

# **Current Issues and Trends in Medical Malpractice**

Casualty Loss Reserve Seminar  
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# Current “Issues and Trends” in “Medical Malpractice”

- Medical Malpractice
  - Hospital Professional/Physicians Liability
  - Long Term Care Professional Liability
- Issues and Trends
  - Trends: Data based trends in frequency and severity of indemnity and expense costs
  - Issues: What is driving the trends? How are healthcare providers managing the med mal exposure?

# Hospital Professional Liability – Background

Many hospitals participate in primary layers of insurance through captives, SIRs or deductibles.

- Insulation from perceived volatility of commercial market
- Lower expense load
- A way to attract employed physicians

This participation has encouraged an understanding and focus in hospital risk management

- Investment in defense and cost containment strategies
- Patient Safety initiatives
- Tort Reform initiatives
- CFO interest in changes in reserve estimates

# Aon/ASHRM 2009 HPL Benchmarking Study

- Underlying Data: 81,900 non-zero claims; approximately \$9.5b in reported losses; over 1,500 facilities, over 125,000 licensed beds
- Most participants are self-insurers
- 10th annual study
- Actuarial analysis of Frequency, Severity, and Loss Cost trends countrywide and in specific states
- Claim Severity is limited to \$2M per occurrence
- Claim Frequency is based on “non-zero” claim count
- Exposures are “Bed Equivalents”

# Key Findings of 2009 Benchmarking

- For the first time in seven years, frequency is increasing, albeit modestly.
  - NFP frequency is increasing.
  - FP frequency is decreasing to flat.
- The severity of claims (at the \$2M limit) is increasing at a 4% annual rate.
- Hospital acquired conditions represent a significant portion of claims

## “Never Events”

- In 2002, the term “Never Event” was coined to describe a list of 28 hospital acquired conditions that are preventable and should never occur.  
While original interest in “Never Events” was in the patient safety arena , Centers for Medicare and Medicaid (CMS) interest in “Never Events” was more fiscally oriented.
- CMS non-reimbursement regulations went into effect on October 1, 2008.
- CMS will no longer reimburse for a list of 10 specific hospital acquired conditions.

## “Never Events” and HPL

- Current tort system is a fault based system where fault is determined by comparing the facts of the case to a Standard of Care.
- CMS has ruled that these Never Events are all preventable. So preventable in fact, that they should never happen and therefore will not be reimbursed!
- Never Events **may** lead to Strict Liability
- Plaintiff's bar now has an interesting angle
- Hospital **may** experience higher frequency and/or severity of lawsuits as a result of publicity and awareness of CMS non-reimbursement regs

# Hospital Acquired Conditions

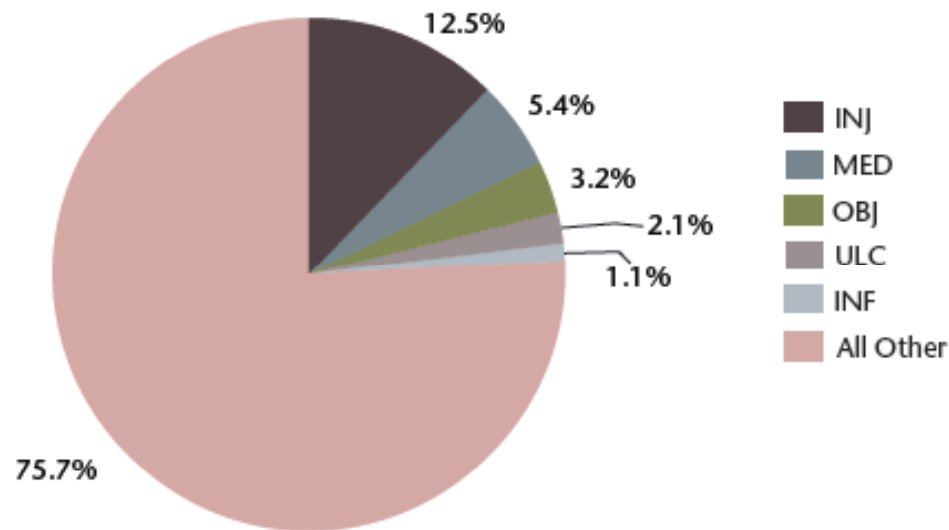
- Aon surveyed participants to see if historical losses alleging one of the 10 specific CMS regulation events were available for analysis.
- Based on the response from the survey, we were able to analyze
  - Hospital Acquired Infections
  - Hospital Acquired Injuries (fractures, dislocations, intracranial injury, crushing injury, burns and other)
  - Medication Errors in Hospital
  - Objects Left in Surgery
  - Pressure Ulcers



# Hospital Acquired Conditions

- 24 percent of total hospital professional liability costs are associated with five specific hospital acquired conditions.

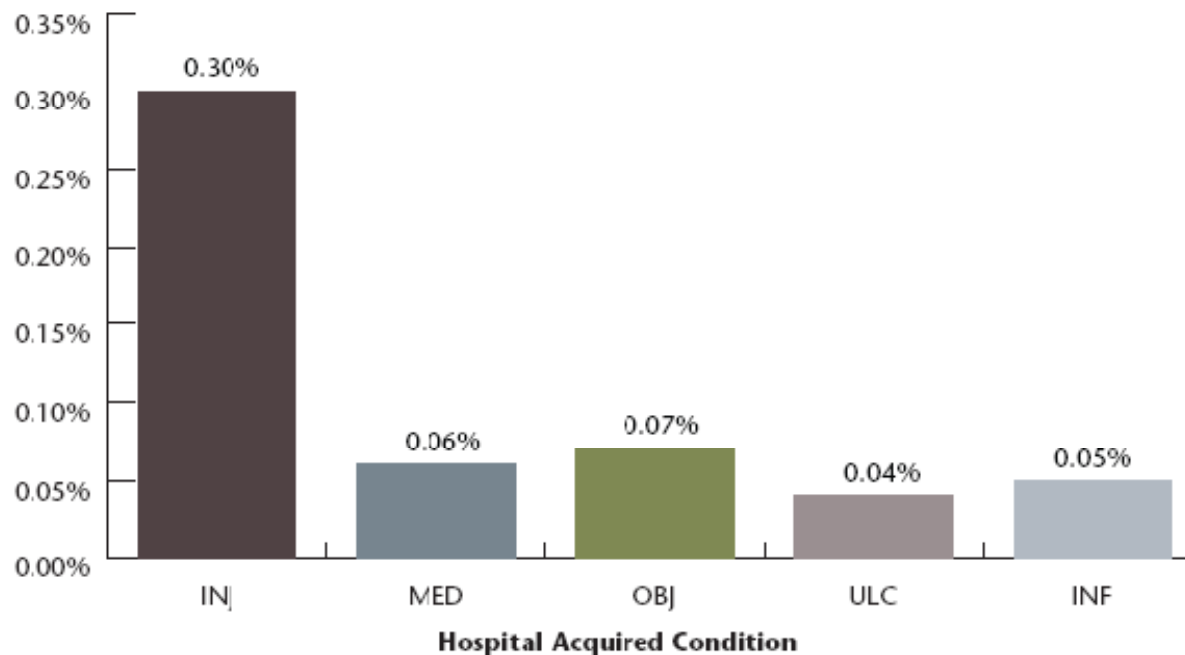
Hospital Professional Liability Benchmark Hospital Acquired Conditions  
Losses as a Percentage of Total Database Limited to \$2M per Occurrence



