US Public D&O Insurance Market Report

December 2023

TransRe™
We value risk.

“Those who will not face improvements because they are changes, will face changes that are not improvements.” — Charles Thomas Munger (1924-2023)

ANALYSIS

We sell a product before we know our cost of goods sold, and our prices reflect both experience and expectations.

Which is why we are confused by the US Public D&O Insurance market.

We applauded (and supported with capacity) the thirty months of cumulative price rises between 2019 and mid-2022. They were a necessary correction for earlier losses.

We don’t fully understand the subsequent eighteen months of price erosion. The market has become susceptible to dramatic fluctuations, a volatile, boom-and-bust market untethered from empirical data and unhindered by logic.

We hear various defenses for the most recent bout of price deterioration, none of which fully explain or justify it:

- **New capacity was attracted by the booming IPO/SPAC/deSPAC business. When that dried up, the new capacity deployed to other public D&O business, driving prices down.**

  The rapid expansion of that premium-rich business did draw in new capacity which, when SPACs dried up, deployed to the higher layers of large towers where the barriers to entry are fewer: writing working layers is more labor intensive, requiring detailed policy forms and dedicated claims teams.

  However, we have excluded IPO/SPAC/deSPAC business from our price index, to avoid obscuring the overall trend downwards.

- **The price rises of 2019-2022 are sufficient to deliver significant profits (2021 in particular) and improve the collective projected loss ratios.**

  In other words ‘we can afford to give some back’. However, our sale price requires a margin for error as well as a margin of return. Those thirty months of cumulative price rises corrected the cumulative erosion between 2015-2018, and it is too early to give back those hard-won recent gains.

Collectively we have been unable to deliver consistent, profitable returns for many years. 2021 is more likely an aberration than a trend, especially after the price cuts.

- **We are generating a lot of investment income on this long tail business.**

  Cashflow underwriting rarely ends well, and we must price for an underwriting margin throughout the cycle. Interest rates can change quickly: markets currently anticipate they will start to drop in 2024.

- **There are fewer security class action filings.**

  The frequency of filings is off 2019 highs but remains at or above historical averages. We remain concerned about dismissal rates going down, as better-targeted plaintiff filings build stronger cases. The SEC's new Cyber Security Rules also create the potential for additional public D&O claims.

  In terms of severity, elevated stock-market levels create the potential for larger $ drops.

- **The rate of price declines is slowing.**

  True, but getting worse more slowly is not the same as getting better.

- **Prices are still above 2018 levels.**

  We have seen some 200%+ loss ratios for that year. If 2018 is your benchmark, how is it working out for you?

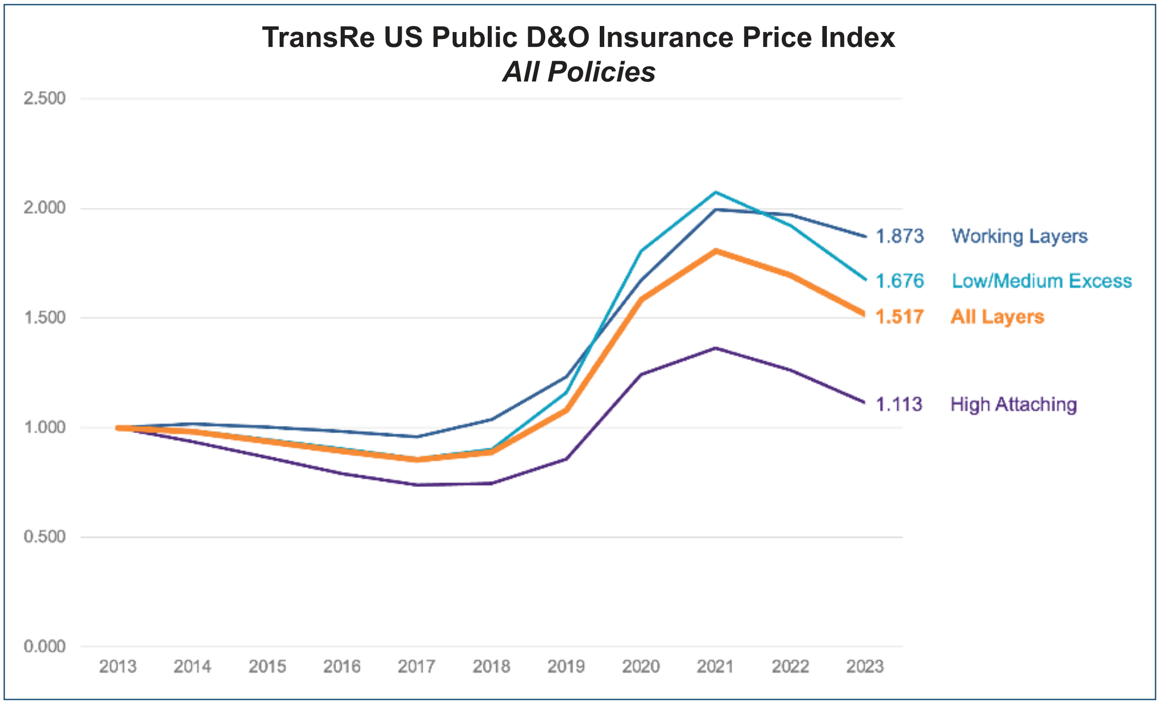
The problem is not just because of new capacity and fewer SPACs. We all claim to be bottom-line focused, but some of us seem more top-line focused than others, as our detailed data will demonstrate.

DATA

Our perspective is based on four separate but related datasets: price changes, loss ratios, schedule P and large losses. All point to the same conclusion:

