Pushing the Limits: An Examination of Liability Insurance Limits for National Park Service Concessioners

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On Behalf Of:

America Outdoors Association

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Executive Summary

Recently the National Park Service has been significantly increasing liability insurance limits for certain outdoor recreational activities in some National Parks. Occurrence and aggregate limits have climbed to $5 million or more for activities such as whitewater rafting and horseback riding. This study attempts to ascertain the impact these limits will have on concessioners and visitors, both now and in the immediate future. Key findings:

- The limits appear inconsistent with and much higher than limits for similar activities at other federal entities, the Bureau of Land Management and the Forest Service.
- The limits also appear to be inconsistent from one NPS concession to another. They also appear internally inconsistent, with certain activities in a concession requiring much higher limits than others.
- The limits will put a significant financial strain on the hundreds of private firms that provide the public with recreational activities on NPS land.
- Concessioners could be forced to buy more coverage than NPS requires, because of the structure of the umbrella policy in the insurance marketplace.
- The limits put private concessioners at a disadvantage with certain nonprofit entities, which generally are not required to have insurance or any other type of authorization for the same or similar activities. This lack of consistency will tend to push park visitors into using unregulated services that may lack insurance or have inadequate risk management, precisely the opposite of the NPS' high-level service goal.
- Though data are thin, they suggest that few claims have the potential to settle for amounts approaching the new NPS requirements. If these limits are implemented, it appears the benefits to either NPS or to a few of its visitors will be outweighed by both the costs borne by concessioners and the opportunities that literally thousands of park visitors will miss out on.

- Insurance prices are currently at a low point. When they rise, they will rise sharply, probably 50% or more, perhaps to the point where – if these limits are adopted throughout the park system - concessioners will be forced out of business.

- At the same time that insurers raise prices, they will restrict the availability of coverage. Some concessioners will be unable to obtain coverage at any price, as insurers pull back from the perceived higher risks of outdoor recreation business.

- The affordability and availability problems will affect both large corporate concessioners and smaller, family-run ones. However, the smaller firms will face a greater challenge to survive, as they lack the financial resources to weather the five to 10 years that can pass before an insurance crisis is resolved.

The net result appears to have the potential to severely restrict the public's ability to enjoy the spectacular open spaces and unique recreational opportunities that are the hallmark of the national parks.

Governmental entities at all levels in the United States have set aside space for parks, forest preserves and other outdoor spaces. Towns and counties have park systems, and every state has its own park service.

Many use private companies, concessioners, to deliver services. This allows the "invisible hand" to maximize the delivery of services efficiently while providing financial benefits to the public institution. These concessions operate under formal contracts or other forms of authorization that allow a concessioner to perform a specific operation on a specific property for a given amount of time. The concessioner must fulfill obligations so that its operations are consistent with the missions of the organization that grants the concession.

But concessioners, like all persons and businesses, are bound by common law to avoid a breach of civil duties owed to their customers. Government entities typically require the concessioner to purchase liability insurance to protect the government's

interests, and those of the concessioner's customer.

The National Park Service, for example, requires insurance to:

> 1. Provide reasonable assurance that concessioners have the ability to cover bona fide claims for bodily injury, death or property damage arising from an action or omission of the concessioner
>
> 2. Protect the government against potential liability for claims based on the negligence of its concessioners and
>
> 3. Enable rapid repair or replacement of essential visitor facilities which are damaged or destroyed by fire or other hazard.[1]

For this paper, we will look at the insurance requirements of three large federal entities controlling space for public recreation: the Bureau of Land Management, the United States Forest Service and the National Park Service. Together they control more than 500 million acres – more land than all of Mexico.

The Bureau of Land Management is the largest, administering more than 245 million surface acres, mainly in the Western United States and Canada. Its mission is to manage this land for a variety of uses - from timber harvesting to energy development - while "protecting a wide array of natural, cultural and historical resources." Its National Landscape Conservation system includes more than 200 wilderness areas covering 8.7 million acres and 16 national monuments covering 4.8 million acres.[2]

The United States Forest Service, part of the Department of Agriculture, manages 193 million acres of public lands in national forests. The organization sums up its mission: "to help people share and enjoy the forest, while conserving the environment for generations yet to come."[3]

The National Park Service controls 84 million acres of land, another four million acres of lakes, oceans and reservoirs, 85,000 miles of rivers and streams and more than 40,000 miles of shoreline.

NPS's mission is "to promote and regulate the use of the . . . national parks . . . which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

It receives more than 275 million visitors a year.[4]

The three organizations differ in the territory they administer and their focus. But all three provide outdoor recreation opportunities. Each authorizes concessions or permits.

Each requires the concessioner to carry a variety of insurance coverage and to practice risk management appropriate for the activity.

NPS is undergoing a transition on the limits it requires. Federal legislation passed in 1998 required NPS to revisit its process of awarding concessions. The legislation did not require a change in insurance limits, but that is one change that NPS is adopting. The new limits are being phased in as concessions are renewed.[5]

The new limits are significantly higher than they had been. They have resulted in limits significantly higher than those of the other federal organizations.[6]

Recent NPS concessions have sought a $5 million aggregate limit, sometimes more for activities such as fishing, horseback riding and float trips. Some examples:

An NPS prospectus for a tour boat/snorkeling concession at Buck Island, in the Virgin Islands, requires a $6 million per occurrence, $7 million aggregate limit.[7]

A concession to operate a dude ranch at Grand Teton National Park requires a $5 million per occurrence, $5 million aggregate limit for recreational activities. A proposal for another concession requires $11 million aggregate limits.[8]

Yet, not all NPS concessions require limits in excess of $5 million. A collection of horseback riding concessions at Rocky Mountain National Park requires an occurrence limit of $1 million and an aggregate limit of $2 million.[9] NPS indicates that insurance requirements are tailored to each concession, through a process that will be described below.

