



Insurance Litigation Report 2022

This webcast features Ron Porter, Lex Machina’s Legal Data Expert in Insurance Law and Jonathan Zobrist, Customer Success Manager at Lex Machina.

During the webcast, panelists discuss the latest findings and trends in insurance litigation, including top law firm and party data, most active judges and districts, case filings and resolutions, timing, damages, and more. The new report also features Lex Machina’s new appellate analytics.

The report focuses on the last five years and includes trends in auto insurance, homeowners insurance, business interruption insurance, and more.



Ron Porter
Legal Data Expert - Insurance
Lex Machina



Jonathan Zobrist
Customer Success Manager
Lex Machina

Jonathan Zobrist ([00:00](#)):

Hello, everyone. And welcome again to Lex Machina's 2022 Insurance Litigation Report webcast. My name is Jonathan Zobrist and I am a customer success manager here at Lex Machina.

Jonathan Zobrist ([00:11](#)):

Before we get started just a couple of housekeeping items. This webcast is scheduled for about 30 minutes, though we hope to finish a little bit early so that we can get through just some question and answers at the end. There is a Q and A box at the bottom of the screen. And if you have any questions, please feel free to pop one in there and we'll try to get to them by the end of today's webcast.

Jonathan Zobrist ([00:35](#)):

If you are not familiar with Lex Machina, we're a legal analytics company. So we provide actionable insights about the courts, judges, lawyers, law firms, parties, and issues involved in litigation. Simply put Lex Machina and our legal analytics help you win. They help you win both in the practice of law, as well as the business of law. Lex Machina is used by law firms of all sizes, including over 75% of the AM Law 100, small firms, solo practitioners, courts, federal government agencies, litigation, funders, law schools, and really any type of organization that wants to gain actionable insights from analyzing litigation outcomes.

Jonathan Zobrist ([01:11](#)):

Before we dig into the data in this year's report, I do want to just note that there's a lot of hard work that goes into creating these reports within Lex Machina. We have a great, 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 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 system 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 of quick clicks within the system.

Jonathan Zobrist ([01:48](#)):

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 of this extremely valuable data. So, today I have the pleasure to speak with Ron Porter. Ron is one of Lex Machina legal data experts and leads our insurance litigation practice area. Prior to joining Lex Machina, Ron works as a product liability lawyer for General Motors, where he managed high exposure product liability cases. Thank you for joining us, Ron.

Ron Porter ([02:19](#)):

Thank you, Jonathan. It's great to be here with you and everyone on the webcast. We will start with just a brief outline of the types of data we're going to be looking at today. First, we're going to take a broad look at federal insurance case filings and the courts where those cases are being filed. Then we'll look at the parties and law firms who are filing and defending those cases and we'll examine how those cases are being resolved, what insurance findings are being made and what damages are being awarded.

Ron Porter ([02:51](#)):

Let's start with the big picture of insurance case filings in federal court over the last 10 years. As you can see, this chart shows that filings of insurance cases in federal court continued to increase in 2021 for the

fifth year in a row. Case filings in 2021 increased over 15% versus 2020 and 47% over the last five years, clearly a growth industry. We'll go into the types of insurance litigation that are driving this trend in a minute, but first let's look at which courts saw the most insurance cases filed and we'll focus on the last five years.

Ron Porter ([03:34](#)):

So this chart shows us that courts in three states dominate, six of the top 10 jurisdictions for insurance case filings are in Florida, Louisiana, and Texas. Which is not too surprising given the prevalence of hurricane cases in these courts. Also of note for Louisiana is that it's a direct action state, which allows insured parties to sue both the alleged tortfeasor and the tortfeasor's insurance carrier in the same action. That results in the high number of auto cases we see in the Louisiana district courts. Most of the other courts in the top 10 are generally the busy courts in large urban areas, such as Philadelphia, Chicago, and Los Angeles.