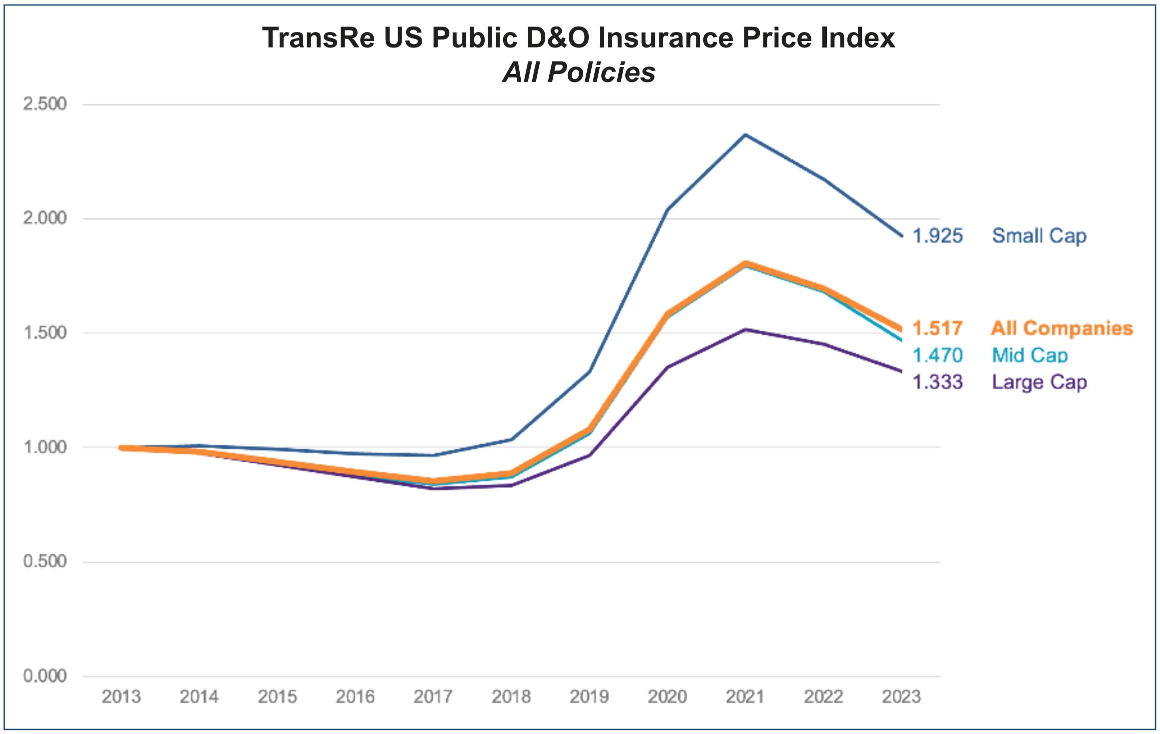
1. PRICE CHANGE ANALYSIS

A. ANNUAL CHANGE, BY ATTACHMENT BAND



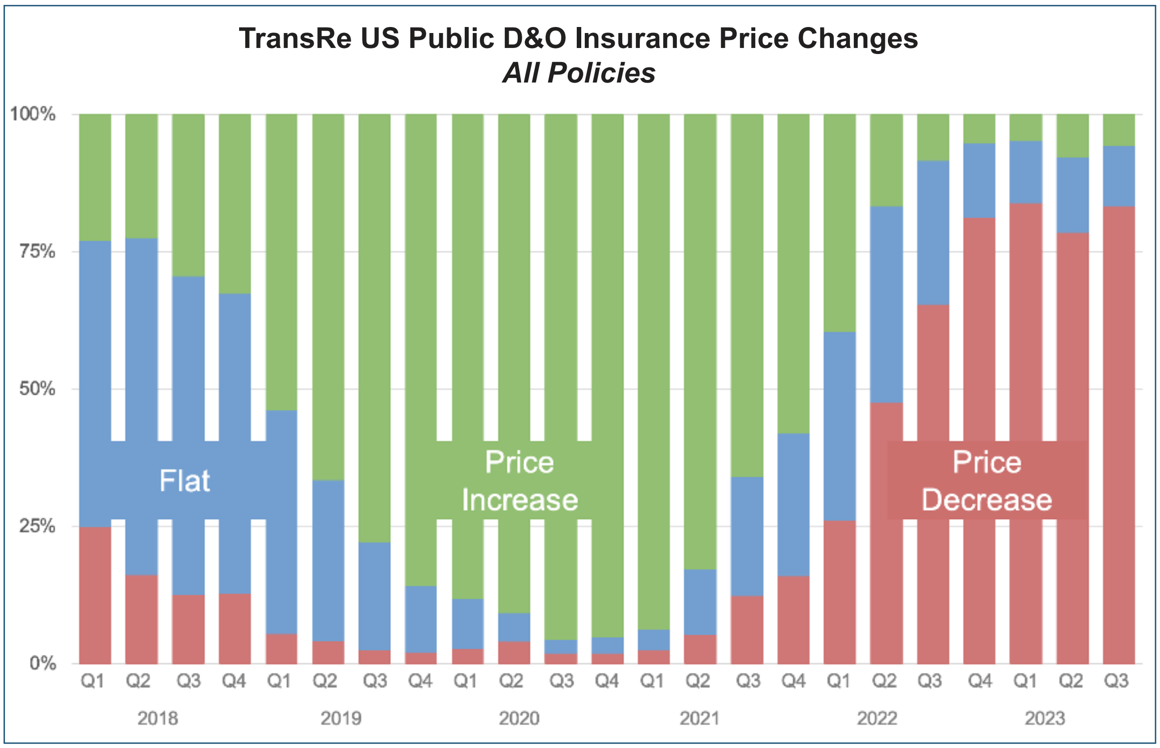
- The last cycle bottomed out in 2018 after which prices rose (in response to deteriorating results) until mid-2022.
- Since then, alarm bells have been ringing, across all company sizes and attachment bands.
- The price for high attaching insurance gives most concern. In a severity driven line of business there is no sound reason for higher-layer pricing to be so out of step, even if new capacity is to blame.
- These are nominal changes. Even before adjusting for the increasing loss cost trends, high attaching layer prices overall are only 11% higher than they were in 2013. The world is more than 11% riskier than it was a decade ago.

B. ANNUAL CHANGE, BY SIZE OF INSURED



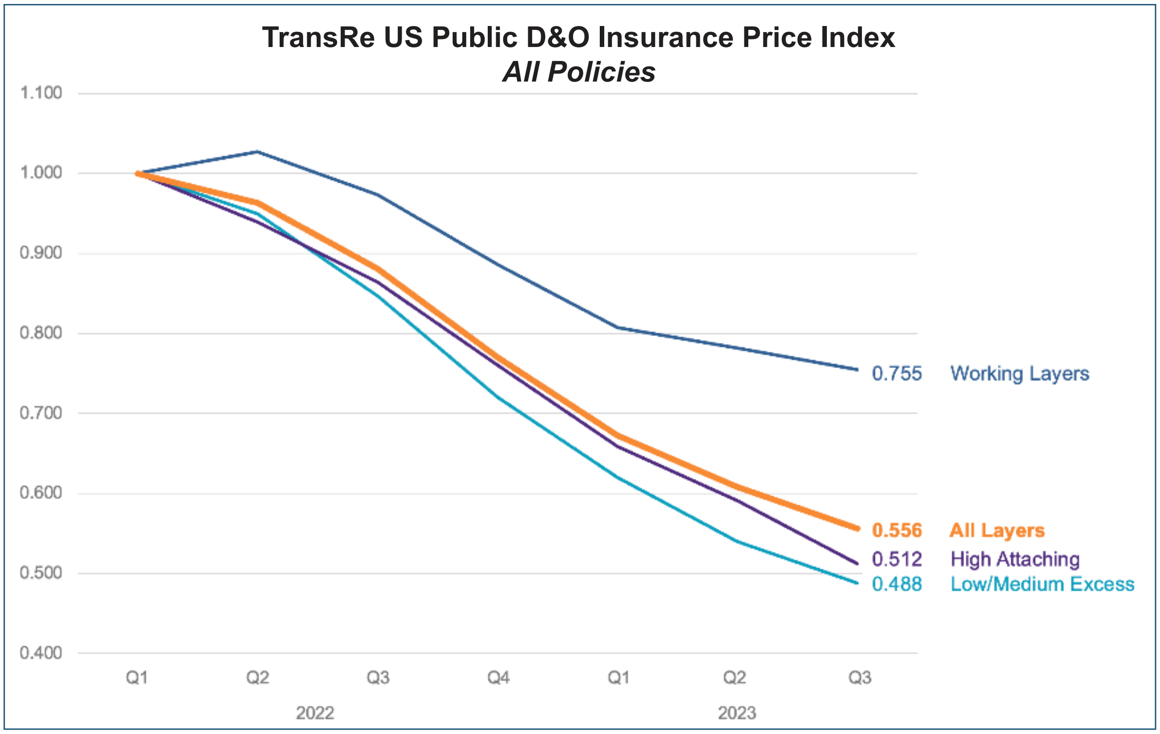
- Having risen most in 2019-2022, small cap companies have since retreated fastest.
- Although large cap business appears to be holding price better overall, such business rose the least during the upswing and the price of high attaching layers dropped in 2022, despite being a major source of claims, and despite those layer prices having also lagged behind the 2019-2022 upswing.
- If we remove Financial Institutions from the dataset, the decline in Commercial prices is more evident and more severe.

