

# The road ahead: litigation forecasting through 2022 and beyond

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Industries around the world are striving to adjust to the societal, business and economic realities of the times. Corporations subject to litigation, like general liability and auto in particular, are focused on understanding what it all means for their industry. While much is unknown, what we do know is that charting a path forward depends on several factors, including:

- an organization's ability to analyze data
- the insights to identify relevant trends
- a commitment to exploring promising solutions
- the foresight to build a long-term strategy for today and tomorrow

## **A LOOK AT THE CURRENT LITIGATION LANDSCAPE**

The past few years have been a bumpy ride for the industry. COVID-19 impacted everything, including litigation. While cases declined considerably in 2020 at the pandemic's height, beginning in late 2021 Sedgwick began to see more claims with attorney involvement at first notice of loss, indicating that cases were rising. In 2021, the industry also saw its first \$1 billion award, a record that lasted only months before an astounding \$301 billion award was announced. A study by Verdict Search found that between 2019 and 2020, there was a 300% increase in awards of \$20 million or more.

Multiple factors are fueling the current climate. Social psychologists note that after the past few years of deprivation and uncertainty, some believe compensation is warranted (both plaintiffs and jurors). The normalization of high verdicts is having a ripple effect across the industry. According to [a 2021 Milliman study](#), losses are growing at a faster pace than insurance premium rate increases.

## **WAGE INFLATION ALSO IMPACTS LITIGATION**

As salaries increase to recruit and retain workers, another factor that must be considered as contributing to verdicts is wage inflation, which is currently at 5.2%, according to the Bureau of Labor Statistics' July release.

Sedgwick analyzed how wage inflation impacted clients in terms of disability payments and time people were away from work to better determine its impact on judgments. Taking 1 million workers' comp claims and examining weekly wages for claims, we compared them year over year. On average, daily disability payments increased 4.7% for workers' compensation claims and 1.5% for average medical payments as compared to 2021. We can expect medical costs to increase in 2023 as well, due to adjustments to workers' compensation medical fee schedules.

Litigated claim expenses, such as legal defense, surveillance, appraisals and special investigations, also continue to rise. According to data from the National Association of Insurance Commissioners (NAIC), [costs as a percentage of the total incurred losses increased](#) by 4% from 2017 to 2019 and, depending on the specific line of liability business, can account for as much as one-third, or even one-half, of total incurred losses.

What does all this analysis mean for the industry? That we must focus on and address a range of issues contributing to the current escalation in litigation expenses.

