Product liability study indicates growth in claims

A second study of product liability claims released by the Alliance of American Insurers, indicates that the average payment for bodily injury “large-loss” claims increased 68 percent since 1975.

The study reports on 174 incidents involving 195 individuals whose product liability claims were closed during 1979. To qualify as a “large-loss claim,” the incident had to involve losses and loss adjustment expenses totaling $100,000 or more. The 194 incidents produced payments of slightly more than $60 million, or an average of $346,587 per incident. This compares with an average of $264,120 per incident in the Alliance’s first study, conducted four years earlier.

Statistics provided by some of the participating companies indicate that these large-loss claims represent less than one percent of total product liability claims closed annually, but consume over half of the total dollars paid out. Thus, the Alliance study focuses on the most costly part of the product liability system.

Despite the 68 percent rise in the average cost per claimant, characteristics of the 1979 claims were similar in most respects to those of the 1975 claims:

- About 80 percent of the payments went for personal injuries and 20 percent for property damage.
- Two of every three injuries arose from business or industrial products being used in the workplace.
- Product liability insurers often were not notified promptly of accidents involving serious injuries. In 40 percent of the incidents, more than a year elapsed from the date of the accident until the claim was reported to the liability insurer. This makes claims investigations difficult and results in delayed payments to those injured.
- All but four of the incidents involved a lawsuit. However, two-thirds were settled without trial, and more than half of those that went to trial were settled during the trial.
- Most people in this sample of paid claims received relatively generous payment for their injuries. On average, the settlements made for bodily injury provided injury victims and their survivors with $6.45 in tax-free cash payments for every $1 of economic loss sustained up to the time of the settlement. When estimated future economic losses were taken into account, claimants received $1.22 in tax-free payments for every $1 of past and estimated future economic losses.

The study identifies some changes that occurred between 1975 and 1979. For example, punitive damages were demanded in 18 percent of the 1979 incidents—almost four times the proportion recorded in the study four years earlier. However, punitive damages were granted in only one of the 1979 cases, and in none of the 1975 cases.

The study provides strong evidence that tort law reforms being advocated by various insurance and manufacturer groups could help stabilize rising product liability losses.

One proposed reform would relieve product manufacturers of liability for mishaps caused by damage, alteration or misuse of the product by the purchaser or user. The study indicates that such damage, alteration or misuse was the cause of the injury or damage sustained in about 32 percent of the large-loss claims in the study. These claims involved 39 percent of total payments for the 174 incidents.

Another proposed reform would impose a heavier burden of proof on persons suing for alleged product injury or damage occurring more than a designated number of years after the product was first sold or delivered. Some 20 percent of the large-loss incidents involved accidents that occurred more than six years after the product was first sold or delivered, and about 14 percent occurred more than 10 years from the date the product was first sold or delivered.

A third proposal reform would require that product manufacturers be judged on the basis of the “state of the art” that existed at the time the product was designed and manufactured. The study indicates that six percent of the large-loss incidents involved claims in which the product did conform to the recognized state of the art at the time of the accident. Claim reviewers indicated that an additional 18 percent of the incidents involved products that might possibly be placed in that category.

Expenses for external legal services were up substantially, along with payments to claimants. The average expense incurred by insurers in defending their policyholders against these large claims was $30,079 per incident—a 26 percent increase over the $23,844 average found in the earlier study.

The Alliance is a national trade association of more than 100 property-casualty insurance companies. The study was based on a 100 percent sample of the large-loss product liability claims closed during 1979 by 11 participating Alliance companies, including Liberty Mutual, Employers Insurance of Wausau, Lumbermens Mutual, American Mutual, American Motorists, Sentry Insurance, Utica Mutual, Federated Mutual, Employers Mutual Casualty Co., Employers Insurance of Texas and Michigan Mutual.