

Social inflation: hard to measure, important to understand

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Social inflation drivers

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“Social inflation” is an important issue to understand, as it has a direct effect on claims-related losses and insurance costs, especially for businesses. The term refers to rising litigation costs and their impact on insurers’ claim payouts, loss ratios and, ultimately, how much policyholders pay for coverage.

Social inflation particularly affects businesses perceived as having “deep pockets,” so the insurance lines most affected are commercial auto, professional liability, product liability, and directors and officers liability. There is [some evidence](#) that private passenger automobile insurance also is beginning to be affected.

Reliably quantifying social inflation for rating and reserving purposes is hard because it is just one of several factors pressuring pricing, making it challenging to tease out its actual influence from the others. The most meaningful way to think about social inflation and its components is to compare their impact on claims losses over time with growth in an inflation measure like the

Consumer Price Index (CPI).

Social inflation drivers

It is difficult to draw a straight line from the assorted factors to which social inflation is attributed, but reporting suggests three major categories of causes.

“Nuclear” verdicts

From 2014 to 2018, U.S. plaintiff awards have *almost doubled* in total dollar amounts, with a few *exceeding \$1 billion*. Plaintiff awards in the commercial trucking industry have increased dramatically in number and size.

The American Transportation Research Institute (ATRI), looked at trucking litigation data on 600 cases between in 2006 and 2019. In the first five years, it found 26 cases in which the awards exceeded \$1 million; in the last five years, there were nearly 300.

Lines most affected:

- Commercial auto liability
- Product liability
- Medical malpractice

Factors thought to contribute:

- Sympathetic jurors, distrust of corporations;
- Plaintiffs’ attorney use of emotion-driven “**reptile brain**” tactics;
- Attorney advertising and public desensitization to large numbers, leading to a “jackpot mentality” among prospective plaintiffs.

Class actions and litigation funding

Class actions

A 2020 **survey** found *class action defense accounted for 11.6 percent of U.S. litigation spending*. A 2019 report by Milliman found a “staggering” rise in the size of *securities class action settlements*, to \$2.4 billion in 2018 from \$1.4 billion in 2017. Virtually all proposed mergers and acquisitions involving public companies now trigger lawsuits alleging false and deceptive disclosures to shareholders.

Litigation funding

Litigation funders assume all or part of litigation costs for an agreed-upon percentage of any settlement or judgment. This can allow plaintiffs to employ experts, investigators, and witnesses to develop effective strategies – options once only available to corporate defendants.

1,300+ COVID-19-related employment complaints filed in federal and state courts in 2020.

67 of those were class actions.

Source: [Jackson Lewis COVID-19 Employment LitWatch](#)

In response to ethics concerns the American Bar Association’s policymaking arm in 2020 approved **best practices** for firms participating in these deals.

Tort reform rollbacks

In the 1980s, liability claims pushed the U.S. insurance industry to the brink of collapse. Coverage costs rose dramatically across all sectors. Tort reforms were enacted across the country, and loss ratios generally declined.

Tort reform rollbacks are often cited as contributing to social inflation, but evidence of the connection is scant.

A notable exception involves statutory limits on non-economic damages, which have been effective in controlling rising liability claim costs. The supreme courts of eight states have overturned such limits enacted by their legislatures.

While causes are hard to determine with rigor, there does seem to be a correlation in the affected lines between loss ratios rising at rates general inflation alone cannot account for and growth in the number of lawsuits, the size of awards, and practices like litigation funding, attorney advertising, and reptile-brain tactics.

Social inflation on the Triple-I blog

[What is social inflation? What can insurers do about it?](#) (January 25, 2021)

[Litigation funding rises as common-law bans are eroded by courts](#) (December 29, 2020)

[Lawyers' group approves best practices to guide litigation funding](#) (August 19, 2020)

[Social inflation and COVID-19](#) (July 6, 2020)

[IRC study: social inflation is real, and it hurts consumers, businesses](#) (June 2, 2020)

[Florida dropped from 2020 "judicial hellholes" list](#) (January 14, 2020)

[Florida's AOB crisis: a social-inflation microcosm](#) (November 8, 2019)

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