Comparisons with BLM, Forest Service

A $5 million limit appears considerably larger than the limit required of BLM and USFS concessioners. A $5 million occurrence limit is 10 times the limit required for the vast majority of concessions at the Bureau of Land Management. The $5 million

aggregate limit is five times the BLM norm. BLM tiers its limit requirement to the riskiness of the activity. The table of requirements is reproduced here:

Event or Activity	**Occurrence Limit**	**Aggregate Limit**
Low risk: general non-competitive and non- commercial activities such as group camping, group activities, mounted orienteering, backpacking, or dog trials.	$300,000	$600,000
Moderate Risk: whitewater boating, horse endurance rides, OHV events, mountain bike races, rock climbing (with ropes), ultra-light outings, rodeos	$500,000	$1,000,000
High Risk: bungee jumping, speed record events, unaided rock climbing, heli-skiing, or aviation assisted activities	$1,000,000	$2,000,000 to $10,000,000

BLM defines riskiness this way:

> Authorized uses are considered low risk when injuries generally associated with authorized activities are not likely to result in death or permanent disability. Authorized uses are considered high risk when injuries generally associated with authorized activities may result in death or permanent disability.[10]

The $5 million aggregate is more than twice as high as the maximum required by the U.S. Forest Service. The service publishes a table listing limit requirements for specific activities. The highest minimum aggregates are $2 million, mainly for ski-related activities – alpine skiing, ski slopes and lifts – tramways and aerial activities involving two or more people. At the Forest Service, the standard occurrence limit is $100,000 and the standard aggregate is $300,000.

For whitewater rafting, the limits are $500,000/$1 million for Class IV and Class V rapids and $500,000/$500,000 for Class I through Class III. For rock climbing, hunting and equestrian activities, the aggregate limit is $500,000. For most other activities, the aggregate limit is $300,000. Per person limits vary between $25,000 and $50,000 – less than 1 percent of the $5 million per occurrence limit NPS sometimes requires.

The forest supervisor has discretion to increase the limit, depending on the

circumstance. In recent years, minimum limits appear to have moved to $1 million aggregate, from $500,000, in some moderate-risk cases.[11]

NPS is aware of the discrepancy between its guidelines and those of other government organizations. The park service indicates it requires higher limits because it is a higher profile governmental unit than the BLM or Forest Service.[12]

Original NPS Guidelines

The guidelines for setting insurance requirements on concessions were written in 1985 and last updated in 1987. They are still technically in force but are being re-written. They are often superseded. Because they are guidelines, there is no requirement to follow them, as there would be with a regulation.[13] However, the approach they take and the principles they enunciate are worth examining and comparing with current practice.

The guidelines suggest a $300,000 occurrence limit and a $500,000 aggregate limit in cases where no more than one person "can reasonably be expected to be injured in any one occurrence. For example, small canoe rental and horseback riding operations." (sic)

The guidelines published the following minimum limits table:[14]

Persons at Risk	Per Occurrence	Aggregate
Single	$300,000	$500,000
Up to 3	$500,000	$1,000,000
4 to 10	$1,000,000	$2,000,000
11 to 20	$2,000,000	$3,000,000
More than 20	$5,000,000	$5,000,000

They noted the "state of flux" the insurance industry was in at the time and so allowed minimum coverage to be revised "to keep abreast of new developments without waiting for renewal or amendment of the contract."

In addition to the above recommendations, the guidelines give the following advice:

> A visitor using concession facilities authorized by the National Park Service has the right to expect that the operator has the capacity to pay a bona fide

> claim which results from the concessioner's act or omission. Insurance should be sufficient in scope to cover all potential risks and in an amount that can reasonably be expected to be awarded in the event of serious injury or death.[15]

The guidelines recommend that the party selecting a limit consider the number of persons exposed to a risk and how many of those people are likely to escape:

> It is unlikely that all the guests in a hotel, even in the same wing, would be trapped by a fire. It is reasonable that a higher proportion of the passengers on a tour boat would be affected by an accident, and it is also reasonable that an even higher proportion of rafting participants would be affected.[16]

In other words, a limit didn't depend on how risky the activity was. It depended on how many people were at risk. The guidelines noted that riskier activities would command a higher premium, but that was a matter for the insurance company and the concessioner. However, NPS does not appear to be following this guideline.

Current NPS Practice

Currently, the setting of limits is tailored to each concession. For each concession, NPS:

- Determines the scope of activity. Rafting, for example, would include providing reservation services, selection of guides, transportation of the visitor to the put-in site, the actual rafting experience and transportation back to the original location.
- Identifies the insurance limits required for the operation. NPS works with insurance broker Aon Benfield. For each concession, Aon collects information on the nature of the risk. It issues a report of recommendations for the concession.
- Examines the potential profitability of the concession. One of the expenses is liability insurance. Aon ensures the insurance required is available in the market. Overall, according to NPS, the proposal must give the concessioner a reasonable opportunity to make a profit. As such, NPS tries to set insurance limits so that the concessioner could obtain coverage, cover other costs and still profit.
- Those recommendations are considered in assembling a concession proposal. The concession is put out for bid.[17]

This process does not appear to follow the original guidelines regarding the ability to cover injuries in case of serious injury or death, or whether the limits are tailored, not to the riskiness of the activity, but to the number of people likely to be injured in an accident. Inconsistency seems to exist, even from coverage to coverage within the same concession.

