

2022 **WEBINAR** SERIES

Skyrocketing Liability Claims:

Casualty Market Impact

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Historical Perspective





“The situation is quite simple. Insurers have significantly underpriced casualty business for the past 10 years.”

-Stephen Catlin

“The industry was slow to recognize this change in the environment. A delay in recognition tends to result in a more dramatic snap back to reality, which is what we are seeing today.”

-Kevin Williams

Recent Large Verdicts



\$2 Billion



\$4.69 Billion



\$157 Million



\$800 Million

Nuclear Verdicts in the Public Sector



Social Inflation is a uniquely American phenomenon because the United States is the only country in the world that routinely uses jury trials for civil cases. Jurors have unconscious biases derived from the culmination of their life experiences.



Loss Year	Description	Total Paid
2018	Sexual Abuse (Class Action)	\$500,000,000
2017	Sexual Abuse (Class Action)	\$215,000,000
2015	Methane Gas Leak	\$120,000,000
2015	Bus Shelter Collapse (Single Plaintiff)	\$115,000,000
2014	Child Abuse/Foster Care	\$113,400,000
2011	Police Shooting/Wrongful Death	\$97,000,000
2014	Dangerous Condition/Landslide	\$71,500,000
2016	Vehicle Accident/Fire Ambulance	\$65,750,000
2016	Wrongful Death	\$60,000,000
2015	Strip Search (Class Action)	\$53,000,000
2012	Dangerous Condition/Bridge Fire	\$50,000,000
2017	Vehicle Accident/Motorcycle vs Auto	\$46,000,000
2015	Vehicle Accident/Sherriff Vehicle	\$42,000,000
2011	Wrongful Conviction	\$40,000,000
2014	Dangerous Condition/Vehicle Accident	\$32,500,000
2015	Sexual Abuse	\$31,000,000
2016	Dangerous Condition/Vehicle Accident	\$30,000,000

Public Sector Exposures

- Law Enforcement
- Emergency Services
- Road Design
- Transportation Services
- Child Protective Services
- Health Care
- Prisons
- Construction
- Higher Education
- Sports Programs
- Housing
- Large Events

Social Inflation – What's Causing It

Why are claims values going up:

1. Simple Inflation
2. Economic Disparity
3. Juror Demographic Composition
4. Reptile Theory
5. Digital Impact
6. The Ferguson Effect
7. Litigation Funding
8. Defense Bar Disconnect

Reason #1 Simple Inflation

- \$1M certainly isn't what it used to be
- 1962 Cost of Living
 - Dow Jones Avg. - 724
 - Avg. Cost of a New House - \$12,500
 - Avg. Annual Income - \$5,556
 - Avg. Monthly Rent - \$110/Month
 - Avg. Cost of a New Car - \$3,125
 - Tuition to Harvard - \$1,520/year
 - Eggs – 32 Cents per Dozen
 - Gas – 28 cents per gallon
- Life care plans, litigation costs, expert testimony

Reason # 2 Economic Disparity

Wealth Distribution

1989

The top **10%** of Americans owned the majority of U.S. wealth



The next **40%** owned less than a third



The bottom **50%** owned a sliver



2016

The top **10%** of Americans owned more of total U.S. wealth



The next **40%** owned less



The bottom **50%** saw its sliver of wealth shrink



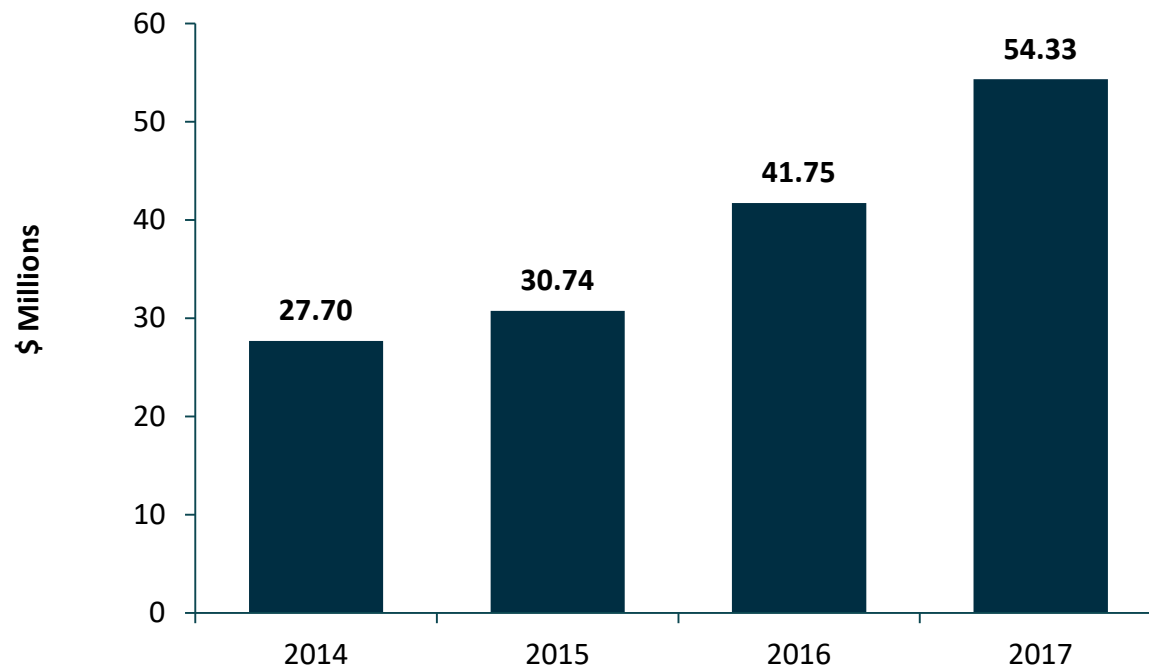
Also, **about 1 in 10** families in 2016 had negative net worth

