sedgwick

LIABILITY LITIGATION

Liability litigation observations and trends

Summer 2026

Overview

In this sixth installment of our analysis of liability claims litigation trends and practices, we provide an update on the effects of tort reform across the country as well as the continuing battle to overcome the legal challenges the industry has been faced with over the previous years.

Executive summary

The liability litigation environment is undergoing a structural shift: severity is no longer determined at trial but created early in the claim lifecycle. While litigation frequency remains relatively stable, outcomes are increasingly driven by how claims are positioned, perceived, and negotiated before formal litigation begins.

This shift is driven by four interconnected forces that create a **compressed liability lifecycle** where outcomes are determined earlier than ever before.

- **Earlier attorney representation,** with most claimants engaging counsel within the first two weeks on claims that will eventually become litigated, reducing the window for meaningful pre-litigation engagement.
- Expansion of **third-party litigation funding,** which extends claim duration, increases resistance to early resolution, and acts as a force multiplier of severity in already complex cases rather than an independent driver itself.
- **Social inflation** and evolving plaintiff narratives, which elevate claim expectations and anchor value earlier through more sophisticated and coordinated advocacy.
- **Procedural pressures,** including early suit filing and time-limited demands, forcing accelerated decision-making under uncertainty.

At the same time, a critical paradox has emerged: trials are increasingly rare, but trial risk has never been more influential. Fewer than 2% of litigated claims proceed to verdict, yet Nuclear Verdicts® continue to act as market signals, influencing higher settlement expectations across the broader portfolio.

The result is a measurable divergence between frequency and severity. Settlement values are rising faster than verdict outcomes, driven not by adjudicated results, but likely by perceived exposure, anchoring strategies, and compressed negotiation timelines.

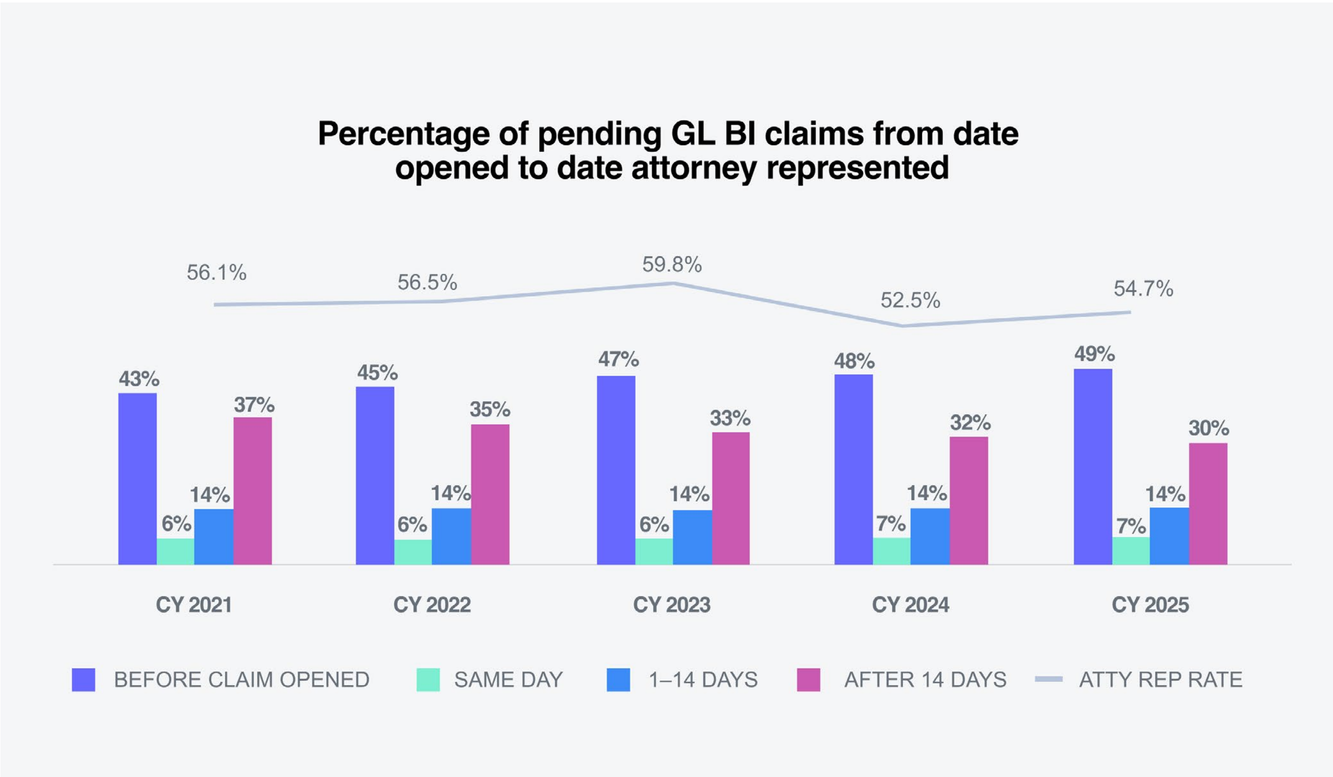
For defense organizations, the implications are clear. Traditional claims handling models built on extended early engagement, incremental evaluation, and reactive negotiation are no longer sufficient. Outcomes are increasingly determined before litigation strategy is fully formed, requiring a shift toward:

- Earlier and more proactive intervention
- Faster, data-driven decision-making
- Greater discipline in negotiation and claim positioning

Organizations that adapt to a front-loaded environment by aligning analytics, operations, and strategy will be best positioned to control severity. Those that do not will continue to experience escalating costs, even in defensible cases.

EARLY ATTORNEY REPRESENTATION AND VENUE RISK

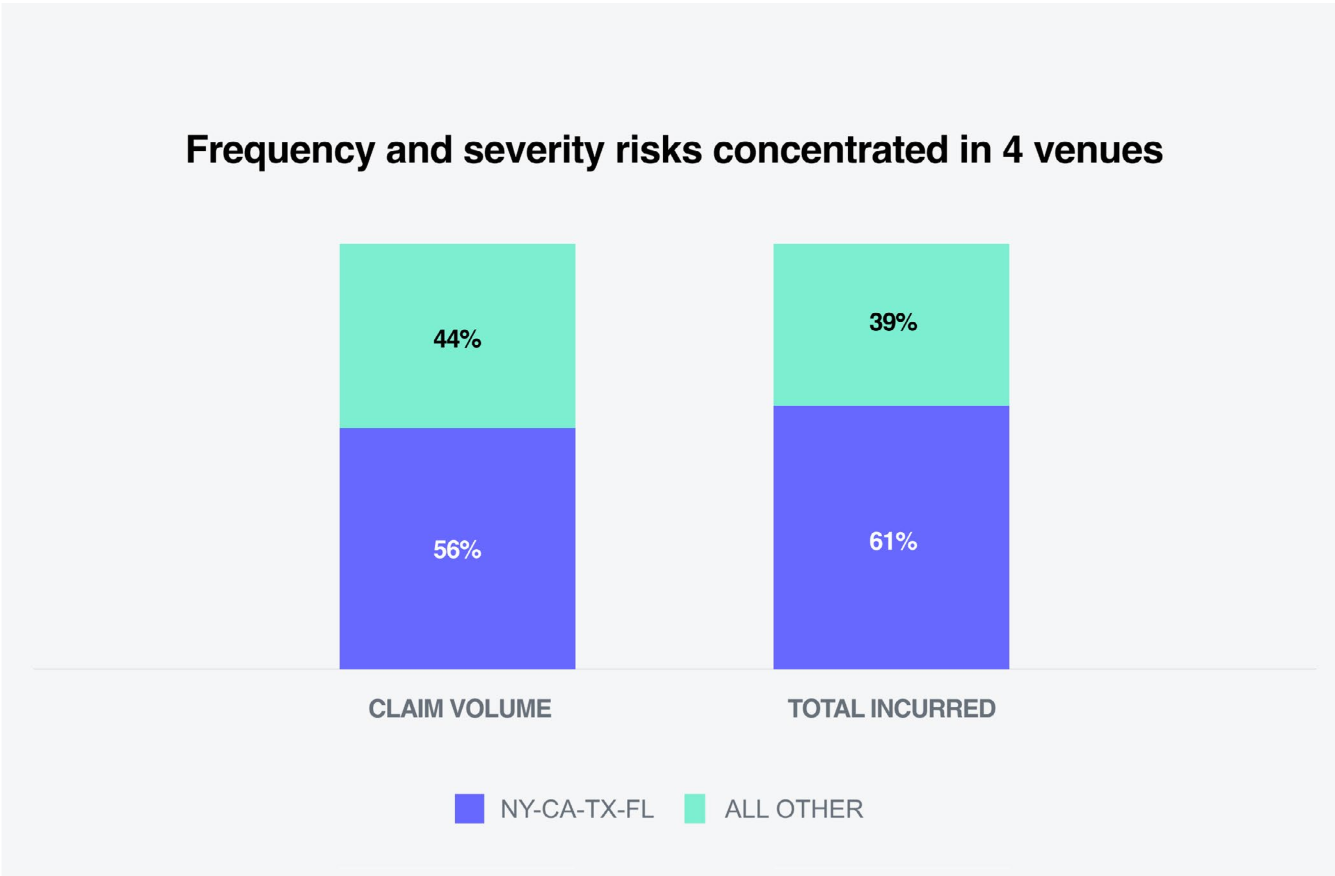
Attorney representation is increasingly the default, particularly in auto and trucking exposures. Sedgwick's data continues to show that 70% of claimants who will ultimately retain counsel and file lawsuits for their bodily injury claim have attorney representation within the first two weeks of FNOL. It is noted that although the litigation rate for GL BI claims increased slightly over the last year, it still remains below 2%. This dynamic significantly reduces the effectiveness of traditional claims handling approaches that rely on extended early engagement.



