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# Social Inflation

## Examining the Costs to the Insurance Industry and Mitigation Strategies

October 2025

## INTRODUCTION

Social inflation has been defined as "a broadening definition by society and juries of what is covered by insurance policies"[1] or "all ways in which insurers' claims costs rise over and above general economic inflation, including shifts in societal preference over who is best placed to absorb risk."[2] Legal system abuse combined with societal and generational changes in attitudes regarding justice and decreasing faith in institutions have fueled an environment where plaintiff attorneys play the "tort lottery" in casualty cases rather than seek to recover reasonable compensation tethered to the specific nature of the claim.

While social inflation is not a new concept and has been discussed and tracked since as early as 1978, what we are seeing today is that social inflation shows no signs of abating. Social inflation continues to cause billions of dollars of direct financial impact to the insurance industry, outpacing the rate of economic inflation.[3] Further, social inflation continues to cause rising and out-of-control costs for all types of liability claims, not just those included in the headline-making "nuclear verdicts" (verdicts above $10M). Reversing this trend will require ongoing engagement with legislators, the legal community, and the public. Without broader tort reform and transparency around litigation practices, social inflation will continue to strain insurance availability, affordability, and public trust.

*You may click on the links below to navigate directly to the corresponding section.*

## THE KEY DRIVERS OF SOCIAL INFLATION

# PLAINTIFFS' ATTORNEY TACTICS

## THE REPTILE THEORY

The reptile theory is a trial strategy used by plaintiff attorneys since the mid-2000's to influence jurors by appealing to the primitive, survival-based part of the brain. The tactic is to focus on a perceived threat to the juror and society rather than the facts and evidence at trial.[4] Plaintiff attorneys want jurors to protect themselves and others by sending a message or punishing defendants for their actions, rather than focusing on the facts of the case and applicable law. There is a direct link between this tactic to anger and frighten jurors, and nuclear verdicts.[5] To combat against this tactic, there are many steps that can be taken:

### Early Case Identification

Insureds, claim professionals, and attorneys must conduct a thorough case assessment at the outset to properly prepare to defend against this tactic. The defense team should examine records and meet with and interview potential witnesses so that they can understand the internal communications, safety practices and processes that may later be attacked by plaintiffs.[6]

### Corporate Witness

It is critical to properly vet and select the best possible corporate defense witness. This individual will be the face of the corporation for the jury, and must be credible, trustworthy, highly competent, and articulate. Having an unlikeable or untrustworthy corporate witness can open the door to nuclear verdict punishment from a jury.

### Deposition Preparation

Counsel must spend the necessary time preparing witnesses for deposition. Each witness should be introduced to the reptile theory, advised on what questions to expect, and instructed on how to properly handle reptilian questions. Mock videotaped depositions should be considered to enhance witness performance.

### Mock Trials and Jury Focus Groups

Conducting mock trials can ascertain how evidence and reptilian tactics influence jurors and what defenses resonate. Jury focus groups can also be great resources when a full mock trial is not feasible. They can be specifically tailored to more particular elements of a case—such as focusing on a specific argument within the case, identifying how jurors react to defense witnesses, or even how they react and respond to defense counsel.

### Early Utilization of Motions in Limine

These pretrial motions can be an important tool to exclude prejudicial evidence and arguments stemming from the reptile theory. Early use of these motions can help shield defendants from the impact of emotional manipulation stemming from the reptile theory.[7]

## ANCHORING

Jury awards for non-economic damages, such as pain and suffering, are unpredictable, may be excessive, and typically are the largest part of a jury's award. Jurors do not receive any guidance from the court when calculating non-economic damages, leaving jurors to their own devices.[8]

While there is no actual formula for calculating non-economic damages the elements are typically past and future pain and suffering, emotional distress, and loss of enjoyment of life. In some states, plaintiffs will use a per diem type formula. For example, non-economic damages of $10 per hour X 24 hours is $240 per day which is multiplied by the number of days since the accident (2 years) = $175,200; while future pain and suffering of $240 per day x 3,650 (10-year life expectancy) = $876,000, for total pain and suffering of $1,051,200. Of course, any upward adjustment in the hourly suffering rate or number of days results in l arger non-economic losses. In other states, plaintiffs will use a multiplier of the amount of medical bills. If medical bills are $350,000, and a multiplier between 1.5 to 5 is used, it results in $525,000 to $1,750,000 i n non-economic damages. While these historical methods result in substantial amounts, they simply don't reach the amounts now being sought by plaintiffs' counsels using anchoring.

