



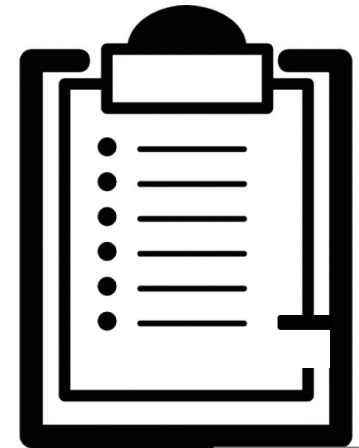
Oregon's Changing Medical Liability Insurance Market

March 18, 2021

We will get started shortly. Your lines are muted upon entry. This event will be recorded.

Welcome!

- Today's event is being recorded
- All participants are muted on entry
- Ask questions using the Q&A Box
- Please fill out satisfaction survey



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Mar. 30 • 10am • Zoom Livestream • Free



Single Payer vs. Universal Care: A Debate on the Future of Healthcare

Apr. 13 • 9am • Zoom Livestream • Free



Next Chapter: Strategies to Support Older Adults Post COVID-19

Caring for Our Carers: Policy and Community Solutions for Our Caregiving Crisis

Apr. 6 • 10am • Zoom Livestream • Free

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Oregon's Changing Medical Liability Insurance Market

Moderator:

Shawn Chummar

Independent Medical Liability Insurance Consultant

Panelists:

Jennifer Millar, MBA, ARM

*Senior Account Executive,
Physicians Insurance A Mutual Company*

Jeffrey R. Street, JD

Co-Managing Partner, Hodgkinson Street Mephram LLC

Anne E. Bryant

*Senior Director of Government Relations,
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OREGON'S CHANGING MEDICAL LIABILITY MARKET

JENNIFER MILLAR, JEFFREY STREET, ANNE BRYANT

MARCH 18, 2021

CHANGING MEDICAL LIABILITY MARKET

CLAIMS SEVERITY AND INDUSTRY TRENDS IMPACTING PREMIUMS



AGENDA

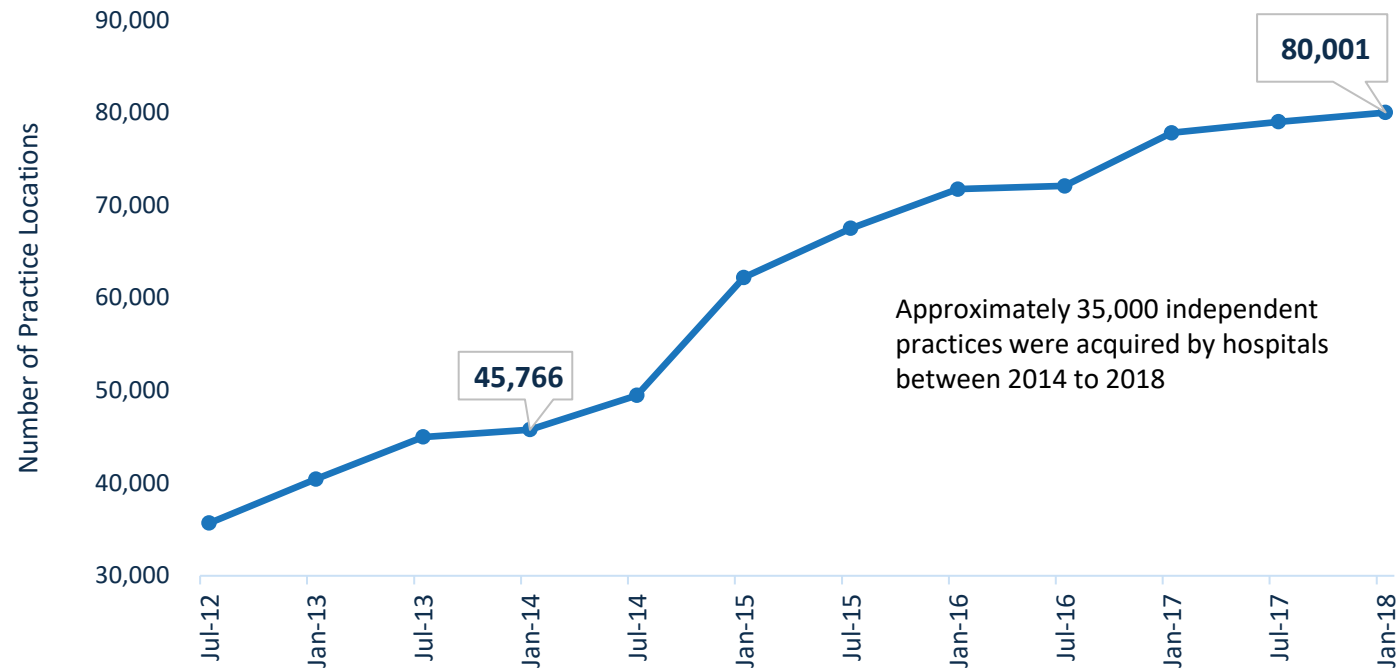
- Market Conditions Impacting Rates
- Increasing Frequency of Severe Claims
 - Legislative Environments
 - Social Inflation
 - Plaintiff Attorney Strategies
 - Uncertainty of COVID-19 and impact on case resolution
- Overall impacts to the MPL industry
- Filed Rate Actions in Oregon
- 2021-2022 Government Relations
- Questions

MARKET CONDITIONS IMPACTING RATES

CONSOLIDATION OF PHYSICIAN MEDICAL PRACTICES – NATIONAL DATA

- The healthcare industry has seen a drastic and sustained shift towards consolidation and physicians moving to employment at hospitals or large groups.

