

# ***Medical Professional Liability: Caught in the Crosshairs***

**Prepared for:** CAS Centennial Meeting

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# *Overview of Presentation*

## **Ø Defense Costs**

- § Observations**

- § Insights and Management**

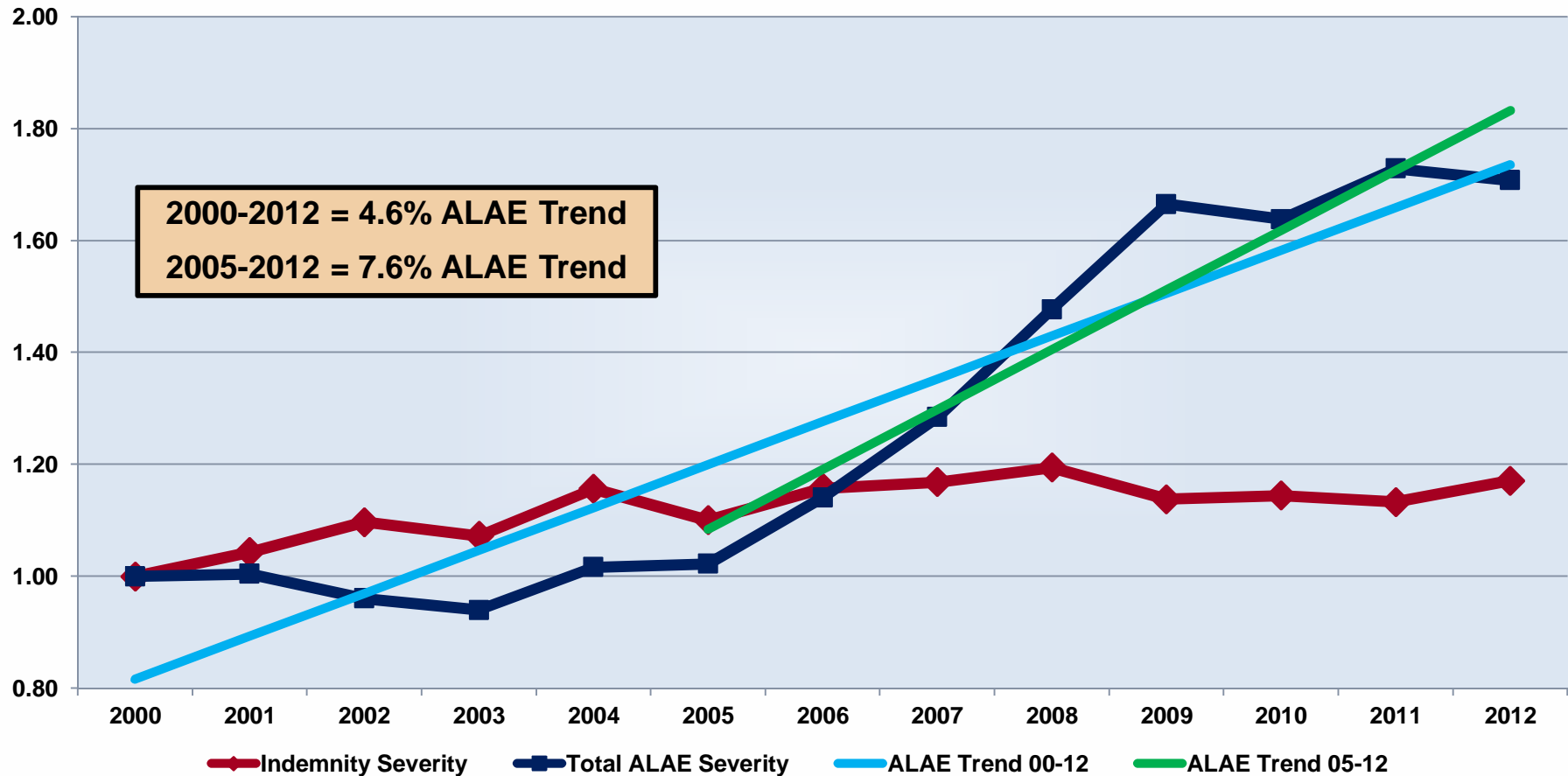
## **Ø Tort Reform**

Observations

# DEFENSE COSTS

# Defense Costs: Observations

## Paid Indemnity and ALAE Severities by Closed Year, Relative to 2000

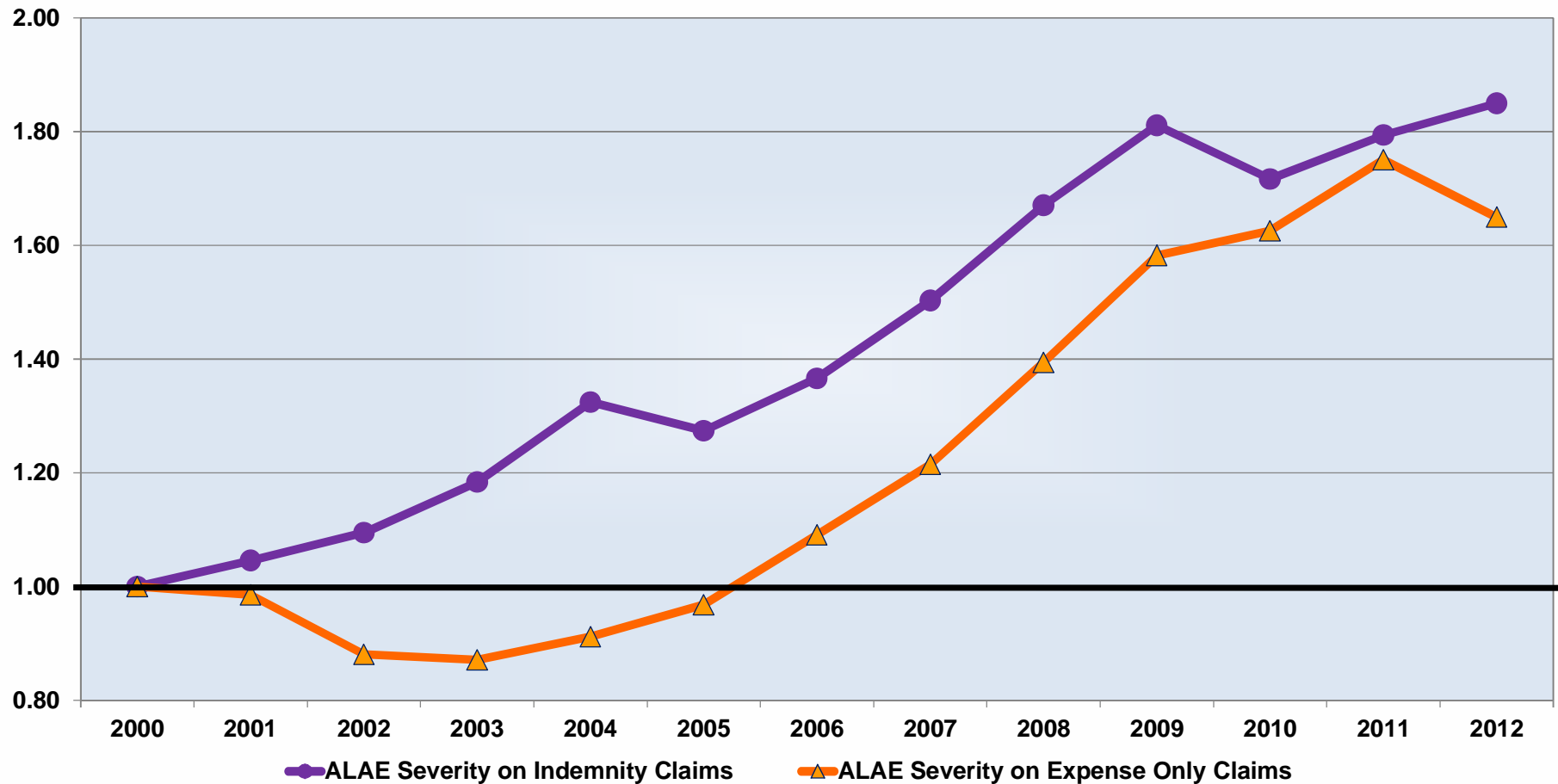


Source: Milliman analysis of PIAA Claim Trend Analysis; 2012 Edition  
Milliman analysis of PIAA Closed Claim Comparative; 2013 Edition



