



# Social Inflation

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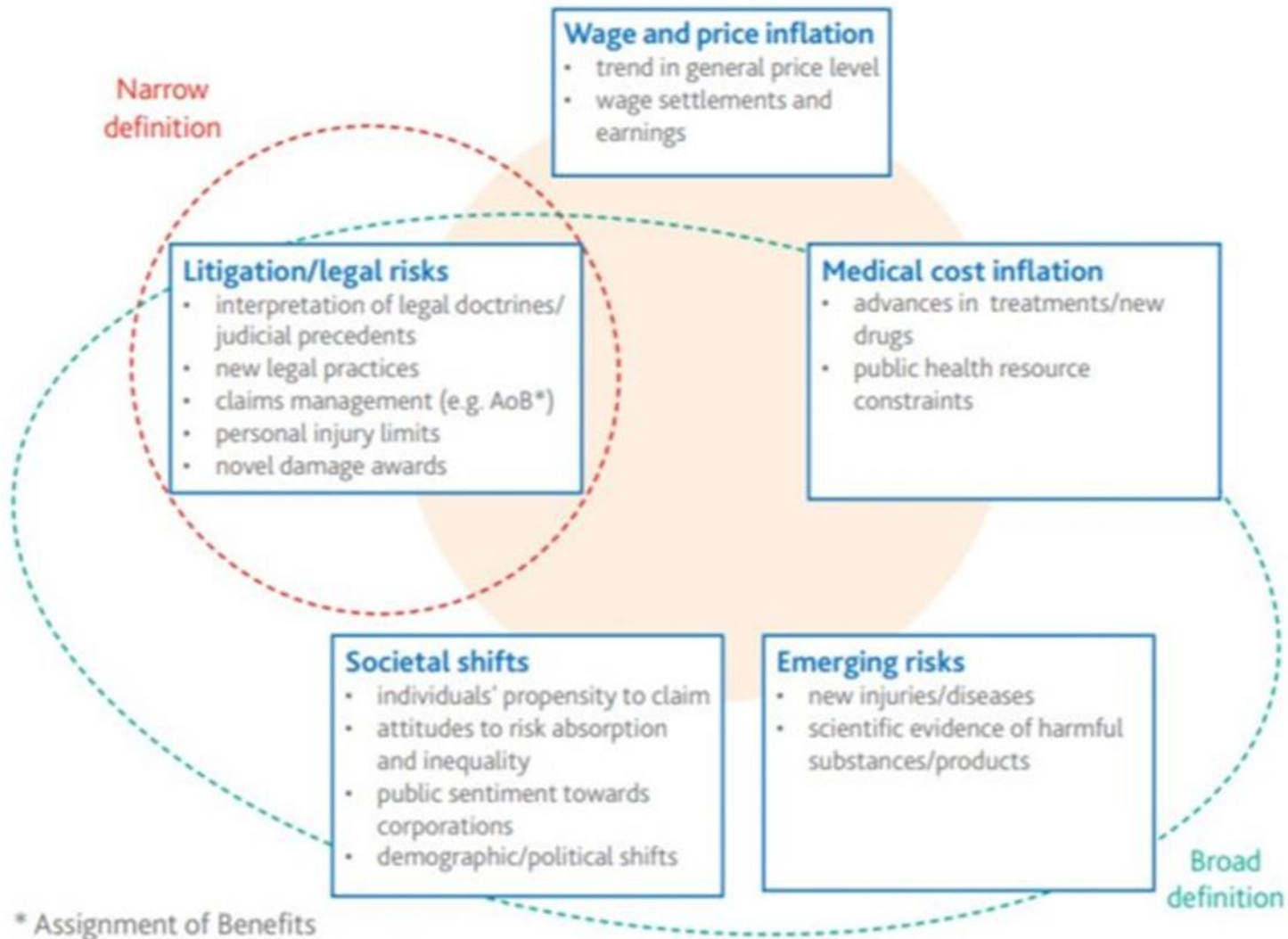
MAY 12, 2022

# What is Social Inflation?



<https://www.iii.org/article/social-inflation-hard-to-measure-important-to-understand>

# Causes & Consequences of Social Inflation



Source: The Geneva Association

# Concepts to Touch On

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Prevalence of “Nuclear Verdicts”

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Societal shifts/attitudes towards litigation & businesses

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Litigation in a COVID / POST COVID (???) World

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Role of Demographics (i.e., Millennials)

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Role of Social Media

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Tactics used by Plaintiff Attorneys

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How do we respond?

# NUCLEAR VERDICTS – WHAT ARE THEY?

- Nuclear verdicts are multi-million-dollar awards (or awards disproportionate to the amount of pain and suffering), with a disproportionate amount of non-economic damages, usually to compensate for a person's subjective and immeasurable pain and suffering that cannot be justified as compensating a person for an injury.

# AVERAGE VERDICT SIZE IS INCREASING

- From 2015 to 2019 the average verdict in the National Law Journal's top 100 verdicts more than tripled from \$64 Million to \$214 Million.
- The same data shows there were 30% more cases in 2019 that pierced the \$100 Million threshold than there were in 2015.
- Research shows a nearly 1000% increase in large verdicts involving truck crashes with the average verdict size involving a truck increased from \$2.3 Million to \$22.3 Million over nine years.

