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Verdicts Go Nuclear

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Verdicts Go Nuclear

In June, plaintiffs were awarded a \$222 million verdict against a power company in Kansas for a plant operator killed in a steam accident.



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This Just In...

Working from home with weak security during the pandemic has created a surge in ransomware attacks.

As a result, losses plus increased demand has caused insurers to reduce the amount of cyber insurance they are willing to offer by half, says *Business Insurance*. At the same time, they have increased premiums for these coverages, including repairs, business insurance and reputational damage remediation.

Insurers that issued \$5 million cyber liability policies last year have scaled back to limits of between \$1 million and \$3 million in 2021, according to a report

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In the same month, a jury awarded a bar patron in Illinois \$22 million when an employee forcibly removed him from the bar and dropped him on his head, fracturing his vertebrae.

In September, a jury in Florida handed down a verdict of almost \$1 billion when a distracted semi-truck driver slammed into a line of cars killing an 18-year-old college student.

These are recent examples of nuclear verdicts, where the awards are vastly out of proportion to what most people would consider reasonable. The median of the top 50 U.S. verdicts has increased from \$28 million in 2014 to \$58 million in 2018, according to Insurance Marketplace Realities 2020, a report by Willis Towers Watson. And that figure is expected to double soon.

Social Inflation

Part of the answer to why many verdicts have gone nuclear is social inflation. When lottery winners can take home over \$100 million and CEOs earn more than \$10 million a year, trial lawyers find it easier to convince jurors that defendants wronged by big companies should pay out big amounts, enough to punish and hurt them financially.

With verdicts like that, plaintiff attorneys are incentivized to drum up business. They are spending big dollars on billboards, television, radio and print advertising to solicit opportunities for clients, especially class action suits on everything from auto accidents and medical malpractice to opioids and pesticides.

Litigation Funding

What is making matters worse, though, is the recent phenomenon of litigation funding, where third-party investors agree to assume some or all the costs of a lawsuit in order to get a percentage of the settlement.

According to Bloomberg, hedge funds, private-equity, and sovereign wealth funds “are piling billions into the outcome of high stakes court cases at a faster rate than ever before,” turning litigation funding into a \$39 billion global industry in 2019.

So far, says the Insurance Information Institute, the defense bar and insurance companies have been slow to react to this “runaway litigation, and its impact on claims and losses.”

Learning from the Plaintiff's Bar

The good news, however, says Paul Horgan, a writer for *Best's Monthly Insurance Magazine*, “is that defense counsel have learned from the highly successful tactics of plaintiff's attorneys and, as such, are employing some of the same techniques to win arguments inside the courtroom.”

“Just as the plaintiff bar has deployed creative new courtroom strategies to push awards ever higher, the defense bar should respond with strategies of its own to arrest the continued inflation of awards,” said Jerry Theodorou, Director of Finance, Insurance and Trade at R Street Institute, an insurance industry consultant. “Failure to do so will result in impaired insurer balance sheets and higher insurance premiums for all, amounting to a ‘hidden tax’ burdening individuals and making businesses less competitive.”

This Just In

released last month by U.S. broker Risk Placement Services.

Not just Lloyd's of London, which controls a fifth of the cyber insurance market, but U.S. insurers such as American International Group, have reduced their capacity.

Cyber criminals used to favor stealing data and selling it to third parties, but now ransomware is the attack of choice. A ransomware attack on the Colonial Pipeline shut down the largest fuel pipeline in the nation in May, resulting in a payment of \$4.4 million to the hacking group DarkSide, though some of that ransom money was later recovered by the authorities.

Premium rates have almost doubled in the United States and jumped by 73% in Britain because of the frequency and severity of ransomware attacks, insurance broker Marsh told *Business insurance*. Rates for some policies had risen by as much as 300%.

If left unchecked, Theodorou warns, “social inflation will become self-perpetuating and send improper signals regarding the value of damages to jurors, judges and defendants. This, in turn, will lead to higher insurance premiums, increased financial stress on insurers and disincentives for businesses to take risks as they become unable to fully calculate the risks in the market.” ■

7 Ways to Improve Company Driver Safety

If you have company trucks to provide service offsite or to deliver products, your drivers spend a lot of time on the road. Check out these tips for improving safety and reducing costs:

1 Make sure your drivers have safety gear onboard

Stock your trucks with warning triangles, first aid kits, LED flares, warning flags, and make sure employees have access to safety vests, helmets, gloves, and other apparel as needed.

2 Keep your trucks well maintained

Maintain a consistent inspection routine for all your vehicles. Not only will they be more dependable, but you will also save money by avoiding big repair bills. Inspect critical components such as steering, brakes, tires, wheels, couplers, and suspension.