Plaintiff strategies have become more coordinated and more aggressive. Advertising and lead generation have evolved into highly efficient acquisition models, supported by rapid response protocols and data-driven targeting. Technology is enabling faster intake, better screening, and more consistent demand generation.

Timing is increasingly critical. Earlier representation compresses response windows and elevates initial demands, leaving less opportunity to shape claimant expectations. Claims organizations need to accelerate activity to the front end of the claims process to create faster communication channels and build trust through transparency, availability, and the ability to address claimant concerns. Earlier representation is one of many components driving a compressed liability lifecycle.

At the same time, venue risk concentration continues to drive disproportionate outcomes, with a relatively small number of jurisdictions accounting for a significant share of portfolio risk. Within our Sedgwick data, four states are driving both the frequency as well as severity. New York, California, Texas and Florida account for 56% of the frequency and 61% of the severity for all states.



We continue to see an environment where:

- Anti-corporate sentiment is pervasive
- Attorney representation rates are increasing
- Legal system abuse and the frequency and severity of Nuclear Verdicts®
- The defense and claims industry is suffering from 'brain drain' (Claims Journal and The CLM)

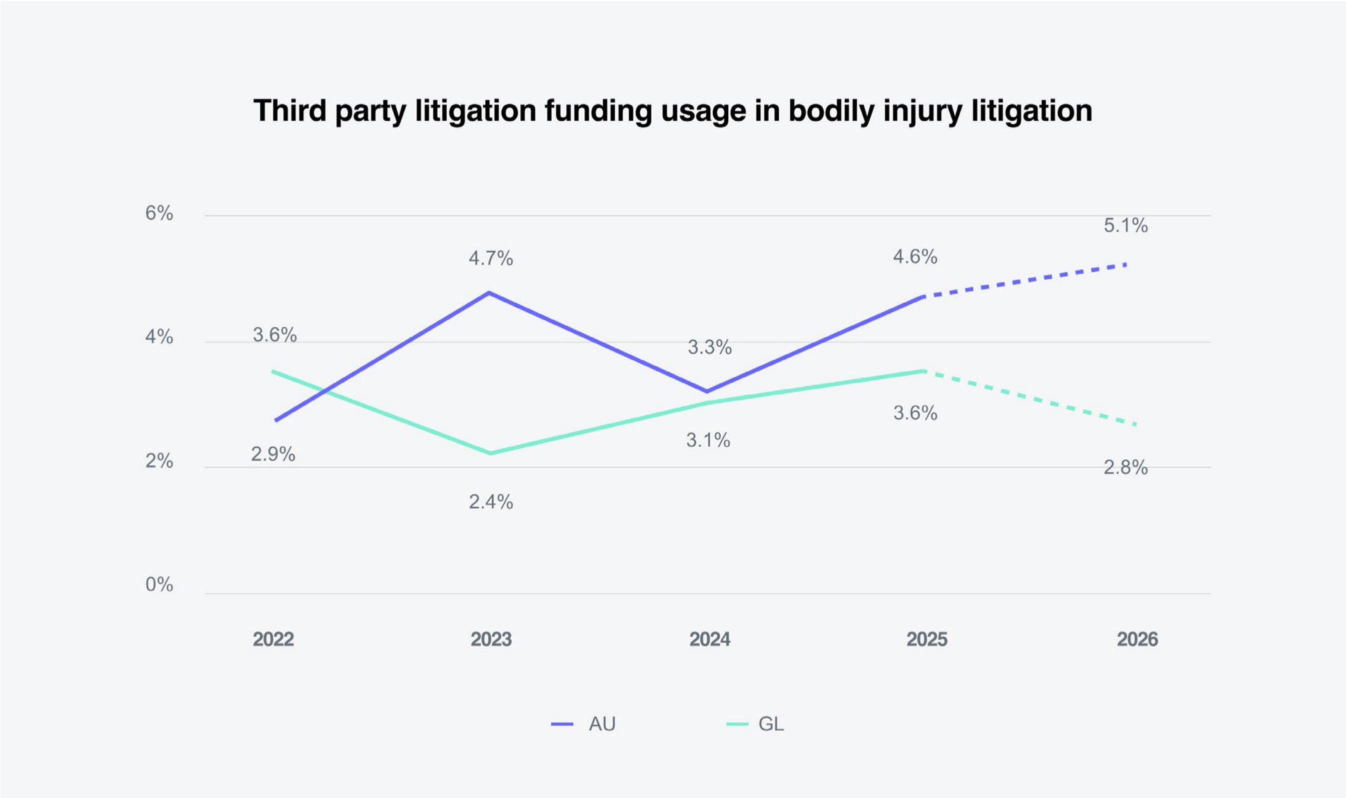
Earlier attorney representation and concentrated venue risk are fundamentally reshaping the liability landscape by accelerating claim escalation while simultaneously amplifying exposure in a narrower set of jurisdictions. With claimants retaining counsel within days, the opportunity to influence expectations or resolve matters early is materially reduced, and claims are more likely to enter litigation with elevated demands from the outset. At the same time, the concentration of both risk means that a disproportionate share of outcomes are driven by venues where litigation environments are more challenging and less predictable, further increasing volatility. The combined effect is a faster-moving, higher-stakes claims environment where early decisions, particularly in high-risk venues, carry significantly greater consequence.

44%

Since 2022, the use of litigation funding in Auto Liability has accelerated with an average annual increase of 44%, with 2026 already on target to exceed that pace.

