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AVAILABILITY AND ACCESSIBILITY OF LIABILITY AND EXCESS INSURANCE FOR PUBLIC TRANSIT AND PRIVATE COACH OPERATORS

This digest provides the results of NCHRP Project 20-65(3), "Availability and Accessibility of Liability and Excess Insurance for Public Transit and Private Coach Operators." This digest was prepared by Jack Burkert, Consultant, and Elizabeth Ellis and Sue Knapp of KFH Group, Inc., in association with Cambridge Systematics.

CONTENTS

1—Introduction, 1

2—Role of Liability Insurance in the Passenger Transportation Industry, 4

3—Impacts of Current Insurance Issues on the Passenger Transportation Industry and Its Response to These Issues, 10

4—Impacts on the Traveling Public, 16

5—Alternative Insurance Models, 18

6—Mitigation Activities and Strategies, 23

References and Notes, 33

Bibliography, 35

1—INTRODUCTION

This digest provides alternatives to conventional liability insurance coverage for public transit agencies and private motorcoach (coach) operators in response to the insurance crisis of the early 2000s that has had, and continues to have, a significant impact on the cost and availability of liability insurance coverage. The digest discusses the role of liability insurance in the passenger transportation industry, current insurance issues and impacts on public transit agencies and private motorcoach operators, alternative insurance models, and activities and strategies that can help to mitigate liability insurance costs and availability.

Background

Public transit agencies and private coach operators have experienced significant cost increases for both basic and excess liability coverage in recent years. In addition, the overall availability of liability insurance coverage has decreased. These trends began as a normal, if undesired, shift in the insurance market cycle several months before the terrorist attacks of September 11, 2001 (9/11). The events of 9/11 appeared to have affected both the speed and extent of the market shift and provided an easy justification for the price changes for some observers.

This shift is not the first time that public transit agencies and private coach operators have had to deal with significantly increased costs for liability insurance and decreased availability of coverage. The constant shifting between easy and difficult availability as well as in the pricing of the insurance product, known as insurance cycles, has a long and well-documented history. This cycle is the latest and is arguably not even the most severe of recent insurance cycles. In the mid and late 1980s, the transportation industry weathered, along with every other business, an "insurance crisis" characterized by high premium rates that rose 500% or more, as well as the typically associated limited availability and restricted amounts of coverage (*1*).

By the early 1990s, the insurance crisis of the mid 1980s was clearly over. It was replaced by a time of extended availability against a backdrop of a constant downward pressure on pricing. Liability insurance costs decreased from the crisis

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years of the previous decade, and available coverage limits increased (*2*).

A prevailing explanation of the causes of the crisis of the 1980s, as well as of the most recent insurance problems, points to the cyclical nature of the insurance market: multiple forces within the financial world can make insurance readily available, with premiums apparently under pressure to be reduced, as insurers vie for market share, revenue for their investment portfolios, and a free flow of cash with which to conduct their businesses (*3*). In this "soft" market, premiums are low and availability is high. Inevitably, as changes occur, both in investment conditions and within the insurance company community, a new direction for insurance is set. Prices for premiums increase, often by large percentage amounts, coverage becomes increasingly more difficult to obtain, and high limits of liability are expensive and often dropped by policyholders. The "hard" market returns.

While many forces are constantly at work within a pure financial mechanism such as insurance, some fundamentals warrant a brief overview. Insurance cycles are influenced by forces internal and external to the insurance company community and the individual policy-issuing company. Profitability in an insurance company can be garnered through underwriting and through investment. Underwriting revenue, from premiums, is ideally set at rates that cover both losses and expenses and includes a profit factor, which is an incentive for the insurer to accept risk.

In reality, underwriting rates are seldom in precise balance with the profit needs of the company. Instead, insurers often gain their profits through adroit activity in the investment world. While largely restricted from "wheeling and dealing" by the need to maintain a reliable capital base, companies can and do manage their assets in a manner that ensures income.

Thus, as premiums decline in a soft market, underwriting profits are less and less possible for the insurer. The insurer becomes more and more dependent upon investment income to retain profitability. So long as investment conditions are favorable in this soft market, many companies seeking premium revenue for investment will keep premiums low. But two factors can force insurers to react by redefining their business strategy: rising underwriting losses as premiums decline well below cost and a slackening of investment income. Some insurers elect to simply withdraw from those segments of the market they find to be less profitable; others stay in the market, but raise their prices to levels that should ensure underwriting profitability.

Obviously, the longer any soft market persists, the longer prices have time to decline, thus making the rebound to underwriting profitability all the larger in terms of real dollar changes. Add in an inflation factor, and the premium price changes can be dramatic. In addition to this financial change, there is policyholder perception. The longer the soft market persists, the longer policyholders come to expect that low premiums are the norm.

In the prior insurance cycle, the turning point occurred in late 1984, when the insurance industry experienced very large losses, and at the same time insurance companies were receiving significantly lower returns on their investments given declining financial market conditions rates. Collected premiums were insufficient to deal with losses, so insurance companies had to use some of their assets to pay claims. Insurers responded by raising premiums and reducing or eliminating coverage in some cases, creating the hard market—the insurance crisis—of the mid 1980s (*4*). That condition eased and was followed by an extended soft market, circa 1987 through 2001, persisting for almost 15 years, which is longer than was historically normal.

In the past few years, with significantly increased costs for liability insurance premiums and decreased availability for public transit agencies and private coach operators, questions have been raised regarding how the passenger transportation industry can best cope with insurance cycles. Indeed, research was needed to find solutions and mitigation strategies. Is the industry experiencing increased risks and losses? Are there external factors, such as the aftermath of 9/11, affecting insurance? And if so, are strategies and mechanisms available that can assist in mitigating or managing the problems as they present themselves? What are effective alternatives to traditional commercial insurance that may help public transit agencies and private coach operators meet their insurance needs? This research study addressed these questions, with an overall goal of investigating the availability and accessibility of liability and excess insurance for public transit agencies and private coach operators.

Purpose and Overview of Digest

The stated objectives of this digest are to

- Assess insurance issues affecting the public transit and private coach industry;

- Identify and detail alternative insurance models beyond the traditional commercial model; and
- Document risk and loss mitigation activities being used by states and the coach industry to reduce premium exposure (best practices).

To meet these stated objectives, the study was designed to

- Identify and assess the current issues affecting the increases in premiums for basic liability and excess insurance coverage and related problems;
- Identify factors affecting the premium increases and determine to what extent the increases are caused by industry risk and loss experience or external factors affecting insurers;
- Identify differences in the current insurance problems by state;
- Identify and assess effective strategies being taken, or that can be taken, by states, public transit agencies, and private coach operators to mitigate the current problems with liability and excess insurance coverage;
- Document any impacts on the traveling public caused by current insurance problems; and
- Research alternatives to traditional insurance models for public transit agencies and private coach operators.

The study included both primary and secondary research. Primary research included several surveys to obtain current information on liability insurance, interviews with representatives of national organizations representing public transit agencies and private coach operator interests, and interviews with insurance industry representatives.

Secondary research included a review of available relevant documentation on insurance for the transportation market, including federal and other sponsored research and relevant periodicals.

The surveys included the following:

- A survey of state departments of transportation (DOTs) to obtain information and input on insurance issues that transit operators are facing in their states;
- A survey of state transit associations to obtain information and input on insurance issues that association members are facing in their states;
- A survey of state and regional private coach associations to obtain information and input on insurance issues that private coach operators are facing in their states or regions; and
- A survey of a sample of public transit agencies and private coach operators to obtain more detailed information from the individual agency/operator perspective.

The intent of these various surveys was to assess the extent of the current liability insurance problem and its characteristics, including whether there is a geographic dimension, whether issues related to insurance costs and availability vary by type or size of operator or type of service provided, and the types of strategies that are being employed to address the problem. The survey also asked if the state DOTs or associations are aware of any testimony or legislation introduced to address insurance issues.

Interviews were conducted with representatives of the following industry and federal organizations:

- American Public Transportation Association (APTA),
- United Motorcoach Association (UMA),
- American Bus Association (ABA),
- Federal Transit Administration (FTA), and
- Federal Motor Carrier Safety Administration (FMCSA).

These interviews were conducted to understand the current liability insurance environment for public transit agencies and private coach operators from the perspective of nationally based organizations. Additionally, the study team probed for any studies done by the respective organizations on insurance and knowledge of any testimony or legislation, at the state and/or federal level, that had been provided or introduced to address the insurance situation. An interview guide was used to structure these interviews.

Interviews also were conducted with representatives of the insurance industry, including the following:

- American Insurance Association,
- Insurance brokers representing two independent entities with significant experience with the transportation industry,
- One of the largest insurance companies covering passenger transportation operators, and
- A large facilitator of captive insurance programs dealing in passenger transportation.

These interviews, primarily in person, were conducted to understand the insurance issues from the perspective of the insurance industry. Specifically, the study team was interested in identifying the factors influencing cost increases and availability issues

and to what extent these factors are based on industry risk and loss experience or forces external to the transportation industry. Interviews with the insurance underwriters focusing on the transit and coach markets attempted to review and understand pricing strategies and the various factors that are considered in pricing and supply. Importantly, these interviews also sought information on the types of activities that public transit agencies and private coach operators can and should take to influence premium rates and coverage.

2—ROLE OF LIABILITY INSURANCE IN THE PASSENGER TRANSPORTATION INDUSTRY

This chapter provides a brief background discussion of liability insurance for public transit agencies and private coach operators, including a review of how it is typically handled. This background discussion provides a context for the research study's findings on the current availability and accessibility of liability and excess insurance coverage for the passenger transportation industry. For more detailed information, please see references provided in this digest's Bibliography.

Transportation Operations and Need for Insurance

By their very nature, transportation operations are subject to many variables. The problems they encounter, however infrequently, through errors in judgment or execution, can create damages for which the transportation operator can and will be held responsible. These errors may be serious in nature, leading perhaps to property damage, personal injury, or loss of life. Passenger transportation is even more highly exposed to this potential because the safety of the traveling public who board an operator's vehicles becomes largely the responsibility of the operator.

The most common mechanism that precedent and law have established to ensure that just and adequate compensation for aggrieved parties is available is liability insurance. In exchange for a financial consideration (premium), a third party—the insurance provider—accepts the responsibility to ensure that damaged and resolved injured parties are compensated, up to the limits of the liability coverage it provided. While there are variations in the exact process and contractual relationships, both public policy and regulation demand that the transportation operator be in a financial position, or contract with those who are in a financial position, to guarantee that losses are paid and injured parties compensated.

This insurance availability and placement of coverage is more than sound business practice: it is public policy and a matter of law. Financial responsibility must be in place. When coverage becomes problematic—because of either availability or, to a lesser degree, cost—both public and private operators, as well as their ridership and the public with whom these operators share the highway, may be affected.

Insurance Essentials

Insurance is best understood as a financial transaction in which pure capitalism is at work. In the insurance industry, as in other industries, capital is made available by investors for the purposes of income and growth. Insurance produces no products, no tangible items, and no services in the sense that an employee directly acts on behalf of the customer. Insurance is first and foremost about money begetting (or losing) money. And while insurers have employees and services, they could be perceived as support to the primary function: acceptance of risk from the policyholder with the expectation that in the transfer of premium for risk, the insurer will profit.

Generally, traditional insurance companies are established through financial investment. For the majority of the industry, what will be termed here as the traditional marketplace, an initial (and subsequently continuing) examination and evaluation process (licensing) is conducted by state government insurance officials. In a simple and very abbreviated explanation, key steps taken by insurers as they supply traditional insurance to passenger transportation operators include the following:

- The insurer establishes rates to be charged based upon the insurance company's perception of the loss profile of the particular industry, especially that portion of the operating entities that the insurer seeks to cover;
- The insurer evaluates potential policyholders through an underwriting process; this process carefully examines history as a predictor of future activity, current operations, management competence, driver skill and records, and other factors associated with the potential for loss;
- Insurers select desired risks, offer a quotation, and, if accepted, then issue an insurance policy. The policy issued is a contract, one which transfers the financial risk of some or all of the

passenger transportation operations from the operating company to the insurer; it is this acceptance of risk for which the insurer receives a premium;
- Insurers anticipate profitability through careful selection of the operators they seek to insure, accepting policyholders who meet the insurers' profile of loss history and operating criteria, as well as through their own skill in managing loss situations as they may occur; and
- Insurers further anticipate profits through income earned by investment of the premiums paid to them by policyholders.

For an insurer to attain and maintain profitability, several factors must be contemplated and balanced to achieve desired results:

- Predictability both at an industry and individual policyholder level:
  - For the industry, the actual losses incurred overall are within the expectations of the insurer and
  - For the individual policyholder, the operations and loss history of the company are generally within the historic profile presented by the operating company;
- Stability within the environment where claims and losses are to be managed so that the environment is largely predictable and is based on historic precedent; and
- Establishment by the insurer of the proper premiums, at levels where anticipated costs are balanced by premiums and income from investments.

In the passenger transportation industry, these fundamental factors for insurer profitability are often elusive. An examination of industry loss profiles provided by a major private sector insurer shows that the average cost of a casualty loss has consistently climbed, at a rate much greater than inflation, over the past 20 years. Insurers attribute this rise in claims costs not so much to an increase in frequency of loss, but to both escalating medical costs and a deteriorating climate of adverse legal verdicts. These two cost escalators have largely eroded one of the fundamentals to insurer profitability—predictability.

Insurance Regulation and Oversight

The insurance industry is subject to significant regulation and oversight that is almost exclusively the province of the various state governments. Ultimately, each state government acts independently, albeit with a degree of uniformity, with little in the way of federal intervention or control.

