Releasing the New Insurance Litigation Report 2020

Join our guest speaker Nicholas Reuhs, partner at Ice Miller, Todd Regenold, Vice President of Sales at Lex Machina and Lex Machina's Insurance Data Expert Ron Porter, to learn about the latest trends and insights for Insurance Litigation. Hear about the impact of COVID-19 and get your questions answered by our speakers. Discover the value of Legal Analytics to make informed Insurance Litigation decisions.

Revealed in this upcoming report are the latest Insurance findings and trends, including information on:

- Top Insurance Litigation Firms
- Top Parties in Insurance Litigation
- Top Insurance Judges
- Timing Metrics
- Case Resolutions
- Damages Awards

Lex Machina's 2020 Insurance Litigation Report will examine the latest trends and insights from Insurance litigation data gathered from cases in the federal district courts. The data set includes cases (including class actions) involving disputes between an insurer on one side and a policyholder, a beneficiary, or another insurer asserting the rights of a policyholder on the other.

Leveraging this data gives companies and lawyers a competitive edge—companies can select counsel based on a proven track record, and lawyers can provide better outcomes by applying data to their strategies, whether drafting a motion for summary judgment, negotiating a settlement, or formulating trial strategy.

Nicholas Reuhs
Partner
Ice Miller
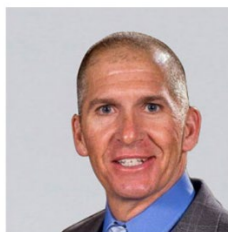
Todd Regenold
Vice President of Sales
Lex Machina

Ron Porter
Insurance Data Expert
Lex Machina

Todd Regenold ([00:02](#)):

All right. Well, good morning and good afternoon everyone. Thank you so much for joining us, we have a fantastic turnout for today's webcast. My name is Todd Regenold and I lead sales and customer success here at Lex Machina. I want to cover just a couple of very quick housekeeping items. The first is that we have carved out some time at the end of today's webcast to answer live questions. So if you have any questions at all as we work through today's presentation, please submit them in the q and a, and we will do our very best to get your questions answered toward the end of today's webcast. If for any reason we can't get to your question, we will certainly follow up with you. So we encourage you to ask questions. Secondly, you have probably kind of a small viewing screen. So in the screen that you're viewing, in the upper right there's a box, click on that box and you'll have a larger, more readable viewing screen.

Todd Regenold ([01:20](#)):

Today's webcast is about the release of our 2020 insurance litigation report. The report will be released next week. Today, we will provide you with an early preview of the report. Of course, COVID has created a great deal of interest in terms of how the economic situation is affecting insurance litigation. We'll be covering a bit of that today. I want everyone on today's webcast to understand and appreciate that all of the wisdom and the knowledge and the insights, we'll be sharing as part of the report. All of this comes from Lex Machina, our online legal analytics solution and the users of Lex Machina not only have access to these insights but an infinite number of additional insights, literally available in seconds at their fingertips.

Todd Regenold ([02:38](#)):

These are our Lex Machina subscribers. Over on the right you see our corporate subscribers. Some of the most well-known corporate names in the world. Johnson & Johnson, Microsoft, eBay, General Motors, Facebook, Allstate, GlaxoSmithKline. And over on the right, you see the names of some of our marquee law firm subscribers. Over 75% of the Am Law 100 are subscribers to Lex Machina. All the way down to one and two person boutique law firms. Those one and two person boutique law firms have access to the same world class technology and these insights at their fingertips as do the largest law firms in the world.

Todd Regenold ([03:38](#)):

What I will do now is go ahead and introduce our presenters. First, we want to thank Nicholas Reuhs. Nicholas is a partner at Ice Miller. There he concentrates his practice on insurance coverage disputes, risk management, and legal ethics in general business litigation. He regularly advises clients in insurance coverage management, insurance coverage matters. Secondly, we have Ron Porter. Ron Porter, he's one of our legal data experts and prior to joining Lex Machina, Ron worked as a product liability lawyer for General Motors where he managed high exposure product liability cases. I'm going to go ahead now and turn it over to Nicholas and Ron who are going to walk us through the 2020 insurance litigation report. Take it away, gentlemen.

