Auto Casualty

P&C Expert Forum: Getting Ahead of Social Inflation and Nuclear Verdicts

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17 MIN READ

Tom Kerr (TK): In today's episode of Enlyte Envision podcast we invited Kevin Combes, director of U.S. casualty claims for Global Risk Consulting at Aon, to join our Michele Hibbert to discuss how social inflation, nuclear verdicts and rising claim severity are reshaping casualty risk. We'll also dig into the growing influence of healthcare costs, litigation funding, evolving plaintiff strategies and state-level regulatory changes on our industry and whether AI can help organizations identify warning signs earlier.

Kevin, let's start with you. Social inflation and nuclear verdicts continue to receive significant attention across the industry. What are you seeing in the market today and how is it affecting injured individuals?

Kevin Combes (KC): What a great question. I would say you have to start with looking at this through the lens of how the industry has looked at it over the last several years, through the lens of social inflation.

What we know is that casualty severity is undergoing structural change, with large verdicts becoming far more frequent and the upper end of that severity distribution moving much faster than historical experience.

So, the exposures are no longer confined just to a few industries, or historically difficult jurisdictions, what we used to refer to as jurisdictional hellholes. But, social inflation really reflects the changing liability theories and strategies that we see, including things like litigation, financing and evolving expectations around what a reasonable award is.

I'd say for the injured individual, the trend is not always an uncomplicated benefit, right? The greater the resources you have that may support a legitimate claim but prolonged and particularly highly financed litigation can delay resolution and can consume that injured individual's recovery ultimately.

The goal should always remain, fair, timely compensation based on actual facts and circumstances of the individual claim.

TK: Thank you for that, Kevin. And this next question is for both of you. Nuclear verdicts are the extreme outcome. But what factors are contributing more broadly to increasing claim severity and settlement values? Kevin, let's start with you on this one.

KC: Well, I would say that increasing severity and settlement values aren't driven by any single cause. It's really a confluence of several different factors, not the least of which is attorney involvement occurring much earlier in the claim life cycle. Factors like I just mentioned, third-party litigation funding, which can really materially change settlement economics and negotiation dynamics. Certainly, jurisdiction is an important nuance.

I think we have to consider things on a much more granular level now when we're talking about jurisdiction and be thinking about not only whether it's a state or federal court, but who is the judge and what does the local jury pool looks like.

Certainly, one factor that we spend a lot of time having discussions with our clients around is the fact that our clients may unintentionally strengthen their plaintiff's narrative through poor documentation, poor post-incident conduct or, a disconnect between corporate messaging and operational reality.

I'll give you an example. A trucking concern that claims in all of its literature and policies and procedures that safety is their No. 1 objective, their No. 1 priority, but fails to do regular or routine motor vehicle record checks of their drivers, right? That's where we have this differentiation between the message and the operational reality.

TK: And Michele, what are your thoughts on this?

Michele Hibbert (MH): Well, I'm going to try and stay in my regulatory/governmental affairs lane, but, when people hear about nuclear verdicts, they really focus on trial outcomes. That's sort of where their brain goes.

But for us and in reality, it's usually the end result of trends that have been building like what Kevin was saying, throughout the life of the claim. So, in the auto claims especially, we're seeing a combination of the higher medical costs, of course. And some can be attributed to inflation. Some is just normal buildup.

The greater attorney involvement, the treatment patterns that are changing, and the emerging trends that we're seeing in the medical side, increased litigation pressure. And it varies, Kevin mentioned it, venue to venue on how we see that coming in and where the regulatory is even changing. These are driving the severity upward.

Those factors influence settlement values even when the case never sees the inside of a courtroom. So, we already have a bad situation even before a judge slams down the gavel that there's a settlement that happens to be a nuclear settlement.

But I would say that there are so many different drivers of change here. And one of the most significant ones that we always talk about, of course, is the medical buildup. In auto claims, the amount and the type of treatment, it often becomes this major factor in how a claim is valued at the end of the day.

As treatment duration increases, which it often does, especially in situations where the statute of limitations is longer in a particular state, we see additional services added or more expensive interventions are being utilized. Claim damages grow substantially in some cases. And, Kevin also mentioned the documentation which letters of protection fall into.

