

*NCACC County Risk Group*

# The State of Risk

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NCACC  
COUNTY RISK GROUP

# AGENDA

Risk

Insurance: What it does and what it doesn't do

Governmental Immunity: What it is and what it isn't

Unique Risk Issues for Counties

Current Trends

Issues Lurking Ahead

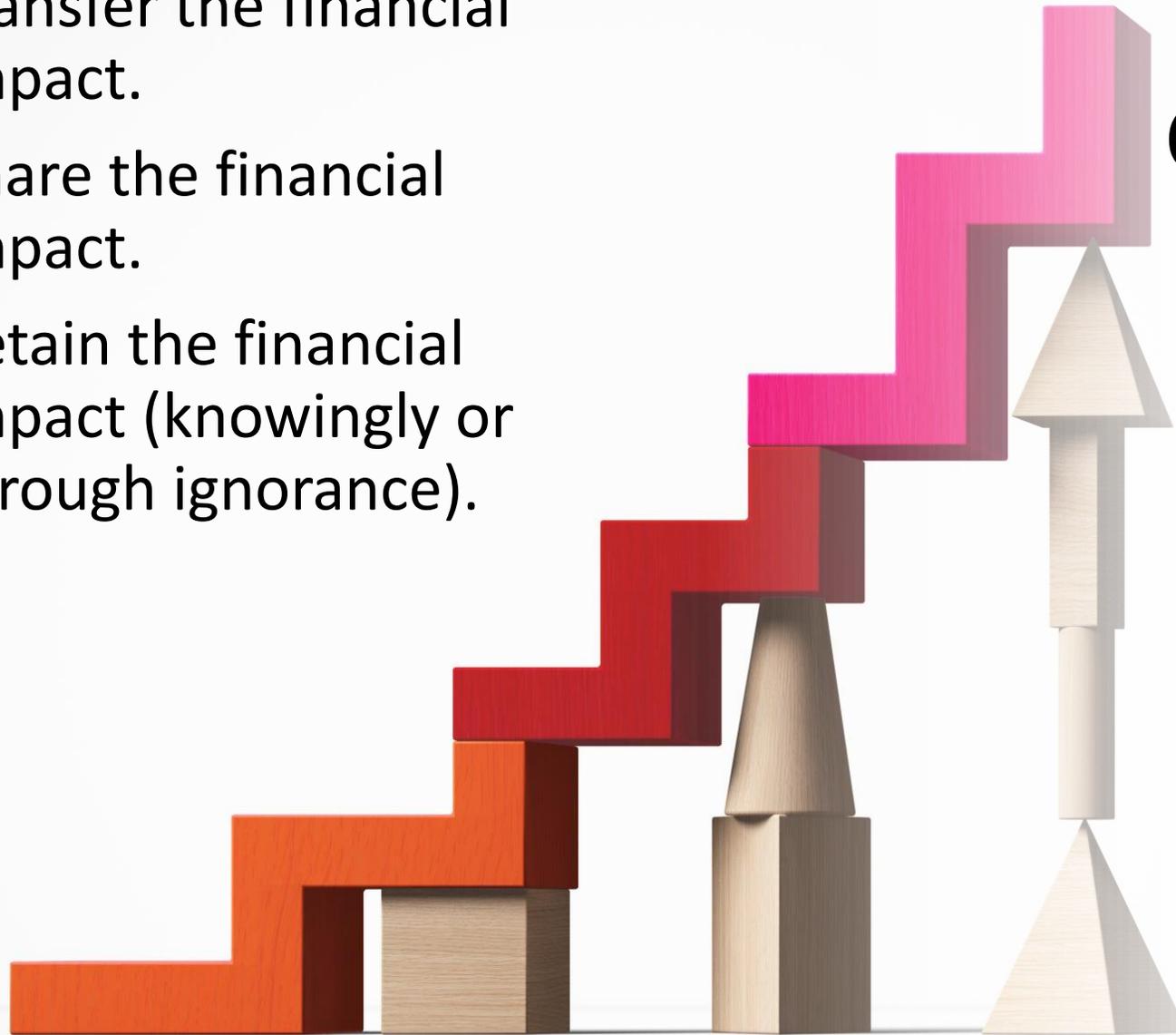
Questions



# Risk

- CANNOT be eliminated.
- CAN be controlled or reduced

- Transfer the financial impact.
- Share the financial impact.
- Retain the financial impact (knowingly or through ignorance).