Ron Porter ([04:24](#)):

It's somewhat surprising to see Colorado on this list. However, about a decade ago the Colorado legislature enacted a law allowing trouble damages and attorney's fees to be awarded to an insured who proves their insurer unreasonably delayed or denied coverage. That statute has led to, in the words of one practitioner, an explosion of cases filed by insureds. Most of these cases are in state court in Colorado, but it is increasingly easy to assert damages in excess of the requirement for diversity jurisdiction. So we can see that the state court explosion is spilling over into the Colorado federal court.

Ron Porter ([05:07](#)):

As I said, we're going to look at specific policy and coverage types and the trends in filings for those types of cases. And first we'll look at cases involving automobile insurance policies. Again, we see a steady increase in filings and cases over the past 10 years, the increased leveled off somewhat in 2021, probably because of reduced driving as a result of the pandemic. I think the overall trend of increased case filings reflects increasing vehicle and medical costs, resulting in more cases that can meet the jurisdictional requirements for federal court. Just as an example with respect to automobile costs, the average cost a new car has increased from about \$30,000 in 2012 to over \$43,000 in 2021.

Ron Porter ([06:05](#)):

Looking at underinsured motorist coverage cases, there was a pretty sharp decline in 2021. Again, I think this was due to decreased miles driven as a result of the pandemic. But overall I would expect the steady increase, which we've seen for the last five or six years to continue for 2022 as people get back on the road.

Ron Porter ([06:33](#)):

Let's look at business interruption case filings. Here we saw a sharp increase in 2020, and then a slight decline in 2021. The sharp increase was caused by a number of businesses attempting to recover for losses to sustained as a result of closure and reduced business during the pandemic. Business interruption coverage, however, is not limited to commercial establishments and we saw a number of schools, churches, and museums seeking to recover for the losses caused by the decreased business traffic related to the pandemic and the related governmental order. New cases in this category declined by over 25% in 2021. I think this is the result of the fact that most of the decisions in these types of cases have been in favor of the insurers. And I would expect further declines in the coming year, unless there is a significant change in the way these cases are decided through the appellate courts.

Ron Porter ([07:51](#)):

Turning to hurricane related cases, we saw a very sharp increase in 2021 in cases related to-

Ron Porter ([08:03](#)):

In 2021, in cases related to damage caused by hurricanes. This was the result largely of two very significant hurricanes that hit the Gulf Coast, hurricanes Laura and Ida. Both caused massive damage. And we see a number of cases resulting from those significant events.

Ron Porter ([08:26](#)):

Turning to cases involving homeowners policies, again, we saw almost more than a doubling in 2021 over 2020, in cases involving homeowners policies. As you would suspect, much of this increase is driven by homeowners suing for coverage for damage caused by hurricanes. But not all of it. Let's look at the data for homeowner's cases, excluding those that are hurricane related. So here we see still a fairly sharp increase in 2021 over 2020, but really it's just part of a trend over the last four years of a increasing number of cases involving homeowners policies. Some of this increase may be due to losses as a result of other natural disasters, such as the wildfires in California, Colorado, and other states, and other extreme events, which are associated with climate change. With the increasing residential real estate values that we've seen over the past several years and rapidly increasing construction costs, I expect we'll see more cases involving insureds attempting to recover under their homeowner's policies.

Jonathan Zobrist ([09:52](#)):

That's pretty interesting data to see here, Ron. Especially. We've been looking a lot at Lex Machina's proprietary case tags in this data. As a practitioner, how would you leverage these types of case tags in your practice?

Ron Porter ([10:06](#)):

Well, I think the policy type tags such as automobile, homeowners and the business interruption tags that we've discussed, give lawyers and other practitioners, the ability to identify cases involving specific coverage types that are of interest to them at the time.

