General Partnership Liability

LOOKING AHEAD TO 2025

Risk and Insurance Trends for Venture Capital and Private Equity Firms

WOODRUFF SAWYER

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1.0 Introduction

Rising defense costs, a shifting regulatory environment, and competitive insurance pricing are key trends shaping the general partnership liability (GPL) marketplace as we head into Q4 2024 and 2025. For both the venture capital and private equity community, rising claims activity is a continuing trend, particularly concerning portfolio companies and regulatory issues, as well as outside directorship liability. Other challenges stem from general partner infighting and personal disputes, which incur high defense costs and higher-than-average settlements. Additionally, the SEC is increasingly encroaching on the exempt reporting adviser space for venture capital firms.

In this first *General Partnership Liability Looking Ahead to 2025 Guide* dedicated exclusively to the venture capital and private equity community, we delve into these trends, pricing dynamics, and claims insights, drawing from our deep bench of experts. We wrap up with results from our Underwriters' Survey, where we asked underwriters to share their expectations for 2025. With a deeper understanding of market trends from this *Guide*, PE and VC firms can confidently navigate today's complex risk and liability landscape.

2.0

General Partnership Liability: Trends to Watch

From SEC regulations to increased insurance carrier capacity, learn about the top trends in the GPL marketplace.

Start >>

2.1 Trend #1:
Outside Counsel Rate Increases Continue to Accelerate

When facing sensitive regulatory or securities litigation matters, asset managers want to retain the most effective outside counsel. While best-in-class lawyers in this space have always commanded high fees, billing rate increases have accelerated in recent years. There is no substitute for quality, and we continue to see our clients seek out highly experienced lawyers in this space.

> Regulatory and compliance partners bill at some of the highest rates of any practice area.

In-house legal and compliance teams need to control spend while simultaneously ensuring that critical matters are handled by highly effective outside counsel. While this is not an easy task, an experienced team of insurance advisors and a well-crafted general partnership liability program can make your life considerably easier.

First, regulatory investigations can be very expensive. Your insurance coverage can help to dampen the financial impact of investigation-related legal fees, but only if you have appropriate, market-leading coverage. Your broker should carefully negotiate your policy so you have the best possible coverage if a regulator comes calling.

Second, when you hire a very experienced—and very expensive—lawyer to handle a sensitive matter, be sure that your insurance carriers will come along for the ride. Here, again, an effective insurance advisor must advocate effectively with your insurance carriers so that they cover the cost of working with your counsel of choice.

2.2 Trend #2: A Regulatory Inflection Point

The last year has been a roller coaster ride for venture capital, private equity, and hedge fund managers focused on regulatory compliance. The Securities & Exchange Commission's (SEC's) new Private Fund Adviser Rules created significant new compliance burdens. But, before the rules went into effect, these new burdens were lifted by the Fifth Circuit Court of Appeals. Despite this relief, recent amendments to Regulation S-P and new proposed FinCEN rules have created an atmosphere of increased risk surrounding cybersecurity and AML/KYC practices.

In 2025, SEC leadership will set the regulatory tone for investment advisers. In one possible future, the government will continue to aggressively police the asset management industry, including by targeting technical violations that do not involve clear or material investor harm. In another possible future, regulators will take a more circumspect approach to marginal cases, particularly in the context of private funds advising sophisticated institutional investors.

From the perspective of insurance underwriters, the near-term regulatory landscape will continue to be an area of atmospheric focus but is unlikely to be a material driver of on-the-ground outcomes. However, regardless of the government's posture going forward, if insurer losses from investigations grow in coming years, carriers may be forced to reexamine the broad coverage that has become increasingly common in this area.

Risk Mitigation for Asset Managers After the Demise of the Private Fund Advisor Rules >>

Learn how asset managers can use the Fifth Circuit's decision as an opportunity to assess risk mitigation, compliance, and investor relations best practices.

2.3 Trend #3:
The Competitive Pricing Environment Should Continue for Top Tier Risks

The soft market trends of the past 12–24 months continue in Q3 and Q4 2024, as increased insurance carrier capacity drives competition. In 2024, we have successfully negotiated significant year-over-year GPL price savings for our venture capital and private equity clients that have not experienced significant claims activity. Most clients have realized premium savings of 0%–20% as compared to last year (assuming consistent AUM and absence of material claims).

0%–20%

GPL Insurance Premiums For Woodruff Sawyer Clients Decreased In 2024

In 2025, we expect underwriters will approach pricing and retentions with increased rigor. Our inaugural Underwriters' Survey shows that insurers are concerned about portfolio company management issues and increased debt burdens.

Claims related to portfolio companies can implicate both outside directorship liability (ODL) and fund-level GPL coverage. Both types of claims have been on the rise; more generally, GPL claims payouts have been increasing. With these trends in mind, underwriters may attempt to increase rates for asset managers with potential or actual material portfolio company issues.

For clients without significant historical or ongoing claims and with conventional investment strategies, the pricing landscape should remain favorable in 2025, with pricing anywhere from flat to down 20% YoY. For those venture capital or private equity firms where there have been claims, we expect underwriters to dig into those renewals on an account-by-account basis and underwrite the renewal pricing and retention structure based on the overall claims picture and current reserves set for any open and ongoing claims.

2.4 Trend #4:
Focus on Regulatory Investigation Coverage

In today's "soft" market, broad coverage for regulatory investigations may be available for venture capital and private equity firms—if they are working with a broker who knows the right questions to ask. Strong competition between carriers can give your broker significant leverage to negotiate pricing and retentions. It also allows them to carefully manuscript and negotiate key policy terms for clients' benefit, including by broadening how a claim is defined within the policy.

Depending on the policy language your broker negotiated, the scope of coverage for regulatory investigations may be confined to "formal" investigations triggered by specific events (such as a Wells Notice or a target letter), or there may be broad coverage for informal government requests. Regulators do not always take a formal approach with investment advisers, so coverage for informal investigations can be quite valuable.

While informal investigations coverage has been available in the market for several years, the relevant policy language and coverage approach still varies significantly from carrier to carrier. Like most coverage issues, the devil is in the details.

Financial Services Insurance in an Era of Regulatory Risk >>
Learn about the SEC's recent focus on regulating how investment managers and funds handle legal fees.

Ask your broker to explain the specific contours of your coverage for regulatory investigations in advance of your next renewal. And, to the extent enhanced coverage is available in the market, now is the time to shore up your policy. It is also important to understand the scope of coverage in your policy so you can be sure to meet your notice obligations.

3.0

Venture Capital and Private Equity Claims Trends

Get an overview of the types of claims we're seeing today.

