

Social Inflation in Marine Insurance

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Basics of Social Inflation

- Developing claims experience + economic inflation = expected claim results
- For many years actual claim results have exceeded expected claim results – the difference between the expected results and actual results = Social Inflation
- Factors:
 - rising jury verdicts
 - changing attitudes towards corporations / the corporate role in society
 - mass adoption of new tactics by plaintiff's counsel
 - for-profit litigation funding companies
- Why is this issue drawing attention in boardrooms throughout the industry? Pure cost increase, pure loss to the insurance carrier.



- Cost of Claim Resolution
- Verdicts and settlements affected – US and Australia leading the way
- Verdictsearch (U.S.) data over the last two decades:
 - 300%+ rise in the frequency of verdicts of \$20M or more in 2019 compared with the annual average from 2000 – 2010
 - Trucking industry in the U.S. saw a 300% rise in verdicts over \$1M from 2012 – 2019 compared to 2005 – 2011
 - Median cost of a single fatality claim has doubled since 2015
- Large verdicts in media change expectations of what a “large” award is
- Cost drivers: Increased use of experts, mock juries / jury consultants, specialty counsel

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Changing Plaintiff Strategies

- Plaintiff counsel have been much more willing to collaborate and share strategies than the defense / insurance side and their approach has been very effective
- Reptile Theory: invites jurors to put themselves in the shoes of the plaintiff, then engages the primeval “reptile” part of their brain to provoke feelings that the defendant's actions put the community / the jurors and their families at risk
 - Fundamentally, it attempts to replace the actual legal standard with a “safety rule” that tries to require a defendant to have taken the “safest” action possible
 - While technically a violation of legal rules, it has had wide success – the creators of the Reptile Theory claim it has led to over \$10B in verdicts / settlements

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NEWS

Two trucking companies hit with \$1 billion verdict in death of Jacksonville teenager Connor Dzion

Katherine Lewin Florida Times-Union
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On Aug. 20 after just five days of testimony and four hours of deliberation, the Nassau County jury handed down a verdict of over \$100 million to the Jacksonville teenager's parents for pain and suffering for the loss of their son and \$900 million in punitive damages against AJD Business Services Inc., the company whose truck driver had crashed ahead of Dzion and stalled traffic.

The case also named Kakhkashan Carrier, Inc. of Canada in the lawsuit. Its truck driver crashed into the line of stopped cars, killing Connor. The driver was traveling on cruise control at 70 miles an hour and the data recorder showed he did not attempt to brake until one second before the fatal crash.

Third Party Litigation Funding (TPLF)

- TPLF is a transaction in which the TPLF company provides funds to a plaintiff or plaintiff's counsel up front, in return for a payout if the lawsuit is successful. That payout can vary but is often up to 40% of the verdict / settlement.
- TPLF is common in the U.S.A., Canada, the U.K., and Australia; and is used in both litigation and in arbitration cases.
- TPLF is a multi-billion dollar industry in the U.S. alone, and fuels frequency of lawsuits, encourages plaintiff's to push for higher settlements / verdicts, and sometimes requires frivolous appeals, etc.
- Defense side is largely unaware when their opponent is using TPLF – we must push to standardize discovery demands on the issue in every claim!



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Societal Change

- Corporations – including insurance companies – are not only expected to act ethically in their own dealings, but also to only deal with ethical entities.
- Social justice movements across the world have impacted how jurors view the role of corporations in society
- These changes are used by plaintiff's counsel to create advantages in the courtroom and leverage larger verdicts / settlements



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Final Thoughts

- Social Inflation has presented a new set of challenges to the industry – how do we rise to the challenge?
- Improve communication amongst defense counsel / insurance carriers – share what works
- Top counsel in the U.S. and elsewhere are creating good caselaw on reptile theory issues, TPLF discovery issues and others – support them, then broaden the approach
- Early resolution programs are widely successful even if not successful in every case
- Don't be penny-wise and pound-foolish – use of specialty counsel, additional experts, support teams for trial, etc. may drive costs, but they can also make an enormous difference when used strategically