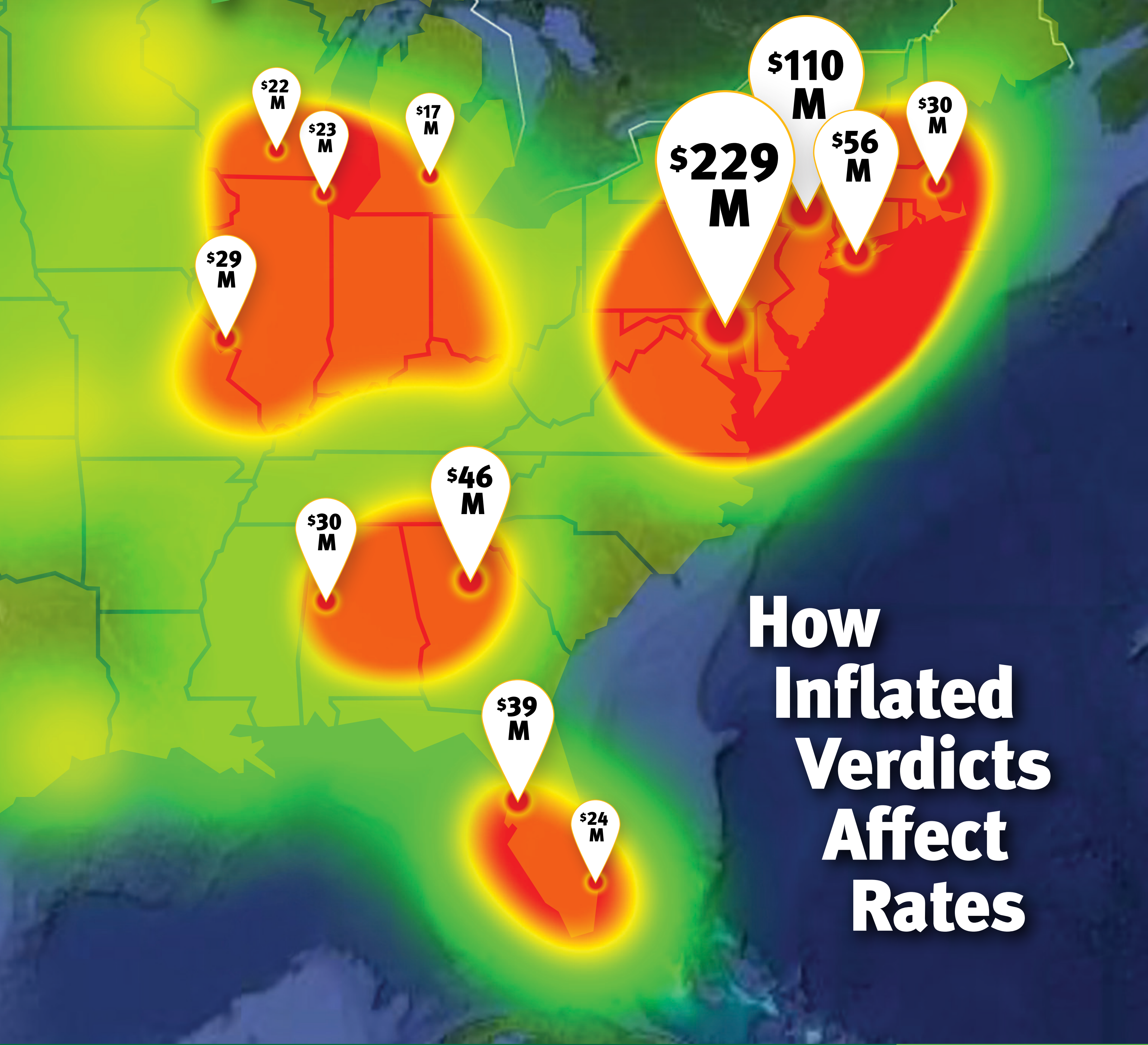
ProAssurance
Treated Fairly

provisions



How Inflated Verdicts Affect Rates

"The MPL claims environment is evolving and our way forward centers on disciplined underwriting.

It is our responsibility and privilege to be good stewards of the trust our customers place in us and that means being appropriately cautious as we consider these emerging trends."

Ned Rand
President & CEO
ProAssurance

When the last hard market began, just 6% of indemnity claims surpassed the $1M mark.

In 2019, 11% of all indemnity claims exceeded $1M.

A word from the CMO

Responsible Rate Increases Protect the Intent of the Policy

As part of our due diligence, ProAssurance keeps a constant watch on medical professional liability (MPL) trends—particularly the severity of the claims environment. Severity trends have raised concerns for some time and continue to worsen.

In response to those unfavorable trends, we increased rates and tightened underwriting in early 2019. We stayed the course throughout 2019 while announcing significant operational changes as part of our overall business plan for 2020. Finally, in late 2019, other carriers and industry analysts adopted our early assessment; we are pleased to see their evolving perspectives.

The life cycle of a healthcare liability policy is longer than many other products. It's not uncommon for a decade or more to pass before all claims in a given policy year are fully resolved. When underwriters set a price for a new policy or renewals, they are not just looking at what price is fair in the market today—they are working to calculate what sum will be adequate years in the future when the client needs to take advantage of their coverage.

ProAssurance is dedicated to assisting our agents both in understanding how the market cycle informs our corporate decisions and how to communicate industry changes to healthcare liability and prospects.

The first major step in our new initiative to communicate the hardening market was our Market Dynamics report; the first version was released exclusively to ProAssurance agents last month. We will continue to update that report and share the latest version as relevant industry events occur or new data is available.

This issue of *ProVisions* will expand on that initial report to include additional background information—and discussion from the ProAssurance team which will assist in painting the picture of the current market. We have also included many statements and advice from those who have weathered hard markets in the past.

Yes, sales conversations will be harder. With claim severity continuing to rise, it is essential to stay the course in order to maintain a secure presence in the market.

Over the years, we have carefully cultivated relationships with agents and brokers we considered to be the best of the best. Your sales efforts are an essential part of our work. Thank you for your dedication to the industry, and ProAssurance.

As always, we want to provide you with any tools and information which would be helpful in steering your sales conversations.

Our Sales and Underwriting teams are also standing by if you would like us to join you for particularly intense renewal meetings. Reach out any time to your market manager if you have questions or want assistance.

Thank you!

Jeff Bowlby
Chief Marketing Officer
ProAssurance
(Photo taken during the last hard market)

TABLE OF CONTENTS...

ProVisions is ProAssurance's monthly agent newsletter. If you or your colleagues do not receive the digital version, email **AskMarketing@ProAssurance.com**. Please include names and email addresses for everyone who would like to subscribe.