Anchoring is a tactic whereby, during the course of the trial, plaintiff's lawyers will repeatedly request or suggest a monetary award or method of calculating damages that is typically arbitrary.[9] The amount awarded is influenced by the amount requested.[10] After the Plaintiff suggests a number, jurors typically accept the number or make some adjustments (up or down) using that number (the anchor) as a reference point.[11] "Studies show that both use of a specific sum or mathematical formula lead juries to reach awards that are double or quadruple the amount they would have awarded if left to determine a just and reasonable award on their own."[12] To counter plaintiff's anchoring strategy:

### Know the Jurisdiction

Over 40% of states cap non-economic damages in healthcare liability lawsuits.[13] Almost 20% of states limit non-economic damages in some or all personal injury matters.[14] Some states have begun placing limits on plaintiff counsels' ability to use unsubstantiated anchoring. In June of 2023, The Supreme Court of Texas rejected the use of unsubstantiated anchoring in a case in which plaintiff's counsel referenced the value of a $71M F-18 fighter jet, a $186M piece of art, and a multiple of the number of miles driven by the defendant trucking company in the prior year, while seeking non-economic damages.[15] Additionally, Georgia recently passed a tort reform package that places limits on unsubstantiated anchoring. The new law states that the amount of non-economic damages: cannot be argued before the close of evidence, must be rationally related to the damages in the case, and may not reference objects or values with no rational connection to the facts proven by the evidence.[16] Defense strategy should be tailored to the applicable laws.

### Expose the Anchor

Jurors are not familiar with the multitude of reasonable settlements that may occur every day. Instead, they are only familiar with the huge numbers listed on billboards or in television ads. That is why it is important to "expose" the anchor by telling jurors that the plaintiff attorney is trying to influence the damage amount by anchoring.[17] "Psychological research has shown that people are less likely to fall prey to mental processing errors like anchoring when the tendency to engage in such thought is outwardly exposed. In other words, by drawing attention to the fact that the plaintiff's counsel is attempting to influence jurors with an anchor, jurors will be less likely to be persuaded by it."[18]

### Remove the Anchor

Explain to the jury that the plaintiff's unsubstantiated anchoring uses arbitrary numbers, that the jury is not bound by those numbers, and the jury gets to decide what the amount of fair and reasonable damages are.[19]

### Drop the Anchor

Defense counsel should consider suggesting a fair and reasonable damage amount in the event liability is found against the defendant.[20] One recommended approach is to present a "restorative damages plan" by obtaining information during discovery about plaintiff's life before the injury and identifying how the plaintiff envisions their life moving forward.[21] The restorative damages plan allows the defense to propose "specific costs for specific needs rather than generalized numbers, which can look like the defense just wanting to save money."[22] It is suggested that the defense number be tied to specific things that plaintiffs hope may make their life better such as gym memberships, educational funds, and counseling sessions.[23] Not only does this serve as a defense anchor, but it portrays a sense of empathy and effort by the defense to assist in the plaintiff's recovery. Although there has been hesitation amongst the defense counsel to present a specific damage award for fear that it will be perceived as conceding liability, the alternative is to risk that the jury construes the defense's silence to mean that the plaintiff's demand is reasonable.

## PLAINTIFF ATTORNEY ADVERTISING

In 2024, more than $2.5B was spent on advertising by trial lawyers and aggregators (companies that recruit plaintiffs and sell their information to law firms).[24] This is a 32% increase from 2020.[25] The advertisements publicize misleading results, amass claimants for class actions, and suggest that it is normal for plaintiffs to receive nuclear verdicts.[26] For example, in the Roundup litigation, advertisers effectively displayed ads during the lifecycle of the case, choosing the best moment to capitalize on their investment. In the months before the trial that led to a $2B verdict, plaintiff lawyers inundated the local jury pool with television and radio ads alleging the weed killer causes cancer and flaunting a recent $289M verdict. These ads influenced the jury pool by arguing liability outside the courtroom and giving jurors a sense of what they should award if they find against the defendant. After obtaining the $2B verdict, another $50M was spent nationwide to secure more plaintiffs.[27] Although the $289M verdict and $2B verdict were later reduced,

the advertisements had served their purpose, allowing plaintiffs to use past misleading results to obtain nuclear verdicts.[28]

Some states have taken steps to regulate legal advertising. In 2022, Texas amended its rules of professional conduct in response to a legal advertisement touting a $1.25B verdict/judgment that failed to disclose that the plaintiff never received any money or even attempted to collect.[29] The rules now require that if a lawyer knows the advertised verdict was reduced, reversed, settled for a lower amount, or never collected, they must disclose the amount the client received within the ad with the same or greater prominence than the advertised verdict.[30]

In 2020, a New Jersey ethics opinion regulated the electronic advertising techniques of geo-fencing and geo-targeting in legal advertisements. These techniques deliver targeted messages to users based on geographic location. The opinion prohibits these techniques in areas where individuals are likely in a compromised state, such as emergency rooms, funeral homes, and accident sites.[31] Additionally, Florida, Louisiana, and West Virginia have enacted legislation that prevents legal advertisements from being portrayed as medical alerts or public health announcements.[32]

Another way to combat plaintiffs' advertising tactics is to present a strong message to the public that highlights the benefits of insurance and explains how the costs of these large verdicts and settlements are being pushed down to consumers. Jurors need to understand that the money awarded to a plaintiff is never "free." If a verdict is ultimately funded by an insurance carrier, those costs will be absorbed by both businesses and individuals in the form of rate increases. According to David Sampson, President & CEO of the American Property Casualty Insurance Association, this has come to be known as a "tort tax."[33] Ultimately, this becomes financially harmful to businesses, individuals and households. Increased premiums for businesses lead to higher operating costs, which then result in higher prices that are ultimately borne by consumers. Nationally, it is estimated that the average American household has had to absorb between $2,000-$5,400 in tort costs annually.[34]

## LOSS OF FAITH IN SOCIETAL INSTITUTIONS

The loss of faith in public and private institutions continues to trend in the wrong direction. Pessimistic and distrustful jurors create great challenges for defendants. Defense counsel must consider if jurors have a desire to punish the defendant just for being a business, a governmental entity, or an insurance carrier.

