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The Impact of Inflation on the E&S Market

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Introduction

The Excess and Surplus (E&S) insurance market, often described as the industry's "safety valve" faces many challenges from inflation. This sector covers risks that standard admitted carriers tend to avoid, including unique, high-value, or catastrophic exposures (Allen). As prices for goods and services rise, E&S carriers face higher loss costs due to increased expenses for construction materials, repairs, and legal services, which directly affects profitability and complicates the underwriting of risks that inherently lack adequate loss history (NAIC, "Regulator Insight: Social Inflation"). Unlike admitted carriers, E&S insurers are not bound by strict state rate regulations, giving them more flexibility in pricing; however, they still face competitive pressures that can limit how quickly increased costs can be passed to customers (Vault Insurance). While this flexibility helps E&S insurers respond faster than the admitted market, maintaining profitability during periods of rapid inflation remains difficult. Inflation raises the cost of goods, labor, and claim settlements while affecting premium adequacy and policyholder behavior.

At the same time, the industry faces a related challenge known as "social inflation," a term used to describe the rising costs of insurance claims not explained by overall inflation rates. Social inflation refers to the factors that make claims more expensive beyond measures like the Consumer Price Index (CPI). These factors often include increased litigation costs and shifts in societal attitudes that lead juries to award larger settlements than in the past (Sabharwal). Together, economic and social inflation create compounding pressures on E&S insurers, demanding more precise underwriting and adaptive strategies to remain sustainable in a changing market.

Effects

One of the most immediate and visible effects of inflation in the excess and surplus (E&S) insurance market is the rise in premiums. In the E&S sector, where insurers cover higher risk or unconventional exposures outside the admitted market, carriers are more directly exposed to inflationary pressures and often adjust rates more rapidly. During periods of high inflation, insurance companies face increased claim payouts and rising operational expenses, which can result in higher premium costs for consumers. For example, rising housing and labor costs have led to increased claims payouts in property and casualty insurance. The growing expenses of construction materials and labor have raised repair and replacement costs for damaged properties, compelling insurers to increase premiums to cover these higher costs (Cavallo). The cost of building materials rose by 8.3% in 2022, resulting in higher replacement expenses for insured properties (Nationwide, “Commercial Insurance Conversation Guide on Inflation). For instance, a business property that cost \$1 million to replace last year might now require \$1.2 million to rebuild. Similarly, labor costs rose by 5.1% in 2022 (Reuters), increasing the total cost of claim settlements. These inflationary trends place additional pressure on E&S carriers, which often underwrite properties in catastrophe prone or high severity risk areas where claims are already expensive.

This inflation driven cost increase is also evident in E&S professional liability lines. Many insurers providing architects and engineers professional liability coverage plan to raise rates in response to persistent inflation, rising claim expenses, and broader economic uncertainty. According to a report from Armes & Gough, among insurers surveyed this year, 71% are seeking rate increases, 24% plan to keep rates flat and just one insurer expects to reduce rates (Lerner). Additionally, 83% of surveyed companies reported that inflation influenced their decision to

raise rates, while 67% plan to focus increases on accounts with unfavorable loss histories, a trend consistent with past hard-market behavior. In 2024, the E&S industry recorded its fourth consecutive year of premium growth, with nearly one-fourth of insurers achieving double-digit percentage gains. Among the 14 insurers reporting premium growth, about 29% experienced increases between 11 and 15%. Furthermore, out of 17 insurers surveyed, 13 raised rates in 2024 in response to deteriorating claims experience and elevated risk levels (Lerner). These figures reflect how inflation continues to fuel premium growth across E&S markets, as insurers seek to offset higher costs and preserve underwriting margins.

The effects of inflation reach beyond E&S professional liability lines, impacting claims costs and premium trends in auto and casualty insurance. A study by the American Property Casualty Insurance Association (APCIA) titled "*Auto Insurance: The Uncertain Road Ahead*," released in July 2023, found that insurance claims inflation has continued rising faster than the CPI, significantly outpacing premium increases (Marshall). The study found that the combination of rapidly increasing overall economic inflation and claims inflation has increased auto insurance losses and combined ratios (Marshall). Notably, the study examines the effects of legal system abuse on personal injury claim settlements, finding that "[b]y almost any measure, litigation-involved recoveries are now increasing at previously unseen rates. This includes [...] increases in average verdicts, median verdicts for single fatalities, nuclear verdicts, which include exceptionally high jury awards, billion-dollar personal injury verdicts, and verdicts involving trucking or workplace class actions. As individual verdicts reach new heights, they establish new precedents[,] thus creating a positive feedback loop influencing future judgments for liability cases, fueling lawsuit inflation across all lines of business" (Marshall). Research conducted by the American Transportation Research Institute in 2020 demonstrates that the

average verdict exceeding \$1 million in truck crash litigation increased approximately 970% between 2010 and 2018, rising from \$2.3 million to \$22.3 million. Data from Current Award Trends in Personal Injury indicates that median personal injury judgments increased nearly 320% over a ten-year period, from \$39,300 in 2010 to \$125,366 in 2020. Between July 2022 and July 2023, auto insurance costs surged 17.8%, representing the largest annual increase since December 1976, according to the Bureau of Labor Statistics' CPI (Marshall).

Beyond the direct effects on claims and premiums, inflation has increased pressure on global supply chains, which continue to struggle after the COVID-19 pandemic. Research by SAP indicates that business leaders attribute current supply chain issues to geopolitical instability, shortages of raw materials, and surging energy and fuel prices. A study by the research agency Achilles further reports that critical materials such as tin, nickel, lithium, zinc, and crude oil remain in short supply, driving up input costs and slowing production. US trade sanctions have also contributed to these challenges; since 2018, a 25% tariff on roughly one-third of imports from China has reduced import volumes and increased domestic production costs (Nationwide, “The Sting of Ongoing Inflation for Manufacturers”). These economic strains leave many businesses financially exposed, which in turn affects insurers’ loss ratios. As inflation persists, both the frequency and severity of losses may rise, particularly if companies reduce investments in risk control or safety measures to offset higher operating expenses.

Ultimately, the pandemic accelerated many of these inflationary drivers, making the claims landscape even more challenging and costly for insurers. The E&S market is not immune to social inflation, and due to the unique and complex exposures written on an E&S basis, it may be even more susceptible. The forces behind social inflation, such as litigation trends, higher jury awards, and shifting public sentiment, continue to grow faster than general inflation, resulting in

higher customer premiums and sustaining a hard E&S market. Social inflation is also reshaping underwriting strategies, with carriers limiting the types of risks they are willing to write and reducing available coverage limits in industries prone to nuclear verdicts. Accounts with longer tail exposures are especially vulnerable, as social inflation compounds over time and increases pressure on settlements. Because E&S policies often cover complex liability claims that take years to resolve, the market faces increased exposure to these long-term social and economic inflationary effects (Bublitz).

How Carriers & Customers can Adapt

To navigate ongoing inflationary challenges, E&S carriers should adopt adaptive and innovative strategies to preserve profitability and maintain competitiveness. Inflation expands exposure bases, which increases premiums if rates remain stable. However, when rates soften, more exposures are written at lower rates, creating additional pressure on underwriting performance. To mitigate these risks, E&S insurers should implement dynamic pricing models, refine their underwriting criteria, and incorporate inflation-sensitive variables when determining rates. They should also strengthen their risk management frameworks by adapting to shifting supply chains, managing the effects of tariffs, and exploring alternative investment strategies such as private equity partnerships. Similar to how businesses have historically rerouted supply chains in response to tariff increases, E&S carriers can reconsider their risk models and coverage strategies to account for evolving sourcing patterns, rising replacement costs, and changing market conditions. If new tariffs or cost pressures intensify inflation, the resulting impact on claims may be reduced when businesses absorb costs, adjust production locations, or secure exemptions. By proactively innovating and adopting flexible pricing approaches, E&S insurers

can better manage profitability while sustaining capacity during a volatile economic environment (Calandro and Carr).