THE HOMEPAGE

MPL Market Dynamics 2020 EXPLAINED

The end of 2019 saw several MPL insurance industry companies release "state of the market" reports, including ProAssurance.

While some investors and financial analysts produce these as a matter of routine, others have a specific objective in mind—to explain why premiums are increasing and policy conditions are tightening in the coming year.

The various reports all have potentially useful content. However, we think (surprise!) the **ProAssurance Market Dynamics 2020** report stands out, thanks to several design elements intended to make ours more useful to agents in messaging to clients.

You'll see elements of the report used in this issue of *ProVisions*. We hope that version one is already useful to you out in the field and we'll keep making it better through this market cycle change.

Drill Down History of the MPL Market

Our report builds a logical argument and makes a concluding statement. Each section of the report is a building block in the argument supported by a headline, an explanatory paragraph, supporting quotes or statistics, and an industry data graphic.

You can scan the headers at face value and move on, or dig deeper into a section for more information. The content covers:

1. **MPL Insurance is Cyclical**
2. **Medical Malpractice Claim Severity is Increasing**
3. **Shock Verdicts Fuel Social Inflation**
4. **Reinsurance Costs are Driven up by Excess Verdicts**
5. **Warning Signs Indicate a Market Turn…**

   and we saw plenty of…
6. **2019 Distress Signals**

   THEREFORE…
7. **Expect Responsible Pricing and Disciplined Underwriting as a Top 2020 Industry Trend**

For Agents' use in the Field

Unlike the more general industry reports or the highly technical ones for investors, our report is built for agents with the specific purpose of helping you communicate to clients. Because insurance is a pooled risk fund, a transition to a hard market affects everyone, including physicians who've never had a claim before. We heard from you that you wanted tools and messages to help you through the coming tough conversations with clients, and we created this report in response.

Ready-to-use Slides to Download and Present

We converted each of the data-driven graphics into PowerPoint slides for use in your presentations.

The slides are intended to be supplemental resources for you to pick and choose to support your own presentations. But yes, you can download them all and present them in story format if that's what you need. However, the intention is to provide you a set of tools for you to adapt communications for your individual clients.

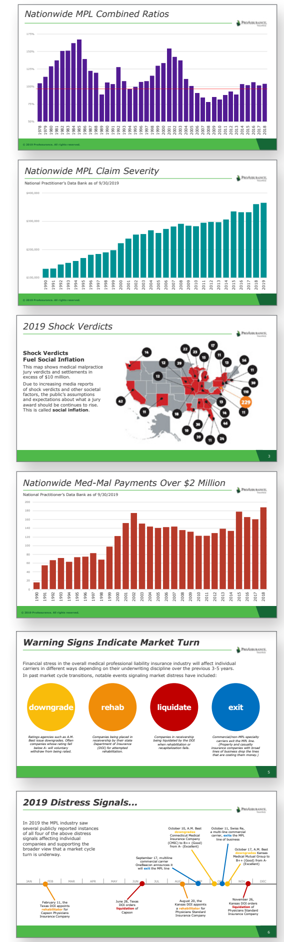
Planned Updates Will Keep you Current

This report format was designed to expand as the market continues to change, as new information comes out, and as new pieces of the logical argument are developed.

Version one was created to get a tool in your hands ASAP to assist with 1/1 renewals, as we were hearing about challenging client conversations. Version two will add two more sections clarifying the different characteristics of the market cycles and explaining the "deeper pockets" effect of hospital insurance programs. After that we'll update the full report again once 2019 numbers are published.

Future reports will be produced two full pages of content at a time so it can be shared easily online (PDF) or in print.

The most current content will always be available to you on the website and we'll keep you updated via *ProVisions*.



Slides available for agent presentations.

Written by Steve Dapkus, *Vice President, Marketing*

Please note: *The Homepage is not an advice column. The purpose of The Homepage is marketing, communications, and business operations insights in the digital age.*

Visit ProAssurance.com/MPLMarketDynamics for a PDF of the latest report, the slide deck, and related support materials.
If you have specific feedback about how we can improve, let us know by emailing **AskMarketing@ProAssurance.com**.

MEDICAL PROFESSIONAL LIABILITY **Market Dynamics 2020**

After over a decade of soft pricing, MPL insurance market conditions are changing.

Increased claim severity, largely due to excess jury awards, is pushing combined ratios above 100 percent, which puts pressure on rates. Excess verdicts drive up the cost of reinsurance, worsening combined ratios even further.

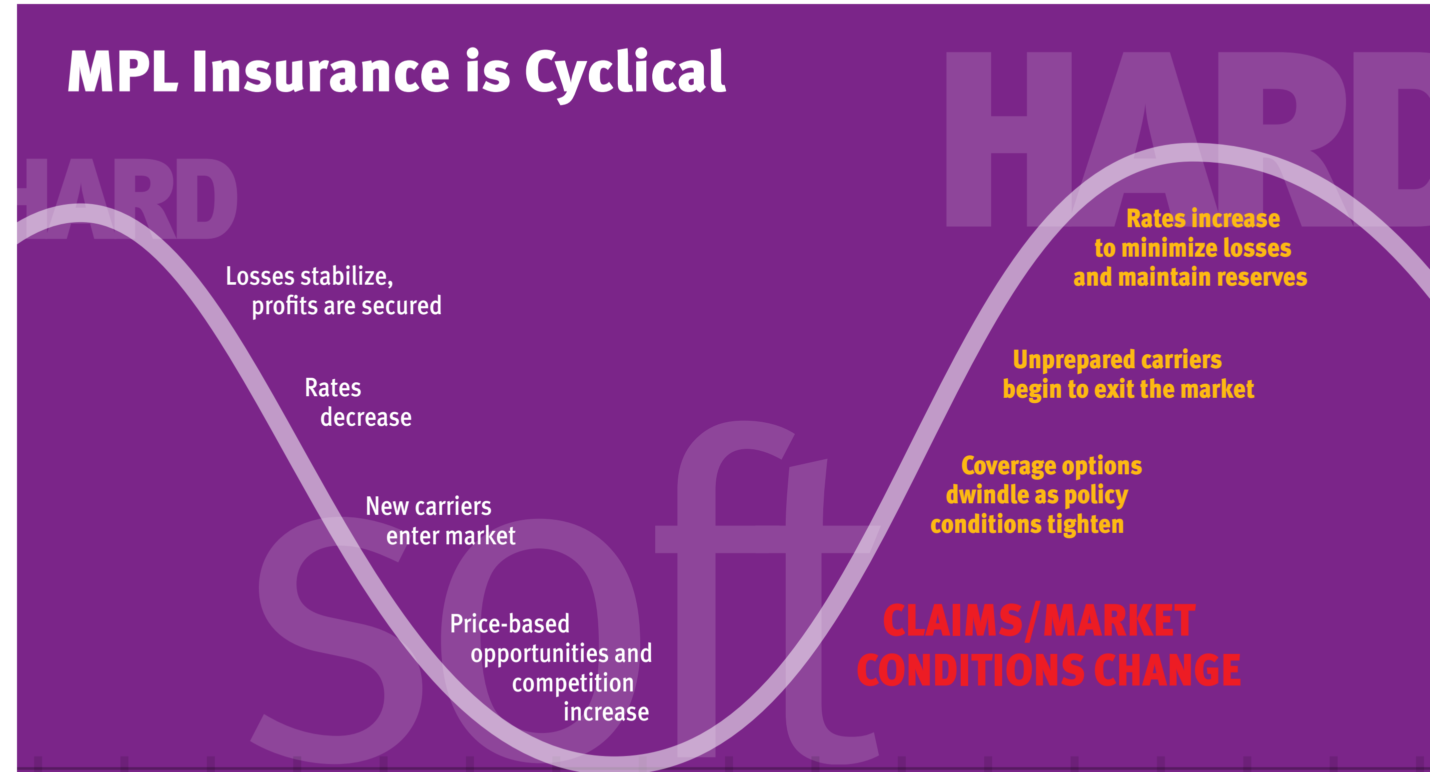
Financial pressures will cause experienced MPL insurance companies to evaluate responsible pricing and policy terms, while nonspecialist commercial carriers have historically exited the MPL line of business.