## OTHER FACTORS INFLUENCING TRENDS

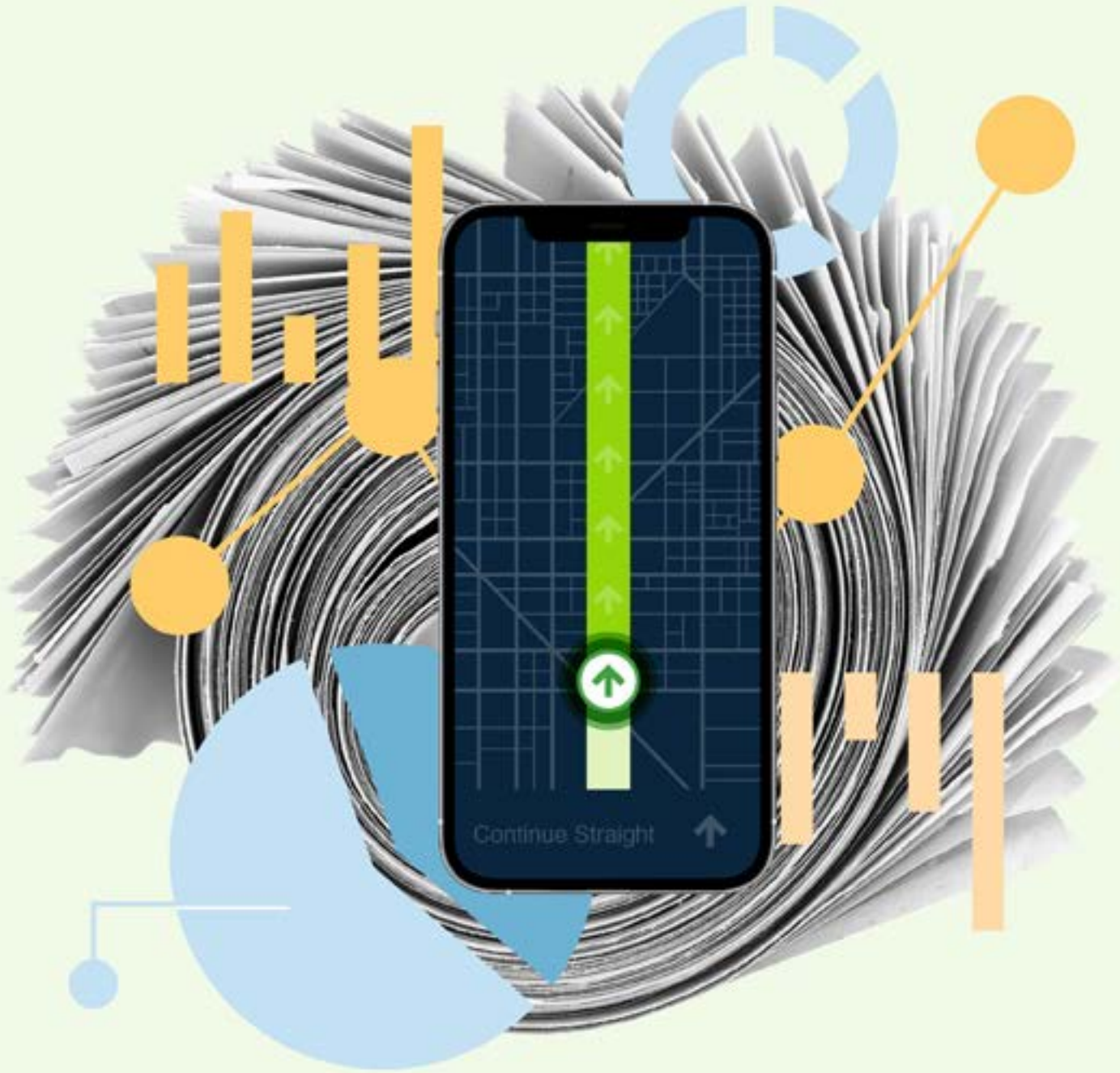
Here are a few to monitor:

1. **Third-party funding.** One trend we're seeing is more funding from third parties — specifically large legal firms. Because of all the dollars they invest up front, the concern is that there will be less opportunity for settlements or realistic verdicts. (For more information, explore Sedgwick's [commentary paper](#) on litigation trends.)
2. **Global marketplace.** Escalating verdicts appear to be a distinctly American phenomenon. However, regions like Great Britain, France, Germany, Australia and Asia will want to closely monitor their ecosystems and note trends.
3. **Environmental, social, governance (ESG) cases.** While still an emerging "must-have" component of an organization's best practices, as ESG grows in importance it could become a factor influencing litigation. The U.S. has already seen the first few cases involving ESG.

## WHAT ROLE WILL TECHNOLOGY PLAY IN LITIGATION AVOIDANCE AND MANAGEMENT?

While understanding the litigation landscape is a crucial step, equally vital is exploring solutions. What can we do to address the challenges of today's litigation marketplace?

One promising strategy is the adoption of predictive modeling, which uses data to help identify litigation-prone claims and develops alternative workflows that can be readily implemented to focus on prevention and resolution.





**Nuclear verdicts -  
those more than \$10 million -  
are becoming the norm**

In the near future, we expect to be able to incorporate artificial intelligence (AI) models, which will allow us to enhance datasets to make better directional decisions, like the optimal venue for a specific trial. Or, we can use AI and machine learning (ML) to run plaintiff comparisons and get insights into expert witnesses and whether or not they have a bearing on outcomes.

AI and ML will become more robust and valuable as we continue to add more datasets — from both internal and external sources and make them more sophisticated and granular. In short, the more information points we add, the more it helps us refine our strategy and ensure we have a strong, solid and objective approach to the litigation process.

As technology continues to evolve, it expands the kind of information we can unlock. We can now read sentiment in unstructured data (i.e., notes fields). If the claimant mentions the word 'attorney' in an email, we can flag that claim. The sooner we can get at-risk claims to experienced adjusters, the sooner we can intervene and potentially save millions of dollars.

## **WHAT DO AI AND ML BRING TO THE LITIGATION MANAGEMENT PROCESS?**

The ability to...