# Defense Costs: Observations

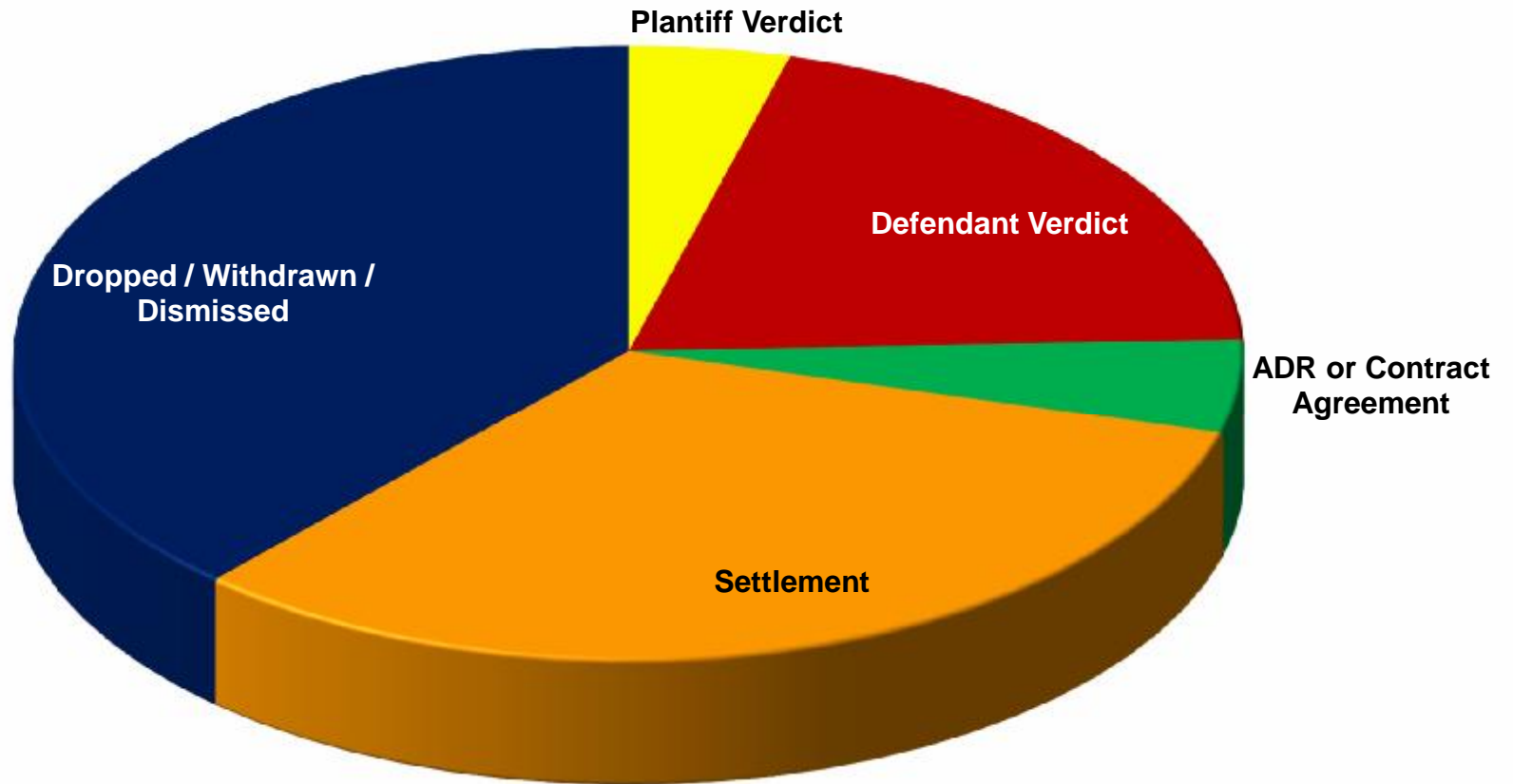
## Paid ALAE Severity by Claim Type by Closed Year, Relative to 2000



Source: Milliman analysis of PIAA Claim Trend Analysis; 2012 Edition  
Milliman analysis of PIAA Closed Claim Comparative; 2013 Edition

# Defense Costs: Observations

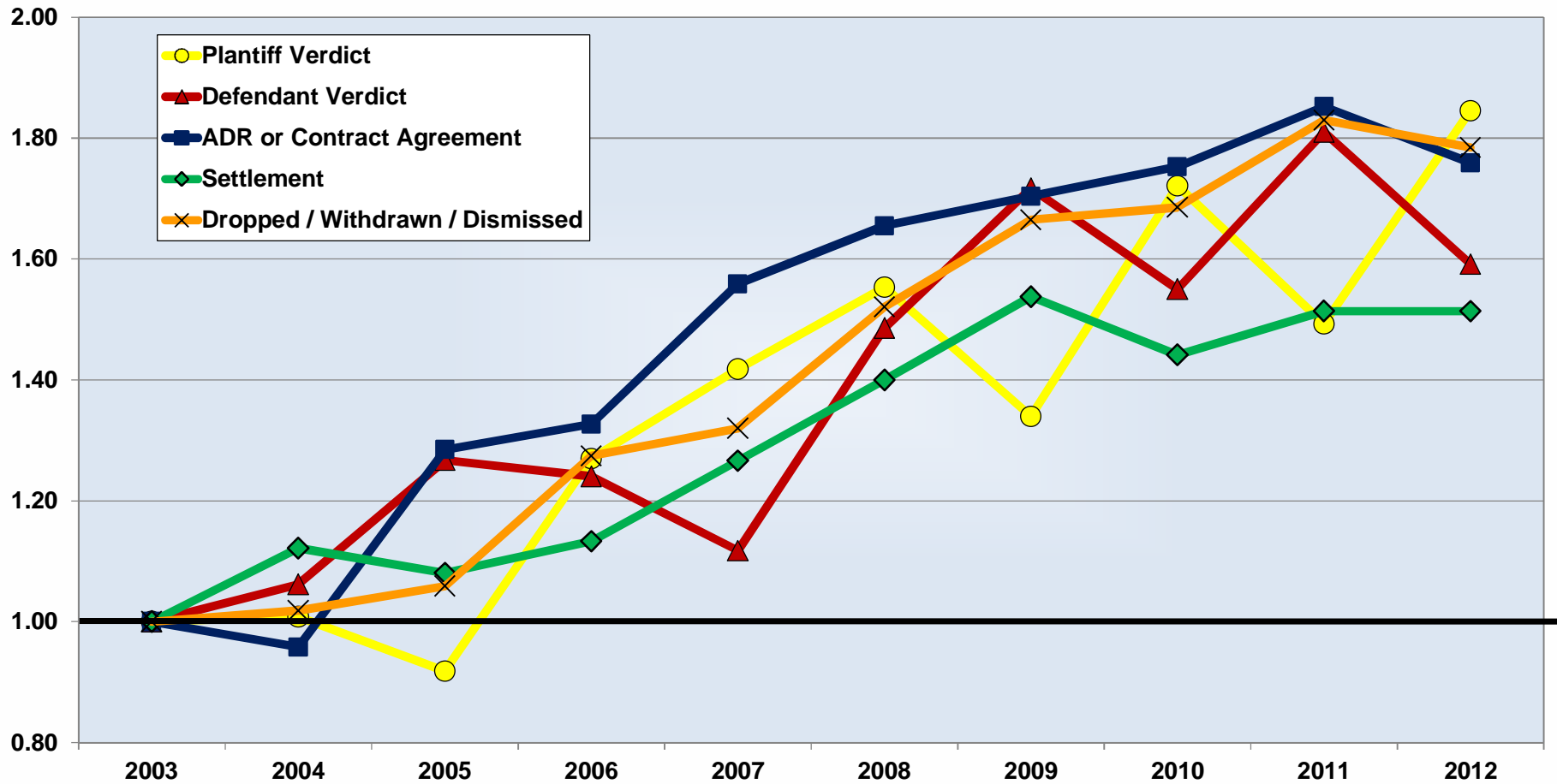
## ALAE Cost Distribution 2012 by Category



Source: Milliman analysis of PIAA Closed Claim Comparative; 2013 Edition

# Defense Costs: Observations

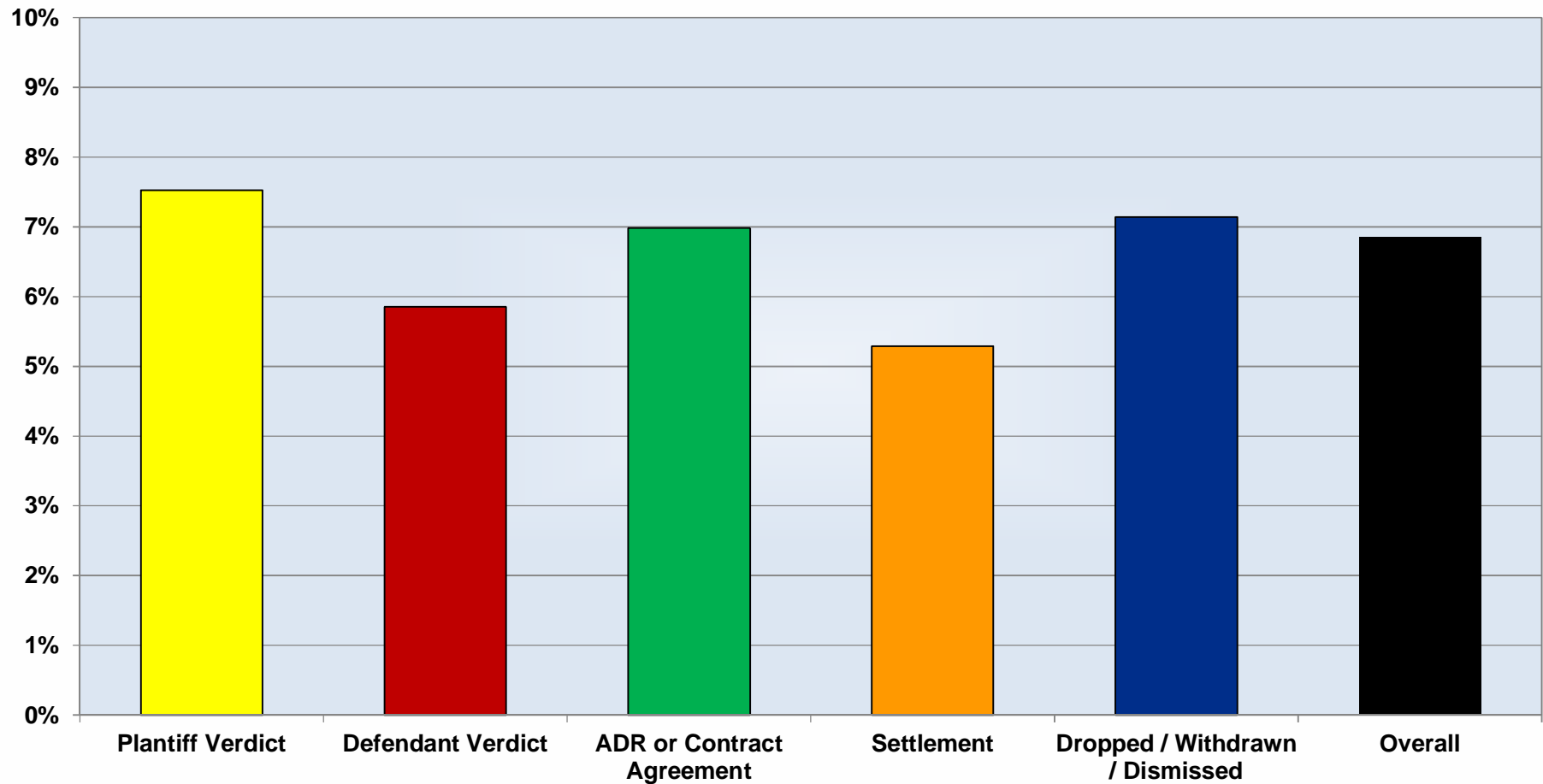
## Paid ALAE Severity by Category by Closed Year, Relative to 2003