For example, a concession to operate snorkeling services at Buck Island Reef National Monument includes the following occurrence limits:

- Automobile liability: $1 million
- Watercraft: $5 million
- General liability: $6 million[18]

A typical snorkeling trip would operate something like this: The concessioner would bus a set number of guests to a site. In case of accident, the auto liability policy would respond to a claim. The same number of guests would be taken by boat to the snorkel site. In case of a boat accident, the watercraft policy would respond. At the site, they would be put in to snorkel. An accident there would trigger the general liability policy.

Using the original NPS guidelines, it would seem the general liability limit should be the lowest, since a snorkeling accident would likely be the injury or drowning of an individual. And it would seem the auto liability policy would have the highest limit; an auto accident is more likely to result in multiple injuries. Yet the concession proposal requires the opposite. The auto liability limit is one-sixth the general liability limit.

Individuals investigating this matter have heard a number of reasons for why limits are set as they are. None of them appear to follow the longstanding NPS guidelines, or any other published guidelines.

The reason for the inconsistency might be clear from Aon's analysis of the concession. The author has attempted to obtain a typical Aon analysis. The National Park Service has not been able to provide one, citing concerns over revealing concessioner financial information. An attempt to obtain a redacted version that would overcome this concern had not been resolved as of deadlines required for this paper.

Obtaining coverage

Concessioners, agents and insurance executives indicate that few insurers offer $5 million limits for outfitting and guiding activities in backcountry settings. Concessioners will be forced to cobble together excess coverage. The typical way to buy this cover will force concessioners to purchase even more coverage than NPS requires.

Excess coverage is usually provided through an umbrella policy. As the name suggests, an umbrella provides coverage in excess of several underlying policies. For the above example, the concessioner would likely buy three policies – auto liability, watercraft liability and general liability – and each would have a $1 million occurrence limit. A fourth policy, the umbrella, would cover losses in excess of $1 million, up to $6 million on events originally covered by one of the underlying policies.

The concessioner would end up with the following limit structure:

- Automobile liability: $6 million
- Watercraft: $6 million
- General liability: $6 million

Note that the auto liability limit is $5 million higher than NPS would require. The watercraft limit is $1 million higher. The concessioner is, in essence, forced to purchase more coverage than NPS required, because of the structure of the insurance marketplace.[19]

And coverage will cost considerably more than the typical $1 million/$2 million limit. Usually prices for excess insurance are stated as a percentage of the premium for a standard $1 million/$2 million policy, sometimes referred to as the base premium. Although prices can vary, the next million of coverage costs about 20 percent to 30 percent of what the base premium costs. The next million costs about 10 percent to 15 percent of the base premium. And each additional million costs another 10 percent to 15 percent of the base premium.[20]

However, umbrella policies, like most insurance, are subject to a minimum premium, typically around $1,500. No matter how little the actual rate-based exposure, the umbrella

will cost around $1,500. For a small concessioner, this could create a considerable hardship.[21]

The exact amount will vary considerably. One concessioner had to pay $29,000 to increase its coverage limit to $5 million from $3 million. That was more than 50 percent higher than the amount charged for a $3 million limit.[22]

That is an unusually high premium for excess cover in today's market, but the concessioner had a unique circumstance. It conducts business at an NPS area – Grand Teton National Park – a Forest Service property – Bridger-Teton National Forest - and on private property. Few insurers were interested in insuring such a broad exposure. The dearth of competition drove premium higher. Competition is thinner at higher limits, so swings in premium are far more common. Note also that the NPS requirement has forced the concessioner to purchase more coverage for its USFS exposure than it needs.

It is reasonable to assume that increasing limits to $5 million will increase a concessioner's insurance costs by 50 percent in the current market environment. That will either force the concessioner's operating income lower or force it to raise prices, which are usually subject to NPS approval. Higher prices would put it at a disadvantage against certain similar services provided outside National Parks and with some non-profit organizations operating in parks, which may not be required to purchase insurance at the same limits. Since most consumers are cost-conscious, the increased limit could, ironically, encourage consumers to purchase services from organizations that do not have the liability protection, risk management protections and higher levels of service that NPS wants visitors to enjoy. Title IV, Sec. 418 National Parks Service Concessions Improvement Act of 1998 exempted many not for profit groups from the requirement to obtain an authorization unless their services produce taxable income.

How much protection is needed

It is worth noting that claims in excess of $1 million are unusual in the insurance industry. It is difficult to analyze outdoor recreation claims separately. The market is divided among many carriers, and claims data is closely held proprietary information. Moreover, the market is small – some estimates say less than $10 million a year in

premium. So even a complete data set might be too small to draw statistically meaningful conclusions.

Information from several sources, though, indicate that losses in excess of $1 million are exceedingly rare. No source could recall a claim as high as $5 million.

An agency representing the Worldwide Outfitter and Guides Association, a risk retention group, indicated that in 30 years that organization has not incurred a claim as high as $1 million – out of the more than 5,000 it has handled. Western World Insurance Group, another long-time insurer in the field, also indicates it has never paid a $1 million claim. A managing general underwriter in the field, K&K Insurance Services, indicates it has had claims around $1 million. The largest single claim, from an accident that was not on National Park Service grounds, reached $4 million.[23]

Volatility in insurance prices

In creating concessions that can last as long as 10 years, it is important to consider the volatility of insurance prices. A collection of polices offering $5 million limits could double in price, seemingly in an instant, as a result of the volatility in the insurance market – particularly in higher risk markets like outdoor recreation.

