



Risk management takes aim at soaring jury verdicts

Customer and broker webinar summary
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While jury awards in the U.S. continue their stratospheric climb, insurers and their customers are finding ways to mitigate the risk of so-called “nuclear verdicts” and structure insurance that provides adequate coverage for a highly unpredictable liability.

The trend towards “massive jury verdicts in the United States” and associated claims costs is a big issue for companies whether they are located in the U.S. or doing business there, said **Ron Davis**, Global Head of Customer Management for Zurich Commercial Insurance and moderator of a webinar that addressed the topic. “The question is, what is it that can be done...and what are some of the actions and solutions that can mitigate some of these risks?”



Managing a difficult risk

As headline-grabbing awards that sometimes reach hundreds of millions of dollars become increasingly common, insurers are helping customers lessen the chances that they will have such a claim, or, if they do find themselves in a courtroom, have a strategy for avoiding an unreasonably large verdict.

Mitigating the potential for a lottery-sized verdict calls for an understanding of what leads to those awards and implementing best-in-class safety approaches, the webinar panelists said.

“We can garner insights from claims and litigation trends and understand the drivers that are specific to your industry or various industries in which you might operate,” said **Scott Toland**, Global Head of Liability, Commercial Insurance at Zurich. “Do you have the correct warning labels? Do you have clear and distinct defensible positions as relates to your products and/or public liability?”

Allen Kirsh, SVP, Head of Claims Judicial and Legislative Affairs at Zurich North America, said businesses should make sure that safety plans are implemented appropriately and documented thoroughly so that a defense attorney can demonstrate the steps taken to keep the operation safe and prove that the company takes safety seriously.

Toland urged risk managers to consider how they can “not leave any doubt that you are best in class as a corporate citizen” and have in place safeguards that are “above and beyond what the law requires.”

Big verdicts spur coverage changes

Catastrophic bodily injury claims are fueling the rise of mega-verdicts, Toland said, and they are handed down across all industries. And, while the big awards traditionally came from class-action lawsuits and multi-claimant actions, they are increasingly showing up in single-claimant settlements, he said.

Kirsh pointed to noteworthy verdicts that include \$375 million awarded in a single-fatality case in Texas and a \$2 billion award in California in a case that alleged a weed-killing product caused cancer. He cautioned, though, that jury awards are often reduced before they are finalized.

Zurich is responding to the trend towards large verdicts with careful risk selection, smart capital deployment and changes in the structure of liability insurance programs.

“Risk selection is one of the most – if not the most – important consideration we have as underwriters,” Toland said. “We need to work to have a deep understanding of our customers, what their business is, what they drive to do. That’s really what we strive to do as underwriters on a day-in, day-out basis.”

Risk managers looking for liability capacity in the U.S. will find the amount of coverage has shrunk dramatically in recent years, according to Toland. While insurance buyers might have found capacity of up to \$100 million or more with a single carrier over a decade ago, a more likely figure today with any one carrier is more in the range of \$25 million, he said. First layers of umbrella coverage have likewise shrunk, he said, with Zurich offering \$10 million to \$15 million in that layer.

While some individual insurers in Europe and the Middle East are structuring coverage in towers that sometimes offer \$100 million in one tranche, that amount of coverage isn’t available in the U.S., Toland said.

The risk of mega-verdicts in much of EMEA is lower, Kirsh explained, partly because the right to a jury does not exist as it does in the U.S. He noted, however, that some plaintiffs’ attorneys based in the U.S. are opening offices in Europe and litigation funding is taking hold in some places, which may foretell changes on the way.





Nuclear verdicts boost social inflation

In the U.S. social inflation is reflected in the movement of liability loss costs above what would be expected from economic inflation, Kirsh said. That gap has amounted to 47-point difference between 2017 and the end of 2021, he added, referring to data from S&P Global Market Intelligence and the Bureau of Labor Statistics.

In an age of general corporate mistrust and one in which athletes and entertainers make hundreds of millions of dollars, lottery jackpots soar to a billion or more and social media influencers rake in millions, jurors aren't restrained by the shock value of huge awards, Kirsh said. Pair that cultural shift with the boom in plaintiffs' attorney advertising that touts the opportunity to land a jackpot award and the drivers of social inflation become clear, he noted.

"When people see this, and when they are eventually called for jury duty, in their mind they have these numbers floating around that are not unusual to award in a personal injury case," Kirsh said.

Plaintiffs' attorneys have been successful with the so-called "reptile theory" as a courtroom tactic. Using anger and fear, attorneys aim to trigger a fight-or-flight response in jurors that causes them to react by punishing defendants, Kirsh explained.

And, litigation funding by third parties provides plaintiffs with up-front funds at large interest rates, which can make plaintiffs reluctant to settle if all the money is going to their attorney and funder, he said.

Prepare your attorneys

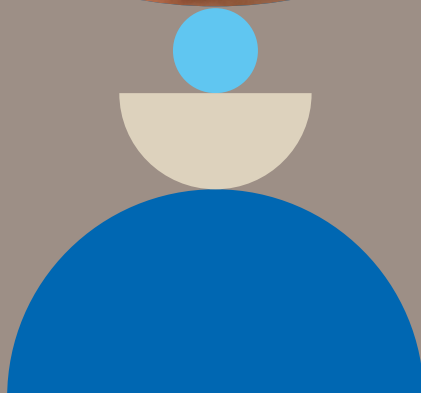
Businesses that find themselves defending a bodily injury case need to make sure their attorneys understand how to present their corporate story, Kirsh advised. "The plaintiff almost always has a compelling story of an individual who was seriously injured," he added. "So, we need to be able to tell the corporate story on our side, humanizing the corporate defendant as well, making juries understand that corporations act through individuals who are making decisions, not intentionally trying to hurt anyone, but quite the opposite."

Kirsh emphasized the importance of notifying the insurer once an occurrence happens so that an investigation can begin quickly and evidence can be preserved. "It's also really important to work with the claim professional and your defense attorney," he said.

Litigation is far more complex than it used to be, Kirsh pointed out. "Now, when we prepare somebody for a deposition where the other side's attorney gets to ask questions under oath, you have to make sure that the employee is well-prepped, that they know what questions will be asked."

"Don't take anything for granted," Kirsh said. "Even small cases that seem not a big deal can very easily blow up and get out of control if they're not paid attention to. Work closely with your defense attorney as well as your claims professional once you find yourself in a situation where there is a claim against you."

The webinar, hosted by Zurich Commercial Insurance, was the latest in a series that was started three years ago to examine timely risk management issues.





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