

Tort Costs for Small Businesses

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U.S. Chamber of Commerce
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Executive Summary

Chapter

01

High-profile litigation against Fortune 500 companies reliably generates headlines, but these stories form an incomplete picture of the costs and compensation in the United States tort system (hereafter referred to as tort costs). The impact of these costs on small businesses is also significant.

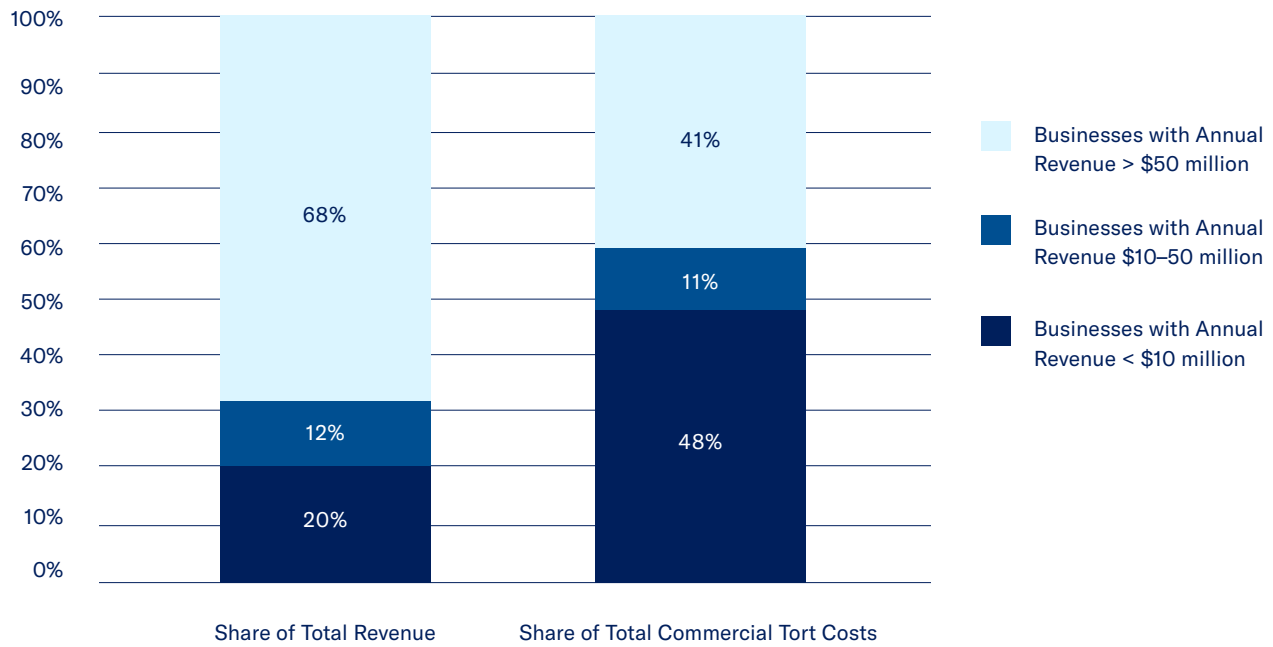
Small businesses compose a large fraction of the U.S. economy and are essential contributors to innovation and growth. There are 35.4 million small businesses in the United States, accounting for 99.1 percent of all firms, and small businesses are responsible for employing 44 percent of private sector employees.¹ U.S. policymakers and researchers are thus keenly interested in identifying ways to help small businesses succeed and prosper. One area of particular interest to policymakers is the extent to which the costs of the tort system fall on small businesses.

In this study—conducted by economists at The Brattle Group for the U.S. Chamber of Commerce Institute for Legal Reform (ILR)—we measure how the costs of the tort system are split

between large and small businesses. For purposes of this study, we define small businesses as businesses with less than \$10 million in annual revenue, a slightly narrower definition than adopted by the U.S. Small Business Administration.²

We initially studied commercial tort costs for small businesses in 2010 and revisited the issue in 2020. Using data developed by Verisk’s MarketStance[®] business (hereafter referred to as MarketStance), a leading provider of market intelligence to the insurance industry, we found in each case that small businesses bear an inordinately large share of the costs of the U.S. tort system.³ In this study, we find that, as of 2021, small businesses continue to shoulder a disproportionately large share of tort liabilities.

“... [T]he most recent data available shows that while small businesses accounted for just 20 percent of the business revenues earned in 2021, they bore 48 percent of the costs of the commercial tort system.”

Figure 1: Revenue and Commercial Tort Costs by Firm Size (2021)

Specifically, the most recent data available shows that while small businesses accounted for just 20 percent of the business revenues earned in 2021, they bore 48 percent of the costs of the commercial tort system (Figure 1).

