

TRENDS

RISK MANAGEMENT

Pending tort reform promises to tame insurance costs

As tort reform advocates prepare for an ugly Senate battle, corporate treasury and risk managers can anticipate the effect such a law will have on their exposures and take steps to reduce their insurance costs.

"Meaningful tort reform should lead to lower liability pricing in the longer term," says Jerry Ciardelli, C.P.C.U., corporate risk manager of Jostens Inc., Minneapolis, and vice president of government affairs for the Risk and Insurance Management Society (RIMS). "Increased capacity will follow."

Washington took a big step toward meaningful tort reform when the House of Representatives passed H.R. 956, a comprehensive bill that would:

- Cap punitive damages for all torts at \$250,000 or three times the compensatory damages, whichever is greater;

- Bar punitive damages in product liability suits if a drug or device had been approved by the Food and Drug Administration;

- Raise the standard of proof for the recovery of punitive damages to "clear and convincing" evidence of an intent to cause harm or "conscious, flagrant indifference" to the safety of others; and

- Limit claims to 15 years after product delivery to the original customer.

The more cautious Senate took up only product liability reform in S. 565, but separate tort reform legislation is pending. In product liability cases, the Senate would place the same cap on punitive damages and abolish joint liability but would allow claims for 20 years. The Senate bill would allow the courts to penalize defendants, but not plaintiffs, for unreasonable refusal to agree to mediation.

Mr. Ciardelli says that risk managers can prepare now to negotiate lower premiums once tort reform



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passes. "Reviewing historical loss patterns is the first step in the renewal process," he points out. "For upcoming renewals, risk management professionals should identify prior losses but delete or reduce those claims involving excessive punitive damages, joint and several liability and frivolous claims."

While legislation is pending, timing policy renewals could be tricky. Charles Fiske, group broking director of Sedgwick James Inc., Memphis, TN, suggests postponing renewals, when possible, until the middle of next year, then locking into short-term policies of perhaps three years duration.

If you have to renew sooner, ask your underwriter to add a clause that will allow you to renegotiate when the law passes. Mr. Fiske advises. He is optimistic that with the certainty of tort reform, underwriters would be receptive.

Tort reform, which would reduce liability and make it more predictable, could encourage self-insurance and make the already soft insurance market intensely competitive. It could be only a matter of time until "insurance companies throw logic out the window and try to attract new, riskier business in a feeding frenzy," observes Patrick Lynch, senior vice president and manager of risk finance for Sedgwick, Nashville, TN.

But he cautions companies not to abandon product-tracking procedures. Capping punitive damages can make a company safe to some degree but would not make it com-

pletely free from claims, he notes.

Companies should think twice before rushing to self-insurance, even after legislation passes, warns Dennis Connolly, senior vice president of Johnson and Higgins, New York. Although the economics of self-insurance might seem compelling, he suggests watching to see how the plaintiffs bar maneuvers and noting losses in cases of clear acts of fault. He also recommends watching to see whether a radically pro-defendant bill weathers constitutional challenges.

While the legislative wheels are turning, treasury and risk managers can influence the outcome by working through trade associations or contacting their elected representatives directly. Dr. Larry Gaunt, professor of risk management at Georgia State University, Atlanta, says, "Right now, the environment for reform is favorable. Reform on the state level already has been helpful. But there will be strong lobbying to minimize changes, particularly with product liability."

Regardless of what Congress does, risk managers must maintain good loss control systems, plan thorough risk finance programs and cultivate their track records. "Prudent risk managers will not treat tort reform as the end of the American liability system," says Mr. Connolly. "They must look at their product line and determine which products would be affected by the legislation, then use these specifics to negotiate reduced premiums."

—Patti Zielinski