



Social Inflation

Midwest Actuarial Forum
March 4, 2021

SERVE | ADD VALUE | INNOVATE





Trends in Jury Awards

- Societal trends may reportedly affect how juries decide.
- For example, a 2019 Law.com [article](#) discusses, in part, how a jury's attitude towards large corporations may be the reason for the increase in awards in civil cases against corporations. Per the article, it may be that "jurors are increasingly familiar with corporate wrongdoing. When it comes to punitive damages, the idea is to punish a corporation and deter it from future wrongdoing..."
- A 2019 [article](#) in the *Wall Street Journal* reported "a more than 300% rise in the frequency of verdicts \$20 million or over in 2019 from the annual average from 2001 to 2010."
- A 2019 [article](#) in the *Financial Times* reported the "median cost of the top 50 [single plaintiff] bodily injury [verdicts] in the US rose from around \$28m in 2014 to just over \$54m [in 2018]."

Growing distrust in large corporations

Use of So – called “Reptile Theory” By Plaintiff’s Counsel

<https://www.law.com/2019/10/17/jurors-want-to-punish-why-a-jury-verdict-goes-nuclear/>

<https://www.wsj.com/articles/the-specter-of-social-inflation-haunts-insurers-11577442780>

<https://www.ft.com/content/5fb9aef8-07fb-11ea-a984-fbbacad9e7dd>

“The Age of Reptiles” <https://www.lexology.com/library/detail.aspx?g=b640404b-c8b7-4ef8-852e-9c693ec70431>



One Definition of “Social Inflation”

“Social Inflation”

- Larger Jury Verdicts
- Changing Judicial Decisions
- Greater Propensity to Sue



Hypothesized Causes for Changing Loss Experience

- **“Social Inflation”**
- **Inflation**
 - Medical Costs
 - Legal Costs
- **Evolving Loss Types**
 - Traumatic Brain Injuries for example
- **Law Changes**
 - Tort Reform
- **Litigation Funding/Greater Use of Analytics by Plaintiffs**





State Regulatory Environments

Erosion of
Some Tort
Reform in
Some States

- State court decisions strike down, in part, **noneconomic damage caps** (e.g. pain and suffering) for medical malpractice cases in some states, for example:*
 - Georgia (2010), Florida (2017)
- State court decisions strike down, in part, **punitive damages reforms** in some states, for example: **
 - Georgia (1990), Virginia (1992), Oregon (1998), Utah (2005), Missouri (2014)

States Following
Champertous
Doctrines May
Hinder Some
Litigation Funding
Arrangements

Some states that may follow champertous doctrines include: Alabama, Delaware, Georgia, Minnesota, Mississippi, New York and Pennsylvania ***

