Navigating the Evolving Liability Insurance Landscape

Beyond the Text is a Conning podcast that features insights from its Insurance Research Department. Hosted by Alyssa Gittleman, a Director and Head of Consulting and Customer Operations for Conning Insurance Research. Alyssa will invite analysts and guests to provide insights on recent publications and emerging industry trends.

Beyond the Text is intended to provide just that: going beyond Conning's typical research. Conning's analysts have deep industry knowledge and come from various backgrounds providing a greater level of context on industry trends for insurance professionals.

[Opening Music]

[Alyssa Gittleman (AG)]

Hello, and welcome to Beyond the Text, a Conning podcast featuring insights from our Insurance Research department.

I'm your host, Alyssa Gittleman, a director and head of marketing & communications here at Conning.

Join me as I welcome analysts and guests to provide insights on recent publications and emerging industry trends.

Today I am here with Julia Brinson, a Vice President at Conning and the author of our recently released Liability report titled, "License to Litigate - Emerging Trends in the Liability Insurance Industry." Thank you so much, Julia, for joining me here today.

[Julia Brinson (JB)] (00:43)

Thank you for having me.

[AG]

Before I go any further, I do want to mention that this report is available for purchase on our website Conning.com. So, let's get into this Julia.

The liability insurance landscape feels more volatile than ever. We're seeing nuclear verdicts, increased claim severity, and a complex litigation environment. What's the most pressing shift reshaping the market right now?

[JJB] (1:12)

The most notable shift we're observing is the combined impact of social inflation, economic inflation, and an evolving landscape—reshaping liability exposures.

- Social inflation has been a powerful force, driven by shifting jury attitudes, third-party litigation funding, and aggressive plaintiff-attorney psychological tactics.
- These factors are fueling an increase in high-dollar verdicts, particularly in product liability, environmental claims, and class actions.
- Economic inflation amplifies the crisis by driving up medical costs, legal expenses, and settlement values.
- The legal landscape is evolving, with expanded statutes of limitations, ESG-related lawsuits, and the broadening of public nuisance claims leading to new liability exposures that insurers hadn't anticipated.

[AG] (2:06)

Thank you. Now, jury awards in liability cases seem to be reaching unprecedented levels, with nuclear verdicts becoming more frequent and exceeding hundreds of millions of dollars. Before we dive into why that may be happening, could you share with us how big these nuclear verdicts have gotten?

[JJB] (2:25)

The surge in nuclear verdicts is staggering.

According to a 2024 Marathon Strategies report on nuclear verdicts, corporate defendants were liable for over $14.5 billion in verdicts in 2023 alone.

Also in 2023, 89 lawsuits against a corporate defendant resulted in nuclear verdict awards – which was a 15-year high.

The median nuclear verdict skyrocketed to $44 million, doubling from $21 million in 2020.

Nuclear verdicts have drastically increased in both size and number since 2009.

[AG] (3:07)

Wow, that really is staggering how much that has really increased. Do you know why this is happening? Could you go into some of the key factors that you think are fueling this sharp rise in both the size and frequency of these extreme verdicts?

[JJB] (3:23)

There were several factors [that] have influenced this growth:

- Public skepticism toward large corporations has reached an all-time high.
- Younger jurors see punitive damages as a method to hold corporations accountable—or even redistribute wealth.
- This sentiment is intensified by social media narratives, corporate scandals, and consumer advocacy movements that paint companies as reckless or indifferent to public safety.
- Plaintiff attorneys have perfected high-impact courtroom strategies, using psychological tactics like reptile theory, which frames corporate defendants as threats to public safety.
- By utilizing the reptile theory by appealing to jurors' instincts for self-preservation, they trigger emotional decision-making that leads to higher damage awards.
- Meanwhile, anchoring arguments introduce inflated damage figures early in trial, conditioning juries to view excessive compensation as reasonable.
- Another factor is third-party litigation funding, where hedge funds and private investors finance high-stakes lawsuits, transforming legal disputes into profit-driven ventures.
- By injecting capital, these investors enable plaintiffs to reject settlements and push for massive verdicts, shifting the focus from justice and fair compensation to maximizing financial returns.
- This trend is intensifying litigation, prolonging cases, and driving up damage awards.

