client, the insurance company hooks into the fleet's telematics, electronic logging devices, dashcams and advanced driver assistance systems.

With the implementation of the ELD mandate starting in 2017, onboard technology on trucks has been quietly collecting all sorts of usable data on a fleet's performance in real time, El-Eita said.



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>
> Bandar El-Eita
> Nirvana

"The obvious question became [if] I'm making these improvements with ELDs and dashcams, how can I leverage this data to save myself some money on insurance?" El-Eita said. "The way we look at it is, while you can save up to 20%, it's really about finding the right price for your actual risk."

Steve Miller, vice president of innovation and mobility for insurance brokerage Hub International, has worked with innovative insurance products since 2015, when he first insured a company working on an autonomous vehicle.

Since then, he has watched as the conservative, highly regulated industry that he's in has struggled to adapt to new technology.

> *"The industry is struggling right now to absorb the technology."*
>
> Steve Miller
> Hub International

He said he sees two tiers of AI implementation and integration in the industry: First, the companies that are all-in on the tech and look to use it wherever possible; and second, companies that are more reserved in their adoption and are poking at the technology to figure out how it best fits their business model.

"The industry is struggling right now to absorb the technology," and make it do more than just answer simple queries or generate clever slide decks, Miller said.

The common thread of both AI integration approaches, he said, is the fact that both factions realize the treasure trove of data to be gained from a trucking company's telematics.

"AI is enabling that dataset to be more readily and robustly digested, analyzed and then used from an actuarial perspective. Actuaries take historical information to price future risk. And what

we need to do is disrupt that process and accelerate adoption of real-time data," Miller said.

The difficulty, he said, is when insurance companies want to take that new way of pricing and adapt it to the patchwork of rate requirements and regulatory frameworks across each of the 50 states.

"That's a big part of what's slowing things down," he said.

AI-Driven Efficiency

Other insurance companies are finding ways to use AI to augment and speed up existing business processes.

Sentry Insurance has been using AI for applications such as claims fraud models and sales opportunities models, said Denise Christophel, director of advanced analytics at the firm.

"We use machine learning for things that are not decisioning models," she said. "We are not using AI to make decisions. We're using AI to help inform our associates as they are making the decisions."

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Denise Christophel
Sentry

The company is using AI to help generate claim summaries and support customer service representatives with real-time recommendations during customer interactions, but none of the interactions customers havee with the company pass through an AI filter.

Future projects are aimed at helping underwriting work more efficiently. Some of the manuals connected with the firm's process encompass hundreds of pages, and finding a precise answer to a specific question can be time intensive, Christophel said.

Nick Saeger, assistant vice president of products and pricing for transportation and specialty at Sentry, said the company has put its focus on AI applications that allow people to focus on higher-level interactions and projects while computers handle the mundane.

"These are things that allow them to take more time to think through. On the claims side, it's [allowing them] to communicate with claimants, with attorneys, with our customers, and do the things that need to be done to progress the claim and get it to its resolution," Saegar said.

"On the underwriting side, it allows them to not be leafing through or digitally leafing through an underwriting manual to find a particular thing. We can find it more quickly and now we can get at underwriting the actual account itself and it's spending more time getting to the right price. That's why I love it from a business perspective."

"These are things that allow them to take more time to think through."

Nick Saeger
Sentry

Peter Berg, principal and practice leader at TrueNorth, oversees the company's final-mile transportation products.

"That sector is ripe for opportunity because that final-mile component makes up [about] 40% of the cost of the supply chain," Berg said. "There's a ton of technology in terms of how you automate, how do you scale and how do you take out some of the overhead that is associated with that model, which is very much human labor driven."

Berg said he's increasingly seeing the insurance companies his firm brokers use AI to drill down into data to offer more accurate pricing and create better risk assessments.

Reducing Risk

AI may also come into play when managing risk and limiting liability.

"Fleets are subject to nuclear verdicts. That's just a reality. So are insurance carriers because they're the ones that are on the hooks paying for it," Hub International's Miller said.

Increasingly, fleets have been deploying telematics systems, advanced driver assistance systems, and inward- and outward-facing cameras. All of those systems generate data.

"Insurance companies are starting to get better at integrating and taking that data and using it to price to the degree that they can," Miller said.

The real-time data collection and interpretation also can allow for real-time driver coaching and faster identification of driver safety risks, he said.

Nirvana's El-Eita said using AI to speed along the process after a claim is filed can help mitigate claims expenses as well.

"If you can resolve a claim faster, you can get everyone back on the road faster," he said.

Plus, being able to provide hard data from the driver's trip experience leading up to the claim event has proved valuable in helping ward off some lawsuits that might have tied up the company in legal proceedings.

"How did they drive? Were they crazy people behind the wheel or were they driving with all diligence and care? And that can really protect the fleets from more fraudulent factors," El-Eita said.

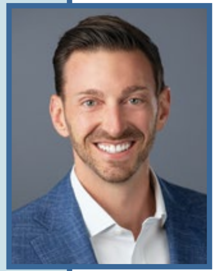
TrueNorth's Berg says he sees insurance companies moving toward requiring fleets to embrace AI technology and advanced telematics.