# Frequency of Hospital Acquired Conditions

- One out of every four hospital professional liability claims is due to these five hospital acquired conditions.

Hospital Professional Liability Benchmark Hospital Acquired Conditions  
2008 Closed Claim Frequency per Bed

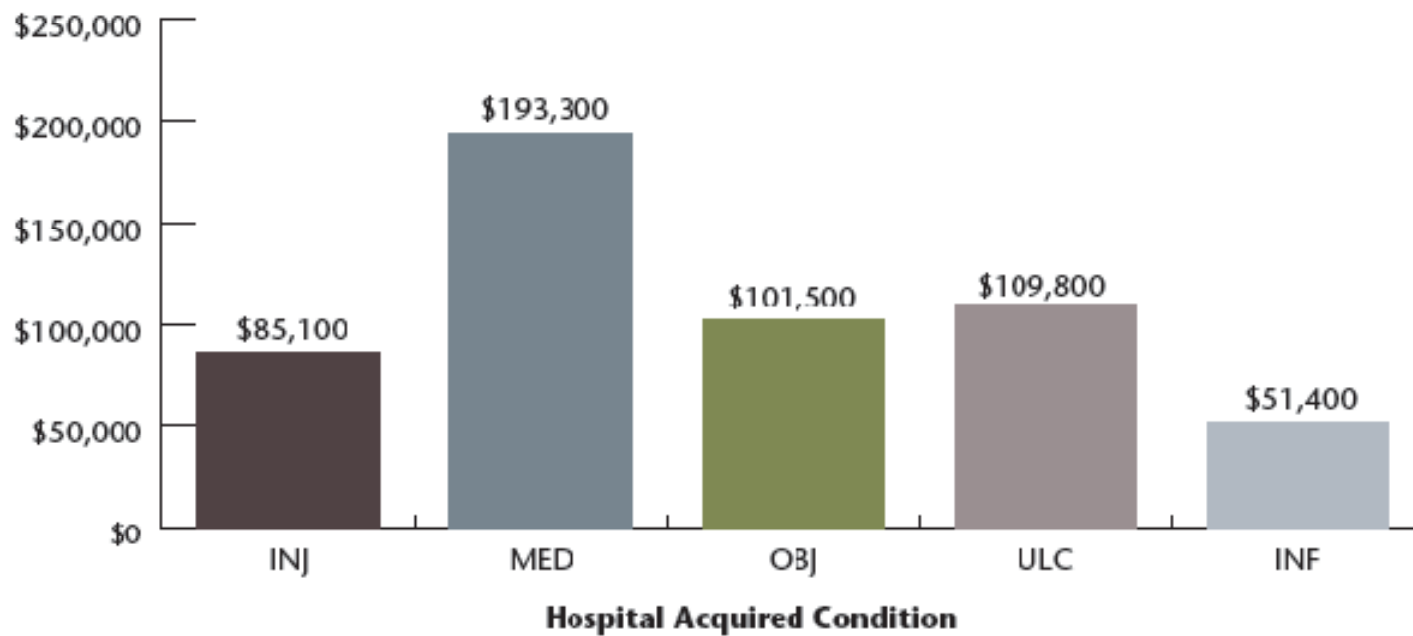


# Severity of Hospital Acquired Conditions

- Pressure ulcer severity is similar to overall average severity while other conditions have below average severities.

Hospital Professional Liability Benchmark Hospital Acquired Conditions  
2008 Closed Claim Severity Limited to \$2M per Occurrence

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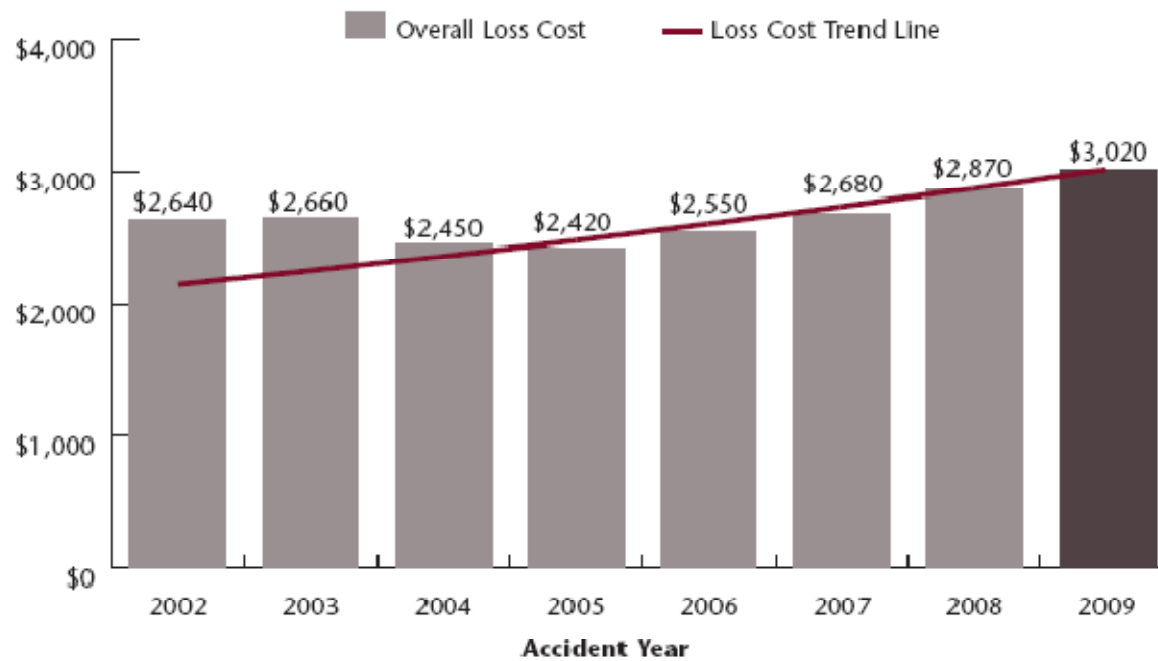


## **“Never Events” Summary of Conclusions**

- Patient and plaintiff attorney attitudes toward hospital acquired conditions could change as the result of the awareness.
- Plaintiff attorneys will not stop at the 10 CMS non-reimbursement categories.
- Impact to HPL likely to show up in frequency first.