The original NPS guidelines were drawn up fully recognizing that volatility. They noted the "state of flux" the insurance industry was in at the time and so allowed minimum coverages to be revised "to keep abreast of new developments without waiting for renewal or amendment of the contract."

It appears that the original guidelines – tiering limits according to the number of persons at risk - were abandoned almost as soon as they were promulgated. Interviews with industry veterans indicate the standard limit for whitewater rafting - a decent benchmark for higher-risk outdoors activity - quickly became $300,000 per occurrence and $500,000 in aggregate, regardless of the number of persons at risk. The state of the insurance industry at the time (the mid-1980s) provides important insight into why this likely came to pass and may foreshadow what could happen over the next few years.

The mid-1980s are well-remembered in insurance for the liability crisis that made it

extraordinarily difficult for businesses to purchase insurance. When businesses could buy, rates were often double or triple what they had been a year or two earlier.

The situation was so dire that 25 years later, journalist Judy Greenwald wrote a retrospective this year for Business Insurance magazine. It began:

> Risk managers, brokers and others who lived through the mid-1980s liability crisis remember it as a frantic time as everyone engaged in often futile efforts to obtain insurance coverage that frequently was not available at any price.[24]

Examples are legion. A Massachusetts manufacturer of soccer and lacrosse equipment saw his premiums rise to $200,000, from $8,000.[25] Liability premium for the Rochester (N.Y.) Lilac Festival rose 400 percent, and organizers only got insurance by agreeing to drop its fireworks display and canceling three of its evening concerts.[26]

A scholarly work at the time catalogued "drastic" increases for products and services as varied as vaccines, general aircraft, sports equipment, obstetrics, ski lifts and commercial trucking.[27]

The recreation industry – which includes recreational outfitters - suffered, perhaps more than most industries:

> In the past year, insurers have cancelled policies midterm, or increased rates by 200 percent to 400 percent or more. In other cases, insurers are not even bidding on good risks. As a result, the private leisure providers have been forced to either limit, discontinue or substantially raise the price of the leisure services they provide. . . .[28]

Chicago removed playground equipment. Wheeling, W. Va., stopped renting horses. The famous Cyclone Roller Coaster on Coney Island shut down because its owners could not find the $3 million limit the city of New York required of it.[29]

Outfitters on federal lands were hurt, too. Canyoneers Inc., a small company that offered whitewater trips through the Grand Canyon lost coverage when the policy it held, through the National Forest Recreation Association, was canceled when its insurer stopped writing whitewater risks.[30]

Gaylord Staveley described the situation in a letter to Sen. Barry Goldwater:

The National Park Service requires us to procure $2,000,000.00 in liability

> insurance for each of 20 companies. . . . Of the 20 companies, 9 have no insurance, and no source of any on the horizon . . . No Grand Canyon river concessioner has possession of a liability insurance policy that carries through the 1986 visitor season.[31]

There is some evidence the service waived liability requirements for 1986.[32] Although this solution helped the outfitters, it was suboptimal for consumers, whose recourse would have been severely restricted had they been injured on a trip.

Even today, the park service can change limits to accommodate a hard market, even in the middle of a multi-year concession. In the meantime, concessioners would have to bear the business and political risk that the bureaucratic solution would arrive in time to help.

It is important to note that the liability crisis had two components - availability and affordability. When an insured could find coverage, it was extraordinarily expensive. Often, though, there was no cover to be found.

As discussed further below, there is no consensus on what caused the crisis. And the market has undergone similar gyrations since then, if not so extreme. A similar contraction occurred in the early 2000s, during which the availability of insurance for outfitters diminished significantly and premiums rose dramatically.

The availability/affordability problem haunts property-casualty insurance. The phenomenon of lurching from increased rate/decreased availability to decreased rate/increased availability is called the insurance cycle. It has been widely studied in the academic literature.

Even today, the industry is prone to sudden, sharp increases in rates and decreases in availability. It happens every 10 to 20 years. It is known as the “hard” phase of the market. It lasts two or three years, and it is all but inevitable.

After a few years of increased rates and decreased availability, rates decrease for several years – sometimes a decade or more, and coverage becomes more available. This is known as the “soft” phase of the market.