The regulatory environment is important to understand when considering possible activities and strategies that might be employed to mitigate the periodic insurance crises that affect the transit industry. Significantly, not all insurance providers are regulated in the same manner; not all insurers are subject to state regulatory control, management review, and claim guaranty funding support. Variables related to insurance companies' physical presence in a state, their ultimate intentions on how they will offer coverage, and their financial and organizational structure all affect how, and even whether, a state regulatory body has significant jurisdiction to regulate. While the traditional insurance industry is and has long been regulated, other types of insurance providers and programs can fall outside the control and oversight of state insurance regulators. Programs such as risk retention groups and captive insurance companies may find some or even all of their operations exempted, by reason of law or physical location (e.g., their "domicile" is an offshore location, such as the Cayman Islands), from this state oversight. This exemption is an obvious financial advantage to the specialized insurance program, but may ultimately prove to be detrimental to both stake and claim holders should an insurance insolvency in this alternative insurance community ultimately occur.

Components of State Regulatory Oversight

Licensing. State regulatory oversight begins with licensing. Insurers seeking to do significant levels of business in a state must seek licensing as a company that has been "admitted" (i.e., admitted into the state to do business). While an insurer may conduct some business as a "non-admitted" provider, such an approach is difficult at best, creating uncertainties, multiple relationships with other insurers, and costs that can quickly make the non-admitted company non-competitive.

The licensing of a company to do business in a state includes an examination of the nature of the insurer's business; the filing and review of financial statements; and acceptance of what is, in effect, a tariff that lists proposed coverage, premiums to be charged, and the process through which those premiums are calculated.

Audit procedures. State oversight continues through audit procedures. Regulatory oversight through audits is a form of consumer and taxpayer protection. These audits are most often but not exclusively conducted by the state listed as the insurance company's domicile. (The domicile state in the licensing process may ultimately not be the state where the company has the greatest physical presence.) While the domicile state usually conducts periodic audits, other states may also elect to do so, sending their representatives to the insurance company home offices. This oversight is intended to ensure that the insurance company is fiscally sound, is not in jeopardy of bankruptcy, and will be able to pay future claims when presented. While other aspects of the insurers' operations may be subject to review, the audit process is one that first and foremost ensures financial stability of the insurance provider.

Not all states conduct their insurance review operations equally. While consumer protection is always the avowed purpose of any insurance office, states take individualized and unique approaches to this responsibility. Many states have extensive and continuing insurance company auditing procedures, others simply await the published results from other states' audit programs. Indeed, even insurance licensing may take on this same format, where some state licenses are issued only after and in response to the completion of the licensing process in another, more demanding state.

Guaranty fund. To ensure industrywide stability and ability to pay claims, state regulators also require insurers to pay a portion of their revenues into a guaranty fund, managed by the state. This guaranty fund is established to ensure that if and when any licensed and admitted insurance company is placed into receivership, or otherwise becomes bankrupt, the remaining liability and other claims of that insurer can be paid. After first dissolving the remaining assets of the insolvent insurer, claims are then paid from funds made available from the insurance industry funded guaranty fund.

Price controls. Insurers electing to operate in a state provide, through the licensing process, indicators and guidelines for the pricing of the coverage they are planning to offer. While this process seemingly would manage ultimate consumer costs, the reality is that by providing broad guidelines, availability of credits and debits to the base amounts, and escalation clauses allowing pass through of rising costs, insurers have enormous flexibility in the ultimate premiums they charge consumers.

Assigned risk. Another and significant role of state insurance regulation is the establishment of the residual insurance marketplace, generally known as the "assigned risk" pool. This pool and programs like it add upward pressure on pricing for every insurance consumer, and, in some jurisdictions, such government programs are perceived to be so intrusive and expensive that they lead insurance providers to withdraw and decline to do business in the state.

The assigned risk program is, in general, a mandatory insurance program in which consumers who are unable to obtain coverage elsewhere may apply for coverage to the state. When this request is made, the state insurance department assigns that consumer to one of the licensed and admitted insurance providers in the state. This insurer then must provide insurance coverage to the consumer, frequently at state-mandated rates. Obviously, a consumer unable to obtain coverage in the open market is likely to be a poor or difficult risk, and insurers will be the first to point out that insuring someone both accident and liability prone is a losing proposition, no matter what the premium amount might be. Traditional insurers are subject to these state assignments; non-traditional insurance programs are typically outside the requirements for accepting mandated policyholders.

An interesting paradox is that the assigned risk program in a state, in times of price swings, may be the low cost provider of coverage. The state-established rates for assigned risk coverage are based on a multiple of recent and typical past premiums charged in the state for the same or similar coverage. Thus, when a sudden upward change in open market pricing takes place, assigned risk pricing may lag. State agencies only periodically reevaluate the premium rates they mandate, and while the marketplace may change daily, state rates may change quarterly or less often. Given this ability for the market to change quickly, and the state slowly, there are often periods where the assigned risk premium available to a consumer can be less expensive than the currently available average premiums.

State Regulatory Role During Hard Insurance Markets

Under hard market conditions, where premium levels rise and some insurers are withdrawing from all portions of the marketplace, the states, through their

insurance regulatory functions, are generally hard pressed to offer meaningful relief to their consumers.

Insurers who wish to withdraw from the state marketplace are usually able to do so, even as consumer complaints and state restrictions slow down their departure. In general, notices of non-renewal or cancellation have a 30-day (longer in some locations) minimum notification period. Federal insurance filings also have this same 30-day warning requirement. However, an insurer determined to exit a line of business, such as passenger transportation, ultimately finds few barriers to departure. An announcement by an insurer of non-renewal to a series of policyholders may provoke state inquiries and examinations, but the insurer effectively can and will be able to cease the line of business or completely withdraw from the market.

Individual non-renewals of policies offer more potential for a reprieve to the insurance consumer, as the filing of a complaint with the state insurance department usually holds in place all aspects of the insurance relationship in question until an inquiry can be conducted. Some states have prohibitions on mid-year cancellations, and others have restrictions on non-renewals, but overall, a notice from an insurer indicating an intention not to renew a policy is at best hard, and more often impossible, to reverse.

Insurers have, in addition to the right to withdraw from the marketplace noted above, a high degree of flexibility on pricing. While initial filings at the time of licensure may give indications of pricing, these filings have guidelines that seldom if ever restrict an insurer from passing through to the consumer the rising costs of doing business. But in some cases, states may have mandatory limitations codified in state law that limit or otherwise restrict premium changes. These state restrictions on price changes may limit what premium changes are permissible, but even this regulatory limitation has its limits: guidelines that control pricing can ultimately create more problems. Insurers unable to recoup losses or costs can, and as experience has shown, will withdraw and completely abandon a state and its consumers.

Thus, despite all of the management and governance potential, as currently structured, the regulatory community is unable to significantly impact and control the insurance hard market. The forces at work in the hard market are global in nature, and the current tools at the disposal of regulators provide limited impact.

The Insurance Cycle

The insurance cycle is one of the facts of life for both the insurance company and the insurance policyholder. As introduced in the preceding chapter, the insurance market is cyclical, with rising and falling premium rates that are influenced by market forces, and generally undeterred by regulation, intervention, or apparently individual policyholder underwriting results.

Because the insurance cycle generally changes direction only after extended periods of time, an entirely new generation of passenger transportation operators may arise between hard markets. Confronted with the escalating premiums of their first hard market, despite their own stable operations, steady or even declining loss rates, and a long-time commitment to an insurer, these operators learn that that the cost of premiums is largely driven by forces outside their immediate and direct control. And while a good loss history is an asset to an operator seeking insurance coverage, such a history only allows the operator to receive the best price available in the current market.

As described in the introductory chapter, the soft market of insurance cycles exhibits declines in industry and individual policyholder premium rates, often in spite of adverse loss history and increasing costs. But when the reality of insurance company and industry poor financial results sets in, the insurance industry takes reactionary steps and companies raise premium prices back to and perhaps above the highest prices of the previous hard market. All of this seemingly defies logic, and yet the cycles have always occurred, with every expectation they will persist into the future. The relationship between the insurance cycle and the financial marketplace, where the impact on insurance company investment income is greatest, is consistently noted by insurance industry officials. Investment income can cover underwriting loss, but only for as long as the income remains high or the losses remain manageable.

These cycles are driven not just by the financial markets. They are also driven by insurer actions, as insurers vie for premium dollars to invest, compete for market share in anticipation of "brighter" revenue days tomorrow, and anticipate that their underwriters—their employees who actually select risks and set pricing—will manage to avoid both accounts in which frequent losses quickly eat up premium dollars and accounts likely to sustain an occasional heavy loss resulting in a multi-million dollar payout.

How the Passenger Transportation Industry Is Insured

The passenger transportation industry in the United States comprises public transit and private coach industries. The public transit industry comprises two separate and distinct groups: one owned and operated by public agencies, the other owned and operated by private businesses often under contract to or in concert with government oversight. (In public agencies, the equipment is purchased by state or local jurisdictions, staff and drivers are civil servants, and control is usually exercised by a quasi-governmental oversight board.) Public agencies can and perhaps should be further defined into two categories: large properties (approximately 100 with the largest vehicle counts and jurisdictions served) and smaller rural or suburban properties (literally thousands) without the broad financial shoulders of their larger siblings. Each of these entities has a different insurance perspective, and thus each needs to be treated separately.

Public Transit Industry

Public agencies. The methods of insuring risks generally used by public transit agencies include

- Traditional commercial insurance,
- Self-insurance, and
- Risk retention pools.

Purchasing commercial insurance is the most commonly used and widely known risk financing tool for smaller public transit properties, while self-insurance is widely used by larger transit properties (many of the large transit properties went with self-insurance in response to the insurance crisis of the 1980s). The third major risk financing option, risk retention pools, are also becoming more common. As described in Chapter 5, risk retention pools involve a number of entities agreeing to jointly fund their losses; participants make contributions to the pool that, in turn, pays out losses. During the insurance crisis of the 1980s, some states formed pools specifically for transit agencies (California, Michigan, Virginia, Washington, and Wisconsin). States and local municipalities also have pools or insurance trusts that cover broader governmental or quasi-governmental units within their jurisdiction (not confined to transit) (*5*). The ability of a transit agency to participate in state or local governmental pools is often dictated by state law or the specific legislation creating the pool. Transit agencies participate in such pools regardless of size, but their participation depends on the availability of a pool in their state or municipality and whether their institutional structure allows them to join. Very few public transit agencies have joined captives (member-owned insurance companies) because they require front-end investments and a long-term commitment. Chapter 5 provides more insights into the characteristics of captives.

Public transit agencies have two important considerations where casualty losses are concerned: they are often in a position to invoke legislative restrictions on (1) their susceptibility to lawsuit and (2) the limits of their liability. These agencies may also have public funds and the public treasury from which they may draw financial strength, thus allowing them to self-insure. Self-insurance is generally a cost-saving measure that includes the acceptance by the transit agency of a high deductible on losses that occur. Specifically, the agency self-funds significant amounts of its own losses, usually beginning with the first dollar of loss upwards to perhaps $1 million, without seeking or drawing upon the protection of an insurance provider. However, beyond these levels, the large public transit properties generally obtain "excess" insurance from an insurance provider.

Insuring losses through excess insurance commencing at $500,000 or $1 million is very different from seeking coverage after a $250 deductible. This type of high limits coverage, commencing at high loss dollar amounts and continuing to perhaps $20 million or more, is generally available through certain specialists in insurance, often companies that act as "reinsurers" themselves to other licensed primary (or lower limit) insurance providers.

Transit agencies in smaller jurisdictions are not able to participate in high limits insurance programs as easily as large properties. The financial resources or the willingness to accept large risks may not be present for these agencies to self-insure for a million-dollar loss. While a single million-dollar loss is intimidating, the real risk to these properties and their governmental owners is that several such losses could theoretically occur in successive weeks, resulting in huge unanticipated payouts from the public treasury. Thus, smaller properties are more frequently found in the traditional insurance marketplace.

Private contractors. A private business operating on behalf of or under contract to a state or local gov-

ernment can fall into one of several categories based upon the contract, operations, and type of service provided. Obviously based on these differences, each will have a different perspective on insurance as a business problem. Private contractors can be insured through government programs, adding their exposure to that of an existing government-owned fleet, or more likely, through a direct relationship with an insurer who provides coverage as would be extended to any private transportation company. Certain types of operations will produce different perspectives toward insurance; for example, specialized paratransit in which the passengers tend to be more fragile will offer a more difficult and costly insurance profile than that of a rural, midwestern, general public transit system.

From the results of the research study's interviews and surveys, public transit operators that are public agencies or part of local governmental units appear able to take part in state and local insurance pools—a significant cost saving. The public transit operators with the fewest options (and those most affected in a hard market) are the private businesses providing public transit under contract. These private contractors often cannot be part of the government-sponsored pool and, unless they are large enough to self-insure, they must purchase insurance from a third party. Their insurance problems are exacerbated by their private status, which means that often they are not afforded the limits on tort liability that governmental entities enjoy. Thus, a local community that decides to contract with a private business for the provision of its public transit service may be more vulnerable to fluctuations in the insurance market than if it provided the service directly.

Private Coach Industry

Private coach operators serving the intercity, charter, and tour markets generally insure their risks by purchasing commercial liability insurance. With a few exceptions, most private coach operators are not large enough to self-insure (according to industry reports, 95% of the approximate 3,600 interstate carriers nationwide have annual sales under $5 million, with the typical operator having approximately 5 coaches). While not universally true, private coach operators are generally subjected to mandates for higher liability limits than public operators.

While some private coach operators are now joining pools, only a few are large enough to be involved in a captive program. The rule of thumb is that $1 million of premium is required to achieve the required cost benefit from a single-parent captive (*6*). Similarly, to make participation in a multiple-parent captive or heterogeneous (association) captive financially attractive, $500,000 of premium is required. Rent-a-captive programs (discussed in Chapter 5) can be advantageous with as little as $250,000 of premium, but even this level is beyond the vast majority of private coach operators. And given that the cost for insurance constitutes a large portion of the operating costs in their low profit margin business, these smaller private coach operators are the most susceptible to insurance market cycles.