With inflation on construction and automotive materials, the cost of claims payouts is expected to rise even further. This could strain insurers' reserves and surplus, ultimately reducing profitability. To address these pressures, E&S carriers should balance rate adjustments while taking into account broader economic conditions that influence both the frequency and severity of claims. They should also consider the wider implications of inflation on housing and automobile affordability, as these factors can indirectly affect loss patterns and claim behavior across multiple lines of business.

As the prices of raw materials like oil, natural gas, and minerals keep rising, public budgets may get tighter, increasing the risk of defaults and causing problems for insurers in those areas. To handle this, E&S insurers should update their underwriting and pricing to reflect the financial risks faced by both corporate and public policyholders. Businesses should also conduct detailed scenario analyses to understand potential impacts and find ways to reduce risks. Personal auto, property, and commercial underwriting face unique challenges, but using flexible pricing and forward-looking risk models can help insurers manage uncertainty and maintain their financial stability (Calandro and Carr).

Finally, since social inflation is a human-driven risk, it can be analyzed using nontraditional data that focuses not on historical loss patterns but on real-time behavioral indicators such as social media activity, smart technology data, and broader Internet engagement. By pairing behavioral data with claims data, insurers can create models that more accurately price risk and account for the influence of social inflation. Leveraging these analytical methods

allows carriers to anticipate litigation trends, identify emerging social factors, and proactively manage exposure (NAIC, “Regulator Insight: Social Inflation”).

Consumers and customers in the E&S insurance market must adopt proactive strategies to adapt to inflationary pressures and ensure adequate coverage. A fundamental consideration involves understanding coinsurance clauses, which require policyholders to insure property to a specified percentage of its full value. Failure to meet this requirement results in policyholders bearing a proportionate amount of loss for which the property should have been insured, as the clause's purpose is to prevent widespread underinsurance and ensure adequate premium collection based on insured risk (Merlin Law Group).

For property coverage, customers should collaborate with brokers and appraisers to reassess and update estimated replacement costs for all assets, including buildings, machinery, and specialized equipment. Neglecting this process can result in coinsurance penalties and underinsurance following major losses. Regular valuation updates will ensure full recovery by reflecting current, inflation-adjusted construction and material costs. Given elevated costs for goods and the prevalence of nuclear verdicts, customers must review Umbrella and Excess Liability limits to verify that coverage towers adequately protect corporate assets against multi million dollar claims.

Excess liability and commercial umbrella coverages, where available, can increase coverage limits and eliminate surprise retentions caused by unexpected verdicts exceeding policy limits. These products also provide sufficient limits to satisfy contractual requirements and may extend coverage breadth beyond underlying policies (The Research Academy). Customers should consider diversifying coverage programs through layered insurance structures that combine primary and excess policies across multiple markets, including international reinsurers

and alternative capital providers, to spread risk and mitigate the impact of premium increases in any single layer. Additionally, securing insurance renewals well in advance of expiration dates allows customers to lock in rates and terms, providing enhanced leverage within a hardening market characterized by inflation-driven cost escalations.

Conclusion

Inflation presents many challenges to the Excess and Surplus insurance market, affecting premiums, claims costs, and underwriting practices across multiple lines of business. The combination of economic inflation and social inflation has created immense pressures that extend beyond traditional cost increases, influencing litigation trends, jury awards, and settlement patterns in ways that impact carrier profitability and market stability. Inflation affects every aspect of the E&S market, from construction and material costs to liability verdicts, requiring adaptive responses from both carriers and policyholders. To navigate this economic environment effectively, E&S carriers should implement dynamic pricing models, refine underwriting criteria, and use data analytics to better predict and manage emerging risks. Customers must ensure adequate coverage through regular property valuations, appropriate excess liability limits, and diversified coverage programs. The sustainability of the E&S market depends on the ability of stakeholders to anticipate inflationary trends and adjust their strategies accordingly. As inflation continues to shape the insurance landscape, the capacity for adaptation will determine which carriers and customers successfully manage these economic pressures while preserving the essential role of the E&S market as the industry's safety valve.

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Adapting to Inflation: Challenges and Strategies for the E&S Insurance Market

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1. Introduction

Inflation plays a defining role in shaping the property and casualty (P&C) insurance market. Economic inflation affects all areas of insurance, driving claim payouts and premiums across the industry. While it has been elevated in recent years, it alone has not pushed claims high enough to force admitted carriers out of the market. Instead, social inflation—driven by legal rulings and medical costs that outpace general inflation—has become a far more powerful accelerant. The resulting rise in claim severity is creating coverage gaps across the insurance landscape as admitted carriers exit certain market segments.

The excess and surplus (E&S) market is uniquely positioned to fill this void. Free from regulatory filing and form approval constraints, E&S carriers can assume risks rejected by the admitted market, creating opportunities for growth and profitability during challenging conditions. However, the E&S market is not immune to the effects of inflation. Reinsurer retrenchment, shifting policyholder behavior, and the risk of inaccurate underwriting all pose significant obstacles that E&S carriers must navigate to maintain financial stability and profitability.

2. Inflation

Inflation, measured by the Consumer Price Index (CPI), reflects the rate at which the prices of goods and services rise over time. Historically, inflation reached a high of 9.0% in June 2022 during the pandemic. It has since normalized, returning to a rate of 2.4% as of March 2025 (Ball, Leigh, and Mishra). Despite the cooling of general inflation, the P&C sector continues to face inflationary pressures. The most notable of these are social inflation and claims cost inflation. Social inflation occurs when increases in claim severity caused by legal factors, such as nuclear verdicts, shifting jurors' attitudes, and aggressive attorney tactics, outpace general

economic inflation (Travelers). With the median nuclear verdict rising from \$21 million in 2020 to \$44 million in 2023, social inflation is by far the most pressing issue for insurers (Panteloucos). Claims cost inflation reflects the rising costs of settling claims due to increasing labor, material, and medical expenses. This is driven by underlying economic factors such as supply chain disruptions and global market instability (Javanmardian et al.). These inflationary pressures are dampening the risk appetite of the admitted market, causing a contraction in the availability of standard claims coverage. As a result, there is an opportunity for the E&S market to absorb the displaced risk left by the admitted insurers.

2.1 Contraction of the admitted market

Due to inflationary trends, the P&C industry is currently experiencing a hard market. This means that admitted insurers are less willing to take on risk as rising claims costs, insurance regulations, and economic uncertainty hurt underwriting margins. Inflation has significantly increased the cost of settling claims in property, auto, and liability lines. As a result, insurers face reduced liquidity for claim settlements, prompting stricter underwriting standards (Davila). Since admitted carriers are subject to regulatory oversight and must file rates with state departments, they lack the flexibility to adjust premiums dynamically in response to inflationary pressures. This makes it harder for admitted insurers to raise premiums fast enough to keep up with rising claims costs, which hurts their underwriting profitability. In 2023, net written premiums increased by 11.8%, but inflation-driven claims outpaced these gains, contributing to a decade-high underwriting loss of \$38 billion across the U.S. P&C industry (Carrier Management). In response, admitted insurers reduce their risk appetite and scale back exposure in segments with high loss frequency or volatility during hard market conditions.

2.2 E&S market

Once considered a market of last resort, the E&S sector has entered a period of structural growth, driven by its ability to address shortcomings in the admitted market. E&S insurers are not bound by rate and form filing regulations, allowing them to react swiftly to emerging risks and market dislocation. This flexibility gives them the unique ability to customize coverage for complex exposures and enter volatile regions, such as Florida and California, where admitted carriers have withdrawn.

As seen in Figure 1, direct premiums written by domestic E&S insurers rose 20.1% in 2022 and 14.5% in 2023 (Woleben). These figures demonstrate the E&S market's growing role in the insurance industry, serving as a solution for high-risk and underinsured segments. However, as inflation drives up claims severity, reinsurance costs, and operational expenses, the E&S market faces mounting pressures that test its responsiveness and profitability despite the market's inherent flexibility.

