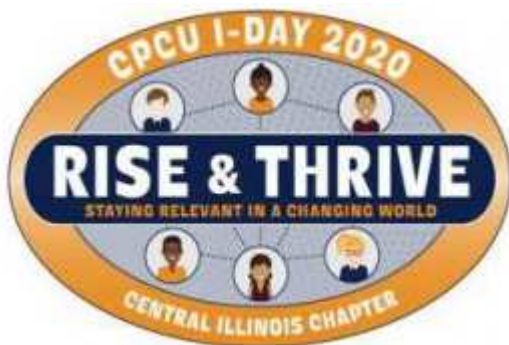




From Millions to Billions – What’s Driving Social Inflation And The Deterioration In Personal Injury And Liability Verdicts?

Tim Fletcher
Senior Emerging Specialist



So What's A Nuclear Verdict?



Working Definition – And An Alternative Description

- Any award \$10M and beyond
- “Sub-Nuclear” - \$5 to \$10 million
- Alternative definition - Aberration Verdict
 - Not the norm / Suggests possibility of control and correction
- Rapid growth since 2010
 - Ten in 2019 in commercial trucking alone, ranging from \$25M to \$280M
 - Non-economic damages being awarded at greater amounts
- “Athletes, Entertainers, and the Lottery”



Exploding Mushroom Clouds. . .



Nuclear Verdicts From 2019

State	Verdict	Case
New York	\$55,900,000	Medical accident during surgery injuring one person
Texas	\$80,000,000	Trucking accident injuring one person
New York	\$110,200,000	Construction site accident killing one person
Washington	\$123,000,000	Duck boat accident killing and injuring many
Georgia	\$125,000,000	Living conditions in an apartment complex resulted in one death
Alabama	\$151,791,000	Automobile accident injuring one person
Maryland	\$229,600,000	Medical accident during a delivery injuring one person
Georgia	\$280,000,000	Trucking accident killing five people
California	\$2,055,200,000	Pesticide product allegedly harmed two people
Pennsylvania	\$8,000,000,000	Pharmaceutical product led to unwanted side effects in many persons

Source: Markel

So What's Driving These Awards?



Social Inflation – What's That?

- Increased loss costs driven by legislative, judicial, social and economic developments.
- Includes changes in the legal system to interpret contracts broadly or to reward plaintiffs with greater and greater awards.
- May entail claimants seeking attorneys to either pursue matter or file lawsuit, driven in many instances by increased attorney advertising.
- Existed previously (and was much worse!)

Overall C/R		GL C/R
1984	118%	151.8
1985	117.3	145.8
2020	100.7 (Projected)	



Warren Buffett in 1977: “[Social inflation is] a broadening definition by society of what is covered by insurance policies. . .”

What's Behind Social Inflation?