He predicted that AI-backed cameras and telematics will become almost a requirement because the added cost and risk of running without them will become too great.

As with any new technology, AI is subject to a wide range of differing regulatory pressures that vary from state to state. Some states have no guidance for private companies on AI usage and integration in insurance policies and processes, while other states are setting up limits and frameworks for implementation.

Most states that do have regulation follow the examples set by California and Colorado. Colorado began by placing limits on how AI can be used for life insurance policies, demanding that technology not be used to discriminate against people based on their race. The state is considering whether the regulations should be expanded to include other types of insurance, including property and liability.

California's Insurance Commissioner issued Bulletin 2022-5, stating that companies using AI must ensure their algorithms and procedures avoid both conscious and unconscious bias or discrimination.



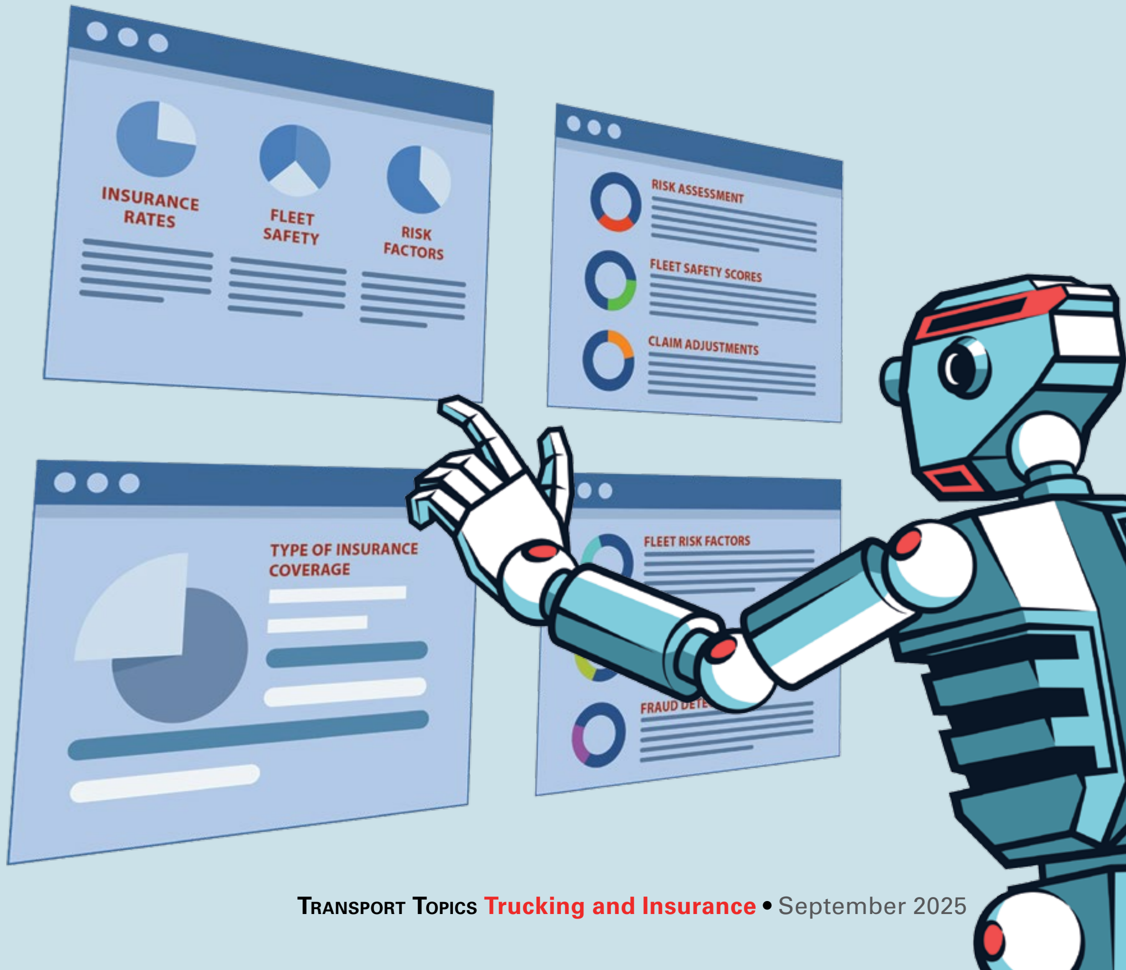
"There's a ton of technology in terms of how you automate, how do you scale and how do you take out some of the overhead that is associated with that model."

Peter Berg
TrueNorth

The state's regulations must be followed when insurance companies are "marketing, rating, underwriting, processing claims, or investigating suspected fraud relating to any insurance transaction that impacts California residents, businesses and policyholders."

The state also warns companies against using unrelated factors, such as social media usage, purchase history and other datasets to make arbitrary decisions on risk and premiums.

"I think that's a good canary for the rest of the country," Hub International's Miller said.



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