Start >>

Consistent with our holistic, client-focused philosophy, Woodruff Sawyer devotes more resources to claims advocacy than any other broker. We have the highest per capita claims team in the industry. Roughly 10% of our employees are focused on claims, and our team includes numerous lawyers. Our competitors have much smaller teams relative to their size.

For our financial services clients, we provide an unmatched claims advocacy platform led by Walker Newell, a litigator with deep experience leading high-stakes securities matters with the SEC and premier defense firms. Our dedicated team has decades of experience handling claims for our asset management clients. Put simply, Woodruff Sawyer has the most experience in the insurance industry with the investigations, litigation, and claims issues that matter most to our venture capital and private equity clients. We leverage that experience to drive the best possible results for our clients.

In the past year, we have analyzed more than 2,000 historical GPL claims submitted by our venture and private equity clients. We will be using this analysis to provide our clients with new proprietary insights into risk. This allows our clients to take an increasingly data-driven and informed approach to selecting coverage and limits.

Looking ahead to 2025, private capital markets will continue to play an outsized role in the corporate ecosystem. This success, in turn, will continue to attract scrutiny from private plaintiffs and regulators, driving more of the kinds of claims activity that we have seen in recent years. Macroeconomic conditions and the broader political/regulatory environment are the unknown variables that may impact claims frequency and severity.

Historically, three types of claims have been the most significant risks for our private equity and venture capital clients.

3.1 Outside Director Liability (ODL) Claims

First, outside director liability (ODL) claims have been consistent and common over the years, which is not surprising given the overall frequency of securities litigation. As a reminder, ODL coverage is the part of the GPL policy that covers claims against the partners as a result of their roles as directors for portfolio companies. For example, if shareholders of a portfolio company file a securities case or derivative lawsuit naming your firm's designated director on the company's board, your ODL coverage may be triggered.

While the underlying portfolio company's insurance program should respond first to these claims, well-constructed ODL coverage is a critical backstop to protect firm and individual balance sheets if their company insurance has coverage gaps or inadequate limits.

Watch Now:
Trends in Venture Capital Claims Activity

3.2 Employment Practices Liability (EPL) Claims

Second, we have historically seen a significant number of employment practices liability (EPL) claims in our GPL book. These are typically claims alleging wrongful termination or discrimination, often preceded by a demand letter or agency filing. Depending on the complainant and allegations, these claims can involve significant exposure. In recent years, we have also seen an uptick in partnership disputes, which may include employment-related theories but are usually centered on a former partner's demand for carried interest. These claims can be problematic, as insurers don't view carried interest loss as covered loss or damages under their policies, and an allocation of loss or damages is required for any settlement.

3.3 Government Inquiry Claims

Third, over the years, our clients have faced inquiries and investigations from the SEC and other government and regulatory bodies. These claims are not high frequency—last year, about 10% of our GPL claims involved some type of government inquiry—but they are often sensitive and high-risk matters. These claims can be broken down into two main categories.

In recent years, we have seen an increase in SEC investigations focused on potential issues at privately held portfolio companies. In these matters, an investment firm and/or their designated director on the portfolio company's board may receive a subpoena for documents and/or testimony, and the government may seem to be focused on the investment firm's potential involvement in problems at the portfolio company. The question of whether there is coverage for the costs associated with these investigations is tricky and requires careful coordination between your outside counsel and your insurance advisors.

We have also seen SEC investigations focused directly on the investment advisory practices of our clients. While such investigations are relatively rare, they are high risk and can be very expensive to defend. As we discuss in more detail above, carefully crafted policy terms surrounding investigations can help to reduce the financial impact from legal fees associated with these matters.

4.0

Underwriters' Survey Results

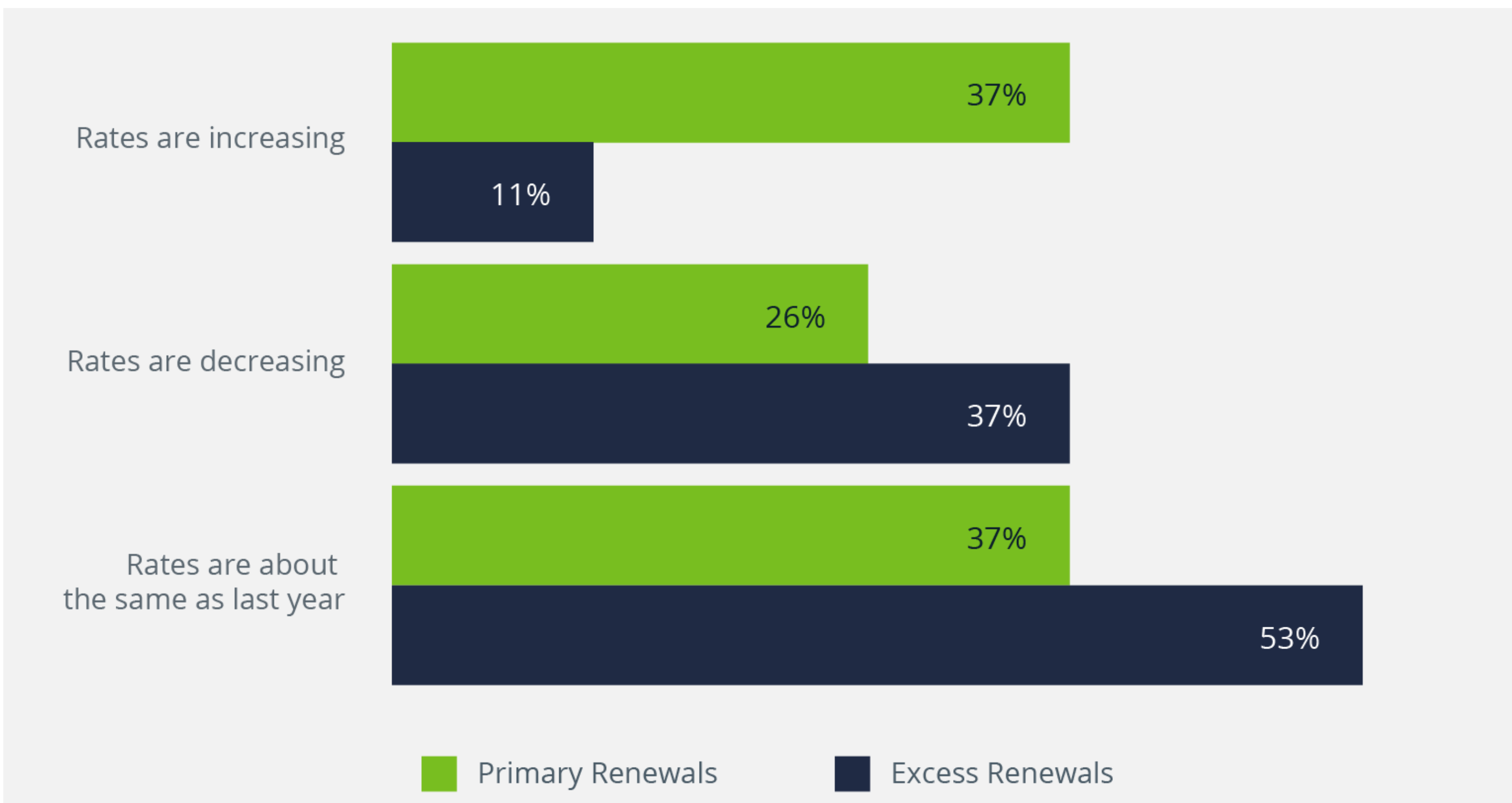
Good brokers are first and foremost advocates for their clients. As part of this advocacy, good brokers also listen to their insurance carrier partners to better understand their view of the world, including their current appetite for risk.