Components

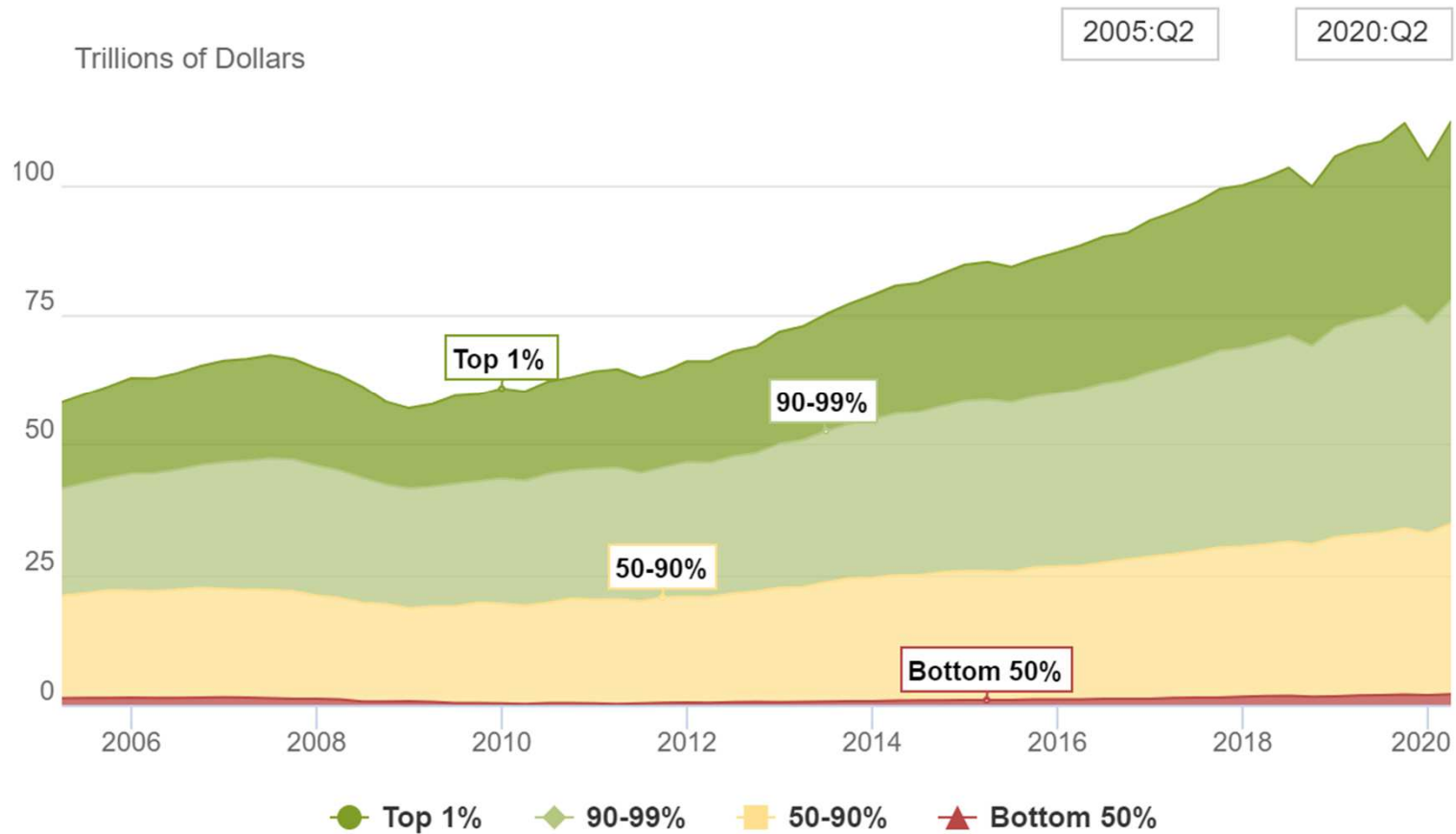
- Increased Economic Disparity
- Reptile Theory
- Rise of Millennial Jurors
- Litigation And Medical Funding
- Defense Bar Disconnect / Slippage In Industry Expertise