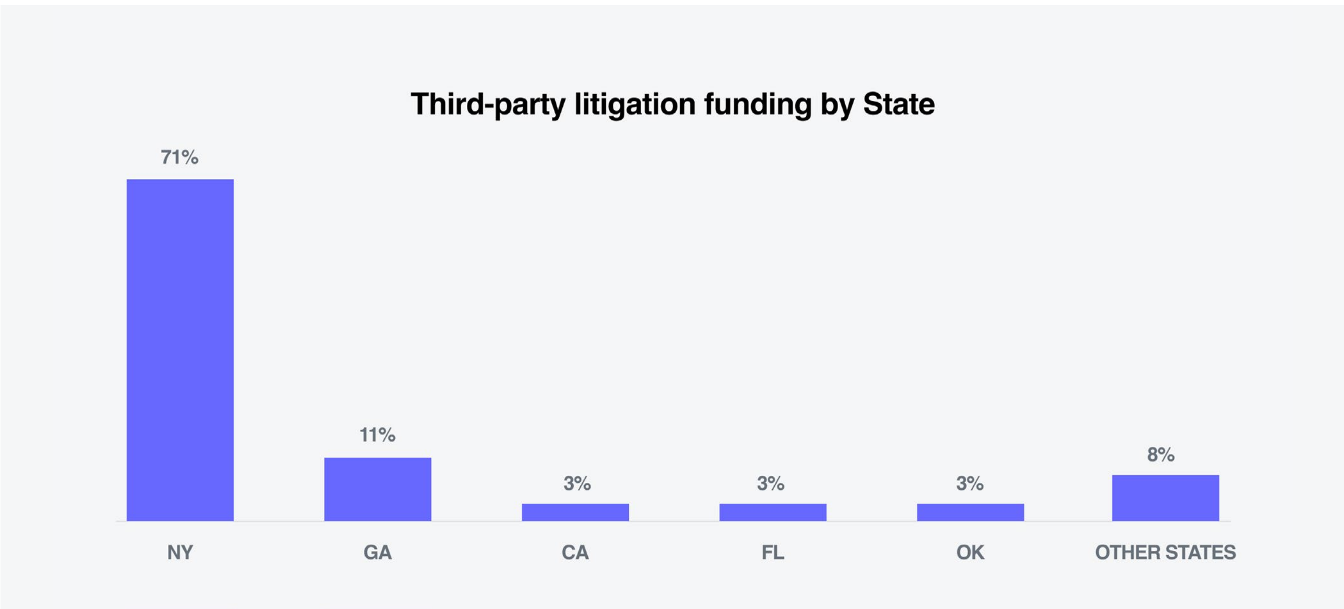
THIRD-PARTY LITIGATION FUNDING

Third-party litigation funding is not evenly distributed across liability exposures, and Sedgwick's data shows a clear divergence between Auto Liability and General Liability claims. Since 2022, the use of litigation funding in Auto Liability has accelerated with an average annual increase of 44%, with 2026 already on target to exceed that pace. By contrast, General Liability experienced more modest escalation, with an average annual increase of 18% since 2022, and 2026 year-to-date trending below prior year levels.



While the overall percentages remain relatively small, the rate of change is meaningful. In 2025, 4.6% of closed Auto BI litigated claims involved some form of third-party funding and year-to-date in 2026 has increased to 5.1%. General Liability BI litigated claims shows the opposite trend with 3.6% in 2025, declining to 2.8% year-to-date in 2026. Litigation funding is concentrating where severity, venue exposure and demand pressure already run highest. New York and Georgia account for 82% of all third-party litigation funding cases in our Sedgwick data. California, Florida and Oklahoma round out the top five.

Sedgwick's data on claim duration and total incurred costs show a significant impact when third-party litigation funding is involved. For litigated auto bodily injury claims, cases with third-party litigation funding have durations, on average, 9.6x longer than those without third-party litigation funding contracts. In litigated general liability bodily injury claims, the difference is even greater, with funded cases averaging 11.1 times longer in duration.



Cost differences are similarly pronounced. Since 2022, litigated auto bodily injury claims with third-party funding have seen a 361% increase in total incurred compared to non-funded claims, while litigated general liability cases have experienced a 232% increase.

These outcomes reflect not just the presence of funding, but where it is deployed. Third-party litigation funding is disproportionately utilized in already severe, complex claims with significant damages potential, prolonged litigation paths, and venue-driven risk.

In that context, funding functions less as an independent driver of severity and more as a force multiplier by extending claim duration, increasing resistance to early resolution, and amplifying the ultimate cost of claims that are already predisposed to high severity. (Segal McCambridge)

The significance of this is the behavioral impact funding introduces. External capital changes risk tolerance, reduces settlement urgency and reinforces higher anchoring strategies, particularly in Auto exposures where volume, plaintiff attorney advertising and venue dynamics intersect. As funding becomes more common in these claims, traditional assumptions about negotiation leverage and timing may be unreliable.

SOCIAL INFLATION

Social inflation continues to impact liability outcomes. What's changed over the past year is how early and how consistently it shows up. Claimants and their attorneys are bringing more impactful storytelling, there is increasing distrust of institutions, and a greater willingness to assign blame to companies from the very beginning. These dynamics are now influencing demand letters, claimant expectations, and litigation strategy from day one.

Public sentiment continues to trend against corporate defendants, particularly within the insurance sector. Sedgwick's experience aligns with broader research conducted by LexisNexis (LexisNexis Risk Solutions, Empowering Carriers with Data-Driven Insights to Address Attorney Representation (2024)) showing that injured claimants increasingly view personal injury attorneys as advocates who improve outcomes and accelerate resolution. This perception reinforces early representation as a rational choice rather than a reactive one, further reducing the opportunity for direct engagement between carriers and claimants.

Medical cost inflation, wage growth, and broader cost-of-living pressures are increasing the perceived value of claims.

Economic conditions are amplifying these trends. Medical cost inflation, wage growth, and broader cost-of-living pressures are increasing the perceived value of claims. These factors do not operate independently; they interact with social inflation to create a more receptive environment for high damages narratives. The result is a feedback loop where economic stress supports larger demands, which in turn reinforces settlement inflation.

Jury psychology continues to evolve in ways that challenge traditional defense approaches. Anchoring is no longer limited to trial strategy; it is embedded in early demand behavior. Non-economic damages are increasingly detached from objective injury metrics, and arguments historically associated with trial tactics are now appearing in written demands and pre-suit communications. This shift requires a corresponding change in how claims are evaluated and negotiated from the earliest stages.

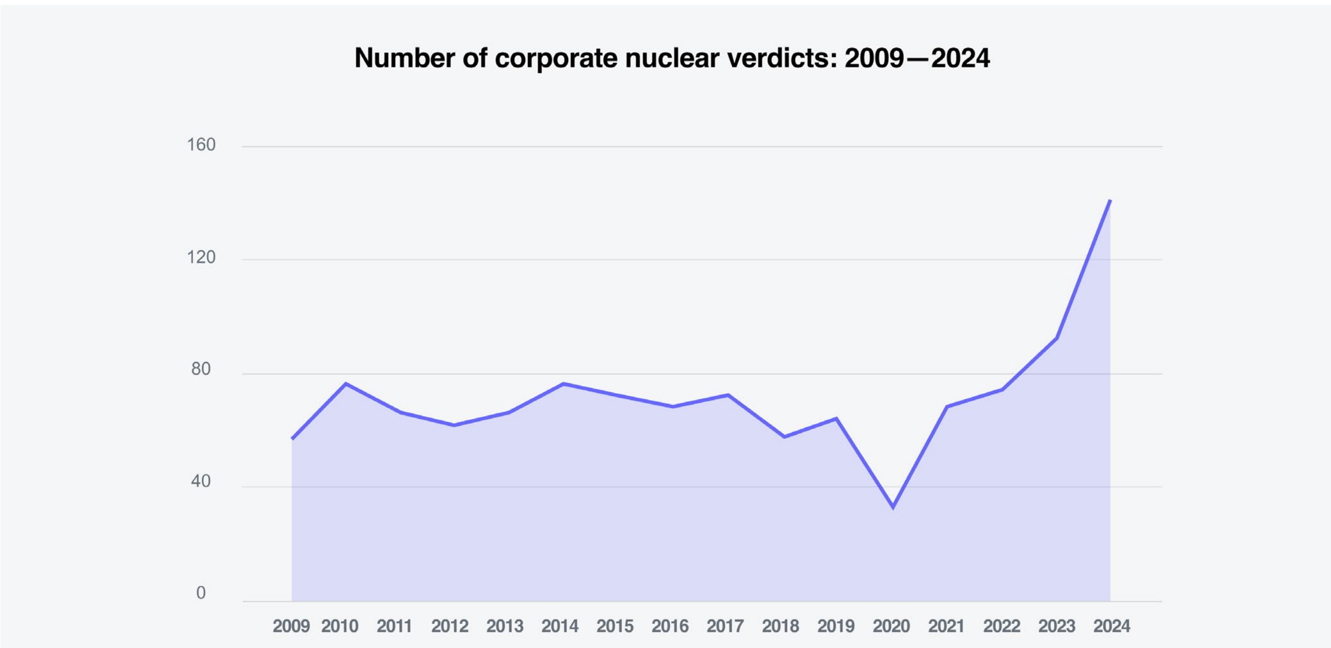
While social inflation explains how plaintiff attorney narratives and public sentiment are elevating the perceived value of claims, its most visible and measurable impact can be seen in jury outcomes. These evolving attitudes are not only influencing how claims are presented, but how they are ultimately decided which contributes directly to the rise of disproportionate verdicts. In turn, those verdicts are reinforcing and amplifying the very perceptions that helped create them, creating a feedback loop that continues to drive severity.