The burdens of the tort system vary significantly across firms of different sizes, as illustrated in Figure 2 below. The tort liability per thousand dollars in revenue for companies with under \$1 million in

annual revenue is more than seven times larger than that of companies with over \$50 million in annual revenue. In other words, the costs of the tort system are more than seven times greater for the smallest businesses than for the largest.

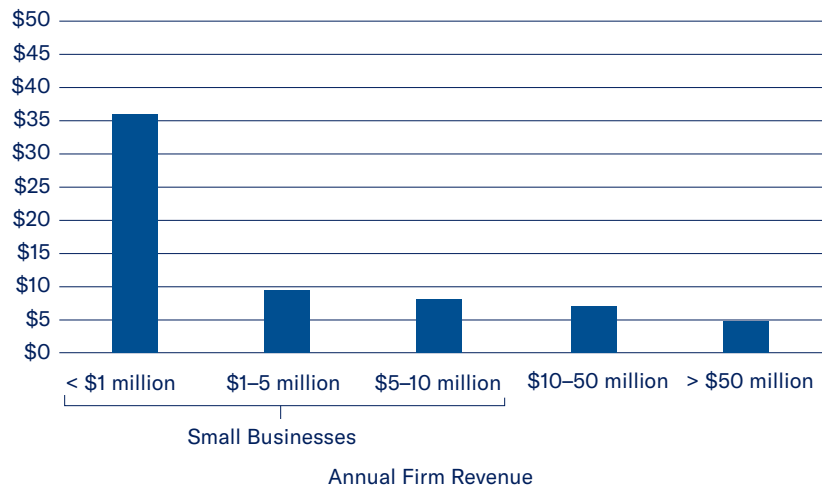
To put these numbers into the context of the greater landscape of tort costs, we draw from an earlier study conducted by The Brattle Group and released by ILR in November 2022.⁴ That study, “Tort Costs in

America,” estimated that total commercial tort costs in 2020 (i.e., amounts paid by employers and non-employee businesses)⁵ amounted to \$291 billion. In this study, we expand upon that work and estimate that commercial tort costs grew at a rate of 19 percent, to \$347 billion in 2021, with small businesses accounting for \$160 billion of the total.

This study is organized as follows: First, we discuss how we estimate commercial tort costs for

2021. We then measure the share of commercial tort liabilities that small businesses bear. Finally, we report on how commercial tort costs are distributed across industries.

Figure 2: Commercial Tort Costs per Thousand Dollars of Revenue by Size of Business (2021)



In this study, we expand upon [our previous] work and estimate that commercial tort costs grew at a rate of 19 percent, to \$347 billion in 2021, with small businesses accounting for \$160 billion of the total.

Commercial Tort Costs in 2021

Chapter

02

In our 2022 tort costs study, which covered both commercial and personal tort costs, we estimated that commercial tort costs in 2020 totaled \$291 billion. In this study, using data on growth in economic activity and changes in the cost of risk, we estimate how commercial tort costs have changed between 2020 and 2021. We use these changes as a basis to estimate commercial tort costs in 2021.

Components of Commercial Tort Costs

The costs of tort liability to a business depend both on the size of the business and the cost of risk. Greater economic activity gives rise to more significant commercial tort costs because firms with larger operations, more employees, and higher revenues have a bigger footprint and—all else being equal—more exposure to potential litigation. For this reason, as the U.S. economy grows and economic activity increases, so do expected commercial tort costs. Larger businesses will tend to have higher tort costs in absolute terms,

but as this study shows, large businesses spend a smaller percentage of their revenue on tort costs than small businesses.

In addition to the amount of economic activity, commercial tort costs will depend on the cost of risk. The cost of risk measures the expected amount of tort costs a firm will incur for a given amount of economic activity. Many different factors contribute to the cost of risk, including the industry in which a firm operates, the relative riskiness of a firm's operations, the effectiveness of a firm's risk management and compliance procedures, the firm's size, and the liability climate in which the firm operates.

The liability climate includes, among other things, the laws and regulations that govern which liability claims can be brought, the litigiousness of the injured parties, the extent of attorney advertising and tort claim recruiting, the expected compensation paid for particular alleged harms, and the cost of resolving each claim. These factors can profoundly affect the costs of the tort system and are why commercial tort costs can vary significantly across states and countries, even when controlling for other factors.⁶ Altogether, we can think of the cost of risk as the price of tort liability for a firm.

We measure economic activity by looking at the total revenues of a firm.⁷ This measure of economic activity is consistent with how many of the largest lines of liability insurance are priced, as total sales are one of the most important factors in pricing those policies. We define the cost of risk as the amount of tort costs a firm can expect to incur per dollar of revenue the firm generates. Accordingly, commercial tort costs are equal to the amount of economic activity multiplied by the cost of risk. The relationship between commercial tort costs, economic activity, and the cost of risk is illustrated in Figure 3 below. This

framework is useful because it allows us to isolate changes in commercial tort costs and better understand the causes.