"In 2019 our industry saw numerous, jaw-dropping malpractice verdicts well over $10 million. Facing today's intense claim environment means staying disciplined and well-prepared.

Our insureds need to be confident in their coverage and understand the logic behind our pricing. We must continue to be responsible in our reserving."

Jeff Bowlby
Chief Marketing Officer
ProAssurance

MPL Insurance is Cyclical

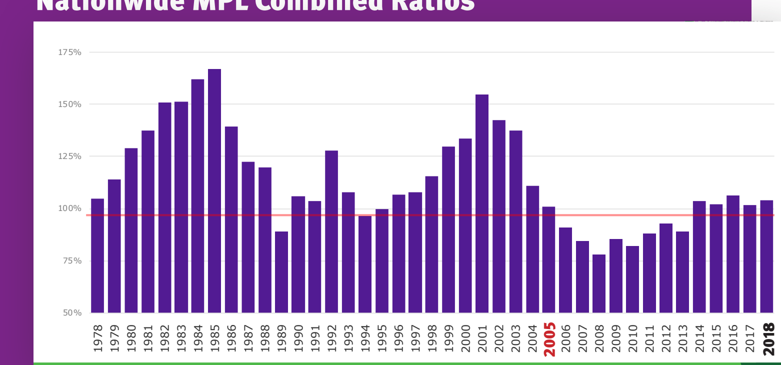


MPL insurance has been in a **SOFT MARKET CYCLE** since 2005—the longest soft market we've experienced. Coverage has been widely available, policy terms relaxed, and priced-based competition common.

In a **HARD MARKET CYCLE**, insurance becomes less available, policy conditions tighten, and premiums increase. Medical malpractice claims may take a decade to resolve, so the insurers' long-term financial health is of utmost importance to the insureds.

Many MPL specialty insurance companies, including ProAssurance, were founded in response to the medical liability crisis of the 1970s.

Nationwide MPL Combined Ratios



A.M. Best data shows combined ratios are rising for most carriers. When combined ratios exceed 100%, corrective actions must be taken to ensure stability.

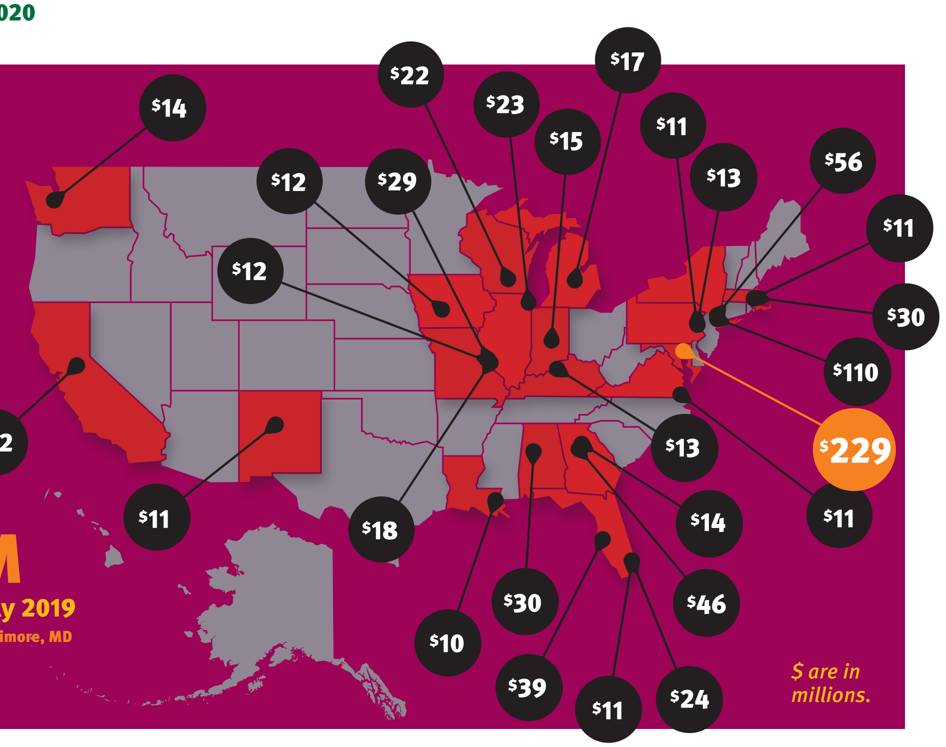
MEDICAL PROFESSIONAL LIABILITY **Market Dynamics 2020**

Shock Verdicts Fuel Social Inflation

2019 saw numerous medical malpractice jury verdicts and settlements in excess of $1 million.

Due to increasing media reports of shock verdicts and other societal factors, the public's assumptions and expectations about what a jury award should be continue to rise. This is called **SOCIAL INFLATION**.

The largest medical malpractice verdict ever awarded in the United States… $229M July 2019 Baltimore, MD



$ are in millions.

Click the numbers on the map to read the articles.

"Adverse litigation trends, with an increased frequency of severe claims, piling atop years of poor market results, have brought the market to a tipping point, prompting carriers to address rate adequacy, where necessary."