## Controlling Risk



# ALL COME AT A COST

THE HIGHER THE RISK EXPOSURE OR UNCERTAINTY, THE HIGHER THE COST



According to the American Safety Council (ASC), “[t]he function of insurance is to safeguard against financial loss by having the ‘losses of the few’ paid by ‘contributions of the many’ that are exposed to the same risk.”

Beyond this definition, however, ASC has noted that “[t]he true value of insurance lies in its ability to protect human life values” and that “[t]he true significance of insurance is its promise to substitute future economic certainty for uncertainty and to replace the unknown with a sense of security.”



# Insurance

- A contract between two parties
- Specific terms and conditions



# Insurance

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- A financial vehicle
  - Limits or controls financial loss - client
  - Opportunity for financial gain/benefit – provider

# Retail Insurance



The most common  
form of risk transfer



Reactionary



Requires  
predictability



For profit



# Risk Pools

- Widely utilized by public entities (85% of public agencies use pooling)
- “Shareholders” are the Pool members
- Not for profit



# Insurance Is Not

- Uniform
- All-Inclusive
- Always available or inexpensive



## Coverage Limitations

- Insuring Grant
- Definitions
- Conditions
- Exclusions
- Limits

# Insurance

- The definition of “damages” does not typically cover fines or penalties.
- In instances where the insurance policy does not define “damages,” case law in the given state will often guide insurers as to whether fines and penalties qualify as damages.



# Immunity Considerations

*Where they matter and where they don't*

Governmental Immunity

Public Officer's Immunity

Qualified Immunity

# Politics and Prosecution



With increased frequency, civil claims against public officials are coming with criminal prosecution against those defendants.

- 5th Amendment
- Consequences on Coverage
- Inflames the passion of the jury

# Criminal Charges and Civil Consequences

- Where criminal charges are paired with a civil claim, insurers must understand the insurability of criminal conduct.
- In many states, it is contrary to public policy for an insurer to indemnify an insured for a criminal act where an element of the crime was intent to injure.