3 Make sure your drivers follow basic good driving rules for trucks

- ★ Slow down, especially with big trucks that don't corner like a Ferrari and take corners and ramps very slowly
- ★ Avoid traffic — avoid peak traffic times, if possible
- ★ Leave a lot of room in front
- ★ Keep lane changes to a minimum — especially with big trucks
- ★ Be extra cautious at night



- ★ Use a GPS
- ★ Check the weather. Sometimes it's best to reschedule. Always be prepared for the weather at hand and take proper precautions.

4 Hire a safety manager

Having a safety manager means you and other members of your management team can focus on other matters. Having a highly trained person who is dedicated to safety will most likely accomplish your safety goals much more effectively. Safety manager duties include driver in-

struction, monitoring safety records, and ensuring compliance with DOT, OSHA, and HazMat laws.

5 Identify and address your biggest violations first

If you've been ignoring or setting aside safety issues for a while, triage them. Focus on the bigger issues first. Whether it's bad brake connections, damaged or discolored windshields, broken turn signals, or uncertified fire extinguishers, identify the biggest troublemakers and focus on those first.

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6 Hire good drivers

You need to check on a person's motor vehicle records (MVR) of course. This will show any tickets they've received or accidents they have been involved in. But because you're hiring someone who is going to be driving on behalf of the company a significant portion of the time, you also want them to be safety conscious. Needless to say, avoid hiring someone with multiple moving violations, especially for speeding or failing to obey signals. Studies have shown that these habitually careless drivers are more likely to become involved in accidents. Moreover, try to hire drivers with a real commitment to safety. The Department of Transportation has a Pre-Employment Screening Program you may want to check out. Companies using the PSP have lowered their crash rate by 8 percent when screening new hires and 17 percent for drivers-out-of-service (drivers taken out of service because of a DOT Roadside Inspection). <https://www.psp.fmcsa.dot.gov/psp/default.aspx>

7 Make safety training a regular event

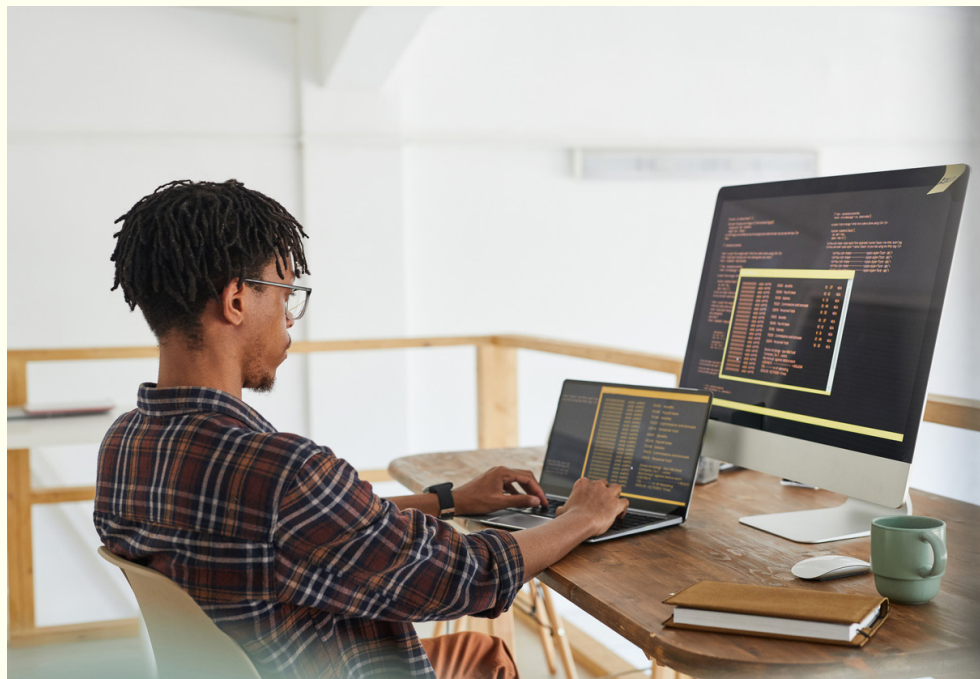
Whether it's with meetings, surveys, videos, pamphlets — the end goal should be of zero accidents. Take the opportunity to discuss the importance of driver safety in multiple formats. Ryder provides several excellent truck driver training courses: <http://www.rydersafetyservices.com/online-training> ■

How to Avoid the Legal Pitfalls of Telecommuting

Are you an employer who started letting employees work from home during the COVID-19 pandemic?

