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Managing social inflation and nuclear verdicts

November 16, 2023

From the impact of economic inflation to the volatility of social inflation, today's claims landscape is trickier to manage than ever. As social inflation and nuclear verdicts, an exceptionally high jury award, continue to evolve, organisations must leverage every possible resource to manage the challenges that lie ahead.

The court of public opinion

Shifting public sentiment compounds the myriad of liability risk factors businesses face today, particularly when allegations lead to litigation. The trend of social inflation, whereby jury sentiment towards the plaintiff results in much higher-than-anticipated damages awards, means that litigation outcomes and costs are increasingly difficult to predict.

To hedge this kind of uncertainty, companies are turning to proven trial and appellate counsel as well as other specialists such jury consultants and witness preparation experts to help them prepare for trial and determine how their case might play out in front of plaintiff-leaning jurors. In addition, insureds need to ensure that they can rely on the quality of their insurer's claims team and specialist risk management support, as experience and the quality of service and advice given is more important than ever if a claim is likely to go to trial.

The impact of nuclear verdicts

There has been a sizable shift in the award amounts that jurors are awarding, particularly in cases that involve bodily injury or emotional harm. When you look, for example, at California jury verdicts on employment practices liability claims, the average verdict from 2018 to 2020 was around US$1.55 million. Post-pandemic, that figure has risen to over US$2.3 million on average.[1]

The value of settlements is also increasing, as plaintiffs' counsel know that defendants are concerned about social inflation and the resultant

nuclear verdicts. This is also making them less willing to engage early in settlement discussions, holding out for much higher resolutions than have been seen previously, and which are out of line with settlements given in similar cases.

Media is compounding the issue

A lack of balance in media reporting is also compounding the issue, as runaway verdicts create eye-catching headlines. The media rarely reports when these nuclear verdicts are ultimately cut down and right-sized. It is important to note that jurors are still finding for defendants or awarding more reasonable amounts in the majority of cases being tried. These outcomes, however, garner much less media attention. Additionally, the media quickly moves on from the reporting of a large verdict and rarely comments on the amount of the ultimate outcome following post-verdict motions and appeals, which may be months or even years after the initial verdict.

Experience matters

When a claim is subject to social inflation, it is essential to develop case strategy early and to consider novel approaches to litigation. On most severe claims, organisations should seek assistance from legal counsel and claims specialists for effective and creative trial preparation from the outset and not simply “process” the claim. The defence should look for opportunities to resolve claims with liability issues, but also be prepared to aggressively and creatively defend these matters if plaintiffs’ counsel proves to be unreasonable.

An organisation may face one claim, but having an expert team on its side that has seen hundreds to thousands of similar claims and is prepared to share their knowledge and experience is invaluable. Claims specialists who are deeply embedded in their clients’ market, will know who the plaintiff’s counsel is, be familiar with the jurisdiction, and are likely to have seen similar scenarios unfold from the perspective of dozens of organisations in the same boat.

All that information and experience can be brought to bear when helping insureds make decisions about how to proceed in the face of a claim, in this time of social inflation and unpredictable outcomes.

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