C. QUARTERLY CHANGE BY OUTCOME



- The most widespread price rises were in 2020.
- A majority of renewals have declined in price each quarter since Q3 2022.
- At times of market inflection, relatively few policies renew flat/‘as is’. Now appears to be one of those times.

D. QUARTERLY CHANGE BY ATTACHMENT BAND



- When we focus on price changes from the peak (Q1 2022), the dramatic price decline is evident.
- Again, it is the higher attaching layers that are of most concern
- While the decline is slowing, prices continue to deteriorate.

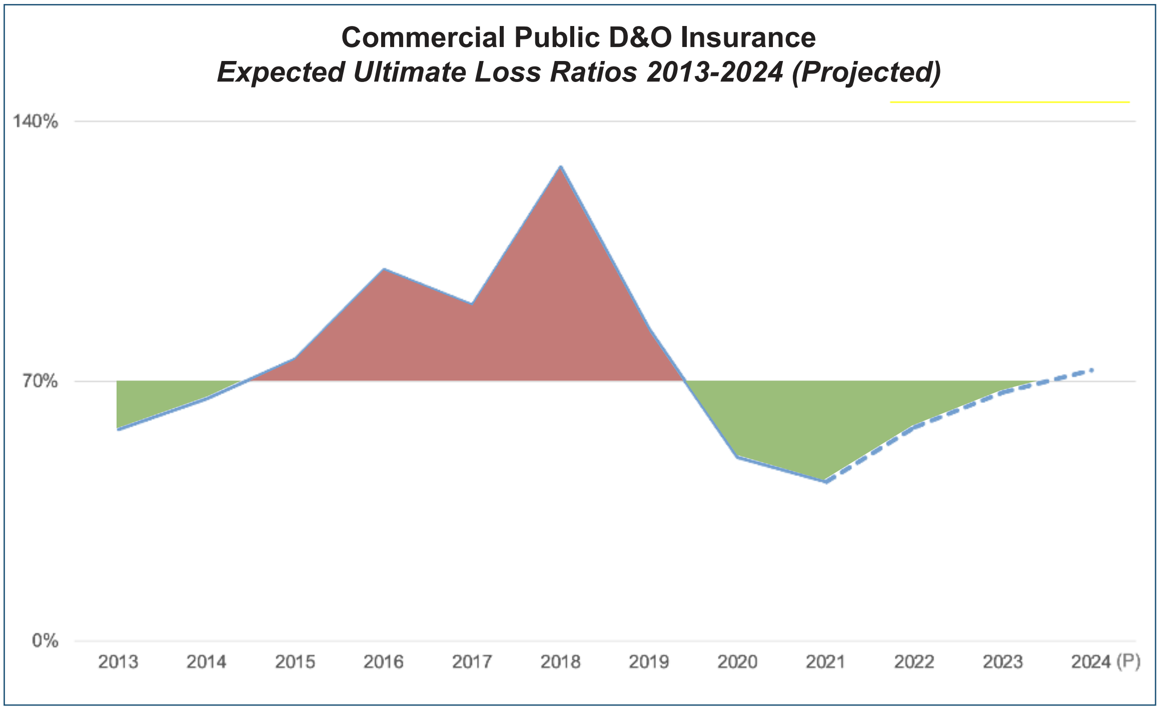
If we continue as we are, then it is a question of when, not if profits will disappear, as a look at projected loss ratios will confirm.

2. LOSS RATIO ANALYSIS

The math of D&O insurance is straightforward:

Combined Ratio	100%
Assume Acquisition Costs	(15%)
Assume Internal Expenses	(15%)
Breakeven Loss Ratio	**70%**

We have superimposed this notional breakeven on expected Commercial ultimate loss ratios:



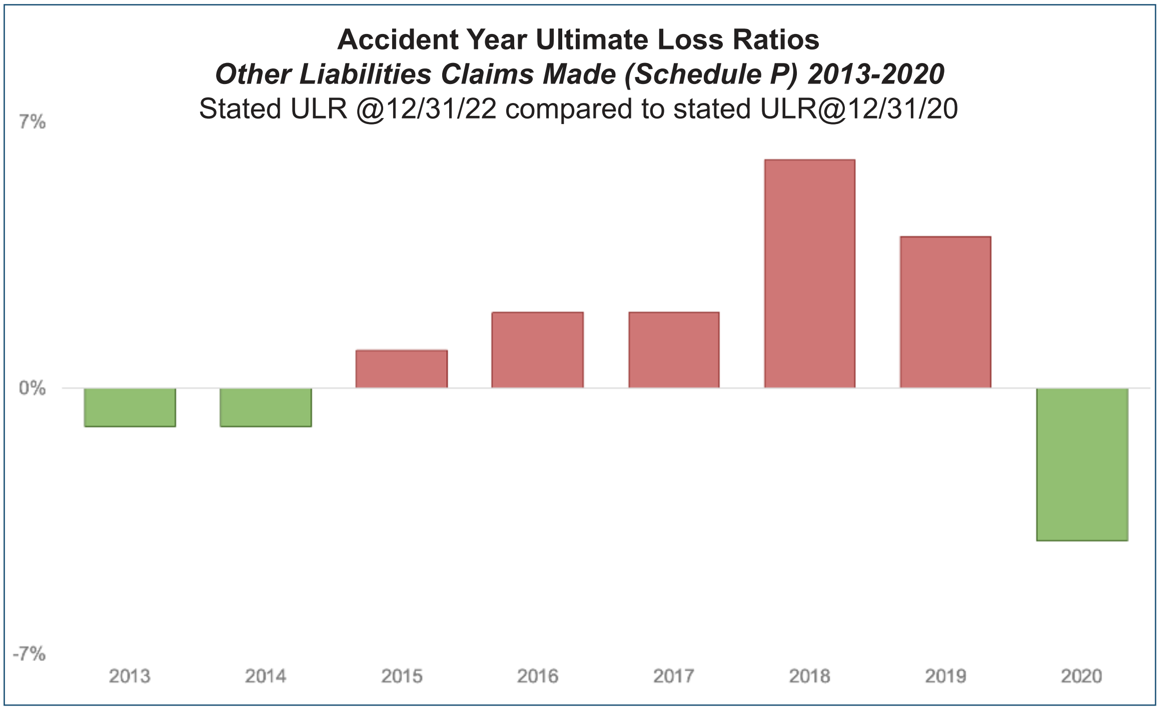
- 2021 is the most recent year sufficiently developed to provide an accurate data point. Up to then the picture appears fine.
- However, collectively US public D&O writers failed to achieve their anticipated rate rises in 2022 and this miss is already impacting results, even before 2023's price freefall.
- Only four of the past fifteen years show an expected profit, and three of those are the most recent (least developed) years.
- Continuing price decreases into 2024 turn the projection negative.
- The cumulative, notional (yet to be crystalized) profits of 2020-2023 (area under the line) is smaller than the prior period's losses (area above the line). If realized, this would represent an overall market loss for the cycle.