Source: Milliman analysis of PIAA Closed Claim Comparative; 2013 Edition

# Defense Costs: Observations

## Annual Trend Rate for Paid ALAE Severity by Category, Relative to 2003



Source: Milliman analysis of PIAA Closed Claim Comparative; 2013 Edition

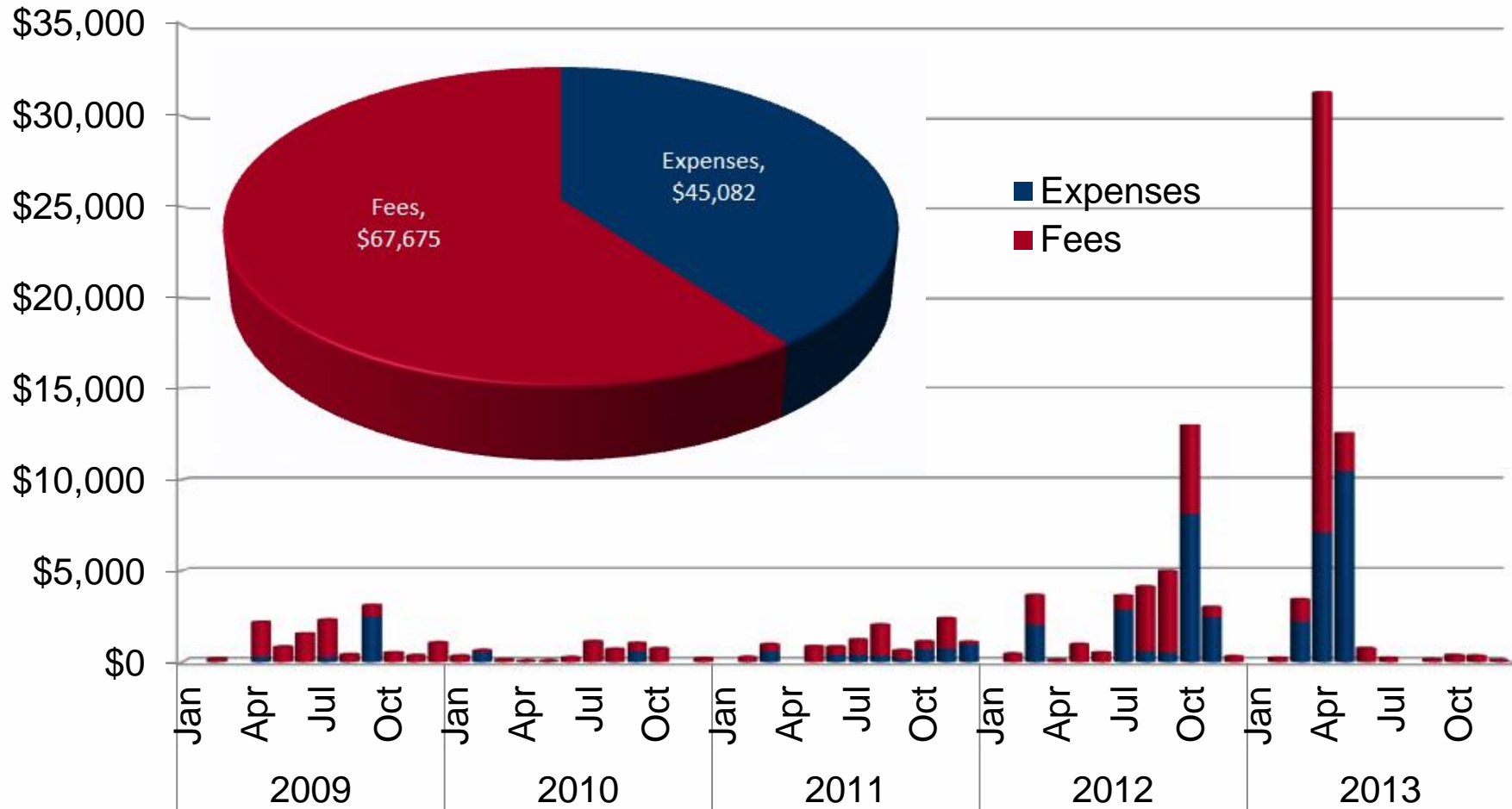


Insights and Management

# DEFENSE COSTS

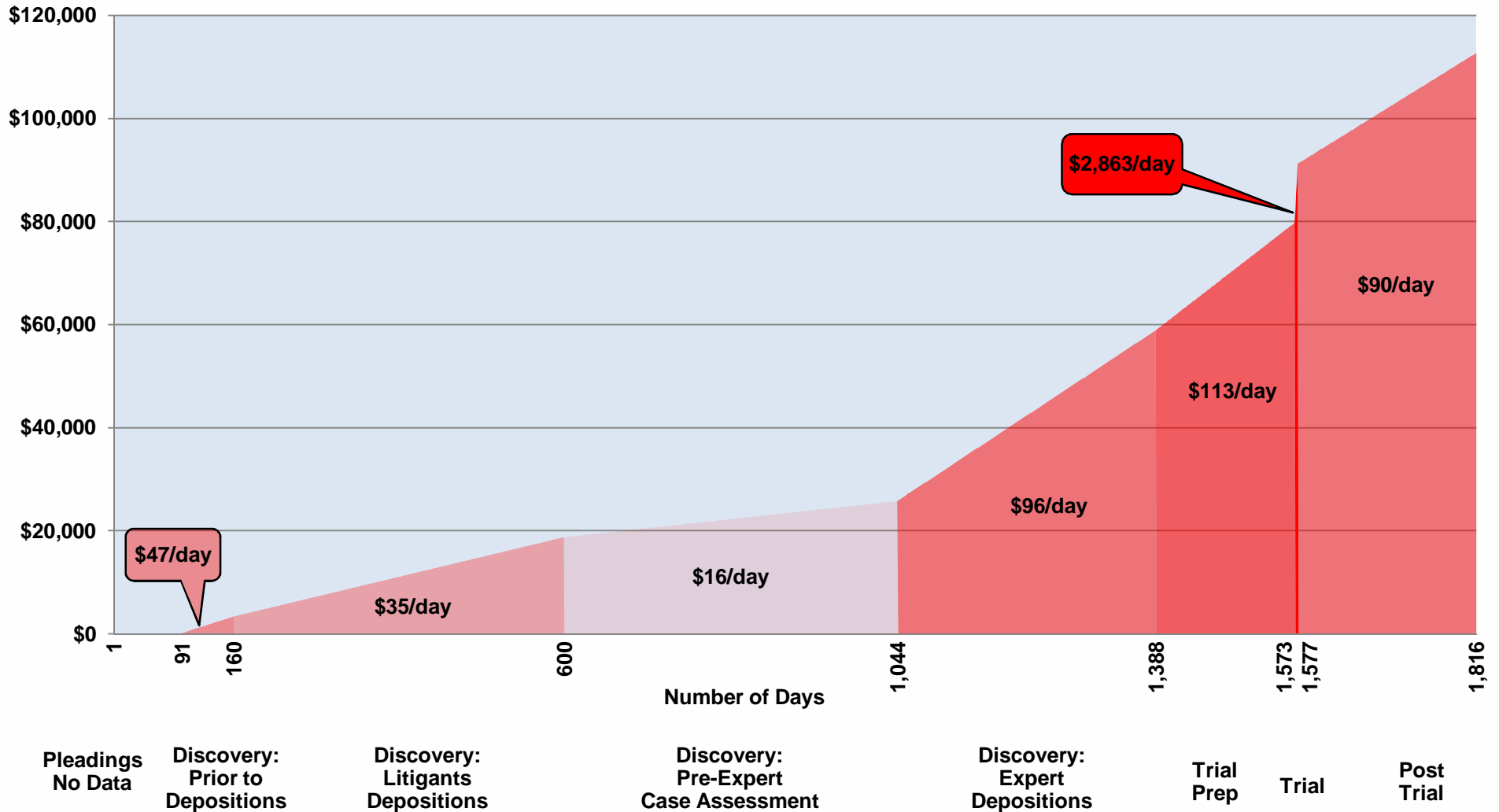
# Defense Costs: Insights and Management