E&S premiums are accounting for a larger share of the industry's total premiums

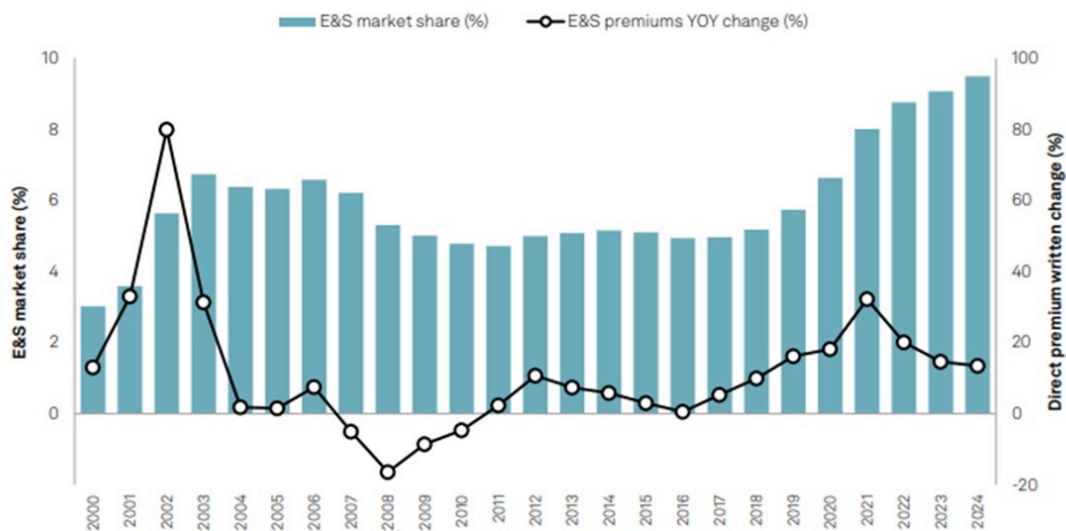


Figure 1: E&S market share and annual premium growth; S&P Global Market Intelligence

3. Inflationary drivers and their effects on E&S

Inflation is reshaping the E&S sphere through a combination of economic, operational, and behavioral pressures. These factors increase the overall cost of retaining risk and intensify friction between E&S insurers, reinsurers, and insureds. As a result, inflation is influencing how E&S carriers manage exposure, control operational expenses, and engage with policyholders in an increasingly complex and volatile market.

3.1 Economic and market effects

Like their admitted counterparts, E&S insurers face mounting financial pressure from rising claims costs. Reinsurers have intensified these pressures by retaining less risk and increasing attachment points—the threshold at which they begin to cover losses—to protect their capital and maintain profitability (Howard). This shift has made reinsurance coverage more expensive and less accessible, putting more of the direct risk and pressure on E&S insurers.

Unlike admitted carriers, E&S carriers are not pulling back from the market. Instead, they are responding to inflation and rising claims severity by adjusting premiums. E&S excess and umbrella layers' premium rates are impacted the most because they provide coverage that only activates after primary insurance limits are exhausted. According to Russ Stein of Risk Placement Services, "For low/moderate hazard classes, umbrella rates are up 8%-15%, while high-hazard excess layers could see +20% increases." (RPS). While these hikes are necessary to maintain disciplined underwriting, they make coverage less affordable for many insureds. This results in shifting policyholder behavior across the E&S landscape.

3.2 Policyholder behavior

With inflation driving up premium costs, psychological behaviors are influencing insureds to adopt cost-cutting measures. Present bias is a major driver, as insureds tend to

overweight immediate expenses, such as higher premiums, while undervaluing the long-term security that insurance provides (AXIS). Insureds also often buy into optimism and underestimate the likelihood of incurring large losses. These tendencies form a pattern of underinsurance as policyholders trade long-term loss protection for short-term savings.

The most notable cost-cutting measures include underinsurance and selective risk disclosure. Reducing coverage limits and increasing deductibles are both cases of underinsurance where insureds intentionally take on more risk or purchase inadequate coverage to manage rising premiums. This strategy carries significant risks of financial loss when claims exceed the policy's maximum limit or fall within the higher deductible amount. Additionally, selective risk disclosure or intentional misreporting may lead E&S insurers to void the policies altogether (Gallagher). This can be catastrophic for the insured, who becomes fully responsible for paying both the immediate loss and any future claims that would have been covered by the policy. While these cost-cutting strategies can provide short-term relief from inflationary-driven premium increases, they result in significant instability for E&S carriers and magnified exposure to risk for insureds.

Insureds can also implement cost-cutting measures that target safety, maintenance, and operating costs. According to the U.S Bureau of Labor Statistics, "construction material prices increased 12.5% between 2021 and 2023" and "vehicle repair costs surged by 23% between January 2022 and January 2023" (Wright). Rising expenses drive up repair and upkeep costs, leading some companies to reduce spending in these areas. Although this temporarily eases financial strain, it often results in unsafe conditions that increase the likelihood of severe claims.

3.3 Operational and compliance challenges

E&S carriers face a variety of operational and compliance challenges driven by inflationary pressures. In response to rising costs, many policyholders adopt cost-cutting measures that increase the likelihood of contentious or disputed claims. Even when policyholders intentionally underinsure or selectively disclose risk, disputes can escalate into lengthy litigation processes. Policy disputes also strain the relationship between carriers and brokers. Brokers serve as intermediaries between insurers and insureds. In court proceedings, the broker's role is frequently scrutinized and can be a deciding factor in how cases are resolved (Schwartz, Conroy & Hack). Such proceedings can foster mutual distrust. Brokers may view carriers' claim practices as too conservative, and carriers may question the accuracy of brokers' submissions. These tensions then result in brokers placing fewer clients with certain carriers, reducing their business volume and potential profits.

Beyond these relationship and litigation challenges, inflation also exposes carriers to financial vulnerabilities in the form of premium leakage. Premium leakage occurs when there is a disconnect between the policyholder's actual risk profile and the premium charged, often due to outdated or inaccurate underwriting data (IRR). Inflation intensifies the issue by accelerating the rise of claim costs. If insureds' risk profiles are not evaluated frequently, policies can quickly become misaligned with current exposures. This results in undervalued premiums. Underpricing reduces overall profitability for E&S carriers, making it difficult for them to maintain adequate reserves and cover substantial claims.

4. Carrier adaptation strategies

E&S carriers can preserve long-term stability and mitigate the effects of inflation by implementing a variety of targeted strategies. Inflation impacts carriers on multiple fronts,

including reinsurer retrenchment, rising claims costs, tensions with policyholders and brokers, and challenges in data-driven pricing. Thus, adaptation requires a multi-faceted approach. To respond effectively, carriers must manage relationships with reinsurers, build trust with brokers and insureds, and modernize data and underwriting practices.

4.1 Market-level strategies

Inflation-driven reinsurer retrenchment has heightened the importance of strong reinsurance partnerships for E&S carriers. Effective ways to strengthen these relationships include disciplined underwriting, leveraging advanced risk technology, and tailoring strategies to reflect the unique dynamics of each E&S line (Insurance Business Magazine). This is essential because each line of business carries its own distinct risks and loss patterns. For example, wildfire insurance is heavily impacted by climate change and is characterized by low-frequency but high-severity claims. On the other hand, construction insurance typically handles frequent small losses from on-site accidents, with occasional large liability claims. By demonstrating confidence in managing risk volatility and reducing the likelihood of large, unexpected losses, E&S insurers build trust with reinsurers. In turn, reinsurers are more willing to provide flexible coverage terms, allowing carriers to maintain competitively priced premiums amid inflationary pressures.

E&S carriers can also strengthen relationships with reinsurers by building diversified portfolios across geographical regions and lines of business, reducing concentration risk and the likelihood of multiple large losses exhausting reserves. This dynamic is reflected in top-performing groups such as Markel, whose diversified portfolio and consistent A (Excellent) rating by AM Best highlight its ability to attract sustained reinsurance support. E&S carriers with

similarly well-managed and diversified portfolios are more likely to build long-term partnerships and trust with reinsurers.