A 2025 Edelman survey found that 7 out of 10 believe that government officials, business leaders and journalists deliberately mislead them.[35] According to Gallup, trust in big business, congress, television news, the presidency, public schools, large technology, and the criminal justice system all hit all-time lows in 2022 and 2023.[36] Perhaps most troubling is how many of the institutions are at or near all-time lows from when Gallup began tracking them in 1979. Distrust in institutions is associated with conspiracy beliefs.[37] This is particularly concerning because research has shown that jurors who believe in conspiracies are more likely to side with the plaintiff than with the defense in civil lawsuits.[38] Jurors are more likely to follow

their emotions to a verdict, and these emotions tend toward sympathy for the plaintiff, anger toward the defendant, and an overall broad distrust of corporations.[39] This creates additional challenges for defense counsel and can result in unpredictable nuclear verdict results.

Potential jurors are also potential plaintiffs. Their corporate distrust and anger are captured by new platforms that lower the bar of entry for any potential plaintiff considering a lawsuit even for a very small claim. For example, one new site (PettyLawsuit.com) utilizes artificial intelligence to "auto-generate" lawsuits for plaintiffs that enter just a cursory amount of information about their claim.[40] The site claims to be able to turn small claims into "one-click lawfare" and generate a demand letter as well as a court-ready filing packet. They advertise the ability to "Sue anyone. For anything. In minutes." and encourage lawsuits revolving around cold coffee and rude Lyft drivers. This type of "just-add-water" litigation is a new twist in the escalation of social inflation and tort system abuse.[41]

The insurance industry has done an effective job of using advertising to obtain favorable name recognition and branding. Characters such as Allstate's Mayhem, the GEICO Gecko, Flo from Progressive, and Jake from State Farm have resonated with the public and enhanced brand recognition.[42] But how many advertisements focus on the insurance carrier stepping up for its customers when they are in need? Or explaining how nuclear verdicts can negatively impact the public in the form of increased premiums? The fact is that as an industry, we can do a better job of highlighting claim success and how insurance carriers step up to assist their customers in times of need with excellent customer service and positive results. We must change the false perception created by plaintiff attorneys that insurers arbitrarily deny the claims of widows and orphans to better reflect the truth—that insurers are there for their policyholders to restore their damaged property, to defend them from liability claims, and to fairly compensate people post-loss so that they can restore their lives.

## CHANGING JURY DEMOGRAPHICS: SOCIETAL AND GENERATIONAL ATTITUDE CHANGES

Societal and generational changes impacting social inflation go beyond the issue of lost trust and lost faith in American institutions. The reality is that each generation has a very different perspective on life based on having radically different shared experiences. Generational perspectives on the role of justice, judges, attorneys, and juries also vary greatly. Societal and generational changes in attitudes regarding justice have also been a key component of rising social inflation and increased costs for the insurance industry.[43]

Jurors from the Silent Generation (born 1928-1945), Baby Boomers (born 1946-1964), and Generation X (born 1965-1980) are more likely to apply the facts to the law and adhere to the instructions provided by the judge.[44] However, juries are now mostly comprised of Millennials (born 1981-1996) and Generation Z (born 1997-2012) who are more focused on a perceived virtuous result than on the law or facts at issue in an individual case. They are motivated by a desire to correct perceived injustices,[45] believe that unrealistic or even 100% safety standards are the only acceptable outcome,[46] and view their role as a juror as an opportunity to achieve social justice and redistribute wealth.[47] However, jurors believe they are sending

a message to the defendant, without any indication of the insurance company's role in the case. This concealment significantly influences how justice is pursued and perceived. Jurors are unaware that an insurance company, rather than an individual defendant, is providing the defense and paying the award and therefore their attempt at redistributive justice is misguided and fails to serve their intended purpose.

Further, the traditional notion of "conservative" versus "liberal" trial jurisdictions can no longer be relied upon by defense counsel or claims adjusters when evaluating their cases. According to data published by Assured Research, the growth in liability burden due to social inflation from 2018-2024 exhibits no clear pattern based on the traditional political metrics within jurisdictions.[48]

The use of jury consultants and mock trials are critical for defense counsel and insurance carriers. These exercises can help identify the likely composition of a given jury in a particular jurisdiction and test which themes, messages, and communication methods best resonate with jurors. These tools can also help the defense better understand how they and their corporate witnesses are perceived by jurors of differing generations. While full-scale mock jury exercises can be expensive, if they are able to prevent a nuclear verdict, they are well worth the investment. Finally, insurance carriers should invest the time and cost of sending their adjusters to attend and monitor trials. This type of direct-source observation can be priceless and can allow adjusters to analyze the proceedings without the filter of defense or appellate counsel reports.

