Lex Machina's 2023 Insurance Litigation Report

Join Ron Porter (Lex Machina's Legal Data Expert in Insurance Litigation), hosted by Aria Nejad (Lex Machina's In-House Counsel), as they discuss insurance litigation trends over the last three years and offer insights on judges, venues, parties, law firms, case filings, timing, case resolutions, findings, damages, and more. The webcast will also include a look at emerging trends in connection with federal appellate insurance litigation.

Speakers:

Ron Porter
Legal Data Expert - Insurance
Lex Machina

Aria Nejad
In-house Counsel
Lex Machina

Aria Nejad ([00:00](#)):

And welcome everyone to today's webcast where we'll be introducing Lex Machina's newly released 2023 insurance litigation report. My name is Aria Nejad. I'm in-house counsel here at Lex Machina and I'm hosting today's webinar. I'll introduce our guest here shortly who will showcase highlights from the analytics and data included in the insurance litigation report and provide insights on judges, courts, law firms, attorneys and parties involved in insurance litigation. A couple of quick housekeeping notes up top before we get started. This is going to be a 25-minute presentation followed by answers to any questions submitted by attendees for up to about 30 minutes total. So please share your questions at any time. We'll review them together at the very end and at the end of the presentation we'll have an interactive poll for the audience to get your feedback on today's webcast. Just takes a few seconds and it helps us improve our future webcast. So please take the time to share your thoughts with us at the end.

([00:52](#)):

A little bit about Lex mocking up. Lex Machina is legal analytics. It's our focus. Lex Machina provides legal analytics to companies and law firms, enabling them to craft successful strategies, win cases, and close business. We currently count over three quarters of the AM Law 100 as clients, in addition to companies and law firms of all sizes from Fortune 50 companies to small businesses, small law firms, solo practitioners, courts, federal government agencies, litigation funders, law schools. Really any type of organization that wants to gain actionable insights from analyzing litigation outcomes.

([01:25](#)):

Before we dig into the data in this year's report, I do want to note that there is a lot of hard work that goes into creating these reports within Lex Machina. We have a great team of legal data experts that put in a lot of time and energy working on these reports, but the cool thing about this data is that you'll see is that you could access all of these data points directly within Lex Machina. We're pulling it directly from the product when we put the report together. And if you want to dig into narrow, expand the data points, if you have Lex Machina, you can do all of that with just a couple clicks within the product.

([01:53](#)):

Now, today's session will be kind of a high level overview of just some of the data points available within the report. So we do really recommend reviewing the full report for a more comprehensive view of all this extremely valuable data. So today I have the pleasure to speak with Ron Porter. Ron is one of Lex Machina's legal data experts and leads our insurance litigation practice area. Prior to joining Lex Machina, Ron worked as a product liability lawyer for General Motors where he managed high exposure product liability cases. Thank you for joining us today, Ron.

Ron Porter ([02:22](#)):

Thank you, Aria. It's great to be here.

Aria Nejad ([02:26](#)):

Likewise. So at this point, I'm going to turn the presentation over to you, Ron. Go ahead and begin the presentation when you're ready.

Ron Porter ([02:32](#)):

Thanks, Aria, and thank you to everyone on the call for joining us. It's great to be here. Today we'll be looking at some of the highlights from the 2023 Lex Machina Insurance report. The report covers

insurance litigation in the federal courts, and we'll be looking at data related to case filings, courts, judges, the parties involved in the litigation, the law firms that represent the parties. We'll look at some timing data for insurance litigation in the federal court, and we'll look at important data about case resolutions and damages. First, let's jump right into with some high level data about insurance case filings in the last 10 years. As you can see from this chart, insurance filings fluctuated around the 10,000 per year mark for much of the early part of this period, but really beginning in 2020 began a pretty steep increase that continued in 2022. So let's dive into... Oh, I'm sorry.

Aria Nejad ([03:44](#)):

I was going to ask you. No, you're fine, Ron. I noticed this increase here from 2020 to 2022. Just curious, as a practitioner, what is your opinion on what was maybe driving this increase?

Ron Porter ([03:56](#)):

Well, Lex Machina has some policy type tags and some other kinds of tags that allows the practitioner to go into this data a little more deeply and see what type of coverage or what type of events is driving this increase. So we can do that. Let's take a look at the next slide. And this chart shows cases involving business interruption coverage and focuses on the last 10 years. And as you can see, going back to 2013 through 2019, there were relatively few cases and the number of cases each year didn't fluctuate. Starting in 2020, we saw over threefold increase in case filings for business interruption coverage cases, a slight decline in 2021, but then an increase starting again in 2022. And this reflects that business interruption coverage really became a focus in 2020 as a result of the pandemic. And businesses and other public enterprises sought to recover losses that they incurred as a result of the business restrictions that occurred during the pandemic.

