



Assured Research, LLC

**2021 Virtual Seminar on
Reinsurance**

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Research and Analysis for Insurance and Investment Professionals

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TODAY'S DISCUSSION:

- ◆ Traumatic Brain Injuries and the Reptile Theory
- ◆ Measures of Inequality

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TRAUMATIC BRAIN INJURIES/REPTILE THEORY

- ◆ The Insurance Landscape
 - 53% increase in ED visits and deaths from 2006-2014 (CDC)
 - Increasingly hearing that TBIs are "added to" injuries from auto accidents and appearing in many severe claims
 - TBI claims are expensive – present in 30% of WC claims > \$10 Mil (NCCI)
 - According to ATRI, a TBI increases the size of a jury verdict by \$800K

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TRAUMATIC BRAIN INJURIES/REPTILE THEORY

- ◆ TBIs are REAL!
- ◆ Because societal awareness has risen so much over past decade + (NFL, veterans suffering from concussions) juries accept as fact maladies that used to be tied to "severe emotional distress" claims
- ◆ Medically – rapid advances in understanding deleterious impact of TBIs (does *not* have to be repetitive). New neuroimaging techniques
- ◆ Plaintiff's bar is organized! Focus on growing the pie, not how it is sliced
- ◆ Reptile theory works here, consider this script...

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TRAUMATIC BRAIN INJURIES/REPTILE THEORY

Ladies and gentlemen of the jury, through no fault of his own my client was struck by the truck being driven by the defendant and owned by his employer. Among the injuries we have outlined, allow me to remind you of the seriousness of the traumatic brain injury he suffered. My client will indefinitely be susceptible to such life-altering harms as memory loss, headaches, sleepless nights. His mood may change which could affect his work and his relationship with his wife and children. He could develop other comorbidities that both shorten and diminish the quality of his life. This, we all know, could have happened to any of us if we had been in his shoes and it could happen to others, including people you love, if the defendant is allowed to continue to hire drivers who...

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TRAUMATIC BRAIN INJURIES/REPTILE THEORY

Who among us, as we've read about the suffering of many professional athletes or veterans from head trauma hasn't thought back to a few good blows to the head over the years and wondered...could that happen to me? Have I increased my risk of dementia?

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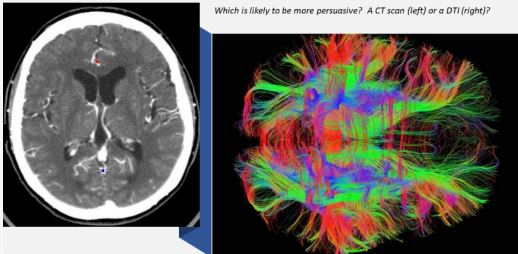
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TRAUMATIC BRAIN INJURIES/REPTILE THEORY

Which is likely to be more persuasive? A CT scan (left) or a DTI (right)?



Sources: Google Images, Assured Research

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TRAUMATIC BRAIN INJURIES/REPTILE THEORY

◆ What can (re)insurers do?

- Hold regular meetings – claim, U/W, actuaries
- Involve an emerging risk committee
- Text mine large case files for patterns and associated injuries
- Think of innovative ways to use telematics

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INEQUALITY: MAIN POINTS

- ◆ Wealth and income inequality gaps, already wide, are worsening because of the pandemic recession
 - These societal trends increase the propensity to sue and the size of verdicts; in turn settlements.
- ◆ There is a strong, inverse correlation between national wage index and the liability loss ratio
- ◆ We believe measures of inequality belong on the radar screens of insurers as U/W, pricing, and reserving measures

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INEQUALITY – THINK IT MATTERS?

In the years that followed [the financial crisis of 2008], the market bounced back and progressed through its longest expansion in history.

Meanwhile employment rates and hourly wages remained stagnant. As the middle class shrank, we heard jurors talk more and more about the “Two Americas...One for the elite and one for the rest of us.”

We continued to observe the trend away from juror concerns over the harms of frivolous lawsuits and toward the threats of corrupt executives and unbridled corporate influence and power. The culture eventually shifted so strongly that large corporations were being demonized as a group, with each being treated as guilty unless proven innocent. Verdicts became nuclear because anti-corporate beliefs had become the norm, and the pervasive loss of trust was being reflected in the deliberation room.

Excerpt from The Impact of the COVID-19 Crisis on Social Inflation by Boesen Litigation Consulting. Contact us for an introduction.