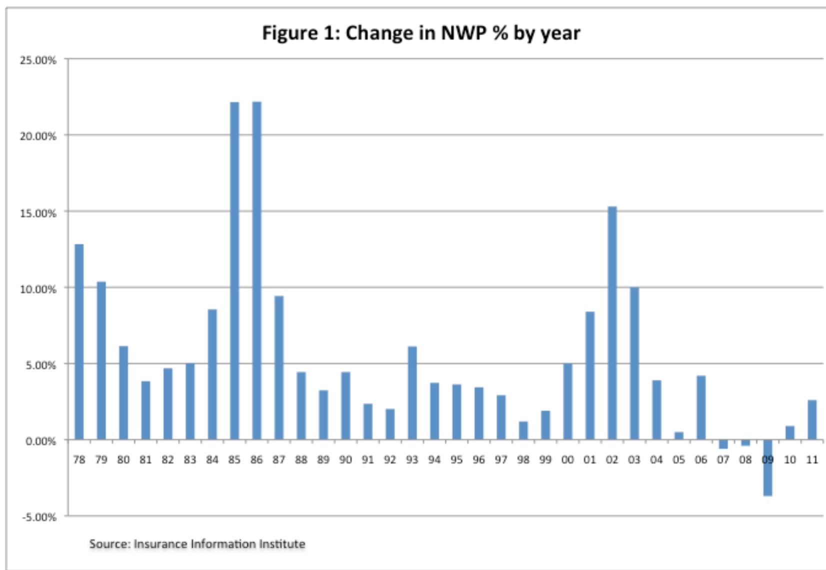
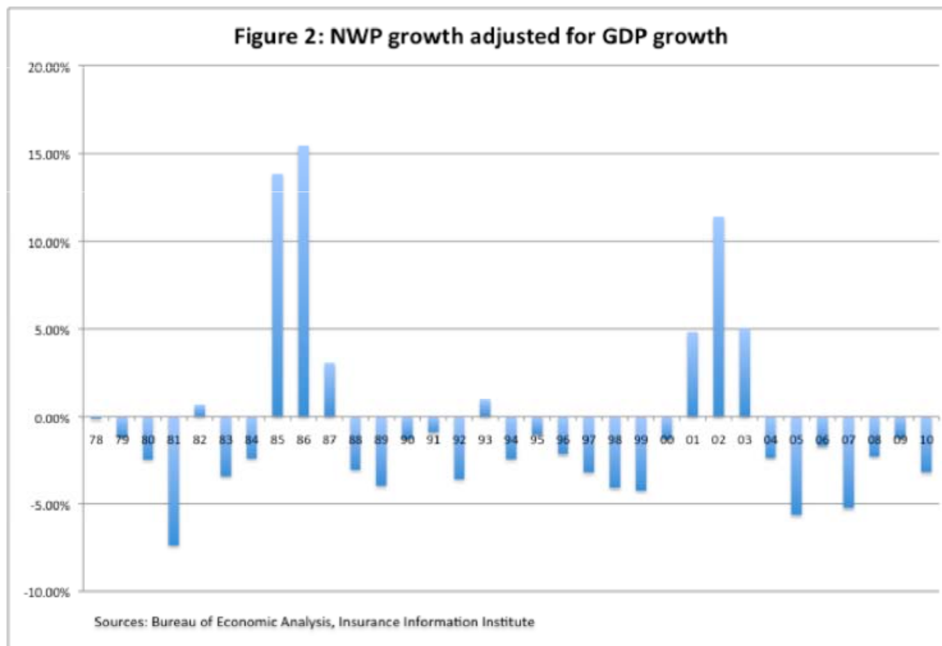


Figure 1 shows the insurance cycle. The figure shows year-on-year change in net written premiums in property-casualty insurance. As a mature industry, insurance experiences long-range growth in insurance sales (premiums) at about the same pace as the economy. So industry premium rises most years, just as gross domestic product does. However in a few years - 1985 to 1987 and 2001 to 2003, growth is substantial. These are hard market years.

Figure 2 shows the phenomenon more clearly. It is the change in annual premiums, adjusted for growth in gross domestic product. In most years, premium growth lags GDP growth. These are generally years with rate decreases. Rate increases generally occur in years where the change is greater than zero.



Note how the insurance market cycles with a few hard market years of steep increases followed by many years of rate decreases. Also note that the change is negative for the past seven years. The insurance cycle is in its soft market phase.

There is little conclusive evidence what causes the cycle.[33] This means that it is difficult to determine when the cycle will turn. However, there is evidence the current market is near its ebb.

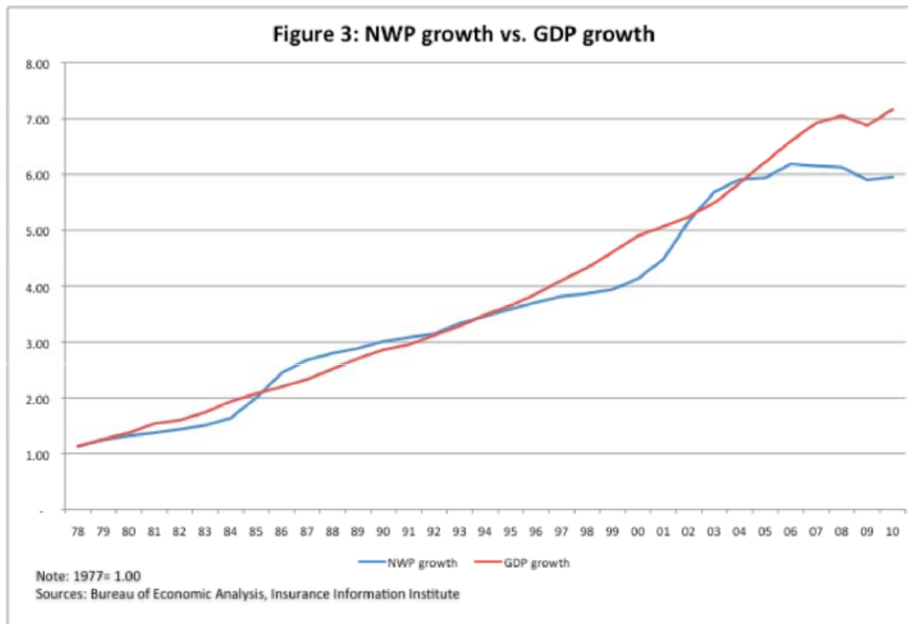


Figure 3 shows the cumulative growth in industry premium (the blue line) vs. the cumulative growth in gross domestic product (the red line). Note that over the long term, the two correlate highly; one line never strays far from the other. Also note that currently the blue line - premium - lags GDP. History indicates that premium will return to the trend line set by GDP. The gap, seen at the far right of the chart, is quite large, so it would seem steep price increases are imminent.