We are giving away price on the back of recent (but underdeveloped) positive experience, without seeming regard for the continuing adverse development of earlier years, as our Schedule P analysis underlines.

3. SCHEDULE P ANALYSIS

The Other Liability Claims Made data in Schedule P of Annual Statements (Yellow Books) provides a proxy for D&O, since it also includes E&O, Environmental, Product Liability, Cyber and Transactional business.

To highlight the ongoing development, we compared the accident year loss ratios reported at the end of 2022 against those reported at the end of 2020:



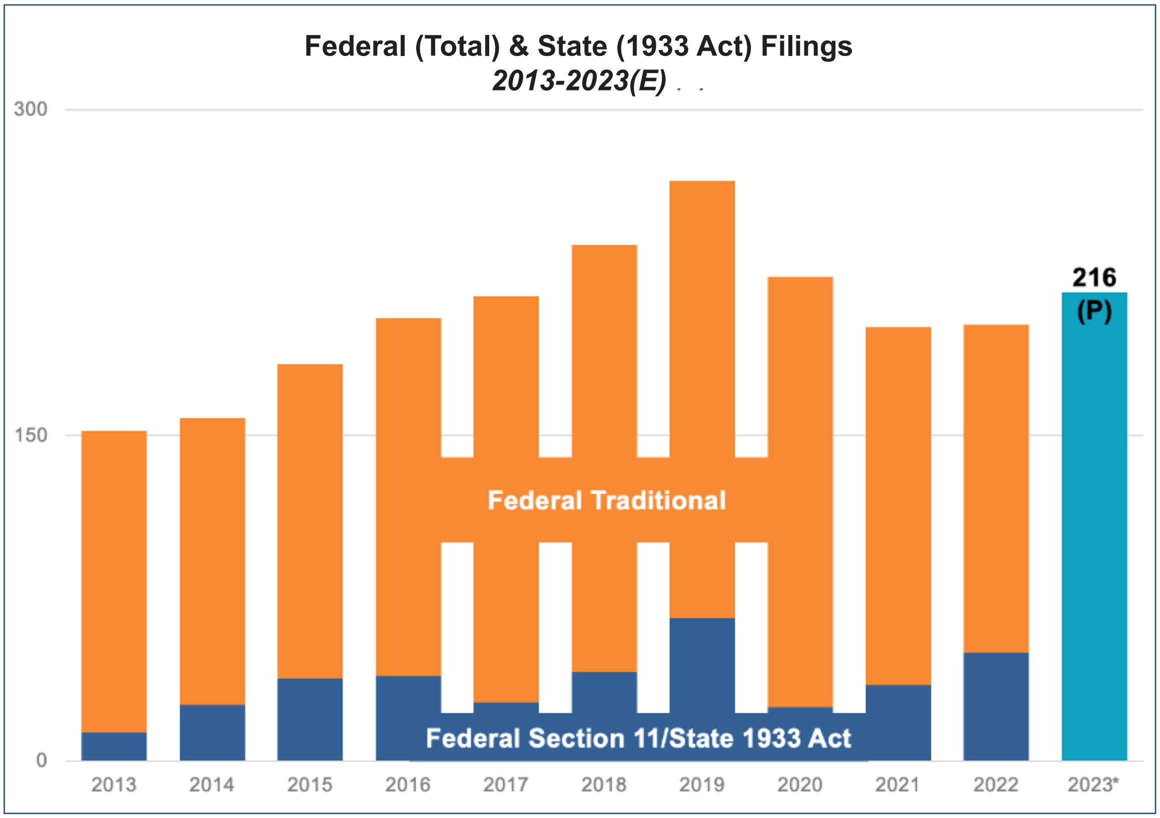
- The ongoing and significant upward restatement of 2016-2019 losses is clear.
- The deterioration in 2018 alone is equivalent to $1B.
- Based on currently available data 2020 looks positive….so far, as the anticipated post-Covid surge of claims has failed to materialize.

Those who believe rates are currently adequate must also believe that no further deterioration will occur.

4. LARGE LOSSES

We track all significant ($25M and above) settlements, both directly and through the work of the Stanford Law School Securities Class Action Clearinghouse and Cornerstone Research. (Our case data, by year of settlement and split between securities class actions and derivative suits, is available online as an appendix to this report. So too are our '2023 filings of interest').

To enable a like-for-like analysis, we have removed merger objection claims from the Clearinghouse chart since they are now typically styled as individual actions rather than federal class actions.



Sources 2013-2022: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse, Bloomberg Law, Institutional Shareholder Services' Securities Class Action Services, 2023*: TransRe projection.Core filings (excludes merger objection claims).

- Frequency – we project 216 filings for 2023 (198 through 11/23) which, if accurate, would make 2023 the fourth highest year for such claims in the past decade.
- Severity – data points to note include:
  - 1H 2023 - 8 mega DDL filings (>$5B), double the 1997-2022 annual average.
  - The rise in median investor losses (as defined by NERA) to $972M in 2022, 33% higher than 2021.
  - The rise in Cornerstone's DDL index to $170B in 1H2023, 45% higher than 2H2022
  - More large (>$50M) derivative settlements impacting Side A
- We are monitoring whether more focused filings are reducing dismissal rates.

The recent downward trend in frequency has halted, if not yet reversed.

TO CONCLUDE

It isn't easy to raise prices when we're making money, but it should be possible to hold prices when we're not yet sure how much we've made. We have sympathy for underwriters confronted with demands for price cuts, but the risk outlook makes it troublesome to justify or support.

The significant price improvements between 2019 and mid-2022 were a necessary correction for the preceding years.

Premium is leaving the market faster than warranted. The impact is already materializing in projected loss ratios. We must price for an underwriting margin, irrespective of interest rates.

Newer players may have clean balance sheets and expenses to cover, but they will soon have their own claims to pay.

The market is inadequately priced. What will your New Year's resolution be?

ABOUT OUR DATABASE, METHODOLOGY, SOURCES

1. Over decades (and billions of premiums and corresponding claim payments) we have accumulated significant management and professional liability data and insights. We supplement this with licensed third party data and publicly available information, combined into our proprietary analytics engine.