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WEALTH INEQUALITY CONTINUES TO WIDEN

Data from the Fed through Q2 shows the 'bottom 50%' barely visible

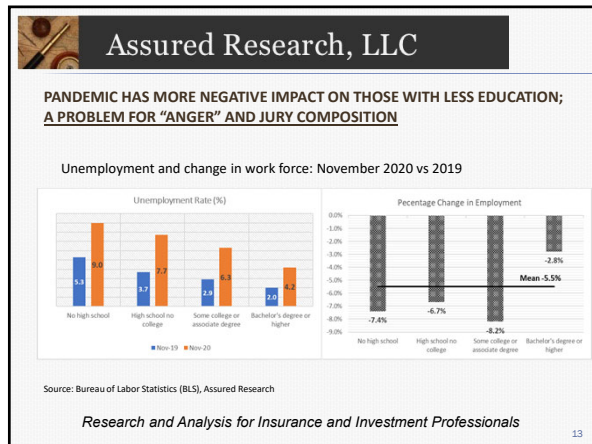
While the HHNW of the top 10% continues to outpace other cohorts

Source: Federal Reserve, Assured Research.

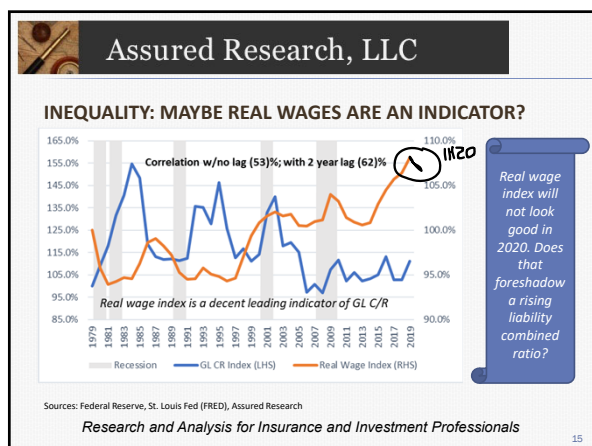
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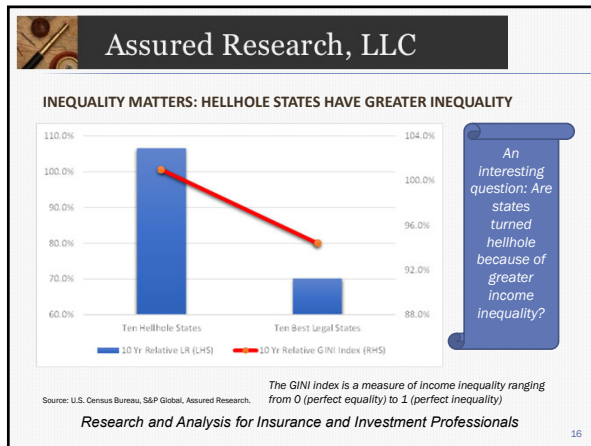
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Contact us with questions or comments

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Thank you!

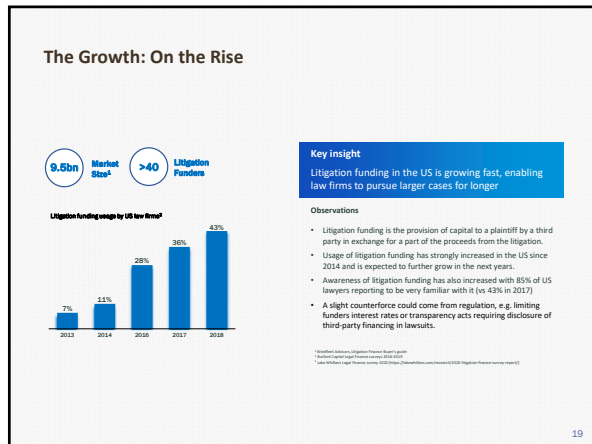
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Litigation Funding