Ron Porter ([04:40](#)):

Thanks, Todd. And thanks to everybody for joining us for this session where we will talk about the highlights from Lex Machina's 2020 insurance report. We will be looking at some data on insurance case filing. As Todd said, we're going to be exploring, in some detail, the effect of COVID-19 on insurance cases. We'll be looking at data for the top parties and law firms and insurance cases in federal court. And we'll talk about timing, case resolutions and damages data for insurance cases in federal court. It's a lot to cover, so we'll get right to it.

Ron Porter ([05:30](#)):

So this chart shows insurance case filings in federal court from 2010 to 2019. As you can see, 2011 had the fewest filings with just over 8,000 filings and 2019 had almost 11,000 filings. While there was some variation in the data over the years, the last four years shows a pretty clear trend of increasing insurance case filings in federal court. We can dive into that data a little bit and look at case filings by policy type. And we've picked the business liability policy type to look at for the same period. Again, filings from 2010 to 2019. And while 2010-2019-

Nick Reuhs ([06:31](#)):

Sorry Ron, I didn't mean to talk over you. I was just going to say one thing that's really interesting there is, you can see on the far left side what's left of the 2008 financial crisis. You can still see that high point with all the business liability claims that were made in 2009, 2010. And then you can still see that on the left side of this chart. And one thing that I think this is particularly useful for is, whether you're on the insurer side or the policyholder side of these disputes, is getting an idea as to what your internal growth looks like versus the larger market. We're constantly segmenting things into smaller practice groups and slices, and you can use Lex Machina to kind of say, "All right well, look, compared to last year or the year before, or the market's down 5%, 10%, 7%, up 7%" and then measure your own firm insurance practice group or your own claims activity, if you're an insurer against this data and it's invaluable for that.

Ron Porter ([07:42](#)):

Yeah. Thanks, Nick. And that's very interesting insight. And that's one of the things you can gather by looking at data by policy type, as opposed to just the general trend in insurance case filings, which tended to show an increase over the last four years. But when you look just at business liability filings, they are decreasing in the last few years. And I guess I wonder, Nick, whether you think that trend is likely to continue given that we are in some period of economic difficulty now that's likely to continue for a while. Would you foresee a business liability policy litigation to increase as a result of that economic trend?

Nick Reuhs ([08:36](#)):

Yeah, of course. You're going to see a few different things. When we talk about business liability and you start putting things into buckets, you can talk about economic loss and physical loss. We'll probably actually see physical loss claims and disputes, bodily injury, property damage. It wouldn't surprise me if we see that go down, people are just at home more. That's people are going to slip and fall on the sidewalk of the restaurant or get in car accidents in a business auto kind of scenario. But on the other side, the economic loss, I think you're going to see a huge uptick. If this went one more or two more years to the left, I think we'd see a number even higher than 3,100 for the financial crisis of '08.

Nick Reuhs ([09:18](#)):

And I think it's Warren Buffett that's fond of saying, "When the tide goes out, you see who's skinny dipping." And that's what we're seeing here is credit markets are tightening up a little bit with respect to businesses, not necessarily with respect to individuals. And people stop paying rent, people close their doors and you have commercial landlords that get into trouble. And all of a sudden, you see who can survive the lean times even if it's just a temporary cash flow issue. And inevitably that leads to lawsuits which leads to business liability filings. So I think this number will definitely tick up. And even if it stays flat, I think that would just really reflect some of the decrease in the physical harm claims as opposed to economic harm claims. Also, keep in mind, anytime you read about insolvency, anytime you see

insolvencies, you're looking at Directors and Officers claims under D&O policies. So that's another thing that I think, if we do this again in 18 months, we're going to see a sharp increase on that blue line.

Ron Porter (10:30):

Great insight. Let's shift to looking at the more recent period. This chart shows case filings by quarter from 2018 to this end of the second quarter here in 2020. And a couple of things about this chart jump out. First, quarter one tends to have the fewest case filings each year, or at least did in 2018 and 2019. It appeared like that's holding true in 2020, as well. But we see the sharp increase from quarter one to quarter two in 2020, which of course, as we'll see as we work through this is driven by the COVID epidemic.