When motor transportation of passengers was deregulated in 1982 through the federal Bus Regulatory Reform Act, legislators, regulators, and the industry itself feared degradation of the industry's safety record. Until that time, strict entry requirements (e.g., public convenience and necessity) had maintained the intercity, charter, and tour markets at perhaps 1,100 operating companies. After deregulation, the private intercity market was expected to and did mushroom in size. While the specific numbers of companies doing business today vary, there are likely 4,000 companies currently in operation, and large numbers of other bus companies have come and gone in the intervening years.

As deregulation was being considered before passage of the Bus Regulatory Reform Act, many sought assurance for safety. The predecessor of the Federal Motor Carrier Safety Administration, the Bureau of Motor Carrier Safety, was only marginally engaged with the passenger transportation industry and had few resources, and the states provided little help. Thus, the insurance process became designated as a safety lever, one that would regulate who operated private coach transportation, by making insurance coverage available only to those companies that met what were presumed to be strict internal insurance industry guidelines. To assist in the creation of this apparent insurance barrier to entry, insurance liability limits were raised at that time, reaching per-incident liability limit levels in 1982 of $1.5 million for small capacity (15 passengers or less) vehicles and $5.0 million for any vehicle with a larger capacity. That these limits were seemingly selected as barriers to entry rather than limits based upon perceived need seems evident: those same mandatory limits are still in effect, unchanged, with no proposal to increase them, 23 years later.

The anticipated role of the insurance industry as guardian of public safety failed to materialize. Even the perceived and anticipated barrier to entry for those who wished to operate "on a shoestring" did not materialize. The intensely competitive insurance marketplace and high availability of coverage in the early 1980s made insurance available to virtually any enterprise wishing to provide private coach service. Even when new companies had difficulty obtaining or retaining coverage, either through their own or the actions of others, insurance coverage continued to be available, albeit often at higher costs, through the assigned risk programs established in each state.

Thus, in historic terms, insurance has been readily available, with only infrequent interruption, since the advent of industry deregulation. Since deregulation of the private coach industry, only two times has the availability of insurance been restricted, and only twice in those years (1985 and 2001–2002) has the industry ever been confronted with anything other than an overall decline in premiums. Over a period of 20 deregulated years, then, literally a generation of risk managers and insurance purchasers, as well as insurance underwriters and marketing personnel, has grown accustomed to and anticipates low or lower liability insurance premiums, with broad availability from multiple providers.

3—IMPACTS OF CURRENT INSURANCE ISSUES ON THE PASSENGER TRANSPORTATION INDUSTRY AND ITS RESPONSE TO THESE ISSUES

This chapter discusses the insurance crisis of the current decade, including a synopsis of factors that precipitated this situation, and the issues and impacts that the crisis has had on the passenger transportation industry. This chapter also presents actions that the industry has taken in response to recent insurance problems.

The Insurance Crisis of the Early 2000s

While the external market forces that influence the insurance industry began pushing the insurance cycle into one of its periodic hard markets with the downturn in the general economy by 2000, the insurance crisis of the 2000s appeared to many in the transportation industry to occur immediately after 9/11. Thus, some attached a cause and effect relationship to the two events, linked as they were by huge financial losses. The terrorist attacks on the country became, for some, a convenient explanation for the dramatically increased costs for insurance and more limited availability by 2001 and 2002. And while these attacks did have an enormous impact on the financial condition of the insurance industry, the attacks were clearly not the sole cause, nor even according to most, the primary cause.

Impact of 9/11 on the Insurance Cycle

Passenger transportation liability premiums had begun to rise in early 2001, after almost 15 years of steady decline: the insurance cycle had begun to turn. However, this insurance cycle was different from prior cycles: first, almost a complete generation of insurance purchasers had grown up in a soft market of easy availability and decreasing premiums; and, second, the terrorists attacks of 9/11, while not precipitating the change in direction of pricing and availability, exacerbated and accelerated the cyclical effect. While the experience of insurance purchasers was critical, in that their expectations were shattered and they did not see the hard market coming, the second of these factors is the one that needs further explanation.

In the world of insurance, financial strength is the measure not only of the insurance company's size, but also of its ability to sustain the premium base and, ultimately, to grow by adding policyholders to its business. Insurers are restrained from providing additional coverage to existing policyholders or adding new policyholders by their ability to pay potential losses, that is, their financial strength. The amount of coverage that can be extended by a typical insurer is generally based on formulae and ratios that are established by the insurer, state regulators, and insurance company rating services. When an insurer sustains losses that have a substantial impact on financial strength, the result is often a need for that insurer to reduce written coverage or even to refrain from policy issuance, most frequently accomplished by acting to withdraw from insuring less than attractive types of businesses.

Thus, the consequences of 9/11 included a sudden and severe shock to the financial strength of the insurance industry. The huge losses that occurred created two requirements: an immediate need for insurers to restore balance between the amount of coverage extended and their new, lower financial strength and a need to begin to recover the dollar losses. Both of

these requirements worked to the disadvantage of the passenger transportation industry.

Passenger transportation's history of declining premiums and rising loss costs throughout the 1990s had not been entirely unnoticed by the insurance community. Thus, from an insurance perspective, a logical way to reduce coverage writings after 9/11 was to eliminate unprofitable or marginal lines of business; and, in fact, insurers reduced availability of coverage to passenger transportation operators. And because dollar recovery was a high priority at the insurer level and the insurance cycle had already begun its upward climb, a faster pace to higher levels was not considered inappropriate. Interestingly, most of these forces were at work within insurance companies that the typical policyholder had never heard of—the reinsurance provider. This level of coverage needs additional examination.

Role of Reinsurance in the Current Crisis

Insurers seldom accept the large levels of risk that are incumbent in passenger transportation. Regardless of the form of coverage, when high exposure to loss is accompanied by high limits of liability, few insurers are willing to accept all of the risk alone. Realistically, single-loss limits of $5 million or more can tax the financial strength of many insurance companies. Thus, the primary insurer, the company that issues the policy to the passenger transportation operator, looks for its own insurance. The primary insurer will typically seek protection for itself through the purchase of reinsurance, either on an individual risk it is accepting or through a general reinsurance arrangement in which every policy issued in a specific line of business is reinsured. The primary insurer approaches other insurers who, for a portion of the premium paid by the policyholder, will accept the higher limits of risk.

Reinsurance is critical raw material for an insurance provider. Rather than accept all of the potential risk, the primary insurer may choose to create layers of coverage, where multiple reinsurers participate in a given policy, accepting, in successive layers, risk in return for a portion of the initial premium. Thus, in a hypothetical example, with a $5.0 million limit of liability policy, a primary insurer may actually be responsible for casualty losses only up to $500,000; thereafter, one reinsurer may then be responsible for losses up to $2.5 million and another for losses from $2.5 million up to the policy limit of $5.0 million. The premium that the passenger transportation operator remitted to the primary insurer is then apportioned, under an agreed upon formula, amongst the various insurance providers.

These reinsurance relationships are all but invisible to the policyholder; only sound business practices and periodic evaluation by state regulators place restraints on what risks for how much premium is transferred between insurers. And despite the potential for participation of several reinsurers in a transaction, the reality is that the reinsurance community of companies is a small one, where only a few companies will consider passenger transportation as a class of business to reinsure. This adverse reaction to passenger transportation adds to the potential for continuing insurance woes for the transit industry.

The reinsurance market experienced particularly large losses after the terrorist attacks of 9/11. With only a small number of companies handling reinsurance, they reacted quickly to the enormous losses that were experienced, tightening the overall insurance market very rapidly. This fast response aggravated what had been a more gradual swing so that the insurance crisis seemed to hit hard right after 9/11. Ranks of the United States reinsurance market are currently very thin. In 1995, there were 59 reinsurance companies and, by 2003, there were only 29, less than half.

Current Insurance Issues and Factors Influencing Them

Current Insurance Issues and Their Impacts on Passenger Transportation Operators

From APTA surveys (*7*), project surveys, and interviews with federal officials and national organizations, the primary insurance issues of the current decade include increases in premiums and decreases in availability. Following is a review of the issues and problems most noted during the research study.

Increased cost of insurance premiums. There is no question that in the early 2000s the cost of financing risks in the public transit and private coach industries increased dramatically. The more the agencies and operators were dependent on purchasing insurance from third party insurers for primary and/or excess coverage, the more affected they were by the crisis. Agencies and operators that had already shifted to self-insurance programs, pools, or captive programs

were affected less, but affected nonetheless, since at least a portion of their insurance was still purchased on the open market. Further, even with self-insurance, the increased cost of medical care and large jury awards served to increase the losses for all.

PUBLIC TRANSIT AGENCIES. While the cost of financing risks in the public transit industry did increase dramatically in the past few years, when adjusting for inflation, the casualty and liability costs today for most public transit agencies with good loss records are close to what they were in 1996, before the insurance cycle started upward.

According to the APTA surveys in June 2002 and June 2003, insurance costs increased at a rapid pace in the early 2000s for all public transit modes and sizes of systems. The 2002 survey showed that from 2000–2001, average premiums increased only 4.2% across all types of agencies, but premiums increased 30.5% from 2001–2002. Based on responses to the 2003 survey (different agencies responded), premiums rose over 50% from 2001–2002. Then in 2003, the increases leveled off to 25%. Because these increases are not reported as premiums per vehicle, it cannot be said definitively that per vehicle premiums increased this dramatically (the agencies responding could have increased their fleet size). On the other hand, the rates could have increased even more because the surveys do not indicate if the agencies changed their policies in an effort to control costs (by changing the deductible, etc.).

In this study's survey, 87% of the state DOTs that responded said that unanticipated or unwarranted increases in insurance premiums are a "critically important" issue for the public transit agencies in their states. According to those who responded,

- 36% said that liability premiums have increased **25%** in the past 24 to 36 months;
- 29% said liability premiums have increased **50%** in the past 24 to 36 months;
- 14% said liability premiums have increased **100%** in the past 24 to 36 months; and
- 21% said liability premiums have increased **more than 100%** in the past 24 to 36 months.

Few of the respondents thought that the cost of claims or losses had increased within the transit industry and most did not attribute the increase in premiums to operators not controlling losses effectively, although many did acknowledge the role that increased jury awards and overall inflation have played in increasing the cost of insurance. There is a perception that the insurance companies increased premiums unnecessarily to cover their losses in their investment income and the losses they incurred on 9/11.

National Transportation Database (NTD) data show that casualty and liability costs of public transit agencies (on a per bus basis) dropped dramatically from 1996 to 2000 (*8*). Casualty and liability costs did increase from 2000 to 2002 (the last date for which data are available) but, when adjusted for inflation, still have not met the 1996 levels (see Table 1 and Figure 1).

Losses were probably increasing for all agencies, not because of more accidents, but because judgments became higher (both out of court and jury awards). Those agencies that were self-insured or part of an insurance pool were already paying for those increases. Agencies that were purchasing traditional insurance, where premiums were artificially low, saw large increases in premiums—and felt it more.

PRIVATE COACH OPERATORS. Based on the research study's interviews with national organizations and private coach operators, premiums for private operators also increased substantially from 2000 to 2003. However, data supplied by one of the large insurance companies interviewed indicates that, based on 2003 dollars, the average insurance premium for private coach operators was about $6,983 per bus in 1986 and fell steadily in the 1990s to under $4,000 per bus in 2000. Rates are currently about $6,100 per bus, which is lower than the 1986 levels.

However, these data do not say that some operators were not affected more dramatically than others. While the average may be $6,100 per vehicle, based on the study's interviews with the major coach operator associations, the cost varies greatly by operator, depending on loss record, geographical location, and type of service being provided. Some operators, those unable to get commercial insurance in their state's assigned risk pool, are paying as much as $28,000 per vehicle per year. Since insurance represents a larger percentage of operating costs for small companies, these increases have led to some companies being forced out of business. The typical small, private coach operator does an excellent job of managing costs, better than many other small businesses; however, any "bump" in costs has a greater impact. The increase in insurance costs after 9/11 was more than a bump for many of the operators.

Decreased availability of insurance. There is also consensus that the availability of insurance has been

Table 1 NTD data on casualty and liability expenses

Casualty and Liability Expenses per Vehicle*				
Year	Demand-Responsive	Percent Change	Motor Bus	Percent Change
1996	$2,926		$6,263	
1997	2,962	1%	5,972	–5%
1998	2,928	–1%	5,792	–3%
1999	2,600	–11%	5,450	–6%
2000	2,568	–1%	5,573	2%
2001	2,674	4%	6,054	9%
2002	3,369	26%	6,747	11%
Casualty and Liability Expenses per Vehicle* in 2004 Dollars**				
Year	Demand-Responsive	Percent Change	Motor Bus	Percent Change
1996	$3,536		$7,572	
1997	3,501	–1%	7,058	–7%
1998	3,408	–3%	6,741	–4%
1999	2,960	–13%	6,206	–8%
2000	2,828	–4%	6,139	–1%
2001	2,864	1%	6,484	6%
2002	3,551	24%	7,115	10%
Overall Change 1996–2002		**0%**		**–6%**

* Average for agencies reporting—reports of less than $100 per vehicle were eliminated from the dataset.
** Using average Consumer Price Index for all urban consumers.

decreasing for passenger transportation operators, in terms of the number of companies willing to write policies and number of quotes received.

PUBLIC TRANSIT AGENCIES. According to surveys and interviews of state DOTs, associations, and providers, insurance was less available during the hard market period of this recent insurance cycle. The majority of respondents to the state DOT and association surveys indicated that cancellation of coverage, limited or no choice of insurers, and insurers withdrawing from the market are critically important issues to the public transit systems in their state.

PRIVATE COACH OPERATORS. Respondents reported that some private coach operators could not get insurance, while others had only a few companies willing to give them quotes.