Ron Porter ([10:28](#)):

For example, we developed the business interruption tag in 2020 in conjunction with Lex Machina's COVID tag to give lawyers the ability to track the important litigation trend involving business interruption cases, which emerged rapidly as the pandemic drastically changed the economic landscape. Practitioners can use all of Lex Machina's tags to gather information for business development and opposition research, for example, by identifying cases involving specific types of coverage that are of interest. Insurers can use the information to assess their own counsel and opposing counsel, again, by identifying cases by specific coverage types.

Jonathan Zobrist ([11:25](#)):

Interesting. All the different ways that you can leverage that information in a practice.

Ron Porter ([11:35](#)):

Yes. I think they are extremely valuable. And as you said, proprietary to Lex Machina.

Ron Porter ([11:44](#)):

So let's turn to another recent development with Lex Machina, and that is the addition of data involving federal appeals into our database. This chart shows appellate cases, docketed that were originating as an insurance case. And you can see that for a long period, the insurance appeals were fairly steady, but increased again, substantially in 2021. I think this increase is a product, at least in part, of appeals involving business interruption claims that we saw a large number of filings in 2020. Many of them were resolved at the summary judgment or judgment on the pleading stage and rapidly moved into the appellate system. And I think, at least in part, that is what we're seeing with that big jump in 2021.

Ron Porter ([12:51](#)):

And let's look at the circuits that had the most appeals docketed in insurance cases in the last five years. These are totals and you can see that the 9th Circuit led the way with almost one quarter of all appeals from insurance cases in the past five years. And the next circuits were the 11th and the 5th, which of course cover the Gulf Coast and the Southeast generally. So busy with appeals of hurricane related cases among other cases. And note that the top three circuits handled almost half the appeals that were docketed in the last five years from insurance cases.

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

So let's turn to the most active parties and lawyers in insurance litigation in the last five years. Here we're looking at the most active plaintiffs and you can see that it's exclusively a list of insurance companies, which may raise the question of why are insurance companies plaintiffs in insurance litigation. That is simply because insurance companies are plaintiffs when they file declaratory judgment actions, and they are also plaintiffs in those cases in which several insurers are litigating the issue of comparative responsibility for a single loss.

Ron Porter ([14:41](#)):

And notice that the number of cases, the absolute number of cases, is relatively small. Particularly when you see the numbers on the next chart, which will show the most active defendants. And as you would suspect, many of the large carriers are on this list. And again, we show here the results for particular types of policies for each of the carriers. For example, you see here that State Farm has separate entities for auto and for casualty insurance. And you can see the breakdown of the cases for each of those entities. There is some, what I would call, noise in this data because insureds often name multiple related entities as defendants, because it seems they're often unsure of which entity is actually the ensuring entity.

Ron Porter ([15:51](#)):

So let's look at the lawyers who are filing and defending these insurance cases. This chart shows us the most active plaintiffs-

Ron Porter ([16:01](#)):

Give plaintiffs... Oh, most active lawyers representing plaintiffs in insurance cases. Generally these firms are representing insurers. As we have charted the data here, you can see the types of coverage these firms have been involved with. And you can see from this data, if firms specialize in a particular type of case, for example. For example, the Gauthier Murphy firm is third in total case filings, but has filed a large number of cases tagged as hurricane and their cases are filed in just 11 districts. Further down the list, the Franklin Azar firm seems to specialize in uninsured and underinsured motorist litigation in a fairly specific group of jurisdictions. Almost all of their cases are auto or UM/UIM and they're filed in just three districts.

Ron Porter ([17:04](#)):

Turning to defendant's law firms. These are firms that most often represent insurance companies. And again, practitioners can use this data to identify firms that may specialize in cases involving certain coverage types. For example, the Butler Weihmiller firm at the top of the list seems to have a thriving specialty in business interruption coverage cases, almost 20% of their cases involve that particular kind of coverage. And you can look at the other firms on the list and the policy types and identify the areas of concentration for their business. One additional note, the department of justice is rather unusual on this list, seems unusual, but is on the list because of its role in defending litigation arising out of vehicle crashes involving federally owned cars and trucks, such as postal trucks, and more importantly, because of their role in cases involving federally guaranteed flood insurance.

