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SOCIAL INFLATION'S EFFECT ON JURY VERDICTS, PLAINTIFF'S BAR'S EFFORTS AND STRATEGIES FOR COMBATTING IT, AND COURT REFORM

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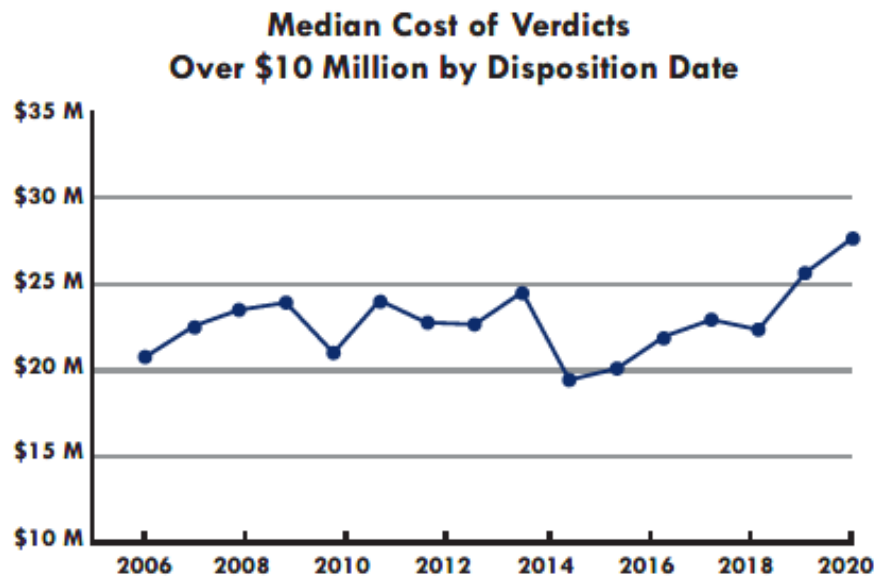
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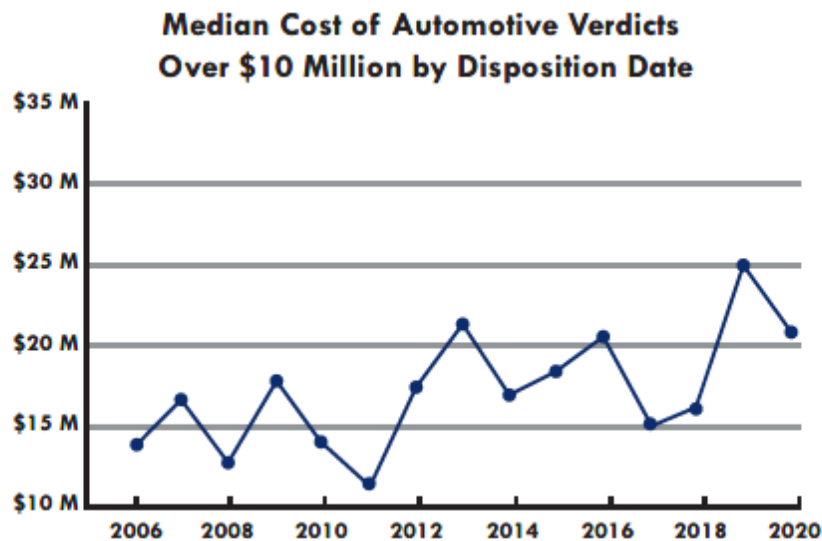
1. Social Inflation – What is it?
 - a. A term used to describe increased loss costs stemming from claims far more severe than what could be reasonably anticipated under the usual scope of economic inflation and claims trends.
 - b. When insurance coverage becomes more expensive because of external and evolving changes in the market.
 - c. It is thought to be the result of litigation funding, an erosion of tort reform, negative public sentiments toward large businesses and corporations, and jury desensitization to large awards.
2. Social Inflation – What causes it?
 - a. Can be traced back to the 2008 financial crisis and centers on litigation.
 - b. There are three major drivers of social inflation in the past decade: (1) distrust of big business; (2) increased litigation; and (3) massive verdicts.
 - c. Distrust of big business
 - i. From policy to public sentiment, society's general disdain for large corporations fuels more than social media rants. Its impacts can be seen everywhere from jury verdicts to rollbacks of tort reforms.
 - ii. When jurors blame problems in the economy and income inequality on big businesses, they tend to side against companies and award larger claims to plaintiffs.
 1. Large-scale data breaches, highly publicized mergers, and political movements all contribute to anti-corporate sentiment.
 - iii. Many states enacted tort reforms in past decades to reduce frivolous litigation and cap settlements – but these reforms are going away.
 1. The result is a climate that makes it easier to sue companies and win large settlements, thereby driving up the costs of claims and coverage.
 - d. Increased litigation
 - i. Another impactful trend is litigation funding.
 1. In the past, high attorney fees deterred plaintiffs from pursuing trials.
 2. Today, third-parties can recover the costs of litigation in exchange for receiving a portion of the settlement.
 3. Litigation funding leads to more lawsuits that advance further and last longer.
 - e. Massive verdicts
 - i. All of this adds up to the normalization of huge financial awards by juries.
 - ii. As juries decide to hold businesses accountable and cultural sentiment assumes big corporations can afford anything, multimillion—or even multibillion—dollar verdicts have become usual and expected.