## PHANTOM DAMAGES

The difference between the listed price for medical services or the amount initially billed by a provider and the amount that the provider ultimately accepts as full payment for those services is referred to as "phantom damages."[49] These phantom damages "are often multiples of what the plaintiff or the plaintiff's insurer [health] routinely pays for medical care."[50] According to the American Tort Reform Association, these should not be considered "damages" at all. Neither the plaintiffs nor their insurers will ever be called upon to pay that amount and the plaintiffs' healthcare providers will never receive payment at that level.[51]

One of the ironies of juries trying to correct injustices and redistribute wealth is that juries are often not provided with full and accurate financial information upon which to base their damage assessment. Jurors are often not told of the available insurance limits nor that the medical bills entered into evidence are not the amounts actually paid by plaintiffs' health insurance carrier or by the plaintiff. The culprit is the collateral source rule which prohibits damages awarded to a plaintiff from being reduced by amounts paid from other sources for those damages, such as health insurance and worker's compensation.[52] Although the rule varies by state, many states use the collateral source rule to prevent defendants from introducing evidence of the amount the collateral source actually paid for past medical treatment.[53]

This runs completely afoul of the purpose of compensatory damages which is to make an injured party whole.[54] The plaintiffs were not restored to their original position before the alleged tort occurred. Rather, they received a windfall. This windfall is funded by insurance carriers but ultimately is to the detriment of

policy holders. The graphic below is an actual example of the difference between the amount charged by a healthcare provider, a reduction based on a healthcare plan's listed price, and the amount ultimately billed to the individual patient. The provider charges are over 89 percent higher than what was ultimately billed and paid by the insurer and patient!

**Year To Date At A Glance:** As Of: **08/31/2025**

This summary reflects charges, payments and your responsibility for the costs during the dates noted.

| | Provider Charges | Your Health Plan Price | Your Health Plan Paid | Your Responsibility |
|---|---|---|---|---|
| **Total for 2025**<br>All claims processed through: **08/31/2025** | $149,157.66 | $17,092.05 | $14,206.09 | $2,885.96 |

Consider the impact of just this one small example in a tort claim. Here, the total provider charges were $149,157.66 and the total amount of those charges actually paid by the claimant and their insurer was $17,092.05 ($14,206.09 paid by the health plan insurer + $2,885.96 paid by the claimant. This gives us a phantom damage amount of $132,065.61 ($149,157.66 billed - $17,092.05 actually paid by the health plan insurer and the claimant). These phantom damages not only impact the potential recoverable economic damages in that amount, but they have an even greater impact on the potential non-economic damages awarded. If we assume a mid-level non-economic damages multiplier of 3X for this example, we now have an increase in the non-economic damage award of $396,196.83 ($132,065.61 X 3). So, in this example alone phantom damages can account for an increased award of $528,262.44 ($132,065.61 phantom economic damages + $396,196.83 in phantom non-economic damages)!

The issue of phantom damages is a significant challenge faced by our industry and some states have begun to address this with tort reform legislation. For example, Georgia recently enacted legislation that limits medical damages to the reasonable value of medically necessary care and permits evidence of both the amount billed and the amount actually paid.[55] Since collateral source rules vary by state, insurance carriers need to be cognizant of how each jurisdiction handles evidence of collateral source payments and advocate for legislative change, if needed.

## THIRD-PARTY LITIGATION FUNDING ("TPLF")

Third-party litigation funding is a multi-billion-dollar industry with global annual investments estimated to reach $31B by 2028.[56] Ernst and Young projects that TPLF could add as much as $50B in costs to the US insurance industry over the next five years, resulting in an estimated 4% to 5% increase in annual loss ratios.[57] While these agreements provide financing for plaintiffs and law firms, they also raise serious concerns for insurers, courts, and businesses. TPLF can delay/discourage reasonable settlements, create conflicts of interest, and contribute to nuclear verdicts. Further, they may allow foreign entities to control US litigation in a way that harms US companies.

Evan Greenberg of Chubb and John Doyle of Marsh McLennan have warned that TPLF funding has turned injury lawsuits into speculative investments "that treat individual misfortunes like penny stocks or subprime mortgage investments."[58] The hedge funds, foreign investors, and other financers are actively making decisions on legal strategy and settlement while simultaneously financing massive advertising campaigns used to amass claimants, all in an effort to make a return on their investment.[59]

There is an effort by some federal district courts, individual judges, and states to make TPLF agreements more transparent, but most jurisdictions still do not require disclosure of TPLF agreements. Where disclosure is required, courts vary as to when disclosure is mandated and what information must be disclosed.[60]