2. Our database includes details of 30,000+ policies.

3. To deliver our analysis we separate Financial Institutions from Commercial, which we further sub-divide by company size and attachment point:

	Attachment Bands		
	Working	Medium	High
Small Cap (<=$1B)	0	<$25M	>= $25M
Mid Cap (>$1B - <$10B)	<= $10M	>$10 to <$50M	>= $50M
Large Cap (>=$10B)	<= $20M	>$20 to <$100M	>= $100M

4. Our report excludes IPO, SPAC and deSPAC data (where identifiable): the rapid growth then drop in these high-premium programs would otherwise unduly affect general trends.

5. We have focused on price rather than rate, to exclude (untrackable) changes in coverage.

6. In addition to general (CPI) inflation, we closely monitor two specific types of inflation which directly impact management liability:

   a. **Legal service inflation** (LSI) which impacts loss adjustment expenses. According to the US Bureau of Labor Statistics) LSI was 6.6% for 2022 and 3.6% thru June 2023 (10-year average is 2.1%).

   b. **Underlying loss cost trend** (not just defense costs) which reflects increased severity as the plaintiffs' bar pursues fewer but more likely cases and asks for more.

7. We only include the business we see. While we believe this to be a majority of what is available, it is not the entire market.

SOURCES

In addition to publicly available data and our own insights, our third-party data comes from a combination of FactSet, Stanford Securities Litigation Analytics, Stanford Law School Securities Class Action Clearinghouse, The D&O Diary, SNL and National Economic Research Associates (NERA), whose work we gratefully acknowledge. To maintain our claims database, we actively monitor major suits and their outcomes.

