

Update and New Guidance from the Social Inflation Task Force

By Lauren Motes and Chris Turney

The DRI Center for Law and Public Policy (the Center) is *the voice of the defense bar*. While the plaintiffs' bar has shown an impressive ability to coordinate efforts in driving up settlements and verdicts, the Center is organizing a well-informed, well-organized pushback to support our economy. The Social Inflation Task Force, as an arm of the Center, is particularly determined to analyze plaintiffs' trial tactics consistently and develop strategies to rebalance the judicial playing field. In January 2023, the Social Inflation Task Force [published a white paper](#) addressing the state of social inflation and how it affects our daily practice.

While defense attorneys and their clients have wrestled with unreasonable demand letters for years, the plaintiffs' bar has organized itself to increase tension surrounding demand letters. Plaintiffs' counsel—knowing that a microscopic percentage of cases are actually tried to verdict—increase presuit and pretrial demands to maximize their payout. A 2019 book written by and for the plaintiffs' bar, *How to Win Top-Dollar Settlements*, recommends, among other things, that plaintiffs' counsel exploit the perceived conflict of interest that can arise between the insurer and insured, including those conflicts that arise from policy limit demands and multiclaimant situations. Two strategies for defusing the tripartite bomb are (1) improving initial communications with the insured, and (2) investing defense dollars earlier in the case.

First, defense counsel needs to address the tripartite conflict head-on in initial client meetings. While honoring ethical obligations to the insurer and insured, defense counsel is often justified in prophesying to the insured what the plaintiffs' bar is up to when it makes a policy limit demand. Instead of personally advising the insured how to handle the demand, defense counsel often should paint the horizon and recommend that the insured lean on personal counsel (legal impact) and insurance brokers (impact on future coverage) to provide key advice that trial counsel typically cannot provide. Indeed, many times the insurer and insured's interests are aligned, and a strong uniform defense is mutually beneficial.

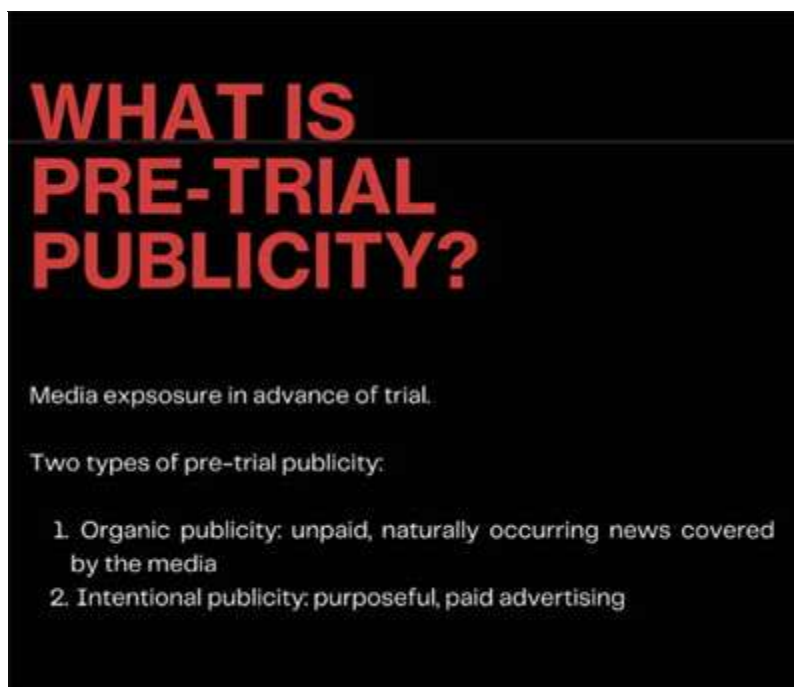
Second, defense counsel can encourage clients and insurance carriers to mount an early attack, stocking their arsenal with admissible evidence that justifies a strong negotiating position. If the arsenal is sparsely stocked, the defense will be sparsely prepared to take hard positions at an early mediation. A thorough initial assessment and strong strategy from the beginning sends a signal to the plaintiffs' bar that (1) their intimidation tactics

will not control the negotiation, and (2) their investment in the case may yield no return. After all, most rational investors will resist sinking money into a high-risk, low-yield return.

Along these lines, remember that the plaintiffs' bar roots for itself because every advertised nuclear verdict raises the settlement expectation in future cases. The advertised settlements and verdicts not only recruit clients but also influence potential defendants and jurors. John C.S. Pierce, et al., *Social Inflation - Legal System Abuse: Observations and Solutions to Support the Right to Fair and Impartial Dispute Resolutions*, DRI: Center for Law and Public Policy (Jan. 2023). When defendants unduly confuse potential verdicts with unlikely verdicts, they overpay in settlements. At this, the entire plaintiffs' bar rejoices—and further ratchets up settlement demands in future cases. One antidote for this phenomenon is to communicate more openly about defense wins—and to root for the defense as a whole. Three prerequisites to this antidote are (1) fighting more, (2) winning more, and (3) communicating more.

When the plaintiffs' bar sees that the defense morale has increased—and that the defense's undue fear is displaced by a sane appreciation of risk—they will more carefully consider where they invest their time and money.

With this said, the Social Inflation Task Force encourages defense counsel to challenge the plaintiffs' bar's self-sustaining advertising efforts creatively. Study their advertisements. Pay attention to the primary, intentional messaging and highlight their tactics to fellow defense counsel and clients. For an excellent primer on organic advertising and intentional advertising, see Social Inflation Task Force member Shari Belitz's [recent LinkedIn post](#) with a slide carousel titled, "What Is Pre-trial Publicity?"



The Social Inflation Task Force is leading a continual effort to stay informed of new tactics and to develop strategies to rebalance the power of litigation. Over are the days of the defense bar's passive approach. Do not unduly fear the policy limit demand. Boldly try the right cases to verdict. Then communicate your wins with fellow defense counsel and clients. With the right tools, we can rebalance the power and empower ourselves with reasonable solutions to common litigation problems.

The Social Inflation Task Force is always seeking motivated members willing to contribute to our cause. If you have questions or are interested in joining our effort, do not hesitate to contact the Task Force's Chair, Chris Turney (cturney@turneyLG.com) or its Vice Chair, Lauren Motes (lauren.motes@dinsmore.com). Be on the lookout for future publications and updates from our task force as we continue to arm the defense bar with the information and strategies it needs to effectively combat social inflation.



Lauren Motes is an associate at Dinsmore & Shohl LLP. She is vice chair of the Center's Social Inflation Task Force. Lauren focuses her practice on commercial litigation. She also assists insurers in civil and administrative proceedings involving coverage disputes and claims for common law and statutory bad faith.



Chris Turney chairs both the Center's Social Inflation Task Force and the DRI Litigation Skills Committee. In creating Turney LG (Kansas City, MO), he assembled trial attorneys who tackle technical engineering, scientific, and medical issues involving products, premises, and professionals. Although Chris's trial experience has centered in large metropolitan venues, he also enjoys litigating cases in smaller counties, having handled litigation in nearly half of Missouri's judicial circuits. In addition to serving as local and lead counsel in Missouri, Chris is experienced in Kansas district and appellate courts, as well as federal district courts and courts of appeals. Outside of work, Chris enjoys every minute with his wife and two children and leads Wings 4 Water, a nonprofit that turns chicken wings into clean water for our global neighbors.