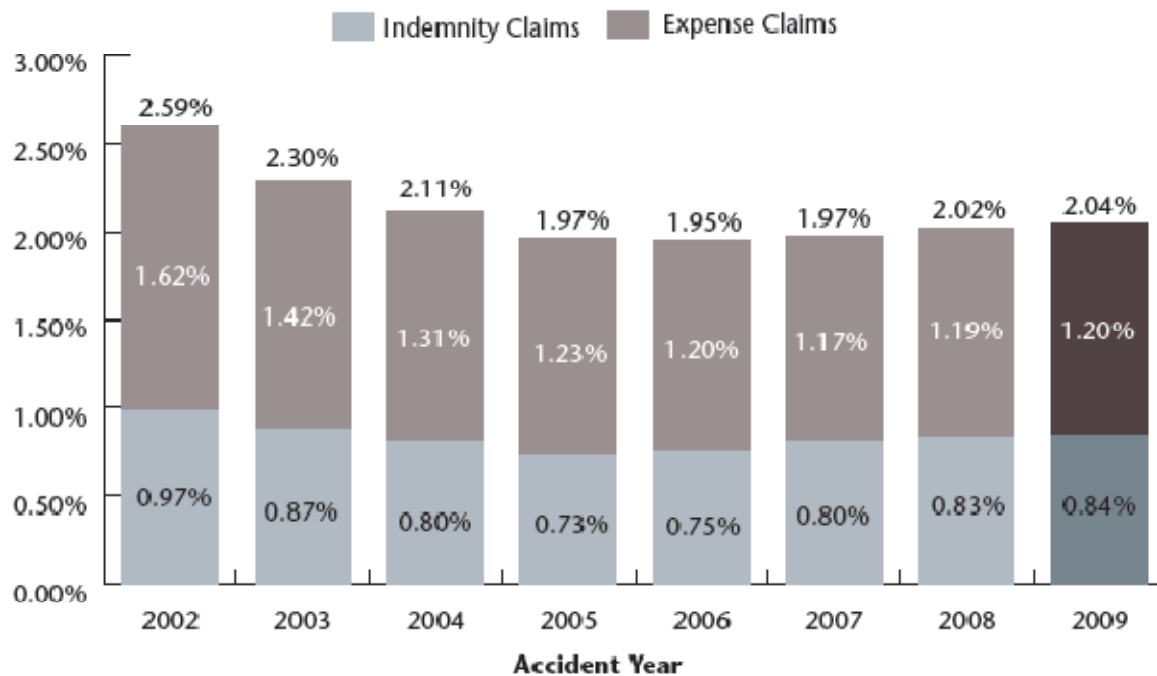
# Overall Results - Loss Costs

Hospital Professional Liability Benchmark  
Loss Cost per Bed Limited to \$2M per Occurrence



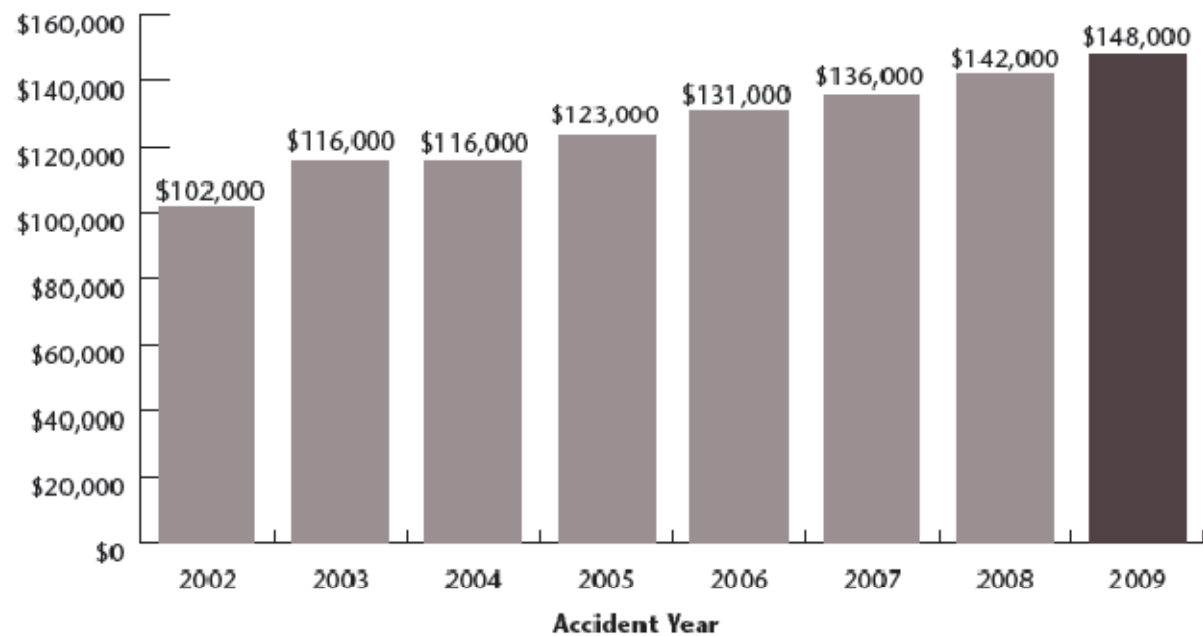
# Overall Results - Frequency

Hospital Professional Liability Benchmark  
Frequency per Bed



# Overall Results - Severity

Hospital Professional Liability Benchmark  
Claim Severity Limited to \$2M per Occurrence



# Closed Claim Results - Indemnity

Hospital Professional Liability Benchmark  
Average Paid Indemnity Limited to \$2M per Occurrence

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# Closed Claim Results - Expense

Hospital Professional Liability Benchmark  
Average Expense on Claims with Indemnity Payments - Unlimited