Increased Economic Disparity



Life Is Good For Some And A Struggle For Many

Wealth by wealth percentile group



Source: Survey of Consumer Finances and Financial Accounts of the United States

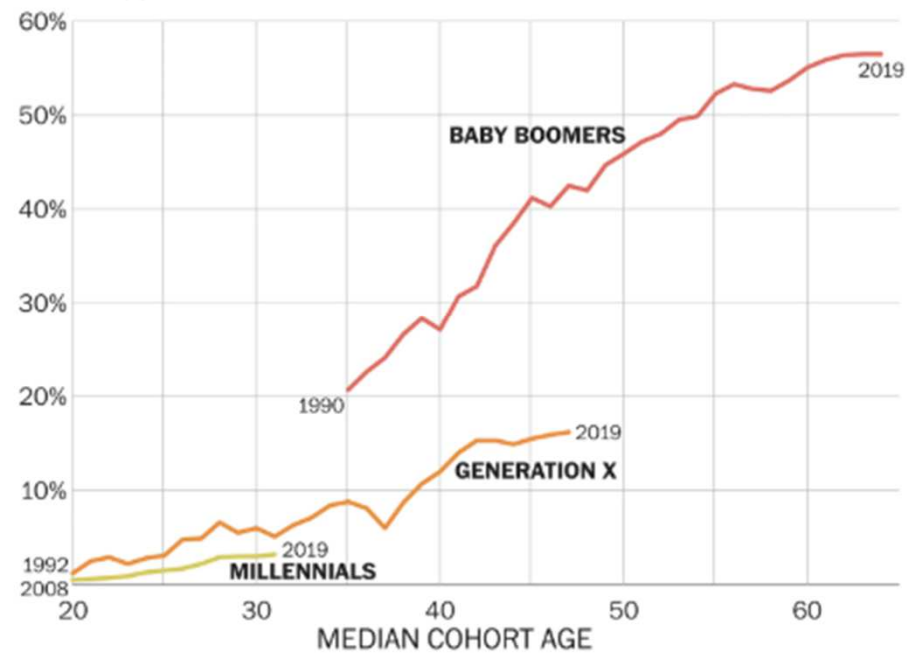
Increased Economic Disparity



Generational Comparison

Intergenerational wealth

Share of national wealth owned by each generation, by median cohort age



Source: Federal Reserve Distributional Accounts
Chart adapted from Gray Kimbrough

THE WASHINGTON POST

Increased Economic Disparity



Home Ownership

Homeownership rates, selected age groups

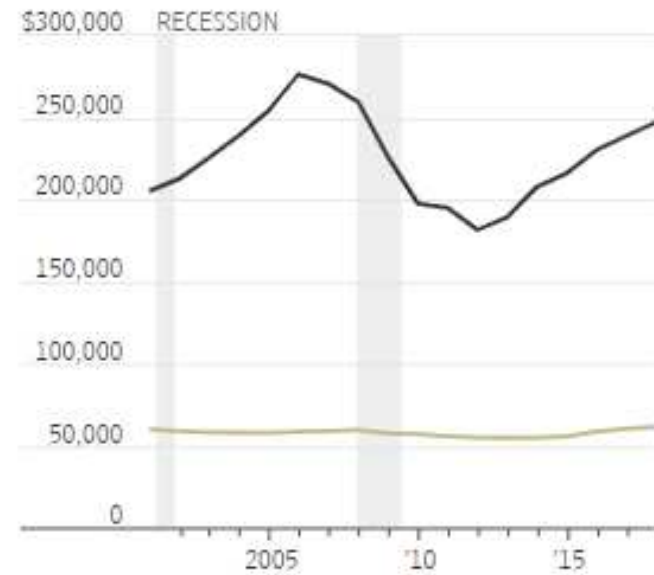
■ 25-34 ■ 35-44



Source: Freddie Mac

Home prices and income

■ Median home price
■ Median household income



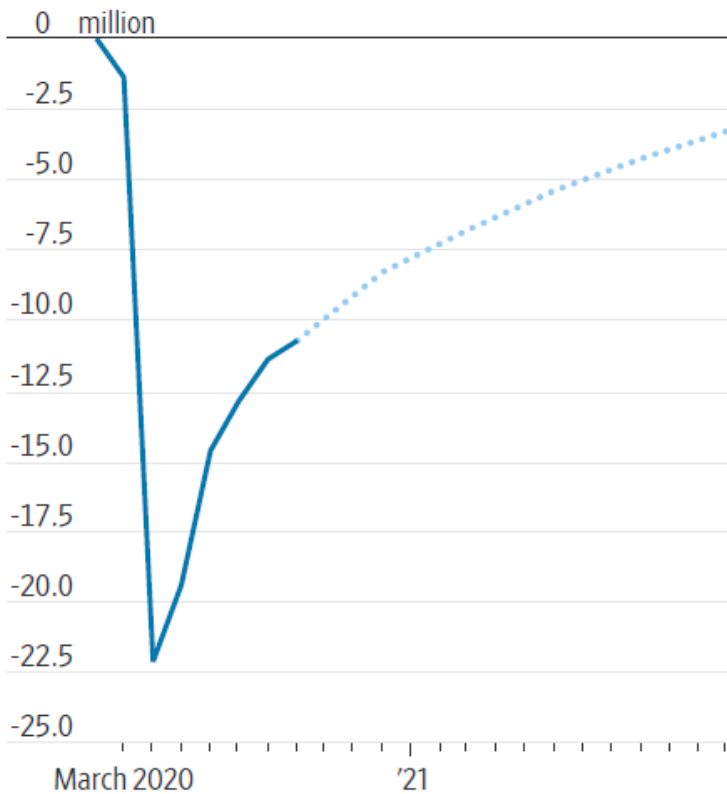
Note: Adjusted for inflation. Median home price refers to the sales price of existing homes.
Source: Freddie Mac (analysis of Census Bureau and National Association of Realtors data)

