



The Insurance Advisor



Harmon Dennis Bradshaw, Inc.

Insurance Brokerage and Risk Management

7115 Halcyon Summit Drive, 36117
Post Office Box 241667
Montgomery, Alabama 36124-1667

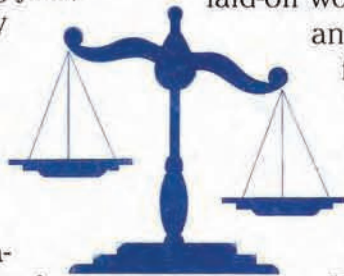
tel 334.273.7277
fax 334.273.9197

November 2009

Litigation increase expected

Companies' exposure to lawsuits tends to increase during rough economic times. That has been the case during this downturn — although to a lesser extent than some were expecting. And even with the economy picking up, companies are expecting litigation to increase in the coming year, according to the yearly survey conducted by Fulbright & Jaworski.

Fulbright surveyed 408 companies about their projected and past spending on litigation. About 42 percent of companies expect an increase in legal disputes over the next 12 months, a substantial increase from the 34 percent who expected an increase in last



year's survey. This comes on top of a year in which 83 percent of responding companies reported that they had been involved in litigation, a jump of several percent over last year.

"Generally, litigation rises in an economic downturn as regulators tend to step up enforcement, laid-off workers head to court

and companies need to file more suits in order to collect on money owed," said Stephen C. Dillard, head of Fulbright's global litigation practice.

"Perhaps most telling about this year's results is that companies across the spectrum expect no substantial decreases in any area of litigation."

The major areas of worry are

what one would expect during an economic downturn. Companies are most worried about bankruptcy litigation, contractual disputes and employment cases in the coming year. In the area of employment litigation, wage and hour cases present the most worry going forward. But sexual and racial discrimination cases come in second and third. ■

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Most wrecks single-car crashes

SINGLE-VEHICLE CRASHES KILLED MORE PEOPLE than multi-vehicle crashes, according to a report in the *Washington Post*. The *Post* reported that a study conducted in Virginia, Maryland and the District of Columbia showed that almost 60 percent of all fatalities occurred in single-vehicle crashes. AAA Mid-Atlantic, which crunched the numbers on this, said the problem of single-vehicle crashes was becoming an "epidemic," according to the *Post*. ■



Workers comp drug costs

DESPITE OVERALL DECREASES IN WORKERS COMPENSATION INJURY RATES over the last several years, the cost of pharmaceuticals has continued to climb, according to a report from PMSI, a provider of workers compensation services. Drugs now make up 14 percent of all medical workers compensation spending, and that number is growing. Workers compensation drug costs increased by 5.4 percent in 2008, according to the report. That was up from a 3.3 percent increase in 2007. Just five classes of drugs accounted for 70 percent of the money spent on workers compensation pharmaceuticals. Those drugs were narcotic analgesics, anticonvulsants, non-steroidal anti-inflammatory drugs, skeletal muscle relaxants and antidepressants. The age of the claim was another important indicator of cost as 80 percent of all drug costs were associated with claims more than 3 years old. ■



Road deaths continue to plunge

Any way you look at it, America's roads are getting safer. The National Highway Traffic Safety Administration reports that traffic deaths were at an all-time low during the first half of 2009, continuing a recent trend in dropping fatality rates.

Deaths on American roads have been dropping every quarter since reaching a peak in 2005. There were 42,708 fatalities in 2005, but only 37,261 in 2008. In the first half of 2009 there were 16,626 deaths compared with 17,871 in the first half of 2008.



There are several possible reasons for the drop: increased use of seat belts; the economic recession has people driving slower to save gas; the phasing out of older, more dangerous cars. But the drop cannot be attributed solely to the fact that Americans are driving less during the recession. The first half of 2009 saw an average of 1.15 fatalities for every 100 million miles driven on U.S. roads. That is compared with 1.23 per 100 million miles in the first half of 2008 and 1.38 deaths per 100 million miles driven in the first half of 2006. ■

Storm surge protections might not be enough

The National Flood Insurance Program requires that structures built along the coast be at a certain elevation. However, the damage caused by Hurricane Ike shows that those standards might not be enough and that more stringent requirements might be needed, according to the Institute for Business & Home Safety, a research organization supported by insurers.

"Lessons learned from Hurricane Ike, which is the third-costliest hurricane on record, should be used by vulnerable communities from Texas to Maine to effectively reduce property damage in all hurricane-exposed areas," said Julie Rochman, the institute's president and CEO. "Simply put, the study found that many properties are not built high enough to withstand storm surges, tightly enough to prevent water from causing interior damage or strongly enough to prevent damage when high winds strike."

The institute said that structures that were built to a higher standard, which included higher minimum elevations, were much more likely to have survived the storm surge produced by Hurricane Ike. The institute said that 10 homes built at 26-foot elevations all survived the storm, while the neighboring structures were swept away.

