

# **Assured Research Series: Social Inflation is Back!**

*Webinar Hosted by Genesis and Assured Research  
February 4, 2020*

## **SOCIAL INFLATION IS BACK!**

- ◆ **Introduction**
- ◆ **Definition**
- ◆ **Legal Trends**
- ◆ **Judiciary**
- ◆ **Third Party Litigation Finance**
- ◆ **Inequality: People/Juries are Discontent and Angry!**
- ◆ **Will Social Inflation Spread to Personal Lines?**
- ◆ **Concluding Remarks**

## SOCIAL INFLATION – A TOPIC SINCE EARLY 2017

We began our series entitled *Social Inflation is Back!* in early 2017. Since then, it has become our most requested topic as to speaking engagements, forwards to industry contacts, or requests for use in internal presentations.

Our efforts these past few years have been directed toward trying to define and quantify elements of social inflation. But *quantify* is probably the *wrong word* – trying to find *objective signals of social inflation in the economy* better describes our efforts.

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## SOCIAL INFLATION – ON RADAR OF EXECUTIVES

Virtually every conference call during the 3Q19 (and QTD4Q19) included extensive discussion of ‘social inflation’ or ‘the worsening tort environment’, etc.

The quote below is from Bill Berkley (WRB); but he is not the only executive asking if people are ‘just angry’

*...we're really seeing a group of people who are fermenting **resentment of those who have**. We're seeing **court decisions** that make **no economic sense** that the court is just trying to **punish people**. The trends are not going to change. We have a while before you are going to see it change, a while meaning you probably have on the **short end**, it would be **18 months; on the longer end, 3 years**. People are unhappy and angry, and that resentment is coming through in court decisions...*

## SOCIAL INFLATION BURST ONTO THE SCENE ~2017



*...when it comes to plaintiff activity... I would say we have seen a more aggressive plaintiff activity. Now that was certainly a big driver of the Commercial Auto charge that we took last quarter...*


*Alan Schnitzer, CEO of TRV on 1Q19 CC*

*What exactly is social inflation?*

## SOCIAL INFLATION – WHAT IS IT?

Social inflation is one of the most frequently mentioned terms on quarterly conference calls:

- It captures an increased propensity to sue; rising jury awards and expanding judicial theories beyond the ‘four corners’ of a contract.
- Social inflation is pernicious because it’s difficult to spot or measure objectively. It’s also a “social” phenomenon...are juries just *angry*? Ways to quantify social inflation is to track 1) court statistics, 2) judicial appointments, 3) legal advertising, 4) third party litigation funding, 5) measures of inequality



*We place inflation in 3 buckets. 1<sup>st</sup> bucket measures ‘stuff’ – CPI; 2<sup>nd</sup> measures medical inflation; 3<sup>rd</sup> measures everything else – social inflation*



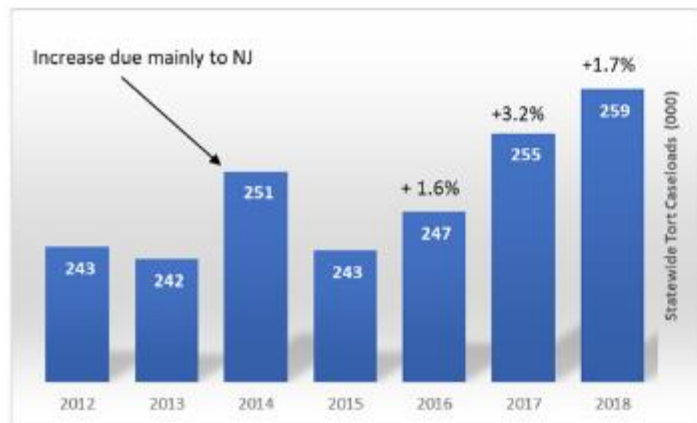
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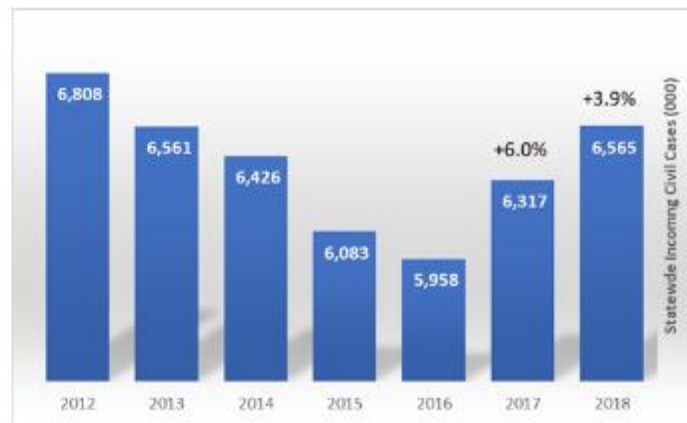
## SOCIAL INFLATION IS BACK! *LEGAL TRENDS*