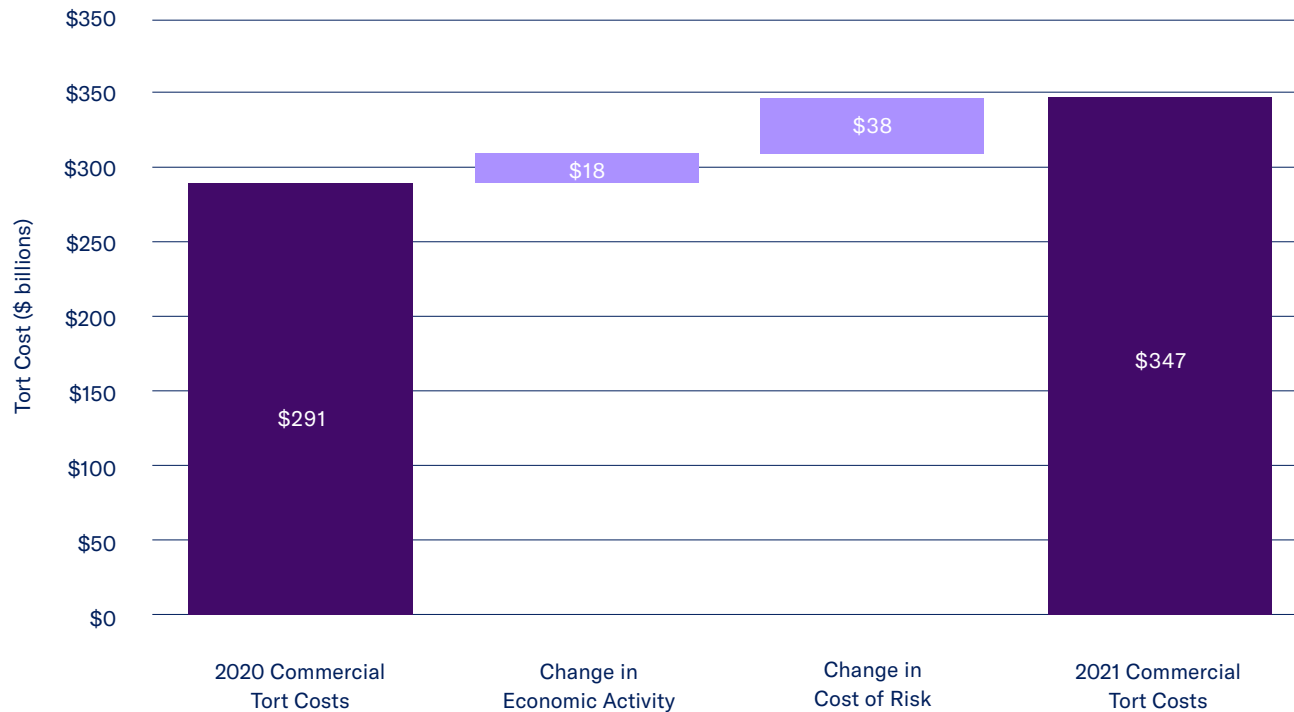
Estimate of 2021 Commercial Tort Costs

The methodology we use to estimate tort costs relies on data provided by MarketStance to measure how tort costs are borne by businesses of different sizes. MarketStance combines data on the cost of liability insurance from insurance companies' rate filings with detailed information about the number and size of businesses from the Economic Census and other

sources⁸ to compute the total amount of insurable risk for businesses.⁹ These data have detailed information on revenues and the cost of liability insurance for businesses by size of business, location, and industry. As previously noted, we determined that commercial tort costs amounted to \$291 billion in 2020;¹⁰ the data and methodology used to estimate 2020 tort costs are described in the Appendix. In this study, we estimate how commercial tort costs have changed between 2020 and 2021 using data on growth in economic activity and changes in the cost of risk from MarketStance.

Figure 3: Components of Commercial Tort Costs



Figure 4: Change in Commercial Tort Costs Between 2020 and 2021

Coming out of the initial shutdown associated with the COVID-19 pandemic, commercial revenues grew at a rate of 6.3 percent between 2020 and 2021.¹¹ Over this same period, from July 2020 to July 2021, inflation as measured by the consumer price index grew 5.3 percent, which implies a real economic growth rate of approximately 1 percent.¹² Given this amount of inflation and economic

growth, we would expect commercial tort costs to also grow by 6.3 percent or \$18 billion.¹³

However, over the same period, the cost of risk increased nearly twice as much as the rise in commercial revenues. In 2020, for every one thousand dollars earned by a firm, the associated cost of risk was \$6.79. In 2021, the cost of risk increased by 12.3 percent

to \$7.63 per thousand dollars of revenue.

Based on the overall growth in economic activity and cost of risk, we estimate that commercial tort costs grew 19.4 percent between 2020 and 2021, with about two-thirds of the increase attributable to an increase in the cost of risk. We estimate that commercial tort costs increased from \$291 billion in 2020 to \$347 billion in 2021 (Figure 4).