Ron Porter ([18:14](#)):

So let's take a look at how these cases have been resolved in federal court. As everyone knows, most cases settle. And insurance litigation in federal court is no exception. Settlements and procedural resolutions comprise almost 90% of the terminated insurance cases from 2017 to 2021. And I get that number from the right hand side of the chart, adding likely settlement of 74% and procedural resolution of 15%. The remaining 11% of the cases, turning to the left hand side of the chart, have some decision on the merits. And here you can see that a claim defendant, which is an insurer, has over four times the chance of prevailing on the merits as a claimant, the insured. And that almost all of these resolutions take place at the summary judgment or judgment on the pleadings stage. One interesting thing to note on this chart, though, is that if the case reaches trial, the insurance prevail about 55% of the time. So you can see the claimant win of 224 and the claim defendant win of 177. So if insurance can get to trial, they have a better than 50 50 chance of prevailing.

Jonathan Zobrist ([19:49](#)):

This is really interesting data to see contextualized, Ron. I know from experience with my customers, better understanding outcomes of similar cases to theirs and their specific litigation situation is really important. How would you use this information to better your understanding of these cases?

Ron Porter ([20:11](#)):

Well, this is really just the top level of the data for case resolutions. And what it enables you to do is to identify the kind of resolution you're interested. For example, trials. You can use this in conjunction with our policy type tag to look at trials that are just involving a certain type of policy or coverage. And the big feature in the Lex Machina product is that all of the numbers that you will see are, almost all of the numbers that you'll see, are clickable.

Ron Porter ([20:54](#)):

And by that, I mean, if you were in the product, looking at this resolution chart, you could click on the 224 number of claimant wins at trial, and you would go right to a list of each of those cases, which would take you to the dockets of each of those 224 cases, where you can dive in and identify winning strategies and arguments and understand not only who won, but why they won. And that's a tremendous advantage for lawyers to be able to look at specific cases, specific case types, coverage types, and understand not only how cases were resolved, but why they were resolved that way.

Jonathan Zobrist ([21:52](#)):

I always like to say only Lex Machina is going to be able to get you to that granularity of information.

Ron Porter ([21:56](#)):

So yes, and very easily, just literally a couple clicks and you're there. Let's take a look at appellate resolutions of insurance cases. Again, this is data that it's new in Lex Machina, and it really gives practitioners a full view of the case. What happened not only at the district court level, but at the appellate level throughout the entire history of the case. So looking at just the big picture, 25% of the insurance cases that ended up on appeal resulted in a reversal or reversal in part. This is slightly higher than the overall reversal rate in federal court. And I would say here that this is the very upper level of the data that we have in the product. There is much more information available in the product and also in the report about the appellate outcomes of insurance cases.

Ron Porter ([23:15](#)):

So turning to another feature of Lex Machina, which is that we annotate findings that are made by the court of the jury at various stages of the case. And these annotations enable lawyers to understand the details of how cases are being decided and identify cases that involve issues that might be specifically interesting to the user. The insurance finding chart shows which findings are made most frequently insurance cases from 2017 to 2021. Not surprisingly, given the resolution data we just talked about, the findings favor insurers and are most often made at the summary judgment phase. The top five.

Ron Porter ([24:03](#)):

Often made at the summary judgment phase. The top five findings are no duty to indemnify, no duty to defend, policy exclusion, and no occurrence within the policy, and no bad faith. All of these findings are insurer wins and most of these findings are made at the pretrial stage. Summary judgment or judgment made at the pretrial stage or either summary judgment or judgment on the pleadings. One thing I will highlight is that the no duty to indemnify findings are about eight times larger than the number of duty to indemnify findings.