**Tort Caseloads**



*Tort cases from 17 states representing about 33% of Liability Premiums.*

**Civil Caseloads**

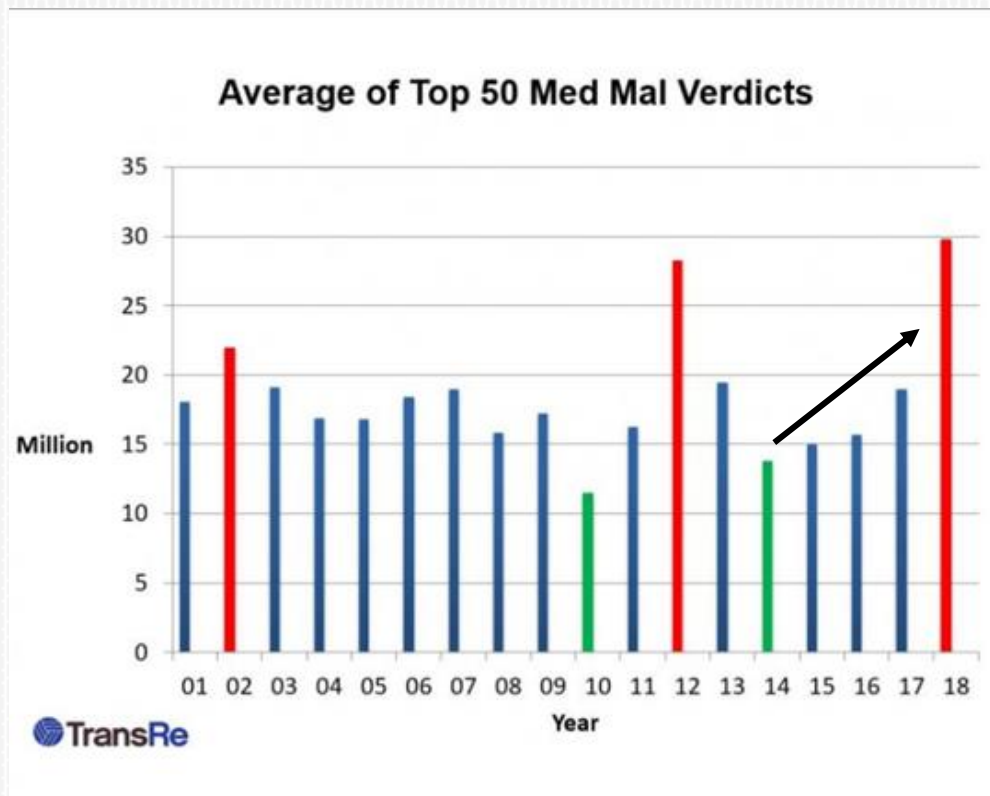


*Civil cases from 7 states representing about 50% of Liability Premiums*

Source: National Center for State Courts, Assured Research

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## MEDICAL PROFESSIONAL – JURY VERDICTS RISING



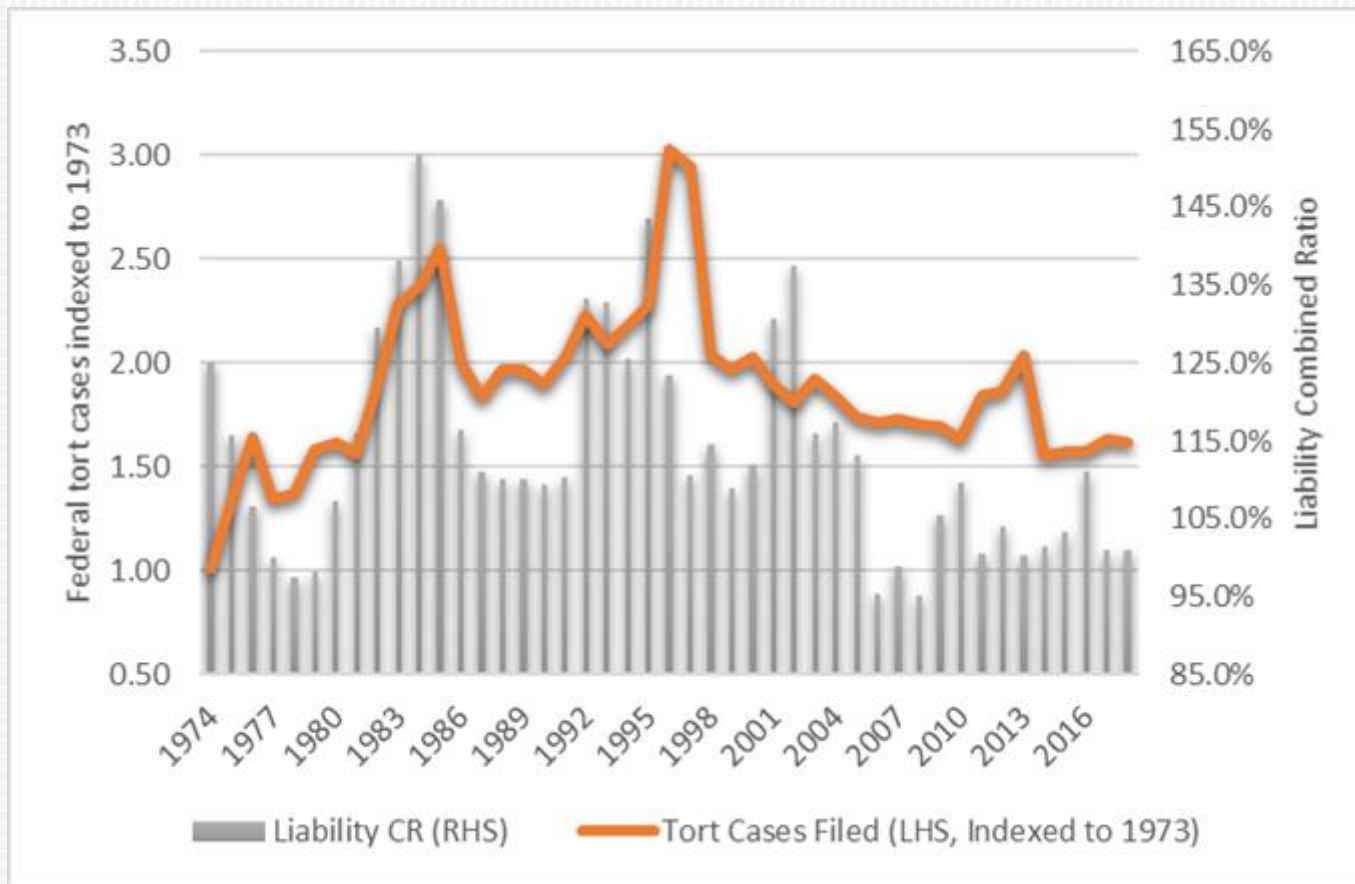
*The largest MPL jury verdicts have been rising (and at all size ranges such as \$10, \$25, and \$50 mil.)*

*Verdicts are small fraction of total claims but have outsized influence on claim settlements*

Source: *Captive International* with data and analysis by TransRe, Assured Research. Arrow added by A/R for emphasis

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## SOCIAL INFLATION IS BACK! *LEGAL TRENDS*



*Interesting correlation between federal tort actions and the liability combined ratio; up to 64% correlation through mid 1990s*

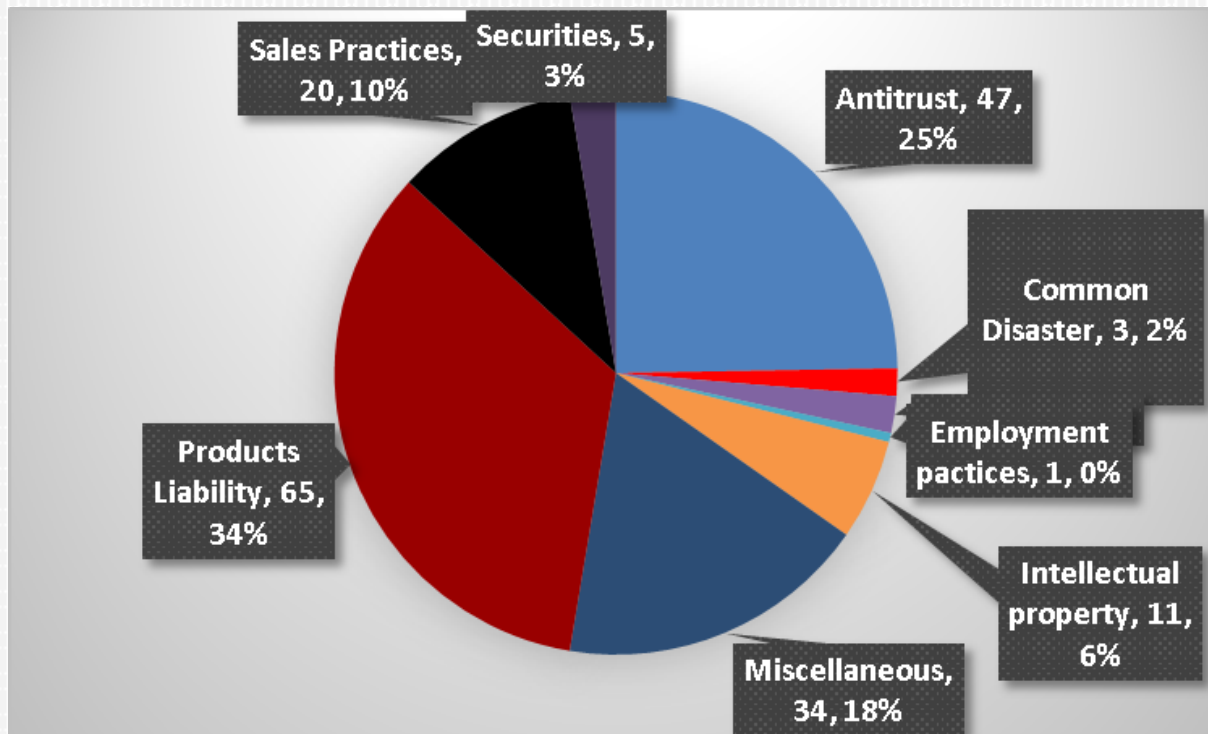
Source: Office of the U.S. Attorney, Assured Research

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## MULTIDISTRICT LITIGATION; GOOD NEWS AND BAD NEWS

- ◆ As part of our continued study of social inflation, we looked at trends in multidistrict litigation.
- ◆ While overall cases are down 35% since 2012 (good news), products liability cases, the largest classification, are only down 10% (bad news).
- ◆ And, the number of large cases is up significantly (more bad news).