Wang, et al. discuss the dynamics of the cycle and summarize theories about it.[34] They note that the creation of a hard market is sudden and sharp. Rates go from the bottom to the top quickly - a 20 percent rise in three years for the entire property-casualty market is not unusual. The hard market that began in 1985 lasted three years, and rates rose around 30 percent.

Though significant, a 30 percent increase might well be borne by insurance buyers. But hard markets affect some buyers more than others. Large lines like personal automobile and homeowners insurance, insulated by heavy regulatory requirements, are not affected much.

The most volatile risks, including most outdoor recreation firms, operate in a separate segment of the insurance industry, the surplus lines market. Rates are not regulated. Here, market forces rule. Insurers charge and customers pay what the market will bear. The

result: Prices gyrate. When they are low, they are exceedingly low. When they are high, they are extraordinarily high.

When a soft market lasts long enough, a few outdoor recreation risks find their way out of surplus lines into the standard insurance market, as standard carriers take on riskier business to keep their premiums from falling. That is happening right now. In fact, the current presence of standard carriers writing niches within the recreation market is itself evidence that the insurance cycle is near its ebb – implying that prices are as low as they will be and availability as great as it will be.

When the market hardens, standard carriers will re-tighten their underwriting, and the outdoor recreation risks that entered the standard market will return to surplus lines.[35]

The last hard market began around 2000 or 2001. Rates rose 30 percent in a single year for outdoor recreation risks with a favorable claims history and doubled for accounts with poor claims history. The overall average was 60 percent, spread over three years.[36]

At the time, Rough Notes magazine noted that obtaining coverage – the availability issue - was a problem across the recreation ("play for pay") industry. Standard carriers had dropped out:

> Many of these markets have disappeared, mostly due to lack of expertise in the ability to provide coverage, loss control and efficient claims handling. Without these elements, this class of business can reach deep into your loss ratios. The current firming of our industry is a contributor to carriers deciding that maybe they didn't know enough about pay for play risk after all.[37]

Most concessioners were able to find insurance, though industry experts indicate that would probably not have been the case had they been forced to purchase limits above $2 million.[38] At one point, many whitewater rafting concessioners could only find insurance through an off-shore captive, Recreation Insurance Association, which was later forced to shut down because of lack of reinsurance.[39]

The hard markets of 1986 and 2002 were not aberrations. Markets like them will happen again. There is substantial evidence one has begun, or will begin in the next two years. If it does, it will come when many travel-related businesses will likely be unable to pass along the costs for higher premiums because of weak demand and low inflation in

the overall economy.

There are signs rates are beginning to rise. Figure 4 shows that quarterly commercial lines insurance pricing showed a 1 percent increase in the second quarter of 2001, compared with the year-ago period. Though small, it is the first notable increase in seven years.[40]

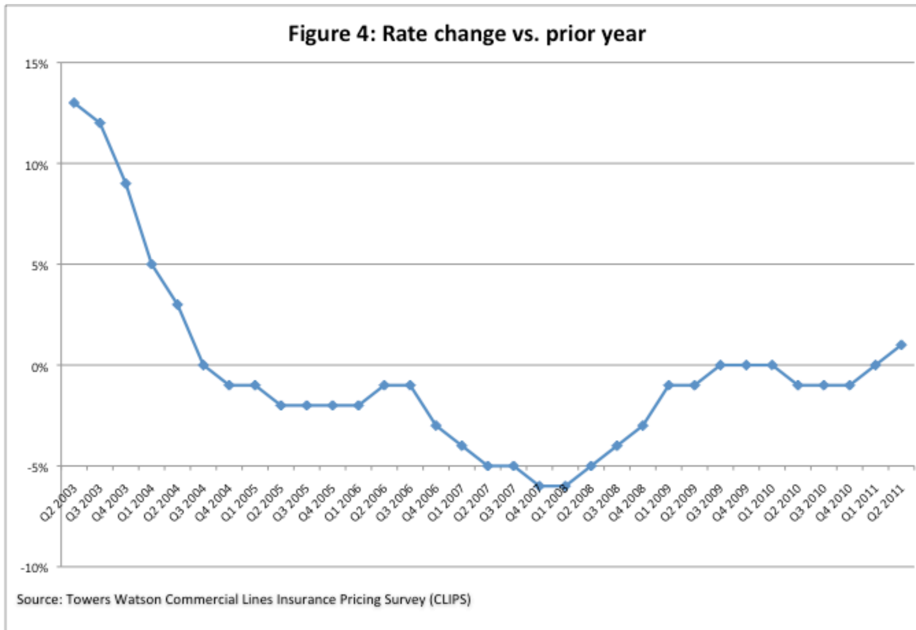


Figure 4: Rate change vs. prior year

Source: Towers Watson Commercial Lines Insurance Pricing Survey (CLIPS)

More recently, Travelers and Chubb, two major property-casualty insurers, reported increases between 4 percent and 5 percent on renewal business.[41]

We don’t know when the market will harden. But it will happen. And the dynamics will repeat to a greater or lesser degree, what happened in 1986 and 2002. Rates for business insurance will rise. Some businesses will lose coverage.

Businesses perceived as high risk, like outdoor recreation, will suffer more than most. Rates will climb higher, rising perhaps 50 percent or more. Less coverage will be available. For some classes, a $5 million limit may not even be available.

