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Straight Talk in Risk Management What Keeps You Up at Night?

I. How do we handle the increase in frivolous claims?

Suing major corporations in hopes of making big bucks is a popular game in this society. However, many people get creative with their claims, creating lawsuits over laughable causes. Most of these cases get thrown out. Of course, defense dollars must be spent, regardless of the absurdity of the claim. For example, Richard Overton sued Anheuser-Busch for false advertising when drinking a six pack of Bud Light failed to produce visions of beautiful women on a balmy beach. He sought damages on \$10,000, claiming that this deceptive marketing caused him emotion and psychological distress. Eventually, the case was dropped, but not before defense dollars were spent.

In some instances, the client's best interests are served by contesting liability and taking a case all the way to a trial. However, in most instances, getting to an early resolution regardless of liability may be the wisest choice as the indemnity costs are dwarfed by the expense of litigation.

What can be learned from the Target case?

Jurors recently awarded \$4.6 million in damages to a woman who suffered personal injury after she was struck by a needle in a Target shopping center parking lot. Initially, the woman's attorney offered to settle for \$12,000. The offer was rejected and the case went to trial. In May 2014, the plaintiff was getting out of her vehicle when she saw her 8 year old daughter picking up a hypodermic needle. She swatted the needle away from her daughter and the needle struck the palm of her hand. She reported the incident to a store employee, who wrote a report noting that the "customer seemed worried." She went to a nearby hospital where she was tested for HIV and hepatitis. She was prescribed medication due to the potential risk of contracting HIV. She has not tested positive for either of these conditions. The medications caused her to become extremely ill, bedridden for some time. The plaintiff sought reimbursement for the medical expenses and the time her husband was forced to take off from work to take care of her. The most the company was willing to pay was \$750.

The case is on appeal.

What would have been the best way for the retailer to have handled the case before it got to the jury? Negotiate the medical bills and lost wages? Maintain the strong stance of nonliability?

II. How do we survive in the world of social media?

People post a lot of stuff on social media. The world's most popular social networking site have certainly changed over the years, and they will undoubtedly continue to change as time moves forward. Old social networks will die; popular ones will stick around as they are forced to evolve; brand new ones will appear. We have moved on from the dates of MySpace to a social media era now dominated by FaceBook and all sorts of other mobile apps, including SnapChat.

Companies strive to find the balance for successful social content, and often fail. In a classic example of a post gone wrong, this retailer was attempting to post a colorful patriotic explosion, but actually posted the moments following the explosion of the Challenger that killed seven people in 1986. The post was quickly removed and the brand issued an apology. The brand blamed the employee's youth stating, "We deeply apology for today's Tumblr post of the Space Shuttle Challenger. The image was reblogged by one of our international media employees who was born after the tragedy and was unaware of the event. We sincerely regret the insensitivity of that selection and the post has been deleted."



But, you can see that the post is never really deleted.

Protecting the Brand

There are plenty of reasons to pay attention to social media when it comes to your restaurant stocks. In August, a 20-second video appeared on YouTube and Facebook of a person in a fast food uniform wiping a burger bun on a dirty kitchen floor and preparing it to be served to customers at a Checkers Drive-In restaurant. The video went viral and the company suffered. Managers apologized. The employee was fired. The brief video dominated social media, garnering millions of views. "All the negative attention damaged the restaurant's public perception and pulled the brand's net sentiment down from 58 percent to minus 85 percent during the worst two days of the crisis," according to the big data social analytics firm NetBase's Best Practices Guide.

Conversely, one of the biggest success stories of 2015 thundered through social media when McDonald's Corp. extended its breakfast hours to the entire day. People responded with a 23 percent increase in internet enthusiasm, and the brand reached 5.7 percent growth, its best quarter in four years, which surpassed many expectations.