## TRENDS IN MULTIDISTRICT LITIGATION



*Products liability is the largest classification accounting for 34% of all MDLs.*

Sources: Judicial Panel on Multidistrict Litigation, Assured Research

*Research and Analysis for Insurance and Investment Professionals*

## TRENDS IN MULTIDISTRICT LITIGATION

Multidistrict Litigation Cases Pending: 2012-Current

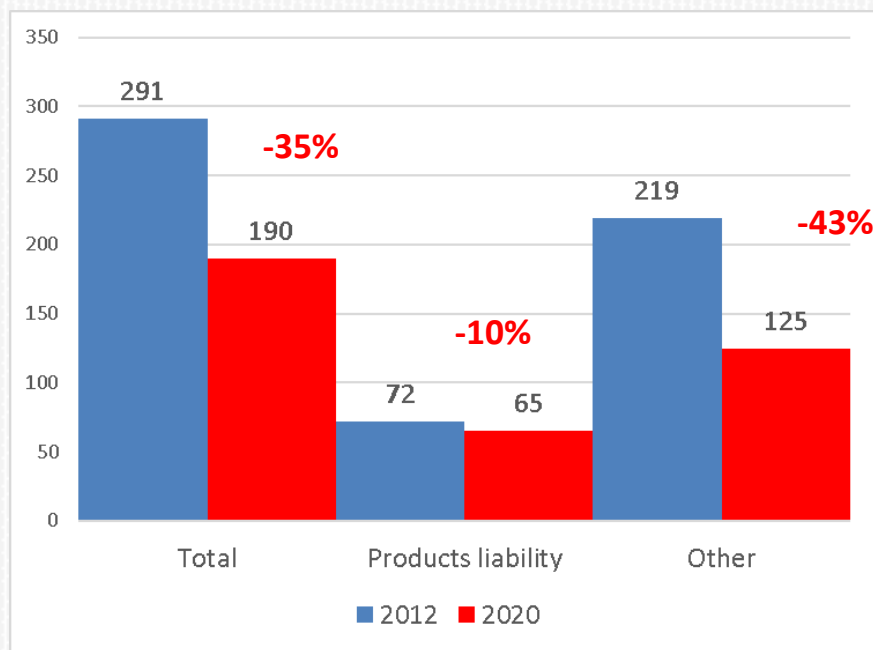
	Cases			Percentage	
	Products		All	Products	All
	Total	Liability	Other	Liability	Other
2012	291	72	219	25%	75%
2013	287	67	220	23%	77%
2014	290	70	220	24%	76%
2015	273	70	203	26%	74%
2016	250	71	179	28%	72%
2017	221	70	151	32%	68%
2018	207	68	139	33%	67%
2019	196	65	131	33%	67%
Current	190	65	125	34%	66%
<b>Change</b>	<b>-35%</b>	<b>-10%</b>	<b>-43%</b>		

*Total cases down 35% since 2012, but products liability cases only down 10%.*

Source: Joint Panel on Multidistrict Litigation, Assured Research



## MULTIDISTRICT LITIGATION –THERE’S GOOD NEWS AND THERE’S BAD NEWS



*The good news the # of MDL cases is down 33%*

*The bad news – products liability cases only down 10%*

*The real bad news-the number and size of large cases (over 1,000 claimants) is up big time*

	2012	Current
Large cases	14	21
Claimants	47,815	119,278

Source: Joint Panel on Multidistrict Litigation, Assured Research



## LARGE CASES AND SETTLEMENTS ARE STARTING TO PARALLEL THE 1980s

<u>Present</u>	<u>1980s</u>	<u>Link</u>
Opioids	Tobacco	Products that cause societal health issues force states and municipalities to sue responsible parties for reimbursement.
Talcum powder Pelvic mesh	Silicone breast implants Intrauterine devices	Personal care products lead to injuries and diseases and eventually class actions.
California wildfires	Bhopal gas disaster	Industrial accidents lead to environmental disasters and numerous claims.
PFAS chemicals	Asbestos	Chemical exposures lead to various types of cancer.
Sex abuse	xxxxx	No parallel

*The insurance impact of these cases may not be material, but their influence over jurors and the cascading affect on 'regular tort' awards is real*

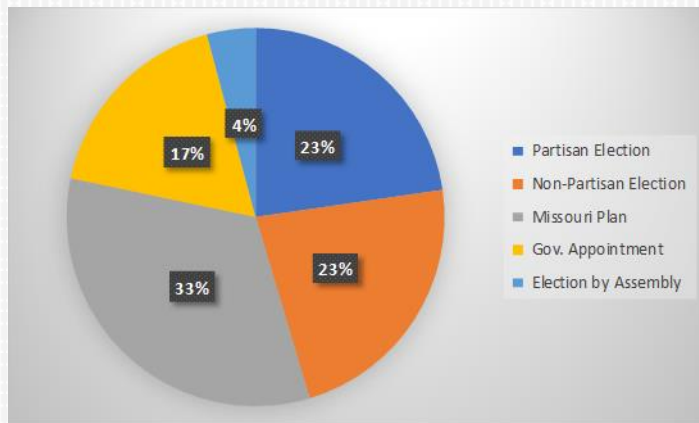
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## OTHER ASPECTS OF SOCIAL INFLATION - JUDICIARY

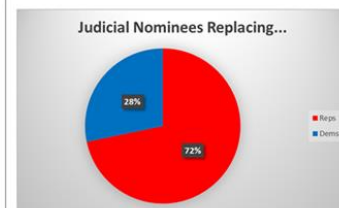
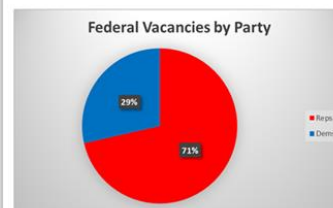
### 3 Key Points:

- 1) State courts matter more than federal courts (to P/C insurers;
- 2) Watching federal appointments can be misleading;
- 3) Change is slow – lifetime appointments (federal) 6-10 years states



*Politics are a factor in most state judicial election processes*

*Most federal judges appointed through 2019 were a R-for-R swap*



Sources: uscourts.gov, S&P Global (population), Assured Research

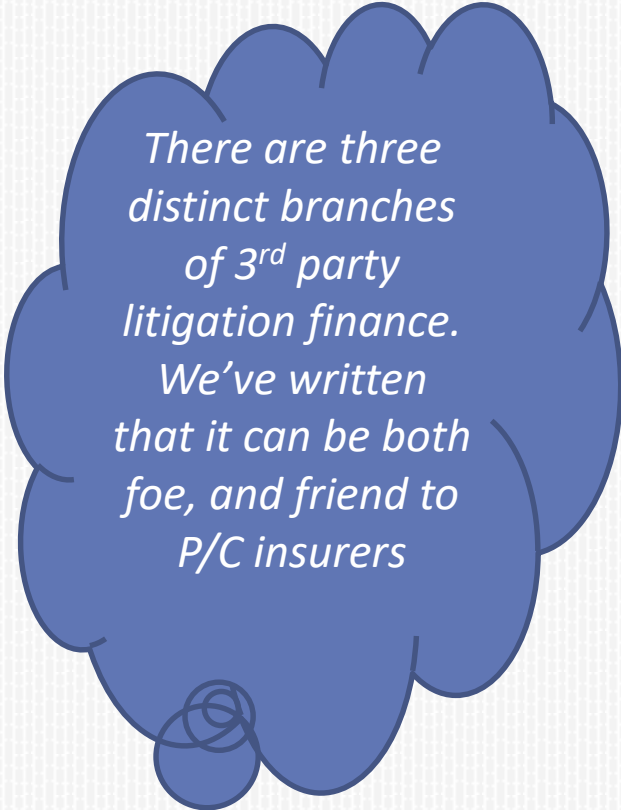
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## 3<sup>RD</sup> PARTY LITIGATION IS CHANGING THE ECONOMICS OF THE LEGAL PROFESSION