Woodruff Sawyer is in conversation with insurance carriers every day. For this section of *Looking Ahead*, we surveyed insurance carriers with whom we place both primary and excess GPL coverage. We asked questions about pricing expectations, retention structures, renewal strategies for both venture capital and private equity, and claim trends.

Start >>

Q1 When looking at primary and excess renewals for private equity firms, what is your team seeing from a rate perspective?

Survey Results: **While most underwriters surveyed said they were seeing unchanged/decreasing rates year over year, more than one-third are seeing increasing rates for primary renewals. This is consistent with our perspective that rates are and will continue to increase for those funds that are seeing an uptick in claims activity.**



Note: Results do not add up to 100 due to rounding.

Woodruff Sawyer Commentary

For private equity firm GPL renewals, we are seeing more scrutinized underwriting methodologies take shape. Profitable, loss-free private equity firm GPL renewals should see 10%–20% decreases in overall premiums, whereas firms with open and ongoing claims will likely begin to see increased premiums in the 5%–10% range in 2025.

Q2 When considering renewals for private equity firm GPL programs, retentions are:

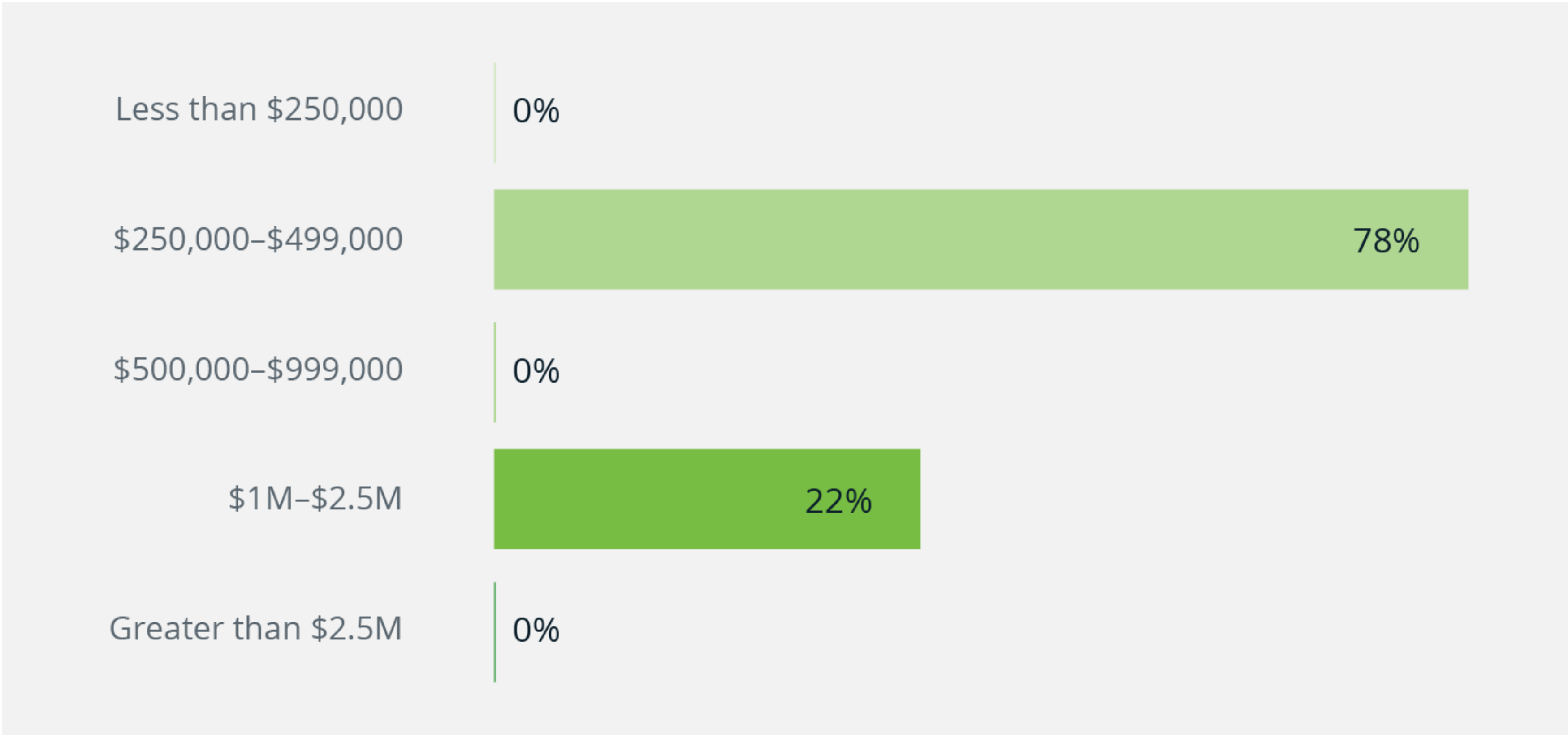
Survey Results: The vast majority of respondents said retentions are the same as last year. We expect this to continue throughout 2025.

Woodruff Sawyer Commentary

We believe this is indicative of the GPL market for private equity firms already setting the standard for retentions on GPL renewals.

Q3 What is the average retention your team is quoting for private equity firms?