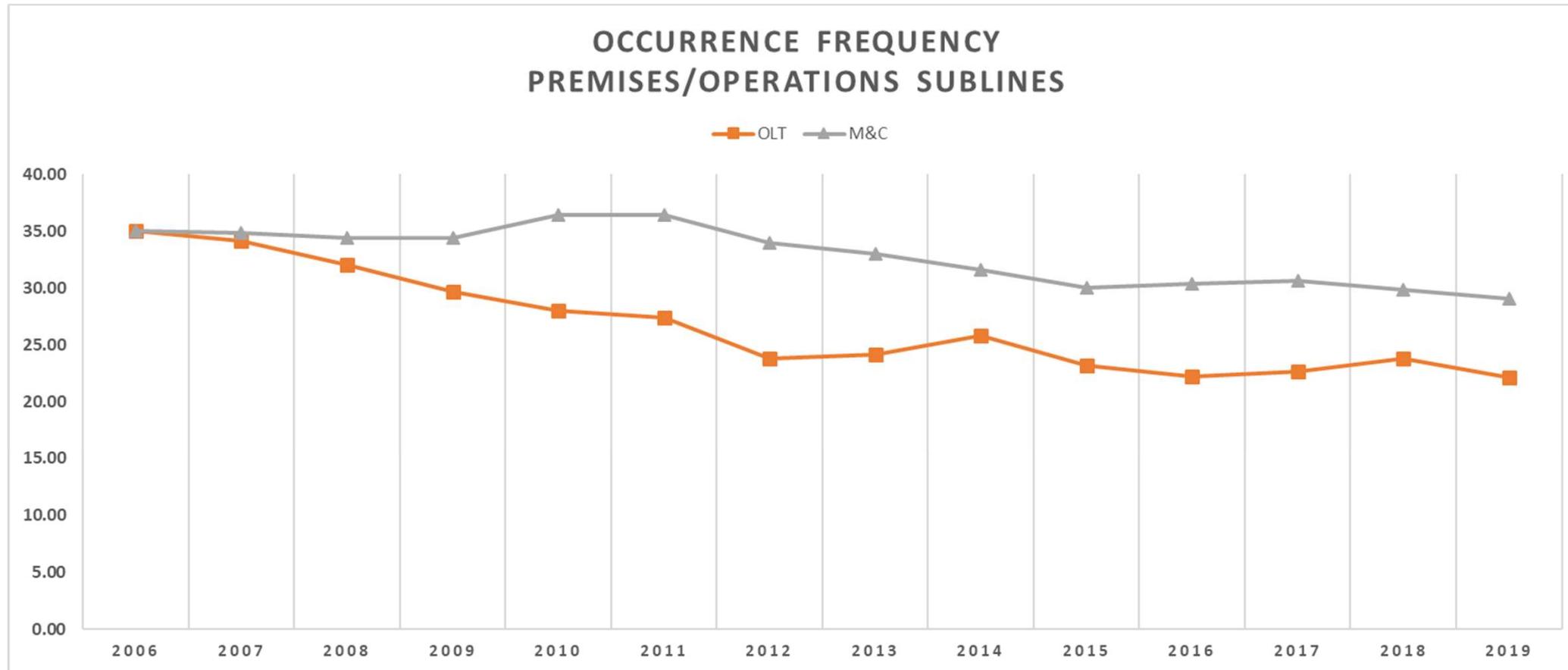
*<https://www.law.com/dailyreportonline/2020/05/11/tort-reform-capping-nuclear-insurance-verdicts-stymied-by-covid-19/>

** <https://www.atra.org/issue/punitive-damages/>

*** <https://www.mondaq.com/unitedstates/patent/774162/a-strategic-look-at-champerty-and-third-party-litigation-financing?>



General Liability – Premises/Operations Accident Year Occ. Frequency