## Distribution of Costs by Time



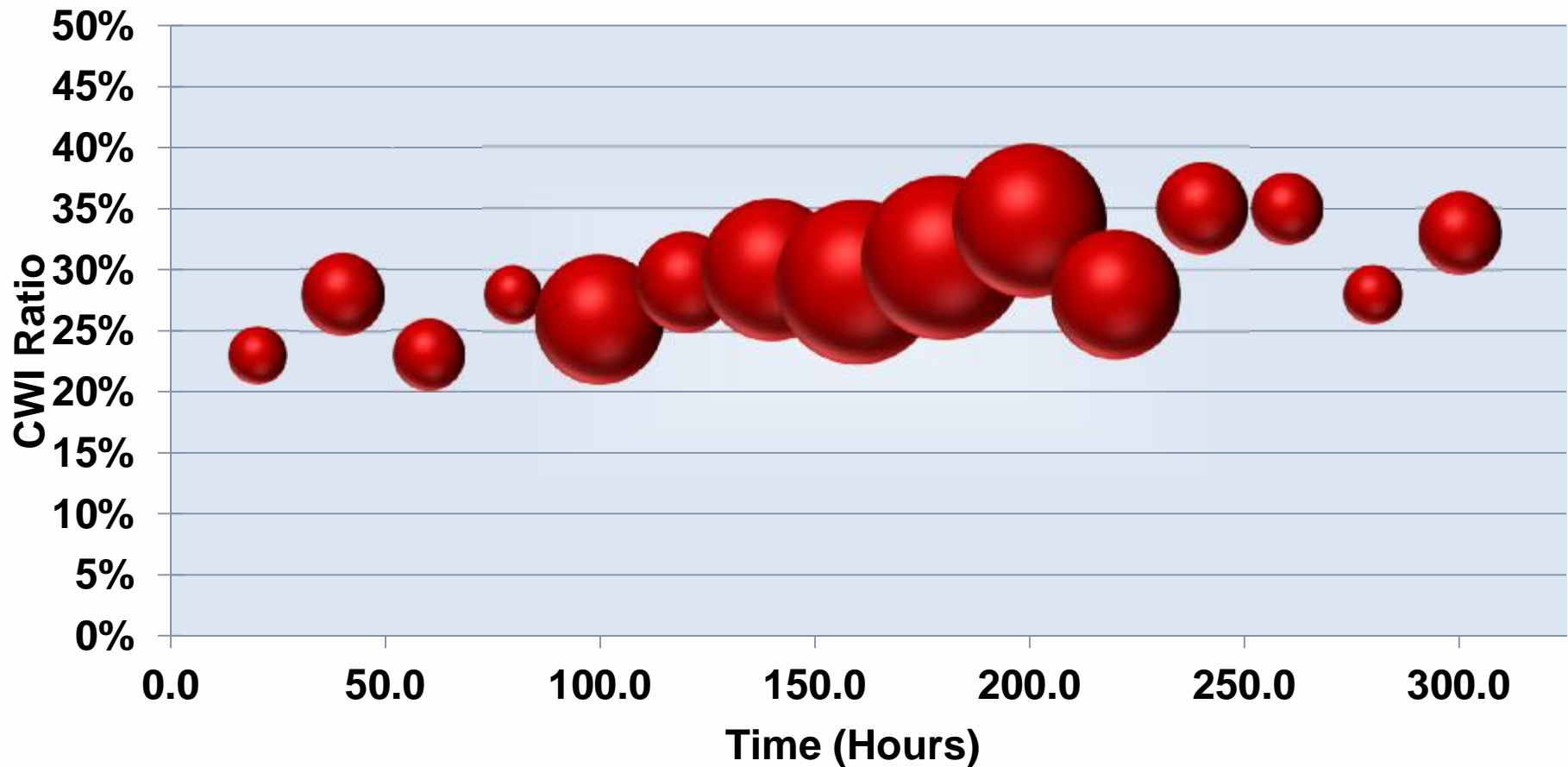
# Defense Costs: Insights and Management

## Costs and Duration by Claim Phase



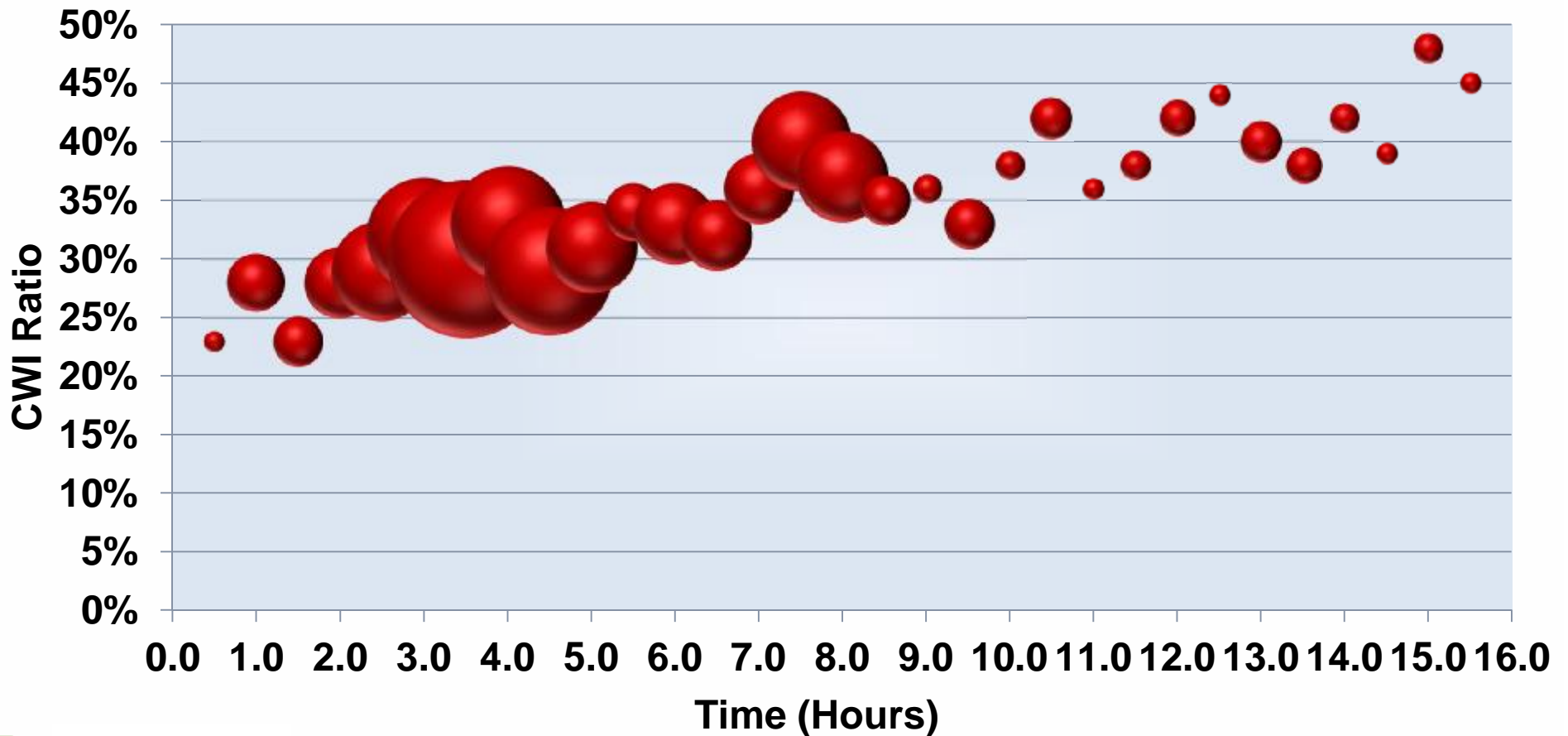
# Defense Costs: Insights and Management

## Claim Result Grouped by Length of Trial Preparation *Possible Results – Not Actual*



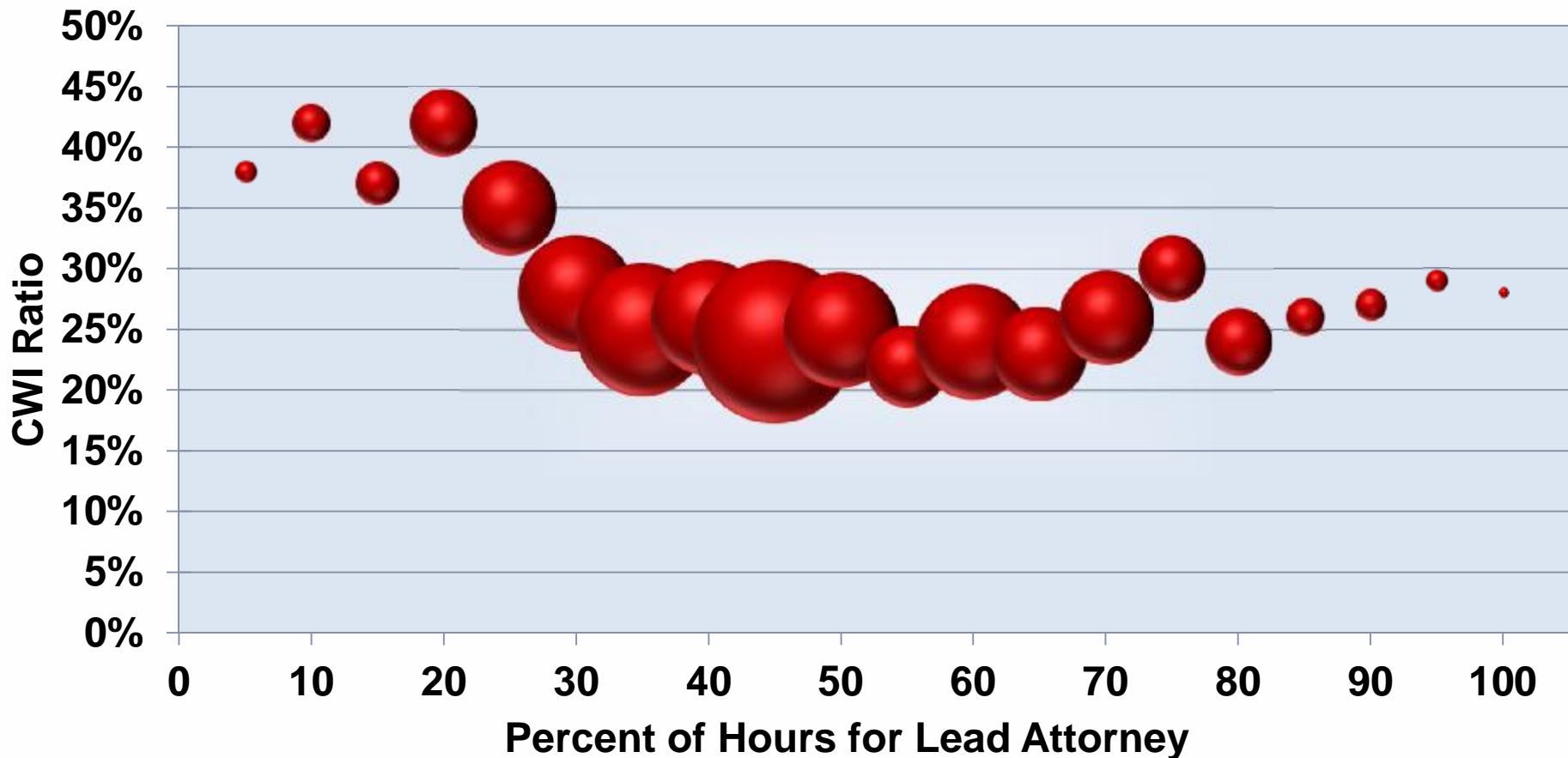
# Defense Costs: Insights and Management