Even with these strategies, reinsurers' risk appetites may remain constrained during a hard insurance market. In this case, E&S carriers can explore alternative risk transfer solutions such as insurance-linked securities (ILS). ILS allows insurers to transfer risk to the capital markets, where investors provide collateral and receive interest funded by premiums. If no triggering event occurs, investors earn interest and recover principal. However, if a defined catastrophe occurs, their principal is used to cover insurer losses (FINRA). This provides carriers with an additional source of financial protection outside traditional reinsurance.

A unique option some E&S carriers have is to reinsure themselves through affiliated reinsurers or captive insurance structures. E&S carriers often employ both captive and external reinsurance. By retaining a portion of their own risk, carriers demonstrate confidence in their underwriting abilities. This signals to external reinsurers the carrier's commitment to disciplined risk management, making them more inclined to provide capacity on favorable terms.

4.2 Policyholder Strategies

Strengthening relationships with reinsurers helps E&S carriers stabilize pricing and relieve some of the cost burden on insureds. While this discourages underinsurance and selective risk disclosure, carriers can also employ targeted strategies to address these behaviors directly. Coinsurance penalties deter underinsurance by reducing claim payments in proportion to the ratio of insurance carried versus the amount required (Amwins). On the other hand, policy rescissions enable insurers to void policies altogether when risks are intentionally concealed. Together, these mechanisms help circumvent the consequences of underinsurance and risk misrepresentation by ensuring adequate rates and transparency.

Coinsurance penalties and policy rescissions serve as necessary safeguards against underinsurance and selective risk disclosure. However, pairing these with softer strategies—such as educating policyholders on coverage adequacy and risk—can help curb claims inflation and strengthen E&S carriers’ relationships with insureds (Amwins). Carriers can support this by providing brokers with training and educational materials that explain coverage terms, exclusions, and risk-management concepts, including the purpose of coinsurance penalties. This collaborative, education-driven approach reduces misunderstandings and disputes, ultimately building trust across the E&S distribution chain.

4.3 Operational-level strategies

Beyond market-level and policyholder strategies, E&S carriers are investing heavily in operational-level improvements in technology, data processing, and artificial intelligence (AI). These advancements enhance underwriting accuracy and claims management, enabling insurers to respond more effectively to inflationary pressures. According to McKinsey & Company, carriers that move away from legacy systems and rewire their operations to embrace data and AI-driven optimization are positioned for the greatest success. As AI continues to redefine risk management, companies that adopt these tools early secure a competitive advantage.

A current example of AI in underwriting is the data-driven tool developed collaboratively by Carpe Data and Harbor.ai. Carpe Data specializes in collecting and analyzing real-world data, while Harbor.ai offers an AI-assisted underwriting platform for E&S lines. The tool integrates Carpe Data’s risk analytics into Harbor.ai’s platform, enabling underwriters to improve both efficiency and accuracy (Insurance Innovation Reporter). By providing timely and precise underwriting insights, the tool reduces the likelihood of legal disputes and premium leakage, improving overall E&S underwriting outcomes.

However, the adoption of AI in underwriting comes with significant ethical and regulatory considerations. AI models are often perceived as “black boxes,” making it difficult for insurers to explain underwriting decisions. When carriers cannot justify AI-assisted underwriting outcomes, it can build distrust among policyholders and raise concerns about fairness and transparency. Regulators have also made it clear that insurers—not vendors—are responsible for ensuring the accuracy and regulatory compliance of third-party data and models they use (Sullivan & Cromwell). While AI can significantly improve underwriting efficiency and accuracy, strong governance is required to ensure fairness and safeguard policyholder trust.

5. Conclusion

Inflationary pressures are impacting the E&S insurance market, as rising labor, material, and medical costs increase claim severity. This drives higher premiums for E&S insurers and can strain relationships with insureds. Additionally, escalating claim costs contribute to premium leakage, since claims growth often outpaces the frequency of underwriting reviews.

To navigate these challenges, E&S carriers should prioritize a few key strategies. These strategies include committing to disciplined underwriting and diversified risk portfolios, implementing safeguards against underinsurance, and investing in technology and AI to modernize underwriting and claims management. Long-term success in the E&S market depends on balancing technological innovation with disciplined underwriting. Successful carriers are positioned to maintain financial stability while capitalizing on opportunities created by the inflation-driven hard market. By embracing technological advancement and strengthening relationships throughout the distribution chain, E&S carriers can better withstand inflationary pressures and solidify their role as a reliable alternative in an increasingly volatile insurance landscape.

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Nuclear Verdicts in America: The Liability Crisis Reshaping the E&S Market

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December 2, 2025

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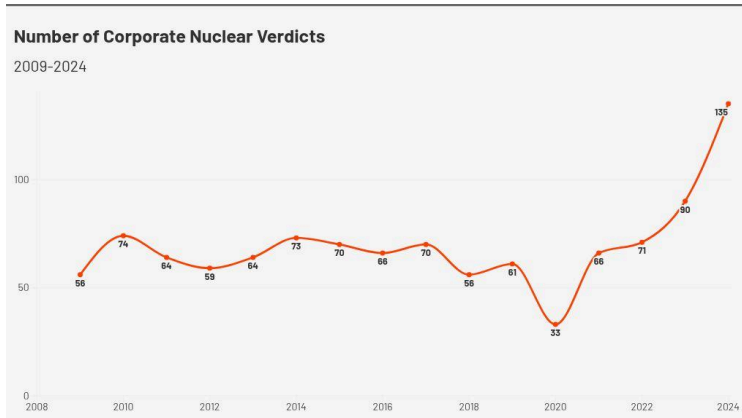
Introduction

There are moments in insurance where one verdict changes the conversation overnight. The \$1 billion trucking verdict in Florida did exactly that. A teenage driver was killed in a crash involving two commercial trucks, and a jury responded with a nine-figure punitive award that shocked insurers, attorneys, and underwriters across the country. Although the final payout was adjusted, the message was clear: juries are no longer anchored by historical norms, they are increasingly willing to deliver verdicts that eclipse anything the industry has ever priced for (American Transportation Research Institute, 2022).

Nuclear verdicts, traditionally defined as jury awards above \$10 million, were once outliers. Today, they are part of a much larger pattern of severity inflation that is accelerating far beyond the bounds of economic logic or actuarial forecasting. According to The Institutes, the median nuclear verdict has grown by more than 300 percent over the last decade, a trend that is fundamentally incompatible with the rate-filing cycles and regulatory restrictions of the admitted market (The Institutes, 2023).

As primary limits are exhausted more frequently and excess layers are pierced with alarming regularity, the E&S market has become the pressure valve holding the liability system together. This shift is not temporary, it reflects a structural realignment in how risk is distributed across markets. To understand the magnitude of this transformation, it helps to visualize the rise of nuclear verdicts:

Chart 1. Growth of Nuclear Verdict Frequency and Severity (2010–2024)



Source: U.S. Chamber of Commerce Institute for Legal Reform. *Nuclear Verdicts: Trends, Causes, and Solutions*. 2019 & 2022.

This graph shows that the number of corporate nuclear verdicts has climbed steadily over the past decade, highlighting a clear upward trend in large jury awards against businesses.

I. What Are Nuclear Verdicts and Why Are They Rising?

Nuclear verdicts refer to jury awards of \$10 million or more. But the industry has entered a new phase where awards of \$25 million, \$50 million, and even \$100 million are appearing with increasing regularity. Some analysts have even coined the term “thermonuclear verdicts” to describe the most extreme cases (Swiss Re, 2024). The escalation is driven by a combination of societal, legal, and behavioral forces that interact in ways traditional models never anticipated.