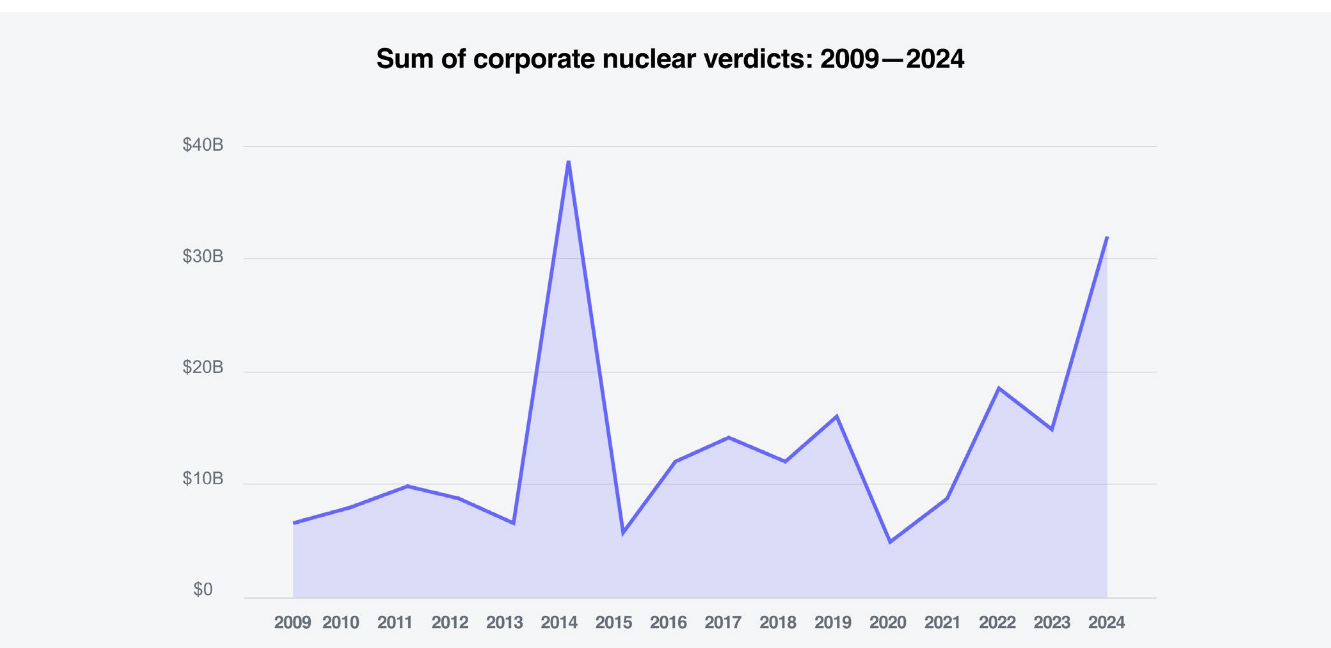
NUCLEAR VERDICTS® AND SEVERITY ESCALATION

The most important shift in the litigation environment is the growing disconnect between frequency and severity. While the percentage of claims entering litigation has increased modestly, the financial impact of those claims has grown at a much faster rate. This divergence is reshaping how portfolios behave and how risk must be managed.

Nuclear Verdicts® remain a defining feature of the liability landscape, but their influence extends beyond the cases in which they occur. Even as trial rates remain low, the frequency and magnitude of outsized verdicts seem to shape settlement behavior across the broader portfolio.

Nuclear Verdicts® reached unprecedented levels in 2024, with 135 awards exceeding $10 million, a 52% increase year-over-year and total verdict values more than doubling to $31.3 billion. At the same time, thermonuclear verdicts exceeding $100 million rose by over 80%, and median verdicts climbed to approximately $51 million, more than doubling since 2020 (Marathon Strategies).





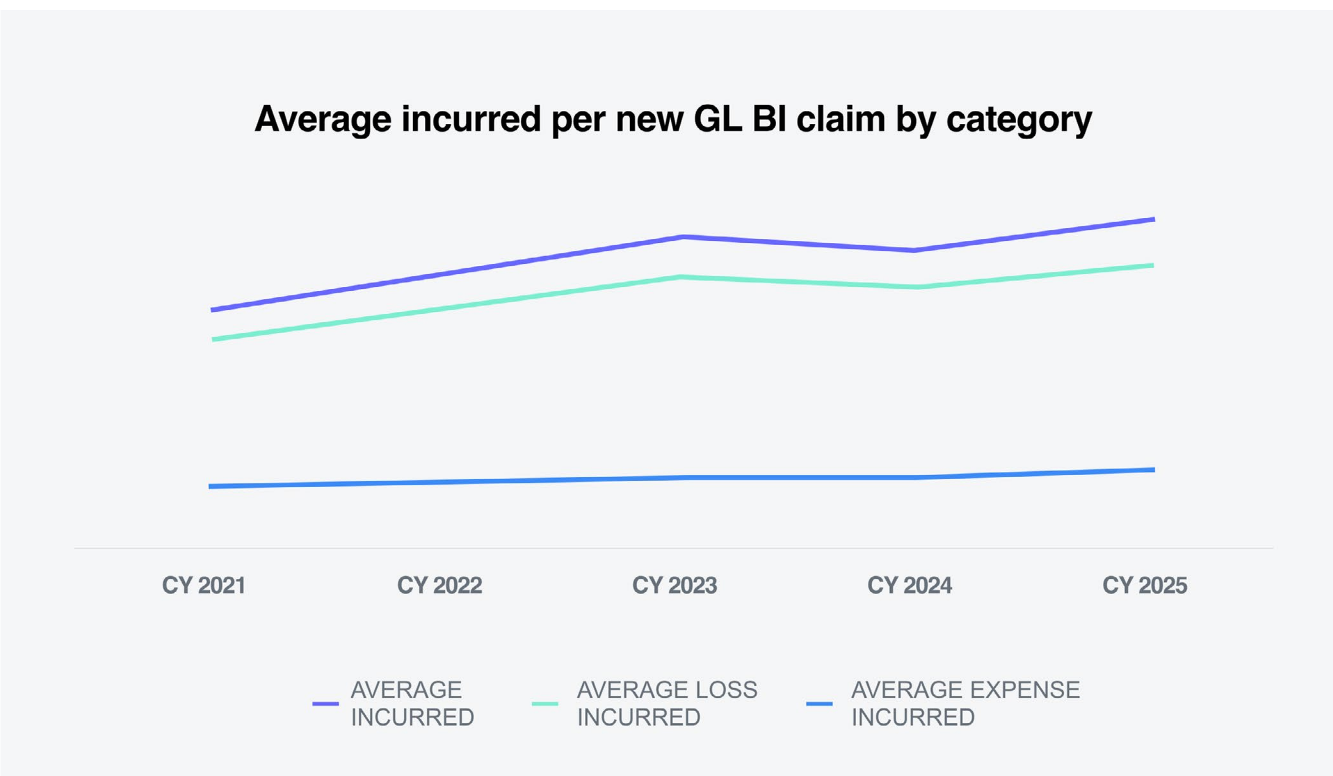
Anchoring strategies, the expansion of non-economic damages, the influence of litigation funding, and the evolution of plaintiff narratives all contribute to an environment where severity can escalate rapidly.

More importantly, these outcomes are reinforcing a perception of risk that drives higher settlement values, even in cases that are unlikely to reach trial. The impact of Nuclear Verdicts® extends well beyond the small fraction of cases that reach a courtroom, creating what can best be described as "nuclear fallout settlements" (Institute for Legal Reform).

It is worth considering whether these outlier outcomes are beginning to influence expectations across the claim lifecycle. Plaintiff attorneys, and in some instances unrepresented claimants, may be increasingly anchoring demands to perceived verdict potential rather than objective claim value. This could place upward pressure on settlement values in non-litigated matters, as the risk of an outsized verdict, however infrequent, shapes negotiation dynamics. Under this view, Nuclear Verdicts® may be functioning less as isolated events and more as signals that expand perceived settlement ranges earlier in the claims process.

Anchoring strategies, the expansion of non-economic damages, the influence of litigation funding, and the evolution of plaintiff narratives all contribute to an environment where severity can escalate rapidly.

Certain sectors remain more exposed than others, with retail, auto (specifically commercial trucking) and product liability continuing to generate a disproportionate share of high-severity outcomes. However, the broader trend suggests that no sector is immune, particularly in unfavorable venues.



