



THE RIPPLE EFFECT OF SOCIAL INFLATION AND NUCLEAR VERDICTS ON THE INSURANCE INDUSTRY

CONTACT

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ABOUT THE AUTHORS

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Social inflation is an issue that continues to gain intensity – but what does it mean for our industry? The term describes the convergence of societal and legal trends to the tune of increased litigation, broader definition of duty to care, legal decisions tipping in the plaintiff's favor, and larger jury awards.

In turn, we're seeing an increase in both frequency and severity of liability claims, impacting insurers all the way at the top of the tower as they try to cover the growing losses. This trend is not only driving up the cost of claims, but also contributing to rate increases across the board.

To date, social inflation has had the most pronounced impact on large corporate risks in the umbrella and excess liability space, commercial auto, medical malpractice and directors & officers. The average general liability combined ratio was estimated at 104% for 2019, the sixth consecutive year of underwriting losses. The 2019 auto liability combined ratio was 110%.¹

This article explores the issues driving social inflation, mitigation strategies and what the future holds for impacted sectors, particularly transportation.

FOUR KEY SHIFTS DRIVING THE RISE IN CLAIMS

1. Jurors perspective.

A main driver of social inflation is the anti-corporate sentiment dating back to the 2008 financial crisis. These new attitudes mean that injured parties are more likely to bring litigation against companies – and win. Jurors today are often biased toward the plaintiff in the name of social justice. They strive to hold big companies responsible and make statements with their actions. According to The National Law Journal, 42% of jurors say they would decide a case based on what they believe is fair.²

2. Litigation funding.

Claimants are receiving help from outside investors to bring their cases to court. These investors pay legal fees and expenses (primarily towards a top-notch plaintiff's attorney) in exchange for a stake in potential awards and settlements.

3. Plaintiff's bar.

The bar is a well-organized and sophisticated group willing to invest in advertising, social media, technology and expert resources to drive damage awards.

4. Normalization of nuclear verdicts.

Across state courts, caps on punitive damages and damages for pain and suffering are being raised or eliminated entirely. This breaks the ceiling on what plaintiffs can ask for and be awarded.

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CASE STUDY

Over the past several years, there have been numerous instances of trucking firms involved in an accident where logical reason would not find the firm to be negligent. They were simply in the wrong place at the wrong time.

In May 2018, a case was brought to the Texas state jury involving a Houston family and a tragic collision between their vehicle and a truck owned by Werner Enterprises Inc. The jury found the trucking company responsible for the 2014 accident, which resulted in the death of a seven-year-old boy, the paralysis of a 12-year-old girl and extensive brain damage to a third child.

The accident occurred during dangerous winter road conditions including freezing rain and subsequent “black ice.” The plaintiff’s vehicle lost control on a divided highway, crossed over the median and crashed into a Werner-owned truck that was allegedly not equipped with proper safety features. The jury awarded \$90 million to the plaintiff.³

STRATEGIC RESPONSE TO SOCIAL INFLATION: CHOOSING THE RIGHT PARTNER

Insurance coverage is just one part of the equation in battling social inflation. Educating your clients and managing expectations is a critical first step. Risk mitigation strategies should also be implemented to make your client’s risk best in class. These include effective safety programs, good maintenance of property, leases that properly transfer risk to other parties, and adequate security.⁴

Retailers should partner with a wholesaler who not only understands the insured’s risk profile, but also has access to leading insurance carriers and understands their claims philosophy. Things to look for in a carrier include the following.

- 1. A comprehensive approach.** The best results come from a proactive strategy to prevent litigation.
 - Claims specialists that apply thoughtful, creative solutions to each situation.
 - Cutting-edge evaluation tools and analytics.
 - Intentional litigation strategy where all parties work in sync, using a total cost of claim philosophy and following an agreed-upon strategy to save money, time and resources.
 - Continuously monitor predictive data to anticipate future decisions and measure operational metrics, backfill historical litigation data, perform legal audits, use advanced analytics and adhere to our quality assurance program. This data provides insights that control costs, guide strategy and lead to the best possible outcomes.
- 2. Expert Counsel**
 - Experienced adjusters with a flexible approach to early resolution, core bodily injury and complex teams, that are poised to handle high-profile claims in an efficient and timely manner.
- 3. Hired Operators.** While it’s important to prevent litigation, it’s always best to be over prepared.
 - Utilize mock juries to test themes, arguments, liability damages and issues. This provides critical insights that teams use in and out of the courtroom.
 - Identify challenging and unfavorable cases early.

WHAT DOES THE FUTURE HOLD?

Thanks to COVID-19 causing a backlog in court proceedings, we may experience a temporary pause in nuclear verdicts while the juries are out. Many plaintiffs realize that it could be years before their case sees a trial and are taking the settlement amount offered by defendants.⁵ However, given the varying degrees of uncertainty, it’s unknown what to expect long-term. Social inflation could get worse before it gets better.

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ON YOUR TEAM.

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In the commercial transportation industry, the influx of new technology – including sensors, cameras and autonomous tech – is giving transportation firms greater control in their legal defense. By providing an accurate snapshot of what happened in the incident, technology has the potential to be a vital resource when it comes to settling claims. However, while the benefits are clear from a safety perspective, technology has yet to make a material impact on the harsh legal environment and nuclear verdicts.⁶

SUMMARY

Social inflation is adversely impacting capacity offered on umbrella towers and significantly increasing pricing. It's difficult for carriers to quantify or underwrite based on these societal attitudes regarding distribution of wealth and perceived sense of justice. The verdicts being awarded are crippling business owners and insurance companies alike, and also impacting the overall economy. Commerce will suffer if this continues to the point where trucking companies cannot afford their insurance premiums and are forced to close their doors. The specialists at AmWINS are here to help you provide a risk management plan for your clients during these challenging times.

SOURCES

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³ Plaintiff Support. Jury Orders Werner Enterprises Inc. to Pay \$90M to Family Involved in Tragic Collision. <https://plaintiffsupport.com/jury-orders-werner-enterprises-inc-to-pay-90m-to-family-involved-in-tragic-collision/>

⁴ <https://www.businessinsurance.com/article/00010101/NEWS06/912336909/How-insurers,-brokers,-policyholders-can-reduce-the-effects-of-social-inflation>

⁵ Insurance Information Institute (July 2020). Social Inflation and COVID-19. <https://www.iii.org/insuranceindustryblog/social-inflationand-covid-19/>

⁶ Business Insurance (October 2020). How insurers, brokers, policyholders can reduce the effects of social inflation. <https://www.insurancebusinessmag.com/us/news/commercial-auto/tech-helps-transportation-firms-fight-nuclear-court-verdicts-122170.aspx>