Other liability issues raised through research study surveys and interviews. In addition to the increases in liability costs and decreases in availability of insurance, four other issues were raised during the course of this study:

- Operators that use non-hire, non-owned vehicles (volunteers) are having a hard time getting insurance and when they do, it is very expensive.
- Some states have begun requiring an increased amount of coverage. One state indicated that it no longer has governmental immunity and can be sued. In response, this state is requiring its public transit agencies to carry high limits on their liability. Other states indicated that they were increasing insurance requirements in response to losses of 9/11. Regardless of the reason for the increased requirements, the effect is an increase in the cost of premiums.
- Some governmental pools that previously allowed private, non-profit agencies to participate if they provided public transit under a governmental umbrella are no longer allowing

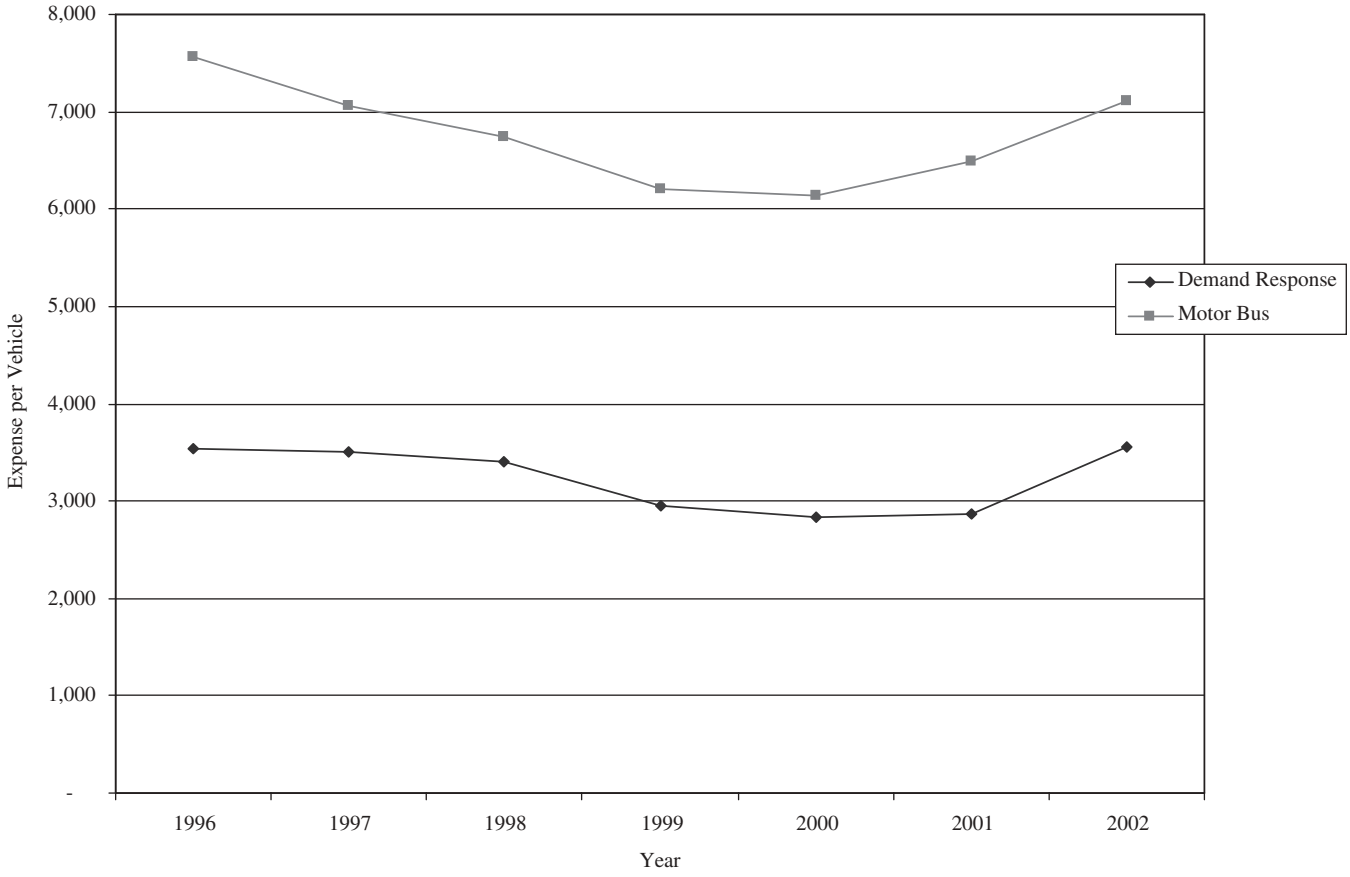

Figure 1 NTD casualty and liability expenses—2004 dollars.

them to participate. As a consequence, these agencies have had to go to the traditional insurance market for insurance. The reason for this shift in policy is not clear; possibly the private, non-profit agencies should not have been in the pool in the first place or the state is re-assessing the risks of allowing non-governmental units to participate.

- Some respondents indicated that the availability of excess liability insurance is the greatest problem they face.

Factors Influencing Price and Availability

The surveys and interviews of state DOTs, state associations, and providers shed light on the factors that the industry thinks have played a part in the increasing costs and decreasing availability of liability insurance.

Type of entity. Private entities, especially those not covered by the limits on liability afforded most public transit operators, have been more affected by the recent insurance crisis than have public entities. Respondents noted that restrictive rules for participating in municipal or other governmental insurance consortium may keep some public transit operators from joining.

Operating environment. Higher premiums were reported in more urban environments because of higher exposure. Some respondents also mentioned mountain areas as having higher premiums. (Premiums are linked to base of operation rather than to where the bus operates.)

Type of clientele. Higher insurance costs were reported for entities that transport more vulnerable clientele (elderly, disabled).

Geographic differences. Providers in states where the tort and liability climate is not favorable reported higher increases because of the litigious nature of the states. Areas most affected by the terrorist attacks of 9/11 also reported higher increases then the rest of the Northeast. Respondents also reported that states with consumer-oriented climates (e.g., Maryland and Massachusetts) are less at-

tractive to insurers and, as a consequence, some companies will not write policies in those states. This refusal to insure is not a problem in a soft market because there is more competition, but it becomes an issue in a hard market.

Cost of defending claims. The respondents also thought insurance costs had been affected disproportionally by the cost of defending claims, higher awards, and attorney involvement in the process.

Changes in state insurance requirements. Respondents reported that some state programs are requiring a higher coverage for passenger transportation services.

Lack of understanding of passenger transportation by insurers. Some of those interviewed felt that insurance companies and underwriters increased some premiums because they lacked an understanding of the passenger transportation industry, particularly the exposure and potential for losses.

Lack of understanding of insurance and risk by passenger transportation operators. On the other hand, some respondents felt that passenger transportation operators, especially smaller ones, commonly undervalue their risk and fail to plan for losses, effectively underinsuring. Also some believe that many operators become complacent with the low prices of a soft market and do not plan financially for increased prices that are bound to come when the market hardens.

Actions Taken in Response to Insurance Issues

Public Transit Agencies

State DOT and transit association surveys reported a number of efforts by transit agencies to control the insurance costs and losses. While the respondents generally did not report that any one measure was used by many or most of the agencies in their states, the majority reported that some operators had attempted to control premiums and losses by

- Voluntarily changing insurance carriers,
- Involuntarily changing insurance carriers,
- Changing the limits or type of coverage,
- Increasing their deductible,
- Meeting with insurance company personnel, and
- Becoming more aware of insurance pricing structure.

Both anecdotal evidence and survey data indicate that many transit agencies are responding to the current insurance crisis by adjusting insurance policies to control costs. Comparing the 2002 and 2003 surveys conducted by APTA shows that, during the 2002 renewal cycle, transit systems were adjusting their coverage and deductibles and were looking for alternative ways to insure their risks. The Self-Insured Retention (SIR) and deductible levels reported in 2002 ranged from $5,000 to $5 million for multimodal and large all-bus systems (the survey did not distinguish between self-insured retention and deductible levels) and the range for small all-bus systems was from $250 to $1 million. In the 2003 survey, the transit systems reported higher limits with a maximum of $7.5 million for multi-modal and larger all-bus systems and $2 million for smaller all-bus systems; systems seem to have been buying more coverage. Also more of the larger all-bus systems seem to have been self-insuring because the deductibles and/or SIR are higher and more first dollar coverage was being sought by smaller all-bus systems (decreasing the deductible or SIR to 0).

Most state DOTs and associations responding to the study surveys indicated that none or only some of the agencies in their states had attempted to control premiums and losses by

- Changing internal claims administration;
- Becoming more active in claims administration;
- Changing their claims handling policy (for example, increased resistance to payment);
- Retaining the services of an insurance consultant; and
- Reducing or eliminating broker involvement or fee.

According to the state DOTs and associations, the most common risk mitigation or loss control strategy taken by transit agencies in their states has been to raise fares to cover the increased cost, although most indicated that only some of their agencies had resorted to this tactic. Other common strategies reported include

- Implementing a fraud deterrent program,
- Adding or increasing the role of an internal risk manager, and
- Increasing safety and security programs and loss control efforts.

About one-third of the state DOT respondents reported that some public transit agencies had ceased to operate a portion or all of their services.

Private Coach Operators

Representatives of the private coach operators sought to control insurance costs and losses by

- Down-sizing their fleets;
- Increasing liability insurance deductibles;
- Eliminating coverages or reducing limits to the extent permissible by law;
- Delaying equipment purchases;
- Creating "work arounds" to lower insurance costs (for example, some operators are using an out-of-state address for a domicile that offers lower rates);
- Dropping insurance all together (some operators have chosen to drop their insurance coverage in disregard of the law);
- Improving safety (some are looking for ways to improve safety even though improvements in loss records do not translate into reduced premiums in the short term); and
- Staying in the assigned risk pool (sometimes insurance is cheaper for an operator in the assigned risk pool).

Many anecdotes report that small, private charter and tour operators were forced out of business by insurance problems (confirmation is hard to obtain because many factors could have contributed to the demise of private charter and tour operators in the wake of 9/11, including the loss of business and tourist trade in general).

State DOTs and Industry Associations

State DOTs and transit associations were asked what activities they have undertaken to assist operators in their states or their members with insurance problems. The two primary activities undertaken by states were to increase communications on insurance issues among providers and offer educational programs for operators. Only a few state agencies reported other activities, such as adding an insurance program, creating new types of insurance for operators (*9*), introducing legislation or tort reform, meeting with insurance providers on behalf of operators, or creating a hot line for assistance. Clearly, the state DOTs and state transit associations see their role in dealing with this issue as one of education rather than direct intervention.

Similarly, the national associations interviewed reported that they are hampered from taking action since insurance regulations are so state based. None of the national associations has been involved in pushing any federal insurance legislation or tort reform.

4—IMPACTS ON THE TRAVELING PUBLIC

The impacts of the current insurance crisis on the traveling public appear to be subtler than they have been on the passenger transportation operators. Survey and interview information obtained through this research study indicate some operators raised fares and limited or eliminated certain services because of the increased costs for insurance. More significantly, there are reports of bus operators, particularly private ones, that have been forced out of business because of the insurance crisis and of some private operators that are operating illegally without liability insurance.

On the positive side, the greatly increased costs for insurance, particularly for private operators, have engendered a new, stronger focus on safety and training, as reported by a number of operators. To the extent that such focus may improve safety for the traveling public, the impact is positive. This chapter presents the limited information that the research study obtained on the impacts of the current insurance crisis on the traveling public.

Impacts from the Public Transit Agency Perspective

Many of the state DOTs and state public transit associations that responded to the survey indicated that the public transit agencies in their states have had to cut services and raise fares because of increasing insurance costs (*10*). Additionally, one-third of state DOTs and 20% of state transit associations indicated that public transit agencies in their states have left the market or cut service because of current problems with liability and excess insurance coverage.

One of the state DOTs that responded to the study's survey noted that safety has been affected negatively because so much cash flow is tied up with insurance, which does not provide any real benefits. This report directly contradicts reports by many other operating entities that increased their focus on safety in efforts to control losses. A transit association respondent reported that the increased insurance costs have forced agencies to enact less customer-

friendly policies; for example, paratransit agencies changed from door-to-door service to curb-to-curb service, resulting in somewhat less liability for passenger accidents related to getting to and from the bus boarding area.

Reduced contractor competition may be another indirect impact for public transit operations in which services are contracted out to private entities. Some private entities have gone out of business because of escalating costs, particularly insurance, and some must bid much higher because of increased insurance costs. Because many public agencies look for low bids when awarding transit operations contracts, private contractors that must adjust their cost structures to reflect greatly increased insurance costs will be disadvantaged. Private contractors that are able to keep their insurance costs lower, through either alternative insurance models or stellar loss histories, may be better positioned to provide lower bids for public transit contracts.

Also, when public agencies frequently change their private contractors in search of lower bids in an environment of increasing costs, resulting to some extent from insurance, the public agency's transit program and its passengers will be affected more frequently with the typical disruptions that accompany changes in contractors. While such disruptions are usually minor, they can affect a public transit program adversely.

Impacts from the Private Operator Perspective

Information obtained during this study indicates that there have been greater impacts on private operators and their traveling public than on public transit agencies and their traveling public. These impacts have included increased costs for transportation, fewer operators available in markets where bus companies have gone out of business, and an apparent and reported increase in the number of private operators that operate *without* insurance. However, there were also reports of private operators that have focused new attention on safety, as a way to mitigate increased insurance costs. To the extent that such focus results in safer operations, it affects the traveling public beneficially.

Cost Increases for the Public

Private operators may be able to implement fare increases more easily than public transit agencies. And clearly, fares charged for charters and tours have increased in many cases because of increased insurance costs. One larger operator on the East Coast indicated that it added a specific insurance surcharge to help cover insurance costs, which doubled in 2001–2002.