Sources: Federal Reserve Board's Survey of Consumer Finances and Federal Reserve Bank of St. Louis

Social Inflation



Median, 50 Largest Jury Verdicts



Sources: Swiss Re Economic Insights, Burford Capital.

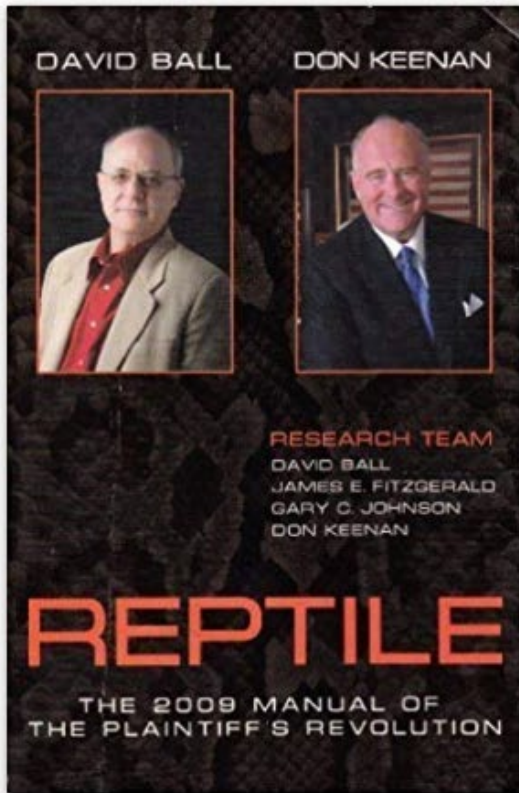
Reason #3 Millennial Impact

- Looking for someone to blame
 - 79% favor plaintiff from the outset
 - 45% would decide based on fairness
 - Wants to reward underdogs and punish deep pockets
 - Would give largest awards to single parent or baby plaintiffs
- Jury instructions...what jury instructions?
 - Will ignore law/judges instruction
 - 31% would do internet research even if judge forbids it
- 85 Million+ Millennials!

Reason #4 Reptile Theory

- Plaintiff counsel strategy
- Establish safety rules for society
- Focuses on damages
- Punishment and deterrence





Reptile: The 2009 Manual of the Plaintiff's Revolution

by [David Ball](#) (Author), [Don Keenan](#) (Author)

★★★★☆ 10 ratings

[See all 3 formats and editions](#)

Paperback
from **\$912.89**

5 Used from \$912.89

2 Collectible from \$1,003.99

Learn how to make tort reform's impact on juries insignificant by using the instincts of safety and self-preservation. This book is highly recommended because the methods found inside have made it a must read for every trial lawyer.

[Report incorrect product information.](#)

Reason #5 Digital Impact

- Causing immediate public awareness
- Public opinion formed in in 140 characters or less
- 24-hour media cycle
- Desensitization to value of money

Reason #6 The Ferguson Effect

- Distrust of police actions
- Assumption of blame rather than assumption of innocence
- “Scumbag Defense” and “Suicide by Cop” defenses doesn’t work any more
- Dash cams and body worn cams
- Recent settlement amounts
- Political Pressure
- Qualified immunity under scrutiny