Ron Porter ([24:43](#)):

Again, this brings depth to the resolution data showing not only who wins, but why. Let's turn to damages that are awarded. This chart shows the total damages awarded in insurance cases from 2012 to 2021. And I think the big picture here is that the damages fluctuate somewhat from year to year, but in a fairly predictable range. The swings are not too wide from year to year in what damages are awarded. And note that Lex Machina's new appellate data enables us to see the damages that have been reversed on appeal, which again provides a full picture of how insurance damages are handled both at the trial court and in the appellate court. We can go into more detail in looking at these damages and break them down by the types of damages that are awarded in insurance cases. And here you can see that the two largest types of damages awarded are contract damages and approved class action settlements.

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

The one interesting part of this chart is that notice that extra contractual damages based in tort or punitive damages are pretty unusual and relatively small in amount. We just have 15 awards of punitive damages over this period totaling 37 million. My sense of the story underlying this data is that while bad faith allegations are fairly common in insurance pleadings, they are most often resolved in the insurer's favor prior to trial. And most of the relatively small number of cases that do present the risk of punitive awards seem to be successfully resolved prior to trial. And so the resulting number of punitive awards at trial is quite small. Well, that's the overview of the data that you will see in the insurance report. As we said at the beginning, it's a very top level view and there is a lot more data in the report itself.

Jonathan Zobrist ([27:28](#)):

Yeah. Thanks, Ron, for providing that contextualization of all of this data kind of at that high level. So we just have a couple of minutes remaining here, so we'll see what questions have come through. I have a question here. Can this data be used for better understanding judges?

Ron Porter ([27:53](#)):

Absolutely. All of the data is sortable by judge and court. And so that's actually one of the most useful use cases I think in our product. Is that when a lawyer is either assigned to a case, or gets a new case, or gets a new judge, you can immediately go to Lex Machina, look at not only high level data for that judge, including timing and resolutions, but you can use our case tags to sort by a type of case. And even if you're in insurance, type of coverage. So you can look at what your judge's experience has been in homeowner's cases, for example, or business interruption cases, and understand immediately their level of experience and how they tend to rule in those types of cases. So that is one of the, I think, most important features. It's looking at judge data.

Jonathan Zobrist ([29:07](#)):

Yeah. And I'll also add. You can incorporate appellate data into the district court decisions as well to be able to see how frequently a judge is overturned on specific types of cases.

Ron Porter ([29:18](#)):

Yes. Absolutely.

Jonathan Zobrist ([29:22](#)):

All right. We might have time for one more. Did any of this data surprise you after seeing the report as it came through?

Ron Porter ([29:31](#)):

One thing I would say was a bit of a surprise was the number of business interruption cases that continued to be filed in 2021. As I mentioned, the resolution of those cases has been almost uniformly in the insurance company's favor. And so it surprised me that insureds are continuing to file cases to the level that they did in 2021 simply because the results were just not there and it seems like a big uphill battle.

Jonathan Zobrist ([30:20](#)):

Well, it looks like we are at the half hour mark. So I do want to thank you again, Ron, for taking the time and all of the work that's gone into creating this report. The insurance report is always one of our most popular reports and we get a ton of requests for it. So thank you again.

Ron Porter ([30:37](#)):

Thank you. It's been fun.

Jonathan Zobrist ([30:40](#)):

And so the next question is how can you get the report? If you are a Lex Machina's subscriber, the report is available in the help center and it is accessible as of this moment. So you can go in there and access it there. We will also be following up after the call today with an email that will provide access to the report.

Jonathan Zobrist ([31:02](#)):

We also will send it to people that are not current subscribers to Lex Machina. We do have one ask, and that's just that you spend a few minutes with one of our legal analytics experts and they can walk you through your cases and see insurance litigation analytics through the lenses of your own practice, but we're happy to share with anyone. So, Ron, thank you very much again for joining us today and all of the hard work that went into this report. We really appreciate it. And to everyone on the call, thank you so much for joining us. It's always a lot of fun to have these webcast. And if you want more information about Lex Machina, you can always go to www.lexmachina.com. So thank you very much. [inaudible 00:31:40] the rest of your day.