- Compare similar claims to gather insights into litigation and settlement trends and potential strategies.
- Identify litigation prevention models by data mining case notes (Sedgwick can look at cause, code, structure, severity, data details of claims, etc.).
- Look for key words in notes and other unstructured data sources within claims — which helps us predict the likelihood of a specific outcome earlier in the process.

## **SMALL NUMBER/BIG IMPACT**

It's important to remember that while new technology is exciting and promising, the ultimate goal for its adoption must be to prevent a claim from advancing to litigation — and certainly from resulting in a nuclear verdict. If we improve modeling through predictive analytics, we have a much stronger opportunity to stop claims from escalating.

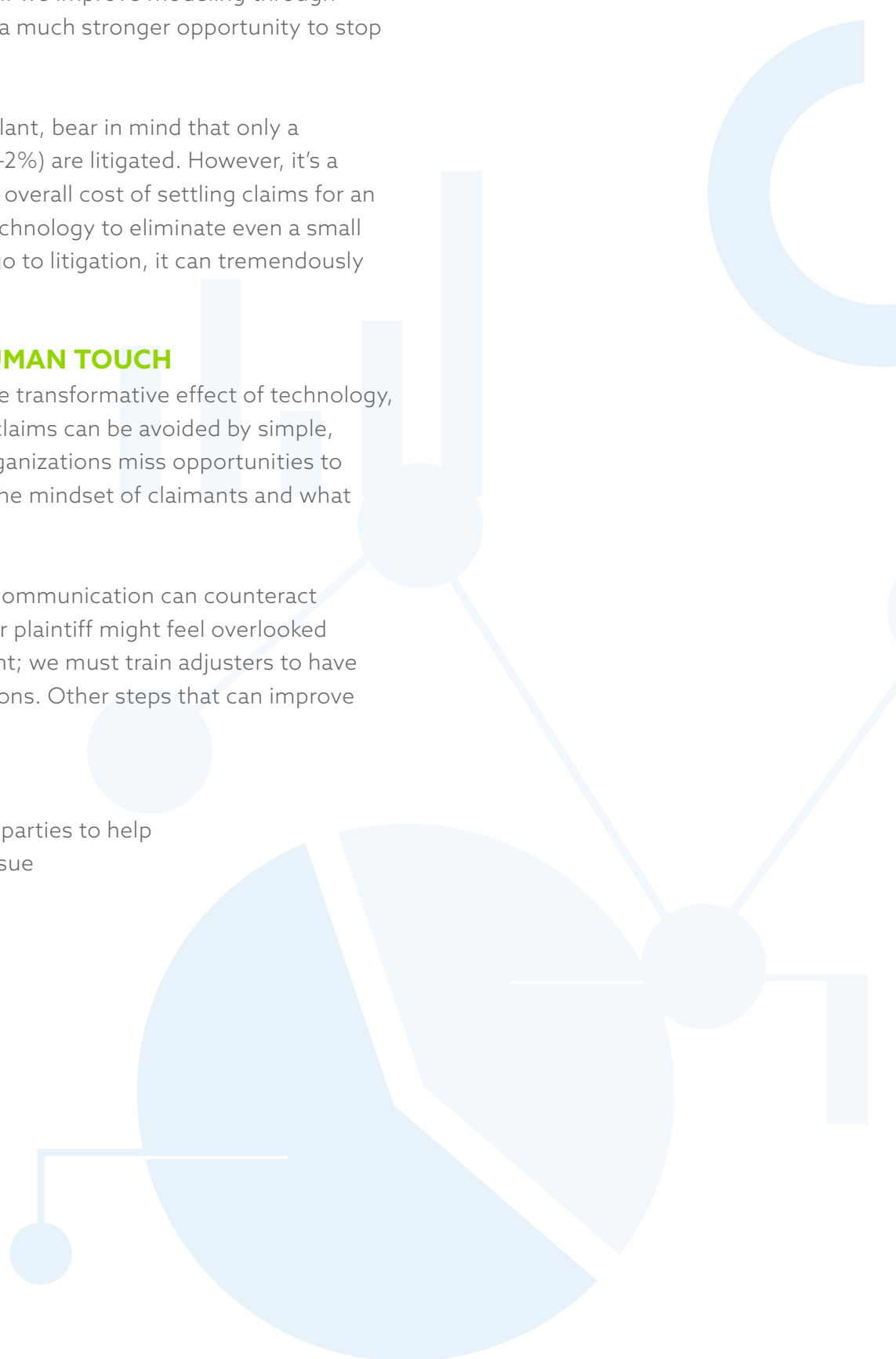
While it's important to be vigilant, bear in mind that only a small percentage of claims (1-2%) are litigated. However, it's a disproportionate share of the overall cost of settling claims for an organization. If we can use technology to eliminate even a small portion of those claims that go to litigation, it can tremendously impact the bottom line.