Reason #7 Litigation Funding

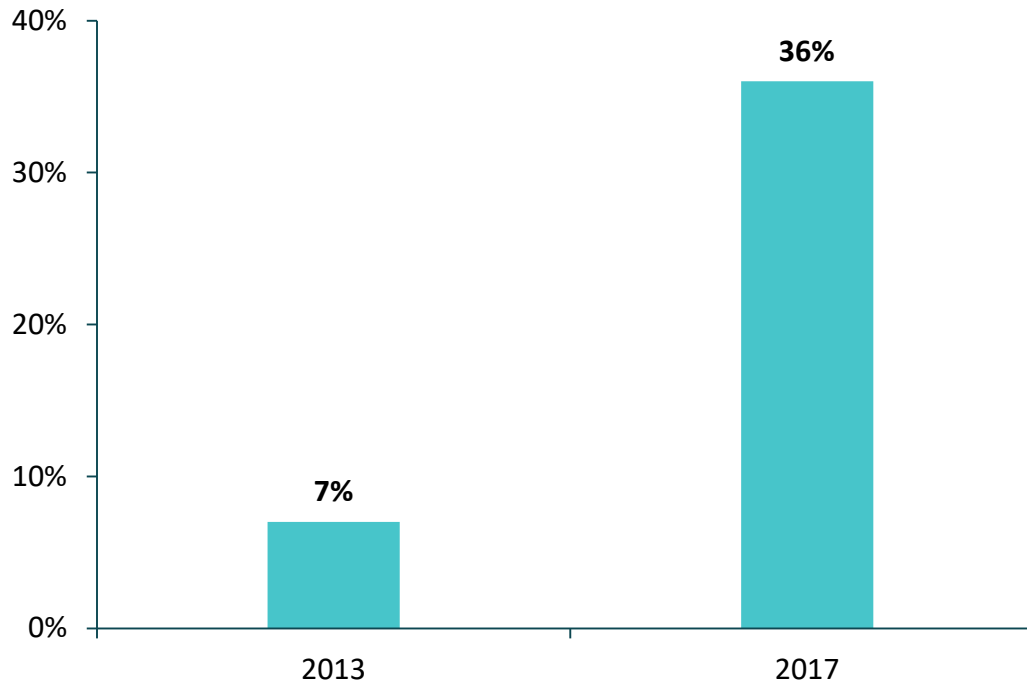
- Not a new phenomenon
- Litigation funding firms select deals based on
 - Possible settlement amounts
 - Investment outlay
 - Probability of success
 - Expected duration of the case
- 30% return on investment

The Changing Legal Environment



Percent of US Law Firms Using Litigation Financing
Litigation is a financeable asset.
– 68% of US Law Firms

Litigation Financing



Reason #8 Defense Bar Disconnect

- Failure to attack the “Reptile Theory”
- Not resonating with millennial jurors
- Can’t ignore litigation funding
- Damages drive awards – unwillingness to admit guilt
- Baby boomers retire

Impact on Liability Insurance

- Universe of carriers is shrinking
- Reduced limits and sub-limits
- Pressure on terms and conditions
- Remaining markets picking up the slack, but...
 - Less supply + increased demand = higher rates

Sample Market Capacity Reductions



2015 (\$ Millions): **25**
2020 (\$ Millions): **5**



2015 (\$ Millions): **10**
2020 (\$ Millions): **5**



2015 (\$ Millions): **10**
2020 (\$ Millions): **5**



2015 (\$ Millions): **10**
2020 (\$ Millions): **2**



2015 (\$ Millions): **5**
2020 (\$ Millions): **5**



2015 (\$ Millions): **10**
2020 (\$ Millions): **5**



2015 (\$ Millions): **10**
2020 (\$ Millions): **10**



2015 (\$ Millions): **10**
2020 (\$ Millions): **2**



2015 (\$ Millions): **5**
2020 (\$ Millions): **5**



2015 (\$ Millions): **5**
2020 (\$ Millions): **3**



2015 (\$ Millions): **10**
2020 (\$ Millions): **5**



2015 (\$ Millions): **10**
2020 (\$ Millions): **5**



2015 (\$ Millions): **10**
2020 (\$ Millions): **5**



2015 (\$ Millions): **20**
2020 (\$ Millions): **10**



2015 (\$ Millions): **10**
2020 (\$ Millions): **5**



2015 (\$ Millions): **10**
2020 (\$ Millions): **5**

2015 (\$ Millions) Total

170

2020 (\$ Millions) Total

83

What Can We Do?



Get Creative

- Take a look at your program structure
 - Consider higher retentions
 - Is an aggregate/corridor deductible right for you?
 - Will re-layering your excess placement help?
 - Is taking on a quota-share layer a possibility?

Get Creative

- Strengthen relationships throughout the year
 - Present “State of the State” to carrier/underwriting partners
 - Coordinate Underwriter Forums with key insurers – both pre-renewal and midterm
 - Discuss claims strategies with TPAs/Claims Advocacy teams
 - Host Quarterly Claims Calls for severe claim updates – keep the dialogue open!

Get Creative

- Prepare management and departments/agencies
 - Messaging very important
 - Provide them with talking points
 - Focus on the problem...not just the symptoms

Fight the Good Fight

- Pay attention to jury composition
- Value of a mock trial
- Using resources...think outside the box
- Look for early resolution
- Expert retention
- "Skin the reptile"

Dare I Say Tort Reform?

- This is the real answer...but how do we do it?
- DATA, DATA, DATA
 - Public entities have data
 - We need to get on the same page
 - Need consolidated, consistent and actionable data to present to the legislature
- Projects are in the works

**I skate to where
the puck is going to be,
not where it has been.**

- Wayne Gretzky



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**WHAT HAS WORKED
FOR YOU??????**