## Claim Result Grouped by Length of Defendant's Deposition *Possible Results – Not Actual*



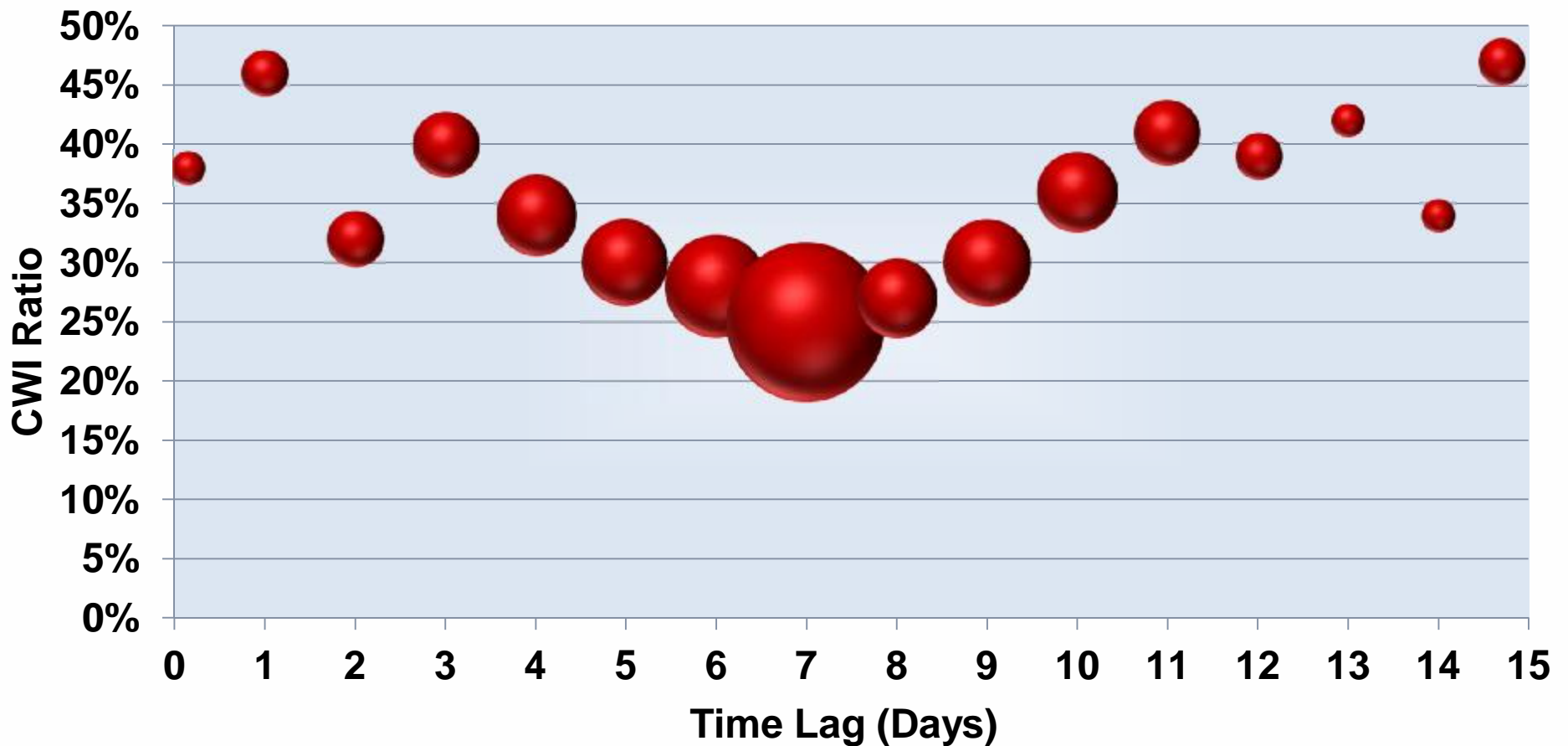
# Defense Costs: Insights and Management

## Claim Result Grouped by Lead Attorney Involvement in Case **Possible Results – Not Actual**



# Defense Costs: Insights and Management

## Claim Result Grouped by Deposition Preparation Lag *Possible Results – Not Actual*



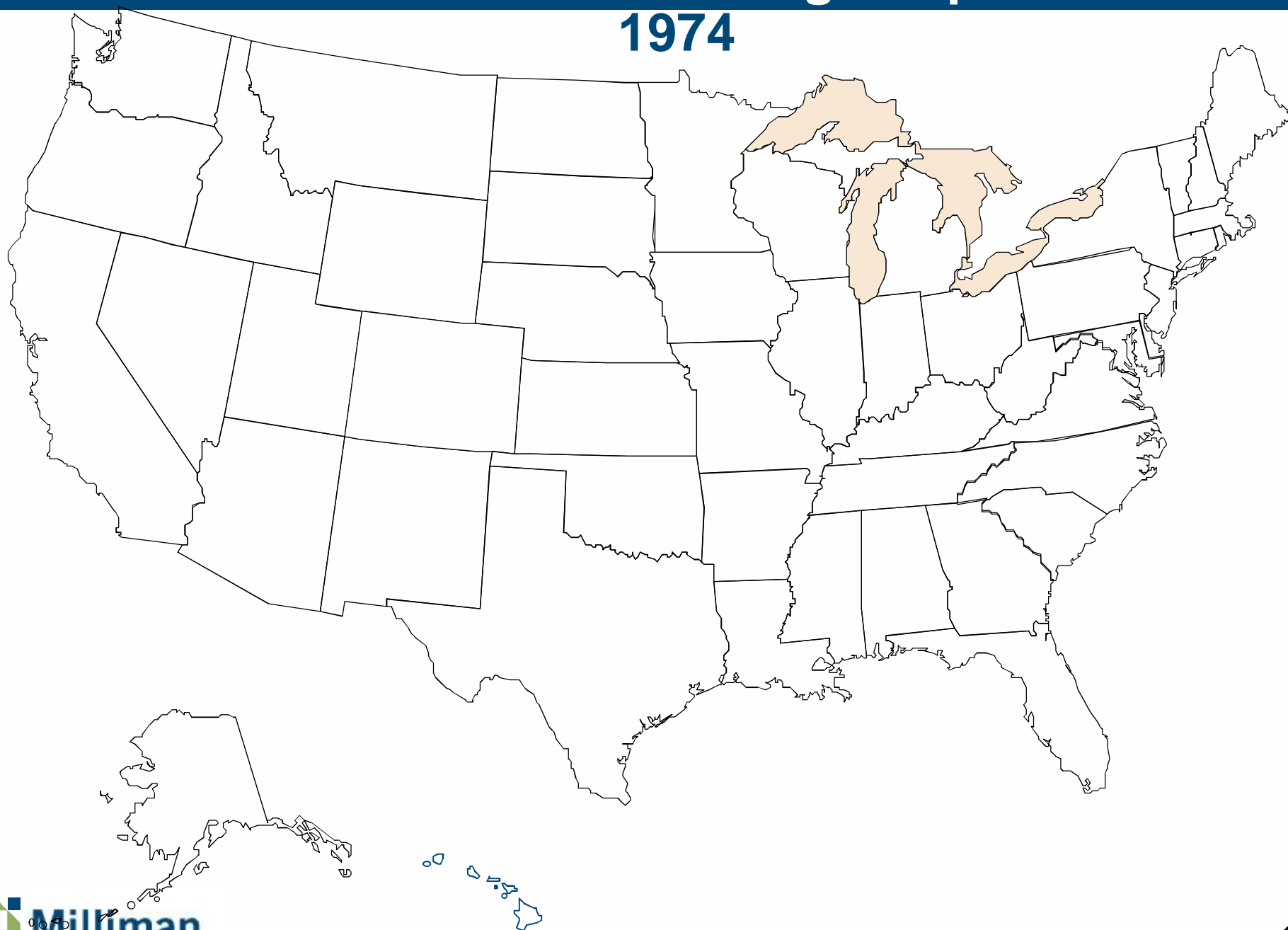
Where are we headed?