Risk & Insurance

The average medical malpractice claim cost has increased 50% since 2009

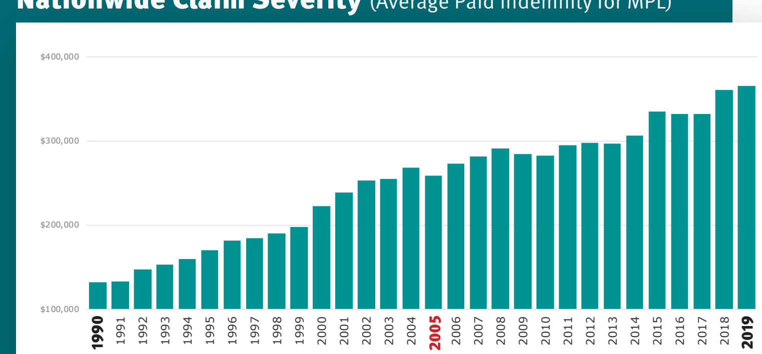
Beazley Group

Medical Malpractice Claim Severity is Increasing

The last hard market ended after claim frequency fell sharply in 2004/05. While MPL claim frequency remained flat, claim severity has been steadily ticking up, which compounds over time. In recent years, large jury verdicts have widely been seen as the primary driver of increasing claim severity.

Since the last hard market, the average indemnity payout has increased 41% (2005-2019)

Nationwide Claim Severity (Average Paid Indemnity for MPL)



The National Practioner Data Bank indicates claim severity is on the rise.

Reinsurance Costs are Driven up by Excess Verdicts

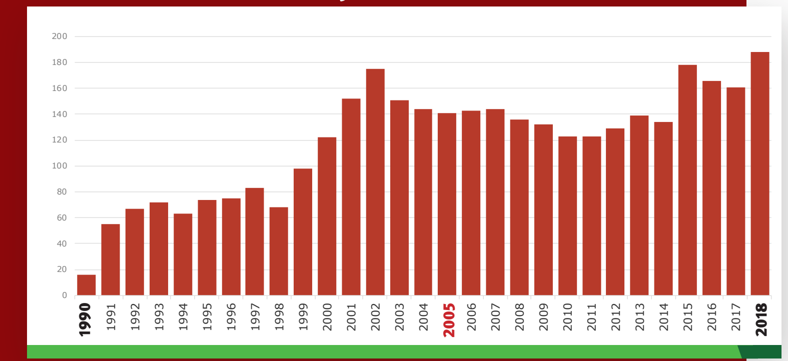
To provide protection against excess/catastrophic losses, insurance companies enter contracts with reinsurers.

The primary carrier retains financial responsibility up to a specified limit per claim ($1 million is common for MPL carriers). The reinsurer becomes responsible for losses above the set limit. As the cost of excess verdicts increase, reinsurance companies respond by raising their premiums, further pressuring the balance sheets of the primary carrier.

The Mid-Year 2019 Market Report from EPIC stated:

"…most, if not all, of the MPL insurance and reinsurance carriers sought rate increases due to high severity claims impacting the industry."

Nationwide Med-Mal Payments Over $2 Million



According to the National Practitioner Data Bank, medical malpractice indemnity payments are above historic high points on a national scale.

"Malpractice claim severity is increasing, and reinsurers are seeing losses in excess of $10 million more frequently than in years past. You can expect higher reinsurance costs to become more of a factor in this market cycle. As those costs increase, it will inevitably flow through to the customer."

Rob Francis
Executive Vice President, Underwriting and Operations
ProAssurance

Plaintiff Attorneys Pursue Larger Verdicts by Stacking Limits

2018 marked the first year where employed physicians **(47.4%)** outnumbered physicians that owned their practice **(45.9%)**.

Increasingly, medical care is being performed by a healthcare team including multiple physicians, physician assistants, nurses, and other healthcare staff.

If care took place over a long period of time, or at multiple facilities, plaintiffs may try to argue that multiple insurance policies could cover the alleged malpractice. This is known as stacking limits.

It becomes increasingly problematic if a physician is employed by a hospital, which has much larger limits than an individual physician's policy—leaving the physician open to a much costlier lawsuit.

2018 marked the first year where employed physicians (47.4%) outnumbered physicians that owned their practice (45.9%). The size of physician practices is also increasing. The number of practices with fewer than 10 physicians dropped by 4.9% from 2012 to 2018.[1] This makes it more likely that a physician will be named in a larger malpractice suit.

Typically, healthcare organizations and physicians have different philosophies when it comes to managing claims. Physicians hope to defend against a malpractice claim to avoid the suit staying on their record and damaging their professional reputation. Healthcare facilities hope to efficiently manage claims in a way that is quick and cost-effective—often settling the suit. This can become difficult to navigate with stacked limits when the opinions of multiple policyholders must be considered.

[1] *https://www.ama-assn.org/system/files/2019-07/prp-fewer-owners-benchmark-survey-2018.pdf*

MEDICAL PROFESSIONAL LIABILITY **Market Dynamics 2020**

Warning Signs Indicate a Market Turn

Financial stress in the MPL insurance industry will affect individual carriers in different ways depending on their underwriting discipline over the previous three to five years. In past market cycle transitions, notable events signaling market distress included:

downgrade

Ratings agencies such as A.M. Best issue downgrades. Ratings are based on a multitude of factors including industry standards, proprietary benchmarks, and comparison to peers. The company's risk appetite, operating plans, business philosophy, or support of affiliate companies may also be considered. Companies whose ratings fall below A- often withdraw from being rated.

assess

State-managed funds such as patient compensation funds accumulate deficits as these funds are used to cover more or larger malpractice verdicts. To address these debts, the state performs an assessment on the direct written premium of all professional liability insurers operating in the state; the assessment amount will be added as a line item on the policyholder's invoice until the state's accumulated debt is paid off.

rehab

Companies unable to meet their financial obligations may be placed in receivership by their state Department of Insurance (DOI) for attempted rehabilitation. The process varies according to state law; generally the insurance commissioner will exhaust all remedies to help the insurer recover its losses and regain its financial standing.

liquidate

Companies in receivership are liquidated by the DOI when rehabilitation or recapitalization fails. A liquidator takes control of all the company's property and will conduct any remaining business under supervision of the court. Insureds will be given a set timetable in which their coverage will expire.

exit

Commercial/non-MPL-specialty carriers exit the MPL line when it becomes unprofitable. These companies typically have a more diversified range of products, and determine it is more profitable to focus on other types of insurance—instead of taking on the additional risk professional liability represents. The St. Paul Companies, Inc. abruptly exiting the MPL line in 2001 is commonly anecdotally credited with fueling the last hard market.