Physician Practices Owned by Hospitals

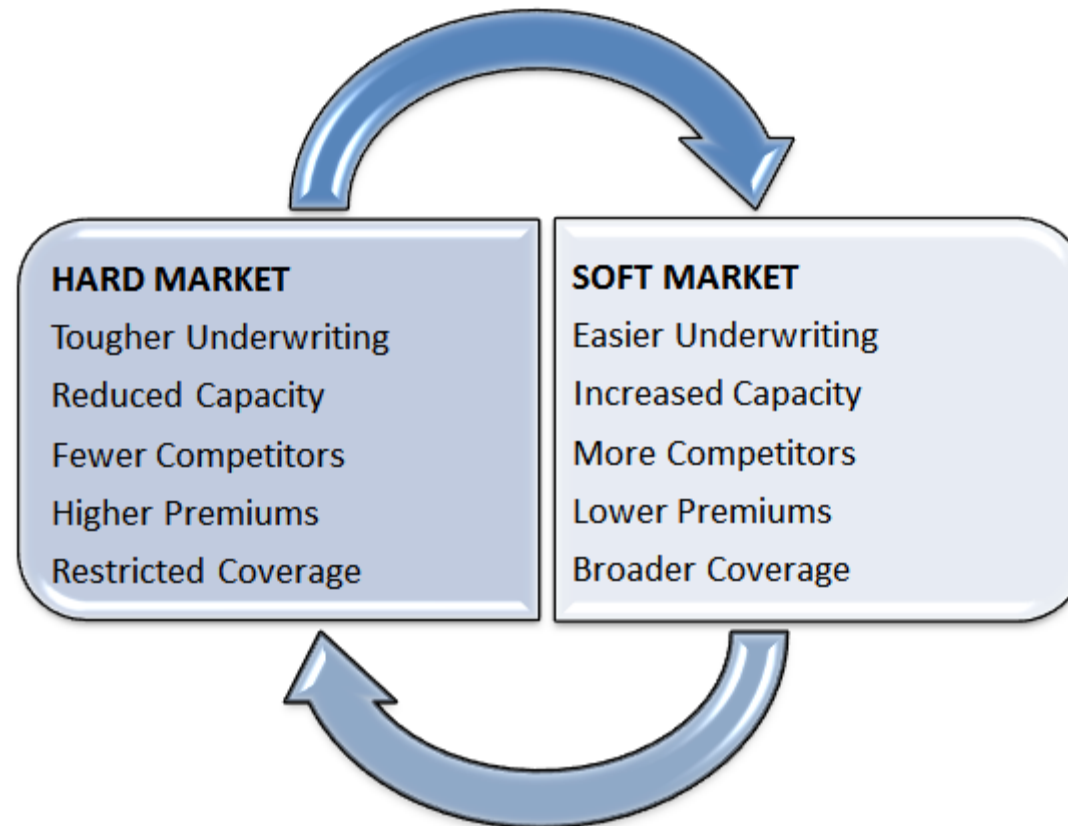


Source: Physician Advocate Institute, 2019

MARKET CONDITIONS IMPACTING RATES

PROLONGED SOFT MARKET

Insurance markets historically go through somewhat predictable cycles which influence insurance limits and corresponding premium.



MARKET CONDITIONS IMPACTING RATES

COMBINED RATIO: WHAT IS IT?

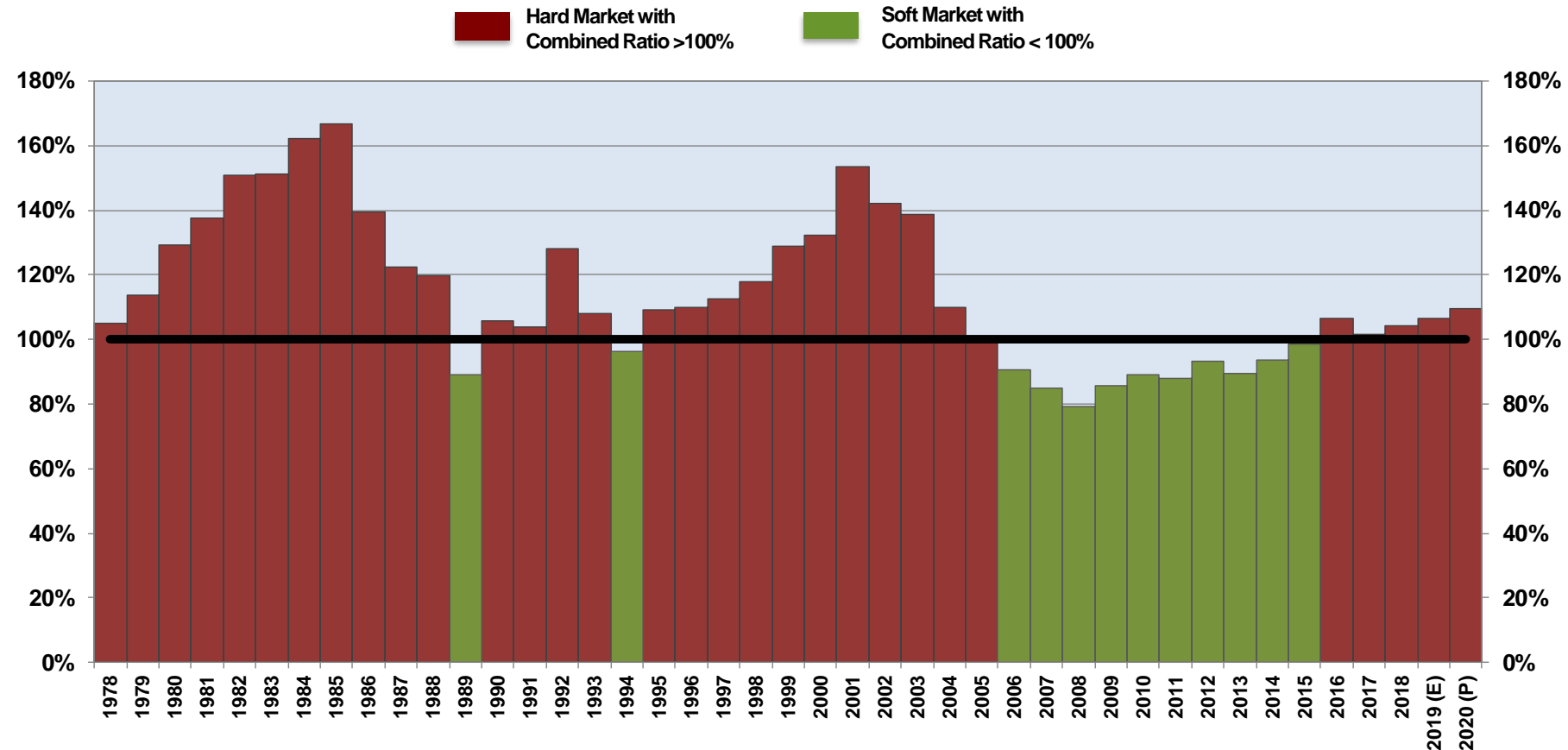
$$\text{Combined Ratio} = \frac{\text{Incurred Losses \& LAE} + \text{Underwriting Expenses}}{\text{Net Earned Premium}}$$

- Measure of profitability to gauge performance
- Combined ratio < 100%=Underwriting Profit
- Combined ratio > 100%=Underwriting Loss
- Another way of calculating: Loss & LAE Ratio + Underwriting Expense Ratio

