

Understanding Social Inflation

Welcome! We will begin momentarily...



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Today's Format:

1. Speaker Introduction
2. Defining Social Inflation
3. The Impact of Social Inflation
4. Controlling Exposure to Social Inflation
5. Risk Management Resources
6. Q & A



Welcome to the Webinar!

Before We Begin:

- Volume Controls
- Q&A
- Post Webinar

Introducing Today's Speakers



Jared Bishop, CPG

- Divisional Assistant Vice President of Specialty Human Services Risk Management



Doug Svenkerud, JD, CPCU

- Divisional Senior Vice President – Specialty Human Services Claims

What is Social Inflation?

1. An Economics course offered at an Ivy League University?
 2. A Political Science term related to Americans being overweight?
 3. All of the above ?
 4. Some of the above ?
-
- A term used to describe the trend of rising insurance costs due to increased litigation, plaintiff-friendly legal decisions, broader contract interpretations and higher jury awards.

Key Findings: *Overarching Litigation Trends*



Key Findings: *Litigation Funding*

- What is litigation financing ?
- This industry has doubled between 2012 and 2018
- Impacts to litigation
 - Volume of cases
 - Increase in pursuit of full trials
 - Increased loss costs



Key Findings: *Erosion of Tort Reform*

- State regulations designed to limit the length of time during which a lawsuit can be filed, as well as monetary caps on punitive and noneconomic damages that can be awarded, are being modified legislatively or challenged on constitutional grounds in several states.
- An example would be the new state “reviver” statutes that allow older sexual abuse claims to be pursued.

Key Findings: *Negative Public Sentiment Toward Businesses and Corporations*

- Current public sentiment indicates a high level of distrust for businesses, corporations and non-profits.
- Juries are increasingly likely to sympathize with the plaintiff when awarding damages, *regardless* of the level of fault assigned to the defendant in order to help make that person whole, in part, because it is perceived that the business or their insurance company can 'afford it.'

Key Findings: *Desensitization to large jury awards*

- The “Reptilian Strategy” explained
- Potentially punitive jurors
 - Some jurors respond to the reputation of the brand or industry more than the facts of the case
- Media coverage of eye-popping verdicts
 - These verdicts are often reduced by the judge, but this is not always reported

Key Findings: *More Nuclear Verdicts*

- A more prevalent anti-corporation mentality
- Increasing inclination to punish perceived greed, protect the community
- Influenced by increasing disparity in wealth distribution
- Eroding faith in government, institutions, businesses
- Increasing social activism and a growing expectation that businesses should take the lead in advancing societal objectives
- Tie-in to lawyer advertising and rise of social media: big awards are increasingly well-known and do not surprise jurors – “anchoring”

Key Findings: *Reviver Legislation*

States have enacted “reviver” statutes allowing otherwise time-barred claims for childhood sexual abuse to proceed.

- (1) They eliminate the statute of limitations for such claims;
- (2) extend the statute of limitations for such claims; or
- (3) create a window (e.g., a period of a few years) in which otherwise time-barred claims can be filed.

Example 1: American Guarantee and Liability Insurance Co. v ACE American Insurance Co.



Plaintiff died when his bicycle collided with the rear end of a parked truck and trailer. The truck was legally parked. Plaintiffs' helmet was cracked down the middle indicating he was traveling fast with his head down and wasn't looking where he was going. The Plaintiff was a 43-year-old captain in the Houston Fire Department. There were no witnesses. The accident appeared to be the sole fault of the plaintiff.

Jury Award: \$39,960,000

Settlement: \$9,750,000

Example 2: Blake et al vs Ali et al (Werner Enterprises Trucking)

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.

