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employee's life.

Finally, anti-smoking forces were heartened recently by a Swedish court's recent agreement with a non-smoker's contention that her lung cancer was caused by on-the-job environmental smoke. Although Swedish law requires a lower level of proof, the decision could have far-reaching effects on similar cases in the United States.

Less extreme are the day-to-day costs of cigarette smoking. On average, it costs a company \$1,100 a year more in short-and long-term costs (lost productivity, absenteeism and premature disability and death) to employ a smoker versus a nonsmoker, according to Dr. Marvin M. Kristein, of the department of economics and community and preventive medicine, SUNY at Stony Brook.

William Weis of the Institute for Occupational Smoking Policy estimates that smokers spend six percent of their working time on the smoking ritual, take 50 percent more sick leave and use health care systems 50 percent more often than nonsmokers.

Other areas where employers have saved by prohibiting or restricting smoking are in repair to furniture, drapes and carpeting, janitorial costs and heating, cooling and ventilation.

While the numbers are small, some companies, such as Aetna Life and Casualty, will not hire smokers. And new police officers hired by the small town of Holden, Massachusetts will not be allowed to smoke on or off the job, lest they face being disciplined or dismissed. Such discrimination is legal because it is not based on an immutable factor such as a person's race.

The smokers argue that what they do on their own time should not matter to their employers. Corporations, however, argue that smokers' productivity goes down when they aren't allowed to feed their habit during work hours, and the general physical effects from smoking decrease productivity as well.

Such regulations do have a long-term effect. A survey following Pacific Northwest Bell's decision to ban smoking at all of its facilities found that within three years the percentage of the company's 15,000 workers who smoked dropped from 24 percent before the ban to 10 percent after, according to William Weis.

"The reality of it," explained Weis, "is that most people, smokers and non-smokers alike, don't want to be forced to work in a smoke-filled environment and that when exposed to a supportive, nonsmoking situation, the smokers were able to quit their habit. While it's not the objective of such policies to get people to stop smoking, that's often the result." (1)

About the Author

Richard A. Marini was recently named the editor-in-chief of Viva magazine in San Antonio, Texas. His article "Smart Business Travel" ran in CENTER's January/February issue.

Sorting Out the Liability Debate

Amid the growing debate over the liability insurance crisis, three things are clear: everyone agrees the problem is severe and getting worse. No one is quite sure where the blame belongs. And it's best not to invite a liability lawyer and an insurance executive over for drinks to discuss it.

Until recently, the insurance industry dominated the polemics surrounding the issue. For years the industry has denounced greedy lawyers and a legal system that makes it too easy to recover outrageously expensive awards. Last week the Reagan administration, essentially adopting the insurers' view, issued its own proposals to correct the problem. They included measures designed to cap "non-economic damages," such as "mental anguish" awards, to limit product manufacturers' liability and to place attorneys' fees on a sliding scale (so that as a client's award rises, a lawyer's percentage of the award declines). Prompting

the legislative push, Attorney General Edwin Meese III said, is "the explosion" in liability litigation, which, he claimed, is the primary reason for soaring insurance rates.

As the administration backed tort reform, however, the "litigation explosion" theory came under attack: A study by the National Center for State Courts asserts that Americans are *not* jamming the courts hoping for a piece of the liability action. The report says total tort filings in state courts, where most cases are tried, increased 9 percent between 1978 and 1984—a fairly reasonable increase, considering that U.S. population growth over the same period was 6 percent. A Rand Corporation study due out this summer will report a similar finding. Those numbers contrast sharply with a Justice Department finding that liability cases in federal court soared 758 percent in 11 years—a figure constantly used to rally support for tort reform.

Why, then, the surge in insurance costs? Industry critics say the timing of the price increases and the pleas for legal reform is no coincidence: they come after a prolonged period of industrywide price cutting. During that period, many companies felt they could afford to cut prices on their policies because interest rates were so high. They simply poured the revenue from premiums into high-yielding investments and figured they were covered on the claims side. Then interest rates plummeted, the claimants came knocking, and the red ink started to flow. Around then, says attorney Sol Schreiber, the insurance industry decided the legal system was a mess. "It's an insurance problem first," he concludes, "and a tort problem second."

Dueling game: Insurers dispute that, and the two sides are now engaged in a frantic game of dueling studies. Mechlin D. Moore, president of the Insurance Information Institute, claims liability losses rose 25 percent in 1984 and 43 percent in 1985. Those kinds of sharp movements, industry executives argue, put the fear of God into anyone trying to make realistic actuarial calculations. They result either in huge rate increases or a complete withdrawal of some types of coverage. "If the risk is unknowable, then it is inherently uninsurable," says Richard Haayen, president of Allstate Insurance.

The proposed new rules are now in the hands of the Senate Commerce Committee. That's where the administration-backed legislation is, along with competing legislation not as favorable to the insurers. Committee chairman John Danforth introduced the alternative bill, but that's not the only reason the administration package may have a tough time becoming law. Nine of 17 senators on the committee are lawyers—including Danforth.

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