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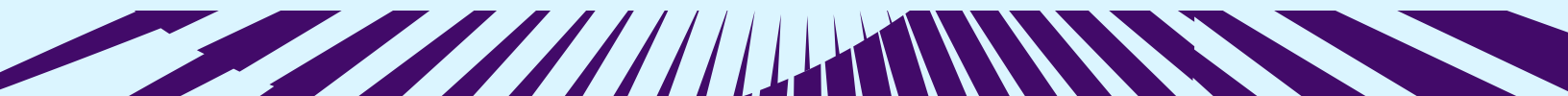


Table 1 below summarizes our estimate of commercial tort costs in 2021, broken down by types of tort costs. Operating and professional liability saw the highest growth, while medical professional liability was lower. Of the \$347

billion in commercial tort costs, \$271 billion relates to liabilities covered by operating and professional liability insurance,¹⁴ \$19 billion relates to liabilities covered by medical liability insurance, and \$57 billion relates to liabilities covered

by commercial automobile insurance. Over 50 percent of the total commercial tort costs relate to retained exposures, which shows that many businesses choose not to purchase insurance or have liabilities in excess of their insured limits.

Table 1: Projected 2021 Cost and Compensation of the Tort System (\$ billions)

	2020 Commercial Tort Costs	2021 Commercial Tort Costs	Estimated Growth
Operating and Professional Liability			
Insured Liability	\$96.34	\$118.17	23%
Self-Insured Liability	\$129.26	\$152.82	18%
Medical Professional Liability			
Insured Liability	\$11.31	\$12.66	12%
Self-Insured Liability	\$6.14	\$6.79	10%
Commercial Auto Liability			
Insured Liability	\$33.98	\$40.30	19%
Self-Insured Liability	\$13.85	\$16.61	20%
Total*	\$290.89	\$347.35	19.4%
Private Sector Total**	\$276.98	\$330.95	19.5%

* Any differences in totals are the result of rounding.

** Commercial tort costs include costs to both private and public sector entities. Public sector costs in 2021 included \$16 billion in liabilities for state and municipal governments as well as school, fire, and utility districts. Federal government entities are not commercially insurable, accordingly those liabilities are not included in our insurance-based estimate of tort costs. Private sector costs associated with the tort system amounted to \$331 billion.

Tort Costs for Small Businesses

Chapter

03

As discussed above, a key feature of the MarketStance data and the methods employed in this study is that they allow us to measure the costs of the tort system for firms of different sizes. Larger companies may be better able to manage litigation risk because their scale makes risk management efforts and access to legal resources more efficient, and pricing of insurance more competitive. They also may have more robust financial reserves, making self-insurance more feasible.

In contrast, small businesses often lack the economies of scale required to manage their liability risk as efficiently as larger businesses can and may prefer to rely more heavily on liability insurance. However, many small businesses either find that the cost of insurance is too great or fail to appreciate the level of risk they are assuming and choose to be either under-insured or uninsured. Ultimately, the cost of risk is greater for small businesses, whether insured or uninsured.

The MarketStance data allows us to accurately measure the revenues and tort costs for small businesses separate from mid-sized and large businesses. The MarketStance estimates of the total number of businesses, employees and revenues differ slightly from metrics reported from the U.S. Census (Statistics on U.S. Businesses) and U.S. Bureau of Economic Analysis because MarketStance includes farms (including approximately 1.5 million non-employer businesses) and in certain industries uses a different and more consistent definition of revenues to better reflect the insurable exposure base across industries.¹⁵

“Ultimately, the cost of risk is greater for small businesses, whether insured or uninsured.”

Table 2 below shows the total revenues and commercial tort costs for firms of different sizes. This analysis reveals that small businesses pay a disproportionate share of the costs of the tort system. While small businesses account for only 20 percent of the revenue, they bear

48 percent of commercial tort costs, which amounts to \$160 billion. This pattern is even more pronounced for the smallest companies. Businesses with under \$1 million in annual revenues account for only 7 percent of revenues and yet bear 34 percent of the commercial tort liability costs.