CONTACT US

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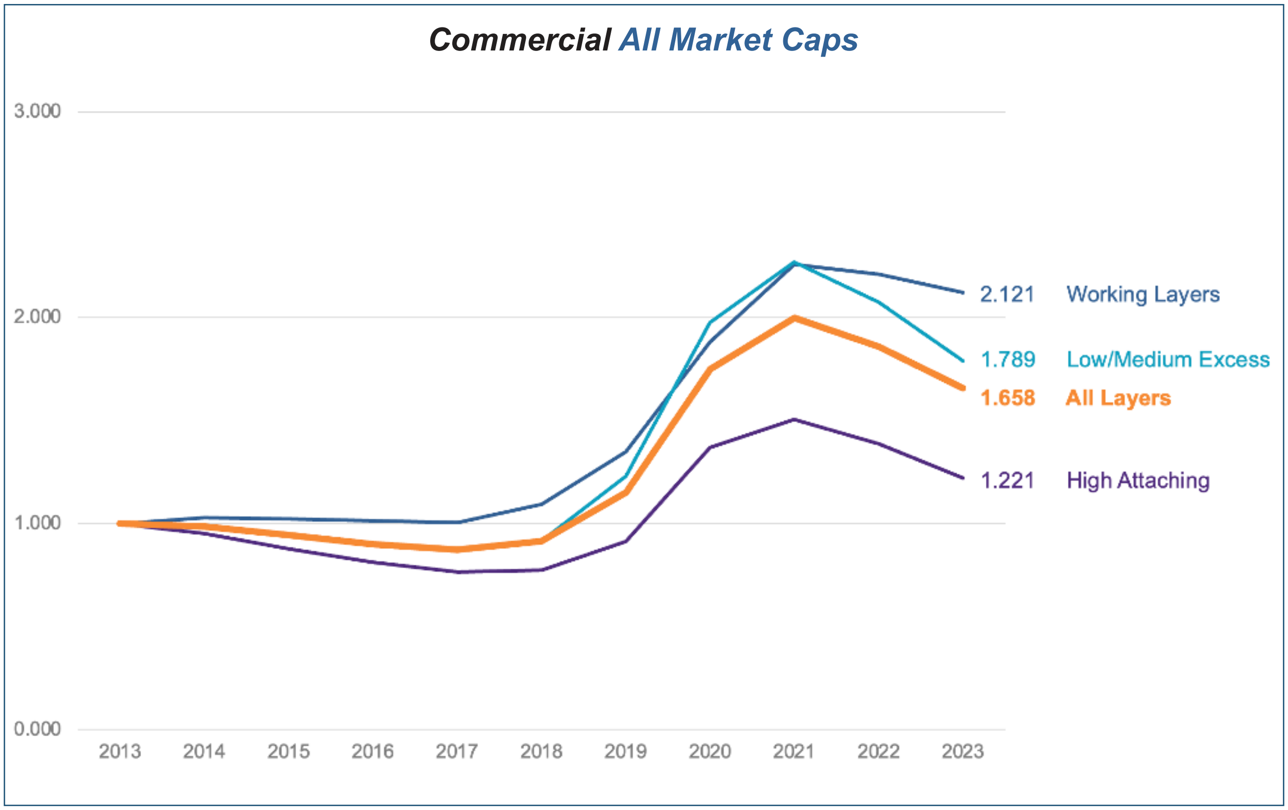
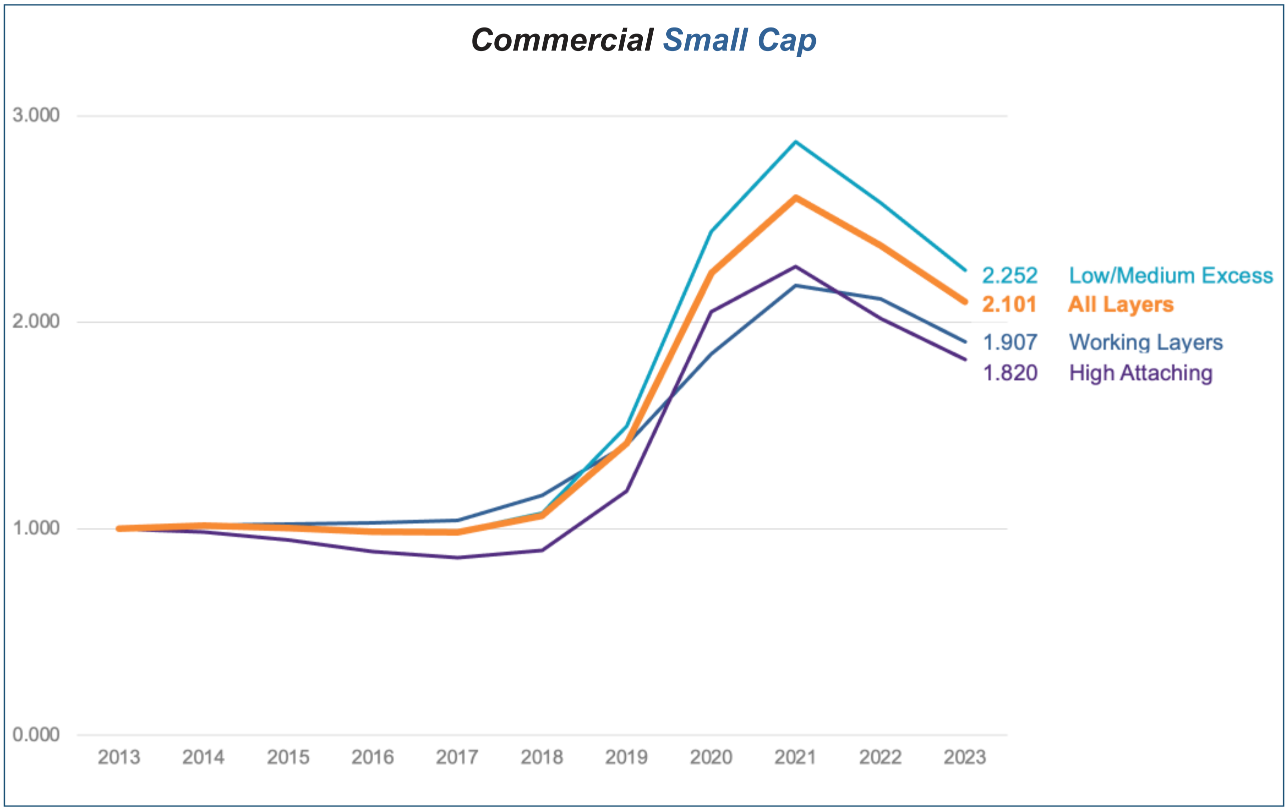
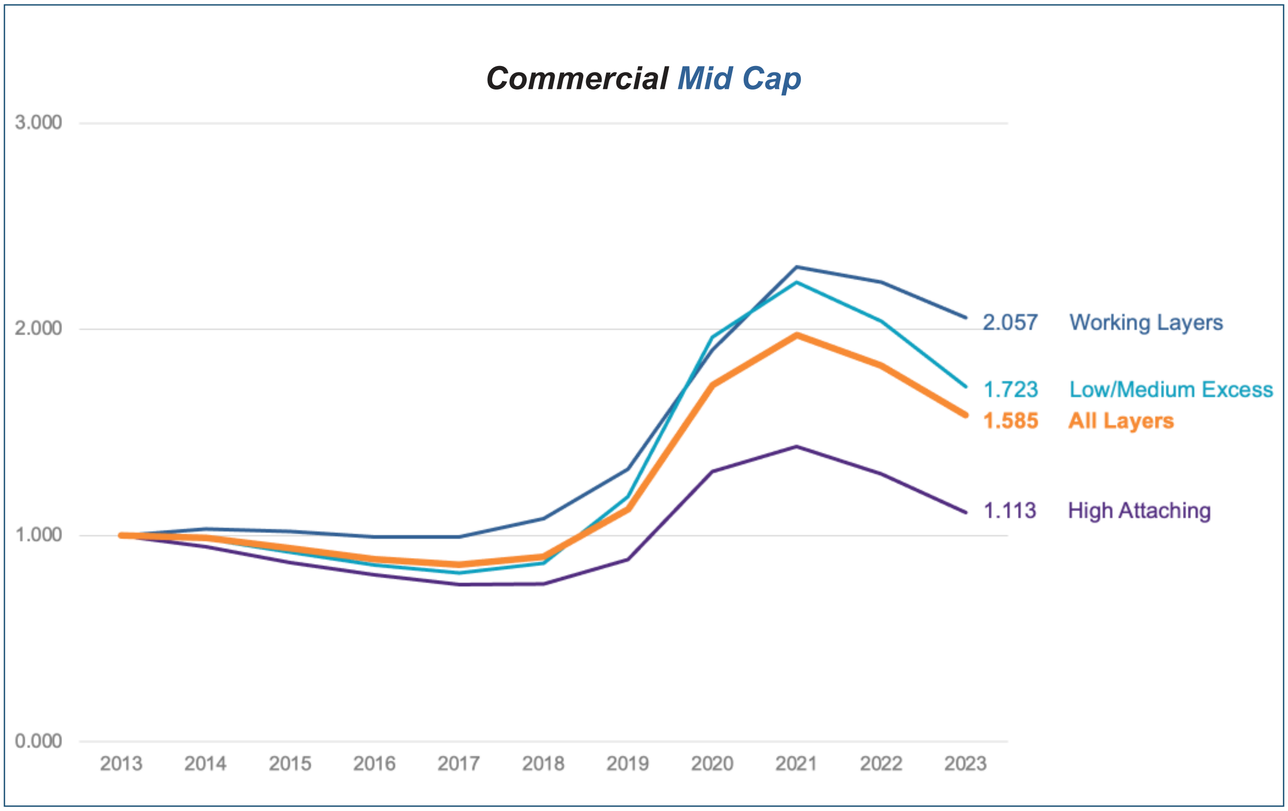
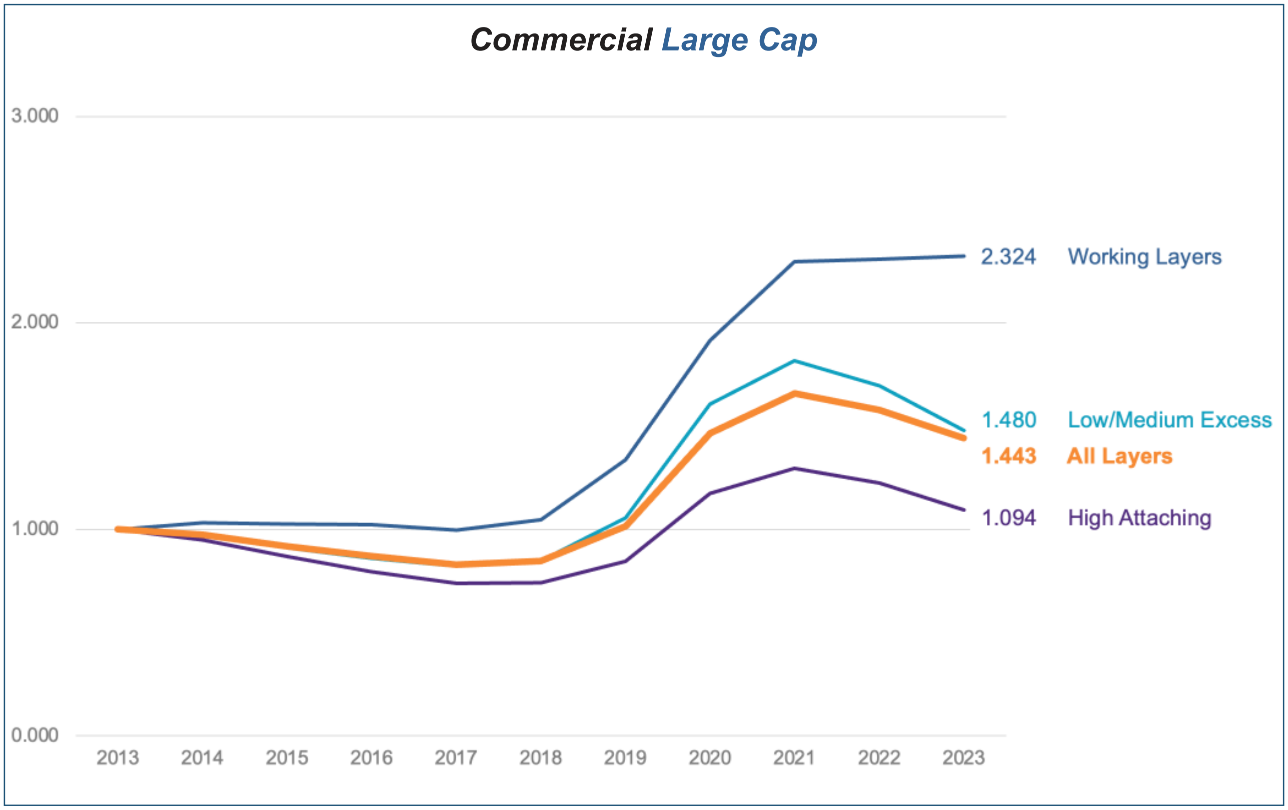
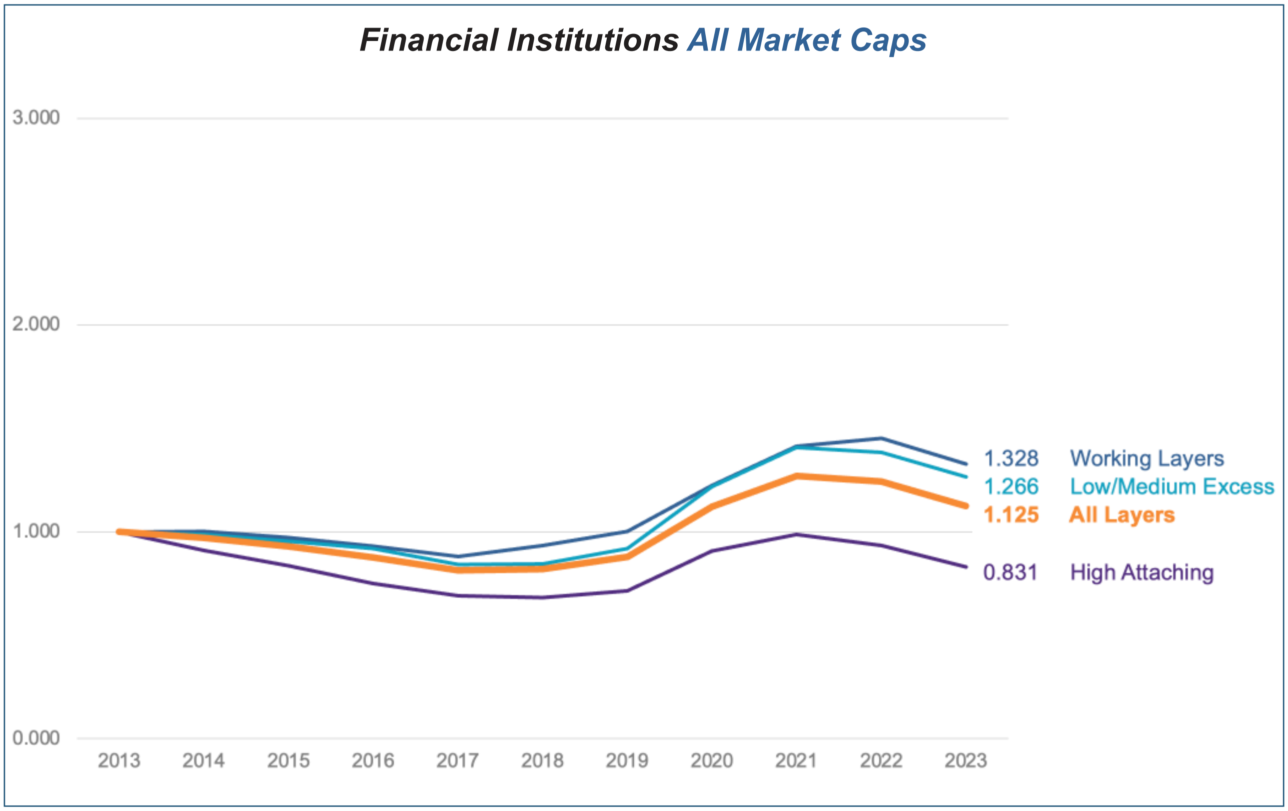
TRANSRE US PUBLIC D&O INSURANCE PRICE INDICES