Ron Porter (11:27):

So let's look a little bit more closely, comparison of insurance case filings from March to June. Again, looking at that period from 2018, 2019, and then we'll look at 2020. But for 2018 and 2019, you see an increase overall in filings, not really much remarkable in terms of which policy type was driving that increase. We do see an increase, fairly substantial, in hurricane related claims, but that's heavily weather dependent and probably not something driven by things going on in lawsuits in general. But when we get to 2020, you can see a substantial increase in filings in the March to June period compared to previous years, which we can attribute to COVID. And before we dive into why that is, so I guess I'd like Nick's reflections on what, in general, the effects of COVID had been on his practice over the past six months.

Nick Reuhs (12:52):

Yeah. So before I even talk about my own, keep in mind that the numbers on this chart, you're going to want to look at these again in a few months I think, everybody that uses this, because keep in mind the insurance lawsuit lags behind the insurance claim, right? So if you make a claim, there's an investigation and a coverage letter and that can take 30 days, 60 days, 90 days, six months. And so there'll be this lag in seeing the definite effects of COVID that probably takes a bit of time. And I think the one way you know that's happening is you see the auto claims are pretty even. And we know as a matter of fact that auto claims are down overall. That's why all the insurers are giving you money back because you didn't drive your car.

Nick Reuhs (13:46):

So we start to get into Q3 data and into Q4. I think we're going to see auto go down, UM/UIM go down and that business liability, it's already up 10%, it'll be up 25, 30. It could be up a 100% because obviously what we're seeing is all the COVID BI filings in them. Like I mentioned a minute ago, all of the filings that relate to just the business tensions that are out there. And those numbers could explode even more. Ron, you asked about my practice, the advice we've been giving clients on COVID BI is, unless you've got a really solid, straightforward policy, we have some clients that have pandemic coverage or loss of attraction coverage, where clean claim, you're going to pursue it. Those frankly don't go to suit and those are getting paid.

Nick Reuhs (14:42):

But the vast majority of businesses have standard BI coverage, which ensures we could do a whole 90 minutes on whether it's right or wrong or saying no. But the advice that I give and the advice that I can tell you a lot of other lawyers in the policyholder world are giving is, lets wait and see how courts rule. A few suits got filed in nearly every state. And the courts are trying to get through this threshold issue of whether or not this needs basic ISO triggering language for a business income loss. And everyone's sitting back and

watching those. And, for instance, there was a policy holder favorable decision in Missouri a couple weeks ago, but then there's been insurer favorable decisions in DC and Michigan during that same period.

Nick Reuhs ([15:36](#)):

And so you're kind of watching and waiting to see what happens there and if, lets say the Indiana Supreme Court says, "Yeah, this does trigger." You're going to see a ton of filings in Indiana just overnight. And so that's what we're seeing with COVID, at least on the BI side. And I think Ron will touch on it here in a minute, kind of the ability to track where cases are being filed by jurisdiction. And so I think a lot of people, we've got clients all over the country, we're watching these in all the different states to kind of find out where that BI litigation is going.

Ron Porter ([16:17](#)):

Right. Yeah, we've mentioned the BI litigation and let's take a look at their insurance COVID-19 case filing. This is data showing cases that Lex Machina has reviewed and attributed to COVID-19. And in the insurance world, that basically means their business interruption claims by businesses who were affected by the shutdown orders in March. There are a few other types of insurance policies that have been involved in litigation related to COVID, mostly travel insurance policies. We've seen some class actions seeking refunds of premiums, principally in the auto and commercial liability area. But the vast majority of these cases that are COVID insurance case filings in Federal Court are business interruption claims. We saw a couple people file early in March, but then the big numbers in May, June, July, and August. Tapering off possibly, as Nick suggests, because businesses are waiting to see what happens with the cases that have already been filed. And Nick, you mentioned tracking these cases as they proceed through the courts. Is that something that Lex Machina helps you do?