And one area that we've talked about a great deal over the past several years, especially on the regulatory side, has been the third-party litigation funding receiving a great deal of attention because it provides the additional financial resources that allow these cases to remain in litigation longer and longer and longer and longer.

But if I actually had to summarize it in one or two sentences, I'd say that claim severity is really no longer being driven by any single factor. It's the interaction of the medical inflation, the treatment patterns, the attorney

involvement, litigation financing, the regulatory differences venue to venue and, steadily, increases in the cost of auto injury claims long before a jury ever is asked to render a verdict on these claims.

TK: And Kevin, how have these trends changed the conversations you're having with clients about their casualty programs and overall risk.

KC: Well, I'd say some of the most productive changes are conversations that we're having with our clients that focus on governance, ownership of those high-risk claims, escalation triggers throughout the kind of the C-suite, shared assessments, and a near-continuous reevaluation of all of those factors that Michele was just talking about. Like the social inflation triggers, essentially medical development in particular plaintiff counsel, reputational factors, and things like settlement posture.

Certainly, casualty exposure is increasingly an enterprise risk conversation. It's not just about an insurance renewal discussion anymore. It has to be more nuanced than that. Conversations are now more inclusive of the enterprise as a whole, including risk management claims, legal, finance operational leaders within the organization and focus more on identifying and escalating claims with an adverse verdict potential, right? Recognizing those attributes that when they line up essentially create greater risk.

So, although clients are revisiting limits and attachment points and retentions and capacity, etc., risk transfer is only one part of the response. We're also seeing these conversations include discussions about whether historical loss experience reflects reality, right?

Can we look in the rearview mirror and understand where we've been historically from a verdict perspective? But because of social inflation, can we leverage that loss experience to help us understand what's ahead of us?

And the growing consensus is no; we can't just rely on our historical observations because of that shifting kind of structural change in casualty claim severity.

TK: And Michele, we're seeing states respond to the litigation trends in different ways, from medical damages and attorney fees to bad faith reform and litigation funding. Which legislative or regulatory developments should the industry be watching more closely?

MH: Well, what we're really seeing today is that the state legislatures and the regulators are really increasingly recognizing that the legal environment is becoming a real significant driver of the claim costs.

For property and casualty, and particularly in the auto liability sector, it's important to watch not just the individual reforms, but the broader trend toward greater transparency, which is reflective of a lot of things we're doing right now, like AI, for example.

But the broader trend toward this transparency evolves into predictability and consistency in how claims are litigated and valued. Kevin mentioned before about the historical view is not necessarily what we're seeing today. And there's a lot of reasons for that. There's still sort of what we might call a mystery in some areas just based on trends. But some is related to actual reforms that are happening, like what happened in Florida and Georgia over the past couple of years.

And then the emerging trends in medical is changing. So, what we're seeing in claims today and how people are being treated, even for soft tissue injuries, is very different than the normal hot pack, electrical stimulation, and spinal manipulation we used to see. We're starting to see things like extracorporeal shockwave therapy. We're starting to see PRP injections and things that we had not seen before.

So, really, when we're thinking about areas to watch one is the changes in the statute of limitations, which I already mentioned. The length of time it takes to treat a person. The more of these types of things you start to see.

In addition, the standards that have evolved with regard to medical damages. I think one of the most important developments involves how states are treating evidence of medical damages now. Courts and the legislatures, they continue to grapple with questions like whether damage should even be based on amounts billed or the amounts paid, what does the health payer do? I mentioned letters of protection before and how should those be considered and what the impact is on the claim.

We're also looking at bad faith in a number of states in the legislature. If you're looking at the top 50 things that are in legislatures, that ranks in the top 5. Attorney, fee provisions and the bad-faith frameworks are just another major area of focus that we're seeing.

And I already mentioned the third-party litigation that's already at a federal level, of course, and trickling down into states. We saw a lot of change in that in South Carolina, in Georgia, and Louisiana in the past year.

And so, I really think from my perspective that the industry's biggest challenge is not really the high-claim costs that we're seeing. It's kind of a bit of uncertainty here in what you're going to see because history does not look like it did today. Whether we're talking about the medical damages, the litigation funding, comparative negligence, or bad faith, the common theme is predictability. And insurers need that predictability.

The more predictable the legal environment, the better position, the insurers will be for their business, and the consumers will even be able to manage what they're going through as well and maintain affordable coverage at the end of the day.

