

Module 8: Liability Risk Management

Table of Contents

Case Study 03: Obesity and Insurance—Litigation or Self-Discipline?..... **Page 2**

Case Study 04: The Medical Malpractice Crisis..... **Page 4**

Module 8: Liability Risk Management

Unit 3 – Part 2: Major Sources of Liability – Part 2

Case Study 03: Obesity and Insurance—Litigation or Self-Discipline?

Obesity and Insurance—Litigation or Self-Discipline?

Business Insurance reported in January 2005 that obesity claims against fast-food giant McDonald's were revived. The McDonald's case was the most celebrated 2002 class-action lawsuit. The plaintiffs were a group of teenagers who sued the chain for causing their obesity. Following a dismissal, a federal appeals court reinstated the claims that McDonald's used deceptive advertising to mask the health risks associated with its foods. While a U.S. district court judge threw out the complaint in 2003, parts of the dismissed suits were upheld. The obesity cases have not stopped with this fast-food restaurant. In a 2003 California lawsuit against Kraft Foods, the manufacturer of Oreo cookies was asked by the plaintiff to cease its target marketing until the cookies no longer contained trans fat. This lawsuit was later withdrawn, but it did affect the actions of Kraft. In another high-profile lawsuit, McDonald's french fries were the focus of the suit. The plaintiffs accused the fast-food chain of misleading the public by using beef fat while promoting them as vegetarian fries. The case was eventually settled in 2002 for \$12.5 million and McDonald's posted an apology.

These are examples of the problems with the food-obesity-liability triangle. The Centers for Disease Control (CDC) estimates that 60 percent of Americans are overweight, defined as a body mass index score (a ratio of weight to height) of 25 or above. Forty million people are considered obese, with a BMI of 30 or more.*

Flab has become a national crisis. In December 2001, then-surgeon general David Satcher predicted that obesity would soon surpass smoking as the leading cause of preventable deaths in the United States. Overweight people are ten times more likely to develop diabetes and six times more likely to have heart disease. Excess weight is linked to gallbladder disease, gout, respiratory problems, and certain types of cancer. Estimates of the annual health care costs of obesity run as high as \$100 billion. With major pressure on health care systems and a growing number of our citizens' quality of life deteriorating, is obesity the next crisis, destined to eclipse tobacco in magnitude for liability?

Question for Discussion

Is obesity a disease that needs medical intervention, in your opinion, or a lifestyle issue that calls for self-discipline? Is it a case of self-discipline or a topic for litigation?

* Check your BMI with the CDC's Web calculator: <http://www.cdc.gov/nccdphp/dnpa/bmi/calc-bmi.htm>.

Sources:

- Karen Shideler, "Rising Cost of Obesity in America Hurts Us All," *The Wichita Eagle*, October 27, 2002; "Weight Management and Health Insurance," American Obesity Association, <http://www.obesity.org>; "Overweight and Obesity," Centers for Disease Control, <http://www.cdc.gov/nccdphp/dnpa/obesity/index.htm>;
- Libby Copeland, "Snack Attack: after Taking On Big Tobacco, Social Reformer Jabs at a New Target—Big Fat," *Washington Post*, November 3, 2002, F01
- Nanci Hellmich, "Weighing the Cost of Obesity," *USA Today*, January 20, 2002; reports by the Insurance Information Institute in 2005 such as "Obesity, Liability & Insurance" and various articles from the media in 2005

Module 8: Liability Risk Management

Unit 4: Possible Solutions

Case Study 04: The Medical Malpractice Crisis

The Medical Malpractice Crisis

The Insurance Information Institute stated in its May 2005 “Medical Malpractice” report the following:

- The cost of medical malpractice insurance is rising. This hard market began in 2000 following a long period of flat prices. Fewer insurers in the field is one of the causes of rate increases.
- Rate increases led the medical community to lobby for limits on noneconomic damages and other reforms.

How did the situation get so bad? Doctors blame insurance companies for skyrocketing premiums. Insurers blame personal-injury attorneys who work on contingency. The American Medical Association blames jurors who award exorbitant punitive damages. In fact, much of the problem can be traced to ordinary business cycles and a bit of coincidence. Some studies in no way attribute lawsuits to the premium increases. The 1970s saw sweeping changes in both medicine and jurisprudence; broader liability rulings and rapid advances in medical technologies coparented a rash of record-breaking lawsuits. Insurers raised premiums, and when lawsuits declined in the 1980s, malpractice insurance again became a profit center for insurers—so much so that by the mid-1990s, the field became very competitive. The competition among insurers led to price wars, but lowering premiums depleted the insurers’ reserves just as malpractice lawsuits began escalating again.

Horror stories abound of frivolous lawsuits on the plaintiff’s side, appalling negligence on the defendant’s, and exorbitant jury awards in the middle. As in the 1970s, many think the answer lies in legislative reform. Twenty states now have medical malpractice caps on jury awards. West Virginia is proposing a state-managed liability plan. Pennsylvania has banned

“forum shopping,” in which lawyers file their suits in jurisdictions where juries tend to award huge damages; lawsuits now must be tried in the county where the malpractice took place. Mississippi, too, has recently instituted sweeping medical malpractice reform law, including a provision against forum shopping. The Bush administration urged Congress to pass a bill that would limit noneconomic damage awards to \$250,000, limit punitive damage awards, place limits on the time allowed for injured patients to file a lawsuit, and establish a fee schedule for lawyers’ contingency fees. A provision would also provide liability protection for pharmaceutical firms. In May 2005, the American Medical Association (AMA) reported a decline in medical malpractice claims and improved physician recruitment and retention resulting from some states’ tort reforms.

Sources:

- The Insurance Information Institute is a good source for special timely reports. In addition, see Joseph B. Treaster, “Rise in Insurance Forces Hospitals to Shutter Wards,” *New York Times*, August 25, 2002;
- Steven Brostoff, “Medical Malpractice Reform Bill Draws Praise From Insurers,” *National Underwriter, Property & Casualty/Risk & Benefits Management Edition*, October 7, 2002;
- Rachel Zimmerman and Christopher Oster, “Insurers’ Price Wars Contributed to Doctors Facing Soaring Costs,” *Wall Street Journal*, June 24, 2002;
- Lori Chordas, “A Downward Spiral: Medical Malpractice Insurance Is Losing Its Place as a Top Performing Line of Business in the Property/Casualty Industry,” *Best’s Review*, August 2001; “Report: Suits Don’t Cause Higher Med Mal Premiums” *National Underwriter Online News Service*, March 11, 2005, accessed March 16, 2009, <http://www.propertyandcasualtyinsurancenews.com/cms/NUPC/Breaking%20News/2005/03/11-Report%20Suits%20Dont%20Cause%20Higher%20Med%20Mal%20Premiums?searchfor=suits%20cause%20higher%20premiums>;

- Arthur D. Postal and Matt Brady, *“President To Unveil Tort Reform Proposals,”* *National Underwriter Online News Service*, January 4, 2005, accessed March 16, 2009, <http://www.propertyandcasualtyinsurancenews.com/cms/NUPC/Breaking%20News/2005/01/05- President%20To%20Unveil%20Tort%20Reform%20Proposals?searchfor=tort%20reform%20proposals>.