Survey Results: **Most respondents indicated the average retentions they are quoting are in the $250,000 to $499,000 range.**



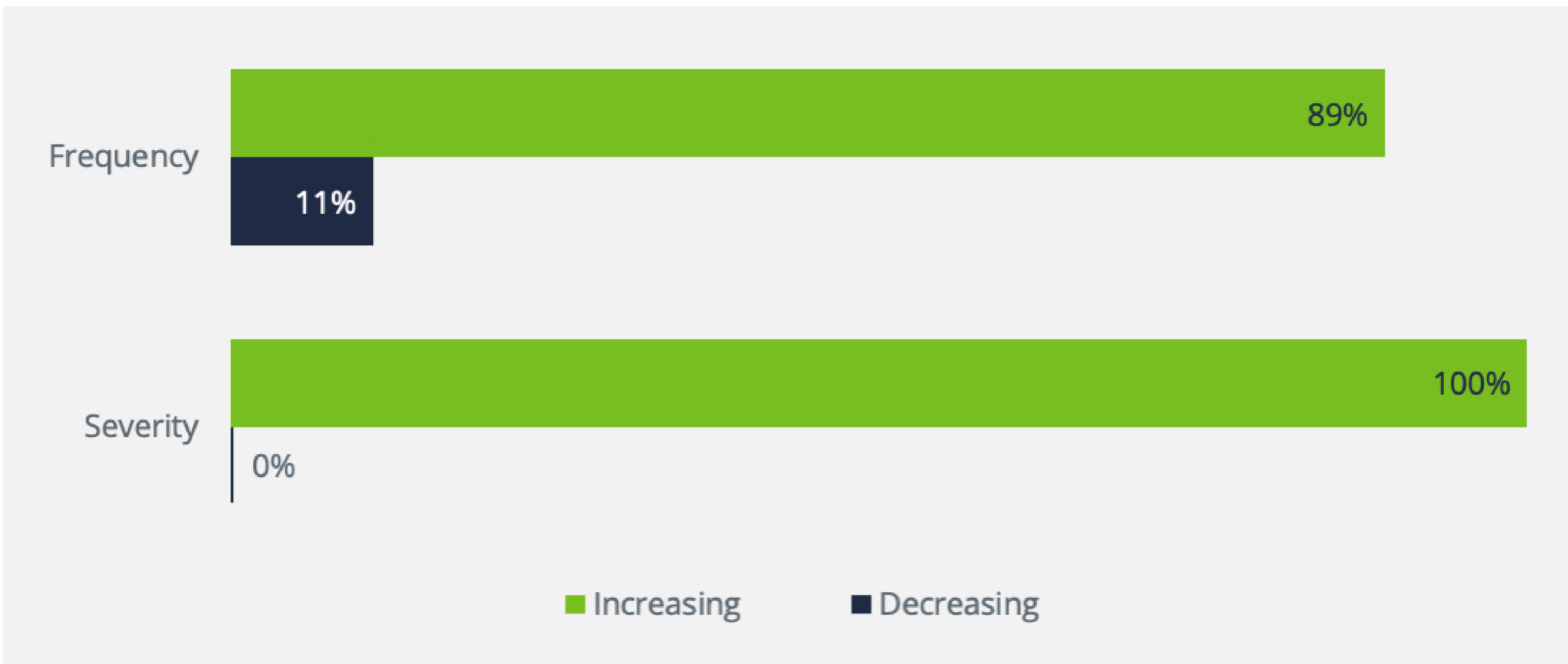
Woodruff Sawyer Commentary

In the private equity GPL space, we are seeing fewer and fewer underwriters quote retentions that are less than $250,000. Especially for firms looking to quote a $5 million or $10 million primary layer, clients should expect minimum retentions of $350,000, $500,000, or more.

Q4

For private equity, have you seen claims increasing or decreasing in terms of frequency/severity year over year?

Survey Results: **Most underwriters said claims are increasing in frequency, and all respondents said they are increasing in severity.**

