

NAMIC ISSUE ANALYSIS



SOCIAL INFLATION IS COMPLICATED AND COSTLY – PEERING INTO THE CRYSTAL BALL: WHAT WILL SOCIAL INFLATION HOLD FOR THE FUTURE?

TIM FLETCHER

Senior Emerging Issues Specialist

Gen Re

ANDREW PAULEY

Government Affairs Counsel

National Association of Mutual Insurance Companies

**This is part five of a five-part series – in partnership with Gen Re –
examining social inflation and its impact on insurers.*

TIM FLETCHER

Tim Fletcher, J.D., CPCU, is Gen Re's Senior Emerging Issues Specialist and a Vice President. He heads the company's Emerging Issues unit, drawing from 36 years of experience and a wide range of responsibilities. In his former claims role, Tim helped clients successfully resolve high-exposure cases and respond to various claim and legal issues. He is also a guest lecturer on Risk Management and Insurance at Georgia State University, and he's based in Gen Re's Atlanta office. Tim is the Immediate Past President of the Atlanta CPCU Chapter and currently serves on CPCU's RE&S (Reinsurance, Excess, & Surplus) Interest Group.

ANDREW PAULEY

Andrew Pauley, JD, CPCU serves as government affairs counsel for NAMIC in a cross-functional role supporting the state, federal and international/regulatory divisions of the Government Affairs Department. Andrew additionally works with the Workers' Compensation Council, Amicus Working Group, NAIC Working Group and Policy Research Council. He covers civil justice reform issues and other international and regulatory concerns among other issues.

Prior to NAMIC, Andrew served in multiple roles including Deputy Commissioner and General Counsel in the West Virginia Insurance Commissioner's Office for over ten years. His responsibilities included serving as liaison with the state legislature, litigating cases before the highest court in the state and serving as counsel to three insurance commissioners in all areas of insurance operations and regulatory policy. Andrew participated regularly at the National Association of Insurance Commissioners (NAIC). Further, Pauley directly participated in several insurance initiatives including the privatization of the state workers' compensation monopolistic system and residual claim run-off, medical malpractice insurance reform and third party unfair trade practice reform.

Andrew has an undergraduate and law degree from West Virginia University. He also holds the Chartered Property and Casualty Underwriter designation conferred by The Institutes. He is a member of the West Virginia state bar.

For more information about this NAMIC Issue Analysis please visit www.namic.org/issues/our-positions or contact:

Andrew Pauley
apauley@namic.org
202.580.6746 x1303

The National Association of Mutual Insurance Companies is the largest property/casualty insurance trade group with a diverse membership of nearly 1,500 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC members lead the personal lines sector representing 66 percent of the homeowner's insurance market and 53 percent of the auto market.

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This is part five of our five-part series – in partnership with Gen Re – examining social inflation and its impact on insurers.

As society continues its halting emergence from the COVID-19 pandemic, court activity has resumed. With that activity has come a return to the eyebrow-raising verdicts that we saw pre-pandemic:

State	Verdict	Description
Florida	\$412,000,000	Motorcyclist injured in multicar pileup
Florida	\$120,000,000	Injury to passenger hit by public utility SUV
Illinois	\$51,600,000	Alleged excessive force used by bar bouncer, resulting in paralysis
Nevada	\$29,000,000	Failure to administer epinephrine to fashion model
New Mexico	\$27,000,000	Wrongful death of female motorcyclist struck by tire thrown from tractor trailer
California	\$23,700,000	Motorcyclist injured by at-fault commercial truck
Georgia	\$12,000,000	Permanent brain injury to woman accidentally administered wrong medication
West Virginia	\$10,800,000	Birth-related injury due to negligent treatment during labor and delivery

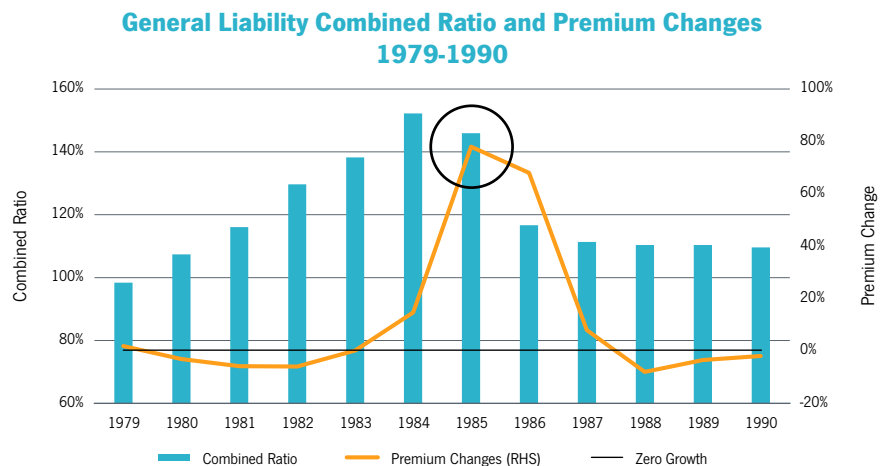
Source: Law360

Fueling those verdicts are the trends that we’ve discussed previously in this series – changing juror demographics and attitudes, a plaintiffs’ bar eager to feed juror concerns over personal safety and perceived disenfranchisement, as well as litigation funders seeking to maximize returns in the current low-interest environment.

With preliminary signs indicating that social inflation will continue its seemingly inexorable rise, an obvious question comes to mind: At what point does social inflation severely constrict the availability of certain lines of coverage and thereby give rise to legal remedies, such as tort reform? Are we approaching a precipice?