# 2021 SIGNIFICANT VERDICTS

VERDICT	CASE	VENUE	DATE
\$2,175,000,000	VLSI Technology LLC v. Intel Corp.	Texas	March 2
\$1,002,000,000	Dzion v. AJD Business Services Inc.	Florida	Aug. 20
\$300,000,000	Optis Wireless Technology, LLC v. Apple Inc.	Texas	Aug. 13
\$300,000,000	Personalized Media Communications LLC v. Apple Inc.	Texas	March 19
\$222,000,000	Most v. Team Industrial Services Inc.	Texas	June 1
\$200,000,000	Batchelder v. Malibu Boats, LLC	Georgia	Aug. 28
\$185,000,000	Erickson v. Monsanto Co.	Washington	July 27
\$177,792,640	Plexxikon Inc. v. Novartis Pharmaceuticals Corp.	California	July 22
\$172,554,269	Wapp Tech Limited Partnership v. Micro Focus International PLC	Texas	March 5
\$155,413,344	Rudnicki v. Farmers Insurance Exchange	California	Dec. 16

# WHAT CAUSES NUCLEAR VERDICTS?

Simplest explanation: Anger

Societal shifts in attitudes toward litigation

Animosity & distrust toward large companies

Plaintiffs' lawyers inflame the jury to punish the defendant for conduct that would not qualify for punitive damages.

# Distrust of Large Corporations

- A Decision Quest Study from 2018 that interviewed potential jurors drives home how society views large companies today:
  - 88% of the respondents believe that companies should take “any and all precautions” no matter how impractical or costly, to ensure the safety of their products.
  - 58% of the respondents believe that a corporation “always” has some responsibility for the injury, even if the customer is injured while misusing a product.

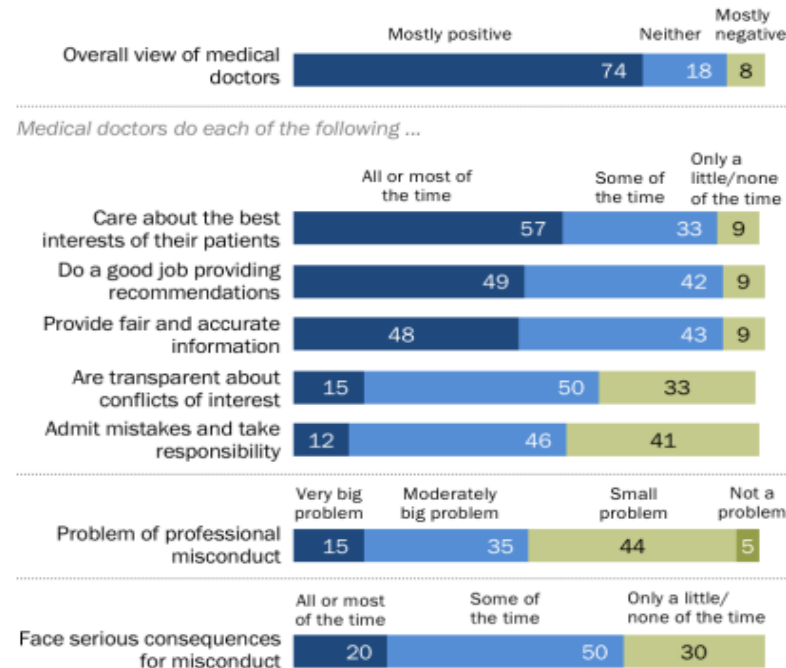
# Examples from Recent Trial...

- Actual Juror comments re: large corporations:
  - “generally greedy bastards that prioritize money over well being of people”
  - “highway robbery, tax evaders, too many perks for the big guy”
  - “too much money and power”
  - “only interested in profit”
  - “more concerned about their bottom line than the customer”

# Juror Trust in Health Care Professionals

## A majority of U.S. adults say medical doctors care about their patients' interests all or most of the time

% of U.S. adults who say the following about medical doctors



Note: Respondents who did not give an answer are not shown. "Neither" means "neither positive nor negative."

Source: Survey conducted Jan. 7-21, 2019.

"Trust and Mistrust in Americans' Views of Scientific Experts"

PEW RESEARCH CENTER

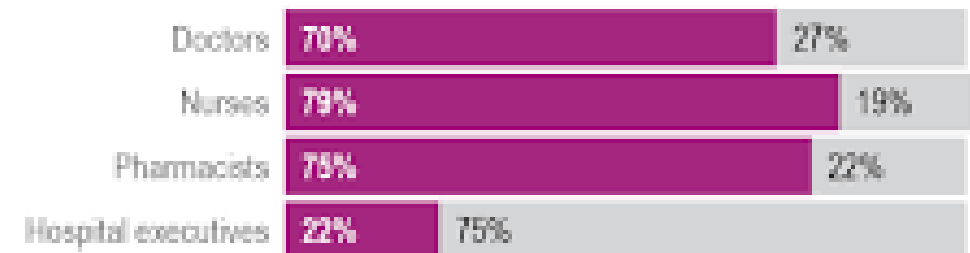
## Wide majorities of Americans trust doctors, nurses and pharmacists

A new UChicago Harris/AP-NORC poll finds at least 7 in 10 Americans say they trust doctors, nurses and pharmacists to do what is right for them and their families, but only about 2 in 10 trust hospital executives.

