Cost of liability has soared over 60%

by Pat Healy
Insurance Times

Liability coverage for businesses went up more than 60 percent in 2003. This could be why businesses worldwide bought less insurance in 2003 than in 2002.

According to the 12th Marsh Limits of Liability report, entitled *How Much Is Enough?*, issued by Marsh, Inc., the increasing cost of liability insurance, the negative impact of a sluggish economy on the revenue flows of businesses and the pressure on corporate budgets has made it so not many businesses are eager to pay higher premiums, especially for low-frequency losses.

The study found that average limits purchased by U.S. firms declined 9.4 percent in 2003 and declined 14.5 percent over the past three years. The report speculates that perhaps this is because the average cost to U.S. firms per $1 million of coverage rose 63.4 percent in 2003.

In the U.S., the average company surveyed bought $87 million in limits for 2003, while the average for all other countries combined was $47 million. A spokesperson for Marsh said that this difference reflects the fact that the U.S. tort liability system generates far more and far more expensive awards than any other country in the world. The spokesperson added that this gap may be narrowing.

The Limits of Liability report responded to these statistics stating that while the outlook for tort reform is unclear, several opportunities present themselves with respect to asbestos, punitive damages and class actions.

While last year saw a New York jury returning the largest compensatory asbestos damage verdict to date of $53.5 million, there is hope on the horizon for tort reform. Asbestos is re-emerging as a concern as a plan is now being considered by Congress to create a federally-monitored trust fund that would be financed mostly or entirely by businesses and insurers, making over $100 billion available to pay claimants over the next 30 years. The sickest claimants would receive awards exceeding $1 million, while those showing no symptoms could receive $1,000.

Another issue examined in *How Much Is Enough?* was punitive damages. Despite their relative infrequency punitive damages can "vastly increase the amount of any liability award," the report stated.

The largest punitive damage award to an individual in U.S. history was handed down last year when the punitive damage award of $28 billion levied against a tobacco firm was 33,000 times larger than the compensatory award.

The report suggested that some control could be exercised over punitive damage awards by allocating them to good causes or government agencies in what are known as split-recovery statutes. Citing a recent Ohio Supreme Court decision where $20 million of an award for a brain cancer patient was directed to a cancer research fund, the report suggested that punitive damages could be treated as a fine. The decision involving the negligent treatment of this brain cancer patient drew some public complaint, but the court's response was that the plaintiff lacked a "vested right" to the money in the first place since it was never the plaintiff's property. Eight states currently have split-recovery statutes that allow courts to divert portions of awards to the government, ranging from half to three quarters of the amount.

The Marsh report also uncovered a trend in class actions where some state courts are much friendlier to plaintiffs than others.

"The disparity in the way courts treat plaintiffs has spurred 'forum shopping,' as plaintiffs' attorneys seek judicial venues with the highest possibility of favorable judgments and higher awards," stated the report.

The most generous states to plaintiffs were Mississippi, West Virginia, Alabama, Louisiana and Texas, while the states with the liability systems most hospitable to defendants included Delaware, Nebraska, Iowa, South Dakota and Indiana.

Because of the growing number of class actions, tort reformers have sought to shift cases into federal court, where federal judges usually won't hear cases involving individual awards. In April of this year the Senate Judiciary Committee approved a bill to make it easier to avoid forum shopping and place class actions in federal courts, specifically in cases where disputants come from different states. Similar legislation was introduced in the House. ❒