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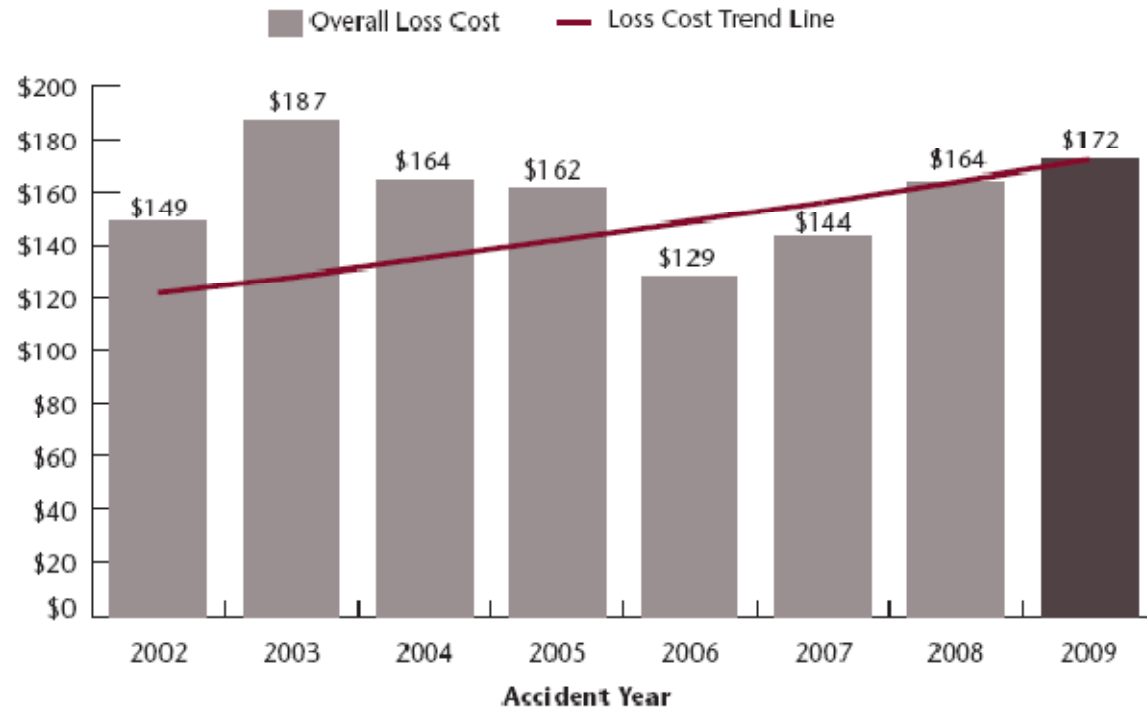
# Closed Claim Results - Expense

Hospital Professional Liability Benchmark  
Average Expense on Expense Only Claims - Unlimited



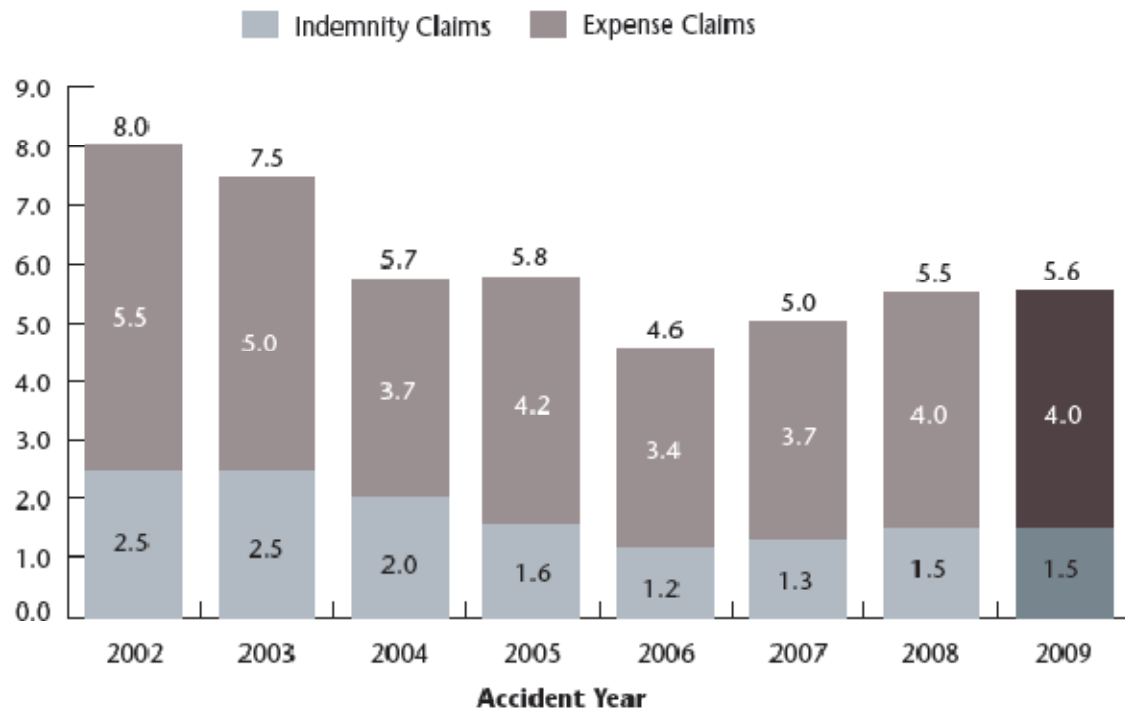
# Results by Service Line - OB

Hospital Professional Liability Benchmark  
Loss Cost per Birth Limited to \$2M per Occurrence