Operators Going Out of Business

Interviews with representatives of the two national private operator associations revealed that there have been instances of private operators forced out of business because of the current insurance crisis. One association, with a membership total of about 800, indicated that a "handful" of its members—perhaps five to ten—went out of business citing insurance costs as a primary reason. The other association, with a slightly larger bus operator membership base, indicated that right after 9/11, 347 private bus operators went out of business, which represented about 10% of registered private bus operators at that time. While the specific role that insurance played in forcing these operators out of business is not clear, the increased costs and limited availability clearly were detrimental to the operators' continued business.

Uninsured Private Bus Operations

One of the clear consequences of the insurance crisis of 2001–2002 was an increase in the number of private bus operators that began to operate without liability insurance. While hard data on the extent of this trend are difficult to obtain, it was mentioned by most of the private bus industry representatives interviewed for the study. According to those interviewed, the number of such operators was "probably not large," but the potential impacts on the traveling public and the public at large of such uninsured bus operations are serious.

The U.S. DOT's FMCSA, which is responsible for licensing private bus operators and ensuring that they have mandated insurance coverage, indicated that there were a number of high profile accidents involving private bus operators that had no insurance in the period leading up to and into the era of the 2001 insurance crisis. These accidents, coupled with tips from legitimate private operators about uninsured bus operators that were later verified, have given the FMCSA a recently acquired focus on insurance. The FMCSA streamlined its process for revoking the operating authority of private operators based on a lack of insurance. The revocation process

used to take close to 3 months; it now takes an average of 36 days. While some of the revocations are reportedly purposeful (an operator voluntarily lets its authority be revoked as a temporary way to address its inability to get insurance), others have been revoked adversely. And the numbers of revocations are up, according to the FMCSA, but isolating what part of the increase in revocations is from the impacts of the insurance crisis and what is from the streamlined revocation process is difficult.

Also the FMCSA has moved to make its regulations more enforceable by creating an ability for inspectors at roadside to check on the insurance status of private operators they stop for other reasons.

According to the FMCSA, its data on revocations reportedly have not shown a geographic pattern. What the data do show is the revocations have been concentrated within the smaller private operators. Given that 95% of the private operators are classified as small, the revocation pattern is not surprising.

New Focus on Safety

A positive impact on the traveling public may be a new focus on safety because of the insurance crisis. Several private operators noted that they had implemented new safety programs, such as award programs and other incentives for safe drivers. Another operator reported the creation of a new position in his company to specifically address safety and training. One operator on the West Coast noted that he is taking a harder look at applicants for driver positions as well as at his current drivers, terminating several drivers who compromised the new higher safety standards.

Summary

The current insurance crisis appears to have had fewer direct impacts on the traveling public than it has had on the passenger transportation operators, at least in the short term. Reportedly, some operators raised fares and reduced services; some bus operators (particularly private ones) were forced out of business; and some private operators began operating illegally without liability insurance. However, the increased cost of casualty and liability insurance has created a stronger focus on safety and training; therefore, to the extent that this focus improves safety for the traveling public, the impact is positive.

5—ALTERNATIVE INSURANCE MODELS

Over the past 20 years, beginning largely with the insurance crisis of the mid 1980s, interest and participation in alternatives to traditional insurance have increased. Since the last insurance crisis, increasing numbers of operators have moved towards non-traditional insurance models. According to the American Insurance Association, of the passenger transportation industry's total exposure for risk, today a smaller percentage is insured by traditional insurance companies than in the past. Operators have had to find alternatives, given their difficulties in hard market years; however, the movement towards alternatives has been somewhat different for public operators than for private operators.

In general, the alternatives to traditional commercial insurance are self-insurance, insurance pools, and captives. This chapter describes the function and general advantages and disadvantages of traditional insurance and several specific, more commonly applied insurance alternatives.

Traditional Insurance

Traditional insurance is obtained through a commercial insurance company. The insurance company becomes, through a contractual relationship, financially responsible up to the policy limits for the operator's losses, upon payment of a premium to the insurance company. Support functions, such as claims handling, are typically the responsibility of the commercial insurance company but may be handled by a third party administrator or by the policyholder itself (in-house staff).

In most insurance scenarios, a premium cost is established as a set and predetermined cost to the policyholder for the year. The premium may be based on vehicle counts, miles operated, or monetary receipts. The premiums are typically paid in installments through the policy year at established intervals; however, some programs include advance payment and post policy adjustments based upon actual results. Most critically, premium costs are predictable within the policy period, and—excepting changes to conditions, fleet operations, and loss experience—premiums are anticipated not to change dramatically year to year. Within the assessed premium are sums for loss payments, insurer expenses, government fees, services, and other management functions allowing the insurance company to manage and administer the policy and to realize a profit.

With traditional insurance, the policyholder may decide to cover every dollar of all of its losses. This type of coverage is known as first dollar coverage, as all costs associated with a claim are administered and paid by the insurance company. A common variation of this most expensive insurance format is for the policyholder to establish a deductible, for which the insured is responsible for paying the specified amount for each claim incurred. Once a claim has been submitted, the payments are shared between policyholder and insurer, with the policyholder responsible for an initial portion and the insurer responsible for the balance up to the policy limit. The term SIR is often used synonymously with deductible, but there are minor distinctions. A SIR is typically for larger levels of risk retention than with deductibles. And with a SIR, the insured typically is responsible for claims handling, with an audit provision exercised by the insurer; whereas with deductibles, the insurance company handles all associated administrative tasks.

Advantages

- Costs for premiums are known and are stable on an annual basis. No assessments or calls for additional funding will occur in the absence of a specific action by a policyholder (e.g., a change in fleet size). This alternative may be more suitable for smaller operators who have more limited operating funds or reserves to deal with insurance costs that may fluctuate greatly over a short period of time through a self-insurance model.
- Traditional insurance does not require any up-front capital contribution for participation, as is true for some of the other models.
- There is no ongoing operational responsibility or day-to-day costs for the administrative functions related to insurance. Neither are there needs for special training, internal skill development, nor claims management, as these functions are all outsourced to the insurance company.

Disadvantages

- With the associated administrative and related costs of the insurance company, premiums for traditional insurance may be higher than necessary for the individual policyholder. Further, premiums will include a mark-up for the insurer's profit, with the result that costs, at least in theory, can be higher over time than non-traditional insurance.
- Premiums may change over time based on factors beyond the operator's control. For example, an operator may have had a superior safety record but may still see an increase in its premium costs from year to year.
- Traditional insurance may be difficult to obtain when the insurance market is hard, and it may be very costly during such times.

Self-Insurance

With the self-insurance model, the passenger transportation operator pays its own losses, up to some predetermined limit, from its available funds (usually through operating expenses or from a reserve fund). The operator provides the initial layer of coverage up to the limit and then adds higher levels of coverage through relationships with traditional insurers, generally by purchasing excess insurance.

More specifically, the policyholder, in conjunction with the insurance company, establishes layers of insurance, with each party responsible for the losses that occur within its own layer of coverage responsibility. The policyholder is typically responsible for losses from the initial or first dollar, up to an agreed amount, for example, $100,000 or $250,000. From that claim level upward, a traditional or reinsurance company would take responsibility for payments up to some policy limit level. Thereafter, separately purchased excess or umbrella coverage may add financial protection from the policy limit upward to some exceedingly high limits, perhaps $20 million. The administrative functions of insurance, certainly including claims handling, can be performed by in-house staff, cooperating insurer, or a third party administration firm.

Operators will choose self-insurance when the costs of potential losses, administrative costs associated with insurance, as well as a contingency allowance, are determined likely to be less than the cost for traditional insurance. However, because the number and seriousness of losses are not known in advance and can only be estimated, there can be significant fluctuations in annual loss costs depending on results. While these fluctuations are the responsibility of the policyholder within the self-insured layer, high dollar risks are typically transferred to a traditional insurer.

Generally, self-insurance regulations are set by state and differ state by state. Some jurisdictions may impose limitations on passenger transportation operators that wish to self-insure. For example, an operator may have to provide evidence to the state insurance regulators that it has the financial capacity and administrative resources to self-insure. Such requirements for self-insurance, however, may not apply for public agencies given the legal status and financial backing of public entities.

Advantages

- The operator's safety record directly correlates with the cost for its losses.
- The operator has more control over claims handling and settlement decisions.
- The operator does not have to deal with the swings of the insurance cycle, an advantage when the market is hard and traditional insurance difficult to obtain.

Disadvantages

- Costs for insurance may fluctuate greatly depending on actual claims costs.
- This model is generally not feasible for smaller operators, who lack sufficient financial resources to handle the risk potential fluctuation of self-insurance.

Insurance Pool

Another insurance model that gained new popularity in the transportation industry after the insurance crisis of the 1980s is the insurance pool. In this arrangement, a group of passenger transportation operators jointly fund each other's losses. Members contribute to the pool, which is then used to pay for claims and/or purchase excess insurance. Administrative functions can be handled by staff of the pool or contracted out.

Insurance pools are more common with public transit agencies. However, the Risk Retention Act of 1986, passed to address some of the problems associated with the insurance crisis of the 1980s, facilitated the use of insurance pools by private operators. The Risk Retention Act effectively removed individual state licensing and oversight from such groups.

Pools function more similarly to insurance rather than self-insurance. The pool member pays into the pool's fund and receives insurance coverage. Pools offer the potential for modest size operators to create purchase groups with larger premium bases, thus attracting the interest of investment-minded insurers. Funds from the pool are used to pay for claims above the pool member's deductible, up to the pool's maximum retention. Beyond this, the pool typically purchases excess insurance, for the next layer, which applies for losses that exceed the pool's maximum (*11*). Insurance pools are able to provide some of the cost savings of self-insurance, compared to traditional insurance, but because of the group nature of the arrangement, is able to avoid some of the instability that may characterize self-insurance and the cycles of the traditional insurance market.

There are generally two ways to finance pools (*12*):

- In pools that are *totally self-insured,* pool members contribute funds for not only the costs to meet annual losses but also the reserve fund to pay for unreported losses, for losses that require more than 1 year to settle, and for ongoing administrative costs to run the pool. Essentially, with pure self-insurance pools, the pool members pay for all the costs, with no risk shifted from the pool to an insurance carrier via a reinsurance policy.
- Pools that are *partially self-insured* combine aspects of pure self-insurance and traditional insurance. With this version, a significant portion of the contributions from pool members is assigned to a loss fund from which claims are paid. In addition, reinsurance is purchased to protect against single large claims. Reinsurance may also be purchased to cover claims in excess of the cumulative dollar amount of the loss fund. These elements of the insurance pool mean that the members are less exposed to financial contributions, keeping contributions less than with a pure self-insurance pool.

Current Transit Insurance Pools

Based on information from the Association of Governmental Risk Pools, there are currently five states that have transit-specific insurance pools. Many others have local government pools in which transit agencies may participate.

Of the current transit-specific insurance pools, the California Transit Insurance Pool (CalTIP) and the Washington State Transit Insurance Pool (WSTIP) may be the larger and more established ones. CalTIP, formed after the last insurance crisis in 1987, is

a joint powers insurance authority, organized specifically in response to the lack of liability insurance from commercial insurers. Originally with 12 transit agency members, CalTIP now has over 30 members. CalTIP's liability coverage program gives members different options on a deductible—from first dollar up to a much higher $250,000. The organization self-funds, through pooled funds from members, the first $1 million of coverage (inclusive of the member's deductible). CalTIP then purchases excess insurance for its members, at a level of $4 million above the first $1 million layer of coverage. Members also have the option of purchasing two more layers of insurance: an additional $5 million (so that they have $10 million in coverage) and another additional $10 million (for a total coverage of $20 million).

Transit-specific pools may offer programs to increase safe operations, which ultimately benefits all pool participants because accidents and claims may decrease. WSTIP, for example, has its "best practices" program, which has established standards for operations in a number of areas. Member transit systems are reviewed to assess their compliance with the best practices and their performance in meeting the standards. A member's deficient areas are given focused attention by the member and WSTIP, which provides technical and financial assistance to help the member achieve the standards.

The Virginia Transit Liability Pool is an example of a smaller transit-specific pool. Established in 1987 in response to the insurance crisis of the 1980s with six original members, the organization has grown to ten members. In a similar way as CalTIP, the Virginia pool offers flexible deductibles. The pool's board of directors, which includes representation from the majority of the members given the small size of the organization, determined that each member is to have at least $10 million in coverage. With member contributions, the pool self-funds the first $1 million in coverage and purchases reinsurance to provide the remaining $9 million in coverage. State law prohibits private entities, such as private, non-profit transit operators, from joining the Virginia Transit Liability Pool. However, public agencies that use private contractors to operate services may be members of the pool, as the service is "owned" by and the ultimate responsibility of the public agency.

Local government insurance pools may also be an option for a transit operator. In Maryland, the Local Government Insurance Trust (LGIT) includes a number of members that are transit operators, including private non-profits. However, for a private non-profit to be eligible to participate in LGIT, it must be subject to the Local Government Tort Claims Act, which establishes financial and other limits on the extent to which a local entity may be found liable. This act sets out specific criteria that must be met. Reportedly, at least one private, non-profit transit operator that had been covered through LGIT lost its insurance coverage through the pool and went to a traditional insurance coverage, with its annual insurance cost increasing almost eight-fold in 1 year. Such huge increases are very difficult for most transit operators to sustain, and alternatives must be sought.

Association County Commissioners of Georgia is another example of the many different state insurance pools for local government; it provides insurance to the public transit systems of a number of its member counties through its Interlocal Risk Management Agency. This self-insurance pool is owned by member entities and managed by a board of trustees who are representatives from participating counties. The pool began in 1987 with 14 county members, and now has 123 members.

