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R SHEET ON SOCIAL INFLATION

December 2021

BACKGROUND

Social inflation refers to the forces responsible for elevated civil litigation awards that are out of proportion to sustained economic damages. Median jury verdicts and out-of-court settlements are rising at rates far above economic [inflation](#) and there are more frequent “nuclear verdicts” (awards in excess of \$10 million). This phenomenon amounts to a “tort tax,” with crippling financial costs to defendants. These financial costs trickle down, creating higher costs of goods and services for all Americans.

CURRENT DEBATE

The strongest driver of social inflation is a highly effective plaintiff bar which applies [psychology](#) in the courtroom to manipulate juror emotions. These emotions translate into retributive justice in the form of high demands for non-economic and punitive damages.

Other drivers of social inflation include growth in attorney [advertising](#), an expanding litigation finance [market](#), anchoring and the impact of phantom damages. Anchoring is the practice of suggesting a high reward amount prior to juror deliberations to encourage a large award. Phantom damages refers to the difference between medical amounts billed versus amounts actually paid.

Insurers are often more focused on controlling legal costs than on pushing back against unjustifiably high indemnity amounts. This is in part because of the difference between plaintiff and defense compensation models. Plaintiff attorney contingency fee arrangements incentivize the employment of new and refined bold, creative, dynamic strategies that often catch the defense bar off guard. Essentially, plaintiff attorneys make more money the greater the reward, so they encourage inflated awards.

ACTION ITEMS

To counteract these issues, concerned parties—including affected businesses, municipalities and insurers adversely affected by social inflation—should work as coalition

SUMMARY

- Social inflation creates ever-higher median court judgments and settlements.
- A plaintiff bar benefiting from large awards propagates and amplifies the phenomenon.
- Left unchecked, ballooning awards send inappropriate price signals, feeding a self-perpetuating trend.
- Courts, legislatures and the defense bar need to work actively, strategically and cooperatively to create awareness of the dangers of out-of-control social inflation and introduce court and public policy measures to stem its growth.

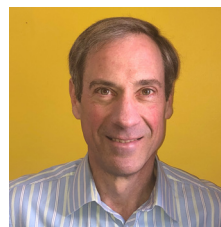
partners. This group should pursue public policy education and advocacy, pushing back against litigation finance, anchoring and phantom damages.

Defense attorneys need to work to mitigate the use of emotional courtroom appeals with objections citing violations of the Rules of [Evidence](#) and other [checks](#) on excessive non-economic damages.

Exploiting jurors to secure large verdicts generates misleading price signals that distort the civil justice system. Reasonable tort awards should reflect the magnitude of damages, not the ambitions of plaintiff attorneys profiting from the manipulation of juror emotions.

CONTACT US

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