# TORT REFORM



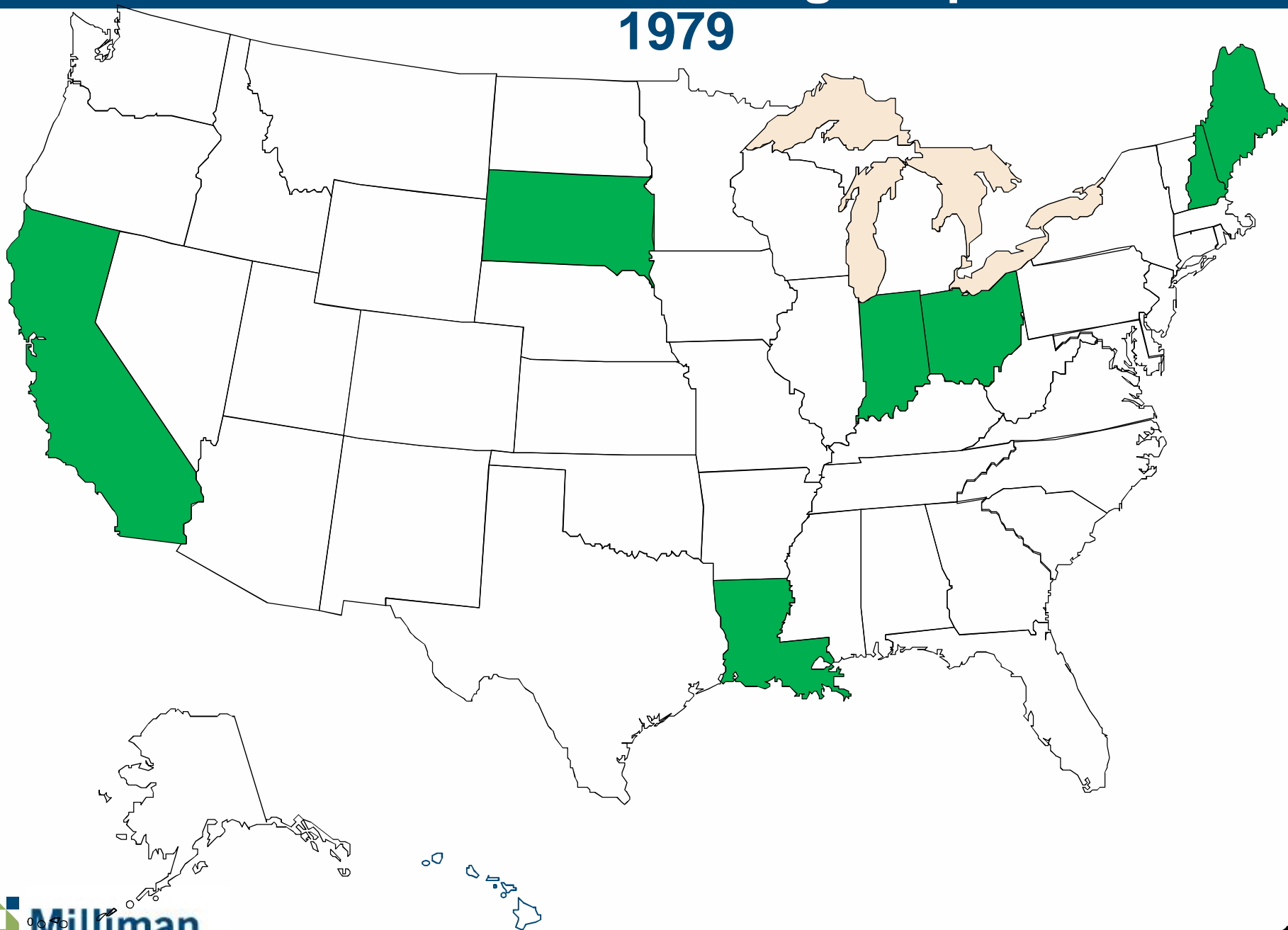
# Tort Reform Damage Caps

1974



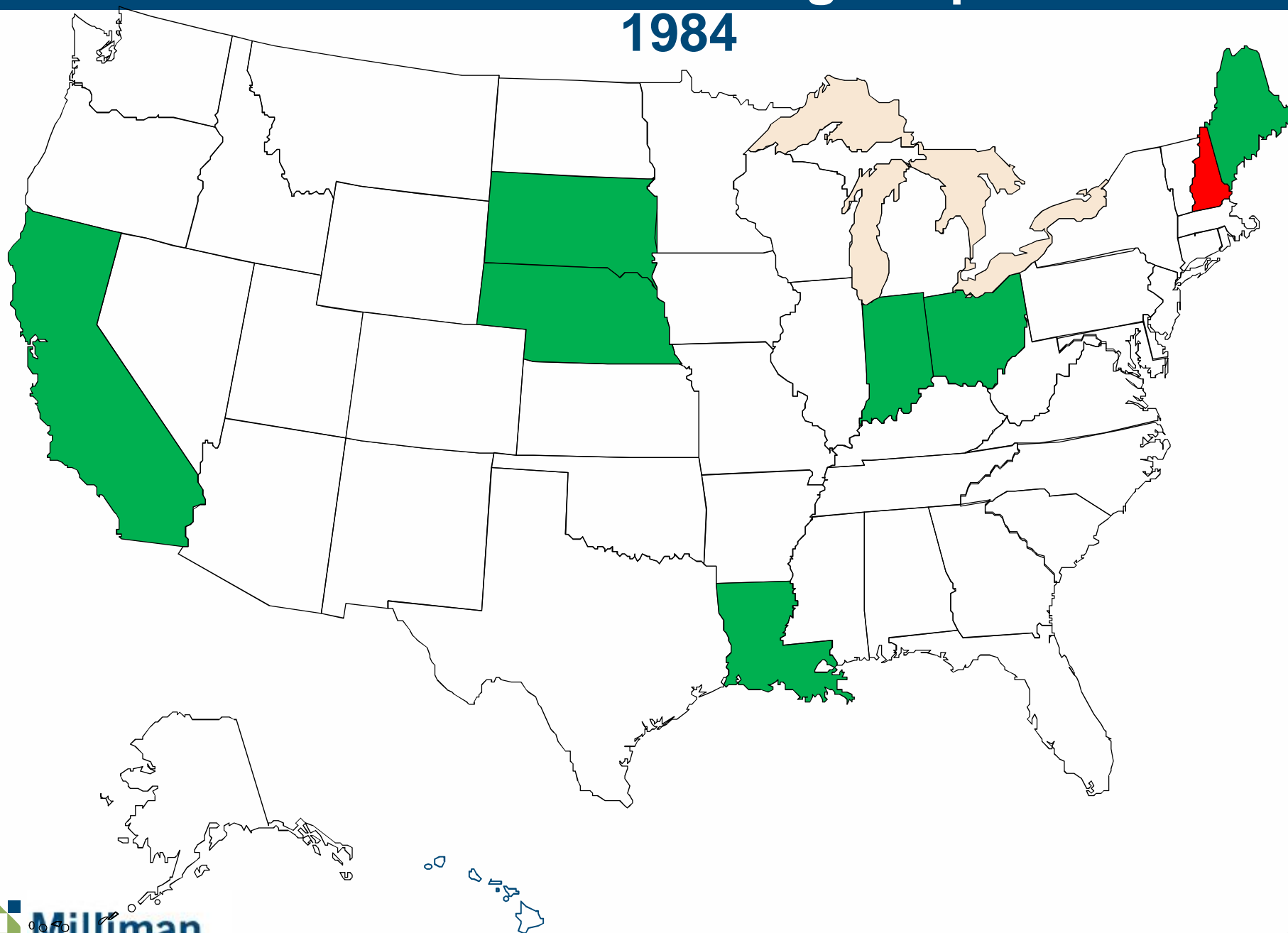
# Tort Reform Damage Caps

1979



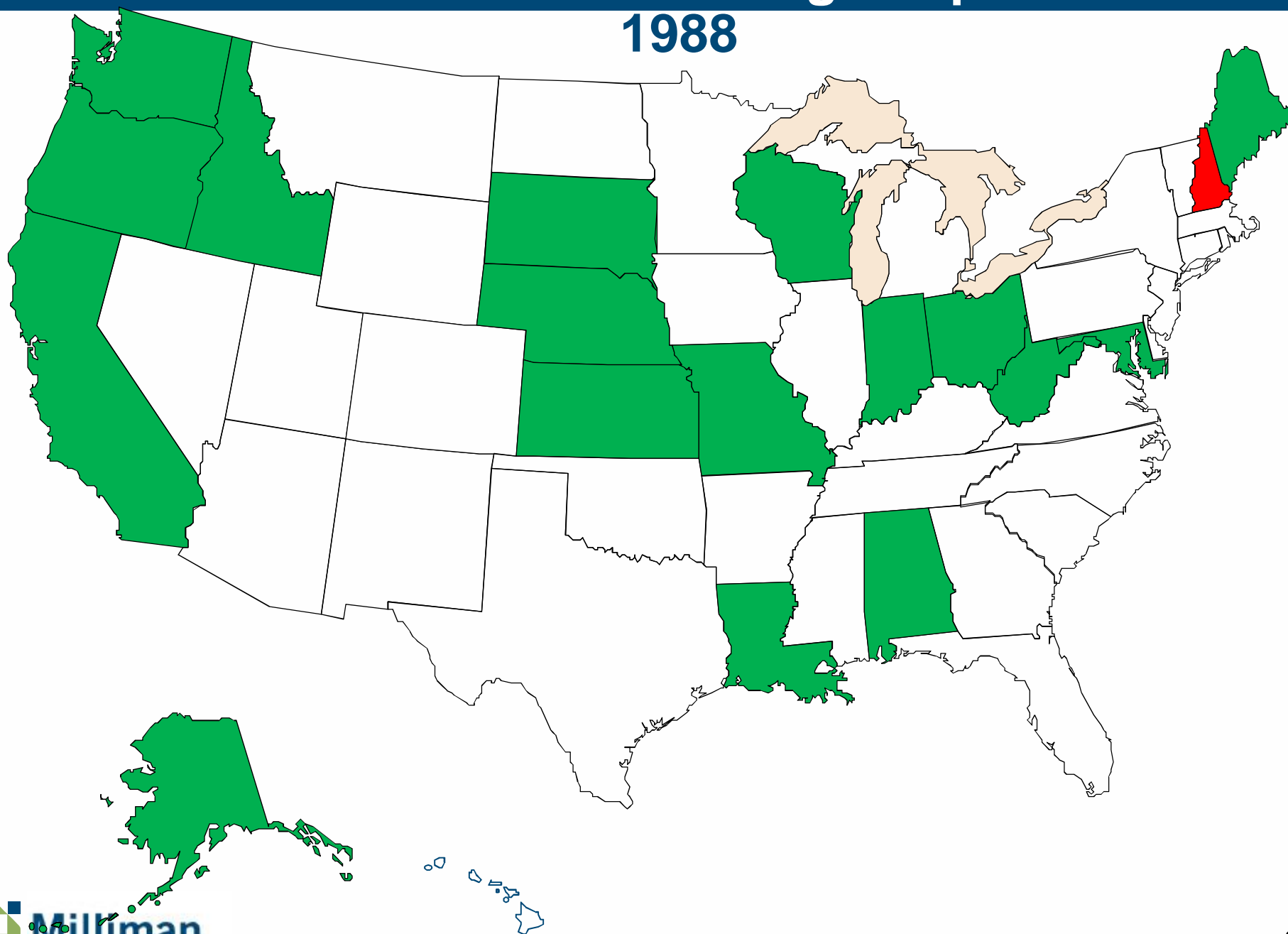
# Tort Reform Damage Caps

1984



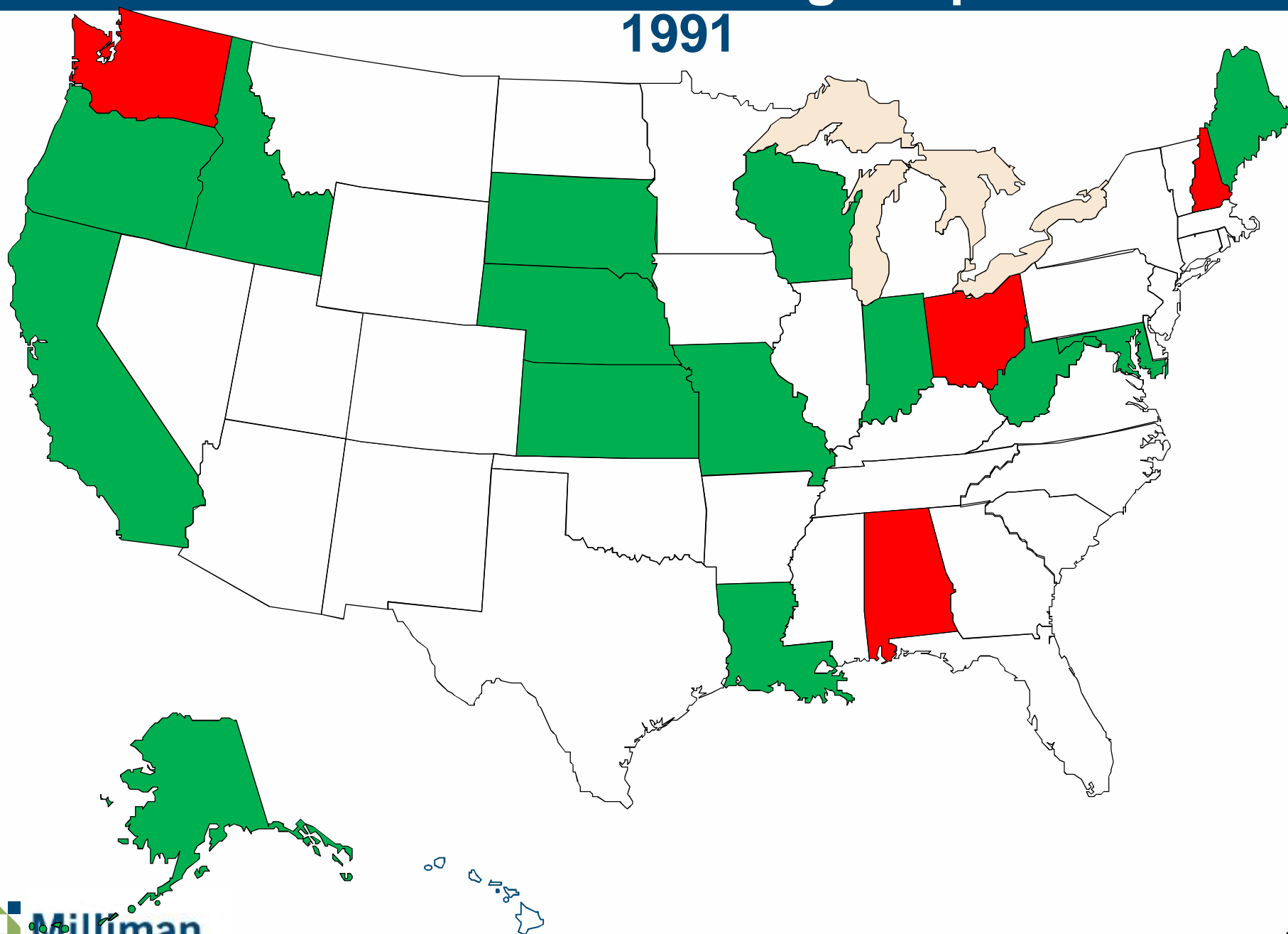
# Tort Reform Damage Caps

1988



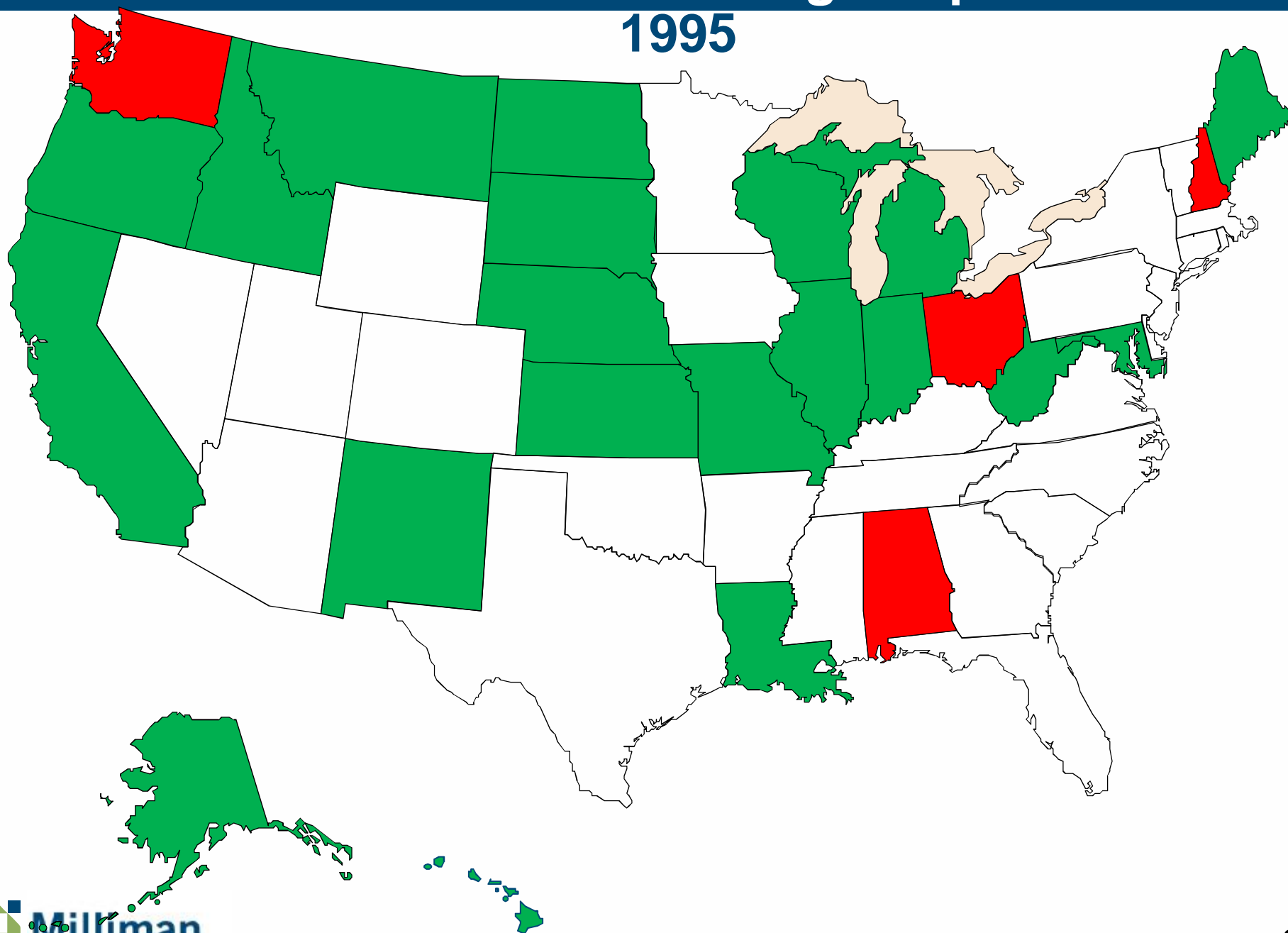
# Tort Reform Damage Caps

1991



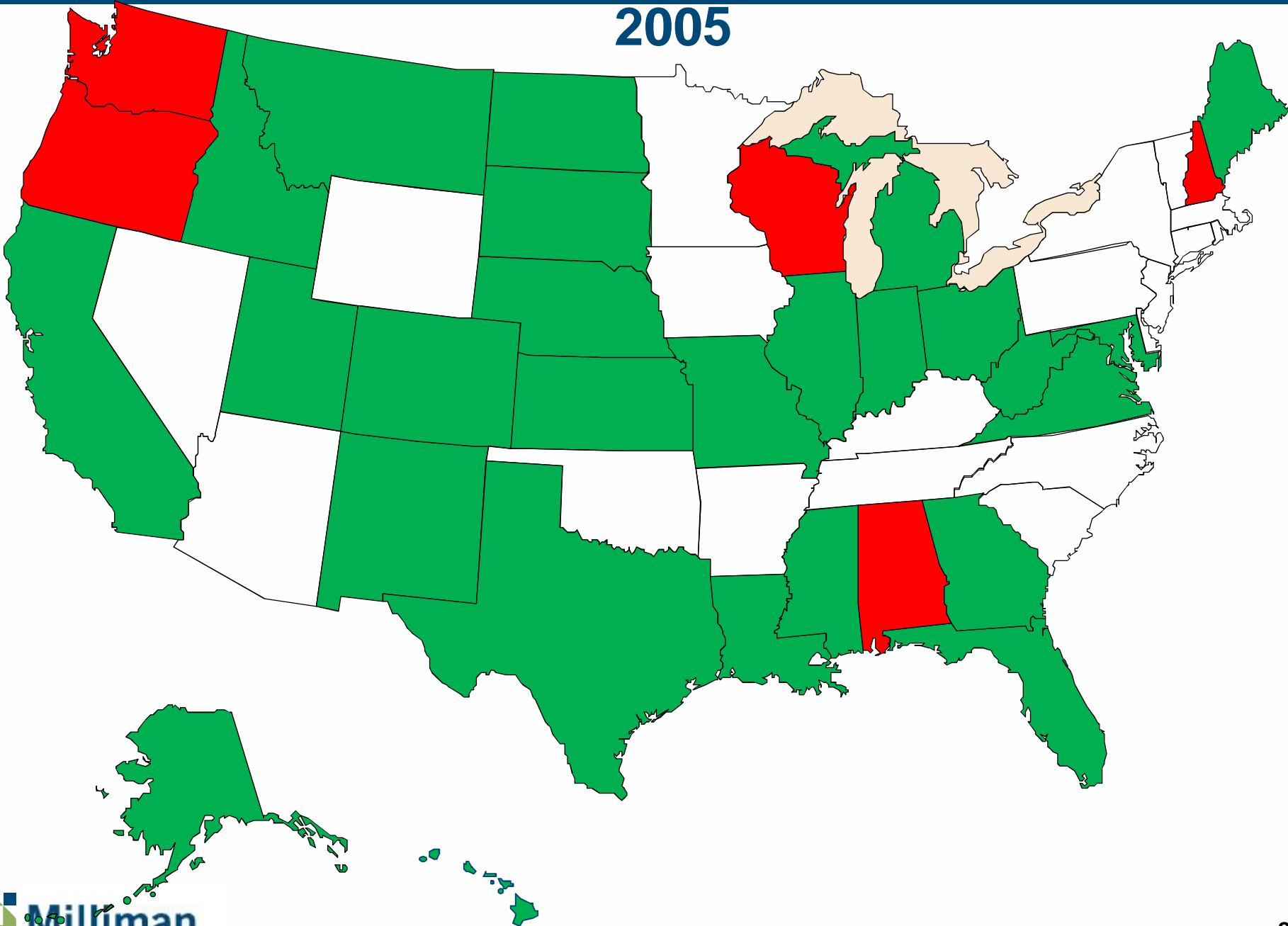
# Tort Reform Damage Caps

1995



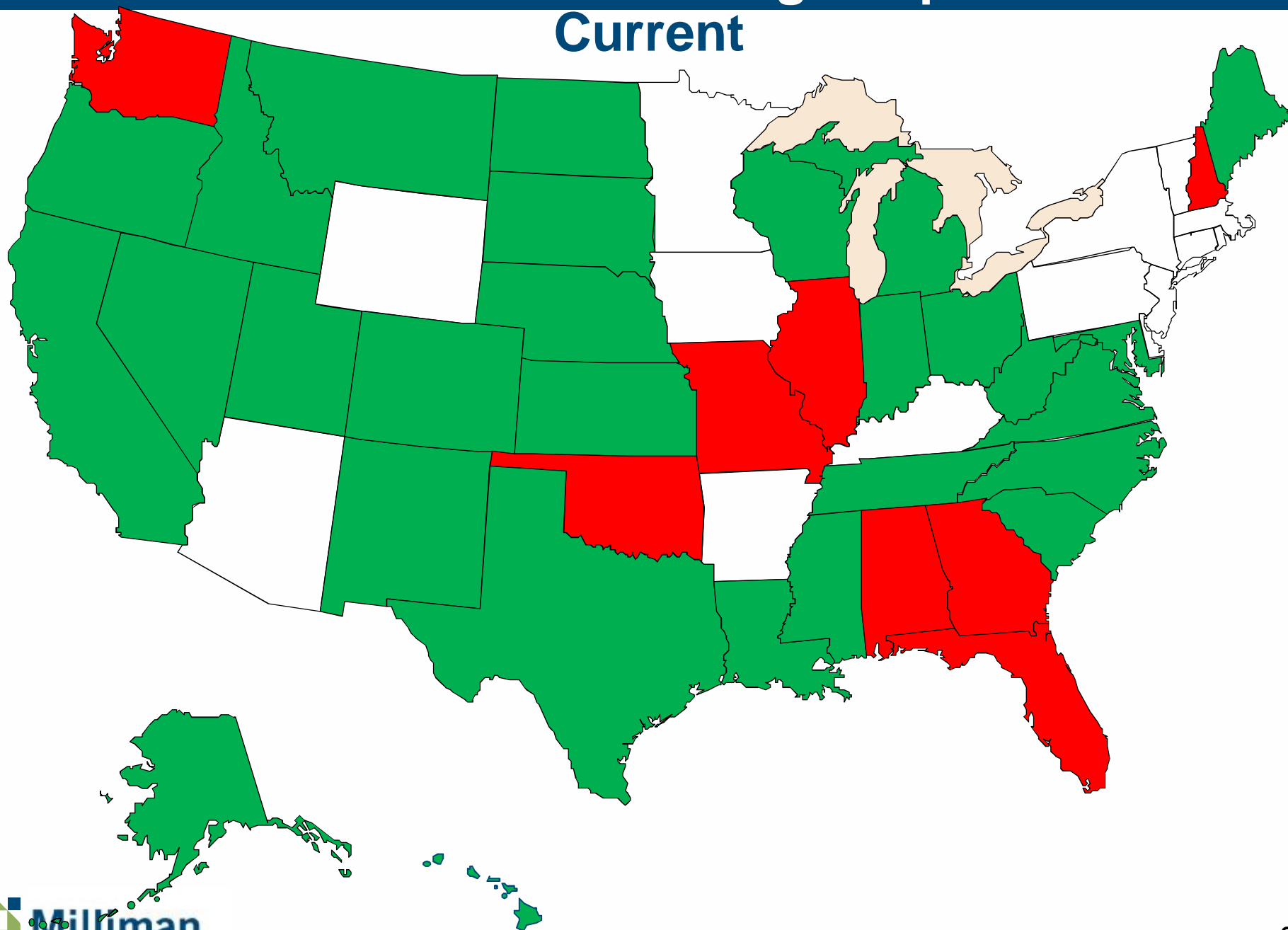
# Tort Reform Damage Caps

## 2005



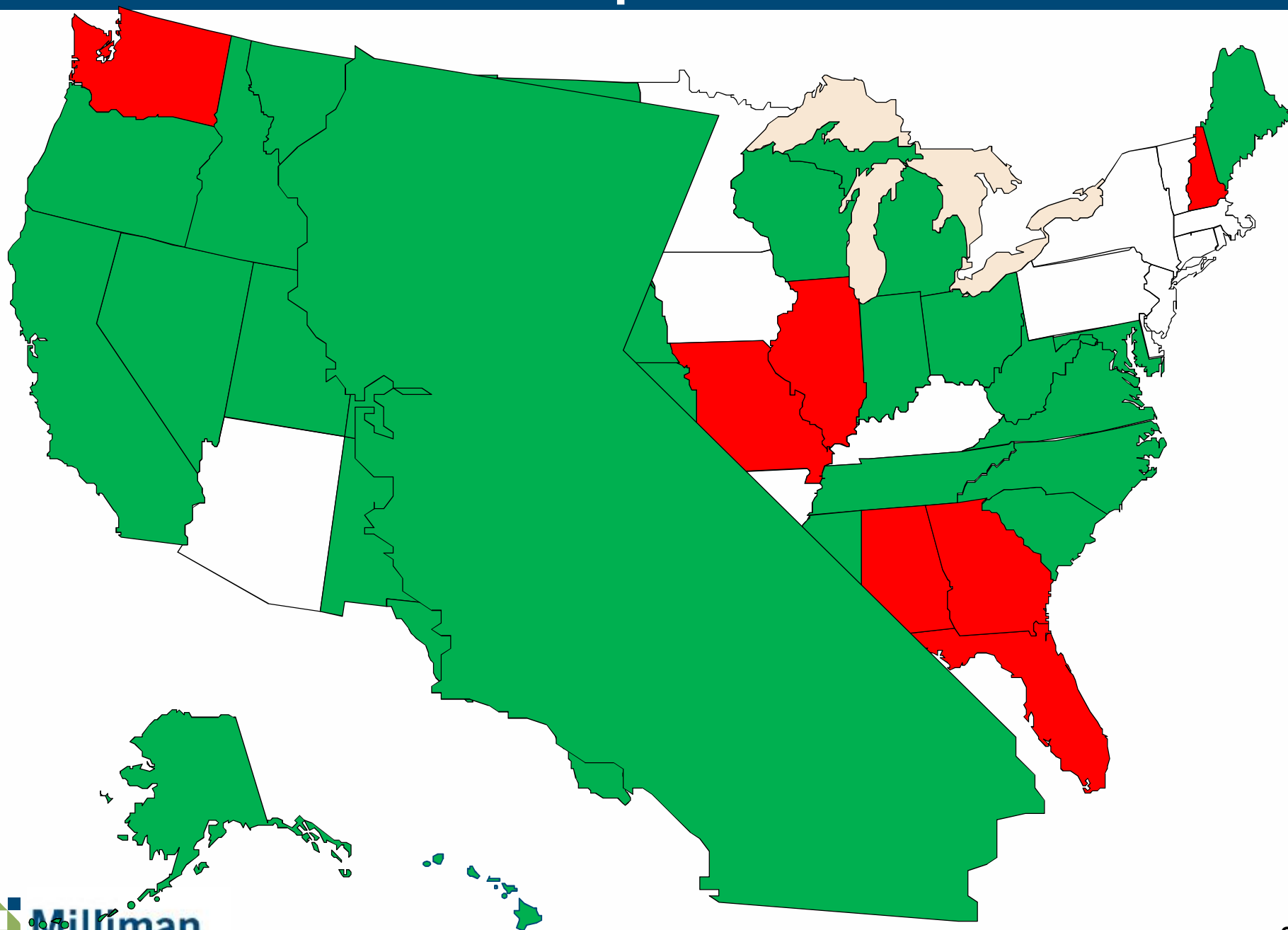
# Tort Reform Damage Caps

## Current





# MICRA Cap Maintained



## Proposition 46

Ø Cap on Non-Economic Damages ↑ \$1.1M

Ø Random drug testing of physicians

Ø CURES database

§ Requires physicians to query

§ Gives DOJ access to the database