- Bodily Injury, Property Damage and Fringe Combined. (# of occurrences per \$1M of ALCCL)
- Accident Years Ending 6/30 evaluated as of 9/30/2019
- Source: ISO General Liability Experience Reviews – 2020 Groups 3 and 4



Annual Statement LOBs Including General Liability

- Commercial Multi-Peril Liability (052)
- Other Liability (170)
- Products Liability (180)



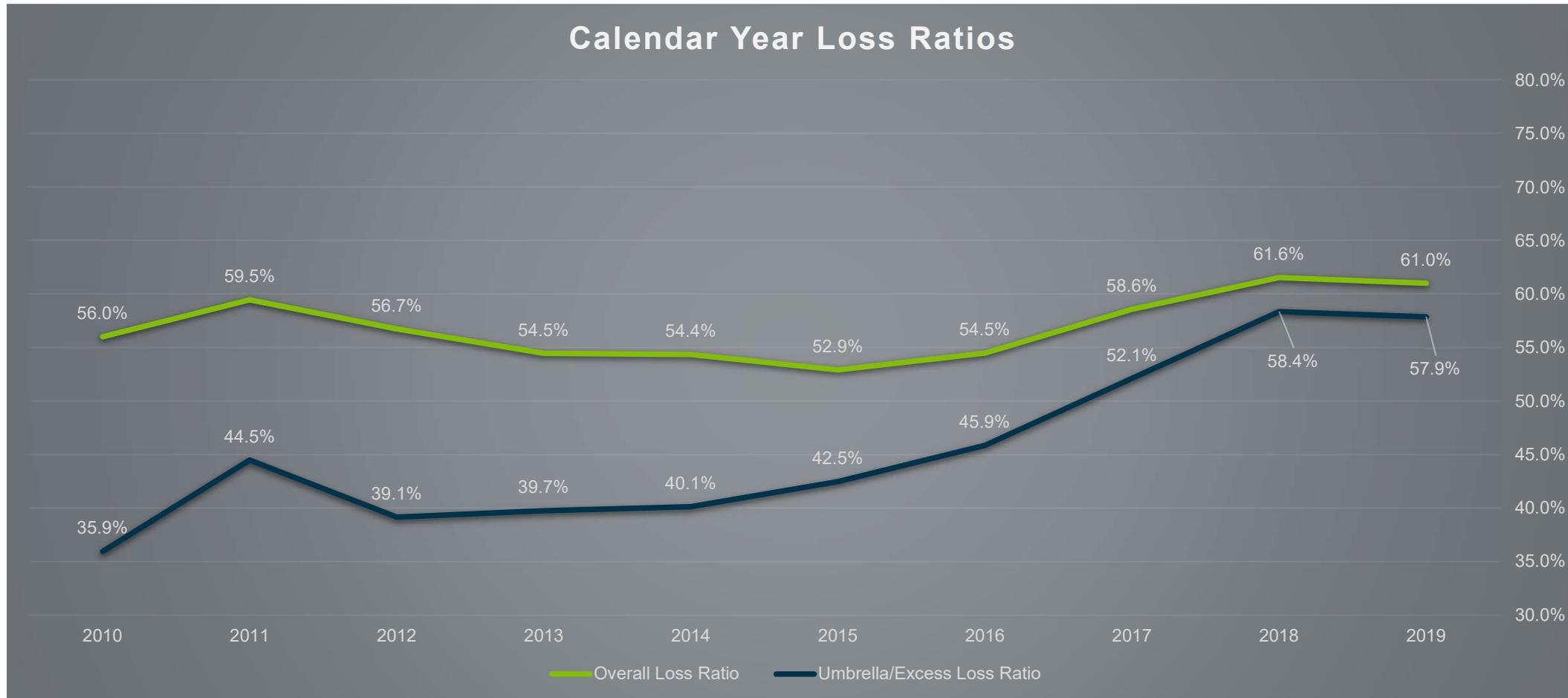
Types of Insurance included in Annual Statement LOB “Other Liability”