Aria Nejad ([05:25](#)):

That makes sense.

Ron Porter ([05:27](#)):

We can take a look at other events as well. Lex Machina has analytics that allow you to look for cases that are the result of property damage caused by hurricanes. And here you can see going back 10 years, actually a decrease from 2013 until the middle of the period. But then starting in 2020 and continuing until present, the cases have increased substantially. And really no surprise when you think about the hurricanes, the very destructive hurricanes, that have occurred in Louisiana and Florida. We'll see some of the data later on and how that's affected the courts, in those jurisdictions, but here you can see really the numbers greatly increasing in the last few years.

Aria Nejad ([06:25](#)):

Right. Yeah, probably as a result of Hurricane Irma and some of the other weather related events like you were talking about in the South. Interesting stuff.

Ron Porter ([06:32](#)):

Exactly. And then turning to another common policy type that is involved in litigation, we can see that homeowners policies are increasingly the subject of insurance litigation, again, starting the increase in 2020 and continuing through 2022. Now, one might say, well, maybe this is just a reflection of the hurricane experience since many of the people, many of the insureds damaged by hurricane will be seeking coverage under their homeowners policy. But Lex Machina Analytics allows you to drill down a

little deeper and say, "Well, is this just homeowner's policy disputes increasing or is it really just a reflection of the hurricane effects?" And so looking at the next slide, we can show that there is a real increase, although not as dramatic in the last five years in homeowners policy case filings that aren't related to hurricanes. So we're seeing increased litigation centering on homeowners coverage, and that trend is pretty pronounced over the last five years.

Aria Nejad (08:01):

Right. Yeah. Some interesting stuff here in this, especially these past two slides. As a practitioner, how would you maybe leverage this type of information in your own practice?

Ron Porter (08:12):

Well, I think as a practitioner, you can kind of get an idea of what, if you have insurance company clients, you can kind of get a preview of what's coming down the road and what your client might be facing. For folks who represent the insured, it can provide you guidance as to what type of expertise you should develop. If homeowners policy cases are increasing and you're not in that business, you might want to start thinking of ways to develop that expertise and join in the increasing litigation.

Aria Nejad (09:04):

Right. Makes sense.

Ron Porter (09:07):

So this chart shows the federal appellate cases related to insurance docketed from 2013 to 2022. Again, kind of mirroring the increase we saw in filings in the federal district court. We saw a big spike in 2021. And again, all these numbers can be examined in more detail in the report. My suspicion for the peak in 2021 is that there were a large number of business interruption cases that were decided in the district court and then appealed as the courts and the parties kind of figured out what the law was going to be with respect to those business interruption claims. There were a lot of cases that went on appeal in 2021. So I think that's what the spike you see in 2021 relates to.

Aria Nejad (10:17):

Yep. I believe you're right about that. Now we're looking at the most active district case.

Ron Porter (10:23):

Yeah. Let's take a look at which courts have the most insurance cases to deal with. And I guess not surprisingly, from what we've seen with respect to the hurricane losses, Louisiana, Florida and Texas and particularly Louisiana, really have seen the brunt of the case filings in the thousands, many thousands over the last few years. So no surprise there. Lots of litigation generated by these very destructive hurricanes. And looking again at courts, but this time at the circuit court level and appeals, a little surprisingly, the 9th circuit takes the number one spot, even though most of the district courts with the litigation spikes are in the 5th or the 11th, the 9th circuit has almost one in four of the federal cases with insurance issues.

Aria Nejad (11:45):

Interesting. Why would you say that is? Is there something that, just like you said, I would imagine it actually would be the 5th, but if you were looking at it, it's the 9th.

Ron Porter ([11:54](#)):

Well, I think because most of the cases in the Louisiana, Texas, Florida, most of the spike relates to property damage from hurricanes. I think a lot of those cases get settled, and so there aren't as many appeals as you would expect from those kinds of cases.

Aria Nejad ([12:21](#)):

Gotcha. Now we got the most active judges here. Anything jumps out at you, Ron, looking at this list?