- Investors are now funding law firms to pursue litigation claims
  - This is a growing business in the US
  - Managers claim 30% returns are reasonable expectation
- Insurers will see better funded claimants and possibly more legal activity—**Negative**
- But, also see claimants that are more willing to settle to end litigation—**Positive.**



*There are three distinct branches of 3<sup>rd</sup> party litigation finance. We've written that it can be both foe, and friend to P/C insurers*

## DECONSTRUCTING LITIGATION FINANCE – 3 ELEMENTS

### 1. Commercial Litigation Finance

- Esoteric B2B litigation; some involvement in mass torts



### 2. Consumer Litigation Finance

- Involved in 'regular torts' like auto, premises liability, professional liability, etc.
- But amounts advanced are small (~\$4,000) and used for daily living



### 3. RAND paper proposes a 3<sup>rd</sup> element of Litigation Finance

- Specialty finance firms providing capital to personal injury firms
- Video Clip – [Advocate Capital Inc.](#) View this for insight into the 3<sup>rd</sup> element of Litigation Finance

## SPECIALTY FINANCE FIRMS ARE “GAME CHANGERS”

*“We are a game changer for contingency fee law firms. We help them give them the confidence to be able to go into negotiations and reject low settlement offers.”*

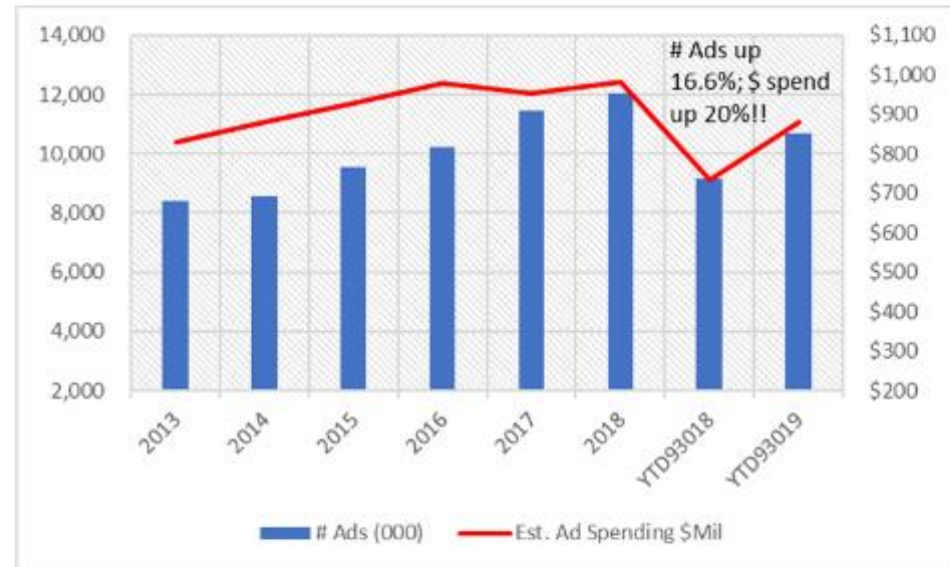
*Advocate Capital (and peers) are specialty finance firms that provide ‘working capital’ to contingency fee law firms*

Tina Burns, VP of Advocate Capital, Inc. speaking on a promotional video found at their website.



## SOCIAL INFLATION – LEGAL ADVERTISING IN U.S.

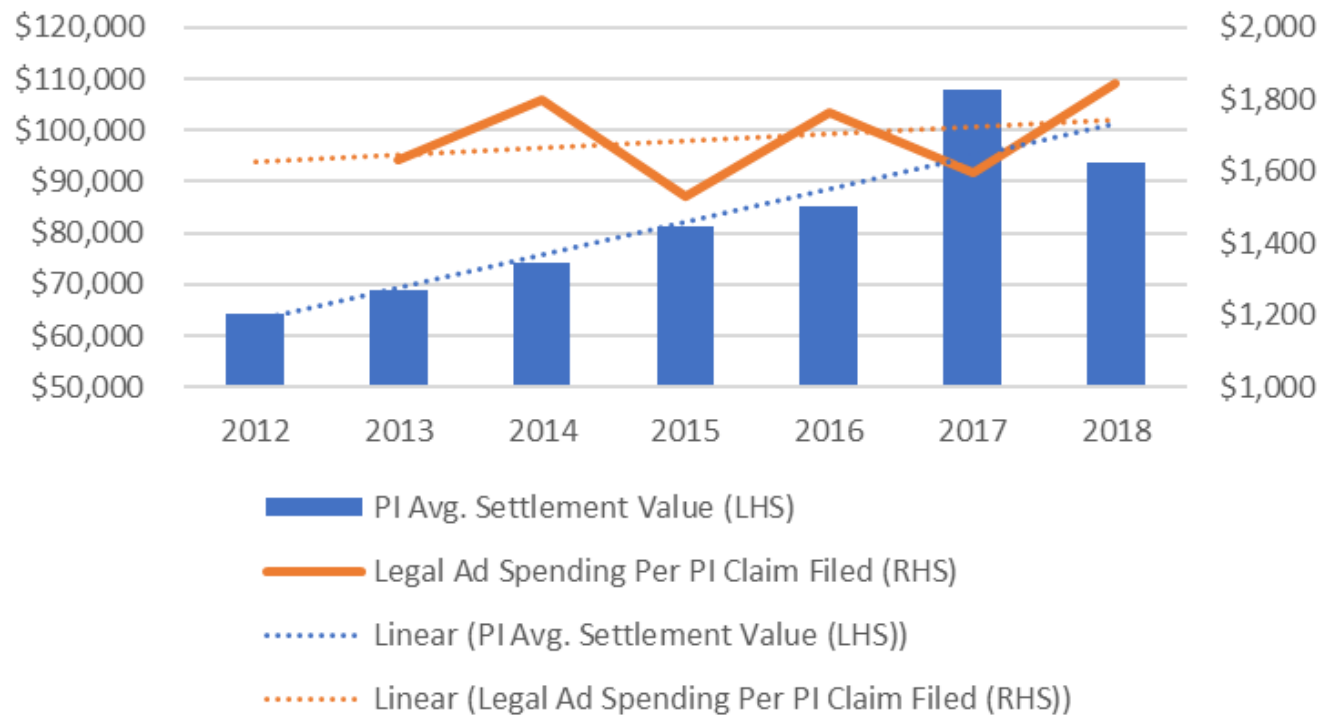
*National and local TV advertising for legal services set to surpass \$1 billion in 2019*



*CAGR # ads from 2013 to 2019e is 9%; from 2016 to 2019e is 11%!*

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## IS THE ROI ON LEGAL ADVERTISING GOOD? IN NYC – YES!