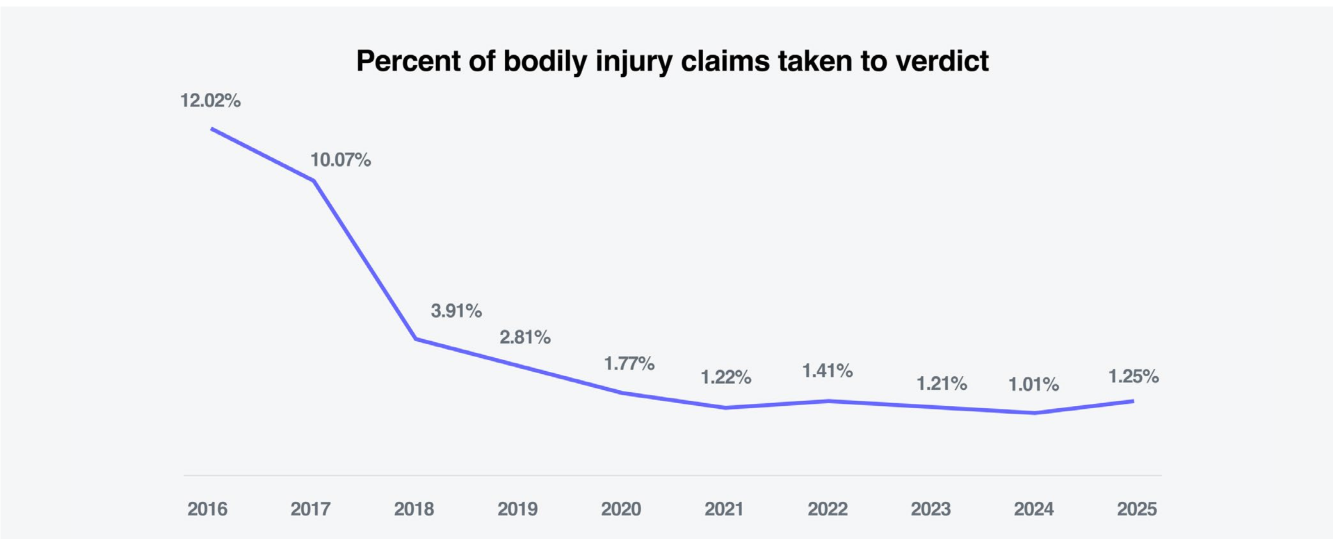
LITIGATION RESULTS

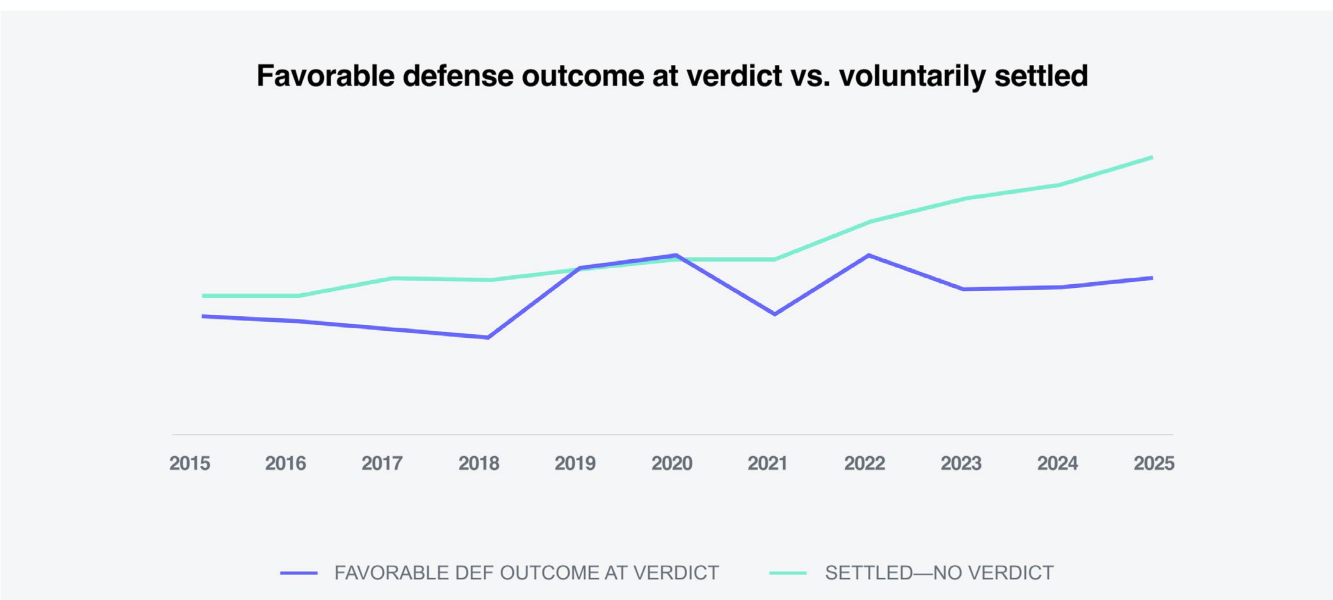
With the addition of another year of closed litigation data, Sedgwick's 11-year analysis continues to confirm the same core pattern: trial rarely occurs. Overall outcomes across the full data set did not materially change year-over-year.

However, when isolating bodily injury claims, the trend becomes even more pronounced. In calendar year 2025, only 1.25% of bodily injury litigated cases proceeded to verdict, down sharply from the 2016 peak where approximately 12% of bodily injury cases were tried. This decline underscores how infrequent cases now reach a jury.

The more consequential finding is not trial outcomes themselves, but how severity is evolving. Over the last five years, verdict severity has increased at an average annual rate of approximately 3.7%, roughly in line with inflation. By contrast, settlement severity has increased by more than three times that rate, averaging 12.6% annually over the same period.

The data indicates that severity escalation is being driven more by voluntary settlements rather than by jury verdicts. This dynamic fuels aggressive strategies such as early anchoring and accelerated suit filing. The result is a negotiation environment where defense decision-making appears to be shaped by fear and distorted perceptions of jury behavior rather than empirical trial outcomes.





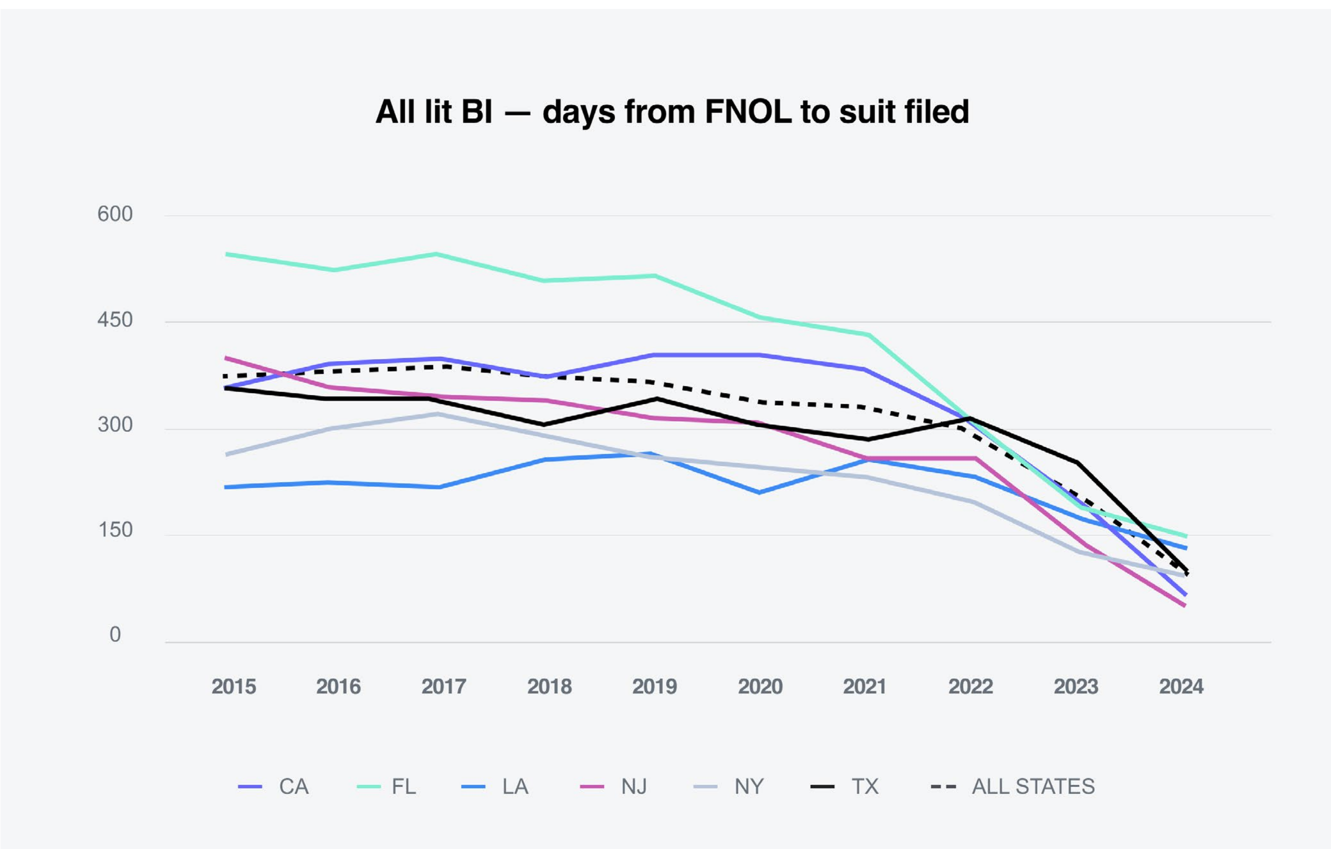
While nuclear verdicts are shaping expectations and redefining how claims are valued across the system, they do not, on their own, explain how those elevated expectations are translated into day-to-day claim outcomes. That translation occurs through the tactical mechanisms deployed by the plaintiffs' bar. Most notably those tactical mechanisms that accelerate timelines, compress decision windows, and force early engagement. In this way, perceived verdict risk is not simply an abstract influence but is operationalized through specific plaintiff attorney strategies that apply pressure on the defense earlier in the claim lifecycle.