A. Social Inflation and Changing Jury Expectations

Social inflation refers to rising claim costs caused by changing attitudes toward litigation, corporate responsibility, and compensation. Juries today are:

- more skeptical of corporations
- more influenced by emotional narratives
- more receptive to large non-economic awards
- more exposed to high verdicts through media

Plaintiff attorneys strategically leverage these dynamics through tactics like reptile theory, anchoring, and damage framing, methods designed to trigger juror fear and moral judgment instead of focusing solely on economic loss (U.S. Chamber ILR, 2023).

B. Litigation Funding as a Severity Multiplier

Third-party litigation financing has grown into a \$13–15 billion market in the U.S., giving plaintiffs access to extensive pretrial treatment, expert witnesses, and prolonged litigation timelines (Swiss Re, 2024). Because funders take a share of the verdict, their incentives align with maximizing award size, not resolving claims efficiently.

C. Phantom Pricing and Inflated Medical Bills

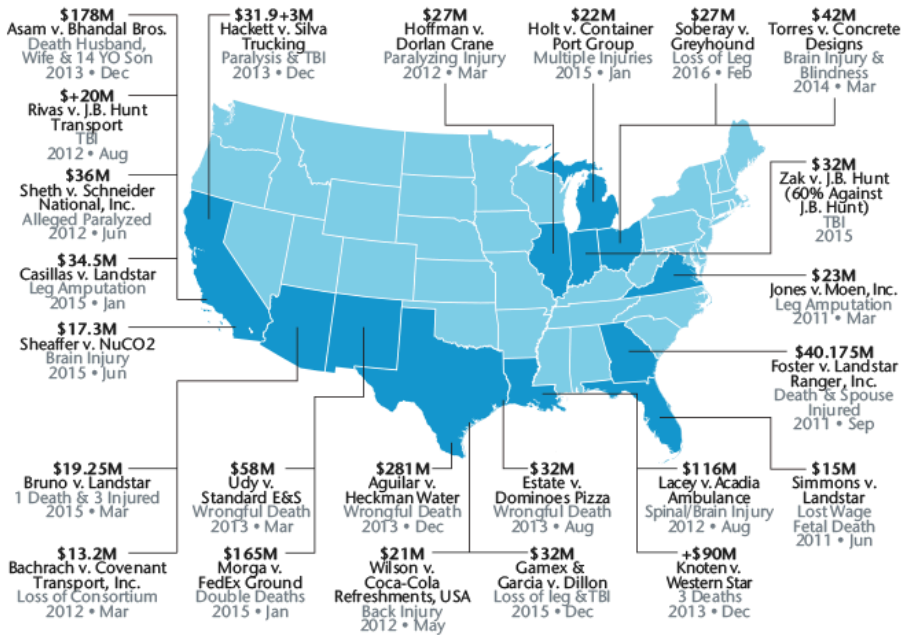
Letters of protection allow providers to bill 10–20 times normal rates, vastly inflating the economic damages presented to the jury. These inflated charges often become the foundation for multimillion-dollar non-economic and punitive damages (Triple-I, 2024).

D. Venue Shopping and Plaintiff-Friendly Jurisdictions

Jurisdictions like Cook County (IL), Fulton County (GA), Philadelphia (PA), Los Angeles (CA), and Miami-Dade (FL) account for a disproportionate share of nuclear verdicts. Plaintiff firms deliberately file in these venues because juries tend to award larger verdicts. This visualization is shown in Chart 2:

Chart 2. Nuclear Verdict Hotspots for Truck Accidents by State

Figure 2 – Nuclear Verdicts for Truck Accidents



Source: https://www.carrallison.com/wp-content/uploads/Carr-Allison_US-Nuclear-Trucking-Verdicts-2011-2016.pdf

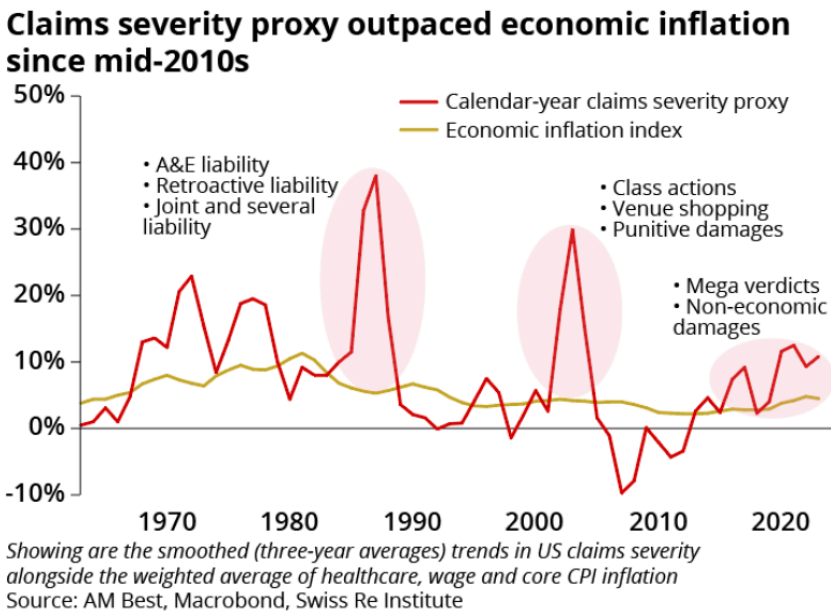
These nuclear verdict hotspots are central to understanding the liability crisis because they reveal that severity inflation is not a random national trend; it is geographically concentrated and highly predictable. Jurisdictions like Cook County (IL), Fulton County (GA), Philadelphia (PA), Los Angeles (CA), Miami-Dade (FL), and parts of Texas consistently generate the largest verdicts due to plaintiff-friendly jury attitudes, permissive evidentiary rules, and entrenched legal cultures that support aggressive litigation strategies. These hotspots matter enormously for insurers because a claim filed in Chicago or Atlanta does not carry the same loss profile as one filed in Omaha or Salt Lake City; the legal environment itself becomes an underwriting variable. For the admitted market, which must justify broad rating structures through regulators and cannot easily impose jurisdiction-specific pricing or exclusions, this geographic concentration of extreme severity creates a structural disadvantage. In contrast, the E&S market can react immediately, tightening terms in high-risk venues, adjusting attachment points, or withdrawing capacity altogether. Hotspots, therefore, are not just legal curiosities; they are the fault lines along which

the admitted market breaks and the E&S market expands. They provide one of the clearest illustrations of how nuclear verdicts translate directly into volatility, and why that volatility inevitably flows into the surplus lines sector.

II. The Data: Severity Inflation Outpacing All Economic Indicators

For insurers, the most alarming aspect of nuclear verdicts is how dramatically liability severity has diverged from traditional inflation measures. Swiss Re's 2024 report indicates that liability claim severity has increased more than 60 percent over the last decade, compared to only 25 percent for CPI and 35 percent for medical CPI (Swiss Re, 2024). Commercial auto severity alone has risen more than 50 percent, contributing to over ten consecutive years of underwriting losses (AM Best, 2024).

Chart 3. Liability Severity Inflation vs. CPI and Medical CPI (2014–2023)



As shown above, this widening gap between economic reality and litigation outcomes is precisely why traditional actuarial methods struggle. Nuclear verdicts introduce outliers so extreme that they distort loss triangles and disrupt trend analyses.

Put simply: you cannot price what you cannot predict, and you cannot predict what behaves irrationally.

III. Case Studies: Catastrophic Jury Awards Reshaping Liability

While aggregate data tells part of the story, the true impact of nuclear verdicts becomes clear through real cases that have already changed underwriting practices across the country.

1. \$1 Billion Trucking Verdict – Florida (2021)

The \$1 billion trucking verdict delivered by a Florida jury in 2021 remains one of the most defining moments in modern liability. The case involved a teenage driver killed after being struck by two commercial trucks, and the jury responded with a \$100 million compensatory award and \$900 million in punitive damages (ATRI, 2022). Even though the punitive portion was later reduced, the initial verdict instantly became a symbol of runaway severity and the vulnerability of trucking defendants in plaintiff-friendly venues.