What's Next?

Expect Responsible Pricing and Disciplined Underwriting as a Top 2020 Industry Trend

Well-capitalized MPL specialists constantly analyze industry trends and take responsible, corrective actions to historical warning signs. Experienced carriers are positioned to manage market cycle turns in a manner that will protect the long-term interests of their clients.

ProAssurance is ahead of the market cycle correction curve and is prepared to assist our insureds and agent partners with industry knowledge and communication tools.

If you have questions or suggestions regarding market cycle dynamics, please contact your ProAssurance market manager.

2019 Distress Signals

2019 saw publicly reported instances of all four warning signs above. This news affected several individual companies and supports the broader view that a market cycle turn is underway.

JAN 2019 | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | JAN 2020

- **February 11, Texas DOI appoints a rehabilitator for Capson Physicians Insurance Company**
- **May 19, South Carolina announces a 2-6% assessment to shore up the underfunded South Carolina Joint Underwriting Association/ Patient Compensation fund.**
- **June 28, Texas DOI orders liquidation of Capson**
- **August 20, Kansas DOI appoints a rehabilitator for Physicians Standard Insurance Company**
- **September 17, multiline commercial carrier One Beacon announces it will exit the MPL line**
- **October 10, A.M. Best downgrades Connecticut Medical Insurance Company (CMIC) to B++ (Good) from A- (Excellent)**
- **October 11, Swiss Re, a multiline commercial carrier, exits the MPL line**
- **October 17, A.M. Best downgrades Kansas Medical Mutual Group to B++ (Good) from A- (Excellent)**
- **November 26, Kansas DOI orders liquidation of Physicians Standard Insurance Company**

Tales from Previous **Hard Markets...**

We sent out a company-wide request to our MPL experts asking for stories that stood out during the last three hard markets. Not everyone worked for ProAssurance at the time and their insights are interesting to compare to what we're seeing today.

A Hard Market History Lesson

My career has covered three prior hard markets in the MPL line.

The first was the hard market centering around 1975. I had just joined a law firm that represented physicians in Michigan, which was one of the hardest-hit medical malpractice states. This was the time of the emergence of the physician-controlled insurers that were filling the gap left by the departure of commercial insurance companies from the MPL space. What the new physician-controlled carriers lacked in experience was offset by their determination to defend claims more aggressively and thereby hold down the largest single component of MPL costs.

By the second hard market that came about in the mid-1980s, I was an officer of one of the new physician carriers, ProNational Insurance Company. By the time of the third hard market in the early 2000s, ProNational was in the process of merging with Medical Assurance to form ProAssurance. Although the merger discussions preceded the hard market, the motivation was to build a larger and financially stronger MPL insurer, which served ProAssurance and its insureds well during the ensuing hard market.

Hard markets are difficult, primarily as we relate to our insureds. Rates go up while underwriting decisions become more focused. In a sense, we are forced to reverse some of the decisions that we (the industry) were lulled into making during the soft market.

In thinking back, I have three core thoughts to offer.

FIRST, we need to always remember that the primary responsibility of an insurance company is to pay the legitimate claims of its insureds when the claims become due. The hard market forces us to make the often-difficult decisions needed to make sure that the company will remain financially strong and able to meet its obligations to its insureds.

SECOND, I have felt a measure of embarrassment that we, as an industry, would let a hard market develop. To some extent, the long-tail nature of MPL means that claims experience, and changes in the tort environment, are not fully understood until they become painfully evident. However, the fact often is that companies do know that trends are going in the wrong direction but feel constrained by competition from acting until the need to act is universally recognized. ProAssurance should be commended for taking early action in the current hard market.

THIRD, it is the degree of change that is most impactful on the insureds, even if they may actually be paying less than they did a few years ago. The soft and hard market cycle transforms what could have been an orderly rate environment into a roller coaster ride that no one enjoys on the way up.

While painful, hard markets allow insurance companies to take the corrective action that is needed, and strong companies have the flexibility to take corrective action in a manner that is least disruptive for insureds.

Contributed by Vic Adamo. *Vic Adamo served as President and Vice Chairman of ProAssurance from 2001 through his retirement in 2013. He currently serves as Director of The Mutual RRG in California.*

Doctors Threatened to Relocate

The combination of rapidly rising rates and St. Paul's withdrawal from the market created a real crisis in West Virginia. **Doctors were threatening to leave the state and were marching on the statehouse to demand assistance from the legislature.** We (Medical Assurance at the time) were cast as a villain endangering the health of the people of West Virginia, and media reports included threats from the governor and even political cartoons featuring our company. Medical liability insurance typically is way below the radar of the average person, but for about three years in West Virginia, it was a major political issue.

Jeff Lisenby
General Counsel

Affordability Evaporated

Reflecting on my personal experience as an independent producer, placing and retaining accounts in a hard market presented considerable challenges for our clients and for the agency to overcome. **Carrier availability and premium affordability simply evaporated for some specialties in a number of states,** for example: Florida, Pennsylvania, and Nevada. The agency educated and prepared clients as to the factors leading to a "hard market." Premium increases, particularly for surgical and obstetric practices, placed considerable financial stress on the practice, leading to animated communications with underwriters and clients with increased pressure on the agency to shop renewals. If renewal pricing remained under 15 percent, even for practices with no increase in exposure or experience, there was a high probability of retention (loyalty is adhesive). However, there was reliance on the fact other carriers pricing was increasing as well. **Risk retention and risk purchasing groups, a number which were emerging due to the hard market, presented an attractive alternative for some practices.** A stressful time for the agency in having to shop a larger portion of the book to retain a client. Pricing increases also led to an increase in prospect volume wherein direct writers and a few agency competitors were not positioned to offer alternative solutions.

Steve Lempp
Senior Market Manager, retired

More Risk Management

I actually worked as a risk manager in two hard markets—one at PHICO and one when I first joined ProAssurance. In both instances, **price increases were unpopular but matter-of-fact—"this is what it costs now to insure you."** I still remember the faces on some of our customers in renewal meetings—and a lot of folded arms on the underwriting side. Premiums went up a lot, but we rarely nonrenewed accounts. Our risk management team worked closely with our underwriters and our insureds' risk management leadership. **There was a lot more interest on the client side on mitigating risk.** In some instances, pricing was influenced by whether or not an insured made changes required by risk management and supported by underwriting.

Lisa Van Duyn, RN, BSN
Vice President Patient Safety and Service Excellence

Bad News via BOR

One tale is when we had an agency move business via Broker of Record (BOR) and then summarily move it into a poorly funded captive the following renewal. **Our agents lost via BOR and a not so loyal agent moved it away from ProAssurance.** We lost some business, not much, but then adopted a "no BOR" mandate which caused issues with regulators as the market softened to the BOR guidelines we have now.