*\$ Legal advertising per PI claim in NYC is flattish, but average settlement value rising at 8%pa. Not a bad ROI!*

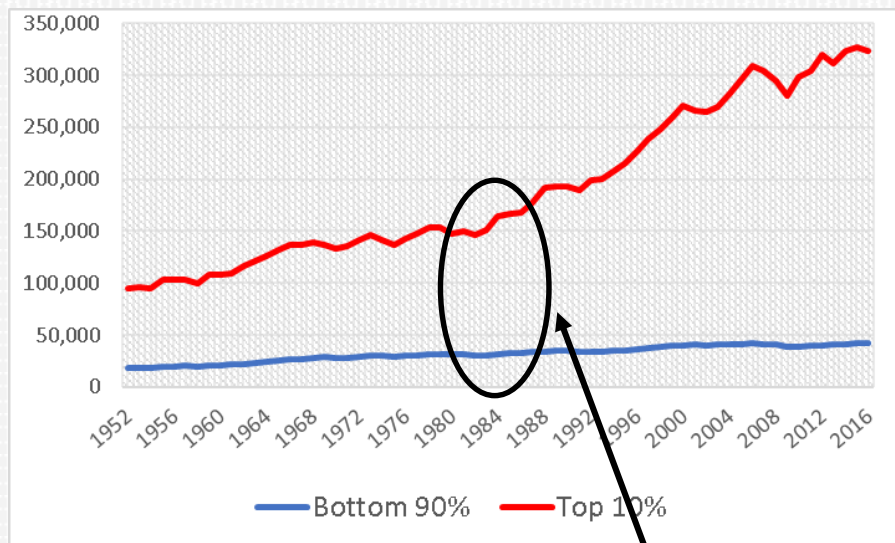
Sources: Legal advertising data from X Ante analysis using Kantar CMAG Data; PI claims from NYC Municipal Liability Report, Assured Research

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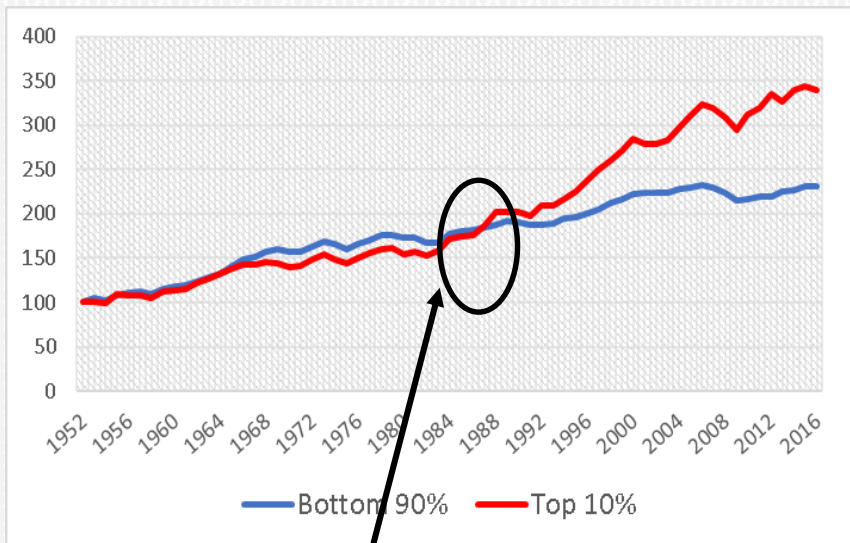
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## Income for the top 10% has been outdistancing the other 90% since the mid-1980s

Income levels: Top 10% vs remaining 90%



Same data: Index basis



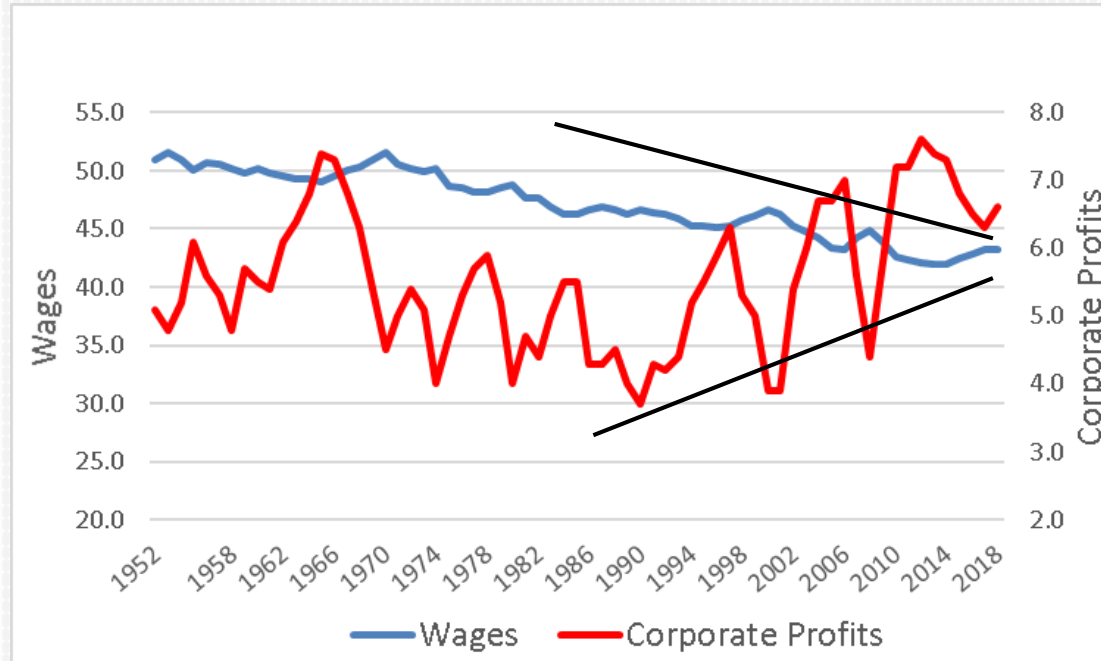
*Note inflection point in mid-1980s*

Source: *Distributional National Accounts: Methods and Estimates for the United States*, Picketty, Saez, Zucman.