It is rare that the details of TPLF agreements are disclosed during litigation, since plaintiffs typically oppose the disclosure and courts generally do not compel production.[61] Additionally, if the disclosure is ordered, courts differ as to when disclosure is mandated, who is entitled to disclosure, who must disclose a financial interest, and what information must be disclosed.[62]

Some steps that insurers and defense counsel can take to counter the lack of transparency and promote the disclosure of TPLF include:

**Understand the Issue and Educate the Courts**

The initial step for insurers is to understand and educate the courts about TPLF.[63] Defense counsel should argue for the discoverability of TPLF agreements based on the same premise that a defendant's insurance coverage is discoverable, as both insurance companies and TPLF companies are interested non-parties with a direct financial interest in the litigation.[64] Additionally, defense counsel can argue that the production of TPLF information would facilitate settlement and allow defendants to adjust their litigation strategy.[65] With interest accruing, plaintiffs' demand will only increase as the case drags on. Disclosure of TPLF involvement may sway some defendants to adjust their litigation strategy to seek earlier settlements. Defense counsel can also argue that disclosure of TPLF agreements would reveal any conflicts of interest that may exist between the funding company, plaintiff, and/or judge.[66]

**Push for Funder Participation at Court Ordered Settlement Conferences**

Insisting that funders appear at court ordered settlement conferences would allow the defense to negotiate directly with those in control of the litigation and settlement decisions.[67] It would also change the optics for the court by showing that the true adversary is a financial firm, rather than the injured plaintiff.[68]

**Lobby For Legislative Change**

The U.S. Chamber of Commerce Institute for Legal Reform is advocating for a uniform federal statutory disclosure requirement,[69] contending that disclosure would: facilitate settlements; clarify who is driving the litigation and controlling settlement decisions;[70] reveal potential conflicts of interest;[71] ensure compliance with state laws that prevent a non-party from funding a litigation;[72] and identify whether foreign actors are

involved, as disclosure would allow the parties to see who is really pursuing the litigation and whether they have any ulterior motives.[73]

In addition to pushing for uniform federal statutory disclosure requirements, legislative efforts are being made to change the way litigation funders are taxed. Litigation funders can structure their profits to avoid ordinary income tax for more favorable capital gains tax rates.[74] Additionally, foreign funders do not even have to file a tax return. A recently proposed legislation attempted to close this loophole by imposing a 40.8% tax on all litigation funding agreements. Though it was ultimately stripped from the 2025 One Big Beautiful Bill Act,[75] it does show that there is at least a growing momentum to impose a tax on litigation funders.

# FRAUD

## STAGED AUTO ACCIDENTS

Insurance fraud is a multi-billion-dollar problem globally and not a new phenomenon. Studies and witness testimony have exposed fraud going back to the asbestosis and silicosis litigations. A 2004 study by Johns Hopkins University showed that radiologists compensated by plaintiffs read 95.9% of films positive for asbestosis-related abnormalities, while only 4.5% of independent radiologists read the same films as positive for abnormalities.

Today, staged auto accidents are a major driver of property and casualty fraud, accounting for almost $20 billion in illegal claims.[76] These staged accidents involve multiple fraudsters, fake claims/injuries, inflated medical bills[77] and are common in high traffic states such as California, New York, and Florida.[78] There are many tactics used to create these staged accidents. For example, in the "swoop and squat" two fraudsters in separate vehicles collude to cause an innocent driver to rear end one of the fraudsters. In the "panic stop" a fraudster slams on the brakes in front of an innocent driver causing a rear end collision. The fraud continues after the accident with fake injuries and doctors inflating medical bills for unnecessary treatments.[79]

Insurers and insureds are fighting back against the influx of staged accidents. There have been multiple RICO actions filed to combat these fraudulent schemes. In June 2025 Uber filed a federal civil RICO suit in Florida against attorneys, auto-body shops, medical professionals, and drivers. The suit alleges a law firm paid Uber drivers to intentionally crash with other cars ("claimants") who were also involved in the scheme. The Uber drivers would say they were using the Uber app at the time of the crash to trigger Uber's insurance coverage.[80] After the accident, the claimant's car would be taken to the defendant auto body shop and the damage to the vehicle would be increased to match the alleged injury. The claimants would then begin a course of inflated medical treatment (unnecessary scans and injections) with defendant medical professionals.[81] An allegedly fraudulent lawsuit would eventually be filed by the defendant attorneys. Uber subsequently filed another RICO lawsuit against doctors and lawyers in California.[82]

Staged accidents have gained national attention and congress has noticed. In April 2025 the Staged Accident Fraud Prevent Act was introduced in congress with the intention of making the intentional staging of motor vehicle accidents with commercial vehicles a federal crime.[83] While the bill has yet to advance beyond referral to the House Judiciary Committee, it represents a significant initiative that deserves the industry's continued attention.