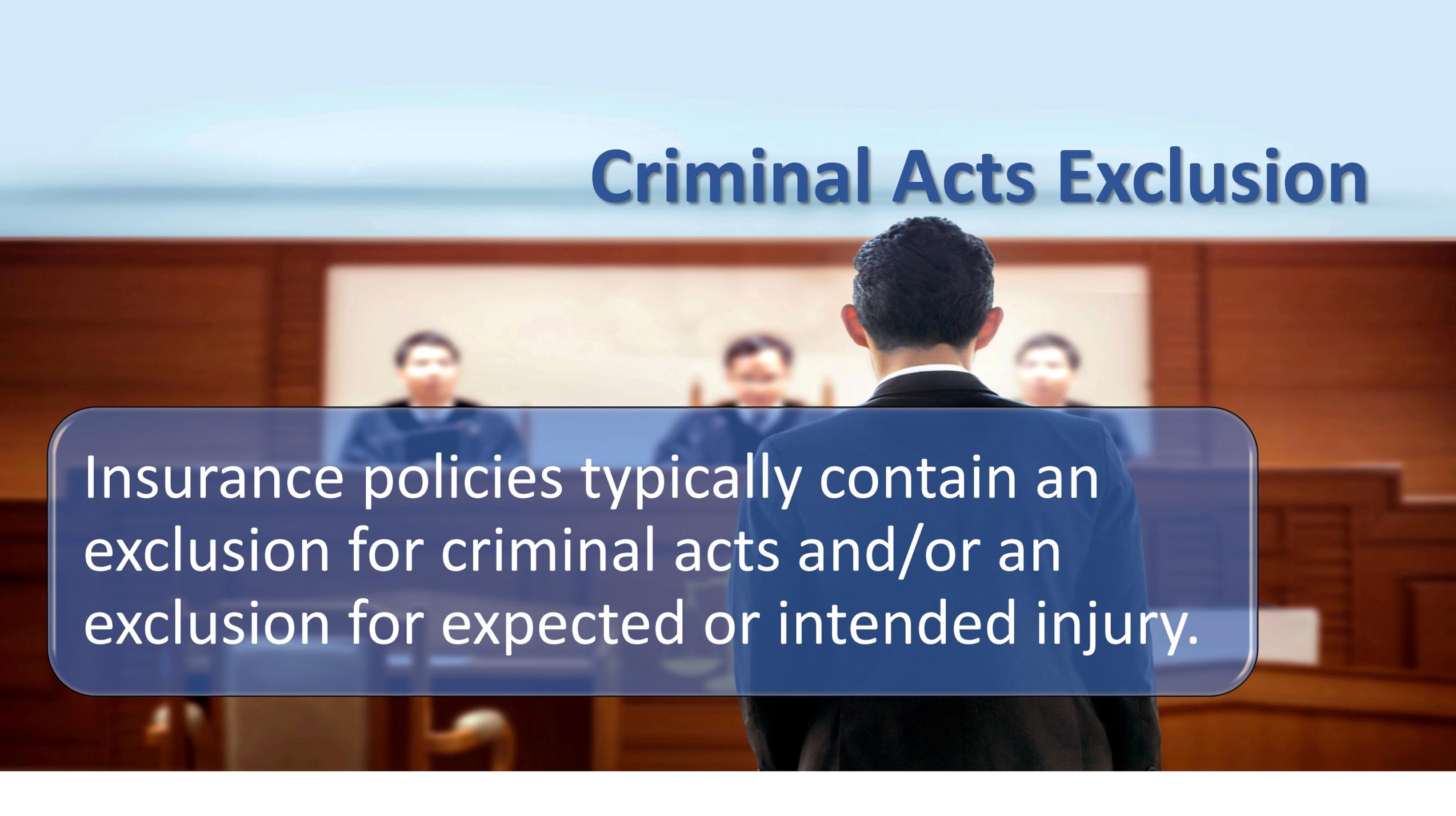


# Unintended Consequences

- With increased government interest and intervention, public officials or employees facing criminal charges will likely continue to increase.
- These charges, and convictions that follow will directly impact the availability of insurance.



# Criminal Acts Exclusion

A man in a dark suit is seen from behind, standing in a courtroom. In the background, three judges in blue robes are seated on a bench. The room has wood-paneled walls and a large window.

Insurance policies typically contain an exclusion for criminal acts and/or an exclusion for expected or intended injury.

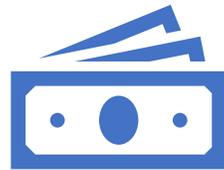


What makes  
County  
Government  
unique from a  
Risk  
perspective?

# County Government – Risk Aspects



**Services**



**Funding/Revenue**



**Physical Location**

# Current Risk Environment





# Social Inflation

Americans, and therefore American jurors, are angrier, more entitled, less trusting of authority, more willing to sue and, ultimately, more susceptible to the combined charms of social media bubbles and an increasingly well-funded plaintiff's bar.



# Collaboration and Strategy

- Collaboration between counsel
  - NCAJ
  - ATLA
- List Serves
- Specialization
- Thought Leadership



# Social Justice Movements

- Increase in verdicts against government entities
- “Be sensitive to this because your case could depend on it.” —U.S. District Judge Anthony Battaglia
- **Examples:** gender pay gap, housing rights, voting rights, gun rights, asylum and immigration



## Media Outlets and Social Media

- The news, websites, Facebook, twitter, Instagram
- A way of reaching tens of thousands of people
- Millennial jurors
- Smartphones and the courtroom