- Premises/Operations
- Liquor Liability
- Directors and Officers
- Cyber Liability
- Professional E&O
 - Excluding Medical Professional
- Commercial Umbrella/Excess (Including Commercial Auto)
- Personal Umbrella
- Personal Liability
- Plus More.....

Source: https://www.naic.org/documents/industry_pcm_p_c_2017.pdf



General Liability Overall vs. Commercial Umbrella/Excess

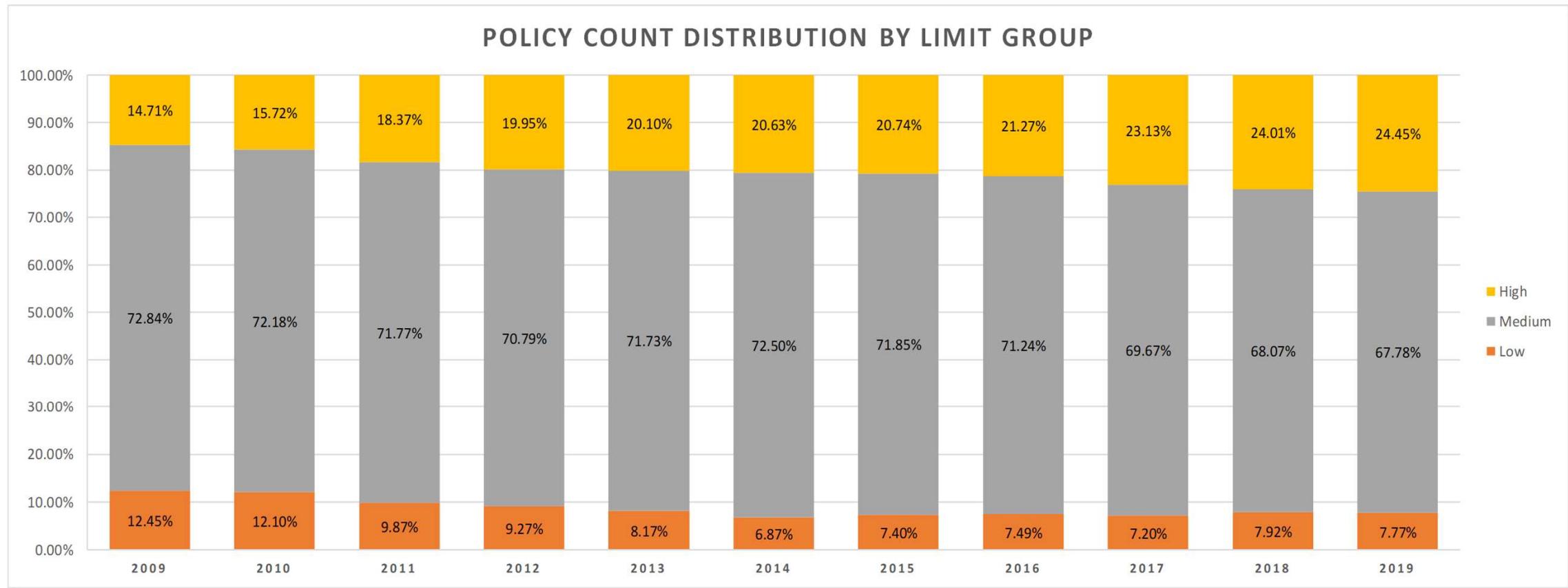


Bulk reserves are not included and a consistent number of accident years are included in each calendar year. This includes Premises/Operations, Products/Completed Operations, Composite Rated Risks, and Commercial Umbrella/Excess.

Source: ISO data



Commercial Umbrella & Excess Liability – Attachment Point Distribution (PY)



Attachment Point Size Groups - High, Medium, and Low

High: Attachment Point > \$1.5M

Medium: \$500k < Attachment Point <=\$1.5M

Low: Attachment Point <= \$500k

Source: ISO Data



Commercial Umbrella & Excess – Loss Development

- Calendar year perspective: **9** out of the last **10** years have developed adversely
- Accident year perspective: **8** out of the last **10** years have cumulatively developed adversely.

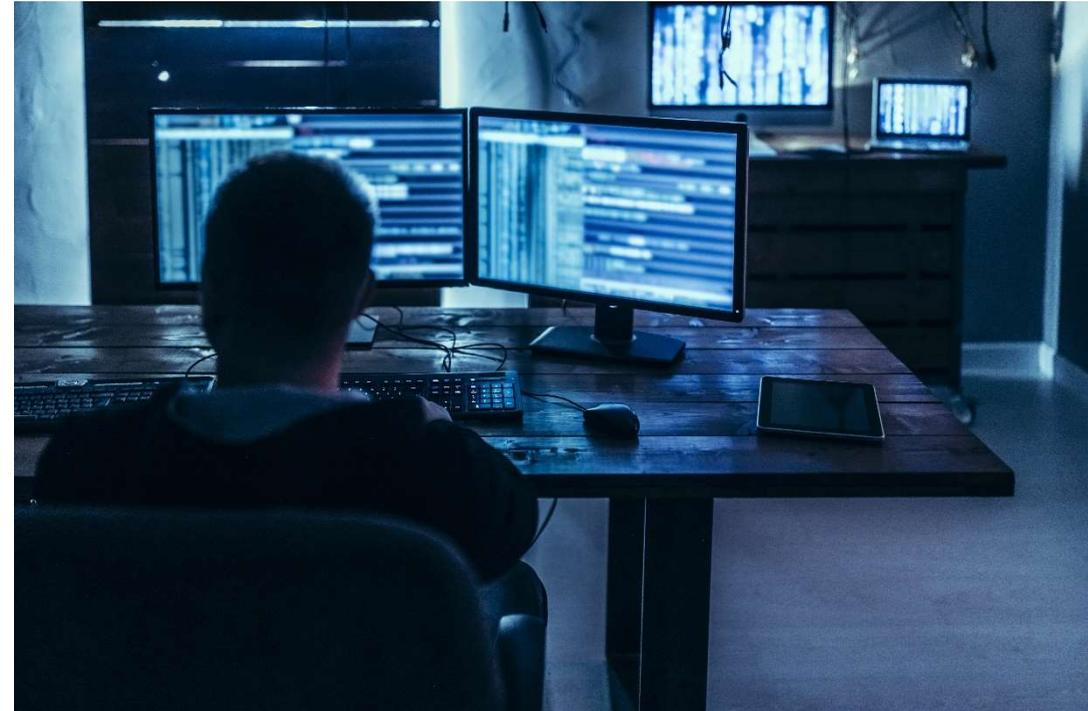
Source: Size of Loss Matrix 2020 V1.