## NEW YORK RICO ACTIONS

A pattern of construction injury claims from residents of specific apartment buildings, linked to similar plaintiff firms, and detailed in a RICO suit filed by a reinsurer and MGA, suggest insurance fraud is rampant in New York City.[84] In particular, the fraud is centered on cases involving New York labor law ("NYLL") Section 240, a/k/a the scaffolding law. It was designed to protect workers from gravity-related falls. However, because of its imposition of strict liability on defendants, NYLL §240 is a "significant contributor" to nuclear premises liability verdicts in New York.[85] Strict liability means that defendants are liable, so liability is not at issue at trial, only damages. The RICO action alleged that defendant medical professionals and attorneys submitted fraudulent bills and medical records to the New York State Workers Compensation system showing injuries and courses of treatment that were designed to result in "windfall tort claims" via New York's labor law.[86]

Unfortunately, on October 3, 2025, the U.S. District Court for the Eastern District of New York entered judgment of an order dismissing the above referenced RICO lawsuit, finding that the alleged financial harms did not constitute actionable injuries under the RICO statute. The RICO claims were dismissed entirely with prejudice, and with no leave to further amend the complaint.[87] We find it hard to fathom that a case with so many parties, allegations, and questions of law and fact could be dismissed before the discovery process could take place. This is an example of some of the systemic challenges that insurers face in trying to counter some of the tactics and strategies of the plaintiffs and their experts and may signal that other pending New York RICO lawsuits may face a similar fate at the trial court level. However, we anticipate that this dismissal will be appealed to the United States Court of Appeals for the Second Circuit and we will be closely monitoring those proceedings.

## AI-DRIVEN FRAUD

The newest form of insurance fraud is being perpetrated by using AI-driven tools to create convincing fake evidence. Generative AI tools can create hyper-realistic images, videos, voices, and even entire medical records that appear authentic at first glance. Fortunately, the same AI technology that is being misused to commit fraud is also being harnessed to fight it. A growing number of AI-powered fraud detection tools are helping insurers identify and investigate suspicious claims. These include image and video forensics, document verification tools, voice deepfake detection, and behavioral analytics to help spot unusual patterns in claims submissions.

## THREAT OF EXCESS OF POLICY LIMITS ("XPL"), BAD FAITH/EXTRA CONTRACTUAL ("ECO"), AND PUNITIVE DAMAGE AWARDS

Plaintiff attorneys make policy limit demands to set the stage for ECO/XPL exposure where none should exist. The tactic is that once a carrier denies a policy limit demand, the plaintiff attorney will seek an award in excess of policy limits, and the carrier exposes itself to bad faith for not settling within policy limits. XPL & ECO claims are rising due to the coordinated efforts by the plaintiffs' bar to "set up" insurers with conditional time element policy limit demand letters. Further, plaintiff attorneys are utilizing artificial intelligence to streamline, tailor and issue a larger number of policy limit demands while using fewer resources.

Policy limit demands create additional burdens and strain on the carrier. The adjuster must immediately prioritize the demand, note the time requirement, and begin an urgent investigation into the demand and appropriate response. Some carriers implement additional internal processes and coordinate among other internal departments when responding to policy limit demands. Some carriers may be tempted to utilize artificial intelligence to more efficiently respond to time element policy limit demands. However, a string of recent lawsuits allege that certain insurers have used artificial intelligence and algorithms to improperly deny claims.[88] As such, carriers must ensure that AI is used properly and with sufficient safeguards to make individual and fact-specific claims determinations and fight the perception that it is being used to limit or deny claims improperly.

Depending on the jurisdiction, a carrier may find it necessary to engage external specialized coverage counsel to assist in responding to these demands. If the policy limit demand is denied, a carrier exposes itself to an XPL award and allegations of bad faith, triggering additional internal coordination and potentially additional outside counsel or appellate counsel who may be retained to defend the bad faith action. The result is increased costs for insurance carriers. If you multiply these costs by the number of limits demands, it is a massive cost-drain on the industry. Given the additional costs, insurers often settle claims at inflated amounts to avoid the risks of XPL or ECO. When jurisdictions permit a "lawsuit lottery" mentality, they encourage inflated claims.[89]

Carriers must remain on high alert and make sure they are responding appropriately to any policy limit demand, threat of an XPL award, or allegation of bad faith. Any such demand should be escalated to management immediately and carriers should consider the retention of local coverage counsel to assist in the response. Claims professionals should work with coverage counsel to understand the different laws in each state the insurer provides coverage, to ensure compliance with time and policy limit demands and to be able to assess the potential for bad faith if the demand is not accepted. Insurers should have a list of coverage counsel in each jurisdiction, and work with attorneys familiar with local laws, regulations, and judges.

Having recognized this problem, Florida recently passed laws to make it harder for policyholders to pursue bad faith claims under insurance policies.[90] In Florida mere negligence is no longer sufficient to prove

bad faith.[91] Further, the claimant, insured, and any representative have their own duty to act in good faith regarding providing information about the claim, demanding settlement, setting deadlines, and attempting to settle the claim.[92] Unfortunately, Florida appears to be an outlier. Other states continue to enact legislation and issue judicial opinions that expand insurers' potential exposure to bad faith claims.

