NAMIC ISSUE ANALYSIS

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SOCIAL INFLATION IS COMPLICATED AND COSTLY –
A CLAIMS PERSPECTIVE

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

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Glenn is Senior Vice President and Head of North America Property/Casualty Claims. He joined Gen Re in 2020 bringing with him extensive experience in the insurance and reinsurance space. He was last at CNA where he led Complex Commercial Claims, including Environmental and Mass Tort, Construction Defect, Life Sciences and Opioid exposures. Prior to that, he was in leadership roles at The Hartford's insurance and reinsurance units. Glenn started his career with the law firm of Day Pitney and as Managing Counsel at Travelers.

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:

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Social inflation is seemingly being discussed everywhere, from news articles to conferences to quarterly earnings calls. And those working in claims are likely dealing with it in some capacity on a daily basis. But what can be done to combat it?

In simple terms social inflation is the increase in defendants'/insurers' claim costs over and above general economic inflation.[1] It is not a new phenomenon. Social inflation occurred in the 1980s, manifesting in the swarm of asbestos and environmental claims/liabilities, and again in the late 1990s/early 2000s in connection with medical malpractice developments.[2] Moreover, social inflation is not unique to the United States; it affects economies across the globe. [3]

CAUSES

Class action filings have increased, nuclear verdicts are on the rise, and large settlements are becoming more commonplace. Numerous factors are driving these trends:

- Plaintiffs' Attorneys – To give credit where credit is due, plaintiffs' counsel has become increasingly aggressive, coordinated, and savvy. Their advertising investment is up considerably, they have embraced technology and social media, and are utilizing the reptile theory quite effectively.
- Legislative Reform – Numerous states have recently enacted laws to not only extend statutes of limitations, but actually "revive" previously time-barred claims such as sexual molestation claims, for example.
- Third-Party Litigation Financing – Increased third-party litigation funding has provided significant capital to plaintiffs' firms.[4] For more detail, please refer to the previously published part two in this series – Social Inflation Is Complicated and Costly – Legal and Regulatory Changes.
- Jury Makeup – Mistrust in large corporations remains, and jurors – particularly millennials – are more than ever aware of social injustices and income inequalities. [5]

COMBATTING SOCIAL INFLATION

How do businesses/defendants and carriers combat the effects of social inflation? It is definitely not a simple challenge, but some considerations include:

- Case Evaluation/Communication – Early, candid analysis is critical. Generally speaking, claims/cases do not improve over time. Attorneys get involved, demands escalate, bad faith and time limit demand strategies are employed, etc. Internally, it is important to cultivate a "no surprises" culture. Claims professionals are the constant bearers of bad news and must be comfortable both receiving and delivering it, the earlier the better. Identify the challenging cases early and develop a strategy to proactively attack.
- "Embrace the Suck" – This is an old military expression that counsels one to lean into the suffering and get comfortable being uncomfortable. The claims world is a challenging one. Days are filled with layers of gray, difficult choices, challenging outcomes and associated risk. Outcomes won't be perfect. Juries are unpredictable, and some losses will be suffered along the way. But it's important to embrace the process, ensure certain cases are resolved early, and identify the right ones in which to invest and bring to trial.
- Talent – The insurance industry as a whole is faced with talent challenges. Unfortunately, insurance does not top the list of most desirable industries for college graduates – they just don't know what they are missing! Recruiting, training, developing, and retaining top, diverse talent must remain a priority for our industry. Outside counsel is

another critical component. It is not only imperative that potentially challenging cases are identified early, but appropriate counsel must be retained; we have to get the right cases to the right attorneys.

TECHNOLOGY TO THE RESCUE?

While still fairly limited in number countrywide, many "nuclear verdicts" – generally defined as those of $10 million and above – share a common theme: they too often come as a complete surprise to the policyholder, defense attorney, and the insurance carrier. Furthermore, any unexpected trial result carries the potential for a claim department to harvest learnings, find commonalities that may appear again, and then apply those learnings to future cases that may contain similar attributes. In the past, an astute claims department may have held a "post- mortem" on such a case, possibly captured a key point or two, and then passed that information on to the larger organization. However, such practices have historically brought mixed and inconsistent results.

It has been noted that no industry takes in more data than does insurance, but then does so little with it. Contained within each claim file is a trove of structured and unstructured data. Could analytics and predictive modeling take those data elements and then forecast a range of outcomes that could enable claim professionals to better quantify the "downside" of a catastrophic injury case, or – perhaps even more beguilingly – identify the "outlier" case with unforeseen potential to generate a nuclear award? Developers are working on such data-driven approaches, with great strides expected to be made in the coming years.

Other tools are on the horizon that may further stem the rising tide of social inflation. One such area involves employing analytics to better manage legal expense that, according to one author, consumes between three and eight percent of direct written premium.[6] The ability to better quantify law firm expertise and efficiency would bring a litany of benefits, ranging from being better able to "match" the defense attorney expertise to that of an adversary, to assessing which firms complete discovery most efficiently. Related is the possibility to better tie firm compensation to claim outcomes in a way that would move away from the traditional hourly billing model. Development in this area continues as well, with a handful of products coming to market in recent years and greater refinement expected over time.

THE FUTURE

Social Inflation has hit the defense/insurance industry like a large wave in recent years. By refining claim handling practices, recruiting top-flight talent, and jumping onto the potential benefits that artificial intelligence and predictive modeling potentially represent, claim departments can hopefully stem the social inflation tide.

Next up: In part five of this series, Gen Re's Tim Fletcher, Senior Emerging Issues Specialist, and Andrew Pauley, Government Affairs Counsel at NAMIC, will examine social inflation from an emerging issues perspective.

ENDNOTES

[1] "Social Inflation: Navigating the evolving claims environment," Geneva Association Report, https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/social_inflation_web_171220.pdf.

[2] "Social Inflation: Navigating the evolving claims environment," Geneva Association Report, https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/social_inflation_web_171220.pdf.

[3] "Social Inflation: Navigating the evolving claims environment," Geneva Association Report, https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/social_inflation_web_171220.pdf.

[4] https://www.advocatecapital.com/about.html

[5] "Social Inflation: Navigating the evolving claims environment," Geneva Association Report, https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/social_inflation_web_171220.pdf.

[6] https://www.carriermanagement.com/features/2021/04/08/219115.htm

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