- f. Corporate disdain
 - g. Corporations value profits over people and the courtroom is a “tool” for people to stand up to corporations.
 - h. The “Great Resignation” is an example that corporations prefer profits over paying their employees a higher wage.
3. Impacts of Social Inflation¹
- a. From 2015 to 2020, the median cost of a jury award over \$10 million increased by 35%, from \$20 million to \$27 million.
 - b. A jury award of more than \$10 million is considered a “nuclear verdict” within the insurance industry.
 - c. The median cost of awards over \$10 million remained in the low- to mid- \$20 million range from 2005-18, before rising in 2019-2020.



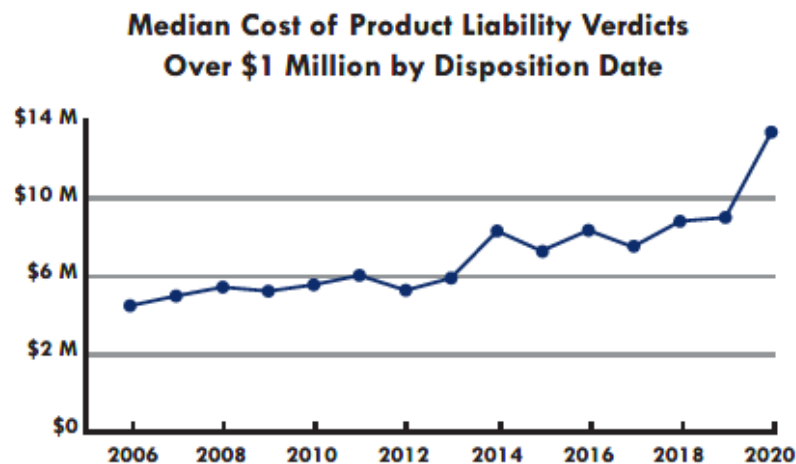
- d. Commercial auto trends
 - i. Jury verdicts for commercial auto losses over \$10 million showed a gradual increase from 2010 to 2013 — with a low of \$12 million and a high of \$22 million — before rising dramatically in 2019.
 - ii. Nuclear verdicts are of primary concern for transportation companies and a factor in insurance rates.

¹ See “In the Know: Social Inflation and Increasing Cost of Large Jury Awards” produced by VGM Insurance Services.



e. Product liability trends

- i. Product liability verdicts have also been increasing.
- ii. The median cost of product liability verdicts over \$1 million rose steadily from 2006 to 2019, with a sharp jump in severity in 2020 to pass the nuclear verdict threshold.



4. COVID-19

- a. What impact does COVID-19 have on social inflation?
 - i. Some experts believe negative sentiments expressed toward insurers over pandemic-related coverage could lead to increasingly severe verdicts.
 - ii. Others believe the job opportunities presented by large corporations will lessen the negative sentiments expressed toward them by juries in the aftermath of a COVID-19 related recession.