Commercial Mid Cap
3.000
2.000
1.000
0.000
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2.057
Working Layers
1.723
Low/Medium Excess
1.585
All Layers
1.113
High Attaching


Commercial Large Cap
3.000
2.000
1.000
0.000
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2.324
Working Layers
1.480
Low/Medium Excess
1.443
All Layers
1.094
High Attaching


Financial Institutions All Market Caps
3.000
2.000
1.000
0.000
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
1.328 Working Layers
1.266 Low/Medium Excess
1.125 All Layers
0.831 High Attaching

SIGNIFICANT (>=$25M) SETTLEMENTS, BY YEAR OF FILING

Derivative suits are bolded and underlined – the balance are securities class actions.

Year	Insured
2013	**Activision Blizzard**
	Barrick Gold Corporation
	Blackberry Limited
	DFC Global Corp
	Freeport-McMoRan
	Intuitive Surgical, Inc.
	J.C. Penney Company, Inc.
	Lumber Liquidators Holdings, Inc.
	Medtronic plc
	Poseidon Concepts Corp.

Year	Insured
2014	Advanced Micro Devices, Inc.
	American Realty Capital Properties, Inc.
	Barclays PLC
	Cliffs Natural Resources, Inc.
	Cobalt International Energy Inc
	General Motors Company
	Genworth Financial, Inc.
	GT Advanced Technologies, Inc.
	HSBC
	L-3 Communications Holdings, Inc.
	Magnachip Semiconductor Corp.
	Microsoft
	NII Holdings, Inc.
	Nu Skin Enterprises
	Och-Ziff Capital Management Group LLC
	Ocwen Financial Corporation
	Petroleo Brasileiro SA - Petrobas
	Ply Gem Holdings, Inc.
	Rayonier, Inc.
	RCS Capital Corporation
	Salix Pharmaceuticals Ltd
	Santander Consumer USA Holdings, Inc.
	SeaWorld Entertainment, Inc.
	Valeant Pharmaceutical International Inc.