In addition to threats of XPL and bad faith awards, defendants should be cognizant of the potential for large punitive damage awards. Punitive damages are designed to punish defendants and deter similar future behavior. Per the US Chamber of Commerce Institute for Legal Reform, the median punitive damage award from 2017 to 2022 increased by almost 250% to $87M while the mean punitive damage award in 2022 topped $690M.[93] The use of reptile theory tactics to persuade jurors to punish defendants, combined with anchoring strategies and ambiguous jury instructions are some factors contributing to large punitive damage awards.[94]

There are steps carriers can take to push back on excessive punitive damage awards. While some states completely prohibit these damages, others prohibit their insurability, and others impose caps.[95] These caps may be based on the final compensatory award or the defendant's net worth. However, there may be exceptions to the caps depending on the type of case.[96] Damage caps are an attempt by state legislatures to manage the high costs of doing business within a particular state and to prevent a drag on the overall economy. Capping punitive damages prevents the increased costs of doing business from being ultimately passed on to the consumer. Additionally, they are meant to discourage plaintiffs from filing frivolous lawsuits with the hopes of a financial windfall. Legislative action can also be taken such as prohibiting juries from considering a defendant's net worth/revenues/profits in determining the amount of punitive damages.[97] This would prevent jurors from using these numbers as an anchor and awarding excessive punitive damages based on the defendant's wealth rather than punishment and deterrence.[98] Finally, carriers may want to seek legislation calling for punitive damage determinations by jurors to be unanimous, similar to the unanimity requirement in criminal cases.[99]

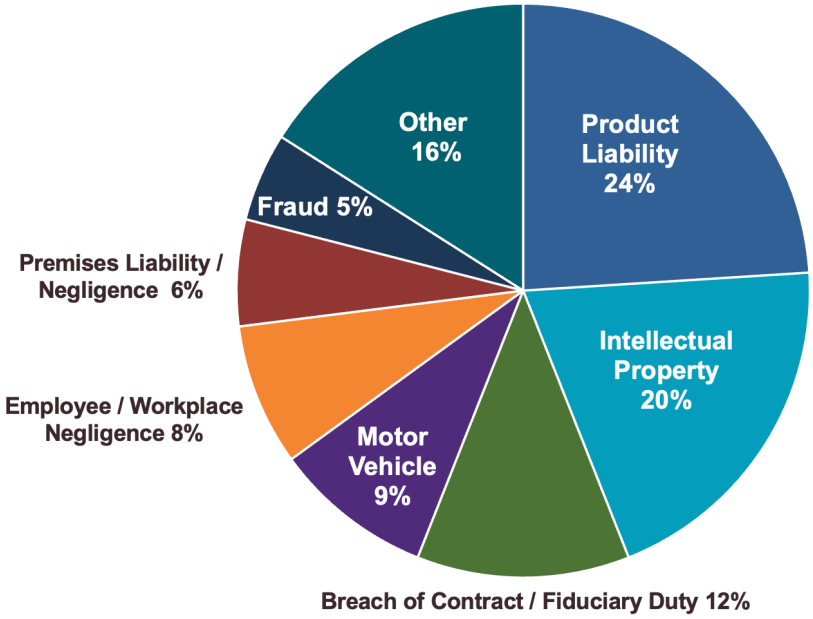
## THE INCREASING FREQUENCY AND NORMALIZATION OF NUCLEAR VERDICTS

The various social inflation factors discussed above continue to lead directly to nuclear verdicts, which continue to rise in both number, size, and scope.[100] In 2024, there were 135 lawsuits resulting in nuclear verdicts (those above $10M) against corporate defendants, a 52% increase over 2023.[101] The total sum of those nuclear verdicts was $31.3 billion, representing a 116% increase from 2023.

While there is data suggesting that commercial auto claims are currently the epicenter for nuclear verdicts,[102] it is important to keep in mind that nuclear verdicts and social inflation continue to span all types of liability claims. According to the American Property Casualty Insurance Association, product liability, professional liability, medical malpractice, directors & officers' liability, and general liability are among the lines of insurance impacted most significantly.[103] These nuclear verdicts also include defendants from all different industries. According to Marathon Strategies, 55 industries were the subject of a nuclear verdict

in 2024 compared to 48 in 2023.[104] Another cause for concern is that there are new and developing areas of risk that are resulting in nuclear verdicts across various insurer lines of business—these include per- and polyfluoroalkyl substances ("PFAS" or "forever chemical") claims, cryptocurrency claims and obesity claims.[105]