The fact that small businesses bear a disproportionately large share of the costs of the tort system implies that the cost of risk, as measured by tort costs per thousand dollars of revenue, is higher for small businesses. As shown in Table 3, for every thousand dollars a small

Table 2: Estimated 2021 Commercial Tort Costs¹⁶

Revenue Categories	2021 Estimates of Number and Size of Businesses			Estimated 2021 Commercial Tort Costs (\$ billions)			
	Number of Businesses	Revenue (\$ trillions)	Percent of Revenues	Insured Costs	Self-Insured	Total	% Total Commercial Tort Costs
Small Businesses							
< \$1 million	33,404,651	\$3.15	7%	\$29.3	\$82.7	\$112.0	34%
\$1 to \$4.9 million	1,733,685	\$3.58	8%	\$22.9	\$11.0	\$33.8	10%
\$5 to \$9.9 million	259,200	\$1.81	4%	\$10.7	\$3.4	\$14.1	4%
< \$10 million	35,397,536	\$8.54	20%	\$62.9	\$97.1	\$160.0	48%
Mid-Size Businesses							
\$10 to \$50 million	239,199	\$4.95	12%	\$26.0	\$9.0	\$35.0	11%
Large Businesses							
> \$50 million	72,739	\$28.64	68%	\$72.8	\$63.2	\$136.0	41%
Private Sector Total*	35,709,474	\$42.13	100%	\$161.6	\$169.3	\$331.0	100%

*Any differences in totals are the result of rounding.

business earns, it can expect to incur \$18.73 in tort costs. In contrast, companies with over \$50 million in annual revenue only incur \$4.75 in tort costs for an equivalent amount of economic activity.

The difference in costs is even more pronounced for the smallest businesses,

those with under \$1 million in annual revenue. Those businesses can expect to incur \$35.56 in tort costs per thousand dollars of revenue they generate. In other words, the tort system is more than seven times as expensive for the smallest businesses compared to the largest ones.

“In other words, the tort system is more than seven times as expensive for the smallest businesses compared to the largest ones.”

Table 3: Estimated Tort Costs per Thousand Dollars of Revenue

Revenue Categories	Total 2021 Commercial Tort Costs (\$ billions)	Total 2021 Commercial Revenue (\$ trillions)	Cost of Risk (\$ Tort Liability per \$1,000 Revenue)
Small Businesses			
< \$1 million	\$112.0	\$3.15	\$35.56
\$1 to \$4.9 million	\$33.8	\$3.58	\$9.45
\$5 to \$9.9 million	\$14.1	\$1.81	\$7.80
< \$10 million	\$160.0	\$8.54	\$18.73
Mid-Size Businesses			
\$10 to \$50 million	\$35.0	\$4.95	\$7.07
Large Businesses			
> \$50 million	\$136.0	\$28.64	\$4.75
Private Sector Total*	\$331.0	\$42.13	\$7.85

*Any differences in totals are the result of rounding.

Tort Costs by Industry

Chapter

04

Not only do the costs of the tort system vary by firm size, those costs vary across industries. Certain industries are inherently riskier and may have more exposure to liability claims. We have computed the tort costs per thousand dollars of revenue by industry and firm size. The results of that analysis are shown in Table 4 below.

The price of tort liability varies significantly across industries. Those with the highest expected tort costs per thousand dollars of revenue are construction, transportation, communications, electric, gas, and sanitary services.

For these industries, the price of tort liability for small businesses is \$30.77 or greater per thousand dollars of revenue. In contrast, the price of tort liability is \$8.82 or under for manufacturing, retail trade, and wholesale trade.

For each industry, the tort liability price is highest for small businesses, particularly those with less than \$1 million in annual revenue, which experience prices many times greater than larger businesses per thousand dollars of revenue.

Table 4: Estimated Cost of Risk by Industry (\$ Tort Liability per \$1,000 Revenue)

Industry	Revenue Categories			
	< \$1 million	\$1 to \$4.9 million	\$5 to \$9.9 million	< \$10 million
Agriculture, Forestry, and Fishing	\$33.72	\$4.17	\$4.67	\$13.74
Mining	\$46.48	\$12.64	\$9.36	\$19.99
Construction	\$53.55	\$17.15	\$13.91	\$30.77
Manufacturing	\$19.65	\$3.78	\$3.49	\$6.30
Transportation, Telecom and Utilities*	\$85.03	\$25.66	\$19.46	\$47.32
Retail Trade	\$20.31	\$5.22	\$3.81	\$8.82
Wholesale Trade	\$16.11	\$3.13	\$2.55	\$4.51
Finance, Insurance, and Real Estate	\$18.69	\$11.63	\$9.71	\$15.18
Services	\$43.01	\$11.02	\$10.56	\$24.93
State and Local Government	\$25.62	\$13.74	\$10.49	\$13.82
Industries Not Classified	\$21.85	\$8.76	\$5.53	\$19.54
Overall (Private Sector)*****	\$35.56	\$9.45	\$7.80	\$18.73

* Includes transportation, communications, electric, gas, and sanitary services.

** The overall (private sector only) figures do not include state and local government data.

*** Any differences in totals are the result of rounding.

Conclusion

Chapter

05

Between 2020 and 2021, commercial tort costs grew 19 percent, from \$291 billion to \$347 billion. This growth in tort costs affects all businesses. However, small businesses shoulder a disproportionately large share of tort costs.

While small businesses accounted for just 20 percent of business revenues in 2021, they bore 48 percent of commercial tort costs. Furthermore, in proportion to revenue, the costs of the tort system in 2021 were more than seven times greater for the smallest businesses than for the largest ones.