Jury Award: \$90,000,000



The Impact of Social Inflation

1. Drives up general liability claim frequency and **severity** to the degree that rate increases can't keep pace with mounting **losses**, and **insurers'** reserves are dwindling. The market is currently in its sixth consecutive year of underwriting **losses**.
2. Decrease in limits offered and terms are restricted
3. Higher General Liability premiums
4. Harder to find insurance in the standard market
5. A move to the Excess and Surplus lines market where coverage is restricted, and premiums are considerably higher
6. Higher reinsurance costs
7. Populism
8. The organizations assets are put at risk

Summary : *Social Inflation*

- Deepening anti-corporate mentality
- Punish perceived greed/protect the community
- Influenced by increasing disparity in wealth distribution
- Eroding faith in government, institutions, businesses
- Increasing social activism and expectation that businesses should take a lead role in advancing societal objectives
- Tie-in lawyer advertising and rise of social media: big awards are well-known, seem commonplace and do not surprise jurors

Protecting Your Organization

Be Good at the Basics of Risk Management

1. Evaluate Exposures
2. Plan Controls
3. Implement Controls
4. Measure Effectiveness
5. Make Changes and Start Over at #1

Protecting Your Organization

Loss Drivers tied to Social Inflation

1. Auto Liability
2. Abuse & Molestation
3. General Liability
4. Third-Party Liability

Auto Liability Considerations

- MVR Policy
- Distracted Driving Policy – Cell Phone
- Vehicle Maintenance – (Pre-trip & Post-trip)
- Driver Safety Training
- Commercial License Considerations
- Equipment Training
- Hired & Non-Owned Auto

Abuse & Molestation Considerations

- Zero Tolerance Policy
- Formal Procedures – Establish Boundaries
- Acceptable Monitoring & Observation Practices
- Follow-up & Coaching
- Feedback & Metrics
- Crisis Response Plan

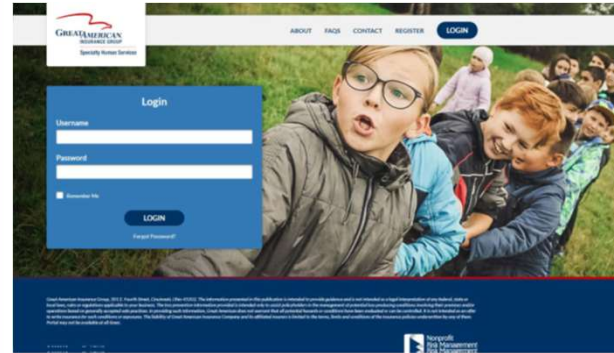
General Liability Considerations

- Visitor Management Controls
- Slips/Trips/Falls
- Building & Equipment Maintenance
- Housekeeping Controls
- Aquatic Safety Controls
- Building Access Restrictions
- Crime Controls
- Theft Controls

Third-Party Liability/Risk Transfer Considerations

- Identify All Third-Party Relationships
- Certificates of Insurance (COIs)
- Contracts (Hold harmless & Indemnification)
- Additional Insured Status
- Waivers
- Follow-up

Resources from Specialty Human Services



SAMPLE Applicant Screening & Selection Evaluation

Position Title _____ Date _____
 Name of Applicant _____
 Date Application Submitted _____ Evaluation Completed By _____

☐ Application Reviewed

Red Flags  Noted on the Application Review (Assign 1 Point for Each Box Checked)

Check if Present	Red Flag	Points
<input type="checkbox"/>	Application has gaps in dates for employment, education or residence.	
<input type="checkbox"/>	Application includes conflicting or incorrect information.	
<input type="checkbox"/>	Application has omitted or incomplete information.	
<input type="checkbox"/>	The applicant has an unstable work history.	
<input type="checkbox"/>	The applicant provides vague reasons for leaving previous jobs.	
<input type="checkbox"/>	The applicant is unwilling to use former supervisors as references.	
<input type="checkbox"/>	The applicant is overeducated or overqualified for this or other positions with children.	
<input type="checkbox"/>	The applicant is moving to a lesser-paying job.	
<input type="checkbox"/>	The applicant shows a pattern of work and volunteer positions with the same type of children.	
<input type="checkbox"/>	The work pattern shows patterns of problems with authority.	
<input type="checkbox"/>	The applicant found out about the position just by "dropping in" on the program.	
<input type="checkbox"/>	The applicant describes children as helpless, vulnerable or perfect.	
<input type="checkbox"/>	Other	
Subtotal		0

Comments/Notes

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Q & A Session





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