[AG] (5:03)

Thank you, that is really interesting. Thank you for sharing that. Now, maybe shifting gears a little bit, ESG was once primarily a corporate branding issue, but now it's becoming a major liability exposure for directors and officers. What would you say are those ESG pressures that are reshaping the D&O insurance market?

[JJB] (5:24)

Well, ESG has rapidly changed from a voluntary corporate initiative into a high-stakes liability exposure, putting directors and officers under intensified legal, regulatory, and investor scrutiny.

Companies that fail to align with rapidly changing ESG standards, don't disclose climate-related risks accurately, or fail to demonstrate responsible governance, will face a wave of lawsuits and regulatory actions.

DEI initiatives are now a legal battleground. Companies face lawsuits, allegations of reverse discrimination, hiring biases, and the failure to meet public DEI commitments, which is creating new exposures for corporate leadership.

Investors are holding directors accountable for corporate governance missteps, inadequate oversight, and ESG-related risk mismanagement. The rise of derivative action lawsuits means board members must demonstrate proactive governance or risk personal liability.

[AG] (6:32)

Thank you and I wanted to touch on social media. That's something that's everywhere. People are tied to it. People are sharing their life stories on social media so it really has reshaped the public perception and legal exposure. Could you share exactly how it impacts liability claims?

[JJB] (6:53)

Social media has transformed the legal and liability landscape, creating new risks for corporations, insurers, and even individual executives.

What once took years to unfold in court can now be unraveled in mere hours through viral content, public backlash, and digital activism.

The power of online narratives has changed how liability is assessed and litigated. Plaintiff attorneys have mastered the art of shaping public narratives long before a case reaches trial. Viral posts, explosive videos, and trending movements can frame corporations as villains, creating bias among potential jurors. By the time a case is heard in court, the defendant has already been convicted in the court of public opinion. A single negative tweet, leaked internal email, or investigative report can set off a chain of reactions—leading to class-action lawsuits, SEC investigations, shareholder litigation, and consumer boycotts.

- Courts are now debating whether platforms like Facebook, TikTok, and Snapchat can be held liable for 'defective' algorithm design.
- These emerging cases argue that addictive platform mechanics pose risks similar to product defects, creating a new frontier for liability cases that could redefine how tech companies are held accountable.

[AG] (8:19)

Thank you. Given the challenges of social inflation, evolving legal exposures, and regulatory pressures, how should insurers position themselves for success?

[JJB] (8:30)

I think adaptability and innovation are going to be critical.

Insurers must rethink traditional risk models as legal exposures evolve, social inflation accelerates, and regulatory pressures mount.

The path forward requires a combination of data-driven underwriting, legal reform, and strategic industry collaboration.

Ballooning payouts, rapid policy exhaustion, and outdated pricing models are making it harder for insurers to maintain profitability.

Without comprehensive tort reform, strategic claims management, and recalibrated underwriting approaches, nuclear verdicts will continue to reshape both the legal and insurance industries, driving costs higher for businesses and policyholders alike.

To successfully navigate these challenges, I think insurers must:

1. Leverage Advanced Analytics – AI-driven underwriting and predictive modeling will be critical in identifying litigation hotspots, refining pricing strategies, and staying ahead of emerging risks.
2. Enhance Defense Strategies – Insurers need to invest in early settlement evaluations, jury research, and aggressive counter-litigation tactics to push back against excessive verdicts and mitigate losses.
3. Advocate for Legal Reform – The industry must collaborate with trade groups, lawmakers, and regulatory bodies to drive tort reform efforts that address the root causes of social inflation and runaway litigation.

Success in this evolving landscape will depend on proactive risk management, legal foresight, and a commitment to innovation.

I think insurers that embrace these strategies will be better positioned to manage volatility and drive sustainable growth.

[AG] (10:21)

Thank you, thank you so much for sharing that and unfortunately that's all the time we have today. Thank you all for joining this episode of Beyond the Text. If you are interested in learning more about what you heard today, you can purchase our reports at Conning.com or you can always send questions to insuranceresearch@conning.com. We hope you will subscribe to this podcast and join us for our next episode as we stay up to date on industry trends.

Thank you.

About Conning

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