In the State of Washington, the insurance problems of 2001–2002 spawned a new insurance pool specifically designed for non-profit agencies. Over a 3-year period beginning in 2001, several actuarial studies were done and state legislation was introduced and ultimately passed authorizing the formation of the non-profit insurance pool. The Non-Profit Insurance Program (NPIP) formally began in the summer of 2004 with 28 members, including paratransit providers, Chambers of Commerce, Boys and Girls Clubs, and low-income housing agencies. In less than 6 months, NPIP's membership grew to over 70 members. Such growth indicates the need for an alternative insurance model for non-profit agencies, many of which were hit hard by the hard insurance market of 2001–2002.

An interesting variation of an insurance pool is the Transit Mutual Insurance Corporation of Wisconsin. This company evolved through efforts of the State of Wisconsin and its public transit agencies, beginning as a joint purchasing group for insurance composed of more than 15 public transit systems in Wisconsin. Faced with significant cost increases during the insurance crisis of the mid 1980s, the group formed its own mutual insurance company in 1986

(effectively creating a captive insurance company), working with the state and its commissioner of insurance to secure the necessary approvals for formation of such a private entity. Currently, all public transit systems in Wisconsin, except for Milwaukee County Transit System (which is self-insured) and two small public transit systems, are part of and obtain their insurance from the Transit Mutual Insurance Corporation of Wisconsin (*13*).

Advantages

- Costs for insurance tend to be less than commercial insurance, particularly over time, as the pool does not have some of the overhead and other expenses that exist for traditional insurance.
- Pools have generally good cost stability, as they spread the annual cost fluctuations that may characterize self-insurance among all pool members and are not subject to the same overall market effects that affect traditional insurance companies.
- Individual pool members gain from the scale of the program with additional services and capabilities that might be outside their reach individually; these services might include purchasing help, claims management, and loss control.
- Individual pool members may also benefit if the pool offers specific assistance to its members in techniques and best practices for improving transit safety and operations.

Disadvantages

- Participation requires a time commitment. In a soft insurance market when insurance costs may be less using traditional commercial insurance, pool members are obligated to remain in the pool even though costs may be higher.
- Depending on how the pool is structured, additional funds may be assessed, if the pooled funds are not adequate to cover losses that have been anticipated under the self-insurance layer.
- If there is no insurance pool in the area, this model is not an option.
- Members have less control over claims handling and settlement decisions than with self-insurance (but more so than with traditional insurance).

Captive Insurance Companies

Of growing interest in the passenger transportation industry is the captive insurance model. A captive is a member-owned insurance company that provides insurance coverage to its members. Each member is charged a premium for an equitable share of the group's estimated losses as well as ongoing operating costs. The ongoing related administrative costs of insurance are generally handled by a captive management company. Generally, such insurers are created by specialists in the field of captive creation, who utilize a blend of reinsurance and traditional insurer services to form a company that has reasonable prospects for survival.

Members fund the start-up of a program, join the company as policyholders paying their premiums to the captive, and then abide by the rules and standards of the organization. Through ownership and risk sharing, the perception, if not reality, is that more individual control is obtained for the individual members. The captive must, however, obtain financial strength through relationships with more traditional insurers; thus, the captive is still subject to some market swings, especially in reinsurance, associated with the insurance cycle.

There are three types of captives:

- A single-parent or equity captive is owned by one large company.
- A group captive (also known as an association captive or risk retention group [*14*]) allows two or more organizations to pool their financial resources so that they can assume an even higher level of risk than any one of them could under an individual self-insurance program. Typically, this sharing of resources provides for primary liability insurance, with excess insurance purchased for catastrophic losses. Refunds are given or assessments made to members depending on actual experience and costs for claims. In this way, members of the captive have far more control over their insurance costs than with traditional insurance.
- A rental captive, which does not require an up-front capital investment, is a variation on the typical member-owned captive. The captive and the associated capital, regulatory, and administrative requirements are rented or borrowed from an insurance company instead of owned directly. However, members do hold some control over the rental captive; they de-

cide on new participants, how their funds are invested, and the services and coverage that are provided.

Participation in a captive generally requires that a member commit to several years of active participation. Given the organizational structure and requirements, participation in a captive is not a short-term solution to an increased premium from a traditional insurance company.

Captive insurance programs were found to be almost exclusively for the private passenger transportation industry (*15*). The requirements for front-end investment, contractual long-term participation, and liability potential seem to preclude public entity involvement. While not a major factor in private entity coverage, captive insurance programs have been established, are currently operating, and seem to be maintaining their financial health.

Many of the characteristics of captives are shared with insurance pools with the following differences:

- Captives require domiciles that allow their operation. Captives generally seek less-restrictive, tax-advantageous locales;
- Captives generally require periodic reevaluation of the performance of members;
- Captives are regulated more closely than insurance pools, which may increase organizational expenses when compared to pools; and
- Captives usually have formal requirements for capital contributions, which pools may not have (*16*).

Advantages

- Captives tend to be relatively stable in terms of cost over time, compared to traditional insurance and self-insurance, by spreading cost fluctuations among the members. With self-insurance, cost changes can be large from year to year, and traditional insurance costs tend to fluctuate with the insurance cycle, which is influenced by the overall economy.
- Members have control over their insurance, and the safety records of the captive's members directly correlate with costs for the insurance.
- Members may realize a return on the underwriting profits and investment income, depending on the actual losses.
- Captives may be effective in increasing standards for risk management, as members exert pressure on each other to minimize losses, and therefore, claims and costs.
- Captive insurance programs, done well, seem to offer opportunity to transit operators to avoid the availability crises, if not the pricing problems, that periodically recur. A captive insurance company offers unique opportunity for members to create the best possible insurance climate, with consistent, less cyclical pricing and potential for ownership benefits.

Disadvantages

- Joining a captive requires an up-front capital contribution, essentially an equity interest or share of stock, which may be a hardship for some operators.
- Membership in a captive requires a time commitment because of the financial commitment up-front. It is not a short-term solution for insurance.
- Given that insurance costs are shared among the members, a major loss would affect all members of the captive.
- The captive insurance company has the potential weaknesses of inadequate capitalization.
- If operators are not granted membership selectively, operators with marginal safety records could cause negative financial consequences for the group as a whole.
- Perhaps the biggest disadvantage is the lack of a state-backed fund to pay claims unable to be paid by the captive insurance program should it become insolvent. This lack creates a potential for the operator to be liable for losses presumed to be insured.

6—MITIGATION ACTIVITIES AND STRATEGIES

The liability insurance problems that became apparent by 2001–2002 were the result of macroeconomics, the genesis of any insurance market swing, as well as the economic and insurance aftermath of 9/11. That insurance cycles will continue is simple reality, but what can and should change is how the passenger transportation industry functions within this cyclical climate. Clearly, operators who have good safety records have done much to help themselves, but the limited impact such internal controls can have on multiple outside forces must be recognized.

Public and private operators would be wise to expand on intervention strategies that have been identified to make the passenger transportation industry more attractive to the insurance industry. If the passenger transportation industry is not made more attractive, the list of companies willing to offer insurance coverage to public and private operators will continue to erode, regardless of the condition of the insurance market. In the absence of action, insurers, both individually and as a community, will elect to place their money and attention elsewhere, especially during high price and low availability (hard) insurance markets.

Despite the macroeconomic environment over which individual entities have virtually no control, operators and others such as state governments and passenger transportation associations can perform some activities and strategies to mitigate the adverse impacts of liability insurance cost and availability. Identification and discussion of the following activities and strategies are based on research conducted in this study (including the survey of state DOTs and state transit associations, interviews with insurance professionals in traditional and alternative markets, and interviews with a range of public and private passenger transportation operators) and the research team's experience with transportation insurance.

Activities and Strategies for Public and Private Operators

Public and private operators can help mitigate liability insurance cost and availability issues by addressing their own day-to-day operations and their management and administration of insurance through a variety of activities. Clearly, one of the most effective strategies taken by states (DOTs and associations) in the past has been to assist with the creation of insurance pools or mechanisms that can extend limitations on liability to as broad a range of passenger transportation operators as possible.

When asked what should be done by bus operators and states, the majority of state DOTs and state associations supported (in order of support)

- Expanding non-traditional insurance programs—62%,
- Increasing loss control efforts to reduce losses—62%,
- Being more resistant to unnecessary claims payouts—57%,
- Providing statutory limitations to damage awards—57%,
- Limiting insurance company profits and premiums—57%,
- Modifying equipment or vehicles to reduce claims potential—52%, and
- Demanding governmental action to limit or control large price increases—52%.

Less than a majority supported

- Reforming the state insurance regulations to be more responsive to needs—48%,
- Enhancing tort reform to reduce costs—43%,
- Expanding driver responsibility for damages and claims—29%,
- Expanding state control of or role in premium setting and/or availability—29%,
- Adding internal staff to control or manage these costs—19%, and
- Requiring insurers to maintain coverage relationships—14%.

An interesting suggestion for cutting insurance costs in the public transit realm involves changing the type of operating entity to secure limits on liability and/or to be eligible to participate in a governmental insurance pool. For example, in Oregon, if a community forms a transit district, the district is eligible to join the insurance pool available to public entities. In one county, the county's insurance costs were cut 72% by forming a district and employing drivers through that district.

Based on responses to the project surveys and interviews, mitigation activities can be grouped as follows:

- Enhancements to risk management and loss control,
- Improvements to claims management, and
- More proactive insurance purchasing management.

Enhance Risk Management and Loss Control

A primary component of an individual operator's insurance cost is its loss history. Efforts to enhance risk management and improve loss control may be the most vital that an operator can take to help mitigate insurance cost increases and limited availability.

Premiums to be charged for insurance coverage are established through an evaluation process known as underwriting. Underwriters are immediately con-

cerned with using an operator's loss history, as detailed on loss runs, as a predictor of the future.

The market fluctuations seen during the recent insurance crisis affected nearly every operator in some way, but within the rising tide of rates were variations that were quite individualized. Premium amounts and percentages of increases varied based on how attractive an individual operator and its risk profile were to an insurer. Thus, even in a rising rate environment, operators that managed their businesses to minimize risk and maximize safety and loss control were generally able to mitigate, at least to some degree, the increases that were so much a part of the renewal landscape.

Effective risk management and loss control include a number of key objectives, including operating at the highest degree of care to reduce risk, establishing high standards that allow no compromise to safety, hiring and retaining safe drivers (*17*), maintaining the fleet in a safe condition at all times, and operating service to ensure safety at all times. Efforts to attain these objectives should involve the articulation and support of a comprehensive safety program and an organizational and financial commitment for risk management and loss control, which are ongoing functions of the organization.

Enhance risk management. Managing risk can be seen as an initial step to loss control and should involve a range of activities to minimize the exposure to risk through risk elimination and risk transfer.

RISK ELIMINATION. Operators should determine the viability of various levels and types of operations, eliminating unnecessary routes, schedules, and services (*18*). In multi-modal operations, the operator should analyze its loss history to determine if certain operations are producing loss rates that are excessive and should be eliminated. Also, danger points (geographic locations) and at-risk travel lanes should be analyzed and eliminated from operations.

RISK TRANSFER. Where higher risk operations are unable to be discontinued, operators should select specialized subcontractors to conduct those operations. Operators should also consider leasing programs to transfer the process of managing (but not the responsibility for) maintenance and drivers to specialists.

Improve loss control. An effective loss control program begins with standards and includes continual evaluation and analysis to ensure effectiveness.

STANDARDS. The operator must establish standards to which it will adhere. These standards may and should include the qualifying background and experiences of the driver; the policies that guide its actions in hiring, supervising, and training drivers; and driver conduct and performance behind the wheel and in overall management practices.

Several of the national associations have specific programs and training addressing safety that can help their member operators improve loss control. APTA, for example, has developed safety programs for both rail and bus operations as well as audit programs to review how well member operators address safety. The ABA has an active safety committee that, among other duties, identifies best practices in the area of safety and makes this information available to member operators. The UMA has included specific sessions on training in recent conferences to assist its member operators. For operators that belong to such national groups, support and assistance are available for setting standards and helping improve loss control.

DRIVER SELECTION. The operator must evaluate the driver workforce and establish and adhere to hiring practices to ensure consistency with established company or industry safety standards.

TRAINING. Three types of training—introductory, in-service, and remedial—should be in place and include all drivers operating the organization's vehicles. The training offered to new employees may vary, but all drivers should be subject to periodic in-service training and problem drivers should be subject to remedial evaluation and training prior to being placed back into service.

Drivers may be the key aspect of ensuring a safe operation. According to one major passenger transportation insurance company professional, it is critically important for an operator to have safe drivers, "as it is the drivers that have accidents and cause claims, which leads to higher premiums"(*19*).

SUPERVISION AND OVERSIGHT. An operator must create and implement the mechanisms to fairly and thoroughly evaluate driver performance on a regular and routine basis. Control of the actions of the drivers and vehicles once they leave the operation's facility is an essential and, from a practical standpoint, difficult process. Yet oversight is essential if bad or unacceptable practices are to be detected and counteracted so that they do not create more

serious problems, which would then affect the operator's insurability profile.

ANALYSIS. The operator must monitor services and manage operations to reinforce positive results and eliminate factors producing losses. Many public transit agencies establish safety committees, composed of representatives of management and drivers, to help monitor and analyze safety-related data as well as to help build the agency's commitment to safety.

COMPLIANCE. A legal operation is a minimum essential to ensure that the operator complies with applicable state and federal laws pertaining to safety and operations. Insurance auditors frequently focus on such compliance to ascertain insurability.

Find resources for enhancing risk management and loss control efforts. Resources and expertise available to operators to ensure effective risk management and loss control efforts are a continuing issue, especially for smaller operators. The smaller private coach operators that saw their business and revenue fall dramatically after 9/11 may not have the financial resources to devote to improving the risk management and loss control functions and, given their size, will likely not have the expertise readily available. Larger operators may have both resources and expertise, but they must remain motivated to use them in a continual quest for enhancing risk management and loss control.