For insurers, the implications were immediate. The verdict demonstrated that a single crash, without mass casualties or systemic corporate misconduct, could generate a loss far beyond the pricing assumptions of admitted carriers. Many admitted insurers began withdrawing from trucking or drastically limiting their appetite, unable to justify rate increases under regulatory constraints (AM Best, 2024). As capacity contracted, premiums spiked and excess layers thinned. In response, the E&S market rapidly became the default home for trucking fleets in

several states, particularly in the Southeast. This verdict marked a structural turning point, signaling that trucking risk had evolved into a fundamentally surplus-lines-driven class.

2. \$301 Billion Negligent Security Verdict – Georgia (2021)

In 2021, a Georgia jury awarded \$301 billion in a negligent security wrongful death case—a nominal award so extreme that it dwarfed the GDP of many countries (U.S. Chamber ILR, 2023). The case involved a fatal shooting outside an apartment complex, and although the verdict was later reduced, the headline number reshaped the insurance industry's understanding of premises liability risk. The verdict reflected the convergence of social inflation, venue-specific jury behavior, and plaintiff strategies emphasizing corporate punishment.

For insurers, this case demonstrated that negligent security exposures in certain venues cannot be reliably modeled using traditional actuarial methods. Even routine premises risks, such as apartment complexes, bars, convenience stores, and shopping centers, can produce catastrophic outcomes when filed in jurisdictions like Fulton County, Atlanta. Following the verdict, many admitted carriers exited the class entirely or began attaching strict assault-and-battery exclusions and sublimits (Swiss Re, 2024). As a result, negligent security coverage is now almost exclusively an E&S placement. This case became one of the clearest examples of how nuclear verdict hotspots drive entire classes of business into surplus lines.

3. \$410 Million Trucking Verdict – Texas (2024)

A Texas jury awarded \$410 million in 2024 for a multi-vehicle trucking crash, reinforcing Texas's status as one of the nation's most volatile nuclear verdict venues (S&P Global, 2024). The case involved allegations of systemic negligence and emotional testimony—factors that

frequently amplify severity. This verdict highlighted how quickly losses can penetrate multiple layers of excess insurance, exhausting limits that once would have been considered more than adequate for commercial auto risks.

In the aftermath, brokers and carriers reported immediate tightening of capacity across Texas. Admitted markets further restricted limits or withdrew entirely, citing the inability to price venue-driven volatility under regulatory rate constraints (AM Best, 2024). E&S carriers increased their minimum attachment points, raised pricing, and limited available towers for fleets operating in nuclear-prone counties. This case provided another clear demonstration that venue characteristics, rather than the underlying facts of a claim, can dictate loss outcomes. As a result, even well-managed fleets with strong safety programs often require E&S placement in Texas simply because the venue risk is too severe for admitted markets to absorb.

Collectively, these three cases show how nuclear verdicts have evolved into predictable features of certain venues, not random outliers, and why this venue-driven severity volatility now flows directly into the E&S market (Swiss Re, 2024; ILR, 2023).

IV. Why Admitted Carriers Cannot Absorb Nuclear Verdict Volatility

Admitted carriers simply are not structurally equipped to absorb the volatility created by nuclear verdicts. Because they operate under strict regulatory frameworks designed to protect consumers, admitted insurers must justify any rate increase with multi-year actuarial data—data that nuclear verdicts consistently distort by injecting severe outliers into loss histories. These carriers also face strict limitations on modifying coverage forms, endorsements, and exclusions, preventing them from reacting quickly to emerging litigation tactics or venue-driven severity spikes.

Actuarially, the problem becomes even more pronounced when a single verdict exceeds twenty

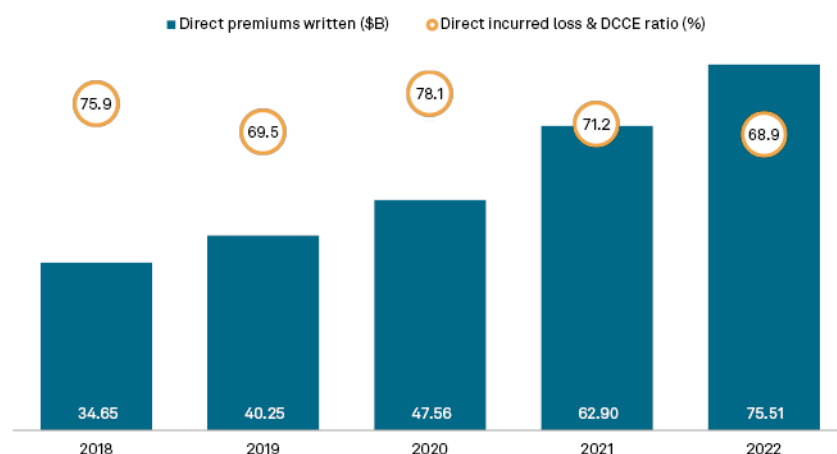
years of earned premium, destabilizing loss triangles and making trend assumptions unreliable (AM Best, 2024). Even when the need for significant rate action is clear, political and social pressures often lead regulators to deny or delay filings to avoid consumer backlash. Faced with this combination of pricing constraints, actuarial uncertainty, and regulatory inflexibility, many admitted carriers ultimately choose to withdraw from high-risk classes entirely rather than attempt to price volatility they cannot control.

V. Why E&S Has Become the Home for High-Severity Liability

The migration of high-hazard risks into the E&S market is not coincidental or temporary, it is structural. Unlike admitted carriers, E&S insurers operate with true flexibility in rate and form, allowing them to adjust terms immediately, impose venue-specific exclusions or surcharges, and rewrite coverage in response to emerging litigation tactics. This adaptability is essential for industries most affected by nuclear verdicts, trucking, construction, hospitality, habitational real estate, and product liability, which have all become core E&S classes precisely because of their volatility. The surplus lines market also dominates the excess layers where nuclear verdicts actually strike, with many catastrophic awards penetrating \$1M, \$2M, \$5M, or \$10M attachment points that are almost exclusively written by E&S carriers. This shift is reflected clearly in market data: surplus lines premiums have nearly doubled since 2018, a growth trajectory that closely mirrors the rise in severity across casualty lines. The following chart illustrates this rapid expansion and underscores how the E&S market has become the primary absorber of nuclear verdict volatility.

Chart 4. U.S. Surplus Lines Premium Growth

E&S industry premiums rose, direct incurred and DCCE ratio improved in 2022



Data compiled April 13, 2023.

E&S = excess and surplus; DCCE = defense and cost containment.

Entities are deemed excess and surplus writers if they have active statuses of not licensed, eligible surplus lines or domestic surplus lines within Schedule T - Exhibit of Premiums Written.

Data sourced from the State Pages or the Exhibit of Premiums and Losses within the annual property and casualty statutory statements filed with the NAIC. US filers only. Includes all 50 states and Washington, DC, but excludes US territories.

Industry data represent the consolidation of data of individual statutory filers covered by S&P Global Market Intelligence.

Industry data excludes E&S premiums written through Lloyd's of London.

Source: S&P Global Market Intelligence.

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The E&S market is not just absorbing volatility, it is becoming the essential pillar holding the liability system together.

VI. Adapting to the Nuclear Verdict Era

To remain sustainable in the era of nuclear verdicts, both carriers and insureds must adapt proactively. For carriers, this means implementing jurisdiction-specific underwriting, raising attachment points in high-risk venues, strengthening defense panel specialization, closely monitoring social inflation indicators, and maintaining disciplined underwriting standards.

Insureds also play a critical role by improving documentation and incident reporting, investing in safety and risk mitigation programs, strengthening contractual risk transfer, and training employees on proper incident response. Together, these strategies help stabilize outcomes in an increasingly unpredictable liability environment.

VII. The Future of Nuclear Verdicts and the E&S Market

All indicators suggest that nuclear verdicts will continue to escalate. Litigation funding is expanding. Jury behavior continues to shift. Social media amplifies outrage and influences public expectations. E&S carriers will play an even larger role in stabilizing the system—leading innovation in pricing, underwriting analytics, and policy structure. As severity continues to rise, the market will shift from viewing E&S as a “specialty alternative” to recognizing it as the core market for America’s most challenging and unpredictable risks.