# Media Outlets and Social Media



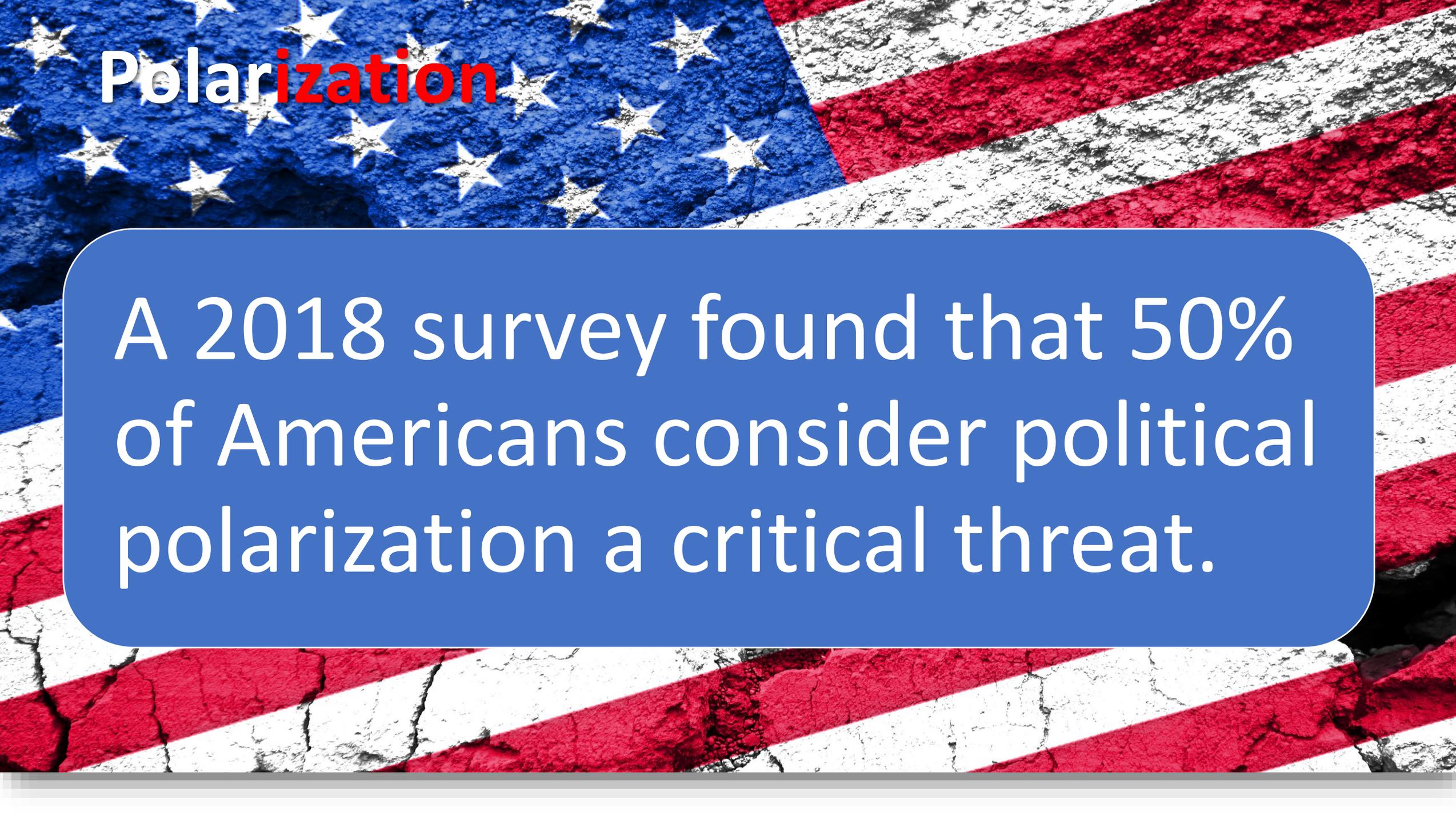
INCREASED ACCESS



INCREASED COVERAGE



ACCURACY OF  
INFORMATION

The background of the slide is a close-up, slightly angled view of the American flag. The stars and stripes are clearly visible, with a textured, almost painted appearance. The colors are vibrant, with a deep blue for the field of stars and bright red and white for the stripes.