For both smaller and large operators, the following resources are available to support risk management and loss control activities:

- The major public and private operator associations offer support, as discussed previously.
- Insurers may offer support. As discussed in Chapter 5, some of the alternative insurance models including state transit insurance pools and captives were noted as offering, in some cases, substantial support with technical assistance related to risk management and safety, such as on-site audits of operations to determine areas that may need strengthening and support in improving those areas. Some of the traditional insurers may also offer support services.
- Professional seminars are periodically provided through industry channels, offering insight and guidance, that operators may attend.
- Videos, manuals, books, and other packaged programs are available commercially.
- Professional consulting services are available.

Improve Claims Management

A second area that operators can address to help mitigate insurance cost increases and limited availability is claims management, that is, the management of processing, investigating, resolving, and, in some cases, litigating claims and their financial cost. A number of the operators interviewed spoke to issues in the claims handling process as needing improvement.

Typically, insurers point to the cost of losses as the largest factor in determining individual operator premiums. In the insurance crisis beginning in 2001, premium changes were found to vary widely. In the study's surveys and interviews, some operators reported no substantive change; others reported modest increases of 6 to 8%; while others, primarily private operators, saw double digit percentage increases for 2 consecutive years (or more). This variation can be attributed to a number of factors, some as seemingly incidental as the timing of insurance renewal dates, but based on the information obtained, operators with a strong commitment to safety and with a greater degree of control over their claims seem to have suffered somewhat less.

While the cost of losses is determined in various ways, in the past 15 or so years, a consensus has formed that one component of increased loss costs is litigation over "torts," defined as an injury or wrong to a person. Tort reform, which involves efforts to change the current system for tort liability, is addressed later in this chapter, as another strategy that may help mitigate insurance cost and availability problems.

Understand claims management. Claims presented by an aggrieved party represent the starting point in a series of steps leading to closure and/or a settlement with the claimant. Most frequently, presuming the validity of the claim, the settlement that results is a financial one. And while the payment immediately comes from the insurer, to whom the operator had transferred the responsibility and obligation to investigate and settle the claim, the money that is paid to the claimant should not be perceived as insurance company money. The money that is paid to a claimant is money that will ultimately have to come back to the insurer (or the insurance community) from the individual and the community of policyholders in the form of higher premiums. This sobering reality ultimately has the potential to shut down the insurability of the bus and coach industry.

Balance the interests of entities involved in claims. Claims handling by insurers must strike a balance between good faith negotiations with the claimant on one hand and their own (and the policyholder's) financial interests on the other. And at times this balance is skewed by fears of litigation and the potential for substantial jury awards for the claimant.

The process used to settle claims is subject to multiple reviews, both internally by insurance company management and externally by state insurance departments, acting in their role as consumer advocates. Insurers must be careful in their efforts, as a misstep by an insurer can result in penalties and even litigation over how they managed a claim. Therefore, the insurer will, as a matter of contract and as a matter of business necessity, take firm and absolute control of claims handling. However, interviews in this study noted a number of complaints about insurance company claims handling, specifically that insurers' efforts were not always adequate or thorough, resulting, reportedly, in settlements that did not seem merited by the operator. Greater involvement in claims management may help mitigate such situations.

Increase involvement in claims management. An operator can potentially improve claims management by

- Seeking involvement and input in each step of the claims handling process,
- Developing a working relationship with claims personnel, and
- Working with the insurer to identify fraudulent claims.

Operators should provide input to the claims handling process, particularly regarding judgments of damage potential and valuation. Claims administrators will have differing degrees of skill, workload, and ability to focus on claims and therefore may make poor judgments or opt to settle a particular claim for reasons that benefit the insurer (or individual claims administrator) but that are not in the best interests of the operator. How well each of the judgments is handled by the insurer will have a bearing on the ultimate settlement cost and thus will affect the later insurability of the operator. By providing input into the various judgments of a claim, operators may be able to mitigate or avoid such situations. Note that settlements of large claims may be affected by litigation concerns. Operators should be aware that, given the potential for high jury and court awards, insurers generally want to avoid litigation.

A strong working relationship with claims personnel may be an operator's most effective tool in gaining input into a claim settlement process, particularly when the operator provides positive input. Regular contact, weekly perhaps, with claims personnel and their superiors can create a climate where decisions that affect the operator and its insurability will be made with all due consideration.

Claims handling is affected by fraud, and fraudulent claims can arise from any party to the claims transaction. Claims personnel are trained to look for fraud and to address it through special investigation units within their company or within the insurance industry. If an operator suspects fraud, it must notify the insurer at the outset of the claims handling process, but for such notification to be successful in identifying fraud, it must be accompanied by facts and evidence. Working in conjunction with the insurer to help identify and document fraud is one step that can be taken to affirmatively address the implications of fraudulent claims and ultimate cost of claims.

Become More Proactive in Insurance Purchasing Management

A third approach to helping mitigate insurance cost increases and limited availability is for an operator to become more proactively involved in the process of insurance purchasing. The process of searching for, applying for, and acquiring insurance coverage is an area in which improvements and points of additional control are available and possible for passenger transportation operators. In an environment characterized by rapid premium increases such as experienced in the past few years, insurers are reluctant to expose pricing early, yet potential policyholders—the operators—need adequate notice so that they have time to mitigate the impact of unexpected insurance program changes and costs. This environment can be contrasted to the soft insurance market of the 1990s, when insurance was readily available and the process of applying for and acquiring coverage was typically abbreviated.

Passenger transportation operators have limited short-term potential to affect insurer responses in a hard market; the low availability or absence of alternatives is a common element to the hard market insurance purchasing process. To deal with such impacts, one insurance broker interviewed for this study specifically counseled that "an insurance 'crisis' is only a crisis if one is not prepared." Being prepared

involves a more proactive approach to the management of insurance purchasing, including continual review of the selection of coverage, investigation of the marketplace, enhancement of the insurance application, and, where appropriate, consideration of alternatives to traditional insurance.

Professional insurance guidance through the process of obtaining coverage was seen by many as an important aspect of mitigating the effects of the insurance crisis beginning in 2001. While some larger operators were able to bring much of this responsibility in house, the average operator had no such potential and thus was driven to employ external resource personnel such as agents (representing companies) and brokers (representing policyholders) for guidance and advice in the determination of needs and the purchase of coverage.

In recent years, the lines between agent and broker have become more blurred, as both seek to represent themselves to each party—policyholder and insurance company—as the best conduit to the other. In addition, most income for an agent or broker is generated through a commission on the sale of a policy: the higher the premium, the higher the cost. Often, agents or brokers are involved in multi-layer programs to access a particular insurance provider. The more layers of brokerage between the policyholder and the insurance company that exist, the greater the commission that may have to be paid by a policyholder in the form of higher premiums. It is not unusual for commissions in a broker multi-layer arrangement to reach 18% or more, thus raising policyholder costs with little apparent value. Finally, agents and brokers may steer policyholders to a particular insurer based upon their own business necessity, rather than those of the potential policyholder. While very few such agents act out of malice or in direct contravention of the policyholder's interests, they may consider meeting certain quotas and maintaining access to a particular insurance provider to be acceptable reasons to steer policyholders to an insurer.

Operators must be careful that any cost savings gained by using professional guidance is not negated by added commissions to agents or brokers, especially in multi-layer arrangements.

Select coverage. While the type and amounts of coverage purchased clearly have major implications for the cost of insurance, these factors also have less understood implications for the availability of coverage. An operator seeking high limits of liability coverage, for example, may find obtaining such coverage difficult, given availability issues and treaty and relationship problems among primary and reinsurance companies or even among reinsurers themselves.

Operators should regularly review, in conjunction with professional agents as necessary, their entire insurance program. As one private operator that was interviewed for the study put it: an operator should increase deductibles "to whatever level the balance sheet will bear." This philosophy demands at least an annual evaluation.

SET LIMITS ON LIABILITY. Operators should carefully assess what level of liability insurance is necessary. Prior to 2001–2002, high levels of excess coverage, for example a $20 million liability policy, may have been chosen by operators given availability and an acceptable premium. However, such high levels may not always be necessary. Mitigating the cost of insurance should include a thorough appraisal of the reasons for purchasing coverage as well as the limits of that coverage.

DETERMINE DEDUCTIBLE. Operators should also assess, on a continual basis, whether first dollar coverage is needed or if a deductible program is more appropriate. Operators seeking first dollar coverage may appear to an underwriter to be too ready to transfer all responsibility for loss occurrences to the insurance company. The use of deductibles can save premium dollars if applied in a strategic manner: the operator should first determine the level at which its losses are predictable, evaluate its loss history over the past 5 years, and then exclude these losses from the insurance policy via a deductible program. If the costs for the predictable losses are included in the policy, those costs will be charged for in the premium, along with any associated insurer costs and markups. Paying for the predictable losses via a deductible reduces premium and costs, and makes the insurer responsible only for losses that occur above that predictable level.

Investigate the marketplace. Choosing an insurer is always important, especially in a hard market. While a number of the operators interviewed for this study indicated that they felt they had no options in the current insurance crisis, for most operators this was not entirely the case. The insurance marketplace is constantly changing and evolving, but is predictable in the sense that cycles do occur and options must always be kept open for the hard market environment.

In choosing insurers, financial strength is critical. Independent insurance company ratings are used by policyholders, agents, and state insurance departments alike to rate the capability of a company to meet its obligations. While financial strength is a critical element, it should not be the sole measure of insurance company capability. An insurer with minimal experience in passenger transportation risks may be ill equipped to manage a major loss; an insurer who opts to employ a third party adjusting firm may find that costs for settling claims are reduced because of improved claims management.

In a typical insurance marketplace, even a hard market, an operator usually has a choice of agent and broker intermediaries through which approaches and applications to underwriting insurance companies can be made. Few underwriting companies limit access to themselves to one or two brokers. However, nearly all of the specialized insurers in the industry prefer, and often limit, relationships to a select group of specialized brokers. However, as the size of the operator increases, with consequent higher premiums and presumably higher levels of deductibles or self-retention of risk, the list of brokers and underwriting company names typically changes. There are several different insurance communities, each with its own set of players and each with its own specific set of policyholder profiles. Being familiar with these different potential markets can be an asset in insurance hard times.

Enhance the application process. When an operator seeks insurance coverage, the primary tool used to communicate with the insurer is the application (larger entities may use a Request for Proposal or Request for Qualifications process). Usually a standardized document, the application presents the details of the operator's services. While this approach is standardized, operators can improve it to enhance the insurers' understanding of the operator, its people assets, and its ability to manage its operations and risk.

Enhancing the liability insurance application has been found beneficial over the long term, giving insurers a more comprehensive understanding of the operator and its services with an objective of making the operator a more attractive risk to insure. By doing so, the operator is more likely to gain a favorable review and timely insurance quotation. While this strategy is not a panacea in a hard market, it is another way to more proactively manage the purchase of insurance.

Care should be taken, however, in enhancing the standard application. If the resulting additional materials are perceived burdensome by insurers, they are less likely to be viewed favorably. Brief, bullet-pointed items seem to work best, with exhibits limited in size and scope: eye-catching invitations to read the contents are most effective, according to insurers.

The following list, building on a *METRO Magazine* article (*20*), provides guidelines for enhancing the application:

- View the application as a marketing document, not a recitation of the obvious;
- Develop the application with great care and attention—start early on the application;
- Submit the application on time, or somewhat before the desired pre-renewal submission date;
- Learn the date that the insurer desires application submissions;
- Build exhibits that demonstrate the longevity and capability of the workforce;
- Describe the achievements of the drivers—short, one-line summaries work best;
- Detail the safety program and its activities;
- Review losses that have occurred and what countermeasures have been taken;
- Include a summary of the results of regulatory evaluations; and
- Detail all of the history, including adverse issues that should be addressed directly.

Consider alternative insurance models. An operator may also consider alternatives to traditional commercial insurance as part of its process in improving the management of insurance purchasing. Chapter 5 presents a number of alternatives. Not all such alternatives are appropriate for each operator; for some operators, alternative models may not be feasible because of availability, affordability, institutional or legal arrangements, or other reasons. However, given that the insurance cycle periodically brings hard market conditions, alternatives that mitigate against a hard market environment may be worth considering.

Consider changing organizational structure. A local community contracting for public transit services with a private company may consider changing its organizational structure to a form that is afforded tort limits on liability. This change may also allow the public transit operator to participate in a government insurance pool. As mentioned previously,

participation in a governmental pool can dramatically reduce insurance costs for public transit services.

Activities and Strategies for States and Other Entities

Several activities and strategies may be employed by states and other entities involved with passenger transportation liability insurance to help mitigate the issues of insurance cost and availability. As developed and articulated through this research study, these activities and strategies include

- Tort reform,
- Increased regulation of insurers, and
- Discerning and eliminating poor risks from the industry.

Reform Torts

As introduced earlier, insurance loss costs for public and private transit agencies have increased in the past 15 years in part because of increasing costs for settlements and judgments arising from legal actions against transit agencies. Under the U.S. system of tort liability, courts can hold an injurer liable for many different types of torts, including vehicle accidents, medical malpractice, and injuries associated with defective products, among others (*21*). Although compensating injured parties for damages that they receive in an accident may be reasonable, increasingly in recent years, transit agencies have become subject to what many consider unreasonably large tort verdicts.

A number of tort reforms affecting public transit liability have been enacted on the state level, with the most common being limits on liability, immunity from punitive damages, caps on non-economic damages, and statute of limitation on claims (generally 1 year to file claims) for these public agencies. According to the recent APTA surveys on insurance, one state mentioned changing the definition of contributory negligence (complainant must be 0% negligent) and another mentioned exempting public entities from payment of no-fault benefits.

The influence of tort reform on passenger transportation casualty and liability costs has not been established. A 1994 TRB digest (*22*) found that jurisdictions with statutory maximums on tort recoveries or partial governmental immunity appear to have one-third lower percentage of tort liability (payments) relative to rider fees than transit systems that have no such limitations. On the other hand, a 1996 study by the U.S. DOT (*23*) concluded that the presence of statutory limits was found to reduce the number of large claims (over $250,000) for the study sample, but the statutory limits did not show an effect of reducing total tort liability payments relative to rider fees. One, perhaps unintended, consequence of imposing limits on liability is that plaintiff awards tend to climb to that limit.