Conclusion

Nuclear verdicts are not a temporary anomaly, they are a long-term structural force reshaping the liability landscape. Their magnitude and unpredictability have outpaced the capacity of admitted carriers, forcing a massive migration of business into the E&S market.

E&S carriers now serve as the industry’s adaptive backbone, providing the flexibility, pricing freedom, and risk tolerance necessary to manage unprecedented severity volatility. As nuclear verdicts continue to challenge underwriting discipline and actuarial predictability, the future of high-hazard liability will depend on the strength and sophistication of the E&S market.

Ultimately, nuclear verdicts are not just altering legal outcomes, they are redefining where America’s highest-severity risks belong.

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Current Trends in Litigation Abuse: Frequency, Severity, and Nuclear Verdicts in the E&S

Insurance Market

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December 1st, 2025

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1. Introduction

The excess and surplus (E&S) market plays a pivotal role in the United States' insurance industry as it covers high-risk or unconventional exposures with structuring, pricing, and underwriting that fall outside the standard boxes. Today, the E&S market faces a challenge that is becoming increasingly pronounced: litigation abuse and nuclear verdicts. Large jury awards, shifting liability norms, and increasingly aggressive plaintiff tactics all drive losses beyond the actuarially expected value. In an industry reliant on flexibility, these developments create challenges to remain competitive in today's environment. This paper examines how nuclear verdicts and litigation abuse have altered the financial and operational dynamics of the E&S insurance market and their loss trends.

2. Nuclear verdicts

2.1 Background

Nuclear verdicts, defined as jury verdicts of \$10 million or more (U.S. Chamber of Commerce Institute for Legal Reform 8), have grown sharply in frequency and severity in recent years, reshaping loss expectations across liability lines. In 2010 to 2022 alone, the median award amount doubled, coinciding with a significant increase in the number of nuclear verdicts (U.S. Chamber of Commerce Institute for Legal Reform 3). Research by the Casualty Actuarial Society also supports this trend especially in E&S classes such as commercial auto, where large-loss development continues to deteriorate (Lynch 7). These awards typically include standard indemnification costs and noneconomic and punitive awards, which worsen severity.

While nuclear verdicts are the most visible and costly risk for many E&S carriers, they represent the culmination of deeper systemic forces often grouped under social inflation. Nuclear verdicts distort the tail of the loss distribution while social inflation steadily raises the

entire loss cost curve. Social inflation normalizes oversized jury awards, expands noneconomic damages, and encourages aggressive plaintiff tactics, increasing the baseline for these claims. As a result, E&S insurers must consider not only individual nuclear verdicts, but also the overall upward trend in claim costs.

2.2 Impact on frequency and severity

The effects of nuclear verdicts differ significantly between the admitted and E&S markets. In the admitted market, insurers are required to file rates, limiting their ability to adjust pricing or policy terms when nuclear verdicts increase the loss severity of their book of business (National Association of Insurance Commissioners 5). This lag causes admitted carriers to have temporarily inadequate rates for product lines that may be more prone to nuclear verdicts such as long-haul trucking or habitational property. As a result, admitted carriers limit their risk appetites within these sectors of the market, shifting these risks into the E&S market.

From an actuarial perspective, nuclear verdicts affect frequency and severity in many ways. Research shows that while the overall number of liability claims that were filed had not increased dramatically, nuclear awards have increased from 6.5 to 12 percent of cases from 2010 to 2019 (RAND Corporation 22). This suggests that the threat comes from severity shocks, rather than a frequency creep. Ultimately, the admitted market's regulatory structure pushes risks with a high nuclear verdict likelihood into the E&S sector. While the E&S market can respond more quickly to shifting loss patterns, its concentration of severity-prone policies means nuclear verdicts pose a greater challenge to the industry's long-term stability. This shift in market share is seen in the commercial auto liability sector of the market where the Casualty Actuarial Society and Insurance Information Institute estimate that social inflation, which includes the rise in nuclear verdicts, have added over \$30 billion to loss costs between 2012 and 2021 (Lynch 1).

While E&S carriers enjoy greater flexibility in changing their pricing or exclusions, they are not immune to nuclear verdicts because of their large share in the industries most exposed to these awards.

3. Challenges of nuclear verdicts

3.1 Underwriting

Within the E&S sector, underwriting has become increasingly complex as nuclear verdicts distort the traditional relationship between exposure, pricing, and expected losses. Because E&S carriers often hold a large portion of high risk lines, they take on a disproportionate share of the nuclear verdict severity risk. These high exposures often cause loss distributions with heavy tails on the high end, where the potential for these outliers in claim cost reduces the reliability of standard actuarial pricing and underwriting tools and tend to lead to the underpricing of products. Liability lines written heavily through the E&S channel have experienced persistent adverse development, as actual verdicts and settlements have exceeded even the elevated actuarial forecasts (Casualty Actuarial Society and Insurance Information Institute 5).

3.2 Risk Management Strategies

To maintain sustainable rates, E&S underwriters must operate with both a qualitative and quantitative approach. Rates, limits, and coverage terms do not need to be regulated by outside organizations, allowing real time reactions to changing trends. Swiss Re's 2024 Social Inflation report highlights that many carriers now use predictive analytics and qualitative screening to evaluate litigation potential alongside traditional exposure metrics (Swiss Re Institute 11). One way this is done is employing jurisdictional heat maps and verdict analysis to predict the probability of a nuclear outcome within certain states or regions. The underwriting process,

which was once purely quantitative, now increasingly is dependent on professional judgment to understand and interpret the social and legal state of the market.

In addition, E&S carriers are also tightening their written policies to help with this volatility. Higher attachment points, more conservative layer structuring, and punitive-damage exclusions are becoming increasingly common. The adjustments to policies help limit exposure to nuclear verdicts, however, they contradict the E&S market's unique trait of offering coverage for unconventional risks. Another strategic risk management technique used in the E&S market is portfolio diversification where carriers are reducing concentration in classes prone to nuclear verdicts, which distribute the exposure across different lines. Ultimately, risk management for E&S insurers now is more than underwriting, it has become intertwined with understanding the dynamics of the legal system.

4. Aggressive litigation tactics

Aggressive litigation tactics are significant contributors to nuclear verdicts. These tactics are designed to prey on the emotions of juries, rather than rational decision-making. They often reframe cases from a logical facts-based approach to a judgement of morality or corporate responsibility and push the award much higher than actuarially expected values. For E&S carriers, who frequently write business for industries easy to portray as negligent or greedy, such as commercial construction, these litigation tactics represent a direct escalation of severity risk. Understanding how these tactics are used is important to understand the drivers of nuclear verdicts and their adverse development in the E&S market.

4.1 Reptile theory

Reptile theory, a trial strategy developed in the mid-2000s, encourages jurors to replace their logical reasoning with instincts and fear (Ball). It takes advantage of the "reptilian" portion

of the brain which is responsible for survival instincts. When using this technique, attorneys will frame the defendant's actions as a threat to society. They will often disregard the specifics and persuade the jurors to think that by awarding a larger, at times nuclear, verdict, they are protecting society. Within the E&S market, reptile theory can be commonly used in classes where the insured's operations involve lots of public risk, such as transportation, construction, or property management. This causes jurors to want to punish the defendant based on industry stereotypes rather than the defendants' actual actions. Arguments using reptile theory have contributed to higher jury awards and is supported by the increasing severity of nuclear verdicts (Insurance Information Institute 2023). The psychological tactic blocks rational evaluation and creates verdicts that do not align with the actual economic loss.