§ *“patients do not have a reasonable expectation of privacy in their prescription records”*

– *DOJ argument in Alwin Lewis, M.D. v. Superior Court of the State of California*

# **“No On 46” Campaign**

## **Ø Costs**

**§ One public estimate: 33% to 77% increase**

## **Ø Access**

**§ Physicians may choose to practice elsewhere**

## **Ø Privacy**

***“patients do not have a reasonable expectation of privacy in their prescription records”***

***– DOJ argument in Alwin Lewis, M.D. v. Superior Court of the State of California***

## ***Proposition 46 – If It Had Passed*** ***Rough Estimate of Possible Costs***

**Ø Frequency: as much as 30% increase**

**§ *A.M. Best Briefing, 10/20/2014***

**Ø Severity: 25% indemnity increase**

**§ *Rand Health Affairs study, Nov 2014***

**Ø Pure Premium à ~ 30% increase**

**§ Assumes: 15% frequency increases**

**§ Conservatively assumes no change in ALAE severity**

**§ Unknown: change in mix of claims**

# OTHER CONSIDERATIONS

# *Other Considerations*

## **Accompanying Oral Discussion**

- n This document is not complete without the accompanying oral discussion and explanation of the underlying information and concepts as well as any interpretational limitations.

## **Limited Distribution**

- n This document should not be distributed, disclosed or otherwise furnished, in whole or in part, without the express written consent of Milliman.

## **Data Reliance**

- n We have relied upon data and other background information prepared by others, as documented throughout this presentation. We have performed a limited review of the data for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.