PROCEDURAL PRESSURES

Plaintiff-side strategies are increasingly designed to create procedural pressure early in the claim lifecycle, forcing defense organizations into accelerated decision-making environments before facts, liability, and damages can be fully evaluated.

Specifically, there are two tactics being observed: the early filing of lawsuits and the increased use of time-limited demands. While these tools are procedurally legitimate, they are being deployed in a more coordinated and strategic manner that is compressing response timelines, elevating initial demand anchors, and reducing opportunities for meaningful pre-suit engagement. The effect is not simply faster litigation, but a fundamental change in negotiation dynamics, where defense decisions are increasingly made under time constraint and uncertainty, shifting leverage earlier to the plaintiff and upward pressure on settlement outcomes.

Sedgwick is seeing this shift in plaintiff attorney behavior nationally, but it is particularly concentrated in Florida and New York. Nationally, the number of days from claim opening to suit filing continues to compress. Looking at the top 5 states from a litigation volume perspective, all 5 states show a declining length of time from FNOL to Date Suit Filed on Bodily Injury claims.



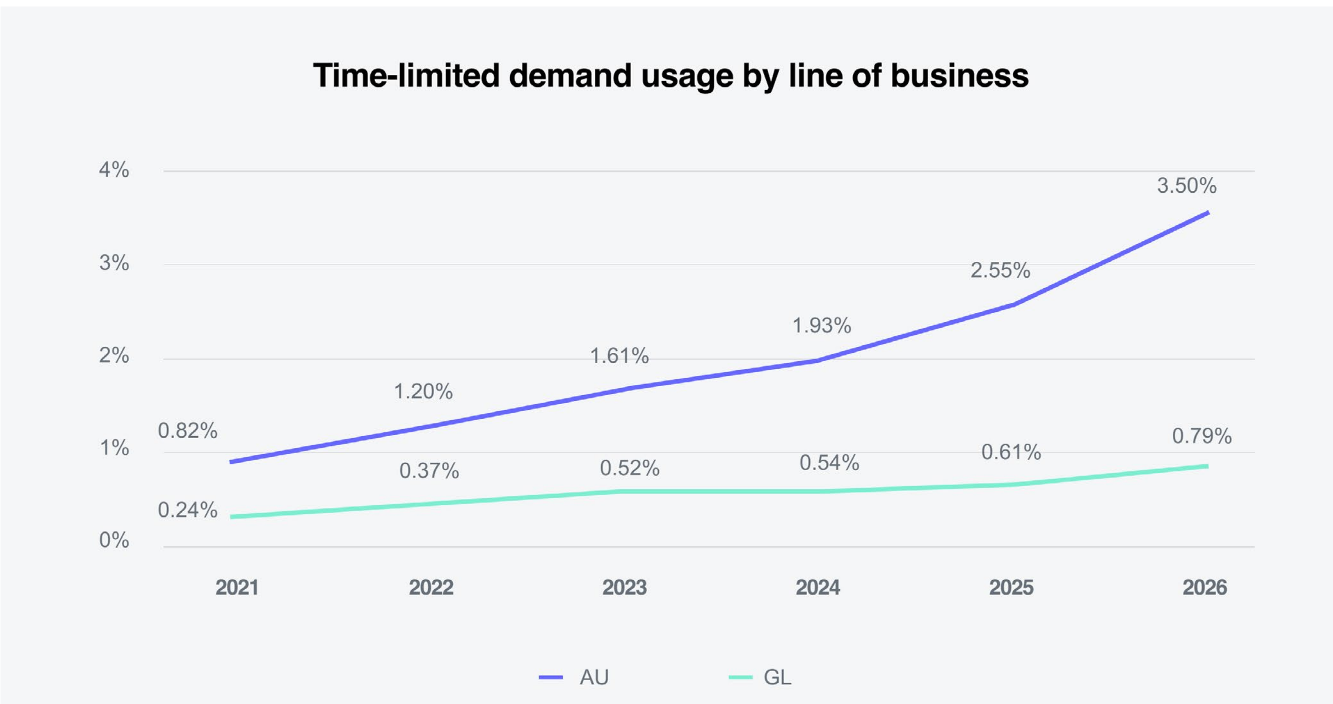
Unfortunately, this early filing behavior is often coupled with minimal substantive communication, what many claims teams experience as “ghosting”, until a sharply anchored demand or formal litigation posture is presented. The net result is increased defense expense to respond to litigation and a greater reliance on proactive investigative efforts earlier in the claim lifecycle.

Along with the accelerated suit filing and lack of communication, the use of time-limited demands is increasing, though the line of business makes a big difference. Sedgwick’s data reveals litigated auto bodily injury claims have a more pronounced acceleration than litigated general liability bodily injury. In Auto bodily injury, the use of time-limited demands has increased from 0.82% of claims in 2021 to 3.5% in 2026 year-to-date, an average annual increase of more than 45%. General Liability bodily injury usage remains lower, rising from 0.24% to 0.79% over the same period, with an average annual increase of 29.4%. Importantly, this is not limited to closed claims. Among pending exposures, 3.43% of Auto bodily injury claims currently involve a time-limited demand, compared to 1.13% for General Liability bodily injury. This confirms that time-limited demands are not only increasing historically but are actively shaping today’s negotiation environment.

Taken together, the early filing of lawsuits and the increased use of time-limited demands are not isolated developments. They are reinforcing mechanisms within a broader shift toward a more compressed and plaintiff-driven litigation model. By accelerating timelines and establishing elevated expectations at the outset, these tactics may reduce the defense’s ability to develop facts, shape the narrative, and influence claimant perception in time to materially affect claim trajectory.

These tactics, along with earlier representation, are creating a compressed liability lifecycle. In this environment, organizations that rely on traditional pacing, delayed evaluation, or reactive negotiation approaches will find themselves consistently operating at a disadvantage. The ability to respond with speed, discipline, and early clarity of position is essential to maintaining control over outcomes.

While these plaintiff-side tactical mechanisms explain how the liability lifecycle is being compressed, they do not fully explain why settlement behavior continues to escalate. That requires understanding how the market interprets and reacts to trial outcomes.



THE CONVERGENCE OF FOUR FORCES DRIVING SEVERITY

What emerges is not a litigation system defined by trials, but one shaped by the shadow of trials. While verdicts remain rare, their influence is not. Nuclear Verdicts® act as market signals, recalibrating perceived case value and anchoring expectations across the broader claims landscape.

These signals are amplified by four interconnected forces: early attorney representation, external capital, evolving plaintiff narratives, and procedural pressure. All of which together compress timelines, elevate demands, and shift severity creation earlier in the claim lifecycle. As a result, outcomes are increasingly determined by early evaluation, positioning, and negotiation rather than by trial itself.

DEFENSE CHALLENGES AND GAPS

The defense environment is facing a set of compounding challenges. Talent constraints within both claims organizations and defense counsel are reducing capacity and, in some cases, limiting the ability to deploy optimal resources early in the claim lifecycle. This is particularly impactful in complex or high-severity cases where early decisions have outsized consequences. While these challenges are structural, they are not insurmountable. Organizations, such as Sedgwick, that invest in earlier engagement, stronger alignment, and data-driven discipline are already demonstrating the ability to materially improve outcomes.

