



Tort Trends and Implications for Liability Insurers





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Who are the Trends Affecting?

- According to the Rand Report liability insurance premiums, particularly for medical malpractice and commercial lines increased sharply and insurance for some kinds of activities became unavailable at any price. Insurers linked rising rates and unavailability to trends in tort litigation.

Reference: The RAND Corporation's Institute for Civil Justice (ICJ) Trends in Tort Litigation: The Story Behind the Statistics by Deborah R. Hensler, Mary E. Vaiana, James S. Kakalik, Mark A. Peterson



Differences in Statistical Data

- Routine Personal Injury Torts, such as auto liability, occur frequently and involve modest injuries and relatively low financial stakes.
- High Stakes Personal Injury torts, such as product liability and malpractice suits have newer litigation and the law is still evolving. The cases are larger and uncertain.
- Mass Latent Injury torts, such as asbestos litigation tend to be problematic as they don't fit in the traditional tort law and they are fact intensive.
- Each of these areas is characterized by a different litigation growth rate, jury verdict trend, and cost profile, and treating them together--as is done whenever overall statistics for tort litigation are reported--produces a imprecise representation.

Reference: The RAND Corporation's Institute for Civil Justice (ICJ) Trends in Tort Litigation: The Story Behind the Statistics by Deborah R. Hensler, Mary E. Vaiana, James S. Kakalik, Mark A. Peterson



Current Tort Trends

Stem from:

- Social
 - Legal
 - Judicial
 - Political factors
- All of which influence common law, which in turn shape settlements, judgments and verdicts.



Litigation Management

- Economic times increase law suits, not all of which are legitimate.
- Plaintiffs emboldened by the “contingency fee” arrangement which takes personal risk out of the game and increases the ease of which plaintiffs can litigate claims.
- With the rise in litigation costs, litigation management takes on a renewed importance.



Economic Times

- General contractors and subcontractor's not pursuing a written contract or having an enforceable contract.
- Vehicle inspections not being performed.
- Increase in overseas manufacturers placing products in the stream of commerce and insured has no vendor agreement in place with the actual manufacturing entity. As a result, insured stands in the shoes of the manufacturer in litigation.



120 Day Rule

- “A loophole in the Federal Rules of Civil Procedure has allowed these policies of finality to be circumvented.” Reference: Federal Rule 4(m): Gaming the Statutes of Limitation written by Michael P. Richman and Anthony Nguyen.
- The rule provides that a suit is commenced by the filing of a complaint, not the service of the complaint, within the limitations period.
- Courts continue to expand the 120 day rule.



The Economic and Non-Economic Issue

- Boardable medicals
- Medical Lien v. Medical Insurance
- Medicare
- Proposals for Settlements



Technology

- Creating inattentive drivers.
- According to textinganddrivingsafety.com, statistics show that in 2011, at least 23% of auto collisions involved cell phones which equates to 1.3 million crashes.
- The same study showed that text messaging makes a crash up to 23 times more likely
- 1 in 5 drivers of all ages confess to surfing the web while driving
- Texting while driving is about six times more likely to cause an accident than driving intoxicated, the same as driving after four beers according to the National Highway Transportation Safety Administration.

Reference: Textinganddrivingsafety.com



Event Data Recorders (EDR's): Microprocessor that records data on vehicle

Example of a real claim relied on crash data imaged by Crash Data Group and its Bosch crash data retrieval tool.

- What the insured claimed: The vehicle in question was purchased four days prior to a claim and was damaged before a pre-inspection was completed. The insured claimed the car was damaged while parked. NO one else was in possession of the keys. The insured drove the vehicle to the police station to fill out a report.
- Result: The insured signed a release to the image data, allowing the data to be retrieved. The vehicle was examined at the salvage yard. The image of the EDR data was retrieved and a data analysis report was completed. It determined that the vehicle was not damaged while parked. Rather it was hit from behind while slowing. The insured was asked to provide an EUO; however, they never responded.

Reference: Claims Management October 2012 Edition written by Peter Thom and Gregory Quan



Are All of the Trends to the Detriment of the Insurer?

- Slip and Fall
- Comparative Fault
- PIP law changes
- Joint and Several Liability