The hard market may provoke a shakeout among the outdoor recreation industry. Smaller concessioners could find it difficult to afford high-limit insurance and may not be able to obtain any. They could struggle with this situation for the five to 10 years a hard market takes to move to a more affordable stage. The concentration of large, corporate interests in NPS concesssions could grow.

Summary

Requiring higher limits is inconsistent with other requirements for outfitters, guides and permit holders at properties managed by other federal entities. It will create financial challenges in the current insurance environment that could ultimately threaten the quality and even the availability of services provided by many outfitters and guides The cost of coverage will put private sector concessioners at a competitive disadvantage with some non-profit operators in national parks, who may not be required to provide services with any authorization. Once the market undergoes its inevitable hardening, the concessioners' challenges will escalate.

NPS is already attempting to raise concession fees for some contracts. Requiring increased insurance costs will put services provided by adventure and outdoor recreation concessioners at risk. Some providers could be forced to curtail activities on NPS lands or go out of business. Either way, NPS will encounter difficulty in achieving part of its fundamental purpose, to provide for the public enjoyment of America's natural heritage.

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[1] National Park Service Guidelines, *NPS 48 - Concessions, Release No. 2, Amendment No. 2*, (April 1987) Chapter 23, p. 1

[2] Data found at: http://www.blm.gov/wo/st/en/info/About_BLM.html

[3] Information found at: http://www.fs.fed.us/aboutus/meetfs.shtml

[4] Quotation from *National Park Service Organic Act*, 16 U.S.C. 1, found at: http://www.nps.gov/legacy/mission.html. Data found at: http://www.nps.gov/aboutus/index.htm

[5] Author interview with Kurt Rausch, branch chief, contract management, commercial services program, National Park Service, Oct. 19, 2011.

[6] There are two basic limit structures – a combined single limit or a split limit. A policy with a combined single limit, the insurer will pay all claims until the sum of those claims reaches the policy limit.
A policy with a split limit has an aggregate limit similar to the combined single limit. It signifies how much the insurer will pay for all claims over the policy period. In addition, it has one or more sublimits. The occurrence sublimit tells how much an insurer will pay in total for all claims stemming from one event. The per person sublimit tells how much an insurer will pay one aggrieved party in an event. For example, a 25/50/100 policy, the insurer will pay no more than $100,000 in losses across the policy period. It will pay no more than $50,000 for losses stemming from one event, and it will pay no claimant more than $25,000.

[7] National Park Service, *Business Opportunity For Interpretive Scheduled Tour Boat Services with Guided Snorkeling and Other Services For Buck Island Reef National Monument* CC-BUIS001-12, p. D-1

[8] National Park Service, *Business Opportunity to Provide Dude Ranch*

Operations, including Lodging, Retail, Food and Beverage Service and Recreational Activities, CC-GRTE15-10, p. D-1; National Park Service, *Solicitation for proposals for a Concession Contract to provide Dude Ranch Operations, including Lodging, Retail, Food and Beverage Service and Recreational Activities within Grand Teton National Park,* CC-GRTE004-12.
[9] National Park Service, *Business Opportunity For Guided Horseback Rides within Rocky Mountain National Park* CC-ROMOXXX-12, p. D-1
[10] U.S. Bureau of Land Management, *Recreation Permit Administration Handbook*, H-2930-1, pp. 45-46. The handbook notes that additional coverage should be required, depending on special circumstances.
[11] U.S. Forest Service Directives, *Forest Service Manual 2700 – Special Uses Management, Chapter 2710 – Preparing Special Use Authorizations*, p. 24. Information on higher limits from author interview with Mike Halpin, vice president, Lost Creek Ranch, near Jackson Hole, Wyoming.
[12] Author interview with Rausch, Oct. 19, 2011
[13] Author interview with Rausch, Oct. 19, 2011, and author correspondence with Rausch, Oct. 21, 2011
[14] NPS 48, Chapter 23, p. 19
[15] NPS 48, Chapter 23, p. 12
[16] NPS 48, Chapter 23, p. 18
[17] The description of the current process comes from Rausch, author interview, Oct. 19, 2011. The insurance process is wrapped into a larger effort to create the concession proposal. In this paper, I focus on the process to establish insurance limits.
[18] National Park Service, CC-BUIS001-12, p. D-2
[19] It is possible to purchase coverage excess to just one policy, such as excess general liability. However, for risks like outdoor recreation, the excess policy typically offers limits of $1 million or $2 million. To achieve, say, a $5 million limit or more, a concessioner would still have to buy coverage on top of the primary and the excess policies. That coverage would continue to be from an umbrella policy.
[20] See for example, *XL Specialty Insurance Company Excess/Umbrella Liability Rating Plan*, pp. 3-5, Pennsylvania Department of Insurance filing tracking no. XLAM-127687010, found at:
http://www.insurance.state.pa.us/cgi/rf_filings.pl?l=QWxs&ty=UmF0ZQ&st=MTcuMDAyMCBDb21tZXJjaWFsIFVtYnJlbGxhIGFuZCBFeGNlc3M&sb=&so=&pg=1
[21] Author interviews with Mike Halpin; Rick Lindsey, president and CEO of Prime Insurance, Oct. 14, 2011; Jim Sattler, Oct. 11, 2011. He is principal owner of Sattler Insurance Agency, which has been operating in recreation markets since 1979; Author interview with Mike Fetchero, Oct. 5, 2011. Fetchero is vice president of specialty programs for CBIZ Inc. His organization handles insurance for more than 500 outfitter clients across the United States
[22] Author interview with Mike Halpin, vice president at Lost Creek Ranch, near Jackson Hole, Wyoming, Oct. 14, 2011.
[23] For Worldwide Outfitters and Guides Association, Rick Lindsey, CEO of Prime

Insurance, in correspondence with David Brown, executive director of America Outdoors Association, Oct. 24, 2011. For Western World, Brown, in correspondence with the author, citing Western World claims personnel, Oct. 28, 2011. For K&K, Lita J. Mello, senior vice president, recreation division, in correspondence with Mike Fetchero, Oct. 24, 2011. Fetchero is vice president of specialty programs for CBIZ Inc. His organization handles insurance for more than 500 outfitter clients across the United States.