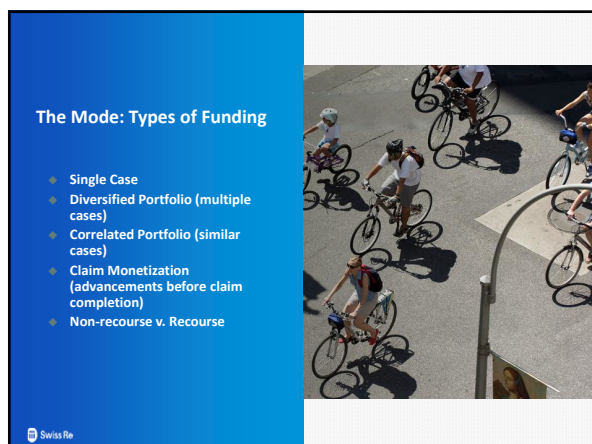
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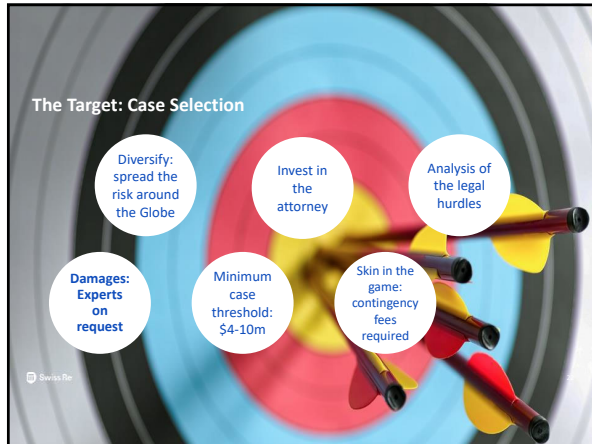
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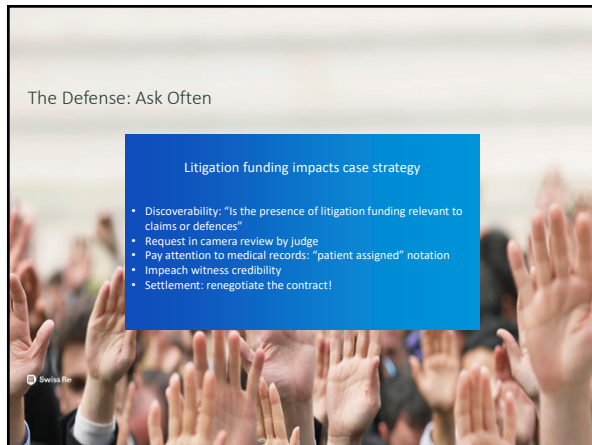
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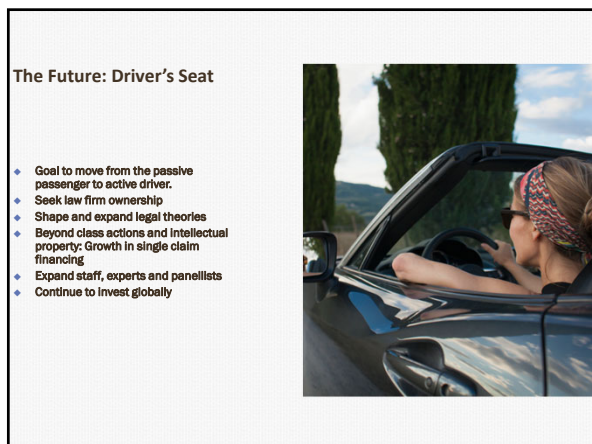
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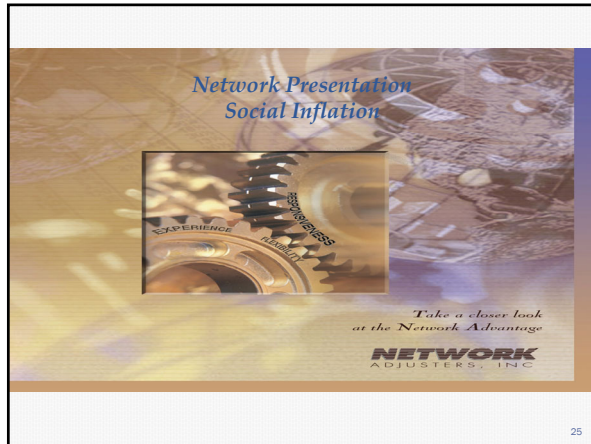
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Three Case Studies to Challenge Experience

- ◆ Network Success Stories-
 - ◆ Won Chinese Drywall in Florida for the Pollution Exclusion
 - ◆ Won Wrongful Arrest Triggers Supreme Court Illinois
 - ◆ Won Construction Management for Fee Appellate Decision NY - Paralegic
 - ◆ Defended multiple Liability and Damages decisions nationally on all lines of Commercial Coverages.
- ◆ Social Inflation combined with a changing psychology of how our peers review coverage, liability and damages challenges our experience in claims.

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Social Inflation – What is Real News?

- ◆ Who appreciates knowing all sides of an issue prior to forming an opinion?
- ◆ United States entering the "No Fault" generation?
- ◆ Costs and Inflation are exceeding our tail handling times to resolve claims.
- ◆ Social Media has a strong impact of negative influence unbalanced by positive outcomes.
- ◆ In Claims we get great results when we understand the venue. When logic does not follow, years of experience meets an unexpected end.