Data available at: <http://Gabriel-Zucman.eu/usdina/>, Assured Research

## WEALTH HAS BEEN STEADILY TRANSFERRED FROM INDIVIDUALS TO CORPORATIONS

Wages and corporate profits as a % of national income

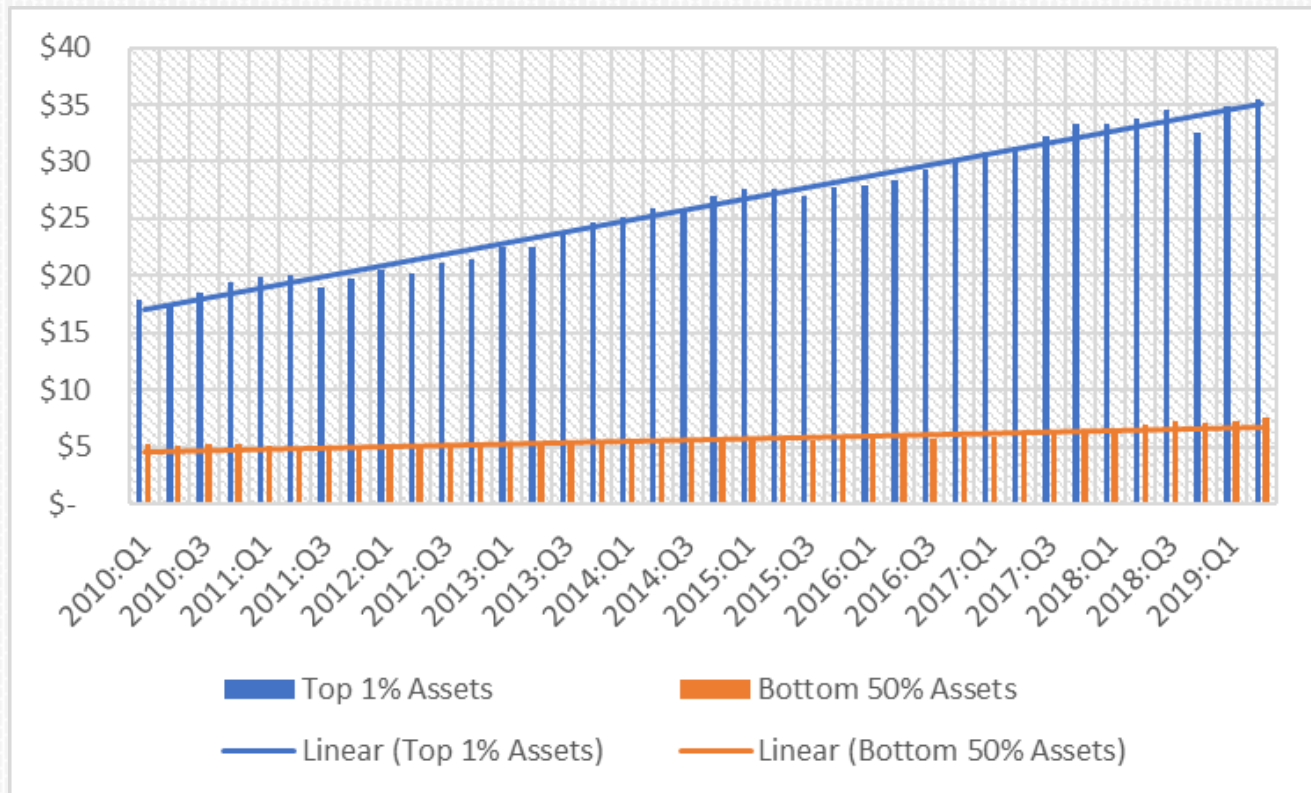


Sources: Federal Reserve Bank of St. Louis (FRED), Assured Research

*Note the differing trend lines, with inflection points in mid-1980s*



## WEALTH INEQUALITY HAS BEEN EXPANDING

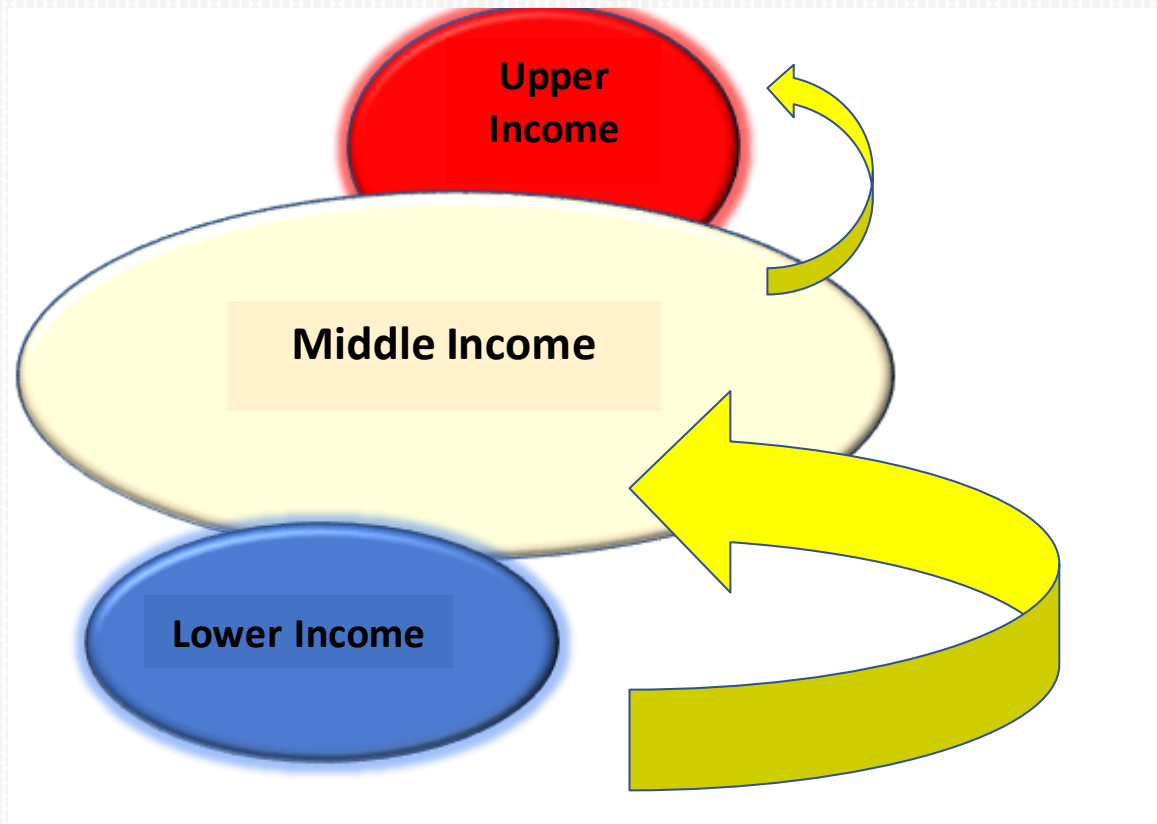


*Wealth inequality continues to grow. Look at the difference in trends and absolute assets owned since the Great Recession*

Sources: Federal Reserve, Assured Research

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## PRIOR SOCIETAL DISTINCTIONS WERE DRAWN ALONG INCOME LINES



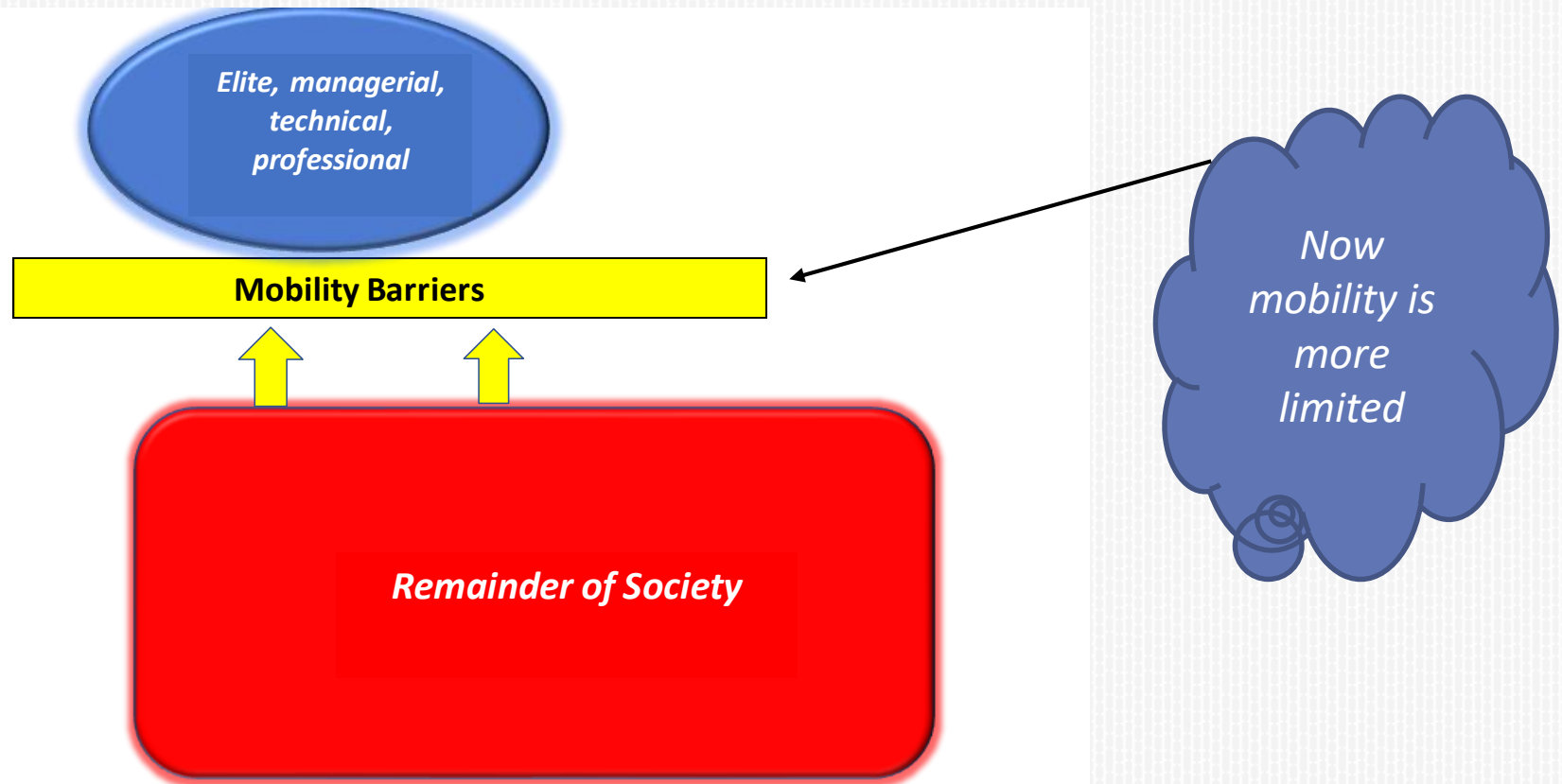
*Yellow arrows indicate there was considerable opportunity for upward mobility*