19 year ex-ante analysis using 7-year loss weighted average for LDFs for Incurred Indemnity and ALAE (included)



Inflation

- **Higher Inflation**
 - Fooled Once (Twice.....Ten Times)
- **Severity Trend vs. General Inflation**
- **Savings Rate**
- **Supply Chain**
 - COVID
 - Weather
 - Geopolitical Relations
- **Unemployment**
 - Vaccine



Uncertain Future

- **COVID**
 - Court System
 - Recession
 - Claim Settlement Patterns
 - Medical Providers
- **Societal Division**
- **Statue of Limitations**





Contact Information

Tim McCarthy
Actuarial Director – Commercial Liability
Commercial Lines Actuarial
ISO
(201) 469-2743
timothy.mccarthy@verisk.com

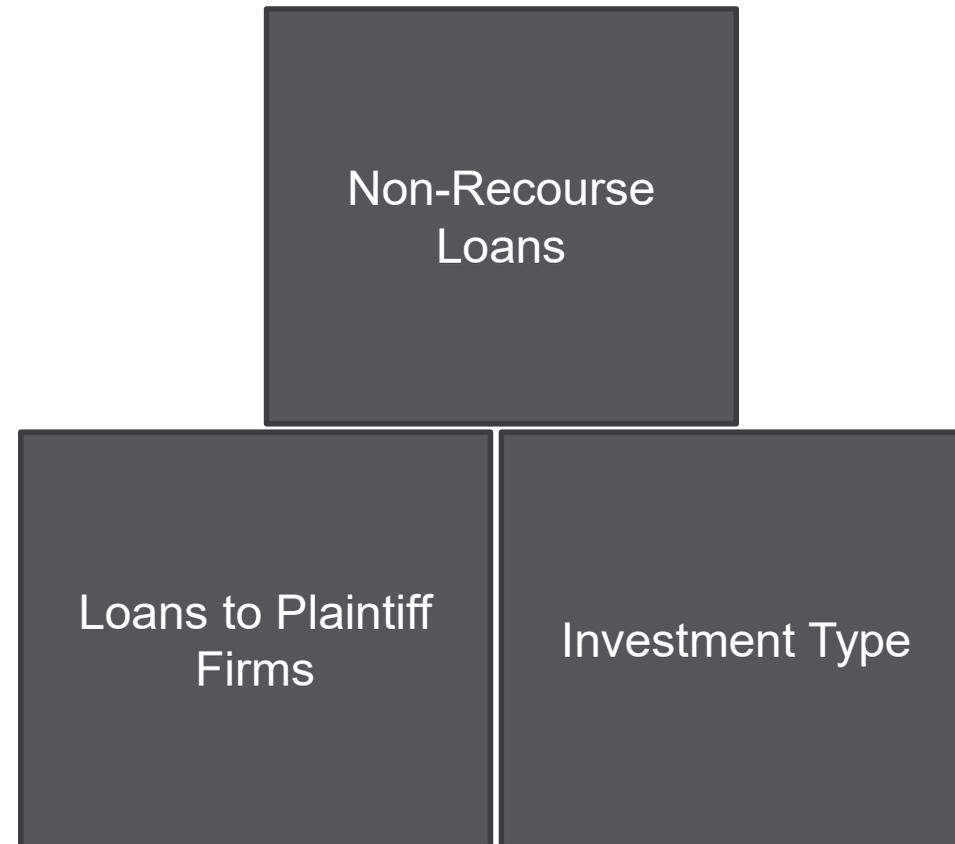
No part of this presentation may be copied or redistributed without the prior written consent of Insurance Services Office, Inc. This material was used exclusively as an exhibit to an oral presentation. It may not be, nor should it be relied upon as reflecting, a complete record of the discussion.





What is Litigation Financing?

According to an American Bar Association guide, litigation financing generally means a transaction in which a third party who is not party to a legal claim chooses to provide capital to a party in a legal claim or its counsel in exchange for a financial interest in the outcome of the legal claim if it is successful. Both defendant and plaintiff sides can reportedly be funded in this manner.



https://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2015_spring_leadership_meeting/guide_to_litigation_financing_may_2014_charles_agee.authcheckdam.pdf