While the issue of large tort awards has been described as a general problem, the impact of excessive awards is more localized in nature, because the U.S. system is not centralized—each state has jurisdiction over its tort law. Certain jurisdictions have either a history, reputation, or both as being adverse climates in which to fight unreasonable claims and thus to offer liability insurance.

With realization of the propensity of some juries to make higher than necessary or anticipated awards to injured parties and because, many times, such awards were well outside the anticipated costs of liability payments, the insurance industry lost one of its fundamentals to the jury awards process: it no longer could predict with any reasonable degree of reliability the amount that a specific type of injury might ultimately cost. This unpredictability made insurance companies far less prone to aggressively defend against claimant requests for excessive damage awards. Plaintiffs knew of this reluctance of insurers to go to court, and they knew of the venues where the defense stood little chance of success. Against this background, insurers were far more likely to avoid court and to settle the case. Over time, however, this response has led to increasing costs for settlements.

Tort reform as a movement in the United States has a brief and uneven history. And in fact, the process of tort reform in the United States is really well over 50 separate efforts, one for each state and jurisdiction and one or more for the federal court system. Unless all are addressed, the weak link in the court system will be the target for plaintiffs.

The primary issues for reform, according to the American Tort Reform Association, include venue control, joint and several liability, and jury service (*24*):

- Some plaintiffs seek a hearing venue in friendlier jurisdictions, those where juries are apt to be friendlier to a plaintiff and court rules are not as stringent or work in favor of the plaintiff. Interstate bus operators are most at risk

with this issue because suits could be heard in any number of courts—in the domicile states of the injured party or the company or in the location where the loss took place.

- Joint and several liability is a common law principle that allows any party involved in a dispute to be held responsible for the entire amount of damages, regardless of the extent of its fault in the event. In a bus loss situation, adverse parties, even if at fault, are likely to be underinsured and the remaining financially strong defendant is the bus operator.
- The creation of a pool of jurors, who by their ability to represent a broad cross section of backgrounds, experiences, and educational levels, would make the jury more responsive to reasonable demands and less likely to be biased in any direction.

Despite the continuing interest in tort reform to reduce or mitigate one of the underlying causative factors in insurance pricing, very few entities or operators interviewed for this research study had any current involvement with the process. With few exceptions (New York, Washington), tort reform was not mentioned as an activity that might influence the direction of insurance availability and pricing. However, the process of tort reform is active in a number of states: reforms have been and to some degree continue to be enacted in many states.

The passenger transportation industry has worked toward tort reform in the past, but such efforts seem to have slowed to a halt over time. Yet, tort reform and the consequent reduction in the costs of litigation hold much long-term promise for mitigating insurance costs. Although some respondents to this research study mentioned the need for liability limitations or caps and others mentioned a more worker compensation-based approach where valuations of injuries were predetermined, tort reform and the promise of fair treatment seem to offer the most practical promise for cost control.

Increase Regulation of Insurers

One of the strategies that might help mitigate cyclical insurance problems is increased scrutiny or regulation on insurers during the soft market of the insurance cycle. A number of respondents to the research study indicated that regulators that oversee the insurance companies failed to ensure that insurers act responsibly in the soft market and that they should do more to limit the insurer's apparent "suicidal" pricing strategy during that period. Additionally, the notion that insurers themselves created the problem by acting irresponsibly in pricing both upward and downward was articulated. In the words of one respondent, "the increases are excessive and unfair and an overreaction."

Based on comments from a number of respondents through the research study, several questions can be framed: if the cost of coverage is some amount, even an escalating one, is it not irresponsible to reduce premiums to a point well below costs? And further, if insurers announce pricing guidelines in advance, why are those pricing guidelines ignored rather than enforced by regulators to maintain the financial integrity of the insurance industry?

Respondents suggested that to mitigate insurance pricing problems in the future, a firmer stance by regulators is needed, and if additional authority to control the cycle is needed, it should be sought. Although preventing insurers from lowering prices would seem anti-consumer in the short term, the long-term integrity of the insurance process seemed to be, in the minds of several respondents, more critical than short-term dollar savings. Some of the research study respondents saw a need for universal pricing, national standards, and other approaches that leveled the ups and downs of insurance pricing. In the absence of insurer restraint and earlier notifications of pending major pricing increases, regulators were urged to act.

Discern and Eliminate Poor Risks

Discerning and eliminating poor risks from the passenger transportation industry is another mitigation strategy that is relevant for a variety of entities—government regulators, passenger transportation industry associations, and even the operators themselves. Risk-prone operators and their inadequate or even unqualified drivers pose a serious risk to the industry as a whole and were noted by several research study respondents. One operator's serious accident affects more than the operator and others involved in the particular accident. That accident negatively affects the entire industry—its loss record, the attractiveness of the industry to the insurance community, as well as the image of the industry, which in the minds of the public is a *collective* industry. The passenger transportation industry loss record, insurance appeal, as well as its image, presumably,

would be affected positively if the risk-prone operators and drivers were no longer a part of it. Potentially, this enormous challenge could be achieved through concerted actions by enhanced government regulatory efforts and the passenger transportation industry itself.

Although no operator can ever be completely immune to loss potential, even a catastrophic loss, the potential for high frequency and/or high severity is generally focused in a discernable group of operators. Membership in this group of loss-prone operators seems not to be a function of company size, geographic location, or time in operation. Although larger company size carries with it additional needs for administration and control, some larger companies have achieved affirmative safety results while smaller companies have failed. Clearly, the company's geographic domicile location, and thus its claims and litigation climate, has an impact on the cost of losses, but being prone to loss incidents is not specifically a function of tort environment. And finally, longevity is no assurance of safety: new companies with effective management and safety conscious drivers can quickly become superior risks; conversely, old line companies that rest on their laurels can quickly deteriorate into risky operations.

A risky-operator discernment program that fairly and equitably enhances the profile of safe operators should be beneficial. If safety and operational standards were broadly established (in a manner not unlike those of APTA for its membership) and periodically reviewed, there could and should be a positive impact that could spark additional insurance industry interest in offering coverage to what is now an industry that includes members with a "wild west" perspective. Insurance providers rely on their own evaluations of transportation providers, but when additional, and more effective, mechanisms for evaluation exist, the potential for error in insuring unacceptable risks is reduced. When the responsibility for safety evaluation becomes shared more evenly and is not the sole province of the insurance underwriter, even the most risk-averse underwriter may be enticed into consideration of passenger transportation risks.

Arguably, this discernment and management of risk-prone operators should be a function of government regulatory oversight and, in some cases, is indeed a focus of such activity; however, in many locations, such oversight is minimal at best. Even in jurisdictions where such oversight may theoretically be extensive, attention is often directed toward factors that are only secondary causes of loss. For example, millions of dollars are spent on vehicle inspections; however, few crashes have vehicle condition as a directly attributable and primary cause. Extensive vehicle inspection programs can and do remove unsafe vehicles from operation and could direct the attention of investigators toward negligent operations, but, without adequate resources, vehicle inspection programs will have little effectiveness.

Moreover, government regulatory oversight of the passenger transportation industry is limited. While highly qualified personnel at both the federal and state levels work hard to ensure safety, the organizations for which they work are focused largely on the trucking industry. The bus industry, given its relative size compared to the much larger trucking industry, continues to lag behind other modes in receiving its share of support from the regulatory community. Studies that should have included bus operations excluded them (for example, driver fatigue studies focused almost entirely on trucking); other studies have been long delayed (for example, a voluminous truck study on crash causation was virtually complete before a bus study was even started). Data that should be collected to discern trends and needs are no more available for bus operations than for trucking, perhaps less so. If discernment of risk is a critical role of regulatory organizations, one would have to conclude that the regulatory community's record of locating and eliminating unsafe and illegal bus operations is at best mixed.

Insurance also was, and to some extent still is, seen as a mechanism to discern, manage, and eliminate accident-prone operations. At the time of intercity bus deregulation in 1982, insurance was perceived as one of those forces that would ensure uniformity and safety. However, insurance is no more a barrier to operations than acquiring authority to operate commercial vehicles has been in recent history. The soft insurance market conditions of the past led to premium-hungry but risk-unaware insurers entering the marketplace; operators that should have been hard to insure not only got insurance, but also often got premium reductions. For those operators that are hardest to insure, under adverse market conditions, assigned risk programs are available; again any barrier to entry and operation was insignificant.

Five possible strategies for discerning poor risks, defining them as such, and isolating them from the

mainstream of the bus and coach industry are discussed in the following paragraphs.

The first and most obvious strategy is the FMCSA's SafeStat system (*25*). The dearth of data not withstanding, this system is already in use by insurers seeking another perspective and by the public attempting to use safety as part of their evaluation to select interstate operators. The database can be accessed on-line from the FMCSA website (http://ai.volpe.dot.gov/SafeStat/SafeStatMain.asp). In addition, the FMCSA has a brand new website (http://www.ai.fmcsa.dot.gov/Passenger/home.asp) to aid consumers in selecting a bus company based on safety and performance.

The Military Traffic Management Command has been conducting in-depth evaluations of bus operations for many years. The information collected in this process reflects safety potentials; the process itself has affected operations by increasing the priority safety is given in the individual company. This information is only recently available to the regulatory community and is still not available to the public.

At least one national association has spoken frequently about creating a passenger carrier rating system that would recognize and recommend the services of one company over another. This process, and others like it, should have the effect of raising the profile of safe operations and providing the consumer with clear choices when considering travel by bus or coach. A universal and politically neutral rating system would do much to create the needed operator differentiation.

Public transit agencies have a voluntary oversight program through APTA; no such parallel seems to exist for the private sector. APTA has developed standardized practices for safety, which are incorporated in the association's safety programs. Audits and evaluations follow participation with recommended practices becoming the norm over time in participating agencies. However, only peer pressure creates any impetus for action. Participation in APTA's System Safety Program is voluntary, but seems to be broadly accepted as the universal standard among participating members.

Insurance program relationships such as pools and captives tend to link members in a common relationship in which safety and loss control are major factors. These programs and pools offer their members high quality safety guidance in a manner that is neither adversarial nor sporadic. Repeatedly, captive insurance program members extolled the safety benefits of their membership and how it had positively affected their operations. Such programs, extended to include more passenger transportation operators, could create a group of high quality, trustworthy carriers whose records would be demonstrably superior to the remainder of the industry.

Other Activities

Several other activities and proposals arose through the course of interviews and surveys during the research study. Of these, several seemed to pass the tests of applicability, practicality, and potential effectiveness:

- Use state resources and personnel to help smaller transit agencies to achieve better safety results;
- Expand the concept of insurance pools to the private sector, allowing group purchases through co-operative ventures;
- Expand federal oversight of passenger transportation with additional resources and personnel specializing in auditing and support;
- License existing pools in some states to expand their operations and do business in other locations; and
- Expand the functionality of SafeStat in relation to private bus operators with additional audits and evaluations.

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7. APTA conducted insurance surveys of members in June 2002 and June 2003. Of the approximately 400 APTA member transit agencies, 96 responded (25%) in 2002 and 89 (23%) responded in 2003. In both years, responses were classified by Group I (multimodal and rail systems), Group II (large all-bus systems), and Group III (smaller all-bus systems).
8. The public transit industry does not have a uniform method for reporting casualty and liability expenses. Insurance premiums and the cost of losses are generally reported in National Transportation Database under Object Class 506, but the manner in which systems account for other liability expenses, such as loss reserves and legal fees, varies.
9. An interesting method that one state employed was to get authority for non-profit insurance trusts from another state to write insurance in that state.
10. Over 73% of the state DOTs and 80% of the state transit associations that responded indicated that public transit operators in their states have cut services because of increasing insurance costs. Similarly, over 73% of the state DOTs and 40% of the state transit associations that responded indicated that public transit operators in their states have raised fares because of increasing insurance costs.
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14. An association captive is also sometimes known as a risk retention group. Formation of such groups were authorized under the Risk Retention Amendments of 1986, which allows trade associations and other groups of for-profit and non-profit companies to establish national self-insurance groups, also called risk retention groups. This federal law preempts state laws that do not allow the formation of liability risk sharing groups and in fact, under the federal Liability Risk Retention Act, 15 U.S.C. § 3901, et seq. (LRRA), a risk retention group may write liability insurance for its members, exempt from most laws of states other than its state of domicile. Membership in such groups, however, is limited to entities that have similar liability exposure (i.e., for transportation entities, similar operations and services).
15. As noted in the discussion on insurance pools, Wisconsin public transit operators began a joint buying group for insurance purposes in the 1980s and by 1986 formed the private Transit Mutual Insurance Corporation of Wisconsin, a mutual insurance company. All public transit systems in the State of Wisconsin except the Milwaukee County Transit System (which is self-insured) and two smaller systems are part of and obtain insurance through the corporation.
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18. Several private operators that were interviewed reported that they have become more vigilant in the past few years about assessing the possibility of risk when presented with new business opportunities. For example, one operator reported that it is now more apt to turn away new business when there is an increased potential for driver fatigue, given that driver fatigue is known to increase the potential for accidents.
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25. According to the website, SafeStat (short for Motor Carrier Safety Status Measurement System) is an automated, data-driven analysis system designed by the FMCSA. SafeStat combines current and historical carrier-based safety performance information to measure the relative (peer-to-peer) safety fitness of interstate commercial motor carriers and intrastate commercial motor carriers that transport hazardous materials. This information includes federal and state data

on crashes, roadside inspections, on-site compliance review results, and enforcement history. SafeStat enables the FMCSA to quantify and monitor the safety status of individual motor carriers on a monthly basis and thereby focus enforcement resources on carriers posing the greatest potential safety risk.

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