MARKET CONDITIONS IMPACTING RATES

MPL COMBINED RATIO – INDUSTRY AGGREGATE, AFTER POLICYHOLDER DIVIDENDS

- Prolonged soft market from 2006-2015 now hardening

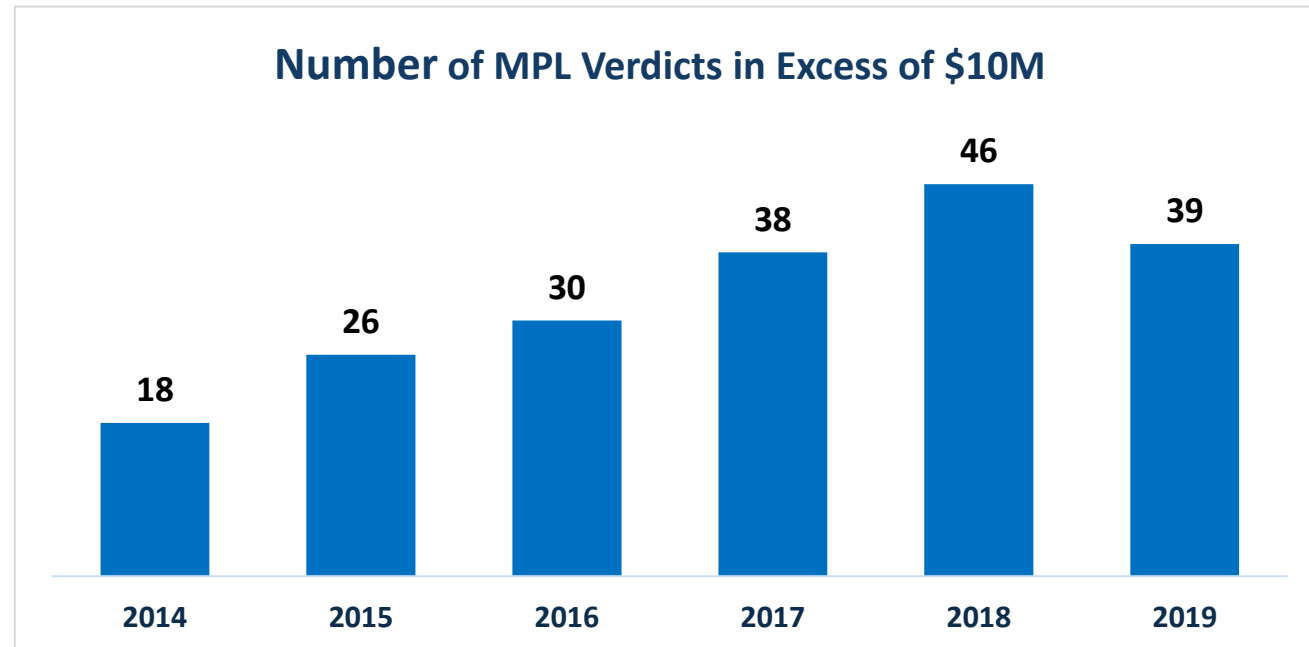


Sources: Milliman analysis of A.M. Best Aggregates & Averages – P&C; multiple editions
Milliman analysis of P&C insurance statutory data as provided by S&P Global Market Intelligence
2019 and 2020 from A.M. Best Review & Preview; March 2020 edition

CLAIMS ACTIVITY IMPACTING RATES & PREMIUMS

INCREASING FREQUENCY OF SEVERITY – NATIONAL DATA

- Nationally, between 2017-2019 there were a record number of jury verdicts greater than \$10M
 - Washington State had two of these cases in 2019: a \$13.9M stroke case and \$23.9M birth injury case
 - Full 2020 information is still pending, WA state had \$10.4M verdict in failed birth control case
- In both 2018 and 2019 there were three verdicts of over \$100M

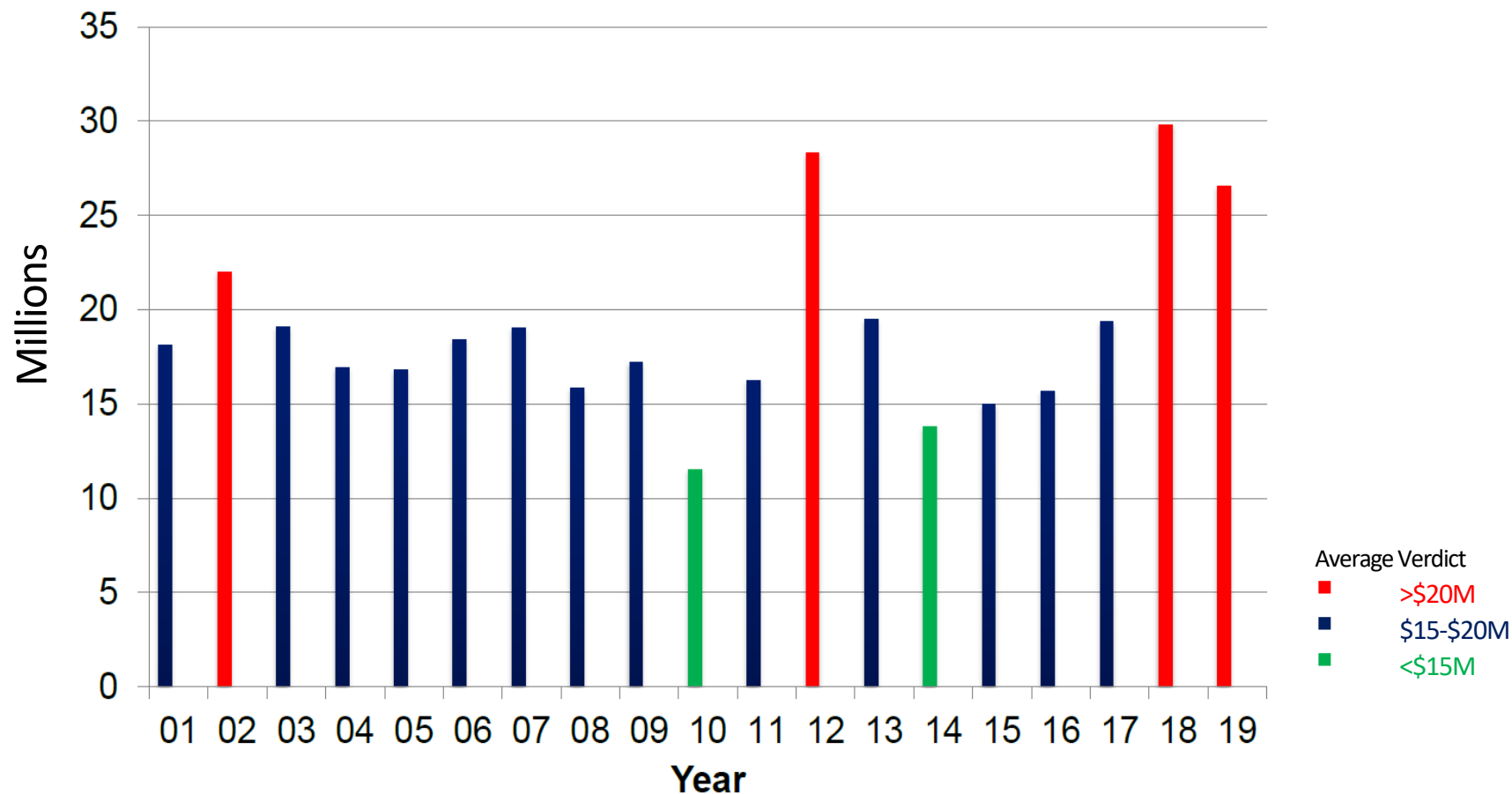


Source: Guy Carpenter, Medical Professional Liability Jury Verdict Trends May 2020