# Polarization

A 2018 survey found that 50% of Americans consider political polarization a critical threat.



# The Nuclear Age Has Arrived

## *North Carolina by the numbers*

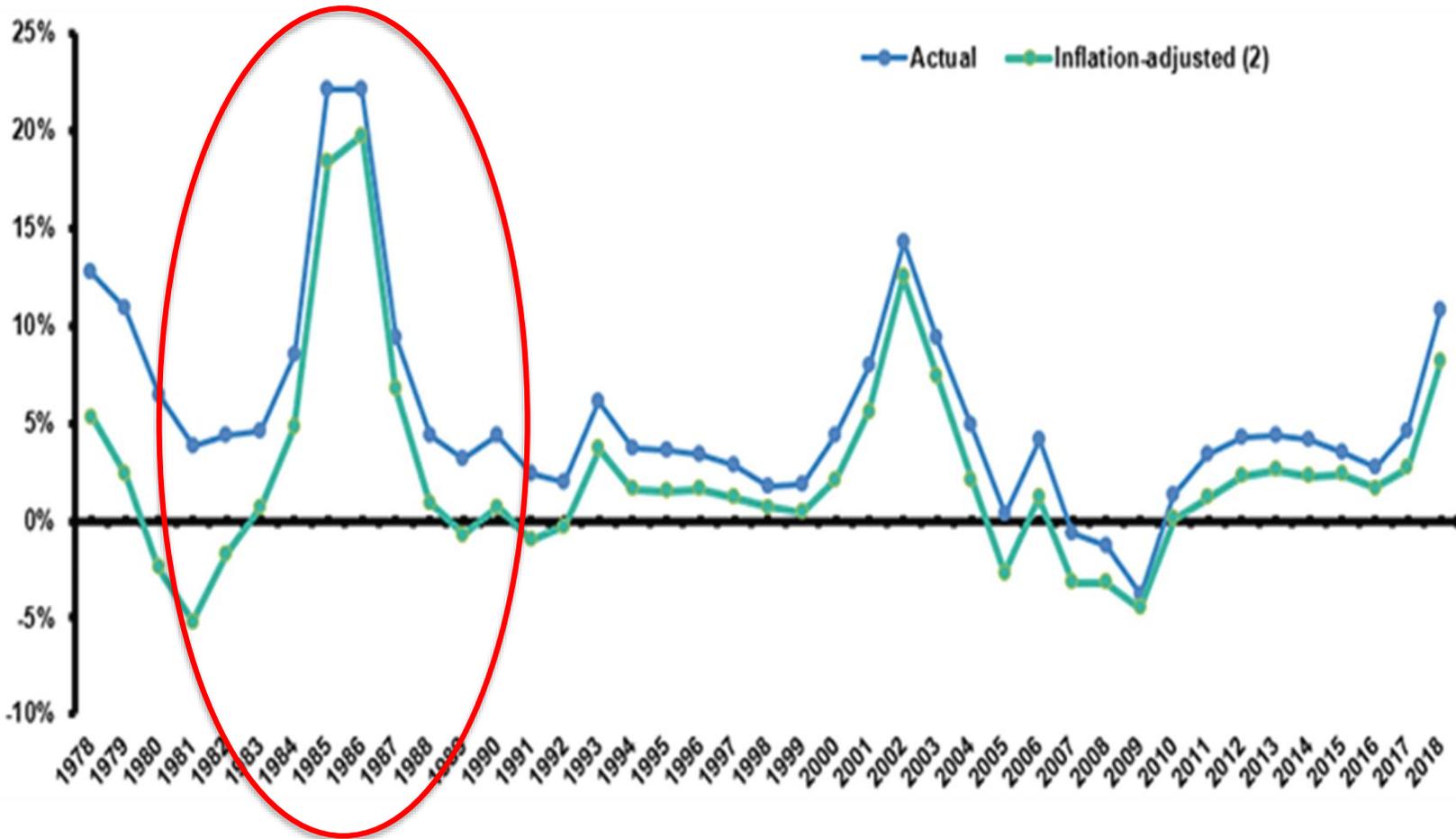
- \$75 million (verdict)
- \$75 million (settlement)
- \$48 million (settlement)
- \$32 million (verdict)