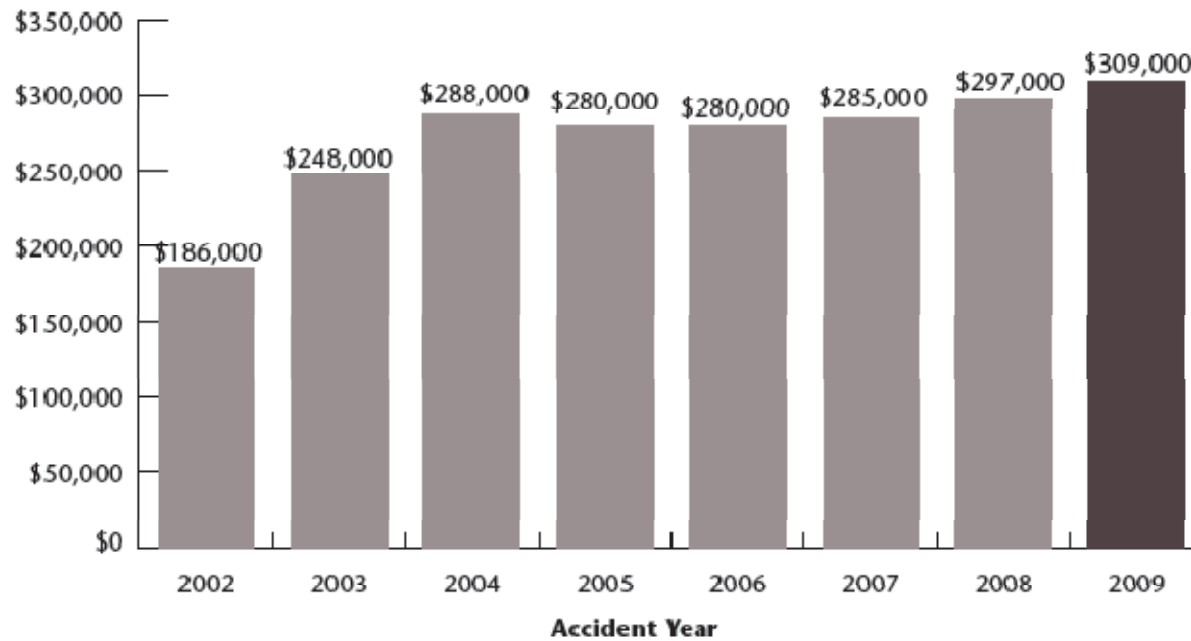
# Results by Service Line - OB

Hospital Professional Liability Benchmark  
Frequency per 10,000 Births



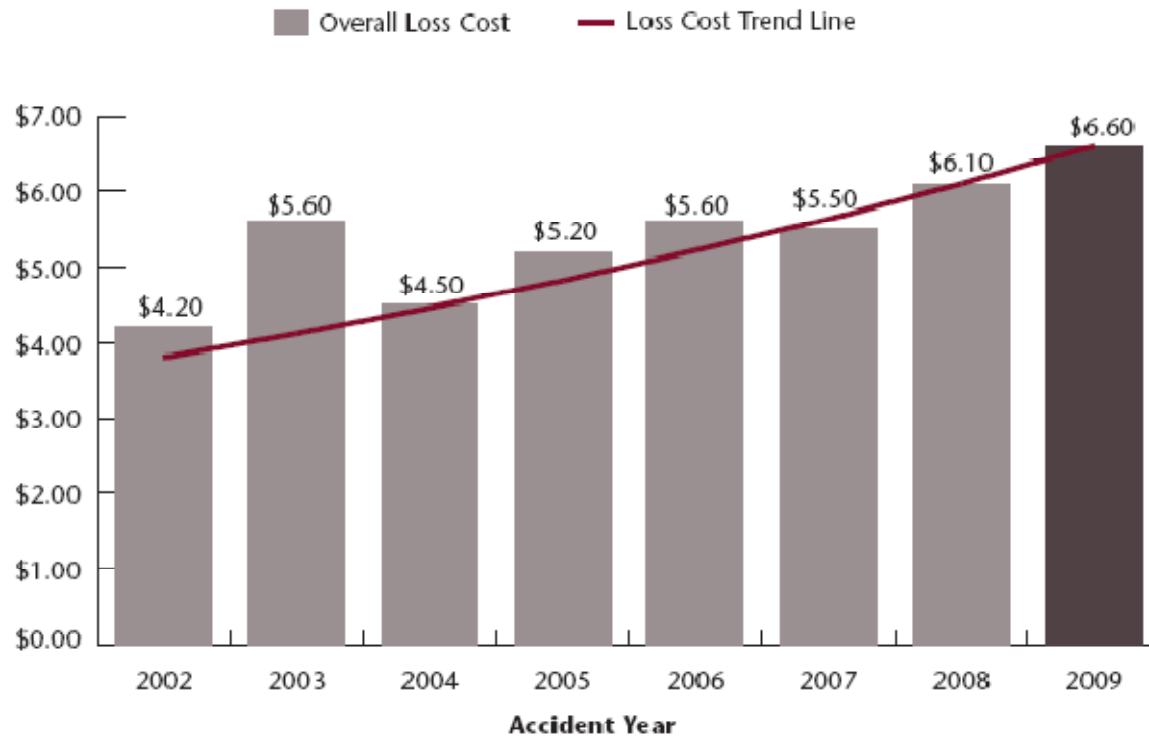
# Results by Service Line - OB

Hospital Professional Liability Benchmark  
OB Severity per Claim Limited to \$2M per Occurrence



# Results by Service Line - ED

Hospital Professional Liability Benchmark  
Loss per ED Visit Limited to \$2M per Occurrence



# Results by Service Line - ED

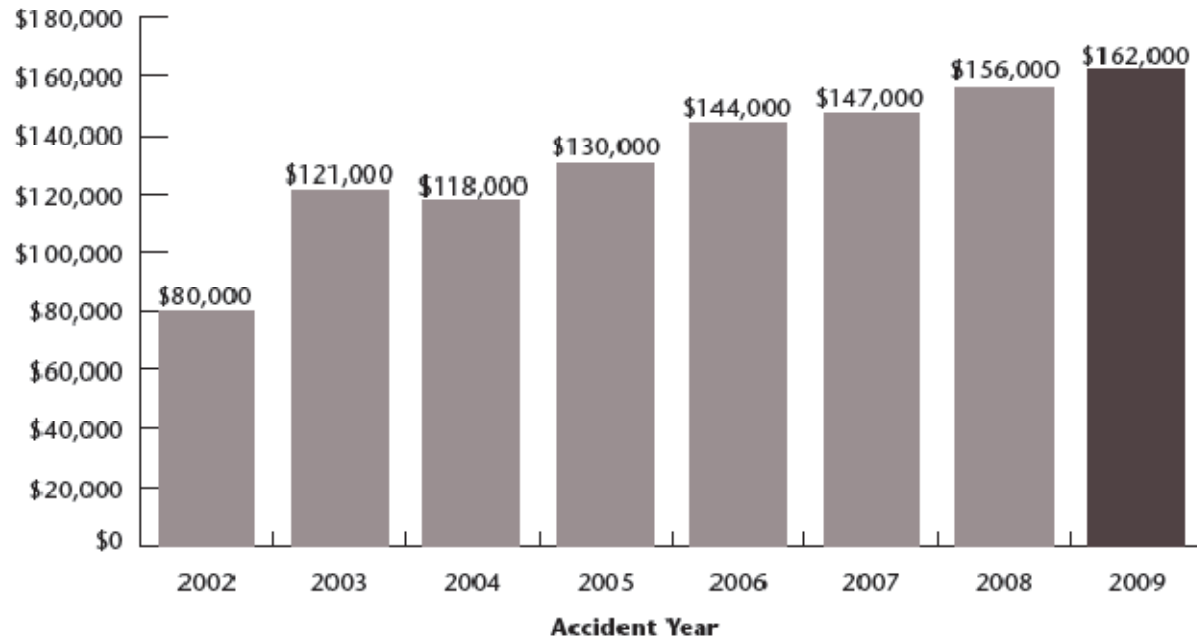
Hospital Professional Liability Benchmark  
Frequency per 100,000 ED Visits