Some restaurants might even live or die by Yelp reviews. "There are studies that show how a one-star increase in consumer ratings on Yelp can lead to a 5 to 9 percent increase in revenue in terms of performance," says Palash Misra, director at the strategy consulting firm, Stax in Boston. Social media expert Jeremiah Barrett, owner of the digital marketing agency JBC, says he uses Facebook to reach employees of large companies near a chain restaurant's location. "I have data showing social media's direct impact (including a) four-fold increase in loyalty card members, doubling of alcohol sales, with a 1,300-percent return on investment," Barrett says. Many firms are now sifting through billions of social media mentions and taking note of which restaurants win the highest social media mentions. "Applying these findings to our own work, we have discovered that social media can be a powerful leading indicator by which to assess company performance," Misra says. "We found this particularly true for brands that cater to millennials."

III. How do I manage all of these claims?

While the insurance industry is facing challenges, including increased global competition, complex technical environment and increased regulation, the talent gap remains the most critical issue facing the industry. As the current workforce shifts toward retirement, many company risk losing vital institutional knowledge and long established relationships. The ability to attract new talent from colleges and universities has been a struggle. Without an influx of new talent to replace the mature workforce, a significant talent gap is looking for a majority of carriers.

Burnout is a constant concern due to the stressful nature of claim adjusting. The stress is compounded with high caseloads that often involve excessive clerical tasks and pressures to meet regulatory requirements and performance standards. The trend of offering unbundled service and high service contracts has resulted in even more reporting requirements and paperwork for adjusters. Whether the reason for voluntary separate is burnout, salary, a shorter commute or a "once in a lifetime opportunity," the negative effects on the company remains the same.

Companies are reporting an increase in poor performance by their TPAs and it seems to happen right before claims reviews. The shortage of experienced adjusters is problematic.

A successful relationship with a TPA or adjuster should consist of a degree of trust that the adjuster possesses the expertise to act in the best interests of the client, balanced with the performance oversight and clear communication of the employer's goals and expectations. With the frequent turnover, this is becoming more and more problematic.

IV. How does a case of seemingly no liability all of a sudden become a case of liability just because we did not preserve "evidence"?

Security video footage can make or break a case for a company. For example, when defending a slip and fall case, a video camera might capture a claimant spilling a drink on the floor moments before the claimant falls in that same spill. Video cameras might show a claimant shoplifting minutes before a store's loss prevention officers apprehends the claimant, and the footage can be used to rebut the claim that he or she was improperly detained.

When video footage does not capture an incident the employee who reviews the footage might decide not to keep the footage. When a video shows an incident, the reviewing employee might preserve footage only from the camera that captured the incident and fail to keep the footage from other cameras, or he or she might preserve the footage only of the incident and discard footage from before and after the incident. Although from a logical standpoint, these omissions should have no effect on a case because the discarded footage is irrelevant, a claimant's attorney might assert that a retailer spoliated evidence and that his spoliation prejudiced the claimant's case.

Generally, spoliation refers to the destruction or failure to preserve evidence that is necessary to contemplated or pending litigation. Penalties for spoliation arise in two categories: (1) as sanctions in pending litigation; and (2) an independent cause of action. Sanctions are the most common penalty. When one entity destroys or fails to preserve certain necessary evidence, a court may choose to impose some type of penalty in the suit addressing the substantive claim. An independent claim might be created to obtain damages caused by the destruction of the evidence apart from the substantive cause of action.

For example, a plaintiff's attorney might argue that discarded footage would have shown whether a store employee actually conducted an inspection of the area minutes before the incident. Even if a particular camera did not capture an incident, a plaintiff's attorney may argue that footage from other cameras would show whether an employee walked through and inspected other areas of the store, which would provide circumstantial evidence about whether inspections occurred in the area whether the incident happened.

Some jurisdictions permit a separate cause of action based upon spoliation (i.e., Connecticut), while others limit a party to seeking sanctions within a case (i.e., Texas). From a retailer's standpoint, the company should adopt clear and concise risk management policies on preserving security video footage, irrespective of whether the company's jurisdiction recognizes an independent cause of action for spoliation.

A retailer can be sanctioned for failing to preserve evidence only if it had a duty to preserve the evidence. The duty to preserve the evidence begins when litigation is pending or reasonably foreseeable. Obviously, when litigation is filed, there is a duty to preserve evidence. Or when an attorney sends a letter notifying of a claim, there is a duty to preserve evidence. Other times, there will be a review of the facts to determine whether a reasonable person would have believed that litigation was foreseeable.