Source: Various data points and observations, Assured Research

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## NOW DISTINCTIONS ARE BY EDUCATION AND PROFESSIONAL STATUS

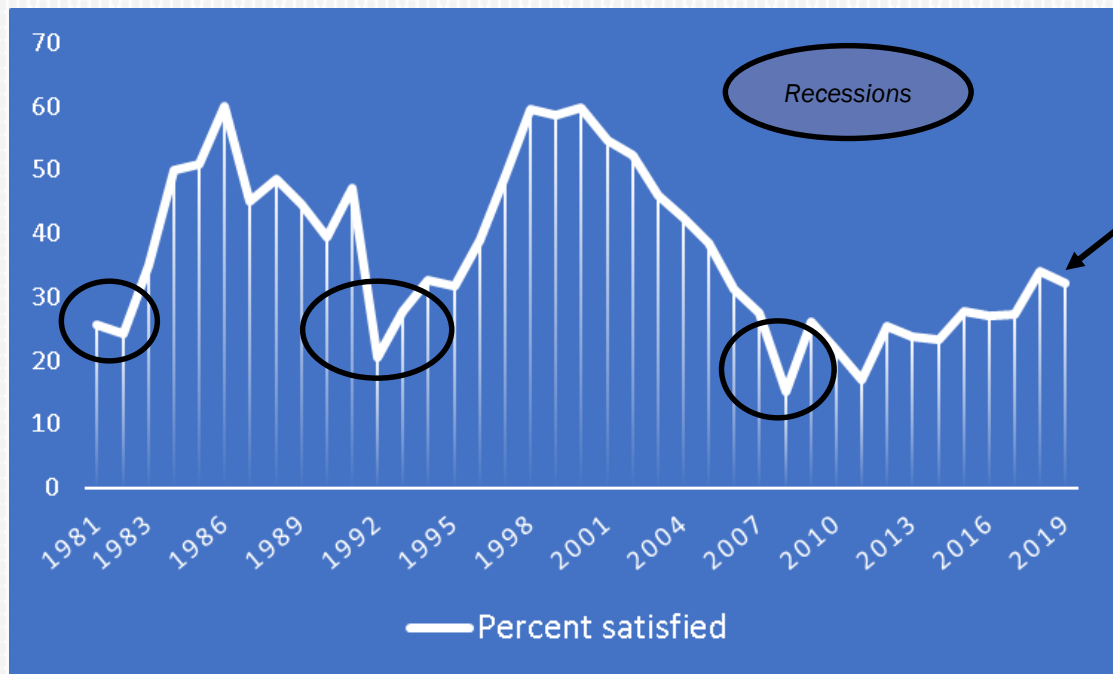


Source: Various data points and observations, Assured Research

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## GALLUP SATISFACTION INDEX IS DEPRESSED GIVEN STATE OF THE ECONOMY AND UNEMPLOYMENT LEVELS

*Percentage of people satisfied with the way things are going in the United States*



*If the economy was working for most people, the satisfaction index would be higher, based on prior surveys.*

Sources: Data available at: <https://news.gallup.com/poll/1669/general-mood-country.aspx>, Assured Research

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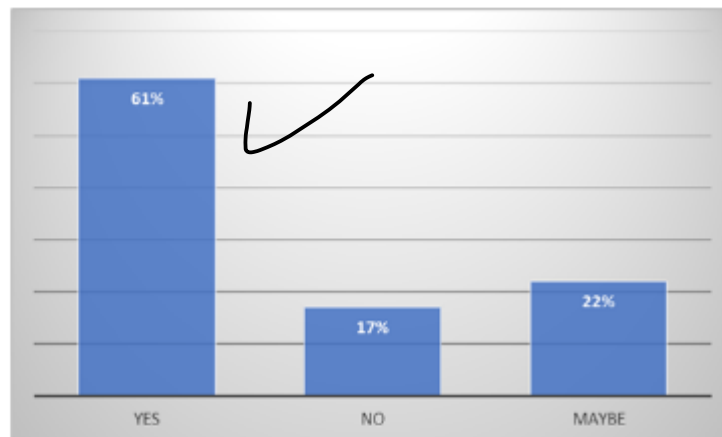
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## WILL SOCIAL INFLATION SPREAD TO PERSONAL LINES – MAIN POINTS

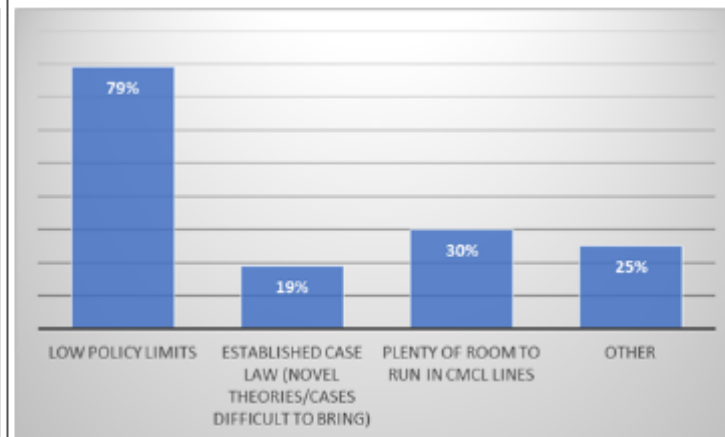
- ◆ **Social inflation has heretofore been a concern mainly for commercial lines**
  - **Commercial auto, general and professional liability, etc.**
- ◆ **We surveyed professionals in the industry and found...**
  - **A majority believe there is a credible risk social inflation will spread**
    - × **Mainly through personal umbrella policies and bad faith claims**
- ◆ **Our review of national rate filings for personal umbrella reveals there is ‘something going on’**

## WILL SOCIAL INFLATION SPREAD TO PERSONAL LINES?

*To date social inflation has been largely concentrated in commercial lines. Do you see the credible risk that social inflation will spread to personal lines?*