# Historical Insurance Reactions



# The P/C Insurance Market Cycle



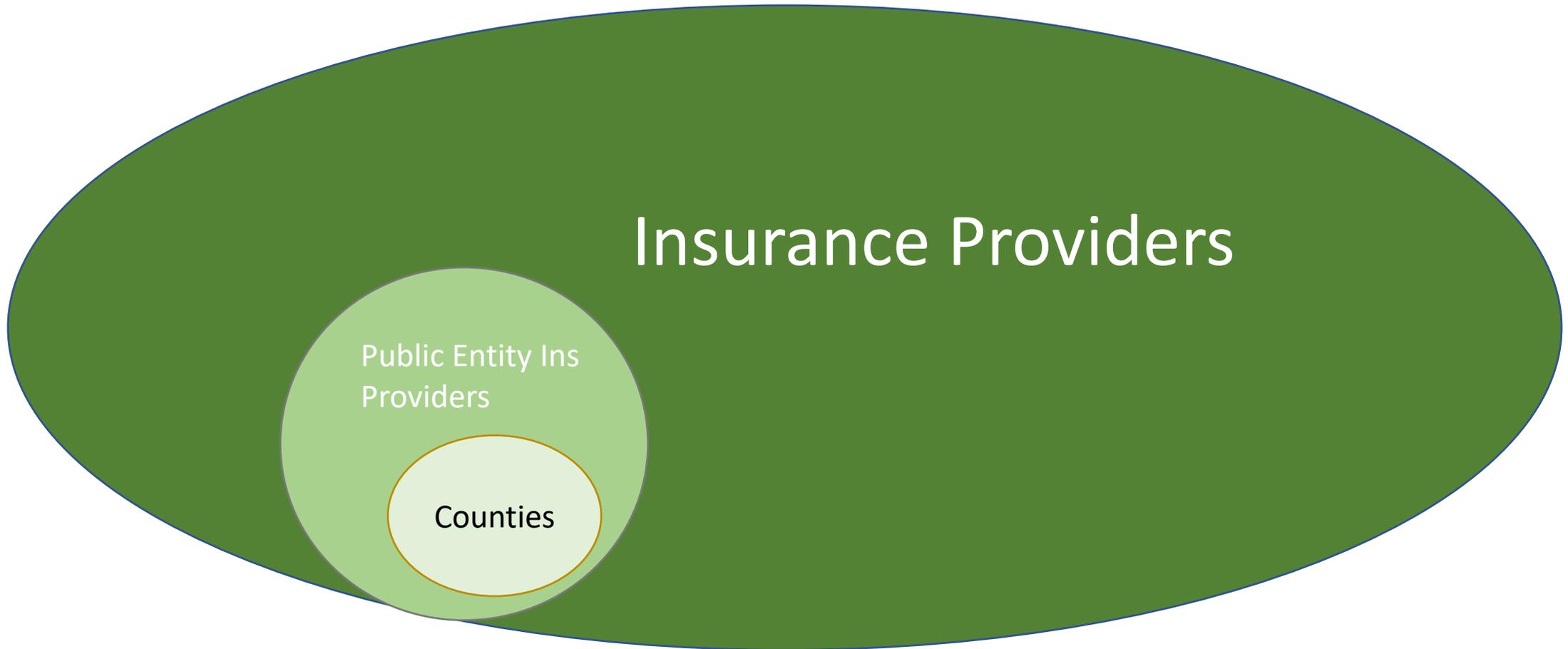
# Hard Market



Characterized by decreased limits, increased retentions and sky-high premiums and in some cases no coverage at all