**# Corporate Nuclear Verdicts By Case Type[106]**
**2009-2022**




*Source: Marathon Strategies*

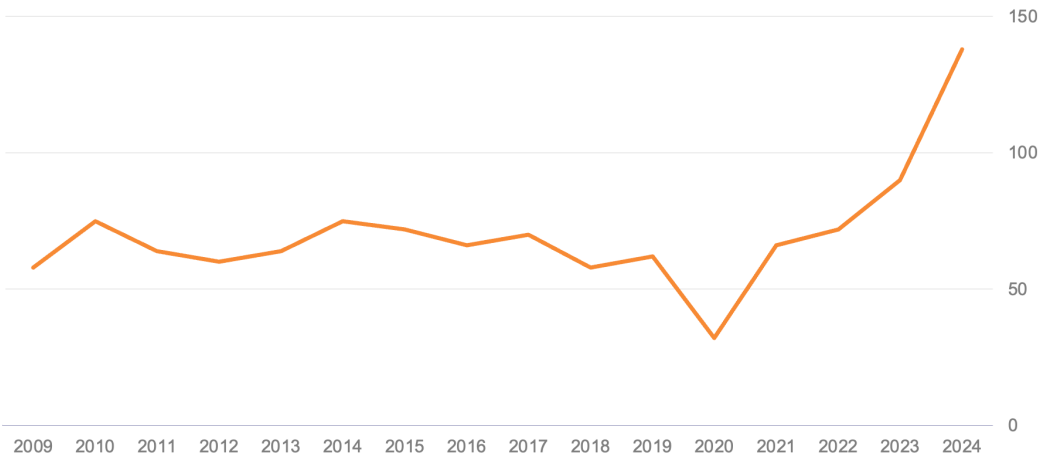
We are now at the point where nuclear verdicts are becoming increasingly normalized, and jurors have become desensitized to large numbers.[107] According to specialty broker Lion Specialty, median nuclear jury awards have climbed from $21M in 2013 to $51M today.[108] Headlines of seven-figure verdicts no longer shock the conscience of readers…readers who are all potential jurors.

According to Psychology Today, human brains can struggle to grasp massive sums of money thus "making large amounts feel meaningless."[109] The concept of numerical cognition explains why a person can detect the difference between $10 and $100 easily, but not so easily between $10 million and $100 million. Potential jurors are now barraged daily with news reports detailing billion-dollar government budgets and CEO salaries or large professional athlete salaries in the hundreds of millions. The media also has a key role in this desensitization. "News outlets regularly report billion-dollar deals as casually as they do celebrity gossip, often failing to provide context that helps the audience understand the scale."[110] These figures are so far removed from people's personal experience, they have no intrinsic meaning.

By way of comparison, consider the now infamous 1994 McDonald's coffee case of *Liebeck v. McDonald's Restaurants*. In that case plaintiff Stella Liebeck suffered burns when she purchased hot coffee from a McDonald's and spilled it on her lap. The jury in that case ultimately awarded Ms. Liebeck $2.8M.[111]

Consider that when this verdict was publicized in 1994 it made national headlines via the Associated Press, stirred a very public debate about excessive verdicts, and became a flashpoint for tort reform discussions. Now consider that the inflation-adjusted value of this verdict in 2025 is just $6.07M. It would not even be considered a nuclear verdict today.

**# Corporate Nuclear Verdicts[112]**
**2009-2024**




*Source: US Chamber of Commerce Institute For Legal Reform*

To combat the normalization of nuclear verdicts, the industry must educate the public about how the increasing costs of nuclear verdicts and increased settlements impact all purchasers of insurance. The notion that these massive verdicts are "free money" must be countered. Not only are these costs ultimately being passed on to all purchasers of insurance, but they are also limiting the type of insurance coverage offered to customers.[113]

## CONCLUSION

While social inflation is not a new concept and has been discussed and tracked since as early as 1978, what we are seeing today is that almost every element of social inflation is getting worse. In all, social inflation is estimated to account for an additional cost of 4-5% for all primary casualty claims and an additional cost of 8-10% for excess liability claims in 2024.[114] Further, the reality is that most cases are resolved prior to a trial. Social inflation and nuclear verdicts are causing insurance carriers to become even more hesitant to risk a jury trial and more eager to settle claims. Thus, the effect of tort abuse is mostly seen via a pervasive increase in the cost to settle claims.

All that said, there have been some positive developments in response to the social inflation crisis. These include effective tort reform implemented in both Georgia and Florida to place limitations on recoverable damages, limit attorneys' fees, and create transparency in litigation funding. Also, defense attorneys

are becoming more adept at counteracting some of the tactics utilized under the reptile theory and at recognizing and analyzing the risks involved with the mindset of modern juries.

While some steps have been taken to push back against the tools and tactics driving social inflation, the insurance industry would be well served to take the offensive in leveling the playing field. Organizations such as the Insurance Information Institute and the American Tort Reform Association are doing their part to bring information about social inflation into the public consciousness. In addition, steps such as educating the defense team (adjusters, attorneys, and insureds) on plaintiff's tactics and societal and generational changes to juries, increasing public awareness about the costs of social inflation and the benefits of insurance to society, and lobbying for legislative tort reform should be taken. The investment of time, organization, and money to educate the public and seek legislative reform is critical going forward. This investment will ultimately help all purchasers of liability insurance in the long run. In the meantime, maintaining underwriting discipline through prudent limit structures, appropriate attachment points and rate increases that reflect the underlying loss cost trend — is essential to sustaining profitability.

If you have any questions or are interested in learning more about this topic, please feel free to contact Frank DeMento (fdemento@transre.com), Howard Freeman (hfreeman@transre.com), or Bryan McCarthy (bmccarthy@transre.com).

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