The issue of coastal protection is more vital than ever as more of the United States' population moves near the coast. More than 50 percent of the nation's population now lives within 50 miles of the coast with more than \$9 trillion of insured coastal property vulnerable to hurricanes from Maine to Texas, according to the institute. ■

Work bullies an increasing recession liability

Workplace bullying might seem like a minor problem but it can cost your business money from lost productivity, higher turnover and increased liability risk. And a recent survey by the Workplace Bullying Institute suggests that workplace bullying might be on the rise because of the economic downturn.

The expense of allowing bullying to continue at your workplace was highlighted in a 2006 study. The turnover of corporate professionals and managers from inappropriate comments and bullying behavior cost employers \$64 billion a year, according to the Level Playing Field Institute study.

During a time of high unemployment, employers might not be as concerned with increased turnover, however, money is also lost through drops in productivity and the increased risk of lawsuits. Most of this bullying does not rise to the level of illegal harassment or discrimination, but about 20 percent of it does, according to the the Bullying Institute. This risk of a lawsuit is amplified by the poor economy as laid off workers who are unable to find another job are suing their former employers in increasing numbers. There is also grow-

ing support in many states to address the problem through legislation, something that could create more legal problems for employers.

Bullying is pervasive in the workplace, according to the Bullying Institute. The organization estimates that 54 million Americans have been bullied at work. A survey conducted this summer by the organization shows that, while the number of people experiencing bullying hasn't increased during the economic downturn, employees report that the bullying they do experience has gotten worse. More than 27 percent of those who experienced bullying in the workplace reported that it got more severe, abusive or frequent.

There are steps that employers can take to mitigate the problem of bullying in the workplace. Employers can try to create an environment that discourages bullying and encourages co-workers to report bullying behavior. Advising employees that the company maintains a no-jerk policy is a good place to start. Instituting reporting mechanisms and factoring such behavior into evaluations can also be helpful. But no matter what programs are implemented or how vigilant a company is,



Flood map mix-up

THE FEDERAL EMERGENCY MANAGEMENT AGENCY HAS DRAWN FIRE from a few Missouri towns after forgetting to put them on area flood maps, according to a report in the Columbia Tribune. The embattled agency left entire towns off the maps and had incorrect boundaries for others. The flood maps are used to assess flood danger and can affect insurance and home prices. The agency says its mapping contractor will fix the problems, which were discovered at a public meeting regarding the maps. ■



there are going to be incidents. Therefore, making sure you have proper liability coverage is also important. Employment practices liability coverage is designed to protect your business from suits alleging wrongful infliction of emotional distress, harassment, discrimination and other related activities. Talk to your insurance representative for precise coverage limits and what is the right coverage for your company. ■

Gas emissions open new door to liability

A potentially new and troublesome area of liability has been opened by a federal court of appeals in a recent decision that allowed several power companies to be sued for creating a "public nuisance" by releasing carbon dioxide into the atmosphere. The Second Circuit Court of Appeals' decision to allow the lawsuit to go forward could open the door to other similar lawsuits against companies that emit greenhouse gases.

The public nuisance doctrine has traditionally been used to stop local nuisances like noise and odors. Expanding it to allow lawsuits against emitters of greenhouse gases has business groups up in arms.

"We are deeply troubled that the Second Circuit has chosen to ignore well-settled law and

allowed the plaintiffs' lawyers' novel public nuisance claims to proceed," said Lisa A. Rickard, president of the U.S. Chamber Institute for Legal Reform. "If this decision is allowed to reverse the judicial trend, it will help further line the pockets of trial lawyers, but it will come at the expense of virtually every U.S. consumer and employer."

While troubling, the decision only addresses the right to bring the lawsuit and does not address the merits of the case. It is not clear that the companies will be held responsible for the emissions, only that they can be sued. Also, it is a federal appeals court decision and thus is not controlling in most of the country. However, it is a worrying trend that could raise the price of doing business if allowed to stand. ■

Hurricane season quiet so far

After Hurricane Ike thundered through Texas last year causing billions of dollars in damage, the 2009 hurricane season is shaping up to be one of the quietest in years. As of mid-October there had been only two hurricanes and eight named storms. Hurricane Bill was the only hurricane of the season to make landfall in North America. It struck Canada as a weakened category 1 storm. Hurricane Fred was the only other hurricane of the season and it never made landfall as a hurricane.

With only a few weeks left in the season, it is possible that

this will be one of the lightest hurricane seasons in recent memory. The last time there were fewer than eight storms was in 1997 when there were only seven. The last time there were only two hurricanes in a season was in 1982, but the 1982 season had nine named storms.

It is important not to be lured into a false sense of security by a quiet hurricane season.

Maintaining adequate insurance and physically preparing your business for the yearly round of storms is important. As Hurricane Ike shows, one storm can do a lot of damage. ■



Workers comp claim in chimp attack

THE OWNER OF A CHIMP THAT HORRIBLY DISFIGURED A WOMAN earlier this year is trying to limit her exposure to a lawsuit by claiming that the injured woman was on the job when the incident occurred and was therefore covered by workers compensation, according to a report in The Associated Press. According to the report, the woman was mauled by the chimp while trying to get it to go into the owner's home. The owner is trying to argue that because the injured woman works for the owner's towing company and the chimp was used to promote the company, that the injuries are work-related. If the owner is successful in making this argument, it could severely limit the amount of liability. ■