Historical Reference to General Liability and Social Inflation

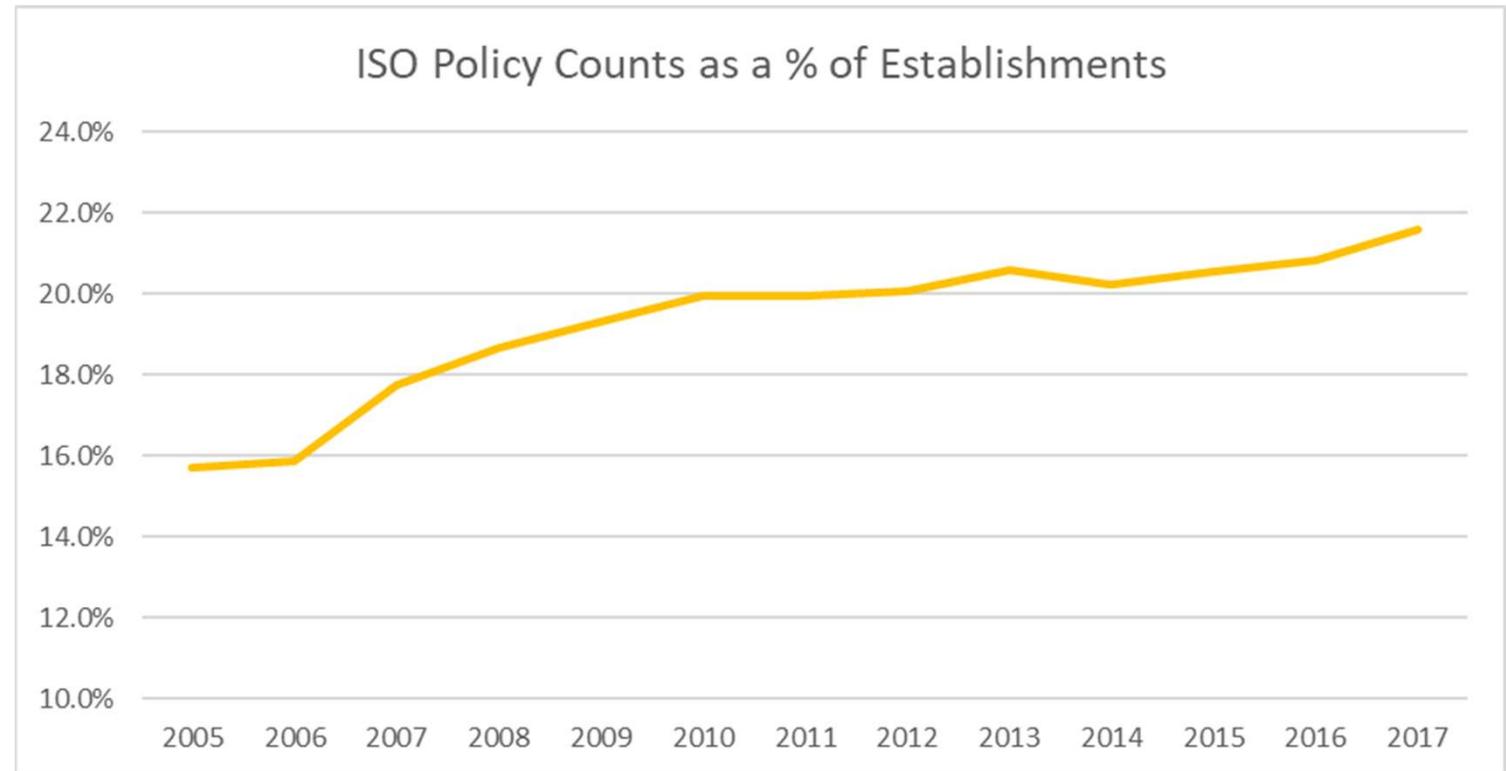
“.....the presence of persistent economic and social inflation coupled with increasing opposition to rate increases from regulators and consumer groups have led insurance companies to view inflation sensitive exposure bases as a great boon.”

Richard Biondi/Kevin Thompson – CAS Proceedings 1981



Commercial Umbrella & Excess Liability – Policy Counts

Policy Year	Policy Count	# of Establishments
2005	1,177,235	7,499,702
2006	1,205,900	7,601,160
2007	1,368,278	7,705,018
2008	1,418,795	7,601,169
2009	1,435,155	7,433,465
2010	1,476,836	7,396,628
2011	1,466,187	7,354,043
2012	1,492,382	7,431,808
2013	1,542,856	7,488,353
2014	1,530,507	7,563,084
2015	1,574,704	7,663,938
2016	1,614,125	7,757,807
2017	1,696,505	7,860,674



- Sources: US Census Bureau - Statistics of US Business Survey (SUSB) Annual Data Tables by Establishment Industry Total Employment Size Category for years 2005-2017. Number of policies is based on ISO reported information