4.2 Anchoring

Another psychological tactic used in courts is anchoring, which influences the jury's perception on the value of the case. The plaintiffs' attorneys will state an extreme figure in the opening of the trial, which will subconsciously "anchor" the value in the jury's minds. Final payouts often remain inflated relative to true damages, even if reduced from the initial request. In the E&S market specifically, this is typically seen with liability cases where the losses involve catastrophic bodily injuries or fatalities. In these types of cases, the jury often does not understand the true value of the damages, which makes them more likely to base their verdict on the anchored value. In 2023, a study by RAND corporation found that in nuclear damages, the variance in the final awarded amount could be explained almost 60% by the initial value stated by the plaintiff. This shows how effective anchoring can be and how it inflates the severity of cases. For E&S carriers, this means when pricing their policies, they must consider not only all of the traditional actuarial principals, but also the behavior and susceptibility of the juries.

4.3 Punitive Emphasis

Punitive emphasis is a strategic elevation of punitive damages within the plaintiff's argument. Historically, punitive damages were only used in cases of extreme misconduct or negligence, but more recently are becoming more normalized. In the E&S market, punitive emphasis adds to the risk associated with exposure in industries where there can be perceived corporate indifference. Even when physical losses can be actuarially estimated, the inclusions of punitive damages can make these more volatile. The Swiss Re Institute found that over 40% of award amounts in large liability cases can be accounted for by punitive damages (Swiss Re Institute 12). To protect against this, E&S carriers have begun to adopt strategies such as exclusions or sublimits, but these can cause accessibility issues for classes with a large need for this coverage.

5. Managing litigation abuse

Because of the increased rise of litigation abuse and nuclear verdicts delivered, E&S insurers are having to readjust how they price their policies and manage risk. Traditional approaches in underwriting, reserving, and claims handling fail to account for the increasing environmental changes that affect loss volatility. To keep up, the E&S market is beginning to adopt new mitigation strategies such as integrating more data analytics, innovation in claim defense, and trial management strategies to counteract litigation abuse.

5.1 Data-driven underwriting and actuarial approaches

The integration of data science and behavioral analytics help E&S carriers expand beyond traditional actuarial models to quantify litigation risk. Modern predictive modeling incorporates jurisdictional data, attorney-specific history and patterns, and verdict statistics to pre-identify high-risk venues or alarming claim characteristics. Swiss Re's 2024 *Social Inflation*

report shows that carriers who use these types of models have been able to reduce their loss ratio volatility by up to 15% (Swiss Re Institute 9). This pre-identification is becoming increasingly important within the new environment.

Many E&S actuaries are also looking at incorporating non-linear models to model loss. Historically, actuaries have relied mostly on generalized linear models (GLMs), which use proportional changes in losses based on linear predictors. GLMs perform well in traditional environments, but struggle to capture the steep escalation in severity caused by nuclear verdicts. Using heavy-tailed distributions such as Pareto or log-normal help capture the increased probability of extreme verdict outcomes. These distributions more accurately estimate upper loss tails in industries such as trucking or product liability. Finally, some insurers are using social inflation indices, internal metrics that trace the average increase in verdicts across different jurisdictions, which are used to adjust the rate indications. Overall, these methods show how the E&S market is trying to bring a traditionally quantitative discipline to a current environment which is so heavily shaped by these subjective and emotional litigation outcomes.

5.2 Claims defense strategies

Another way E&S carriers are fighting against litigation abuse is effective claims defense. Because their policyholders often have complex and high-severity claims, their insurers are typically more invested in the early-stages of their legal intervention. By involving counsels which specialize in defending against tactics such as reptile theory and anchoring, E&S carriers can understand the emotional framing that plaintiff attorneys are trying to establish. Another approach is data-enabled claims triage, where machine learning tools can analyze claim attributes such as venue, injury type, and counsel identity, to assign a litigation risk score to each claim. This allows claim managers to flag cases with highest-risk and help allocate the most

resources towards them. The Casualty Actuarial Society's 2023 update notes that early and consistent defense coordination can reduce ultimate loss severity by up to 25 percent in high-risk jurisdictions (Casualty Actuarial Society and Insurance Information Institute 8).

This emphasis on defense coordination can also help with strategic settlement timing. The goal is not to completely avoid litigation but rather to settle cases quickly before there is the involvement of emotions or cost inflation. This tactic helps prevent the exposure and public pressure that comes once a case gains media attention or enters undesirable jurisdictions with appeals. Carriers that implement this speed and movement into their claims and litigation process typically experience overall shorter durations and costs (Swiss Re Institute 14). Therefore, proactive resolution can evolve into a control tactic that allows a better defense against nuclear verdicts in today's environment.

In cases that do reach trials in which a nuclear verdict is probable, E&S insurers' defense counsels are beginning to adapt their trial strategies to help counter the plaintiff's psychological tactics. Defense teams may emphasize juror education, using prior testimony or strong visual evidence to present the facts and logical side of the argument rather than the emotional side. Additionally, some teams use mock trials or focus groups to present their argument and gain feedback on how the jurors may respond. While these initiatives can help E&S insurers react to the changing environment, there is a greater need for reform and a reshape of the legal system and how it is priced, defended, and resolved.

6. Industry advocacy and tort reform

Through E&S insurers' internal strategies, they are working toward managing litigation abuse in today's legal environment. However, that improvement can only be truly effective if

there is structural reform within the legal system itself. Members of the industry are becoming increasingly involved in advocacy in attempts to address the issue of social inflation. Their efforts include reducing punitive damages, increasing transparency and awareness on third-party litigation funding (TPLF), and restoring a reasonable relationship between the value of the liability and risk, and the value of the harm. These reforms are essential to help stabilize insurers loss ratios, but also to protect the section of the market that E&S insurers serve, providing coverages to unique risks that would not be covered in the admitted market.

6.1 Caps on punitive damages

Originally, punitive damages were intended to protect against egregious misconduct, not as a supplement towards awards. However, with tactics that involve moral outrage and emotional appeal in jurors, this distinction between punitive and compensation has been compromised. These award amounts can cause uncertainty in the estimation capabilities for E&S insurers. To address this, groups in the industry such as the American Property Casualty Insurance Association (APCIA) and the National Association of Mutual Insurance Companies (NAMIC) have advocated for statutory caps on punitive damages. These caps help align the overall value of the award more closely with the compensatory damages which help decrease verdict volatility and increase insurance capacity. The cap would help improve the accuracy of actuarial models as well as reduce the reliance on policy exclusions or sublimits.

6.2 Mandatory TPLF disclosure

TPLF has become emergent in today's legal environment where large hedge funds or private firms help finance the plaintiffs' expenses in exchange for a portion of the final award. While there are some benefits of TPLF, such as the increase in access to justice, it also fuels the ability for nuclear verdicts since funders have a financial incentive to increase the award amounts

rather than a quick resolution. Currently, many US states do not require disclosure of litigation funding agreements. The Insurance Information Institute and the U.S. Chamber Institute for Legal Reform both argue that this contributes directly to nuclear verdict inflation (Insurance Information Institute 2023; U.S. Chamber Institute for Legal Reform 17). The industry is now calling for a mandatory disclosure of TPLF agreements at the beginning of the litigation process. This early transparency would ensure that the settlement reflects the needs and intentions of the parties involved, not the financial greed of undisclosed investors.

7. Conclusion

The issue of nuclear verdicts and litigation abuse represent not only challenges in terms of financial burden, but also the predictability of claims in the E&S market. It shifts the uncertainty from physical hazards and risks to social and emotional opinion of jurors and their behavior. As they continue to increase loss severity and distort actuarial models, E&S carriers are responding with data-driven underwriting, predictive analytics, and early defense coordination. However, one of the main factors of the stability of the market will continue to be identifying high-risk claims and cases before they explode into nuclear values. By integrating behavioral data, venue analytics, and litigation trend monitoring, insurers can transform defense from a reactive response into a preventative strategy. At the same time, systemic reforms such as punitive damage caps and mandatory disclosure of third-party litigation funding are essential to reintroduce fairness and transparency into the legal system. Ultimately, the E&S market's continued resilience will depend on its ability to combine innovation with foresight, anticipating emerging risks, quantifying them with discipline, and acting decisively. This will help to preserve its critical role as the insurer of last resort in an increasingly unpredictable world.

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