## **DON'T FORGET THE HUMAN TOUCH**

Because of our reliance on the transformative effect of technology, it's easy to forget that many claims can be avoided by simple, personal communication. Organizations miss opportunities to settle by not understanding the mindset of claimants and what drives them to file a lawsuit.

A caring approach and open communication can counteract situations where a claimant or plaintiff might feel overlooked or even blamed for an accident; we must train adjusters to have advocacy-focused conversations. Other steps that can improve resolution efforts include:

- Early settlement offers
- Mediation
- Involving trusted external parties to help discuss and resolve the issue



## FIVE CRITICAL AREAS TO UNDERSTAND ABOUT P&C LITIGATION TODAY

1. The pandemic muted claims and lawsuits — but the respite is over.
2. There continues to be an increase in the number of claims with attorney involvement at the first notice of loss.
3. Litigation rates and costs continue to rise.
4. “Social inflation,” among other factors, continues to be impactful, increasing the severity and frequency of litigation.
5. Nuclear verdicts (those in excess of \$10 million) remain a serious concern and are becoming both larger and more frequent.

## BUILD YOUR LITIGATION MANAGEMENT ARSENAL

Despite complexity and uncertainty, there are proven strategies for litigation management. It's essential to focus on the right tools in your litigation management arsenal — including people, technology and data — and to develop and implement plans now. While the focus must always remain on prevention, there will be times when a claim still proceeds to litigation. Once a suit is at hand, companies should focus on employing strategies and tactics to reach an amicable pre-trial settlement.

When this is not appropriate or available, specific trial strategies to consider include:

- Be fully aware of the plaintiff's approach (e.g., taking the spotlight off the actual accident and focusing on ancillary issues like past safety, etc.).
- Use the information and data from your ESG reports to highlight the good the organization does.
- Humanize the corporate defendant. Counter the “reptile theory” typically employed by the plaintiff's counsel, so people can relate to a business as an essential contributor to a community and not just a faceless entity with pockets.

We can also gain useful insights from social psychology. For example, anchoring is a cognitive bias to rely on a reference point for decision-making. Studies have shown that anchors we can tie to understandable and believable derivations are more persuasive. Competent, affable experts and explanations that are easily understood and supported by compelling and relatable graphics will also resonate with jurors.



One of the more promising strategies to appear over the past few years is the development of the attorney score card. Sedgwick is at the forefront of developing an objective tool to measure optimal attorney performance that will ultimately benefit the entire industry. The company's data-based tool examines outcomes, costs, jurisdictions, settlement rates, expertise and more. The analysis provides important insights for clients and helps to ensure the most qualified and successful litigator is assigned to a case. Most importantly, it will help develop accountability among litigators and encourage the best in the industry to do even more.

## PREPARING FOR THE FUTURE

Trends indicate that litigation and related costs are increasing. Clearly, it's time to allocate additional attention and resources to claims at risk of escalating and to identify means and methods to avoid or mitigate them. However, let's remember that change also brings opportunity.

There are steps we can take. Businesses at risk for litigation can strive to collaboratively develop new approaches such as prevention, training, educating adjusters, and working to improve their image and reputations in the areas where they are active — and where court cases may be held.

A better understanding of the challenges, and a plan to map the path to more predictable outcomes and even reduced risk, will help smooth out the litigation journey for the future.

View Sedgwick's commentary paper: [Liability, litigation trends, drivers and strategies.](#)

## RESOURCES

**How data and AI/ML are shaping the future of claims management. Sedgwick blog, June 15, 2022**

<https://www.sedgwick.com/blog/2022/06/15/how-data-and-ai-ml-are-shaping-the-future-of-claims-management>

**Natural language processing and the digital claims transformation. Sedgwick blog, Aug. 2, 2022**

<https://www.sedgwick.com/blog/2022/08/02/natural-language-processing-and-the-digital-claims-transformation>

**3 claims complexities driving today's discussions and tomorrow's decisions. Sedgwick blog, April 12, 2022**

<https://www.sedgwick.com/blog/2022/04/12/3-claims-complexities-driving-todays-discussions-and-tomorrows-decisions>