CLAIMS ACTIVITY IMPACTING RATES & PREMIUMS

INCREASING FREQUENCY OF SEVERITY – NATIONAL DATA

- Average of Top 50 Medical Malpractice Verdicts in US

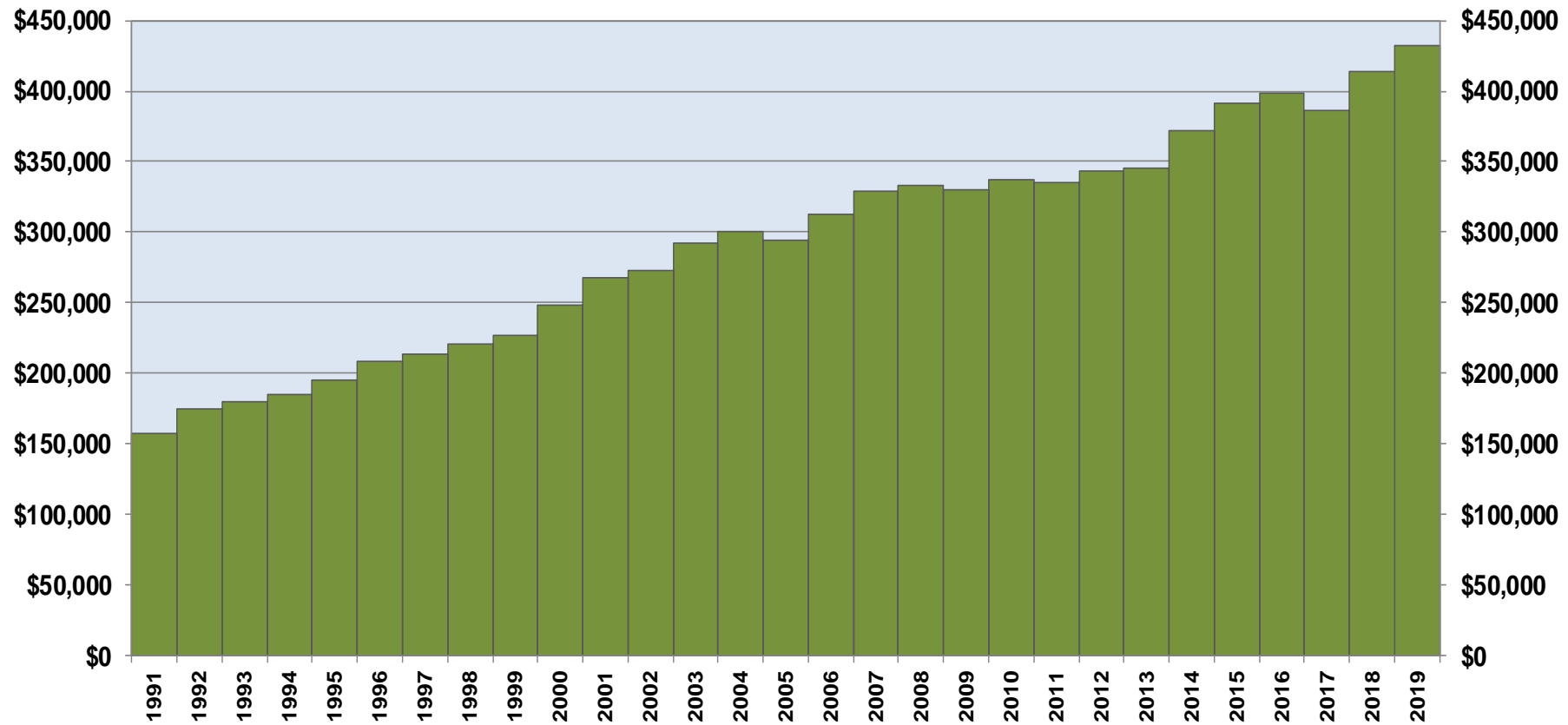


Source: TransRe

CLAIMS ACTIVITY IMPACTING RATES & PREMIUMS

INCREASING FREQUENCY OF SEVERITY – NATIONAL DATA

- Since 1991 there has been a steady increase in average paid indemnity

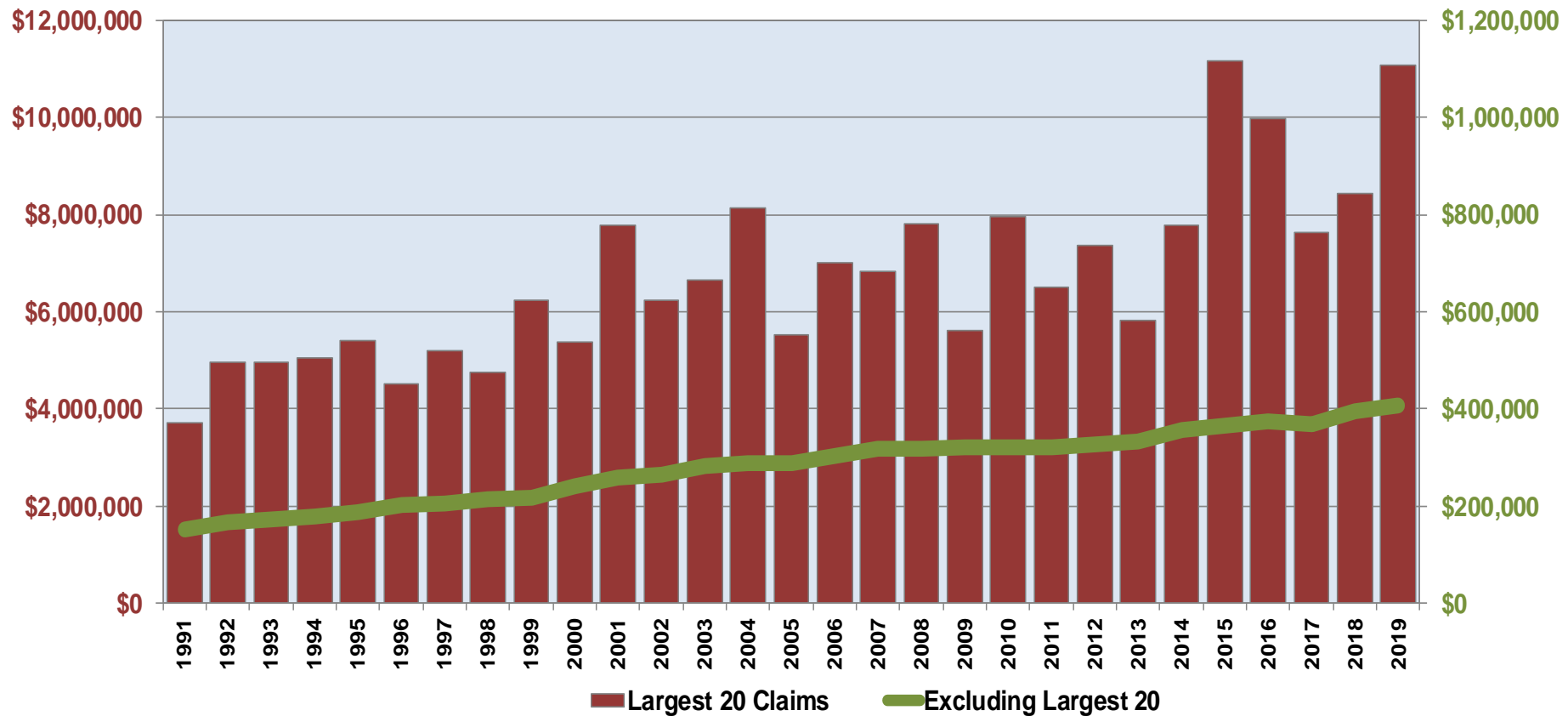


Source: Milliman analysis of National Practitioner Data Bank Public Use File, December 31, 2019

