

Unveiling the Power of Usage-Based Insurance in Personal Injury Discovery

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As technology continues to transform various industries, the field of personal injury law is not immune to its impact. One area where technology is revolutionizing the insurance landscape is through the introduction of usage-based insurance (UBI). UBI utilizes advanced data collection devices to monitor and assess an individual's driving behavior. While UBI primarily focuses on risk assessment and premium adjustments, it also presents an exciting opportunity for enhancing personal injury discovery.

About one third of auto insurance customers in the United States reported a rate increase in the past year, leading a growing number of them to move to usage-based insurance (UBI). This has led to the largest decline in customer satisfaction in 20 years, according to J.D. Power's 2023 U.S. auto insurance study. Participation in usage-based insurance programs more than doubled since 2016, the report found, with 17% of auto insurance customers participating in such programs. Among new customers, the UBI participation rate is high at 26%.

Usage-based insurance fundamentally revolves around the concept of collecting real-time data about an individual's driving habits. By using devices such as in-vehicle telematics

systems or smartphone apps, insurers can gather information on factors such as speed, acceleration, braking patterns and even location data. This data is then analyzed to determine driving risk profiles and tailor insurance premiums accordingly.

The extensive data collected through UBI devices has the potential to revolutionize personal injury cases. In traditional personal injury litigation, determining liability and assessing damages often relies on witness statements, accident reconstructions, and expert opinions. However, UBI data can provide an objective and comprehensive view of the accident, offering valuable insights into the dynamics of the collision.

UBI data can serve as a powerful tool in establishing liability in personal injury cases. Detailed information on factors such as vehicle speed, sudden braking, or erratic driving behavior can help reconstruct the sequence of events leading to the accident. This data can provide an unbiased account of the circumstances surrounding the incident and help identify negligent parties more accurately.

Additionally, in personal injury claims, accurately quantifying damages is crucial. UBI

data can offer valuable evidence regarding the impact of the accident on the injured party. By analyzing data on vehicle impacts, forces exerted on passengers, and the severity of the collision, experts can assess the extent of injuries and correlate them with the accident's characteristics.

UBI data also has the potential to resolve disputes by providing objective evidence. In cases where liability is contested, the collected data can help corroborate or challenge witness testimonies, providing a clearer picture of what truly occurred during the accident. This data-driven approach to resolving disputes can streamline litigation processes and potentially lead to more fair and economically efficient outcomes.

While UBI data can be a valuable asset in personal injury cases, admissibility and privacy concerns must be addressed. Courts need to evaluate the reliability and accuracy of the data, ensuring it meets the appropriate legal standards. Additionally, privacy safeguards must be in place to protect the personal information of individuals captured through UBI devices, striking a balance between the pursuit of justice and individual privacy rights.

Written discovery requests, as well as specific questions at plaintiff's deposition should be a routine part of the defense in any type of auto or trucking litigation. These responses can build the foundation to obtaining the actual data.

The most efficient route to obtain UBI data would come from a direct request from a plaintiff. While a subpoena directed to the insurance carrier could be sent, such efforts

may be unsuccessful, and are likely to be time-consuming and costly. Requests should be made for a data download, which in some instances can be accomplished by the plaintiff, rather than having to involve experts.

Once the UBI information is obtained, proper authentication will be required prior to using the data as evidence at trial. This can be established by various means including testimony from the plaintiff and a representative of the insurance carrier who can discuss the UBI system. Additionally, counsel may want to consider utilizing a forensic expert who can effectively authenticate the UBI data.

The advent and increased prevalence of usage-based insurance offers new possibilities for personal injury discovery. UBI data can serve as a powerful tool in establishing liability, assessing damages, and resolving disputes more objectively. However, it is crucial to navigate the legal and privacy considerations surrounding this emerging technology. As personal injury litigation continues to evolve, attorneys from both sides of the aisle should stay informed about UBI advancements and explore the potential benefits it can bring to their clients' cases.



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