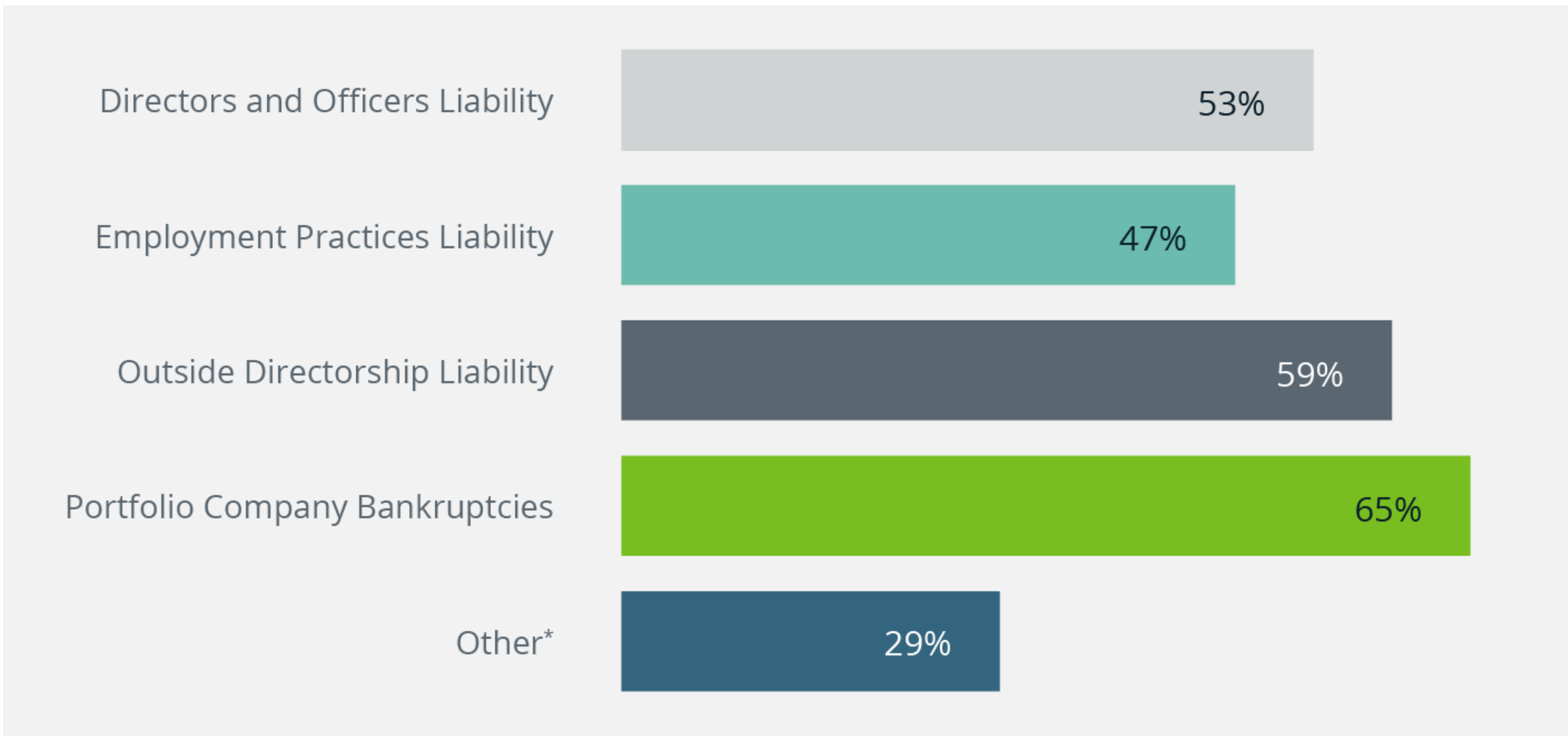


Woodruff Sawyer Commentary

While this is a contrast from what we are seeing in terms of renewal rating, we believe claims for private equity firms will continue to increase in terms of frequency and severity. Generally, the timing to resolve litigation has been and will continue to cause significant upticks in claims reserves and total incurred losses. This can be exacerbated for the private equity community because of the ownership structure and due to a limited number of parties involved with a portfolio company.

Q5 For private equity firms, where are claims typically arising?

Survey Results: **Portfolio company bankruptcies were the most cited claim.**



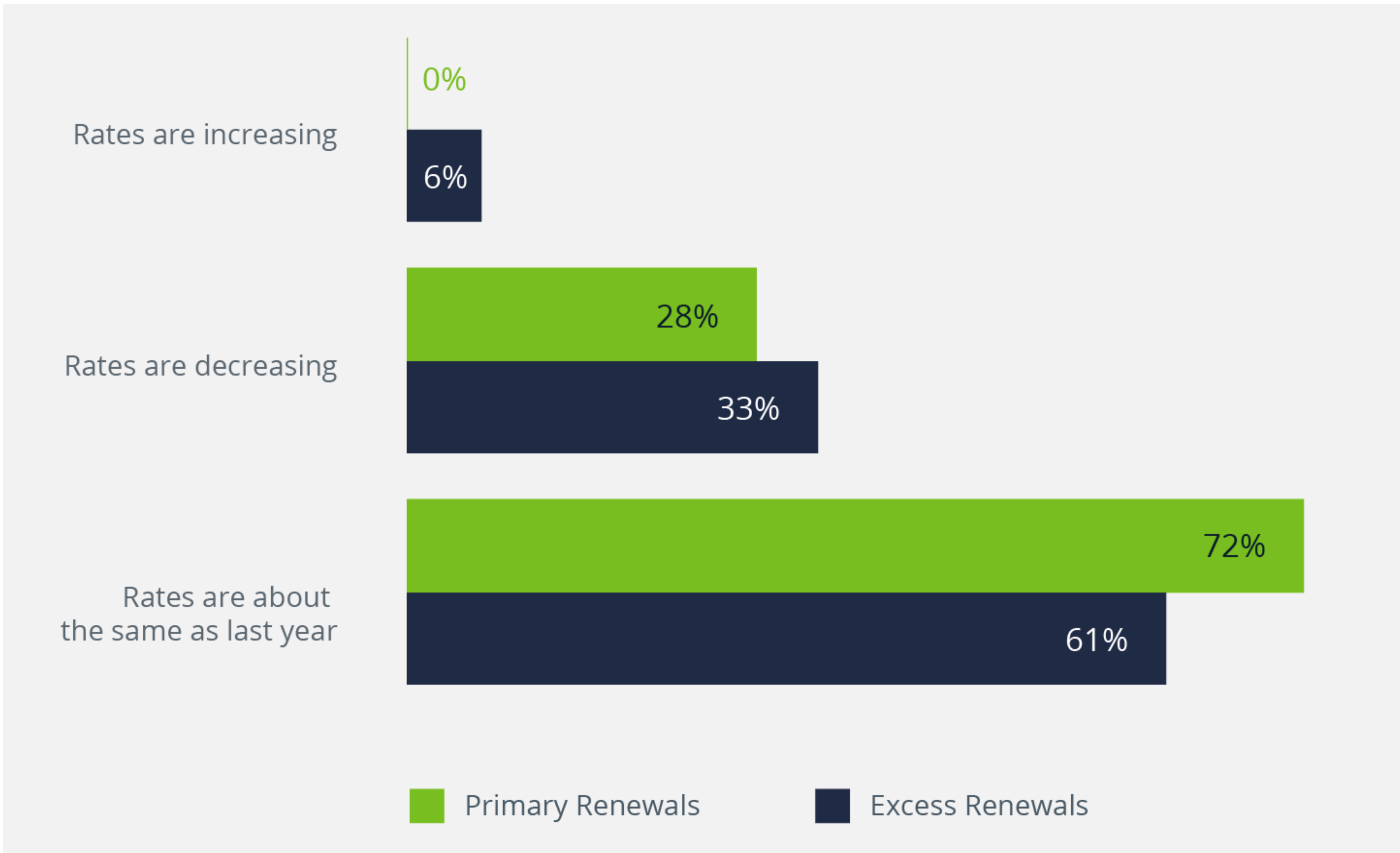
Woodruff Sawyer Commentary

The private equity space continues to see claims arising from a variety of exposures, both at the fund entity level and at the portfolio company level. In our own book of business across our private equity client base, bankruptcies and ODL exposures continue to be drivers of claims, both in terms of frequency and severity.

Note: Respondents could choose more than one option.
*Other includes non-bankruptcy portfolio company claims and breach of contract claims.

Q6 When looking at primary/excess renewals for venture capital firms, what is your team seeing from a rate perspective?