Jeff Bowlby
Chief Marketing Officer

Placed in Rehab

I worked for a company that had locations all over the country and **one day it seemed like things were going fine and the next day the state was coming in to take over the operations in an effort to rehabilitate the company.** Ultimately that company stopped writing business in 2001 and went into a fast track mode of running off the claims that the company was responsible to handle. Berkshire Hathaway stepped in monetarily and helped settle many of those claims. Employees' lives were uprooted as they lost their jobs and had to find work elsewhere. **I came in one day and there were employees who couldn't log into their computers only to find out that was their pink slip.**

Tammy Sternberg
Director of Underwriting, OBRA

Emergency Coverage

Way back in the day, when I was still in claims, at least 14 years ago, **I recall one of the PL insurers going into receivership.** Dr. Crowe made the decision to offer all of their Alabama insureds a short policy (maybe 90 days) at standard rates so they could continue practicing while they applied for coverage elsewhere. **I remember the underwriters working day and night to issue these policies and COIs emergently to ensure the continuity of care for the patients and the livelihood of the physicians.** No one was denied the short policies, not even insureds we had previously canceled or nonrenewed.

TJ Bradley
Senior Legal Counsel

Pricing Jumped

A new business submission for a large hospital in Florida came in. **The hospital had been paying a premium of $450,000 for $15M in total limits and a $25,000 deductible.** We wrote the account with a $1M/$3M primary policy excess of a $500,000/EE retention, along with a $9M/$9M excess policy for a premium of almost $4M.

Shep Tapasak
Senior Vice President
Specialty Underwriting, HCPL

This Time it's Different

When St. Paul left in 2002, it was a big year for underwriters. **PIC Wisconsin saw such a significant amount of submissions, we had to limit the new business we wrote in more litigious territories.** This time around is different. Some carriers have already exited the market but not to the degree we saw back then. This time the industry-wide trend of more $10M-plus claims is driving rates higher.

Sally Kreul
Assistant Vice President
Underwriting, HCPL

Loss Ratios Hit First

Price increases were taken nationwide, without discernible loss of business. **Loss ratios also went up.** It hit, however, before we could get prices up.

Jeff Manget
Senior Financial Analyst

Tons of Applications

I remember sending out three or more declination letters almost every day for months—that never happens anymore. **We were getting paper applications at that time, and while it wasn't the best idea, we took them home and I would review them in between my girls' volleyball matches on Saturdays.** Sometimes I would have 50 different applications in my bag each weekend—what we could not get to during 10-12 hour days during the week.

Anita Hamilton
Director of Service Center

Nonstop Calls for two Days

Over 1/3 of the Alabama physicians had their policy cancelled with no notice when the Virginia Insurance Reciprocal closed. Also there was no guaranty fund coverage available.

When St. Paul announced they were exiting the market (keeping in mind they were probably the largest MPL writer at the time), **my office phone started ringing even before the switchboard was opened and didn't stop for two days.**

Emil Pela
Senior Market Manager

Driving a Yugo

On a lighter note, Danny Karr and I went to Houston in 2002 to meet with an agent. We pulled up in a rental car which was actually a Yugo or something like that. The agent walked up and said now he knows **it's a hard market when underwriters pull up in a tiny little economy rental car** and promised us he would pick up dinner.

Patrick O'Doherty
Vice President Underwriting
HCPL Custom Physicians

Shocking Surcharges

I remember consent to rate and tail surcharges up to 400 percent for all DIR insureds coming to ProAssurance.

Judy Vines
Senior Underwriting Analyst

Match the Indication

On the first rate filing that I did for the company, **the rate indication was for a 35 percent increase. I selected 5 percent.** When I showed my proposal to our Chief Actuary, he said to **revise the selection to be equal** to the indication.

Tonya Bussey
Assistant Vice President
Actuarial Services

Building Loyalty

St. Paul had pulled out of the market in Alabama and the **doctors were grateful to ProAssurance, then called Medical Assurance, for our help. They were loyal to the company.** They were appreciative of our input and eager to assist in their defense.

Barbara Goodwillie
Senior Claims Specialist

Late Hours

When a competitor pulled out of a state of line of business, **we had to work late hours evaluating an influx of applications** to determine what was good business.

Beverly Joiner
Senior Accountant

All Hands on Deck

In the summer of 2003, I was programmer in the IT department and we'd been working overtime to meet a project deadline. I drove to the Birmingham office mid-morning on Saturday 6/21 to find the parking lot already full. **The Virginia state Department of Insurance liquidated Doctors Insurance Reciprocal the day before. Their insured physicians only had until July 3 to find new coverage,** so it was all-hands-on-deck in underwriting to process applications. There are always some cars here on the weekends, but that was the only time it was hard to find a place to park.

Steve Dapkus,
Vice President, Marketing

An Actuary's View on Medical Malpractice Claim Severity

According to the National Practitioner Data Bank (NPDB), **the average medical malpractice payout has increased 40 percent since the last hard market.**

While claims frequency has declined slightly, the entirety of the decline was in low severity claims. When the last hard market began, just six percent of indemnity claims surpassed the $1M mark. In 2019, 11.1 percent of all indemnity claims exceeded $1M. The graph below shows the number of reported counts, as published by the NPDB, by closing year. The light green line reflects claims with a payment less than $250,000 and the dark green line reflects claims with a payment higher than $250,000.

Changing severity

According to the NPDB, the average medical malpractice indemnity payment for MDs and DOs was $419,815 in 2019—up from $360,710 just five years ago in 2014. In line with the NPDB information from the above paragraph, new data from the Medical Professional Liability Association shows that median indemnity payments changed dramatically. The median jumped to $250,000 in 2018—after 12 years (2006-2017) of holding steady at $200,000, a 25 percent increase. (The median has an equal number of cases above and below it and usually varies less than the average does.)

What does this mean?

The median claims change reflects fewer small claims and more $250k-plus claims. Analysts have not identified the root causes for this shift, but healthcare consolidation, social inflation, and the increased sophistication and resources of the plaintiff's bar may be factors.