CLAIMS ACTIVITY IMPACTING RATES & PREMIUMS

INCREASING FREQUENCY OF SEVERITY – NATIONAL DATA

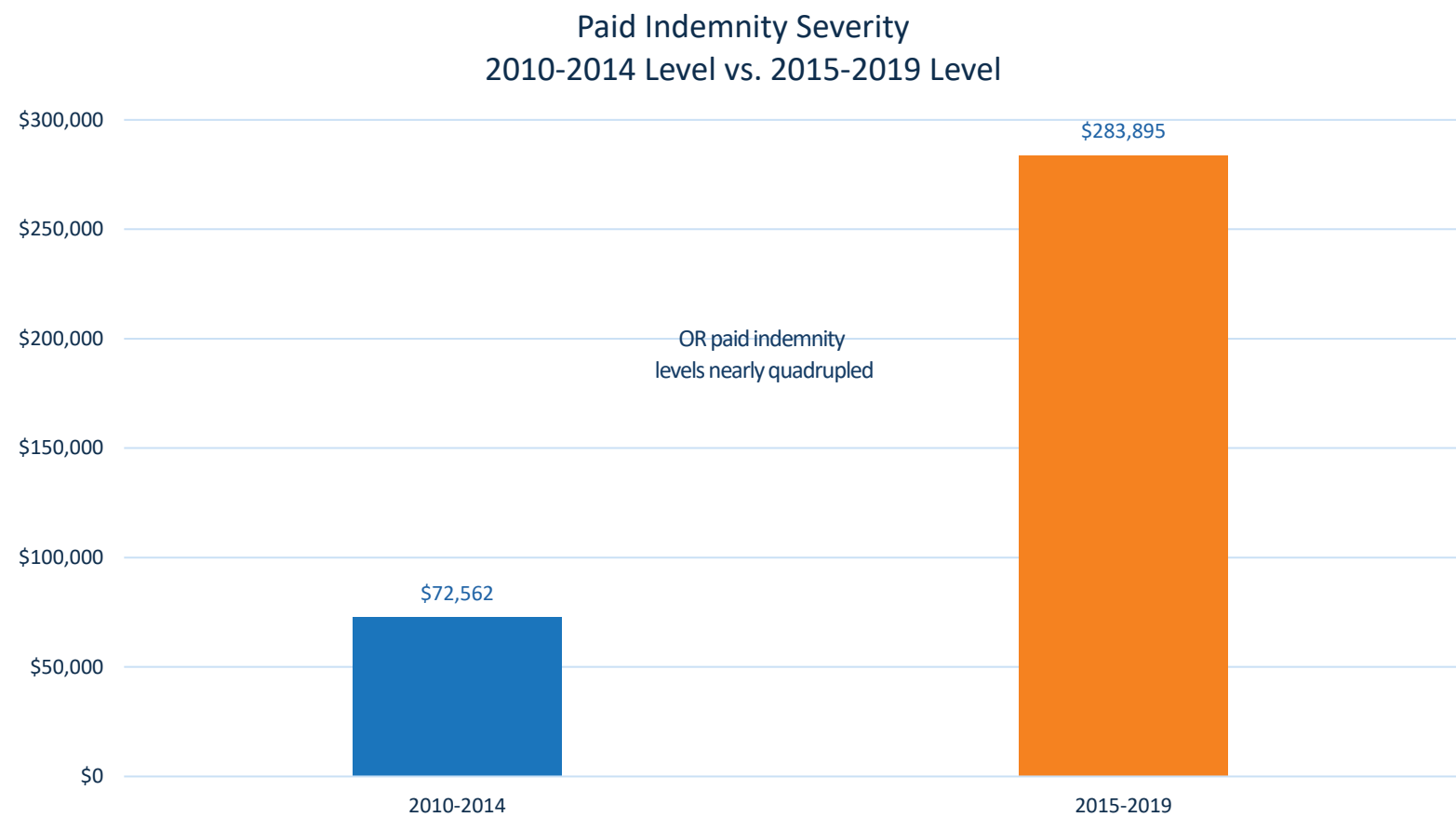
- Average paid indemnity with and without largest 20 “shock claims”



Source: Milliman analysis of National Practitioner Data Bank Public Use File, December 31, 2018

CLAIMS ACTIVITY IMPACTING RATES & PREMIUMS

INCREASING FREQUENCY OF SEVERITY – PI DATA

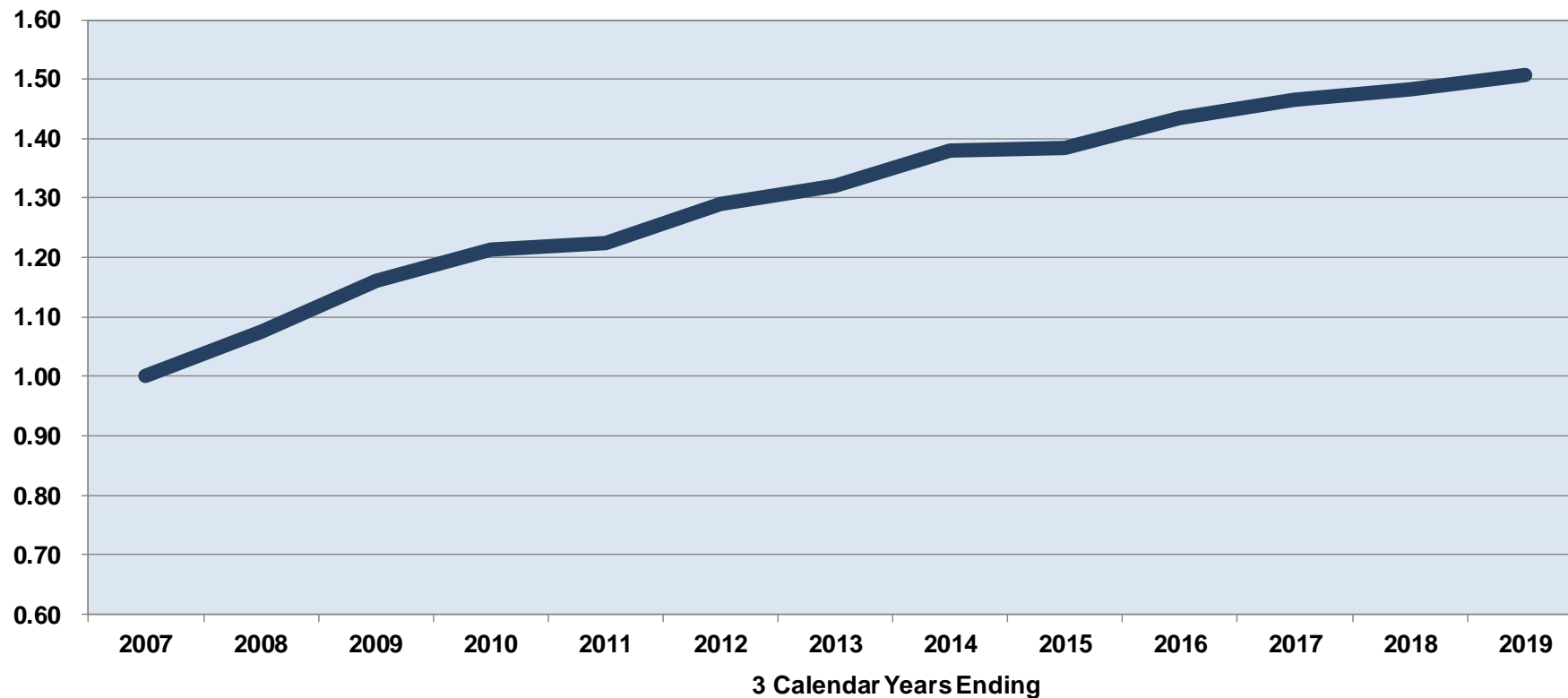


Source: Physicians Insurance Company – PI1007 Claims Report

CLAIMS ACTIVITY IMPACTING RATES & PREMIUMS

INCREASING COSTS TO DEFEND CLAIMS – NATIONAL DATA

- When factoring in the costs of defending the increasing severity of claims, the national data shows over a 50% increase in costs relative to 2007



