Lexicon of Legal System Abuse

Bad Faith The accusation that an insurance company is not honoring its obligations to a policyholder. Reasons cited in bad faith claims may include delayed compensation, excessive red tape, misrepresentation of policy language, failure to abide by policy terms, improper investigation of a claim or follow-up on a policyholder's inquiries or evidence, or an unreasonable denial of a claim, among others. There is an entire cottage industry of contractors, doctors, auto repair shops, and attorneys who, for a cut of the payout, will assist with or spearhead a bad faith claim. Policyholders who don't understand the terms of their policies are particularly vulnerable to the bad faith industry's influence.

Legal System Abuse (LSA) The use of attorneys, artificial intelligence, and third-party litigation financing in an insurance claim to yield a higher-than-deserved payout or to drive higher numbers of insurance claims. LSA is typically characterized by unnecessary or fraudulent filings; dodgy claims-filing tactics, such as assignment of benefits, trumped-up damages, or inflated or false medical care; and recourse to courts when the dispute could have been resolved through non-litigation channels. Legal system abuse can be directed by a true victim or a false victim against an insured party or by a policyholder against that entity's own insurer. The latter case often involves third parties asserting claims of "bad faith."

Legal Theory An argument for damages created by the plaintiffs bar or a plaintiff attorney. New theories are developed as opportunities arise and typically result in class action lawsuits. They springboard off of prevailing social issues, such as tobacco or medical/product injuries, or exploit insurance policy gaps or murky policy language. Often, they seek to broaden a specific case by focusing on generalized societal impacts. They raise the potential cost to the defendant and insurance company and are increasingly backed by third-party litigation funding.

Lottery-Style Cases Litigation that has only a remote chance of succeeding but whose payout, if successful, would be large. These cases typically lure plaintiffs by promising no upfront fees, instead charging a percentage of the windfall if there is one. If a large verdict is achieved, it usually exceeds the policy limits, even if lowered at appeal.

Nuclear Verdicts Jury awards that exceed $10 million. So-called "thermonuclear" verdicts are those exceeding $100 million. In recent years, the frequency and severity of nuclear verdicts has exploded. The uppercased use of the term is copyrighted by Tyson & Mendes, which published a book of the same name. Use of the lowercased version has never been challenged by that law firm.

Public Nuisance Claims Lawsuits that target businesses for liability for harm—real or imagined—to the general public, whether or not the business was at fault, the terms of the tort are met, the award sought will actually remedy the problem, or the "victim" actually suffered demonstrable, measurable harm. Examples include suing gun manufacturers for gun violence and fossil fuel companies for climate change.

Reptile Theory A strategy whereby plaintiff attorneys focus a jury on anger, fear or other emotions (such as pity) to convince them to grant a high award irrespective of the actual facts or law pertaining to the case. It is named after the purported "reptile" locus of the human brain that's geared toward self-preservation and urges juries to "send a message" using the size of the verdict.

Social Inflation The rising cost of insurance claims not attributable to economic inflation. The word "social" reflects popular attitudes toward businesses and individuals accused of liability more so than the accused's actual fault or legal accountability. Social inflation has a ripple effect throughout the insurance industry and economy at large as costs are ultimately passed through to consumers.

Third-Party Litigation Financing (or Funding) A system of lending to plaintiffs in exchange for a portion of the jury award or ultimate settlement. TPLF firms have deep pockets, allowing plaintiff attorneys to leverage outside financing to drive up the costs of litigation in the effort to force insurers into higher-than-deserved settlements. TPLF firms are investors in the litigation process and may be backed by domestic or foreign money. Generally, TPLF is not disclosed during a trial, leaving jurors with an incomplete picture.