PAST AS PROLOGUE

A look backward reveals a time when social inflation ran rampant and caused much consternation among policyholders and carriers alike:



Source: A.M. Best, Assured Research

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During this period, the liability combined ratio peaked at 151% in 1984². Liability premiums skyrocketed as well, increasing 78% in 1985 and 68% in 1986³. Not surprisingly, coverage for certain lines vanished, with specialty lines – such as medical malpractice – being particularly hard hit. Seeking to quell this maelstrom, state legislatures ushered in an unprecedented era of tort reform that resulted in 39 states passing 82 different tort reform measures between 1985 and 1990.⁴ The era also spawned creation of well-known advocacy groups, such as the American Tort Reform Association (ATRA).

By placing caps on noneconomic damages, reducing statutes of limitation, and implementing other procedural changes, tort reform stabilized and ultimately reduced liability premiums. However, its full effect proved over time to be only temporary, as evidenced by a number of successful legal challenges on equal protection and other grounds. Nevertheless, many of the late 20th century tort reform measures remain intact but continue to be under attack.

BACK TO THE FUTURE?

While social inflation shows signs of someday igniting into a full-blown conflagration, the indications are mixed as to whether that will occur sooner or later. While there are many metrics to consider, industry combined ratios for 2020 remain below 100; moreover, the top eight writers of personal auto saw their combined ratio drop to 87.9 in 2020 versus 93.4 in 2019.⁵ While pandemic-driven lockdowns and working from home likely caused the temporary dip in 2020, the fact remains that combined ratios will need to climb stratospherically upward before we face a reprise of the crisis conditions last seen in the 1980s, although even incremental growth has ramifications.

Nevertheless, the social inflation fires could be either fanned or extinguished, at least partially, by a number of cultural factors:

- Individual perceptions of risk tolerance: During this COVID-19 pandemic, each of us are making personal decisions as to how much – or how little – risk we are willing to tolerate. Do we return to the office? How comfortable are we eating in restaurants? To what degree is out-of-state travel (and what by means) acceptable? How an individual answers these questions will provide insight as to attitudes toward personal responsibility, risk tolerance, and expectations of a corporation or business defending itself in a tort liability lawsuit.
- Intergenerational wealth disparity/ongoing economic inequality: Much has been written about increased wealth concentration, the decline of the traditional “middle class” and the growing number of dislocated workers subsisting on “gig” or “part-time” jobs. Similarly, multiple data points suggest that Baby Boomers hold a disproportionately large percentage of the country’s wealth. Will these economic trends continue to fuel the distrust and resentment that is thought to partially explain the spate of “nuclear” verdicts and out-sized settlements? Or will the promise of an estimated \$3 trillion wealth transfer from the baby boom generation and hoped-for economic improvement post COVID bear out and level the economic disparity, and could it restore the societal faith in institutions that once existed?
- Impact of social media: Twitter, Facebook and LinkedIn are only a few of the tech companies that have enabled people to connect in ways unimaginable a generation ago. However, to varying degrees these platforms have also become fruitful ground for the spread of misinformation – and in some instances outright disinformation campaigns. One commentator suggests conditions are ripe for groups to display what social scientists refer to as “ingrouping,” that is, a belief that social identity is a source of strength and superiority and that other groups are to be blamed for their problems.⁶ Could this spread of misinformation be influencing juror attitudes and perceptions of certain groups? Do we now have a growing number of Americans living in an alternate reality that does not comport with reliable and credible factual information? Or is the effect too slight to be much of a factor at all?

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- Insurance industry response: As with other industries, insurance will continue to experience significant transition. Over time, the industry's 2.8 million employees have moved from being managed by Baby Boomers and Gen Xers to Millennials. Filling entry-level underwriting positions are recent Gen Z graduates, with many coming from the growing number of strong risk management and insurance programs that have arisen in the last two decades. At one level, this transition will entail loss of decades of practical experience. At another, it will represent the career dawn of a workforce more educated and more culturally diverse than its predecessors. Presumably, with their greater educational and cultural diversity will come creative and "out of the box" solutions to vexing industry problems, such as social inflation. As mentioned elsewhere in this series, "big data," AI and predictive modeling hold the key.

CONCLUSION

Over the past several years social inflation has caused much discussion – and the initiation of exhaustive searches for its root causes and potential solutions. This series has endeavored to contribute to that effort, with perspectives offered from a variety of disciplines. While the journey will continue for many more months and possibly years, with the ultimate solution far from known, the insurance industry has shown itself capable of meeting great challenges, such as the one social inflation represents. How quickly and effectively the industry meets that challenge rests on the shoulders of the dedicated professionals who have made insurance their chosen career.

ENDNOTES

1. From Assured Research report dated 04/01/2020.
2. Ibid.
3. Ibid.
4. American Tort Reform Association (ATRA) <https://www.atra.org/>
5. Insurance Journal, March 31, 2001. <https://www.insurancejournal.com/news/national/2021/03/31/607804.htm>
6. Fisher, M. “‘Belonging Is Stronger Than Facts’: The Age of Misinformation,” New York Times, May 07, 2021. <https://www.nytimes.com/2021/05/07/world/asia/misinformation-disinformation-fake-news.html>

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

3601 Vincennes Road | Indianapolis, IN 46268 | 317.875.5250
20 F Street, NW, Suite 510 | Washington, D.C. 20001 | 202.628.1558



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