Ron Porter ([12:28](#)):

Well, again, we have nine of the top 10 spots are Louisiana. So the federal judges in Louisiana are all very busy, particularly Judge Cain with insurance litigation. Now, again, just to point out that these numbers are all subject to further analysis, I was looking at Judge Cain's total of 6,877 filings in the last two years, and dove a little bit deeper into that. And Lex Machina does give you the ability to go deeper. And one of the things you learn when you look is that he's already moved about 1,500 of those cases into closed status. So although interesting, the filing number is big and it is a big burden, obviously the cases are moving through pretty rapidly.

Aria Nejad ([13:37](#)):

Okay. Yeah, good to know. Interesting. Doing a deeper dive using Lex Machina. Now we're looking at the most active plaintiffs here.

Ron Porter ([13:45](#)):

Yes. And this can always be a little bit surprising, but it's typical to have the plaintiffs, all the most active plaintiffs in insurance cases, be the larger insurance companies. But the numbers are relatively small, all less than a hundred per year. But you see State Farm Fire and Casualty first, and of course, as plaintiffs, insurance companies are either typically suing for declaratory judgment that they don't owe coverage in a particular case, or there's a dispute between insurance companies about the relative exposure on a particular claim. So that's how we see insurance companies, which we typically think of as defendants as the most active plaintiffs.

Aria Nejad ([14:49](#)):

Gotcha. Makes sense. And moving on to this next slide, we're seeing some familiar names again.

Ron Porter ([14:54](#)):

Yes, many of the same names, but again, notice the numbers are much higher. So it just reinforces that insurance companies are typically defendants in insurance litigation. I would point out, the far right column gives you the number of districts in which the cases exist. And for most of the companies here, they are defendants in lots of districts. Some have cases in fewer districts, likely the result of being more regional in their coverage.

Aria Nejad ([15:42](#)):

Right. Now, we're going to take a look at the most active law firms.

Ron Porter ([15:49](#)):

Yes. So these are the most active law firms representing plaintiffs. And again, it's limited to the last three years. And I guess the thing that I would point out again on these charts is the far right column gives you a good idea of the geographic nature of each firm's practice. You see some of the top firms have only a couple of districts in which they're active, and so it either indicates specialty by type or by that they're just active in one geographic area.

Aria Nejad ([16:41](#)):

And this probably be a very relevant list, I would imagine if put yourself in the shoes of a general counsel at one of these big insurance companies. Probably want to take a look, see who some of these more active firms are.

Ron Porter ([16:52](#)):

Oh, absolutely. And yes, the Lex Machina does have a law firm report function so that you can get, for any of these firms, get a comprehensive report of where and what kinds of cases each of these firms handle. It really allows you to do a deep dive to understand the experience and results achieved by each firm. And then turning to the law firms representing the defendant, again, the same thing. The raw numbers I think are interesting. We see a number of firms like the Porteous firm in the number one position that are handling a large number of hurricane related claims. And so their districts are relatively few, but they have a lot of cases in those districts. But then we also see firms like Lewis Brisbois, Wilson Elser, that have nationwide insurance practices and have a fairly steady number of filings each year spread out in a large number of districts. So Lex Machina also-

Aria Nejad ([18:28](#)):

Sorry. No, please go ahead.

Ron Porter ([18:30](#)):

Yeah.

Aria Nejad ([18:30](#)):

Yep. This is just a very important slide for certain practitioners with time to events and insurance cases. So yes, go ahead. Take it away. Ron.

Ron Porter ([18:37](#)):

Yes, Lex Machina tracks time to certain events, median time in insurance litigation. So we have a median of 454 days for summary judgment, 754 days to reach trial. And then looking at just all the cases that terminated in this period, a median time of 268 days to termination. Now this is insurance litigation on an aggregate. You can generate data for a particular court or a particular judge that is exactly like this. So you can really get insight into how your court or your judge moves a case through to these important milestone events.

Aria Nejad ([19:38](#)):

Right. Now we're looking at the district court case resolutions for cases between 2020 to 2022. What do you think about some of these numbers you're looking at here, Ron?

Ron Porter ([19:49](#)):

Well, this is our famous donut chart, and on the left side of the donut, you see the resolutions of cases on the merits where there's a decision on the merits. And on the right side, you see cases that are either settled or have some sort of procedural resolution without a merits decision. And of course, on the right side, we see 77% of the insurance cases settled and 13% procedural resolution. So that's 90%. But the real meat of the data is on the left, the remaining 10%, and there we see a claimant win of about 2%. Claimant being in Lex Machina, the insured and the claim defendant being the insurer has about 8% of the decisions on the merit. So when we have a decision on the merits, insurers prevail about four times as often as the insured. And typically looking at the box numbers, you can see the insurers typically win at the judgment on the pleading stage or the summary judgment stage. Just interestingly on the trial, when you look at, although the numbers are small, insureds tend to win more often at trial than insurance companies.