Survey Results: **Most underwriters said rates were the same as last year for both primary and excess renewals.**

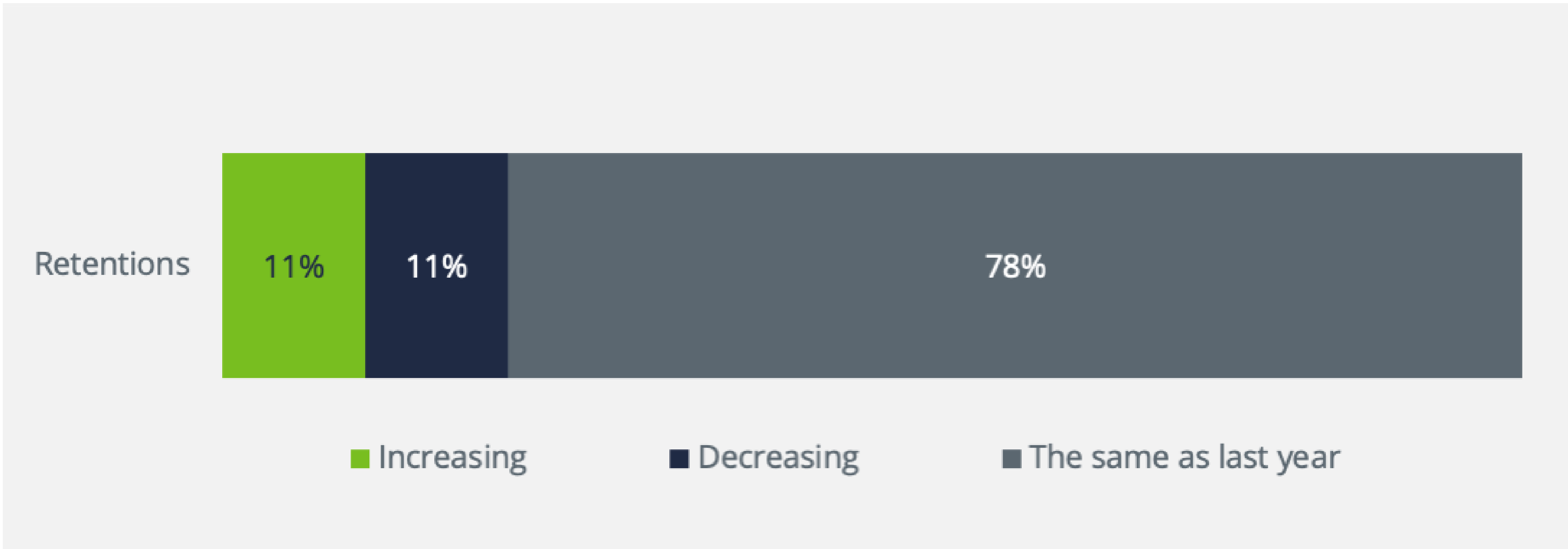


Woodruff Sawyer Commentary

Flat or decreasing rates are consistent with what we have experienced for clients in 2024. However, we believe the picture could change a bit next year with new claims activity. Preferred funds will still receive preferred rates (decreases year over year), but for venture funds with claims activity, we anticipate this graph will shift a bit more towards looking like the private equity counterparts this time next year, given a rise in claims activity overall across the industry.

Q7 When considering renewals for venture capital firm GPL programs, would you say retentions are:

Survey Results: **Almost 80% of respondents said retentions have stayed the same.**

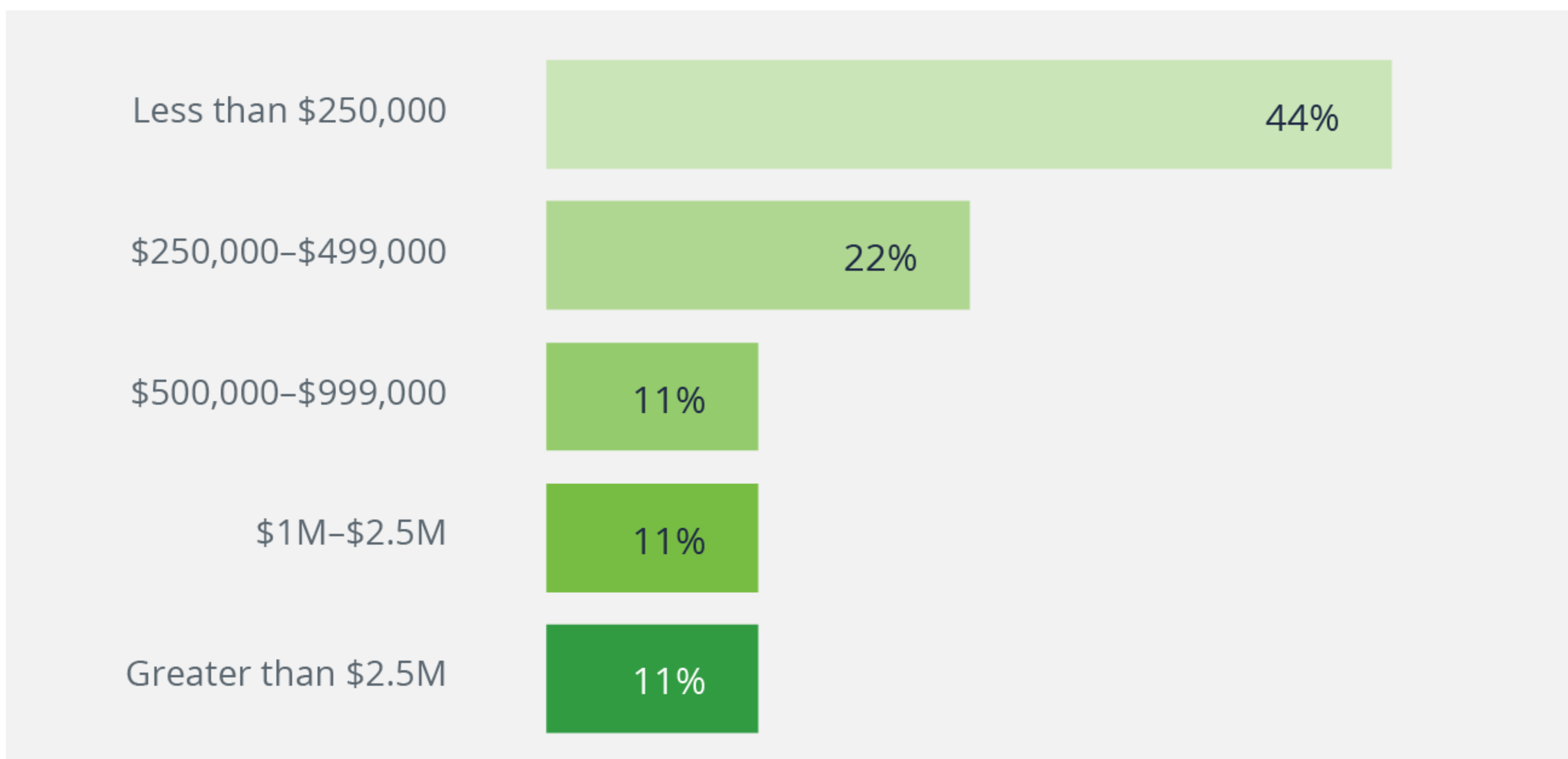


Woodruff Sawyer Commentary

This is largely consistent with what we have seen across our book of venture capital GPL business.