KC: Michele's raised some really interesting points, particularly around this notion of transparency, where a lot of the legislative efforts have focused around disclosure of third-party litigation funding. But even though states like Florida have undergone some significant tort reform, we're still seeing it, right? The trend hasn't really dissipated.

What we know in terms of the frequency of these nuclear verdicts and thermonuclear verdicts and what I would refer to as extinction-level verdicts where the awards are in excess of a billion dollars, right? The notion that the legislative reforms are having an effect today I mean, certainly, it's going to help. But if you look at the numbers, just in 2024, we saw 85 state court verdicts totaling $20 billion and 50 federal verdicts totaling $11 billion.

So, those 49-plus verdicts were in excess of $100 million in 2024. But in 2025, we had over 190 nuclear verdicts. So that's almost a 41% increase over 2024. More than 40 thermonuclear verdicts greater than $100 million in 2025, and 4 of those verdicts exceeded $1 billion, so those are those extinction-level verdicts again.

So, we really believe that you can't rely on historical experience at all anymore to determine what's ahead.

TK: Wow, that's amazing. I mean, just those numbers you're throwing around are just really astronomical. Kevin, are there other particular claims trends or developments that you think deserve more attention from risk managers and insurance buyers than they're receiving today?

KC: Oh, for sure. I would say that there's four or five trends that I think warrant more attention. For one, attorney involvement's happening much more quickly. We're seeing claims being tendered before the claims are even reported to the carrier or TPA.

I'd say another trend centers around jurisdictional granularity, having an understanding of what jurisdictions you're operating in. A statewide view is no longer appropriate because looking at it from that higher perspective can obscure meaningful differences between the courts, the judges and the local litigation environments.

I would say a third factor is what we refer to as defense strategy drift, where a case can begin with an appropriate plan but, as Michele's pointed out, changes in medical information and different treatment regimes, and longer treatment periods are increasing exposure.

We're also seeing stronger plaintiff narratives affecting that defense strategy drift as plaintiff counsel become more sophisticated in their ability to use and leverage data to support more compelling narratives. Those are certainly an important factor.

I've mentioned this a couple times already as well, is this kind of historical data lag issue where traditional loss experience can't keep up with where we're going. It may not reflect new plaintiff strategies. It's certainly not reflective of new causes of action and litigation financing and certainly jury perceptions and what constitutes a reasonable award anymore.

And then I'd say, lastly, and Michele mentioned this already, is the use of artificial intelligence. AI-enabled capability is amplifying capability on both sides of the fence. But it's making it essential for organizations that are more on the defensive side to use data earlier and more systematically, to help manage these potential adverse verdicts.

TK: Thank you, Kevin. Michele, do you have anything to add?

MH: Well, that was a very comprehensive response, I have to say. I can just tack a couple of regulatory tidbits on it, but when we talk to risk managers, we tell them to really pay close attention to the legislative and regulatory changes at the state level. Because the small changes made in one state that may involve medical damages, litigation funding, comparative negligence, it really affects the overall claim outcome even before the claim gets to that nuclear size.

I do want to comment on AI because that is a huge focus of the industry. And me just coming off of meeting with about 10 different regulators from 10 different states and asking them that question, "How do you feel about the use of AI in casualty and workers' comp and property and casualty?" And really getting the response that, from just meeting with 10 or so, that 15% support the use of it and 85% are on the fence … totally on the fence.

And, we think AI is something the industry should be watching carefully, obviously, not just for the use of it by insurers, but to improve what the plaintiff firms are considering the use of it. What are they leveraging it for? Are they leveraging this technology to identify favorable venues? Are they analyzing juror trends? Of course, they are … and target potential claimants more effectively.

In order to be part of this entire pie, the insurers, the payers need to also understand how it's being used in that realm. What are the claimants that are being targeted will become a very important aspect later on down the road.

Combined with the fact that the claim trends can vary dramatically from state to state. It's like being in a different country. Even when you move from Florida, to Georgia, to Alabama, it's very, very, very different.

If I had three to pick from my regulatory and medical area, I'd say medical cost escalation is huge of evolving plaintiff strategies, especially with the use of AI. And the fact that the legal and regulatory trends differ

significantly by state makes it really clear that risk managers need to look beyond their historical claims.