Or maybe telecommuting has been part of your work environment even before the pandemic. In any case, here are some things to be aware of to protect your firm from litigation.

As a first step, the best thing you can do to avoid potential legal issues is to have a formal company policy and a signed agreement that correlates to that policy. Both documents should address any potential problems that could arise when an employee



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works from home or in a public space away from the office.

Here are some of the issues that should be addressed in the policy and the agreement.

Privacy/Confidentiality

In your company policy draw attention to the fact that telecommuters who use their home computer must realize that an employer has the right to monitor or inspect an employee's computer – even if the employee is using a personal computer. The agreement should include a nondisclosure agreement requiring employees to promise not to share company information while allowing the employer to retrieve files at will.

Security

To ensure that hackers can't access company information from an employee's computer, employees should operate their computer from a secure server or a virtual private network. As an extra layer of protection, employees should also use encryption, passwords and network firewalls.

Timekeeping

The telecommuting agreement should list the employee's hours and require them to keep meticulous records or use an electronic tracking system. In situations where work hours fluctuate based on business needs, there should be an agreement specifying how many hours the employee will be paid each week – regardless of the hours they work.

Even with salaried employees exempt

from overtime under the federal Fair Labor Standards Act, establishing normal work hours, including when employees are expected to be available by phone or email, usually creates a more productive, dependable work routine.

Accommodations

The Occupational Safety and Health Act (OSHA) mandates that employers maintain a safe workplace for employees by preventing foreseeable hazards – even when an employee works from home. While an employer does not have the right to go into an employee's home, an employer can make it a part of the telecommuting agreement that to ensure compliance with OSHA standards inspection of the employee's home may be permitted.

Workplace Safety

Most courts consider home workplace locations an extension of the office. That means that an employer could be held liable if an employee is injured at home while working. Employers are encouraged to create a specific policy regarding work-related injuries that may occur in an employee's home. The policy or agreement should designate a specific area of the employee's house where work will be performed – preferably apart from the rest of the house to ensure that injuries occur only in the designated areas.

Discrimination

Your policy should indicate which group

or groups are eligible to work from home, and under what circumstances. Make sure that your policy doesn't apply to groups that could be identified in a manner suggesting discriminatory intent, such as only women or only young employees.

Class Action Considerations

Ideally, each telecommuting employee should have a separate, individualized agreement. Individualized agreements protect employers from class action lawsuits. For instance, in a situation where an employee brings a suit alleging the employer failed to properly record work hours, if all employees signed the same agreement, the suit could be applied to all non-exempt telecommuting employees.

Zoning And Taxes

Some local ordinances restrict the ability of individuals to conduct business in their homes, and in some cases, permit local governments to levy taxes. The telecommuting agreement should stress that it is the employee's responsibility to ensure compliance with local zoning and regulations.

It is in your firm's power of course to discontinue telecommunicating when you believe the arrangement no longer meets your company's needs and your agreement should state so. It's in everyone's best interest, though, for you to provide employees with at least a 30 days' notice, especially to accommodate childcare issues and other problems that may arise from the change. ■

Benefits of Green Construction

It is estimated that in 2021, almost half of all construction firms (47 percent) are building over 60 percent of their projects using “green building” methods and materials, typically in ways that also reduce insurance costs. Some specific areas in which green construction benefits both commercial and residential construction include:

- ✱ Siting and design efficiency – the goal is to minimize impact in terms of a building’s location and the surrounding environment.
- ✱ Energy efficiency – includes minimizing air leakage with high performance windows and insulation, reducing the need for natural light by maximizing solar gain with strategic placement of walls and windows, and implementing renewable energy sources through solar, wind and hydro power, and biomass. A related objective is to reduce the impact on the electrical grid by reducing peak demand and implementing sustainable energy features such as sufficient indoor thermal mass, good insulation, photovoltaic panels, thermal or electrical energy storage systems and smart building energy management systems.
- ✱ Water efficiency – to the extent feasible, facilities should increase their dependence on water that is collected, used, purified, and re-used on-site.
- ✱ Materials efficiency – building materials from “green” sources are



preferred, such as recycled products, materials from certified forests and rapidly renewable plant materials like bamboo and straw.

- ✱ Indoor environmental and quality enhancement – Typically, most building materials and cleaning/maintenance products emit gases, some of them toxic, such as many VOCs (volatile organic compounds), including formaldehyde. These gases can have a detrimental impact on health, comfort, and productivity. Other internal environmental objectives should include improving a building’s thermal quality with improved airflow and personal temperature control and using hypo-allergenic building materials such as wood.

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