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Logic and Social Views are Shifting – Cleveland vs. Taft High School



Key insight

Be prepared for a different perspective when seeking a result. Verdicts can be results oriented.

Observations

- Traditional Logic would defend this case on liability before moving to damages. Oliver is already serving 27 years for the shooting.
- Setting a National Precedent can be a very risky proposition. This is the foundation for all other school shooting cases nationally now.
- Verdicts are trending to a more results-oriented focus.

[The above concerns push up average paid results on matters that never reach trial...](#)

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Verdict Slip Results

- Shooter Oliver 27%
- Oliver's Mother 10%
- Oliver's Brother 9%
- Total 46%
- School Defendants –
 - 27% Rona Angelo – Assistant Principal
 - 19% Mark Schaffner – School Psychologist
 - 3% Marilyn Brown – Administrator
 - 1% Kim Fields – Campus Supervisor
 - 4% Mark Richardson – Administrator
- Total 54%



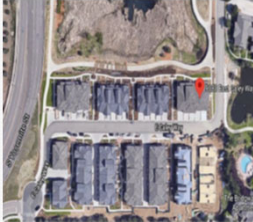
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Experience vs. Results Oriented Decisions

- Traditional experience is that a Criminal Matter remains just that and a Jury would make a decision even if it meant no recovery. Results oriented decisions institute new Precedents and Adverse Claims Development.
- There is a Social Movement of "Not my Fault."
- Immunities and Caps are being reconsidered – Floyd Case.
- Average Pairs on matters close to trial are driven up based on these factors.
- The "Working Layer" of a Primary Commercial Policy is no longer sufficient to control a defense strategy.

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No Damage but Big Award – Townhome HOA V. Large National Builder



Key insight
Damages do NOT need to be present to produce an award. Results are sometimes fear of the future.

Observations

- 118 Homes in this project. 2 Townhomes are known to have objective foundation movement. The rest have been inspected with no known damages.
- 6 Carrier Representatives agreed to Arbitrate this matter to a conclusion. Dispute - HOA wanted recovery for potentially ALL homes having issues.
- All Experts were clear on no objective findings of Damages.
- 2020 was a sensitive year COVID, CAT, RIOTS, Etc.

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Arbitration Results -

Presented -

- ♦ \$1.8 Million Objective Damages to 2 Units.
- ♦ Plaintiff Projection of \$20 Million to repair all units.
- ♦ Avg. Home Sale price \$400,000.
- ♦ Attorney Fees Not Recoverable.
- ♦ Award \$20 Million plus Attorney Fees

\$9 Million being argued recoverable.



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Experience vs. 2020 Influence

- In 2020 under a period of COVID talking about an individuals largest asset being a home was not easy.
- Damages being assumed was new to claims and created coverage issues.
- An offer of 10X damages known was made prior to allowing an Arbitrator to make the decision.
- Average Pairs on matters close to trial are driven up when considering these results.
- The "Working Layer" of a Primary Commercial Policy is no longer sufficient to control a defense strategy.

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It is not a WRAP – Coverage Decision Non-Enrolled Entity



Key insight

Do Courts have the time and experience currently to consider Coverage? Public Policy results.

- A Construction Hoist descended rapidly from the 8th floor to ground with 11 men in the hoist in New Orleans.
- The Construction WRAP did NOT enroll the Hoist Elevator Trade. Policy was issued as same. A Non-Enrollment Cert was sent.
- A Declaratory Judgment Action was filed for a determination of no coverage.
- Significant injuries to the 11 occupants of the Hoist.
- The presiding Judge on the DJ was getting called to a new bench.

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Coverage Decision-

- ♦ The Wrap Policy was not clear. DJ was denied.
- ♦ Appeal to Supreme court shows evidence of no intent, policy issued correctly, confirmation from Wrap Enrolment of Not being enrolled.
- ♦ Leverage to value of damages to Coverage decision
- ♦ Venue and Judge are crucial.

Piper Griffin wins La. Supreme Court runoff after opponent drops out



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Experience vs. Judge and Venues

- Crucial to be proactive in researching your Judge and Venue when litigating coverage. Foreseeability of change is very difficult in 2020
- There is a value to every coverage decision on every claim especially as damages become more significant.
- Leverage is increasing being used by courts to seek a result in many instances.
- What is a comfortable degree of confidence when considering a Trial, Coverage DJ or allowing a result to be determined beyond direct settlement discussions?

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Contrasting the last 5 years

- Beyond adjusting for measurable trends, we have seen a shift in claims results.
- There must be a focus to Commercial Limits for the Working Primary Layer.
- Welcome conversations with people outside the industry when formulating models that assess risk for insurance professionals.

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