The 2026 CLM Sponsored Litigation Management Study reinforces that many of the challenges facing the defense side are no longer isolated issues, but systemic pressures compounding across talent, data, strategy and execution. In many other organizations, the most immediate constraint is capacity. Nearly 75% of organizations report it is more difficult to find qualified claims staff, while 79% indicate law firm staffing shortages are already impacting litigation programs, and almost 40% have had panel firms ask for a pause on new assignments due to capacity constraints. At the same time, the industry is operating in an environment where 97% of cases resolve through negotiation, yet confidence in negotiation skills remains modest and largely unmanaged through formal governance. This combination of rising complexity, constrained resources, and inconsistent execution creates a structural disadvantage against a plaintiff bar that is increasingly coordinated, data-driven, and technologically enabled (Suite 200 Solutions).

Equally important is the growing intelligence and measurement gap. The CLM study highlights that a majority of organizations do not track critical drivers of severity, including policy limit demands, time-limited demands, or litigation funding involvement, despite acknowledging their increasing prevalence. At the same time, plaintiff firms are leveraging shared data and AI tools to refine their strategies and profile defense behavior.

Investment in technology, particularly analytics and AI, must be accelerated and aligned across the ecosystem

The study further finds this inequality is compounded by friction within the defense ecosystem itself, growing pressure on carrier-counsel alignment, limited sharing of information, and a billing model that increasingly fails to align incentives. The result is an environment where outcomes are being driven more by external pressures than by coordinated defense strategy.

Considering these challenges, the question arises as to whether a structural change is necessary to move beyond incremental improvement. First, can the defense close the data gap by systematically capturing and analyzing the drivers that shape outcomes, particularly demand behavior, venue dynamics and plaintiff firm patterns. Second, considering a renewed focus on negotiation as a core competency, with clearer governance, training and earlier engagement in the claim lifecycle. Third, can carriers and defense counsel operate more cohesively, sharing data, aligning incentives and reducing friction that detracts from their ability to compete effectively.

Finally, investment in technology, particularly analytics and AI, must be accelerated and aligned across the ecosystem. However, the path to adoption is not uniform. Implementing AI in a controlled, secure, and ethically compliant matter requires more than access to tools. It requires investment in infrastructure, governance frameworks, validation protocols, and ongoing human oversight. These requirements introduce a cost threshold that may slow adoption among smaller boutique law firms operating on thinner margins.

The CLM findings make clear that the issue is not a lack of awareness, but a lag in coordinated action. Closing that gap represents one of the most immediate and impactful opportunities to improve litigation outcomes.

The environment around negotiation has evolved significantly. Plaintiff firms are investing heavily in technology, data and structured advocacy, producing more sophisticated, better framed, and more consistently executed demands. By contrast, in many defense organizations, negotiation is treated as an experiential skill rather than a structured discipline, with limited formal training, inconsistent process governance, and heavy reliance on individual capability rather than repeatable systems. The result is variability in outcomes, erosion of value discipline, and an increasing tendency to react to plaintiff-driven narratives rather than shape them. The plaintiff side has perfected the art of written negotiation with extensive published demand packages that highlight their strengths and minimize their weaknesses. The defense side tends to negotiate verbally and then follow-up with a written confirmation of the number only. Strength can likely be found in written negotiation, specifically in clearly articulating the defense's position and advantages. This creates a near obligation of the plaintiff attorney to share this offer, along with the defense strengths, to the plaintiff.

The path forward is clear. Negotiation must be elevated to a technical skill, one that is taught, measured and continuously improved, something Sedgwick has increasingly treated as a core discipline rather than an art. This includes formal training grounded in negotiation science, clearer role definition between claims and counsel, earlier engagement in the claim lifecycle, and the use of data and AI to support structured advocacy. Negotiation cannot remain something we "learn over time." It must become something we design intentionally, the difference between reactive bargaining and disciplined negotiation.

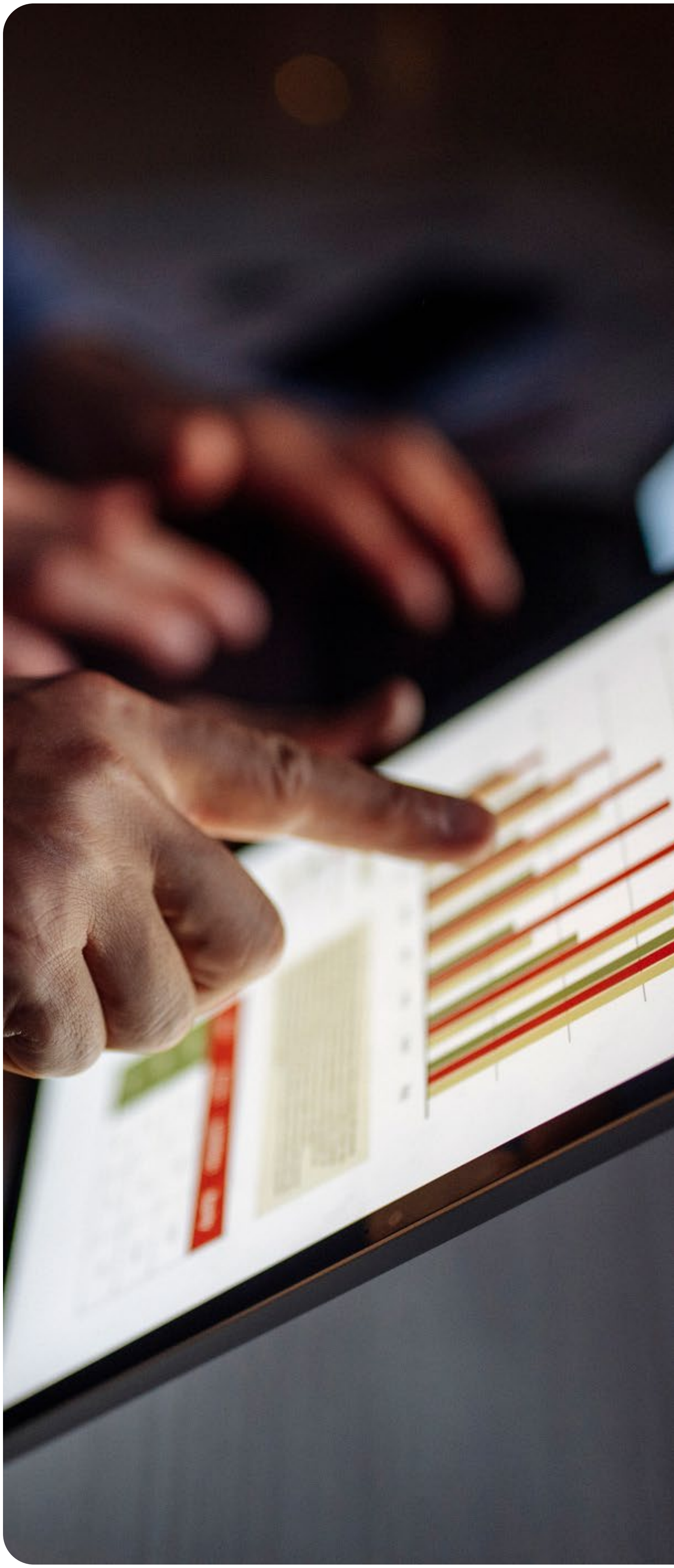
While these challenges highlight the structural constraints facing much of the defense ecosystem, they also underscore a critical reality: many of the gaps in capacity, coordination, and consistency are not solely resource-driven, but are increasingly driven by how effectively organizations leverage data and technology in support of their decision-making processes. In an environment where outcomes are being determined earlier and under greater time pressure, the ability to access, interpret, and act on information in real time is becoming a defining differentiator.

TECHNOLOGY, DATA & ANALYTICS

The role of technology in litigation continues to expand, but adoption remains uneven. Predictive analytics, severity modeling, and legal spend analysis are increasingly available, yet the opportunity exists to consistently integrate them into the decision-making processes.

Sedgwick's approach demonstrates the value of leveraging large-scale claims data to identify high-risk cases early and route them into differentiated workflows. The ability to analyze patterns across hundreds of millions of data points provides a meaningful advantage in anticipating severity and informing strategy.

At the same time, the plaintiff bar is utilizing technology in ways that directly impact outcomes. AI-enabled demand generation, rapid response systems and shared intelligence networks are enhancing their ability to set expectations and apply pressure early.