As we've already stated, everything old is new again or everything new is new again. And we are seeing new, new things. You can't rely on history to give you the full picture.

KC: I would just add, I think that there are some practical and tactical actions that our constituents should consider. Report incidents and claims promptly. Getting cases in the hands of your insurer and third-party claim administrator is going to only serve you well. Preserve evidence and establish a reliable factual record. Keep good records, preserve evidence, but those are key best practices.

Use clear escalation triggers for potentially severe claims. When those attributes line up that suggest that you may have a potential adverse verdict, then make sure that that gets elevated throughout the organization, that you're taking an enterprise approach and not isolating it.

You should be constantly reassessing your strategy throughout the claim lifecycle. Don't get stuck in the status quo. Track attorney involvement and, to Michele's point, medical acceleration and other components, like venue risk, right? She pointed out there are substantive differences between different jurisdictions.

I would say review whether settlement authority reflects current severity. Make sure that you've got realistic projections on where cases are likely to wind up. And, and no less important, is conduct a preparedness assessment before a major event exposes weaknesses.

We here at Aon have a number of tools that we've perfected that can help organizations understand their underlying operational risk and helping to identify those risks positions them to bridge those gaps with best practices that can minimize the risk of an adverse verdict.

TK: Outstanding points. Before we wrap up, for organizations trying to get ahead of social inflation and rising litigation costs rather than simply react to them, what should they be thinking about or doing differently today? Kevin, you want to lead us off here?

KC: Sure. I would say No.1 is to make it an enterprise situation as opposed to what you may have done historically. Involve other parts of the organization. Make sure that you're inclusive, that leadership is involved in discussions about risk related to these types of cases.

I'm a firm believer in utilizing artificial intelligence, and I think artificial intelligence can serve well in this space by helping identify the confluence of claim attributes that can materially increase the likelihood of a poor outcome. So, using artificial intelligence to alert essentially those cases that may require much more attention and a better, more concise strategy.

I would say that early resolution can be effective, but it's probably not a strategy that fits every case. You got to have a disciplined process for identifying which case should require rapid intervention and which should be defended.

So, you need better intelligence on the claim lifecycle and understanding when those attributes actually line up to a potentially poor outcome being able to identify those and apply the right resource at the earliest possible point is of particular interest.

TK: Michele, what are your thoughts on this?

MH: Well, as Kevin was talking, I was thinking we get asked often, even by our own staff, "why?" "Why is this happening? Why are we doing this?" And it's no different with payers and with insurance companies where

they’re trying to educate new incoming people into this field of risk management, into this field of adjusting in the BI claims.

This is where AI does play a very vital role in educating and giving information. We no longer can just provide projects for people to do here internally at Enlyte without telling them why they’re doing them, giving a great background on it. AI’s been super helpful in providing that historical view just to even train people up.

We have gone through an evolution in workforce with adjusters and risk management, and it’s been interesting to see how we have created a new industry of people coming in and garnered new interest. It’s almost like it’s becoming cool again to be a claim rep [laughs], especially in the third-party side, because it is so interesting and evolving and changing.

And from my perspective, the organizations that will be the most successful are the ones that put the effort in to maintaining their workforce, educating their workforce, which helps them identify why a claim is even being escalated. What is social inflation? Teaching them about what to look for, these types of things.

The key here for insurance companies and even for our company is to be proactive and not reactive in these situations. If you don’t prepare your teams for this type of activity that they’re going to be dealing with, they’ll be woefully unprepared.

We need to always know what’s changing, especially in the legal and regulatory area — I could just talk on that for days — and recognize escalation indicators. But without our educating people internally, we will fail at that. We just need to make sure our claims practices keep pace with today’s environment.

KC: I would say that the central message is that organizations do not have to wait for the verdict to understand the risk. By the time the case reaches trial, many of the most consequential decisions have already been made. So, the cat’s out of the bag, so to speak.

The opportunity is to identify the warning signs earlier, leveraging whatever systems are available, coordinate the right stakeholders and manage that casualty risk as an enterprise discipline, as opposed to just an insurance, artifact.

MH: I like the sound of that.

TK: Thanks, Kevin and Michele for that insightful conversation. If you’d like to check out some of other Enlyte Envision podcasts, check us out on Spotify, YouTube and other media platforms, including Enlyte.com. Until next time, thanks for listening.