Small businesses are powerful engines for job creation and economic growth, and are essential to the character and health of American communities of all sizes. They also enjoy unflagging public support—according to Gallup’s “Confidence in Institutions” poll, over 60 percent of respondents indicated

a “great deal” or “quite a lot” of confidence in small businesses in every iteration of the poll between 2013 and 2023.¹⁷ Policymakers recognize the importance of empowering small businesses, and they have a stake in protecting them from excessive tort costs that fall disproportionately on their shoulders.

Appendix: Model of Commercial Tort Costs

Chapter

06

The largest components of U.S. liability costs are covered by commercial liability insurance. We rely on estimates of the size of the market for liability insurance developed by MarketStance to compute the tort costs for commercial and medical professional liability.

MarketStance uses data on the cost of liability insurance from insurance companies' rate filings and detailed information about the number and size of businesses from the Economic Census and other sources to compute the exposure base for risks by size, industry, and location of businesses. Based in part on survey

data, MarketStance estimates the percentage of exposures retained either by businesses choosing to self-insure or through deductibles and exposures in excess of carried limits. MarketStance scales the estimated insured exposures (for the largest liability insurance lines) to match total premiums written into each state by domestic and

alien insurance companies using data collected by the National Association of Insurance Commissioners (NAIC) and other sources. The same scaling factor is then used to develop estimates of self-insured premium liabilities (described in more detail below). This methodology is described in more detail in the following pages.

Insured Commercial Liability Costs

Commercial liability costs can be either insured or self-insured.

All insurance companies are required to report financial data, including premiums, to state and federal regulators, and this information is widely available. These data

are aggregated and reported by a number of data providers, including NAIC.¹⁸ Table 5 shows the specific lines of insurance included in MarketStance's estimates.

Table 5: Lines of Insurance Included in Commercial Liability Estimates

Type of Insurance	NAIC Line	Related MarketStance Line	Tort Category
Commercial Multiple Peril (Liability)	5.2	Premises & Operations Liability Umbrella Liability Excess Liability Business Owner's Policy	General/ Professional
Medical Professional Liability	11	Medical Professional Liability	Medical Professional
Other Liability – Occurrence	17.1	Premises & Operations Liability Umbrella Liability Excess Liability Cyber Liability Directors & Officers Liability Business Owner's Policy	General/ Professional
Other Liability – Claims Made	17.2	Errors & Omissions/ Professional Liability Employment Practices Liability Fiduciary Liability Cyber Liability Directors & Officers Liability	General/ Professional
Products Liability	18	Products Liability	General/ Professional
Commercial Auto Liability	19.4	Commercial Auto Liability	Commercial Auto

Notes:

- The NAIC insurance lines in this table include the following types of insurance: 5.0002 Business Owners, 5.0003 Commercial Package Policy, 5.0006 Commercial Farm and Ranch, 5.0007 Other CMP Policies, 17.0001 Commercial General Liability, 17.0002 Completed Operations, 17.0003 Comprehensive Personal Liability, 17.0004 Contractual Liability, 17.0005 Day Care Centers, 17.0006 Directors and Officers Liability, 17.0007 Elevators and Escalators Liability, 17.0008 Employee Benefit Liability, 17.0009 Employers Liability, 17.001 Employment Practices Liability, 17.0011 Environmental Pollution Liability, 17.0012 Fire Legal Liability, 17.0013 Kidnap & Ransom Liability, 17.0014 Liquor Liability, 17.0015 Municipal Liability, 17.0016 Nuclear Energy Liability, 17.0017 Personal Injury Liability, 17.0018 Premises and Operations (owners, landlords, and tenants and manufacturers' and contractors'), 17.0019 Professional Errors and Omissions Liability, 17.002 Umbrella and Excess (Commercial), 17.0021 Umbrella and Excess (Personal), 17.0022 Other, 17.0023 Veterinarian, 17.0024 Internet Liability, 17.0025 Provider Excess Stop Loss, 17.0026 Excess Stop Loss, 17.0027 Other Excess Stop Loss, 17.0028 Cyber Liability, 18.0001 Occurrence, and 18.0002 Claims Made.
- While aviation, ocean, and marine policies provide some liability coverage, they are relatively small lines and predominantly cover property losses. Since NAIC data do not separately report the cost of liability coverage included in other lines, these liability costs are excluded from our estimates. In contrast, liabilities associated with inland marine policies are included in these estimates.

Medical liability insurance protects doctors and hospitals from liability arising from allegations of negligence purportedly resulting in the injury or death of patients.¹⁹ MarketStance separately analyzes medical professional liability insurance, which is reported separately by NAIC under line 11.