# Results by Service Line - ED

Hospital Professional Liability Benchmark  
ED Severity per Claim Limited to \$2M per Occurrence

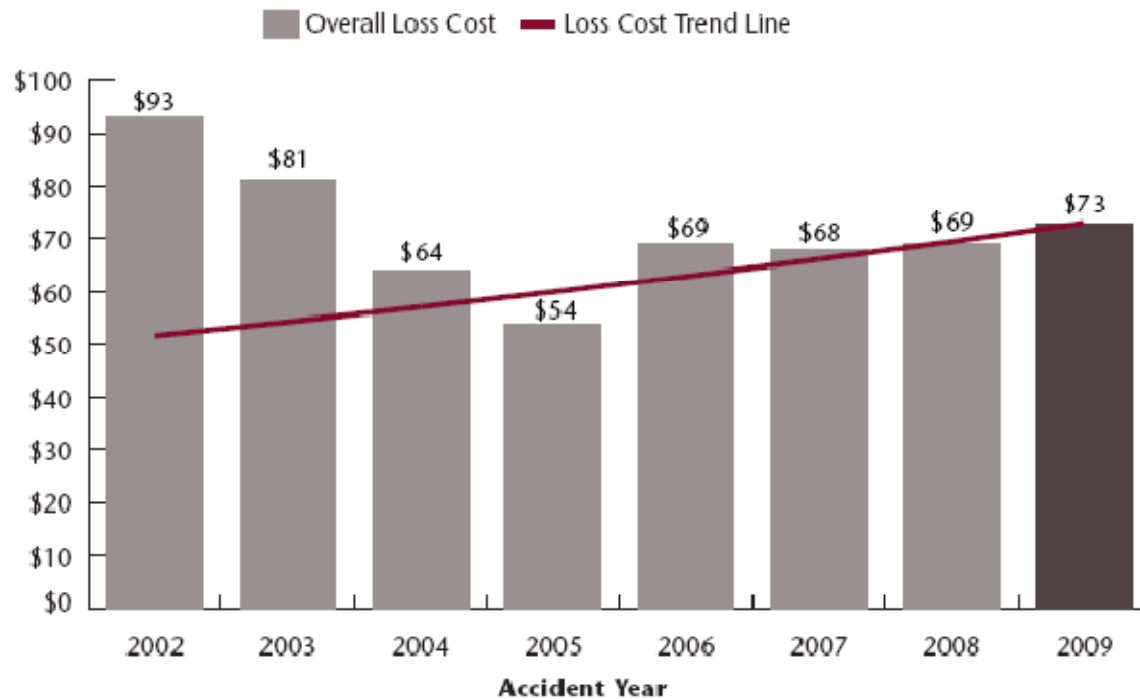
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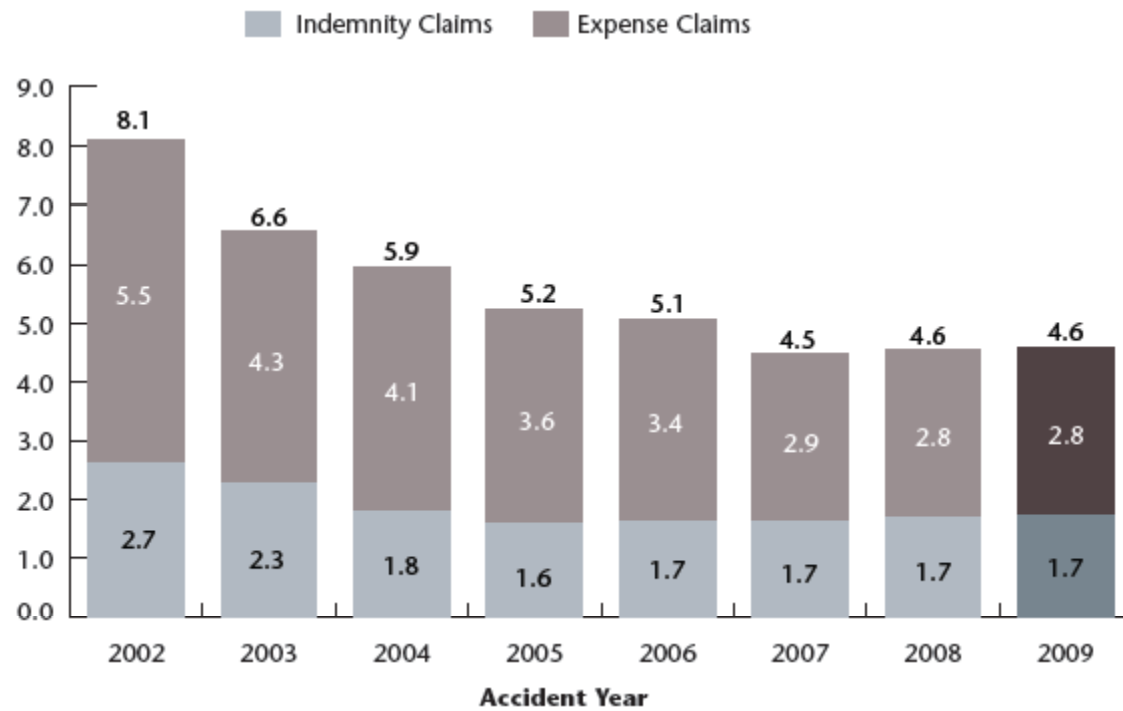
# Results by Service Line – IP Surgery

Hospital Professional Liability Benchmark  
Loss Cost per IP Surgery Limited to \$2M per Occurrence