Increased Economic Disparity



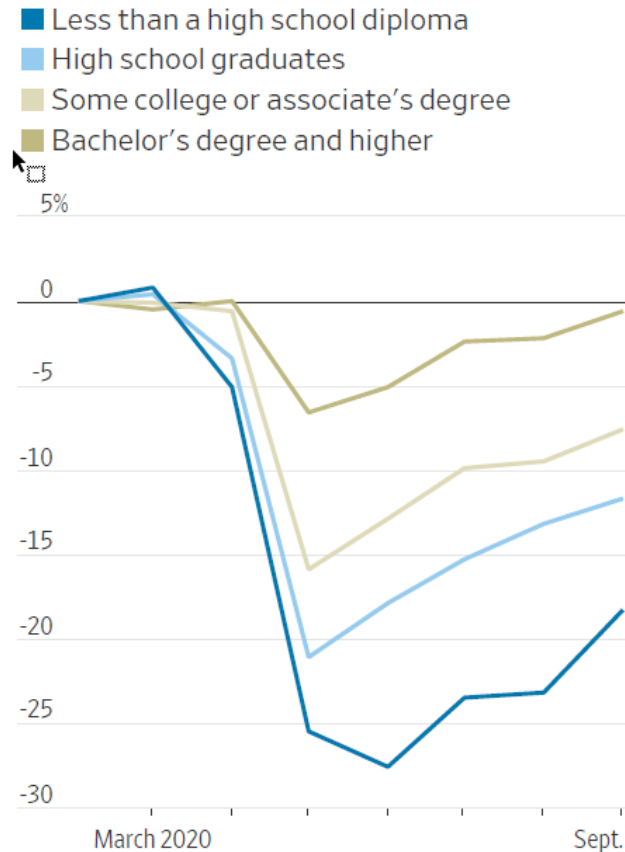
And COVID-19 Isn't Helping

■ Actual ■ Projected



Note: Seasonally adjusted, projections reflect Wall Street Journal survey of economists

Change in employment from Feb. 2020



Note: 25 years and older, seasonally adjusted
Source: Labor Department

What's the Reptile Theory?



An Explanation

- Originator: Don Keenan (*Reptile: The 2009 Manual of the Plaintiff's Revolution*)
- Premise: Appeal to jurors' "reptile brains," described as that portion responsible for primitive survival instincts.
- How Done: By demonstrating immediate danger posed by defendant's actions – "When reptile sees even a small danger, she protects her genes by impelling the juror to protect herself and the community."
- Safety rules: Focus on "danger" that defendant's violation poses to (1) Random Plaintiff and (2) Society at large (and the jurors themselves)
- "Anchor" by specifying large dollar amount to change behavior and make the community safer.



Millennial Jurors



Different Background – And A Different Perspective

- Large and ever-growing segment – Those born between 1981 and 1997
 - ✓ America's largest population group: 75 million (25% of the total US population)
 - ✓ 30% of the voting age population; 40% of the working age population
- More highly educated and diverse than prior generations
- Experiencing ongoing economic difficulties
 - One in three live with parents
 - 41% of adult men between 25 and 34 earn less than \$30,000 annually
 - 41% of millennial families carry student loan debt
- “Profound shift” – Recent ABA Conference
 - Highly educated, poorly paid: Trouble for corporations?
 - “Want to make an impact. . .listen to them”



Social Inflation



Litigation Funding – What Is It?