Businesses are also required to carry commercial automobile liability insurance unless they are sufficiently large that they can be exempt and self-insure. This requirement means that most small businesses that own cars and trucks will carry commercial liability insurance. Larger businesses will frequently retain some or all of the commercial automobile liability risk. Total premiums earned for commercial automobile liability insurance are reported in NAIC statutory filings under line 19.4, and the amount of self-insured liabilities is estimated by

MarketStance. For purposes of estimating tort costs in 2020, we are interested in direct premiums earned, which include the portion of premiums that relate to coverage for the 2020 calendar year.²⁰ However, MarketStance computes direct premiums written in its estimates of insurance liability exposure. On average, earned commercial liability premiums were five percent lower than written premiums in 2020.²¹ Accordingly, we scale down the estimates of commercial written premiums by five percent. Similarly, we scale down medical professional liability written premiums by two percent.²²

Self-Insured Commercial Liability Costs

We estimate the fraction of tort costs not covered by insurance and price this self-insured liability cost using insurance rates.²³ Aggregate premium data provides an estimate of tort costs for those

businesses and individuals that purchase insurance. However, not all businesses and individuals purchase insurance, and not all losses are covered.

At the smaller end of the market, many individuals and businesses retain a significant amount of risk by not purchasing insurance or having low limits. At the other end of the market, many larger businesses self-insure by choosing high deductibles, or by setting aside funds and developing their own risk management programs. Similarly, in the medical liability insurance segment, many physician groups and hospital systems are largely or fully self-insured.²⁴

These self-insured liabilities are not tracked by NAIC but are a significant part of the market. We rely on data and the methodology developed by MarketStance to develop estimates of the self-insured commercial and medical professional liability costs. The key steps in the methodology

for self-insured liability lines are as follows:

1. Computing the total liability exposure using rate filings and business demographic data;
2. Estimating the percentage of the exposure that is insured and self-insured; and
3. Determining the premium cost of insuring the exposure based on total reported insured premiums.

These steps are discussed in the following sections.

Computing Total Exposure

In addition to statutory financial data, insurance companies are required to submit rate filings with their regulators that describe how their premiums are set. Many of these rate filings are available from NAIC’s System for Electronic Rates & Forms Filing. Rate filings provide valuable information on the cost of liability insurance within each state and identify the risk factors

that insurance companies use to price liability insurance. These risk factors and the associated pricing, combined with estimates of the size of each industry sector, provide a measure of the total liability exposure that each business, doctor, or hospital has to liability risk.

MarketStance estimates exposure based on rate filings, business demographic data reported by the Economic Census, and other federal government sources for each state. Business demographic data that affects liability costs include the location of business operations, the industry in which the business operates, the number of employees, the amount of sales, total payroll, and square footage of business operations. Risk factors for medical professional liability also include other factors such as the number of physicians or hospital beds covered.

These estimates include exposures for employee businesses, non-employee

businesses, hospitals, individual physicians and practices, and state and local governments. MarketStance models exposures and premiums for the following liability lines of coverage (“modeled categories of exposure”):

- Premises and operations liability;
- Products liability;
- Umbrella & excess (commercial);
- Business owners (liability portion);²⁵
- Professional errors & omissions liability;
- Directors & officers liability;
- Employment practices liability;
- Fiduciary liability;
- Cyber liability;
- Medical professional liability; and
- Commercial auto liability.

Estimating the Percentage of Exposure That Is Self-Insured

The percentage of exposure that is self-insured varies greatly across businesses with different demographic characteristics. For instance, larger businesses are more likely to retain risk through formal risk management programs, whereas smaller businesses are more likely to be entirely uninsured. In addition, businesses in different industries are exposed to different types of risk, which can greatly affect which lines of insurance they purchase and which risks they retain.

Many physician groups and hospital systems are largely or fully self-insured. As noted above, this limits the usefulness of aggregate statistics on medical liability insurance premiums reported in NAIC statutory filings.²⁶

MarketStance estimates the percentage of the total exposure that is insured based on surveys of companies' propensity to purchase insurance.

Determining the Cost of Self-Insured Exposure

MarketStance calibrates its estimates of self-insured exposure by matching the

corresponding estimated insured fraction of exposure to the reported values. The platform combines its estimates of premiums written and the premium equivalent values for self-insured risks. For each modeled category of liability exposure,²⁷ MarketStance scales estimated premiums to equal the liability premiums reported in the related annual statement lines, with adjustments, applying the self-insured factor to derive the written premium equivalents for that part of the market.

Endnotes

¹ To reach these figures, we rely on a definition of small businesses as those with less than \$10 million in annual revenue, including farms and non-employee businesses. The U.S. Small Business Administration (“SBA”) uses higher size thresholds but excludes farms; using those parameters, there are 33.2 million small businesses, including 27.1 million non-employer businesses, in the United States, which accounts for 99.9% of all firms and 46.4% of private sector employees. U.S. Small Business Administration Office of Advocacy, *Frequently Asked Questions* (March 2023).