Year	Insured
2016	Adeptus Health, Inc.
	Allergan plc f/k/a Actavis plc
	BHP Billiton Limited
	Brixmor Property Group, Inc.
	Cnova N.V.
	Cognizant Technology Solutions Corporation
	comScore, Inc.
	CoreCivic, Inc. f/k/a Corrections Corporation of America
	DeVry, Inc.
	Fitbit Inc.
	HeartWare International, Inc.
	IMPAX Laboratories, Inc.
	LendingClub Corporation
	Navient Corporation
	New Senior Investment
	Orbital ATK, Inc
	Signet Jewelers Limited
	Stericycle, Inc.
	Sunrun, Inc.
	Teva Pharmaceutical Industries Limited
	TreeHouse Foods, Inc.
	Twitter, Inc.
	Wells Fargo
	Wells Fargo & Company
	Zimmer Biomet Holdings, Inc

Year	Insured
2017	**Twenty-First Century Fox**
	Arconic Corporation f/k/a Arconic, Inc.
	Chicago Bridge & Iron Co. NV
	DaVita, Inc.
	Endo International plc (Opana Drug)
	Endo International plc (Anti-trust)
	Equifax, Inc.
	FleetCor Technologies, Inc.
	Harman International Industries, Inc.
	HD Supply Holdings, Inc.
	Lumen Technologies, Inc. (f/k/a CenturyLink, Inc.)
	Mallinckrodt plc
	Mckesson Corp
	Novo Nordisk A/S
	Omega Healthcare Investors, Inc.
	Ophthotech Corporation (n/k/a IVERIC Bio, Inc.)
	RH, Inc.
	SCANA Corporation
	Snap, Inc.
	Tableau Software, Inc.
	The Southern Company
	Willis Towers Watson plc
	United States Steel Corporation
	Yahoo!, Inc.
	Zimmer Biomet Holdings, Inc

Year	Insured	
2018	ADT, Inc.	**NCI Buidings Systems**
	Advance Auto Parts, Inc.	Newell Brands, Inc.
	Aegean Marine Petroleum Network, Inc.	Nielsen Holdings plc
	Akorn, Inc.	Nissan Motor Co., Ltd.
	Bank OZK	NortonLifeLock Inc. f/k/a Symantec Corporation
	BRF S.A.	Patterson Companies, Inc.
	Diamond Resorts International, Inc.	PPG Industries, Inc.
	Fluor Corporation	Synchrony Financial
	GreenSky, Inc.	TrueCar, Inc.
	Grupo Televisa, S.A.B.	WageWorks, Inc.
	Henry Schein, Inc.	Wells Fargo & Company
	Immunomedics, Inc.	**Renren**
	McKesson Corporation	

Year	Insured
2019	2U, Inc.
	Alphabet
	Altria Group, Inc.
	Amneal Pharmaceuticals, Inc.
	CannTrust Holdings, Inc.
	Cardinal Health, Inc
	Cardinal Health, Inc.
	Conduent, Inc.
	Covetrus, Inc.
	Eros International PLC
	Exelon Corporation
	Granite Construction, Inc.
	Grubhub, Inc.
	GTT Communications, Inc.
	Kraft Heinz Company
	Lyft, Inc.
	Mattel, Inc.
	Maxar Technologies, Inc.
	Nutanix, Inc.
	Perrigo Company plc.
	ProPetro Holding Corp.
	Resideo Technologies, Inc.
	Spectrum Brands Holdings, Inc.
	Stamps.com, Inc.
	Uniti Group, Inc.
	Zuora, Inc.
	Boeing
	Goldman Sachs

Year	Insured
2020	Akazoo S.A. f/k/a Modern Media Acquisition Corp.
	Altria Group
	BioMarin Pharmaceutical, Inc.
	CBS Broadcasting Inc.
	Deutsche Bank AG
	Inovio Pharmaceuticals, Inc.
	JELD-WEN Holding, Inc.
	L Brands
	Luckin Coffee, Inc.
	Mohawk Industries, Inc.
	ProAssurance Corporation
	Ryder System, Inc.
	Splunk, Inc.
	Tesla
	Wells Fargo & Company
	World Wrestling Entertainment, Inc.
	Zuora, Inc.
	First Energy Corp

	Insured	Class Period	Claim
January	Southwest Airlines	6/13/20-12/31/22	Investors misled about flight/crew scheduling technology and adverse impact of bad weather
	National Vision	5/13/21-5/9/22	Failure to disclose impact of wage/labor pressures (optometrist shortages) post covid
February	Honda	6/20/18-9/28/22	Overstated safety/effectiveness of Idle Stop engine feature & sold 1000s with defect – reputation
	Telsa	2/19/19-2/17/23	Failure to disclose Full-Service Driving tech created serious risk of accident and injury – reputation
March	Match Group	11/3/21-1/31/23	Failure to disclose Tinder not on track to deliver planned products caused share price drop
	SVB Financial	6/16/23-3/10/23	Failure to disclose tech concentration, making it more susceptible to a bank run
	Rite Aid	4/26/18-3/13/23	Filled hundreds of thousands of unlawful prescriptions for controlled substances (opioids)
	Credit Suisse	12/1/22-2/17/23	Downplayed customer outflows & ability to retain client funds, thus overstated financial position/prospects.
	Alphabet	2/4/20-1/23/23	Anticompetitive behavior in digital advertising artificially inflated revenues
	Signature Bank	3/2/23-3/12/23	Failure to disclose lack of strong fundamentals in the days immediately prior to its takeover by the DFS
	Dish Network	2/22/21-2/27/23	Failure to maintain adequate cybersecurity infrastructure led to and prolonged service outages
April	All Birds	11/4/21-3/9/23	Failure to disclose switch of focus from customer favorites to new (non-core) lines, impacted sales.
	Robinhood Financial	1/28/21-2/19/21	Trading restrictions manipulated stock and option prices
	First Republic Bank	1/14/21-3/14/23	Understated/concealed the magnitude of the risks facing its business model if interest rates rose
May	Walt Disney	12/10/20-11/8/22	Failure to disclose Disney+ subscription numbers and cost overruns
	Toronto-Dominion Bank	2/28/22-5/3/23	Failure to disclose deficient internal controls caused regulator to reject First Horizon transaction
	Spirit Aerosystems	4/8/20-4/13/23	Failure to disclose ineffective production quality controls on Boeing 737 Max fittings, impacted results
	Beyond Meat	5/5/20-10/13/22	Misstated ability to produce plant-based meats at scale
June	Cornerstone Building Brands	6/24/22-7/25/22	“Take-private” merger announced March 7, 2022 deprived shareholders of right to cast informed vote
	Peloton Interactive	5/10/22-5/10/23	Misstatements relative to recall and efforts to enhance safety
July	Baxter International	5/25/22-2/8/23	Failure to disclose true extent of global supply chain problems
	Danaher	4/21/22-4/24/23	Failure to disclose decline in revenue due to pandemic
	AT&T	3/1/20-7/26/23	Ownership of lead-covered cables and US health risk
August	Verizon	2/4/20-7/26/23	Ownership of lead-covered cables and US health risk
	Live Nation Entertainment	2/23/22-7/28/23	Failure to disclose anticompetitive conduct including high fees and extended contracts with talent
	Hawaiian Electric	2/28/19-8/16/23	Failure to disclose inadequate safety protocols and procedures
September	Discover Financial Services	2/21/19-8/14/23	Failure to comply with student loan servicing standards, overcharging customers
	PacWest Bancorp	2/28/22-5/3/23	Failure to disclose impact of interest rate rises and overstated stability of deposit base
	Lumen Technologies	3/11/19-7/14/23	Ownership of lead-covered cables and US health risk

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