



Jan 05, 2026

Categories:

[Publications](#)

Authors:

[Nathaniel T. Fowler](#)

Excess Forecast: Five Warning Signs a Routine Claim Is About to Escalate

Excess carriers face a unique challenge: estimating where a potentially high-value claim will end up before most of the pertinent facts have come to light. This endeavor can feel like predicting the damage a Category 5 hurricane will wreak before the first drop of rain hits the ground. But across jurisdictions, certain early-claim patterns can signal that an excess layer may be at risk.

1. Venue Risk: A Routine Case in a High-Exposure Jurisdiction

Venue remains one of the strongest predictors of claim value. A seemingly modest claim can become excess-layer material the moment it lands in a jurisdiction known for any of the following characteristics:

- Plaintiff-oriented juries
- Nuclear verdict frequency, especially post-COVID
- Disdain or bias against corporate defendants

Even before a claim materializes, if an accident occurs in a jurisdiction that would have venue if the claimant filed suit there, your guard should already be up. And once suit is filed, if it lands in a defense-unfriendly jurisdiction, you should assume heightened exposure from day one. Likewise, excess carriers should watch for unusual filing locations or venue-transfer attempts compared to the incident site.

2. The “Plaintiff’s Counsel” Multiplier: Same Case, Very Different Outcomes

Defense lawyers will tell you that there are one (or more) plaintiffs’ attorneys who make them wince when they read their name at the end of the complaint. Any given claim can immediately triple or quadruple in value depending on which attorney’s hands it falls in. Excess carriers can make an early determination of what (and who)

they are up against with some quick, surface-level research, focusing on the data points below:

- Counsel has recent trial wins or well-known big verdicts in the same venue or industry
- Counsel has a reputation for aggressive discovery and motion practice—early preservation demands, third-party subpoenas, and frequent motions to compel and for sanctions that drive up defense costs and increase settlement pressure
- Counsel is known for critical case selection and strong expert benches. They routinely take on catastrophic or fatal injury cases, retain credible, jury-friendly experts, and run tried-and-true trial themes and damages models that consistently survive *Daubert* and similar challenges

Excess carriers should treat plaintiff's counsel like a risk variable, not a footnote. Build a quick counsel profile (verdicts, trial frequency, typical tactics) and consider that data just as you would any other important feature of the claim.

3. The Medicals: LOPs, Out-of-Network, and Big Specials

Damages escalation is often tied not only to the injuries and treatment, but to the billing system and setup. Letters of protection (LOPs) and out-of-network treatment facilities can inflate medical specials far above normal rates, pulling a borderline case into excess territory. Warning signs excess carriers should watch for include:

- LOPs, liens, or "pay later" arrangements tied to plaintiff's counsel
- Treatment at independent medical facilities known for charging list prices rather than contracted and reduced rates
- A fast jump from conservative care to injections or surgical consults and recommendations

Excess carriers should start evaluating the claimant's bills early, request provider contracts, liens, and assignments and, where

appropriate, consider retaining a billing expert to evaluate the reasonableness of the charges associated with the claimant's treatment.

4. From One-Time Mistake to a Pattern of Recklessness and Concealment: When a Punitive Story Starts Taking Shape

Excess exposure spikes when a case shifts from "an isolated accident" to "a company that repeatedly broke its own rules and didn't care." Plaintiffs begin to write that story by stacking alleged similar accidents amid routine internal policy violations and by hinting at missing or mishandled evidence. Early signals that the claimant's attorney will pursue these theories include:

- Broad preservation letters reaching training records, telematics, inspections, prior incidents, vendor files, especially paired with short deadlines
- Discovery aimed at "how the company runs" (policies, audits, incentives) rather than just the incident at issue in the case
- Early requests for a corporate representative deposition, especially when the topics pertain to "other incidents"

When these warning signs arise, you can reasonably expect the plaintiff is building an excess-value narrative—one that will require expert support, drive expanded discovery, and increase the likelihood of punitive (and excess) exposure.

5. Money Behind the Case: Funding that Inflates Claim Value

One of the quieter forces behind claim escalation is "outside money." Private equity in lawsuits might not yet be prevalent, but it is well on the horizon. And when a case is backed by third-party capital, the claim calculus changes: the plaintiff can withstand delay, absorb costs, and hold a higher number much longer, even when liability and damages are still developing. Early signals that outside capital may be impacting the case include:

- Unusually early “policy limits” demands paired with rigid deadlines and little documentation
- Patterns of treatment and billing that suggest a lien/LOP-driven model (out-of-network facilities, stacked providers, and specials that rise faster than the underlying injury narrative)
- Plaintiff’s counsel operating like a scaled business: heavy advertising footprint, rapid suit filing, standardized discovery packages, and quick escalation into depositions, requests for sanctions, and expert retention

When these indicators appear, excess carriers may find themselves dealing with a capital-backed claimant designed to maximize yield: one that increases defense spend, extends timelines, and pushes an otherwise ordinary case into an excess layer.

Taken together, these early signs can help excess carriers predict whether their layer is potentially at risk. Recognizing them at the outset of a claim enables accurate exposure evaluation and strategy adjustments.

If you’re facing complex claims or suspect that your exposure may be increasing due to the factors discussed above, don’t navigate these challenges alone. Please reach out to the author or any attorney with the firm’s [**Product, Tort, and Insurance Litigation Practice**](#) for help evaluating your settlement exposure, along with proven strategies for mitigating such risks.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.