How much of the time do you think you can trust \_\_\_\_ to do what is right for you or your family?

■ Almost all of the time/Most of the time

■ Almost none of the time/Some of the time



Results based on interviews with 1,071 U.S. adults conducted June 10-14. The margin of error is ±4.2 percentage points for the full sample.

# Juror Sentiment

11 MR. BILLMEYER: I want to go back a couple  
12 questions.

13 I had heart surgery three years ago. So I would  
14 probably have a hard time for the doctor being not  
15 biassed because my -- if I died, I'd have a hard time  
16 not thinking they should sue the doctor.

17 THE COURT: Let me ask you one or two questions  
18 on that.

19 MR. BILLMEYER: Okay.

20 THE COURT: And then I'll come to the next  
21 person whose hand is raised.

22 And you're Mr. Billmeyer.

23 MR. BILLMEYER: Yes.

24 THE COURT: Mr. Billmeyer, do you believe  
25 despite the fact that you've had heart surgery that you  
1 could sit here, listen to the evidence, and fairly and  
2 impartially judge the case without any prejudice against  
3 Dr. Yetman?

4 MR. BILLMEYER: I think I would be biassed  
5 against him. Yes.

6 THE COURT: So do you feel -- you feel you're  
7 incapable of not carrying a bias against the doctor.

8 MR. BILLMEYER: Yes.

6 I believe I'd be biased because I went to the  
7 university hospital and had a doctor look at me because  
8 I had chest pains. And he thought that I was kind of  
9 like faking it. So he stuck something in me, and I got  
10 really sick. I went into a cold sweat and then just got  
11 shivers and numb to my arms, and I just really felt like  
12 he did it on purpose. So I still to this day have chest  
13 pains, but I'm scared to go to the doctor. So I don't  
14 trust them.

15 THE COURT: Okay.

16 Well, Mr. Morris, do you feel that -- that you could  
17 sit here and listen to all of the evidence and review it  
18 fairly and impartially without any bias towards Dr.  
19 Yetman by virtue of his being a doctor?

20 MR. MORRIS: No. I think I would be biased.

21 I'm sorry. I just -- I just don't trust doctors,  
22 you know? And I think we're letting too many people  
23 into this country that probably are not qualified.  
24 Maybe they were schooled in another country. I'm not  
25 sure.



## A Halo Effect After Covid?

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Q: Avoiding sick people is a good start.

A: Not really easy to do, but --

Q: Well, hopefully if someone five years from now is reading this transcript, they'll barely remember the coronavirus being a thing. If we're still here.

[Taken from a deposition on March 6, 2020...]

# ARE MILLENNIALS TO BLAME FOR NUCLEAR VERDICTS & SOCIAL INFLATION?

# Social Media Influence and Social Inflation

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# Social Media's Influence

Jurors are using the internet to gather information about pending cases, people (parties, judges, attorneys), and places even before they appear for services and receive cautionary instructions” regarding such misconduct. (Simpler, 281)

Specifically, jurors have been known to gather this information by perusing the unqualified and (presumably) inadmissible impressions that outside observers pose on social media networks like Facebook and Twitter. (Simpler, 281-282)

This growing concern appears to be most prevalent in cases that are already the subject of mass-media coverage because more outside observers can follow such cases through various mediums and express how they feel about the case. (Simpler, 282)



## Specific Media Influences

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If a juror is unfamiliar with a particular provision of law or is confused about the significance of a certain piece of evidence introduced at trial, he or she may turn to the internet, specifically social networks for further insight. (Simpler, 283)

- This information could be both inaccurate and inadmissible.
- This information is also creating “groupthink”, or group conformity that occurs when pressures to conform are in the interest of solidarity rather than of official goals.

# What lines are most impacted?

- Commercial Trucking
- Product Liability
- Intellectual Property
- Professional liability
- Class actions
- Bad Faith\*

# Plaintiff Tactics Contributing to Social Inflation

- Reptile theory
- Attack on the “system”, not the entity
- Broadening scope of claim(s) and discovery
- Trial selection based on client credibility, not facts
- Focus on non-economic damages
- Specific “types” of claims on the rise
  - Ex: Bad Faith in Wisconsin

# So how do we combat these trends?

## **Pre-Suit/Discovery**

- Carefully paper claim files
- Deponent selection
- Informal discovery
- Selection of experts
- Proactive discovery motions

## **Trial**

- Mock juries/focus groups
- “Disarm” jury
- No wasted time
- Think about concepts like empathy and responsibility
- Poll jurors post-verdict

# Thank You!



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