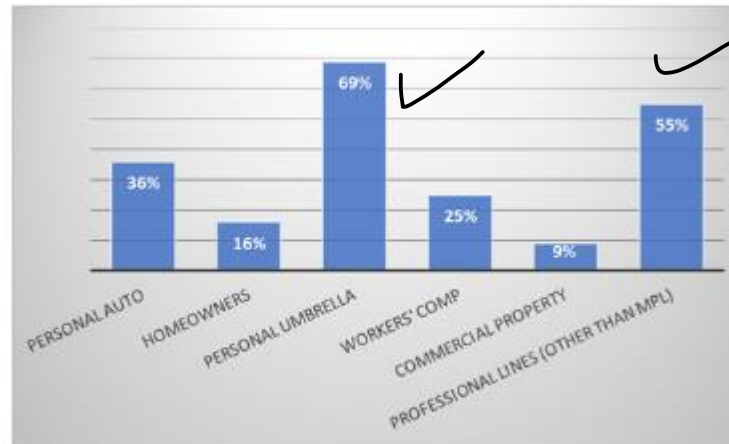


*What are the main barriers to social inflation spreading to personal lines?*

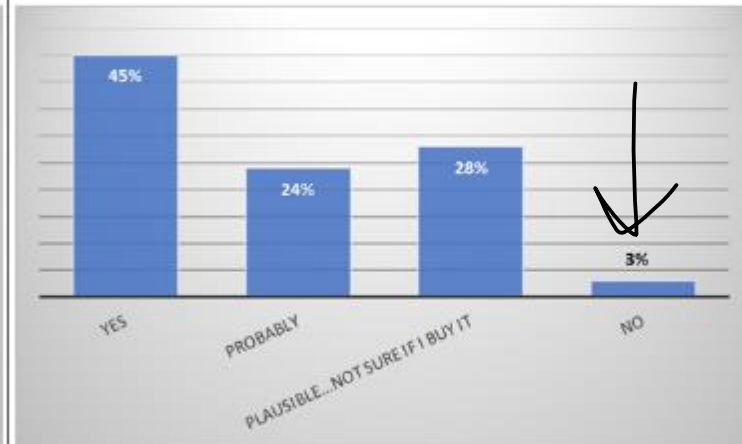


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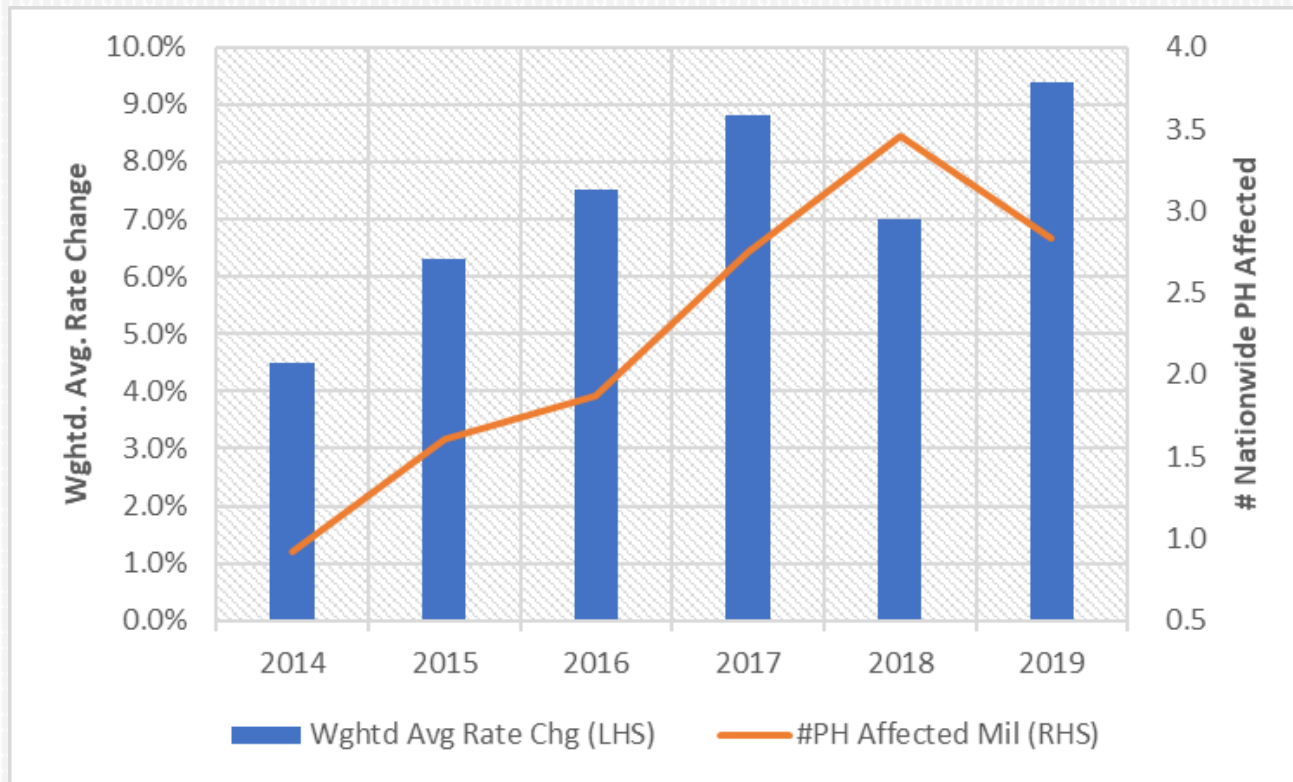
*Which lines of insurance (where social inflation has, arguably, not yet reached) are at greatest risk?*



*Could bad faith claims be an avenue for social inflation to spread (e.g., to personal auto or WC)?*



## PERSONAL UMBRELLA FILINGS NATIONALLY – RATES UP!



*Rate filing activity is up 50% since 2014 and the # of policyholders affected has tripled. Rates are up for reason...umbrella writers experiencing rising 'frequency of severity'*

Source: S&P Global, Assured Research



## WILL SOCIAL INFLATION SPREAD TO PERSONAL LINES?

*In the recent years we have seen a change in the severity of bodily injury claims with drivers including an increase in traumatic brain injuries and multi-level spinal surgeries as a result of personal automobile accidents. It seems that the state of [ ] has had an environmental change which has led to more serious claims and subsequent awards of large sums for such injuries. These areas are impacted by a recovering economy producing more miles driven and an increase in pedestrian/cyclist losses with distraction playing a major factor on frequency. Unfortunately, these types of losses lead to more fatalities, traumatic brain injuries, complex fractures, and multi-level spine surgeries. There is also a component of people being more willing to undergo surgery with the technological advancements making procedures less invasive. Unless there is a significant change in these drivers or legal environment, we expect higher volume and severity of claims to continue.*

*Taken from a 2019 personal umbrella rate filing in response to DOI actuary question as to the reason for high severity trends.*

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## SOCIAL INFLATION IS BACK!

Although politics is well beyond our sphere of expertise, it's probably worth considering that **the political cycle during 2020 is likely to extend** (and maybe exacerbate) **the social divisiveness in the U.S. that seems both simultaneously symptom and contributing cause to social inflation.**

It's hard to disagree with Mr. Berkley that **social inflation will last for 18 months on the short-end to 3 years on the longer side.** The good news we can offer – the clock didn't start with that observation during 3Q19 conference calls; we see the 2016/2017 timeframe as when tort inflation began to resurface.

Questions?

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*Webinar Hosted by Genesis and Assured Research  
February 4, 2020*

Thank you!