Source: Milliman analysis of individual company data

CLAIMS ACTIVITY IMPACTING RATES & PREMIUMS

LEGISLATION AND JUDICIAL IMPACTS ON SEVERITY-OREGON

- Collateral Source Rule
 - Plaintiffs show amount “billed” for medical expenses (“phantom damages”) to a jury, rather than the amount actually paid or required to be paid – which is significantly less.
- Loss of Chance of a Better Outcome
 - Allows patients to claim damages if they had a *chance* of a better outcome and the provider’s negligence eliminated that chance.
 - New to Oregon, already exists in Washington.
 - Not applicable to wrongful death cases.
- \$500,000 Non-Economic Damage Cap
 - The 1987 cap for wrongful death and bodily injury was ruled unconstitutional in 1999 for injuries other than wrongful death.
 - In 2016, the OR Supreme Court reinstated the 1987 cap in Horton vs. OHSU.
 - In July of 2020, the OR Supreme Court reversed course again in Busch vs. McInnis Waste Systems, Inc. by ruling the bodily injury cap unconstitutional.
 - The \$500,000 cap for wrongful death remains.

CLAIMS ACTIVITY IMPACTING RATES & PREMIUMS

LEGISLATION AND JUDICIAL IMPACTS ON SEVERITY-OREGON

- Negligent Infliction of Emotional Distress
 - Bystander Theory
 - “Special Relationship” Theory
 - Evolving area of law to be decided on case-by-case basis
 - Can significant increase damages

SOCIAL INFLATION

WHAT IS IT?

The term “social inflation” is a catchall phrase utilized in the insurance industry, but in general, refers to the increase in loss costs due to shifts in distrust of corporations, juror compositions, and effective plaintiff attorney strategies.



SOCIAL INFLATION

DISTRUST OF CORPORATIONS

- Worse since financial collapse of 2008
- Greater division/separation of wealth
- Feeling that someone needs to pay
- Easier for a jury to believe that a faceless corporation with ample assets or insurance should be held responsible.
- Plaintiff attorneys have used this distrust in corporations to alter how they file pleadings in malpractice cases.



SOCIAL INFLATION

JUROR COMPOSITION AND ATTITUDES

- Millennials as jurors
 - Entered the workforce during last economic recession
 - Student debt
 - Starting to take leadership roles in juries
 - Social responsibility mindset
 - Plaintiff attorneys will appeal to this when they want the jury to “send a message” with their verdict

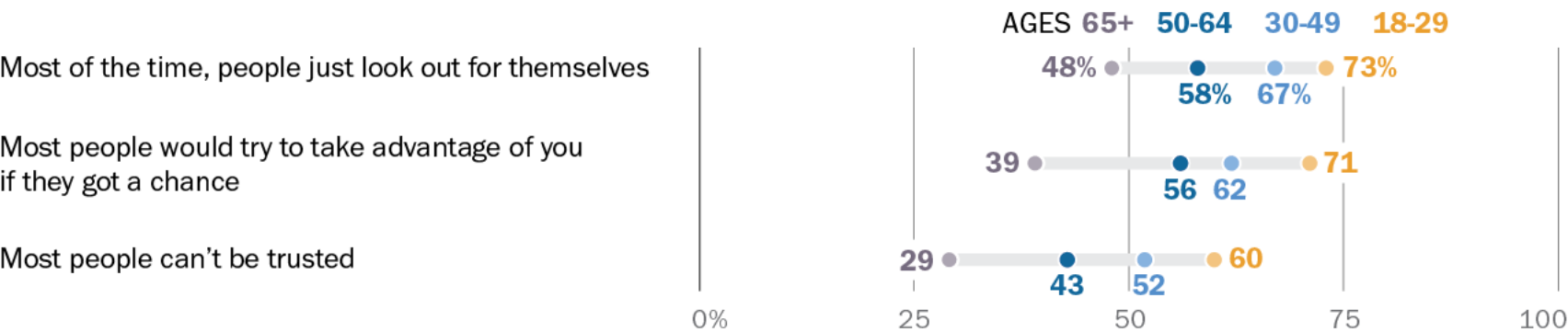
SOCIAL INFLATION

JUROR COMPOSITION AND ATTITUDES

- According to the Pew Research Center, younger generations are increasingly less trusting of other people and authority, with 73% of adults under 30 believing that people just look out for themselves

Most young adults in U.S. see others as selfish, exploitative, untrustworthy

% of U.S. adults in each age group who say ...



Source: Survey conducted Nov. 27-Dec. 10, 2018.
“Trust and Distrust in America”

PEW RESEARCH CENTER

SOCIAL INFLATION

JUROR COMPOSITION AND ATTITUDES

- Uncertainty of access to medical insurance
 - Prior to 2016, the public had some comfort that medical insurance would be available through the ACA or private insurers.
 - Many people on high deductible plans
- Skyrocketing rent and home prices in our core markets
- Knowledge of income of professional athletes, celebrities, and influencers

SOCIAL INFLATION

ANECDOTAL EVIDENCE-TIMES ARE CHANGING

- A sampling of recent cases highlight the trend of rising case resolution expectations

Number	Injury	Jurisdiction	Prayer
1	Urosepsis	Multnomah	\$47,000,000
2	Spinal epidural abscess	Multnomah	\$9,000,000
3	Procedure complication	Deschutes	\$10,000,000
4	Surgery complication	Deschutes	\$15,000,000
5	Labor & Delivery	Multnomah	\$46,500,000
6	Labor & Delivery	Clark	\$100,000,000
7	Labor & Delivery	Spokane	\$20,000,000
8	Labor & Delivery	Pierce	\$100,000,000
9	Stroke	King	\$26,000,000
10	Cancer	Multnomah	\$20,000,000