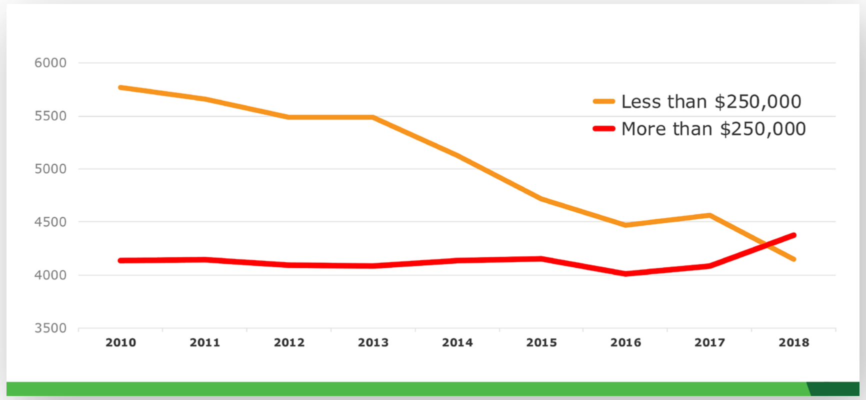
Pressure on insurers

Another way to look at claims severity: there is a lag between when claim costs increase and when they affect the rates charged by the insurer. Because it takes about three years for a claim to be paid, there is a delay between the time when claim costs increase and when they are reflected in charged rates. In retrospect, over the last three years it appears that annual claims costs have increased at a higher rate—four to five percent per year—than the usual one to two percent of prior years. As a result, insurers may be facing a 12-15 percent increase in claims costs when they implement new rates. In addition, MPL premiums industry-wide have stayed steady or gone down over the past 14 years; insurers who underpriced their products to gain market share are likely to feel squeezed as the market changes.

Staying the course

Founded in 1976, ProAssurance has always taken the long view, priced responsibly, and reserved conservatively. In 2016, at the first glimpse of increased claim severity, we increased our reserves for claims over $250,000, which we continue to monitor closely. Industry analysts have commended ProAssurance for being quick to spot and respond to changes in claim severity. However, even when we are subject to analyzing a limited amount of data, particularly when it comes to indemnity payments, which typically comprise less than 20% of all closed claims. ProAssurance remains vigilant, disciplined, and strong in a changing market, which is good news for your clients, our insureds.

Indemnity Claims Counts by Size of Loss



*Source: Singh, Harnam, **National Practitoner Data Bank**. Generated using the Data Analysis Tool at https://www.npdb.hrsa.gov/analysistool/. Data source: National Practitioner Data Bank (2019): Adverse Action and Medical Malpractice Reports (1990 – September 30, 2019).*

Written by Tonya Bussey
Assistant Vice President
Actuarial Services

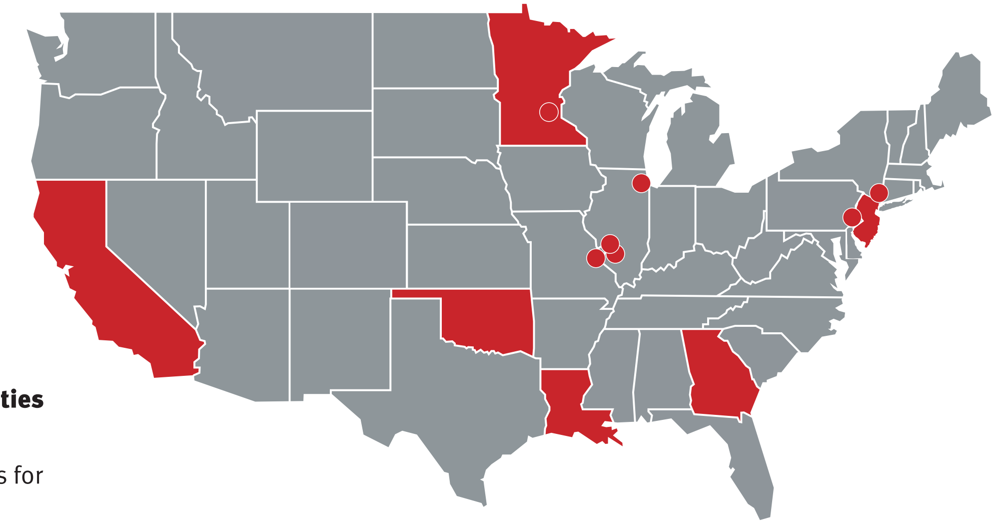
2019-2020 Judicial Hellholes

The American Tort Reform Foundation issued its 2019-2020 Judicial Hellholes report mid-December 2019. The organization has created this list since 2002, identifying documented places where judges in civil cases "systematically apply laws and court procedures in an unfair and unbalanced manner."

This year's list includes:

1. **Philadelphia Court of Common Pleas**
2. **California**
3. **New York City**
4. **Louisiana**
5. **St. Louis, Missouri**
6. **Georgia**
7. **Cook, Madison, and St. Clair Counties, Illinois**
8. **Oklahoma**
9. **Minnesota Supreme Court/Twin Cities**
10. **New Jersey Legislature**

Read the full list, including explanations for each selection at JudicialHellholes.org.



Recommended MPL Market Cycle Articles

To support your knowledge of industry issues, we have curated a list of recent industry articles. Please let us know if there are any other topics you would like us to monitor at **AskMarketing@ProAssurance.com**.

1. **Social inflation making professional lines "trickier"**—Social inflation over the past decade has caused the number of large claims to rise, which is in turn starting to impact loss reserves for professional liability carriers. Written by Bethan Moorcraft, Insurance Business America, December 23, 2019.
2. **Hospitals need to brace for upward trend in malpractice claims**—There has been a steady increase in claims over $5 million, with the average claim paid by hospitals increasing 50 percent since 2009, according to data from Aon and Beazley Group. Written by Christopher Cheney, Healthcare Leaders Media, December 2, 2019.
3. **Leapfrog announces top hospitals of 2019**—Leapfrog selected 120 top hospitals on patient safety ratings through the organization's annual survey. Written by Christopher Cheney, Health Leaders Media, December 17, 2019.
4. **Medscape Malpractice Report 2019**—Medscape surveyed over 4,300 physicians in 29-plus specialties, who revealed if they had been sued, what happened, and how the experience impacted their practice going forward. Written by Leslie Kane, Medscape, November 20, 2019.
5. **Top causes of medical malpractice**—Childbirth, anesthesia, and misdiagnosis top the list of areas most likely at risk for triggering a malpractice claim. Written by Naveed Saleh, MDLinx, July 17, 2019
6. **Doctors worry about the rise in med-mal payouts; more**—Insurer payouts to plaintiffs increased 33 percent from 2017 to 2018, leading to 25 percent of professional liability insurers raising their rates in 2019. Written by Wayne Guglielmo, Medscape, December 2, 2019.
7. **Insurance execs concerned about inflated jury verdicts**—The increase in larger jury payouts fueled by "social inflation" could lead to an estimated $200 billion global reserve deficit, according to Stephen Catlin of Travelers Insurance. Several industry professionals, including ProAssurance's Rob Francis, weigh in on current claims trends. PYMNTS.com, November 22, 2019.
8. **Are we in a hard market or a period of transition? And why do these words matter?**—The market cycle can impact a variety of insurance factors, from the availability of coverage to pricing to the amount of competition in the market. Written by James Curbeam, Risk & Insurance, December 6, 2019.
9. **Malpractice suits are less frequent—but costly**—Malpractice suits declined across all specialties from 2007 to 2016. However, costs to manage claims have risen by an average 3.5 percent throughout that time period. Written by Allicia Gallegos, The Hospitalist, March 2, 2019.
10. **Study: Hospital acquisitions hurt patient experience**—*The New England Journal of Medicine* study indicates quality measures such as mortality and readmission remain steady following hospital mergers and acquisitions—but the overall patient experience decreases. Written by Keith Reynolds, Medical Economics, January 3, 2020.