Sedgwick is also observing a notable shift at the very front end of the claims process: an increase in AI-generated correspondence from unrepresented claimants. These submissions range from initial notices to more formal demands and are increasingly sophisticated in tone and structure. They often incorporate legal terminology, cite duties and standards, and in many cases include spoliation language or preservation demands that historically would have been associated with represented parties. While the underlying facts of the claim have not necessarily changed, the framing has. Claimants are arriving with documents that mirror attorney-authored communications, which can elevate the perceived seriousness of the claim, accelerate internal escalation, and compress the window for informal resolution. From an operational standpoint, this is subtly shifting how claims are triaged and responded to, as adjusters must now distinguish between form and substance while maintaining appropriate compliance with preservation and response obligations.

AI tools are lowering the barrier to entry for claimants to articulate positions in a more structured and assertive way, but they do not change the legal standing of the individual or the evidentiary value of the claim itself.

At a broader level, this trend reflects the democratization of legal language rather than a true shift in legal representation. AI tools are lowering the barrier to entry for claimants to articulate positions in a more structured and assertive way, but they do not change the legal standing of the individual or the evidentiary value of the claim itself. That distinction remains critical. The practical impact is behavioral change: claims professionals should expect more legally styled communications earlier in the lifecycle, even in unrepresented matters. The implication is less about legal risk and more about process discipline, ensuring consistent, timely responses, reinforcing documentation practices, and training teams to evaluate these submissions based on merit rather than presentation.

TORT REFORM ACTIVITY

The tort reform environment remains uneven and highly jurisdiction dependent. Over the past 12 months, legislative activity has continued, but outcomes have been mixed. Some states have advanced meaningful reforms, while others have seen incremental change or faced pressure to reverse prior gains. The net effect is a fragmented landscape where reform benefits are often localized and subject to rapid erosion.

Recent economic analysis completed by The Perryman Group quantifies the impact (CALA):

$35.8 billion in direct losses associated with third-party funding

$54.2 billion reduction in U.S. gross product

Over 450,000 jobs affected

$607 per U.S. household in economic burden

Those economic effects are not abstract. They are already showing up in day-to-day claim handling in these ways:

- Longer claim lifecycles driven by reduced plaintiff settlement pressure
- Higher settlement demands supported by external capital
- Increased volatility in jury verdicts and trial strategies
- Expanded involvement of non-parties influencing litigation decisions

Recent developments in states such as **Florida** and **Georgia** illustrate both the potential and the limitations of reform. Florida's prior reforms continue to show signs of moderating certain litigation behaviors, including reductions in claim frequency and shifts in nuclear verdict rankings. The American Tort Reform Association recently announced Florida as a Judicial Hellhole® **Point of Light** because of the comprehensive reform there, and Georgia was taken off the Judicial Hellhole® watch list following their 2025 comprehensive reforms.

Both states formerly held the number one spot on that list (ATRA and Judicial Hellholes). However, anti-reform forces continue to exert their influence within the legislatures and through legal challenges at the bench so the durability of these gains will depend on sustained legislative and judicial support.

In **Indiana**, House Bill 1147 entitled Causes of Action and Damages was introduced to create a Tort Reform Study commission to analyze the correlation between increases in medical costs and cost of living and any increase in judgments awarded in civil cases. The bill as originally written was modified in the Senate before passing a scaled back version limiting the commission to a summer study committee (IGA).

In a surprise move, **New York's** proposed FY2026 budget unexpectedly introduced sweeping tort reforms. These reforms are aimed at reducing insurance costs by curbing fraud and litigation abuse in auto cases. The proposals would:

- Tighten the serious injury threshold
- Limit recovery for plaintiffs engaged in unlawful conduct
- Shift to a modified comparative fault standard
- Restrict joint and several liability
- Restructure trial sequencing to prioritize liability before damages

Among these proposals, shifting to a modified comparative fault standard would likely have the most meaningful impact on claim outcomes and loss costs by limiting recovery in high-fault cases. However, it is also one of the most politically challenging reforms and is unlikely to pass in its initial form, even though its inclusion in the budget increases its visibility and chances of eventual adoption. A more realistic outlook is that this change would require multiple legislative cycles before enactment.

If enacted, these changes could substantially reduce claim volume and exposure, reshape litigation strategy, and mark one of the most significant shifts in New York's liability landscape in decades, though key details remain subject to negotiation and likely legal challenge (WSHB). New York, however, still has a long way to go to improve their legal environment. The American Tort Reform Association lists New York as the #2 Judicial Hellhole with the third highest tort tax in the country at $2,684 per person, (ATRA) as well as naming it a "Lawsuit Inferno" that caters to the personal injury lawyer lobby and actively seeks to expand liability risks (ATRA).

Third-party litigation funding is becoming the connective thread across tort reform efforts at the state and federal level. Its influence extends beyond individual cases to broader economic and behavioral effects. The U.S. Chamber of Commerce Institute for Legal Reform has indicated that funding alters risk tolerance, prolongs litigation and shifts settlement incentives away from efficient resolution. Despite widespread recognition of its impact, there remains a critical gap in tracking and transparency (Institute for Legal Reform). Internal and industry data consistently show that most organizations lack visibility into funding exposure at the claim level, limiting their ability to respond effectively.

At the **federal** level, Senate Bill S.3826 was introduced as the Litigation Funding Transparency Act of 2026. The bills focus is around disclosure of funding sources in mass tort and class action litigation. The bill remains in the Senate Judiciary Committee. No hearings or votes have been reported. The bill was introduced by Republican Senators Grassley (IA), Tillis (NC), Kennedy (LA) and Cornyn (TX) (GovInfo). While federal action remains in its early stages, states continue to function as the primary laboratories for litigation funding reform.

Looking forward, reform efforts will continue to face a fundamental challenge: sophisticated plaintiff strategies are capable of adapting quickly to legislative change. Without consistent enforcement and complementary procedural reforms, gains are likely to be incremental and subject to ongoing pressure.

OPERATIONAL AND STRATEGIC IMPLICATIONS

The implications for insurers, TPAs, and corporate risk managers are clear. Incremental adjustments to existing processes will not be sufficient to address the current environment. A more fundamental shift toward earlier, more proactive and more data-driven engagement is required.

Intervention must occur earlier in the claim lifecycle, before representation is established and positions are entrenched. This includes not only faster response times, but also a more deliberate focus on claimant experience and communication.

Strategy must become more jurisdiction specific. Venue dynamics are too significant to be addressed through generalized approaches. New insights into local conditions, jury behavior, and judicial tendencies are essential.

Stability in outcomes will not come from reacting to litigation trends, but from reshaping how claims are managed before litigation begins. The organizations that succeed will be those that integrate analytics, operations and strategy into a cohesive approach to risk management.

LOOKING FORWARD

Looking ahead, the trajectory of liability litigation suggests continued pressure on severity, with limited likelihood of near-term moderation. Social inflation, economic conditions, and plaintiff-side innovation are all expected to persist as driving forces.

The most significant disruptors will likely come from technology and regulation. Advances in AI will continue to influence both plaintiff and defense strategies, while legislative and judicial developments will shape the boundaries within which those strategies operate. Plaintiff firms are using AI to maximize financial outcomes while the defense side is primarily using AI for efficiencies to control costs. The larger defense firms will start using AI to minimize outcomes and counter plaintiff firm tactics.

The range of potential outcomes remains wide. In a favorable scenario, increased adoption of analytics, improved claimant engagement, and targeted reform efforts could stabilize severity growth. In a less favorable scenario, continued imbalance between plaintiff and defense capabilities, combined with limited reform traction, could result in further severity escalation.

What remains consistent across scenarios is the importance of early action. The ability to influence outcomes diminishes rapidly as claims progress. Organizations that recognize this and adjust accordingly will be better positioned to navigate the evolving landscape.

Conclusion

The most important takeaway from these findings is that severity is increasingly being determined long before litigation strategy is fully set. While trials remain rare and verdict outcomes have not materially deteriorated, settlement behavior is being influenced upstream by perceived jury risk, external capital, and procedural pressure tactics such as time-limited demands.

The organizations best positioned to control severity are those that act earlier with greater discipline. This includes faster insight into claim trajectory, clearer posture setting before expectations harden, and credible trial readiness that is visible to the plaintiff bar. Where these capabilities exist, outcomes improve not just at verdict, but more importantly, in negotiation.

Utilizing clear decision frameworks early in the process, tracking how demands are evolving, and strengthening negotiation skills across teams, outcomes can improve even in a tough litigation environment.

Steve Ellis

Vice President, Liability Practice

Max Koonce

Chief Claims Officer

sedgwick

TOGETHER WE **THRIVE**

SEDGWICK.COM

26-799 | 06-01/5