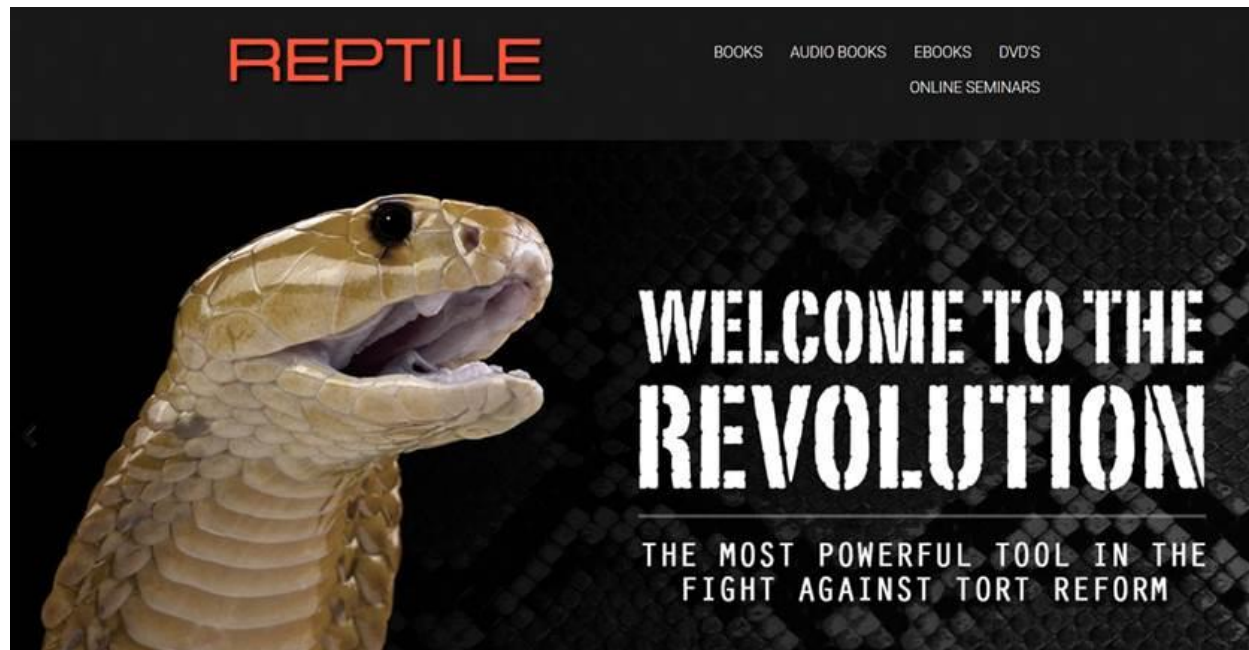
Source: Hodgkinson Street Mephram, LLC

SOCIAL INFLATION

PLAINTIFF BAR INFLUENCE

Reptile Theory

- Attempt to reach the primitive part of the juror's brain that will seek to preserve safety and survival
- The arguments will be that the defendant's care was unsafe and therefore, we are all at danger if a jury doesn't hold a defendant responsible



<https://reptilekeenanball.com/>

SOCIAL INFLATION

PLAINTIFF BAR INFLUENCE

What is the Anti-Reptile?

- Attempt to diffuse juror anger
- Attempt to keep focus on single action for damages, rather than vehicle for social change
- Personalize the Defense
- Accept Responsibility
- Address Bad Facts
- Display Empathy
- Argue Pain & Suffering
- Give a Number

Source: Robert Tyson, Jr. [Nuclear Verdicts: Defending Justice For All: Tyson JR., Robert F: 9781948792035: Amazon.com: Books](#)

UNCERTAINTY OF COVID19

MEDICAL PROFESSIONAL, EPLI, D&O, AND CYBER RISKS

- The pandemic is ongoing and has forced rapid changes in the delivery of healthcare. With any type of new risk, it typically takes several years for claims to materialize so the full impact of the pandemic remains unknown

COVID-19 Claim Trends to Date

- **MPL/HPL**
 - Negligence Claims (Community Spread or Delay in Treatment/Deferred Non-Essential Care)
- **EPLI**
 - Whistleblower/Retaliation, Wrongful Termination, Paid/Unpaid Leave
- **D&O**
 - Negligence for Wrong Action/Inaction
- **Cyber**
 - Remote Work
 - Privacy/Patients and Employees

UNCERTAINTY OF COVID19

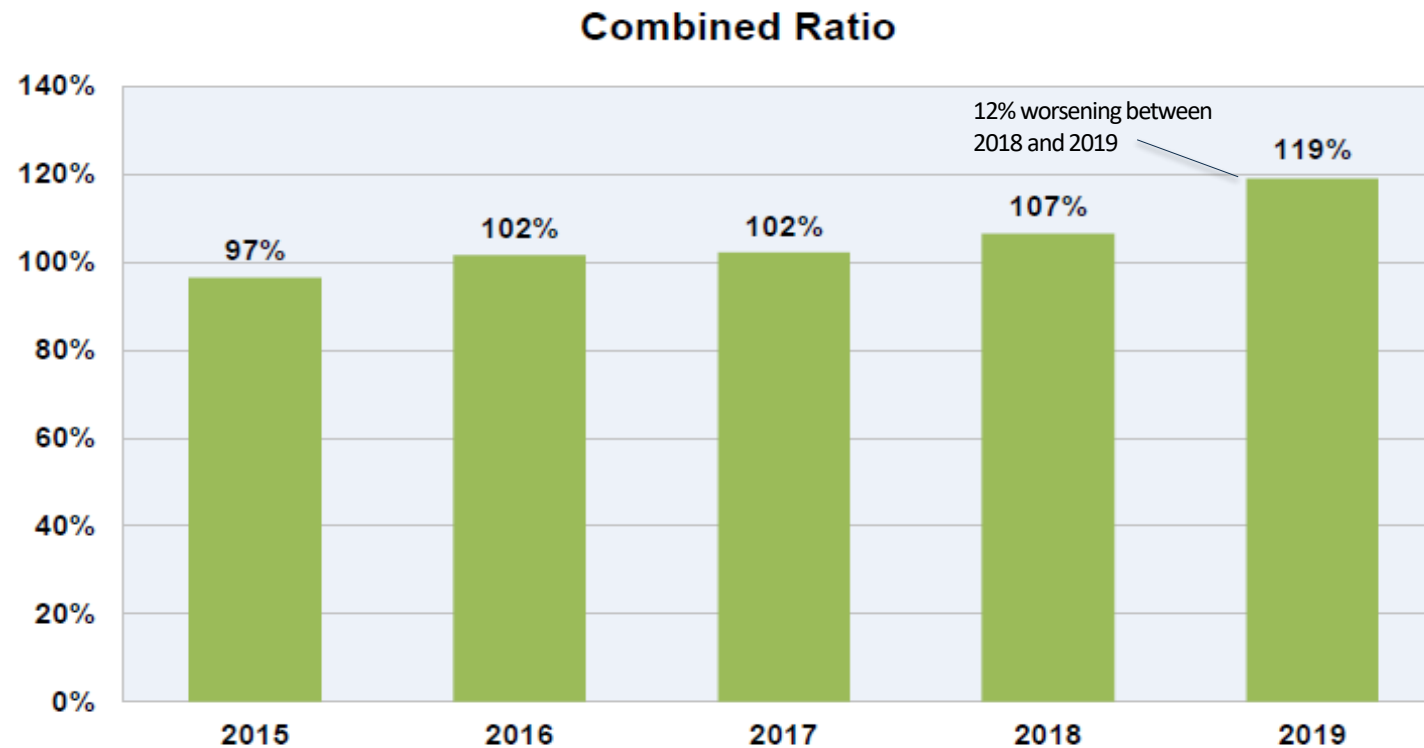
ZOOM-THE NEW MEDIUM FOR LITIGATION

- Meetings
- Depositions
- Mediations
- Trials???
- Resumption of Jury Trials-Late 2021?
- Statute of Limitations Tolled during COVID

OVERALL IMPACTS TO THE MPL INDUSTRY

DETERIORATING FINANCIAL RESULTS FOR INSURERS – NATIONAL DATA

- Across the industry, MPL insurers have seen increasing losses resulting in a deterioration in their combined ratios.