The Big Question

January 2020
Market Cycle

What is your advice for those experiencing their first hard market?

Don't assume that this hard market will be like the last one. There are a lot of characteristics this time around that tell me we'll have to work smarter this time around: more capital in the industry, better data analytics, and more alternative options for large risks.

Tonya Bussey
Assistant Vice President Actuarial Services

Place business with the more stable company, not the most inexpensive.

Judy Vines
Senior Underwriting Specialist

The hard market won't last forever, so be professional and fair. Also, be patient. If this is your first hard market, it's probably the first for the other person too!

Emil Pela
Senior Market Manager

I would say do not underestimate the extent to which insurance companies will be blamed for conditions that are actually a product of the judicial system and jury decisions. Paul Butrus always liked to say, "We are only the record keepers in all this" but we are the easy target when politicians and regulators need to pin the blame on someone.

Jeff Lisenby
General Counsel

Clients become a lot more interested in risk management services during a hard market because: 1) they are paying a lot of money for coverage and this is an included service, and 2) underwriting may have more latitude in pricing when an insured works closely with risk management to limit their exposures. Also, based on my experience at PHICO, an insurer's financial stability in hard markets depends on how they priced during soft markets. If they underpriced to buy business, they (and their customers) can end up in deep trouble—the carrier can't raise their prices high enough to pay increased claims; they run out of runway. It's better to stick with a financially strong insurer through hard and soft markets.

Lisa Van Duyn, RN, BSN
Vice President Patient Safety and Service Excellence, Risk Resource

- *Counsel clients/policyholders to take control of objective credits; for example, risk management educational credits and credits for membership in a medical society or association if offered.*
- *Conduct agency/underwriting discussions as to anticipated rate increase not associated with exposure.*
- *Review any changes within the practice (value of renewal application) to determine if providers are properly classified. Look for changes in practice hours or procedures, for example.*
- *Review loss runs with clients/policyholders that have reported losses in the last 10 years.*
- *Check the level of risk tolerance a policyholder may be willing to consider to reduce cost, e.g. deductible options.*
- *Educate clients on conditions leading to a hard market and history of the last hard market and its consequences.*
- *Do a comparative analysis. Are carriers transparent in the steps being taken, including pricing, to maintain its financial rating/stability in the long-term interest of its policyholders?*

Steve Lempp
Senior Market Manager, retired

The Next Big Question

February 2020
Cyber Insurance

Have you or your clients ever experienced a cyber attack or similar event?

Please submit your observations by visiting **ProAssurance.com/BigQuestion**.

Dow Walker Has Retired

After a very long and distinguished career in many facets of the medical professional liability industry, Dow Walker, Program Executive, Ob-Gyn Risk Alliance, has retired. Dow was one of the founders of Medical Assurance—one of the companies that ultimately became ProAssurance.

Dow has held many roles throughout his multi-decade career. Those who have worked with him find him impossible to forget. He will be missed, and we wish him all the best as he steps into retirement.

Going forward, the Ob-Gyn Risk Alliance program will be managed by Jason Esparza, AVP, Programs. Underwriting for the program will continue to be led by Tammy Sternberg, Director of Underwriting.

Managing Certificates of Insurance

ProAssurance does not require agents and brokers to go through the credentialing team to issue certificates of insurance (COIs) to insureds. Agents and brokers can provide insureds with their own COI via an accord form. **You also have 24/7 access to COIs through the ProAssurance secure services portal (SSP).**

As noted by Steve Dapkus in the October *Homepage*, you can access credentialing documents for the current term or future renewal using the SSP as long as our system has issued the policy. You can group COIs by insured name or policyholder.

If you need any assistance with the SSP, our Web Support team is available to help you. Contact them at **WebSupport@ProAssurance.com** or **205-439-7956**.

SPOTLIGHT ON RISK RESOURCE

New *What's the Risk?* Video:

Independent Medical Examinations

By Kathi Burton, MS, HRM, FASHRM
Regional Manager, Senior Risk Resource Advisor

Risk Resource's ***What's the Risk?*** video series is very popular with physicians and healthcare practitioners which focus on current risk management issues. The newest video, **Independent Medical Examinations**, presented by Risk Resource Advisor Alex Ealy, is now available.

Physicians are often asked by third parties to perform Independent Medical Examinations, or IME's, on patients. While these examinations are typically limited in scope and often do not give rise to the traditional physician/patient relationship, they can still present a liability risk to the physician. In the video, Alex discusses a number of items that a physician should consider to mitigate professional liability risks when performing IMEs.

Access our *What's the Risk?* video series featuring over 40 risk management topics on the ProAssurance website or on the Risk Resource YouTube channel.

PROASSURANCE LEADERSHIP CIRCLE

OCTOBER 4-7, 2020

Streamsong Golf Resort, Bowling Green, Florida

Coffee is for Closers

Congratulations to **Dennis Coffin**, principal of Professional Insurance Services of Nevada, on your mug shot! Dennis placed Miller & Turner OB-GYN, PLLC through ProAssurance's OBRA program.

ProAssurance.
Treated Fairly

provisions

Looking Ahead

Upcoming ProVisions themes include:

- **Cyber (February)**—Our annual look at cybersecurity issues in healthcare, and how they impact the professional liability market.
- **Conferences (March)**—An inside report on ProAssurance's Risk Resource and Claims conferences taking place in February 2020.
- **Crisis Communications (April)**—This issue will contain a full guide to setting up a PR plan following negative events like a high malpractice verdict, cyber breach, inclement weather, and more you can share with your physician practice and hospital clients.

Email your suggestions for future themes to **AskMarketing@ProAssurance.com**.

To subscribe or see previous issues, visit ProAssurance.com/ProVisions.