Q8 What is the average retention your team is quoting for venture capital firms?

Survey Results: **For well-performing risks (especially within the $500 million to $1 billion AUM band), it is possible for venture capital firms to obtain preferred retentions. However, we believe the market is generally moving upwards during renewals, given the developing claims environment.**



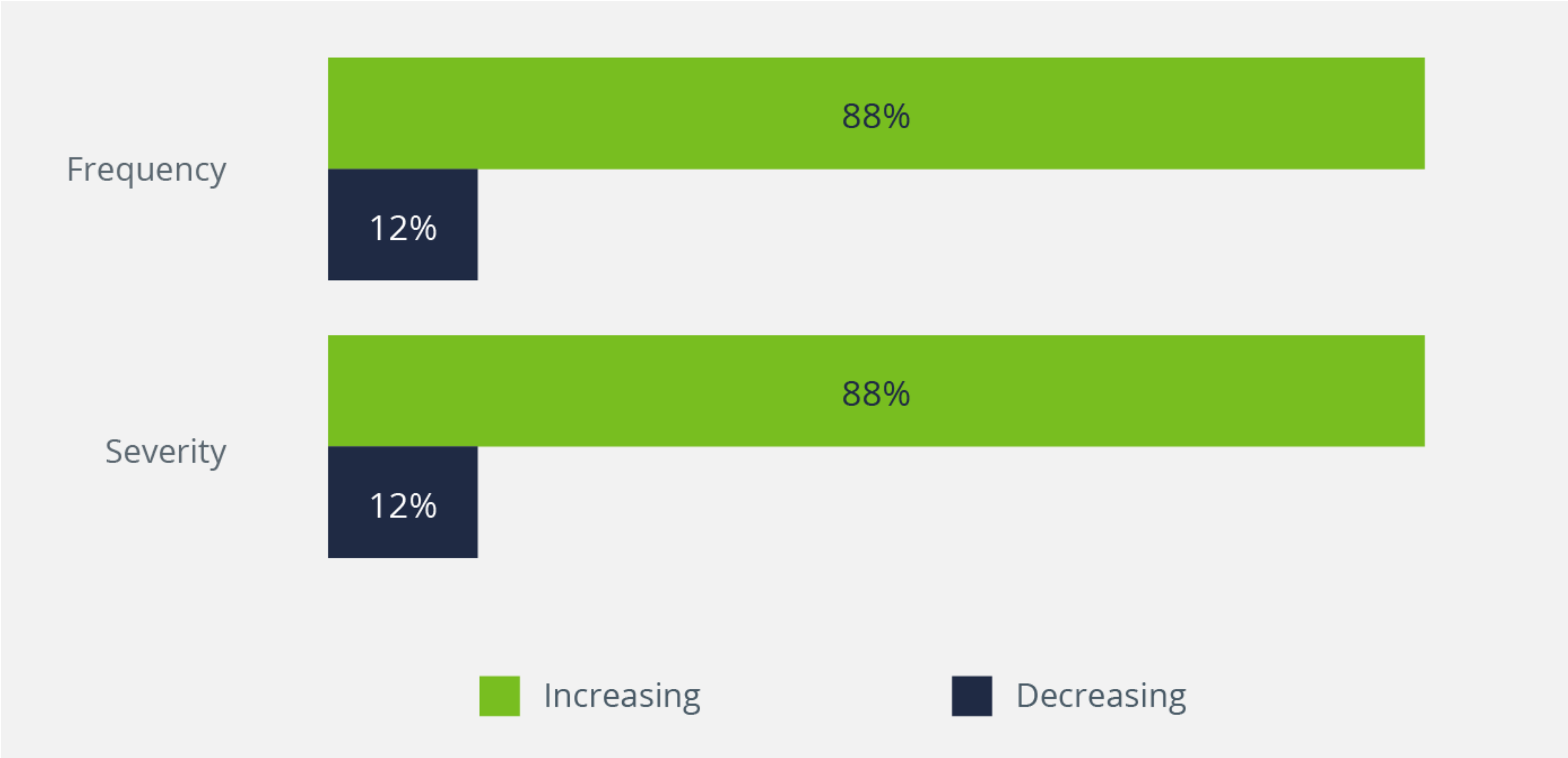
Note: Results do not add up to 100 due to rounding.

Woodruff Sawyer Commentary

For smaller or startup venture firms with <$500 million under management, retentions as low as $100,000 or $150,000 may be available. Firms with >$1 billion AUM should expect to see retentions of at least $250,000 or $350,000, if not $500,000.

Q9 For venture capital, have you seen claims increasing or decreasing in terms of frequency/severity year over year?

Survey Results: **Underwriters say venture capital claims have been mostly increasing in frequency and severity.**