Nick Reuhs ([18:11](#)):

Sure, yeah. Obviously most of these coverage cases are going to be in federal court and Lex Machina's got lots of data about where it's going and also just identifying the cases in the first instance, quite frankly. Because that's what you need to know is, what cases are you supposed to be watching? And yeah, absolutely. And I think, I don't know if you have a slide later on that shows kind of jurisdictional stuff, but yes. It's an easy way to identify which case and then keep an eye on it.

Ron Porter ([18:47](#)):

Right. And just to provide a little sneak peek into the report, Lex Machina will include in the report a data on business interruption cases. We are in the last part of developing a tag for business interruption coverage cases. So you'll be able to track those cases, look at those types of cases since 2009 and get all the traditional Lex Machina data about business interruption cases, including judge data, court data, damages, all the usual Lex Machina data is broken down by business interruption claims.

Nick Reuhs ([19:46](#)):

And Ron, I don't want to get hung up too long on the BI, but one other important note there is that ability to look at who the insured is in the cases you're following. Because you're both looking for... You're looking at your clients and you're saying, "what jurisdiction is their policy going to be construed in and who is their insurer?" And then you're watching the cases to find those two things. If, let's say Cincinnati Insurance gets hit by one of these cases and its policy holder favorable, that's something you want to know. Even if that case was in Ohio and you're sitting in Minnesota, you want to know that because you're going to go take the allegations and the arguments from that complaint and co-opt them for the purpose of your own case.

And maybe if you've been sitting on that, that's the thing that makes you go, "Hey, it's time to pull the trigger, let's file the BI case for this client."

Ron Porter ([20:41](#)):

Sure. Well, let's take a look at the most active parties in insurance cases from 2015 to 2019. And here you can see a fairly familiar list. I think it will be a familiar list to everyone on this call, all the major insurers and the number of cases broken down by whether they're plaintiff, defendant. And then in the far right column, the number of districts in which the party has litigation. We see some spread among most of the parties on whether they're plaintiff or defendant, which of course, is expected in insurance litigation because of the declaratory judgment action. Often insurance will be a plaintiff in a DEC action and obviously defendants when they are sued by their insured. Nick, any thoughts on how party data is useful to you as a practitioner in insurance cases?

Nick Reuhs ([21:53](#)):

So I do policyholder work and, whether like to admit it or not, sometimes we're just taking a swing, right? We've got an argument, we're trying to figure out a, let's write a letter and let's see if we can get the insurer to embrace this. Maybe it's something that we look at and we say, "5% chance this works, but let's give it a try." This is useful because you look at this and the worst case scenario when you do that, is that the insurer files the DEC action, because then you're stuck in this lawsuit and are you just going to give up at that point? It becomes more complicated decision making that controls the dance.

Nick Reuhs ([22:38](#)):

So you look at this chart and it gives you a better idea as to what's going on. I look at this and I go, "No matter how nasty of a letter I write to Liberty Mutual, they're not going to sue me. They're going to wait for me to sue them." On the other hand, if I push the limits with Scottsdale, I'm probably going to get a DEC action. So it gives you some taste as to how quick of a trigger the insurer you're working with has.

Ron Porter ([23:04](#)):

Great point. Let's move on and look at the most active law firms, again, 2015 to 2019. And again, the plaintiff, defendant distinction can be not as meaningful in insurance cases because insurers tend to be both plaintiffs and defendants. But here you can see in a couple of firms, of course, that do exclusively policyholder work. You can see the large discrepancy between the number of cases for plaintiff and defendant. Nick, can you shed some light on how you can use this law firm data, perhaps even in conjunction with the party data that we just talked about?

Nick Reuhs ([24:03](#)):

Well, a little bit of what I talked about a minute ago, figuring out how the law firms are likely to respond, which ones are anxious to file suit. The other thing that you learn when you did... Even more data on the law firms and what they're doing in here is, you start to learn who's doing what, right? And for anybody that practices in the insurance world, you've got always this complexity of the tripartite relationship. You've got the defense counsel, you've got the insured, you've got the insurer. And there's the constant issue of independent counsel, Cumis counsel, divided loyalties. It's a constant point of contention.