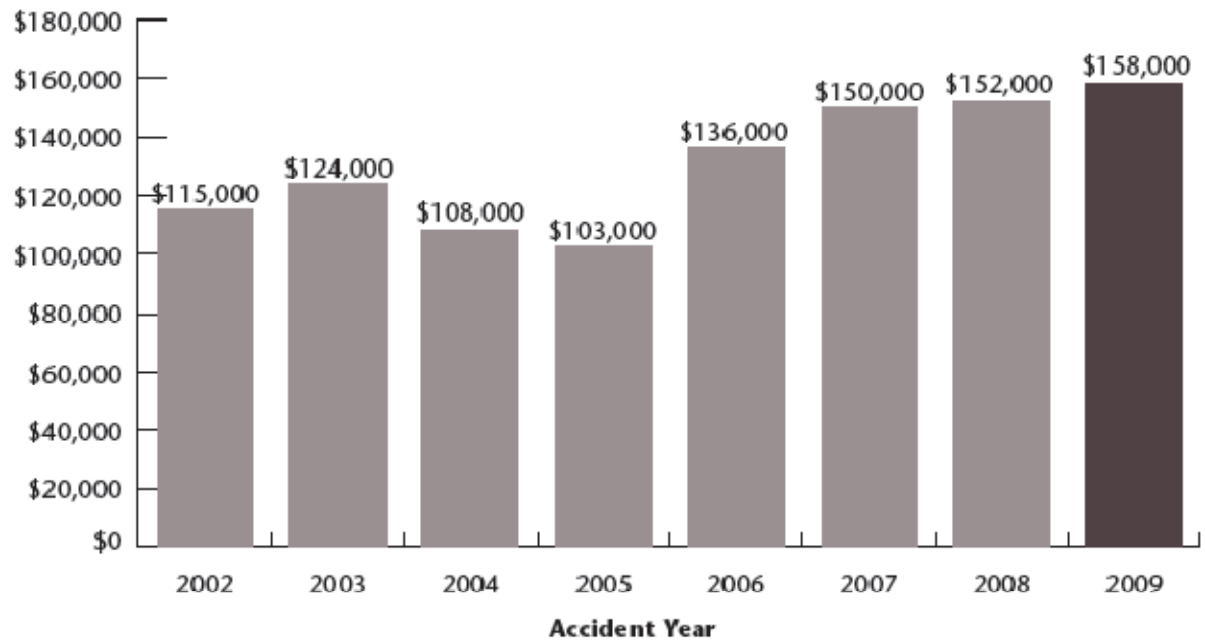
# Results by Service Line – IP Surgery

Hospital Professional Liability Benchmark  
Frequency per 10,000 IP Surgeries



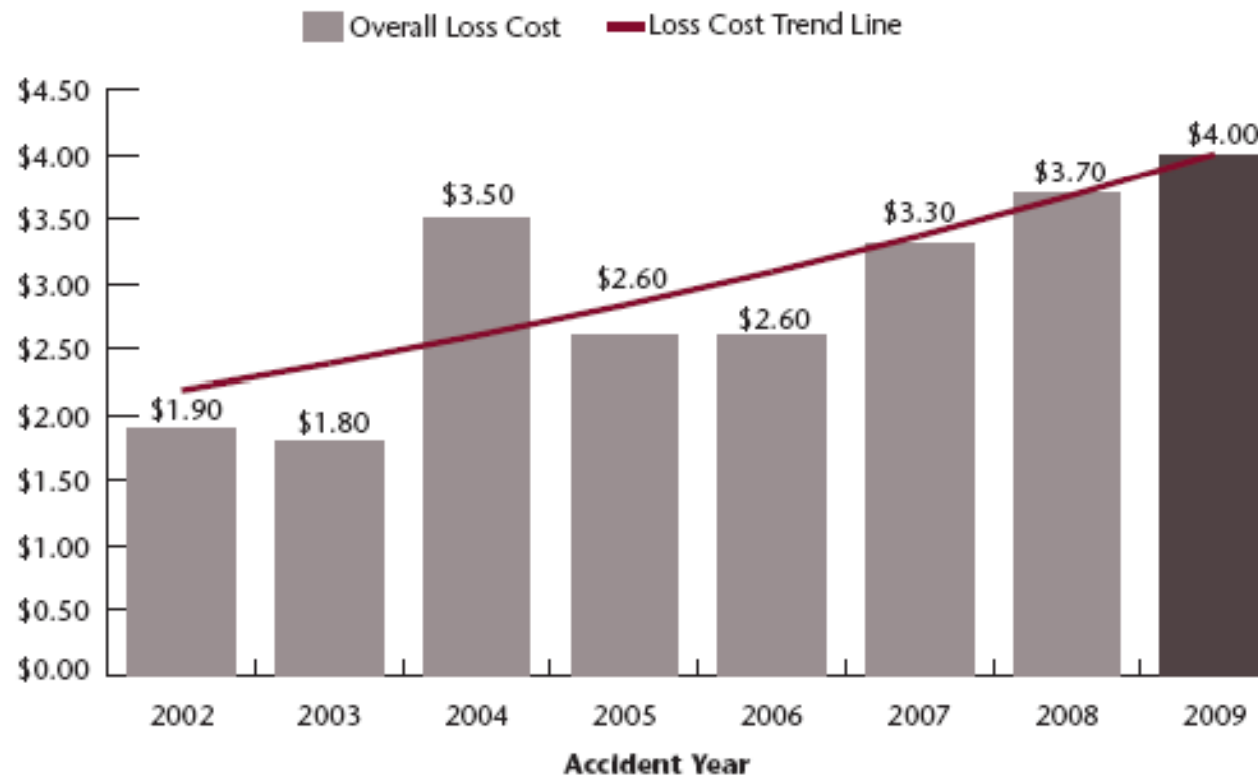
# Results by Service Line – IP Surgery

Hospital Professional Liability Benchmark  
Inpatient Surgery Severity per Claim Limited to \$2M per Occurrence