Source: Milliman MPL Financial Insights 12-31-2019. Based on 35 MPL companies which showed deterioration of their average combined ratios over the last 5 years.

OVERALL IMPACTS TO THE MPL INDUSTRY

DETERIORATING FINANCIAL RESULTS FOR INSURERS

- Norcal Mutual combined ratio increased to 175.9% in 2019
- In February 2020, Norcal announced they would be acquired by ProAssurance.

Effective Downgrades by AM Best 2019-2020

Company Name	Effective Date of Downgrade	Prior FSR	Current FSR
Colony Insurance Company	2/26/2020	A u	A-
CMIC Risk Retention Group	10/10/2019	A-u	B++
KAMMCO Casualty Company, Inc.	10/17/2019	A-	B++
FD Insurance Company	2/26/2020	A u	A- u
Medicus Insurance Company	2/26/2020	A u	A- u
NORCAL Mutual Insurance Company	2/26/2020	A u	A- u
Preferred Physicians Med RRG, Mut Ins Co	2/26/2020	A u	A- u
ProAssurance Insurance Co of America	2/26/2020	A+	A

U: Under Review

Source: A.M.Best

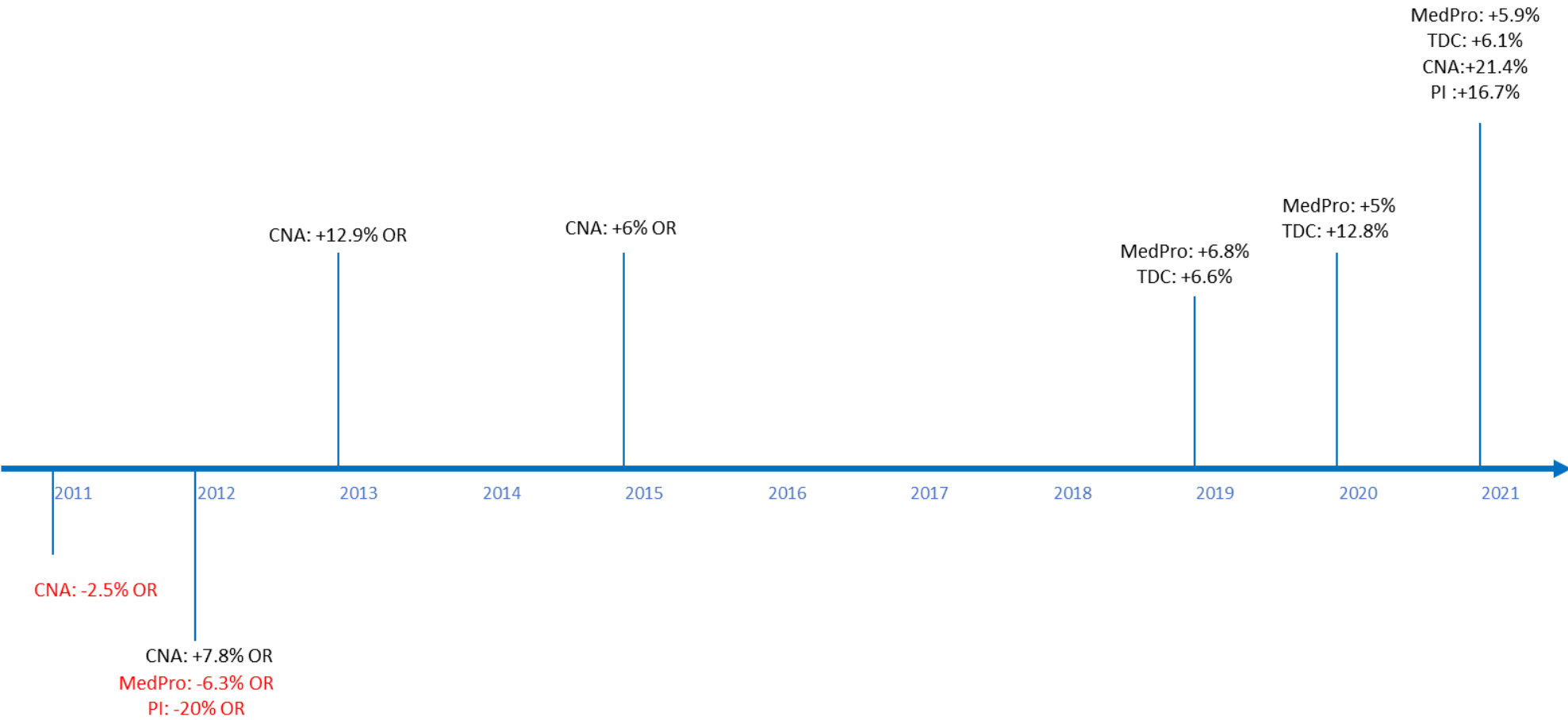
OVERALL IMPACTS TO THE MPL INDUSTRY

AM BEST-NEGATIVE OUTLOOK

AM Best maintains an overall negative outlook on the MPL segment citing:

- Depressed demand
- Diminishing reserve redundancies
- Concerns regarding rate adequacy amid rising loss costs trends and social inflation
- The impact of the COVID-19 pandemic

MPL EFFECTIVE RATE CHANGES IN OREGON



Source: State filings as provided by S&P Global Market Intelligence

2021-2022 GOVERNMENT RELATIONS

Oregon

- Continue to defeat proposals that increase the \$500,000 cap on non-economic damages recoverable in wrongful death actions
- Current challenge to the Oregon Tort Claims Act damage cap
 - Raises the limitation on damages for torts of local public bodies
 - Claims for personal injury or death under Oregon Tort Claims Act do not apply to claims against Oregon Health & Science University
- Support the regulation of litigation funding
 - Plaintiff contracts with a third-party funder to obtain financial assistance for their case in exchange for the funder receiving an interest in the potential recovery
- Protect reasonable cybersecurity and data privacy proposals relating to the Health Insurance Portability and Accountability Act (HIPAA) and insurance

2021-2022 GOVERNMENT RELATIONS

Oregon

- Support liability protections to protect health care providers and facilities who are leading the efforts to address COVID-19 pandemic
- Support Oregon Patient Safety Commission's Early Discussion and Resolution Program for Adverse Events

California-Impact on Oregon

- Defeat proposals that increase the \$250,000 cap on non-economic damages in the Medical Injury Compensation Reform Act

Federal

- Support legislation that addresses telemedicine liability concerns as telemedicine services continue to expand

SUMMARY

- The healthcare landscape has changed and impacted the MPL carriers providing insurance coverage
- Combined ratios are starting to rise again
- Claim costs continue to rise
 - Frequency of severity of cases, erosion of tort reform, social inflation, plaintiff attorney strategies, uncertainty of COVID19
- Insurers across the board are experiencing deteriorating financial results with some forced to sell
- Rate adjustments are being made to reflect the true cost of insuring medicine in 2021 and beyond

Source: A.M.Best



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Audience Q&A

Thank you for attending!