Nick Reuhs ([24:47](#)):

And having the data to know, I think most people on this call, some of these names at the top of the list, it's really easy to go, "Yeah, Hinshaw and Culbertson, they represent insurers. They have some loyalties to

insurance." But as you start to see unfamiliar names, it's good to be able to dig into the law firm data and see who the firm you're dealing with is, and where their loyalties lie. You can also use that same kind of thing in marketing, regardless of which side of this coin you're on.

Nick Reuhs ([25:21](#)):

Before I was at Ice Miller, I was at Vorys, Sater. And when I was there we did mostly insurer side work and at Ice Miller, I do mostly policy holder side work. And in both cases, there was always a push to demonstrate that we were on one side of the coin or the other. Because when you try and play both sides, you're looking at your client and you're going, "We've got a good coverage argument here, unless I do really well in my other case." And that's the tension that can undermine a client pitch. And so it's good to know for kind of competitive intelligence. To be able to say to your client, "You know what? Those guys do work on both sides. They're going to have positional conflict. They're not going to represent you as zealously as we do, because all we do is this side or that side." So that's a place where the law firm data can be very useful.

Ron Porter ([26:11](#)):

Sounds good. Let's shift gears a little bit and take a look at timing data in insurance cases. And again, we're just looking at the last five years of data. So this shows timing ranges from the lowest, the fastest to the slowest for various events, for summary judgment, for trial and for termination. Again, let's show the details here of the median, which is the median time for summary judgment, trial and termination for all insurance cases from 2015 to 2019. And this data can be generated by court, by judge. And again, filtered by policy type if you like.

Nick Reuhs ([27:16](#)):

What's really interesting here, Ron, is when you do it by judge, right? Most insurance cases are in Federal Court. Most insurance cases get resolved on summary judgment. I know this doesn't necessarily say that, but I think if we clicked down one level would see that the ones that go to trial are called direct action, personal injury type stuff. You know, the complex insurance disputes, D&O, E&O, environmental, those are getting resolved on summary judgment most of the time if they're getting resolved. And when you dig down and see the judge level data, it's incredibly important, right? Because so many times we've got the coverage case moving forward in Federal Courts and then we've got a trial date in the underlying case. And we're trying to figure out who's going to be paying for the judgment at the end of that trial or, more often than not, the settlement in the weeks leading up to that trial.

Nick Reuhs ([28:11](#)):

And so you want to be able to look at this data and say to your clients, "we're going to have... we need to file this now because the time to summary judgment for Judge Jones is 270 days. And our trial date in the underlying case is one year out, we got to get this on file to get this cleared up." Or be able to say to your client, "Look, you've got a defense under reservation. This judge is going to take 400 days to rule. You need to be prepared to answer for this judgment and then chase the money." And it gives you the ability to figure out how the two disputes, the underlying liability case and the insurance case are going to interact from a time perspective.

Ron Porter ([28:57](#)):

Right, and you mentioned the importance of summary judgment in insurance litigation. Let's take a look at that. This is case resolutions for insurance cases terminated in the last five years. The right side of the circle

shows cases terminated by settlement or procedural resolution. And it's about typical of federal court cases, I think right around 90% of cases either settle or there's some procedural resolution. On the left side are the decisions on the merits. You can see just in general, claim defendants, which in Lex Machina world is insurance companies, win a little over four times or about four times as often as insureds overall. But when you drill down, as Nick said, and look at summary judgment, many of the resolutions, particularly the ones for insurer wins are at summary judgment. And again, it's insurers win about three times as often as insureds win at summary judgment.

Ron Porter ([30:25](#)):

Slightly different, quite a bit different actually, a breakdown when you get to trial. Trial will go, as Nick pointed out, they're quite rare in insurance coverage cases, insureds do prevail slightly more often than insurance companies. So a bit of a flip in who wins when you get to trial. Let's quickly take a look at some damage data. Last 10 years, insurance damages awarded. Again, really the point here is to show the types of damages that Lex Machina has available for analysis. You can get very granular in looking at what damages have been awarded in insurance cases. Whether it's from just the contract damages or the more enhanced damages that are sometimes awarded in insurance disputes.