5. Recent Verdicts in Arkansas and Texas

- a. Arkansas
 - i. St. Francis County 75 million-dollar verdict.

1. Facts: tractor-trailer was hauling Formic Acid and collided with a pickup truck, causing the tractor-trailer to overturn and catch fire. First responders arrived on the scene and called the freight company and ask if there were any hazardous materials on board, and were told "no". After spending five hours to put out the fire, they received an email from the freight company informing that there was hazardous material on board. Plaintiffs unknowingly inhaled toxic fumes from the acid burning, and suffered permanent lung damage as a result.
 2. Venue: St. Francis County.
 3. Plaintiffs: State troopers, Sherriff's department, fire fighters, tow truck employees.
 4. A few of the appeals pending:
 - a. Order denying Motion to exclude Plaintiff's expert testimony.
 - b. Order denying bifurcated trial.
 - c. Denying issue of "professional rescuer's doctrine."
 - d. Denying directed verdict on toxic tort causation.
- b. Texas
- i. Dram Shop, 301 billion-dollar verdict
 1. The bar was accused of overserving a customer who ended up driving intoxicated, running a red light, and killing 2 people in a motor vehicle accident.
 2. The Plaintiff's attorneys admitted they did not expect to see a single dollar.
 3. The bar is no longer open and did not have insurance.
 4. From the pleadings it appears that the bar's attorney withdrew, a Motion for Directed Verdict was entered, and there was only a jury trial on damages with no defense.
 - a. The news coverage of this verdict desensitizes future jurors to nuclear verdicts.
6. Reform Caps on Judgments
- a. Economic vs. Non-economic damages
 - i. Economic damages are those that you can quantify (medical bills, lost wages, lost earning capacity, actual expenses incurred).
 - ii. Non-economic damages: pain and suffering, mental anguish, scars and disfigurement, loss of life damages.
 - b. Tort Reform in the States
 - i. Thirty-five states have tort reform and have placed a cap on noneconomic damages. These caps range from \$250,000 to \$2,350,000, with the median cap of \$465,900. Only 8 states have placed a cap on total economic damages. These caps range from \$500,000 to \$2,350,000, with the median cap of \$1,050,000.
 - c. The Texas Model
 - i. Texas-Medical Malpractice and Tort Reform Act of 2003
 1. This tort reform capped the damages victims of medical malpractice can

receive, including a \$250,000 cap on noneconomic damages such as pain and suffering. However, the reform does not restrict economic damages, such as hospital bills and lost wages.

2. Doctors nationwide relocated to Texas after 2004. The number of medical licenses jumped 30%.
 3. According to data from the Texas Department of Insurance, medical malpractice claims fell by nearly two-thirds between 2003 and 2011, and the average payout of \$199,000 represents a 22% decline over the same time period.
 4. There exists considerable evidence that medical malpractice reform measures reduce medical malpractice awards and also the losses incurred by medical malpractice insurance companies.
7. Defending Against Social Inflation
- a. Litigation strategies to defend against a socially-inflated jury verdicts starts years before the jury is selected.
 - i. Expert Selection
 - ii. Discovery Responses, Discovery Requests, Discovery Motions
 - iii. Deposition Preparation
 - iv. Visual Aids and Animations
 - v. Trial Strategy (admitting vs. contesting liability; neutralizing pain and suffering; anchoring verdict amount in closing arguments)
 - b. Counter Corporate Mistrust
 - i. Corporations often enter a jury trial at a significant disadvantage because of growing negative sentiment about large corporations. According to a recent survey, less than half of people trust large companies, and another survey found that more than 30 percent of jurors have negative views of corporations.²
 - ii. Humanize the Company
 1. Highlight:
 - a. How does the company benefit the community
 - b. How does it help employees
 - c. Charitable causes

² See <https://www.axios.com/mistrust-us-business-2020-grows-fae6474c-8406-4ae2-999f-9279aa849703.html>