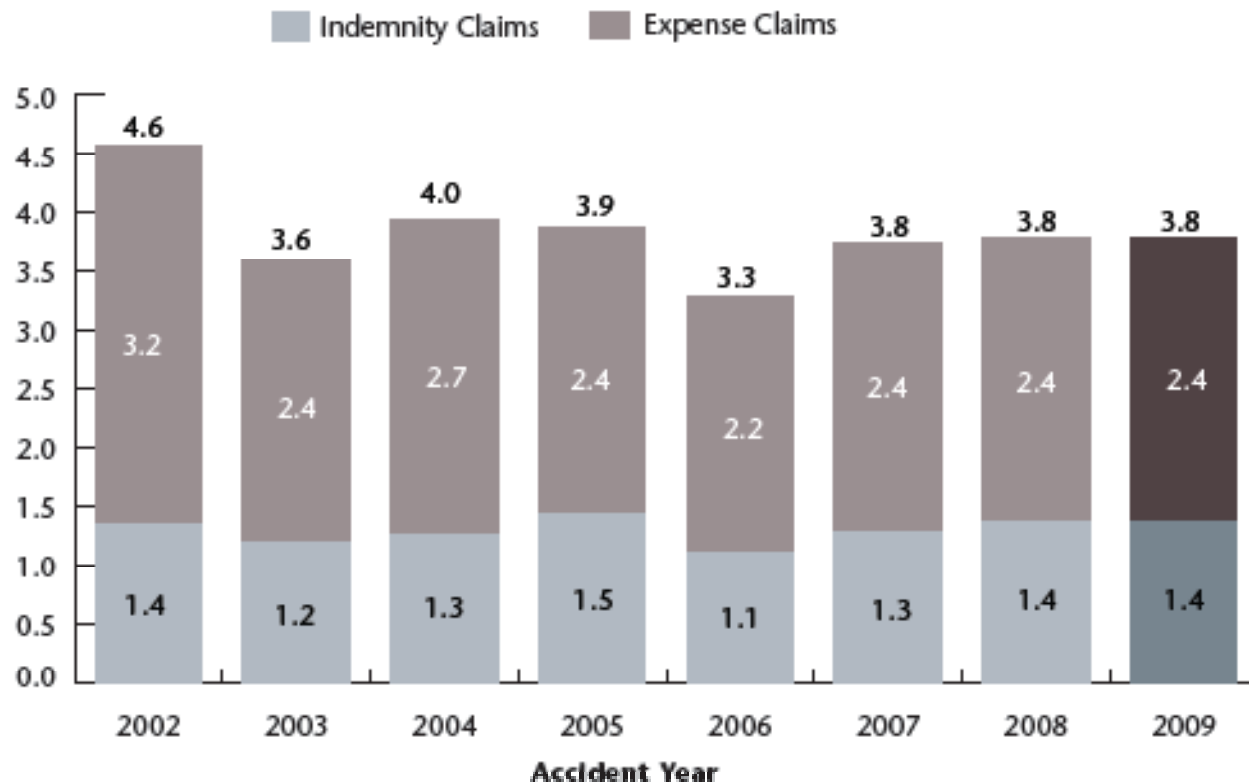
# Results by Service Line – OP Surgery

Hospital Professional Liability Benchmark  
Loss Cost per OP Surgery Limited to \$2M per Occurrence



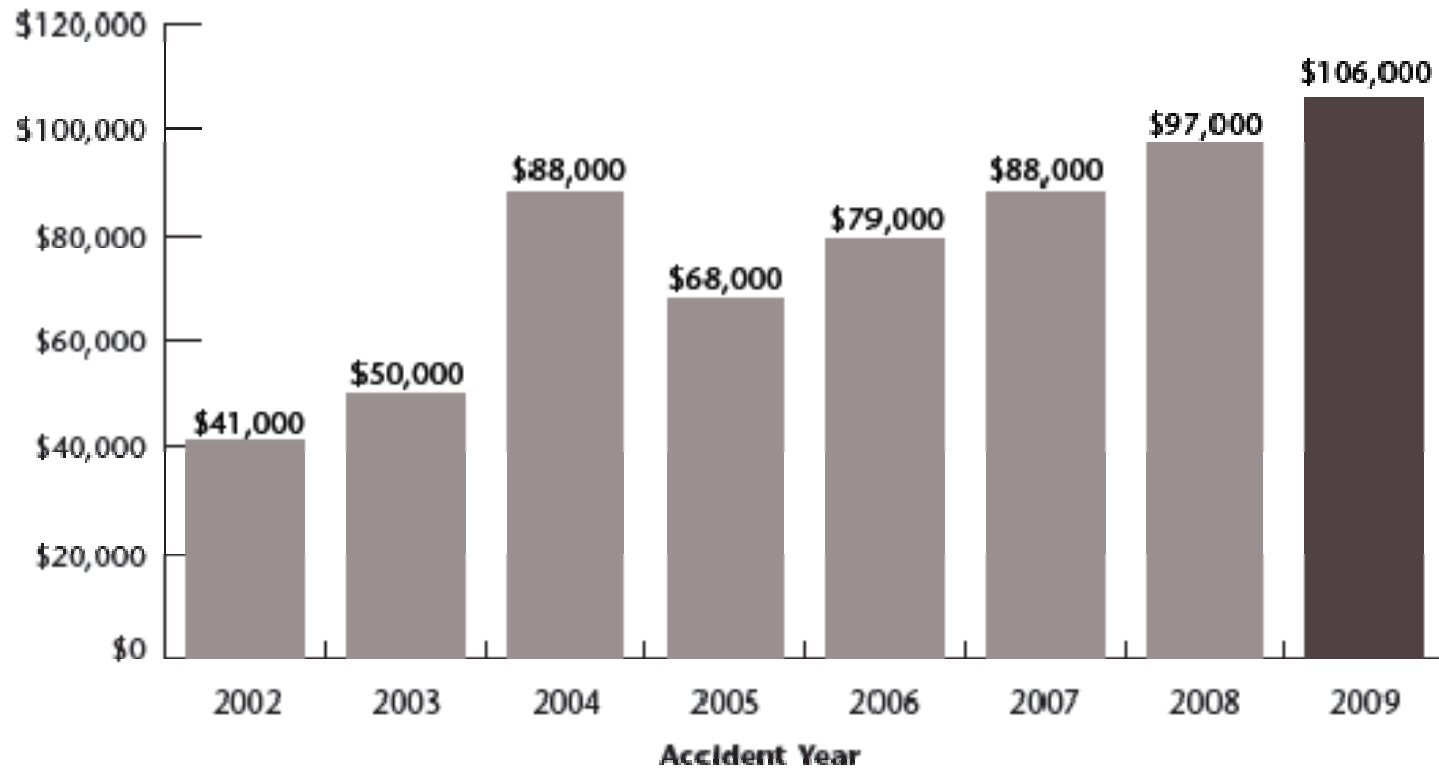
# Results by Service Line – OP Surgery

Hospital Professional Liability Benchmark  
Frequency per 100,000 OP Surgeries



# Results by Service Line – OP Surgery

Hospital Professional Liability Benchmark  
Outpatient Surgery Severity per Claim Limited to \$2M per Occurrence



# HPL Future

- Right now, the environment seems relatively stable
  - Frequency increase is mild
  - Severity increase is consistent with long term
- Areas of interest
  - Never Events
  - Overall medical inflation
  - Service line components
  - Changes to liability laws – Georgia, Illinois
  - Federal healthcare reform – demonstration projects