[24] Judy Greenwald, *Buyers scramble amid insurance shortage*, Business Insurance, Jan. 23, 2011, found at: http://www.businessinsurance.com/article/20110123/ISSUE01/301239979#crit=liability

[25] Tamar Lewin, *The Liability Insurance Spiral: Costs Rise Prohibitively The Spiraling Cost of Liability Insurance*, New York Times, March 8, 1986, p. 35

[26] Robert Hanley, *Insurance Costs Imperil Recreation Industry*, The New York Times, May 12, 1986, p. 10

[27] Priest, George L., *The Current Insurance Crisis and Modern Tort Law* (1987). Faculty Scholarship Series. Paper 578. http://digitalcommons.law.yale.edu/fss_papers/578

[28] Bonnie Direnfeld-Michael, Ohio Department of Natural Resources, *The Liability Insurance Crisis: A Literature Search*, p. Others 2; cited in *The President's Commission on Americans Outdoors, A Literature Review*, Washington (1986), pp. Others 1-28

[29] President's Commission on Americans Outdoors, *Report and Recommendations to the President of the United States*, Washington (1986), p. 154.

[30] Joan C. Szabo, *No relief from the liability crisis*, Nation's Business, October 1986

[31] Testimony by George Staveley, *Hearing Before Subcommittee on the Consumer of the Senate Committee on Commerce, Science and Transportation*, 99th Congress, first session on S. 2129, Risk Retention Amerndments of 1986, p. 69

[32] Author interview with Rick Lindsey, president and CEO of Prime Insurance, Oct. 13, 2011. Lindsey ran an agency that handled Grand Canyon outfitters in the 1980s.

[33] Shaun S. Wang, John A. Major, Charles H. Pan, Jessica W.K. Leong, *U.S. Property-Casualty Underwriting Cycle Modeling and Risk Benchmarks*, Risk Lighthouse LLC and Guy Carpenter & Co., 2010.
Wang outlines four theories:
•Institutional lag: Actuaries estimate future losses based on historical information, adjusted for trends in loss inflation and claim frequency. But the losses themselves are only estimates, since the largest, most complex claims from older years are not settled when it is time to estimate what losses will be for the coming period. In addition, there can be regulatory delays between when a new rate is determined and a regulator allows it to be used in the marketplace. These lags mean that insurers will be slow to notice changes and slower in adjusting to

them.
•Competition: Some researchers have shown insurers display tendencies seen in the "winner's curse," where the winning bidder in an auction has overpaid. This will tend to drive prices lower, even in a rational market.
•Capital as supply: Insurers need capital as a cushion against underpriced business. A shock that reduces capital, such as a catastrophe, will reduce capital. The lack of supply then drives rates higher.
•Economic linkages: Insurers draw profits from investment income on the premium they hold while waiting for claims to settle. Thus, their results are subject to the economic cycle and the insurance cycle is the inevitable result.
Some theorists suggest that several of the above theories interact. Others have tested the prevailing theories and found that none explains underwriting cycles completely.

[34] Wang, et al., p. 5

[35] This is common knowledge in the insurance industry. A good overview is provided by Larry France, *Specialty Lines Markets—Umbrella coverages and rates feel the hardening market*, Rough Notes, July 2001, found at: Rough Notes, July 2001
http://www.roughnotes.com/rnmagazine/search/specialty_lines/01_07P84.HTM

[36] Author interview with Jim Sattler, Oct. 11, 2011. He is principal owner of Sattler Insurance Agency, which has been operating in recreation markets since 1979; Author interview with Mike Fetchero, Oct. 5, 2011.

[37] Larry France, *Market is firming for leisure risk*, Rough Notes, September 2001, found at:
http://www.roughnotes.com/rnmagazine/search/specialty_lines/01_09p114.htm

[38] Author interview with Mike Fetchero, Oct. 5, 2011

[39] Author interview with Mike Fetchero, Oct. 26, 2011. See also open letter to Paddlesports Industry Association members, March 23, 2004, found at: http://nt1.adventuresports.com/canoe/ppa/ria.htm

[40] Towers Watson, *Commercial Lines Insurance Pricing Survey*, September 2011, found at: http://www.towerswatson.com/research/2888

[41] See Bloomberg News, *Travelers Gains as Policy Sales Climb, Insurance Rates Increase,* Oct. 19, 2011, found at: http://www.bloomberg.com/news/2011-10-19/travelers-profit-falls-67-after-hurricane-irene-adds-to-catastrophe-costs.html; and Seeking Alpha, *The Chubb's CEO Discusses Q3 2011 Results - Earnings Call Transcript,* Oct. 20, 2011, found at:
http://seekingalpha.com/article/301041-the-chubb-s-ceo-discusses-q3-2011-results-earnings-call-transcript