Aria Nejad ([21:25](#)):

Right. Pretty interesting data there.

Ron Porter ([21:29](#)):

So this is our data on reversal rate of insurance cases on appeal. It's about 23%, so less than one in four insurance originating cases are reversed based on the data in the last three years. So this is also some of the more interesting data that we have. This is something I believe is unique to Lex Machina. Not only do we show you who wins, but we show you what the issues were and how they were decided. So going back to our date on the donut chart that insurance companies win about four out of five cases on the merits where there's a merits decision. This chart shows you the highlights of what the actual decisions are. So you would expect the insurer favoring findings of no duty to defend and no duty to indemnify are very frequent. And indeed they are. And you can see that a lot of those findings are made at summary judgment.

([22:56](#)):

And then we provide even more detail about the resolution of the cases going into what the issues were underlying the ultimate ruling. And you can see that the most frequent underlying reasons for the resolution are the no occurrence within the policy and a policy exclusion. So those are the big issues that are being decided in insurance litigation in the federal courts.

Aria Nejad ([23:29](#)):

Interesting stuff. We're looking at the damages.

Ron Porter ([23:33](#)):

Yeah. Let's take a look at the damages by type in the last three years. And the thing that jumps out at me is that the biggest number here is the $530 million awarded in class action settlements in the last three years. And not only is the number the biggest, but it's over only 15 cases. So really highlighting the potential of monetary recovery in class actions in insurance cases.

Aria Nejad ([24:13](#)):

Right. Well, I mean, that was excellent, Ron. I appreciate all the interesting data that you're able to share with us. We do have about five minutes left, so we are right on cue. Let's see if we have a few of the questions that we want to address. The first one is a question about, I guess if you had to look into your

crystal ball, Ron, and you had to make a few predictions for the next few years in insurance litigation, what does that look like?

Ron Porter ([24:47](#)):

Yeah, well, my crystal ball is always a little bit hazy, but the things that I'm going to be looking for are whether this business interruption litigation trend continues outside of the pandemic, for one. I think that that type of coverage got a lot of attention as a result of the pandemic and as a result of the hurricane damage. And so I think it'll be interesting to see whether there are more disputes relating to that type of coverage in the coming years as we continue to see more damaging natural events like hurricanes and wildfires. I think that coverage might become more popular and we'll see if it generates more litigation.

Aria Nejad ([25:56](#)):

Interesting. This is another question that just barely came in here. It's asking, "Are these damages figures trending up as a result of inflation, do you think?"

Ron Porter ([26:13](#)):

I think probably there is some effect of inflation the last couple years, although we don't necessarily see that in the raw figures. But where I think it does impact litigation in the federal courts is with respect to homeowners and commercial property damage cases. Home prices have increased substantially. Building and repair costs, raw material costs have increased substantially. So all of that puts more at stake in property damage insurance litigation, which at the same time, the $75,000 jurisdictional requirement for federal court has stayed the same. So I believe we're going to see more of that litigation move from state court to federal court because the jurisdictional amount will be met more often.

Aria Nejad ([27:30](#)):

Interesting stuff. Great, Ron. Well, I really want to thank Ron for all of his expertise today. We're kind of coming short on time here. We're getting close to 10:30, close to the hour. So wanted to thank Ron and also wanted to thank all of our attendees. Thank you so much for joining us. Real quick, and the last question we got here was, "How do we get a copy of the report?" Well, perfect. That leads me into how we usually close our webcast.

([27:56](#)):

If you're a Lex Machina customer, you can access the full report right now, it's in the Help Center. Just click on your name. The report is right there in that help center. If you're not a Lex Machina customer currently, you can also access the report. All we ask is that you spend about 15, 20 minutes with one of our legal data experts, with one of our executives. And so just reach out to us. You'll be receiving an email after this webcast with instructions on that. So you can reach out to us directly on the Lex Machina website as well. But we're happy to get you a copy of the full report after you have someone who's able to walk you through some of the basics with Lex Machina.

([28:31](#)):

So again, thank you so much, Ron. Thank you to all the attendees and everyone. Have a nice rest of the afternoon. Bye.