# Insurance Market





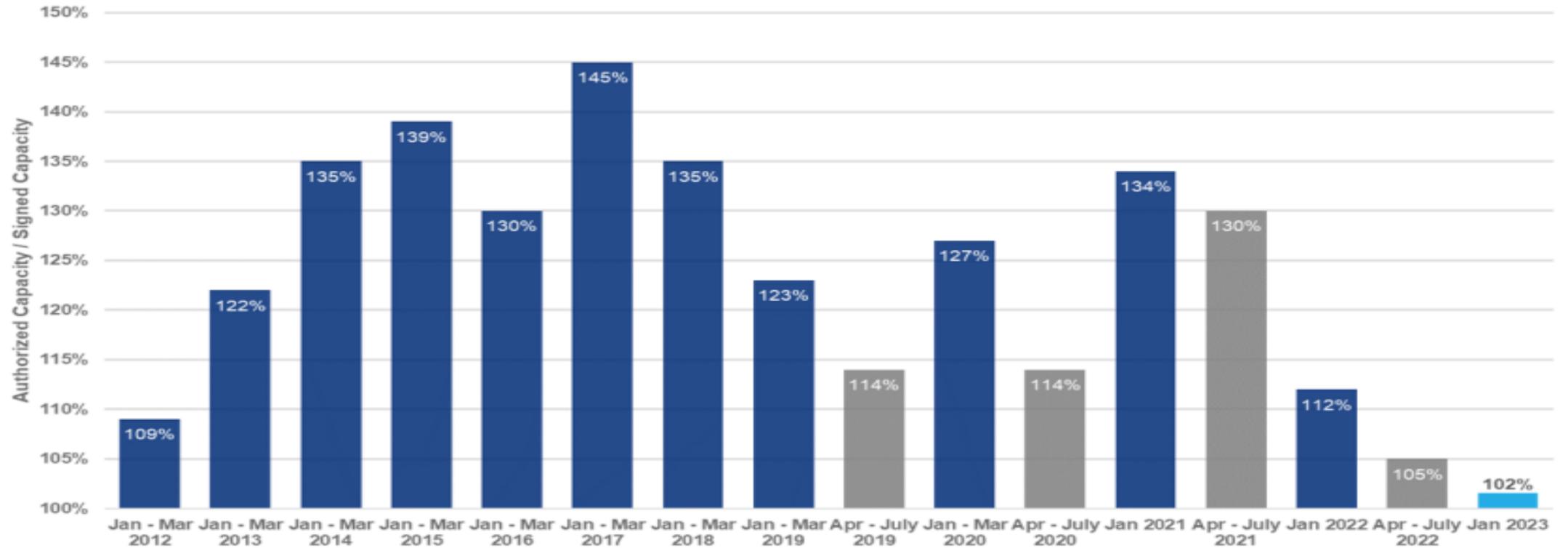
# Buyers versus Sellers



# Insurance Market Factors

## US Property Catastrophe Excess Capacity

1/1/2023



*Lowest levels of excess capacity seen in recent history*



# Insurance Market Factors

**Catastrophic storm activity last 3 years**

**Liability claim settlements increasing dramatically**

**Inflation affecting cost of reconstruction, vehicle and equipment replacement**

**Unfavorable investment returns**

**Investment capital leaving insurance market for other opportunities**

**Less about individual experience and more about market dynamics**





## Current Issues

# Staffing

- Recruitment & Retention
- Training and Vanishing Institutional Knowledge
- Employment Related Litigation





# Emergency Services

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- **Uncertainty of Standards and Expectations**
- **Litigation**
- **Direct Injuries and PTSD Potential**
- **Vehicle Exposure**
- **Continuity Planning**
- **Detention Center Needs and Requirements**

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More than \$3.2 billion spent over the past decade to resolve nearly 40,000 claims at twenty-five (25) of the nation's largest police and sheriff's departments.

As the number and size of verdicts against government actors grows, fueled in part by a desire for social change, insurers will continue to be asked to carry the load.

# Law Enforcement

A straight monetary analysis fails to consider two critical points:

Law enforcement officers are asked to perform their jobs in some of the most dangerous and high-pressure situations imaginable, and

Law enforcement officers must make decisions quickly and with the knowledge that the wrong decision will result in civil or criminal exposure.



What Lies  
Ahead?

# Thank You



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