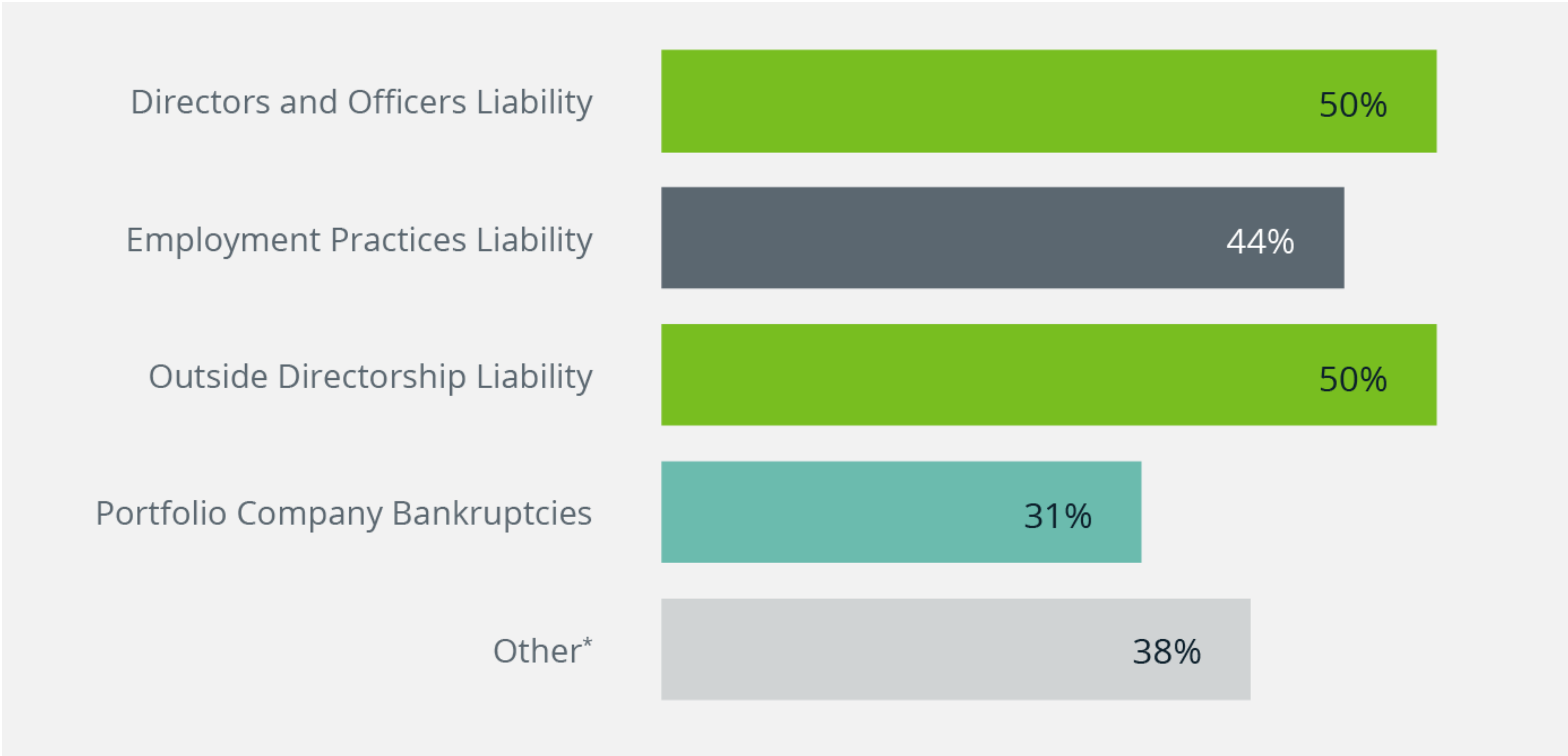


Woodruff Sawyer Commentary

It appears the venture capital GPL marketplace is experiencing a bit of a mismatch of rate versus claims. In 2024, rates have largely continued to decrease YoY whereas here, our survey respondents are clearly indicating claims frequency and severity are increasing. We expect the market to harden for those clients that are experiencing an uptick in claims.

Q10 For venture capital firms, where are claims typically arising?

Survey Results: **Underwriters said D&O liability and outside directorship liability are where claims most commonly arise.**



Note: Respondents could choose more than one option.
*Other includes non-bankruptcy portfolio company claims and breach of contract claims.

Woodruff Sawyer Commentary

Litigation within the venture capital community appears to be spread across a variety of types of claims, a change from prior years and prior underwriting cycles.

In prior years, the key claims driver has historically been ODL exposure. As we look towards 2025, entity-level D&O, E&O, general issues with underlying portfolio companies, and the evolving SEC regulatory environment have caused things to shift.

5.0

Concluding Perspective

For more than three decades, Woodruff Sawyer has been a trusted partner to many of the most innovative venture capital and private equity firms in the world. We pioneered key general partnership liability (GPL) insurance coverage solutions that have since become industry standards across the private funds industry. As an employee-owned and privately held firm free from outside pressure, we have remained relentlessly focused over the years on delivering the best possible coverage, pricing, and claims outcomes for our clients.

Today, Woodruff Sawyer's world-class platform is a valuable resource to our diverse group of hundreds of investment management clients. Our dedicated team of industry experts provides our clients with gold standard coverage terms, conditions, pricing, and claims management. We have more than 40 professionals focused exclusively on serving our private equity, venture capital, and hedge fund clients. Our team has deep expertise across the insurance coverage landscape, including GPL, cyber liability, commercial crime, property, casualty, and employee benefits. And our comprehensive services platform is available to all our clients, from first-time fundraisers to multinational mega funds with $50+ billion under management.

Watch Now:
Woodruff Sawyer's Private Equity Services

Since I became the national practice leader last year, we have enhanced our industry-best platform by investing in new resources and capabilities and leveraging our deep experience to provide actionable insights to our clients. I am incredibly proud of our team's accomplishments. Under my leadership, we've enhanced our claims management platform, adding significant additional resources behind our benchmarking capabilities. We are now actively leveraging more than 30 years of claims outcomes so our clients can make well-reasoned, data-driven decisions about insurance coverage. And when claims arise, our team—which includes highly-experienced securities litigators and insurance lawyers—fiercely advocates to get our clients the best possible outcomes.

> Looking toward 2025, we expect the GPL marketplace to remain competitive, with attractive pricing, terms, and conditions available to well-represented clients.

It is critical to continually and constantly ensure your broker partners have the necessary expertise to adequately represent your firm to the broad insurance marketplace. Not all brokers are created equal— Woodruff Sawyer offers clients a fundamentally different experience.

As the market leader in the space, our inaugural *General Partnership Liability Looking Ahead to 2025 Guide* provides expert insights from our team and directly from the underwriters with whom we are working daily to place coverage for clients. I hope you found value in the insights we offered throughout this *Guide*.

Onward!

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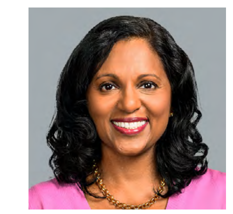

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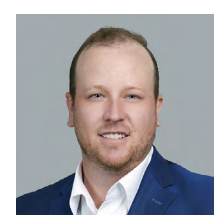

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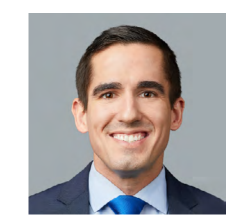

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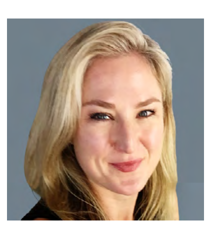

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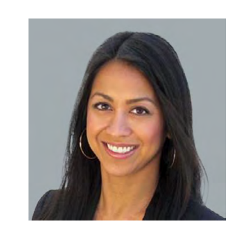

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About Woodruff Sawyer

As one of the largest independent insurance brokerage and consulting firms in the US, Woodruff Sawyer protects the people and assets of more than 4,000 companies. We provide expert counsel and fierce advocacy to protect clients against their most critical risks in property and casualty, management liability, cyber liability, employee benefits, and personal wealth management. An active partner of Assurex Global and International Benefits Network, we provide expertise and customized solutions to insure innovation where clients need it, with headquarters in San Francisco, offices throughout the US, and global reach on six continents.

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