Ron Porter ([31:35](#)):

I think that takes us to q and a Todd, if you want to...

Todd Regenold ([31:46](#)):

That was absolutely fantastic- Absolutely. Well, first off, thank you so much, Nick and Ron, that was really tremendous, really great. I love some of the things you said there, Nick, about benchmarking your firm or practice against the macro data. And then you talked about some of these decisions already coming down in Missouri, DC and Michigan. And I just want to point out to our audience that you can track all of this in Lex Machina as it unfolds, which is obviously very, very important at this point.

Todd Regenold ([32:19](#)):

I want to be respectful of our time so we are going to go to questions in one second, but in case anyone has to jump early, here's how you can get a copy of the 2020 insurance litigation report. You're going to receive two emails from Lex Machina, the first is going to come in about the next 20 minutes. That's going to be a recording of today's webcast. If you'd like, you can share that then with any of your colleagues or if there's anything that you wanted to go back and review, again, you'll receive an email with a link to the recording.

Todd Regenold ([32:49](#)):

Secondly, in about a week, we expect this to be early next week, we will be formally releasing the 2020 litigation report. You'll get another email from Lex Machina, there'll be a simple button in there, hit the button. We're going to have one very small ask. We're happy to share the report with you, we're going to ask that you spend about 15 minutes with us so that we can actually show you Lex Machina, our lines of legal analytics solution. You can see exactly where we're getting these insights that you're finding in the report, get a real appreciation for the power of Lex Machina.

Todd Regenold ([33:25](#)):

And let's go ahead then and go to... In the interest of time, we'll do one question here and this question is, what else is in the report that we may not have gotten to or been able to cover today?

Ron Porter ([33:43](#)):

Well, I guess I would say the most interesting thing or important thing that's in the report, I did touch on it briefly, is that Lex Machina is developing a case tag for the business interruption coverage. So you will be able to track those cases throughout the 2009 to present history. You can sort them by case, by court, by judge, by defendant, and really do a thorough analysis of how those cases have been handled. And also use it, as Nick pointed out, to track cases that are filed as a result of the COVID crisis and see how those cases are progressing. And if you have either an insurance company client, or an insured client, I think keeping track and monitoring those cases will be of great benefit to your client no matter which side of the fence you're on.

Nick Reuhs ([35:02](#)):

And you know, the other thing that I would point out is, everyone's going to use it differently, getting the different nooks and crannies of it. But we kind of ran out of time there at the end, but there was a damages slide. And both throughout Lex Machina, the ability to see the damage amounts for claims. As an insurance practitioner, I'm constantly asked about limits. And I always start with what I know and can find about recent verdicts, worst case BI verdicts, worst case property damage verdict so that I can say to the client, "Look, here are the outlier verdicts over the last three years, five years. That's where we want to start." And then you make the cost decision. You want to go beyond that? Do you want to come down from there?

Nick Reuhs ([35:49](#)):

But at least you're speaking from a place of information instead of just going, "Yeah, you probably need $5 million of coverage" and it's going to be the question why, and you kind of go, "I don't know, that's just what I tell people." At least you've got kind of real, hard data to say, "Look, last year in this type of scenario, these were the biggest verdicts." So think that's helpful too.

Todd Regenold ([36:14](#)):

Absolutely. Well, that is just terrific information, Nick. We really appreciate your openness and candor. We got a lot of inside the insurance litigation information from you today. It was super helpful. And Ron, thank you very much for walking from number one, building the report and then walking our audience through that today. So again, folks are going to receive two emails. One will come very, very shortly. That'll be a link to the recording of the webcast. And then secondly, you'll get an email early next week where you can request a copy of the report. We'll have one small ask and that is that we'd love to have an opportunity then in exchange for the report to show you Lex Machina. Nick, Ron, everyone in our audience, thank you so much for your time today. It's really been fantastic and we greatly appreciate it. Thank you.

Nick Reuhs ([37:05](#)):

Thanks guys.

Ron Porter ([37:06](#)):

Thank you.