- Defined: third-party funder makes non-recourse loan to holder of claim for fees and costs in exchange for part of settlement proceeds.
- New to the US, used for many years in other countries such as the United Kingdom
- In most jurisdictions, not subject to usury and or interest rate limitation because loan provided is on non-recourse basis.
- Champerty: illegal agreement in which person with no previous interest in suit finances it with view to sharing the proceeds if suit succeeds.
- Key issue: Intent. Here, third party funder doesn't acquire the interest in the suit and plaintiff remains the owner of asset that is subject of litigation. No champerty as result in NY (and many other states).



Social Inflation



Litigation Funding – How Does It Complicate?



- Given potential return, drive to maximize recovery amounts possibly at the expense of the plaintiff
- May result in building excessive damage models
 - Subject-specific medical experts
 - Attorney-directed treatment
 - Inflated life-care plans
- Settlements as result complicated
- May be used in portfolio of law firm's cases
 - Efficiencies
 - Economies of scale

Social Inflation



Medical Funding

- What it is: Third-party agrees to “fund” medical treatment for an injured patient with a viable bodily injury claim
- How it works:
 - ✓ Patient agrees to “opt out” of personal health insurance and applicable medical payments coverage.
 - ✓ Patient signs “Letter of Protection” in which the total treatment cost will be treated as a lien against any settlement proceeds.
 - ✓ The provider then bills at the “self-pay” or “100% Chargemaster” rate
 - ✓ The funder “advances” costs to the provider to cover overhead
 - ✓ At trial, counsel “blackboards” total “full value” costs.
 - ✓ If favorable verdict, windfall recovery for provider and funding company



Social Inflation



Medical Funding

- Why it's bad:
 - ✓ Inflated medical specials, sometimes 2 to 3 times that of normal reimbursement rates
 - ✓ Fraudulent billing
 - ✓ Unnecessary treatment
 - ✓ Conflict of interest – the bigger the proceeds the bigger the reward for the physician

PRO•MED
CAPITAL



AMICUS FUNDING
Settlement Advances | Medical Funding

Defense Bar Disconnect



Where Defense Counsel Might Be Missing the Mark

- **Failing to effectively attack the “Reptile Theory”**
 - ✓ Address plaintiff over-simplifications
 - ✓ Focus on the specific
 - ✓ Humanize the defendant
- **Not resonating with millennial jurors**
 - ✓ Keep evidentiary presentations brief, clear and crisp
 - ✓ Use technology to its fullest
 - ✓ Present in form of college lecture
- **Ignoring Litigation Funding**
 - ✓ Assume that it’s being used
 - ✓ Explore through discovery



Defense Bar Disconnect



Where Defense Counsel Might Be Missing the Mark

- Giving short shrift to damage control defense
 - ✓ Attack plaintiff life care plan assumptions
 - ✓ Provide examples of how insurance-based products can meet plaintiff's needs (ACA; private insurance)
 - ✓ Present to the jury an alternative "anchor" to plaintiff's reptile-based number



Slippage In Industry Expertise



Industry Has Had A Hand In This As Well. . .

- Erosion in case evaluation skills
 - ✓ Inability to recognize a serious case when it comes through the door
 - ✓ Reluctance to escalate to upper management
 - ✓ AI / Predictive Modeling as a solution?
- Failure to “invest” in tough case
 - ✓ Managing LAE globally important
 - ✓ BUT must also pay for top-flight counsel
 - ✓ Be prepared to spend money early in the case
 - Witness prep
 - Focus groups – mock trial
 - Pay for more than one trial attorney

Remember, a bad case seldom gets better with time...



Thank you

Tim Fletcher

tfletch@genre.com

<https://www.linkedin.com/in/tfletchemergingissuesgenre/>

(404) 217-3139

Visit genre.com for more info.

Keep up with
the latest industry trends...

Visit genre.com/perspective

Follow us on:



linkedin.com/company/gen-re



twitter.com/Gen_Re