² U.S. Small Business Administration, *Table of Small Business Size Standards Marched to North American Industry Classification System Codes* (January 1, 2022). The SBA defines small businesses based on either the average annual revenues or employment of a firm. While the SBA’s size standards are periodically updated, since January 1, 2022, the SBA has used revenue caps between \$2.25 million and \$47 million depending on the industry. Companies with annual revenues lower than the cap are considered small businesses by the SBA. The SBA definition of small businesses would include more than half of the US workforce if proprietors of non-employer businesses were included.

³ Paul Hinton and David McKnight, *Tort Liability Costs for Small Business—NERA Economic Consulting Technical Appendix*, U.S. Chamber of Commerce Institute for Legal Reform (July 2010) and David McKnight and Paul Hinton, *Tort Liability Costs for Small Business*, U.S. Chamber of Commerce Institute for Legal Reform (October 2020).

⁴ David McKnight and Paul Hinton, *Tort Costs in America – An Empirical Analysis of Costs and Compensation of the U.S. Tort System*, U.S. Chamber of Commerce Institute for Legal Reform (November 2022). The study estimated that aggregate tort costs in 2020, including both personal and commercial liabilities, totaled \$443 billion, or 2.1 percent of U.S. gross domestic product. Of that amount, commercial tort costs amounted to \$291 billion.

⁵ The scope of the MarketStance definition of commercial tort costs, and associated workforces and revenues, includes businesses and state and local government entities with commercial insurable exposures. It excludes federal government entities, with the exception of VA hospitals and employees of the Fed.

⁶ For a comparison of the costs of the tort systems in different states, see *Tort Costs in America*, *supra* note 4, pp. 17–20. For an international comparison of tort costs, see David McKnight and Paul Hinton, *How Costly is the U.S. Tort System? An International Comparison of Liability Costs*, U.S. Chamber of Commerce Institute for Legal Reform (2013) p. 2.

⁷ Similarly the U.S. Bureau of Economic Analysis defines such revenue as Gross Output, which is also computed for state and local government entities.

⁸ Including the U.S. Bureau of Economic Analysis.

⁹ A detailed description of the data and methodology employed by MarketStance can be found in the Appendix.

¹⁰ *Tort Costs in America*, *supra* note 4.

¹¹ The growth in revenue was slightly larger for small businesses with less than \$10 million in sales. Revenues for those small companies grew 6.9 percent. Over the same period, revenues for medium and large businesses grew 6.2 percent.

¹² See Bureau of Labor Statistics, CPI for All Urban Consumers (CPI-U), accessed at <https://data.bls.gov/cgi-bin/surveymost>.

¹³ Commercial tort costs in 2020 were \$291 billion. \$18 billion is equal to 6.3% of \$291 billion.

¹⁴ Operating liability includes the liability portion of the following lines of insurance: premises and operations liability, product liability, business owners policies, umbrella liability, excess liability, cyber liability, inland marine, motor truck cargo, and inland marine warehouse. Professional liability includes directors and officers (D&O) liability, employment practices liability, and professional errors and omissions liability.

¹⁵ For example, the U.S. Bureau of Economic Analysis’s “Gross Output by Industry” measure excludes the cost of goods sold in wholesale and retail industries. Distributions across industries also differ for technical reasons including that employees and businesses are tabulated by the U.S. Bureau of Economic Analysis on an establishment basis whereas sales are tabulated on an enterprise basis so that the sales are assigned to the dominant industry of a multi-industry firm.

¹⁶ Business and revenue data are sourced from MarketStance. The total amount of business sales exceed U.S. GDP because GDP excludes the sales of intermediate goods and services consumed in the creation of newly generated goods and services.

¹⁷ *Confidence in Institutions*, Gallup, Inc. (2023).

¹⁸ See e.g., *Statistical Compilation of Annual Statement Information for Property/Casualty Insurance Companies in 2019*, National Association of Insurance Commissioners (2020).

¹⁹ See David M. Studdert et al., *Claims, errors, and compensation payments in medical malpractice litigation 2024-2033*, 19 *New England Journal of Medicine* 345 (2006). We note that one study of closed claims alleging medical malpractice found that in a large percentage of lawsuits filed, medical errors were not responsible for the claimed injuries.

²⁰ While premiums for annual policies are often paid in advance, those premiums are “earned” throughout the policy term.

²¹ *Supra* note 18.

²² *Id.*

²³ We refer to uninsured exposures and exposures not covered by formal risk management programs as self-insured.

²⁴ Eric Nordman et al., *Medical malpractice insurance report: A study of market conditions and potential solutions to the recent crisis*, Kansas City, MO: National Association of Insurance Commissioners (2004).

²⁵ The liability portion can be broken out based on disclosures made in statutory filings.

²⁶ *Supra* note 24.

²⁷ There are over 30 different lines of liability insurance, including a number of specialty lines that MarketStance does not separately model.

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