



Trends in Tort Law

Overview of the Medical Professional Liability Tort System – Past and Present

**A presentation to the 2013 Casualty Loss Reserve Seminar (CLRS)
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September 17, 2013

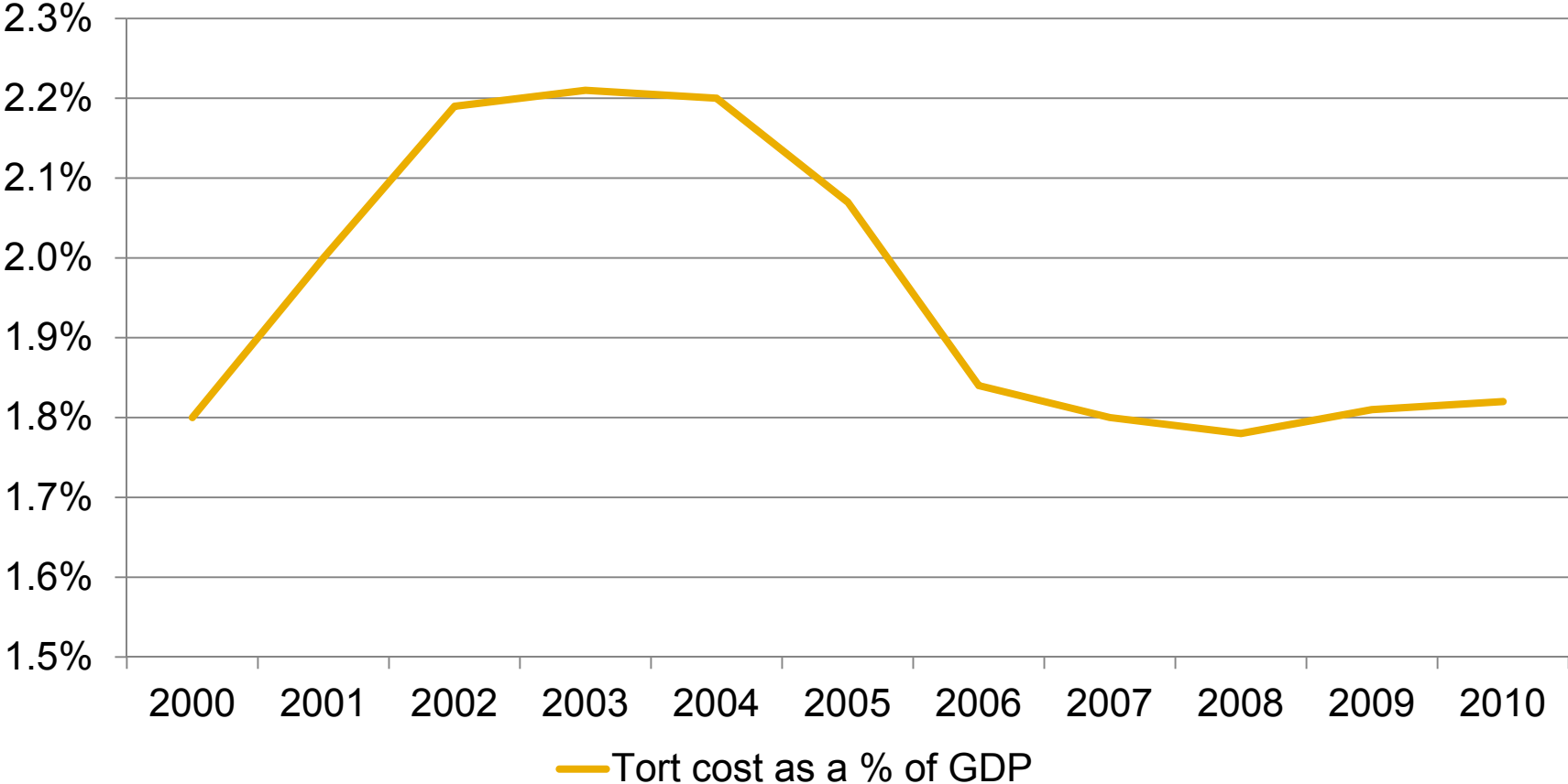
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What is Tort Law?

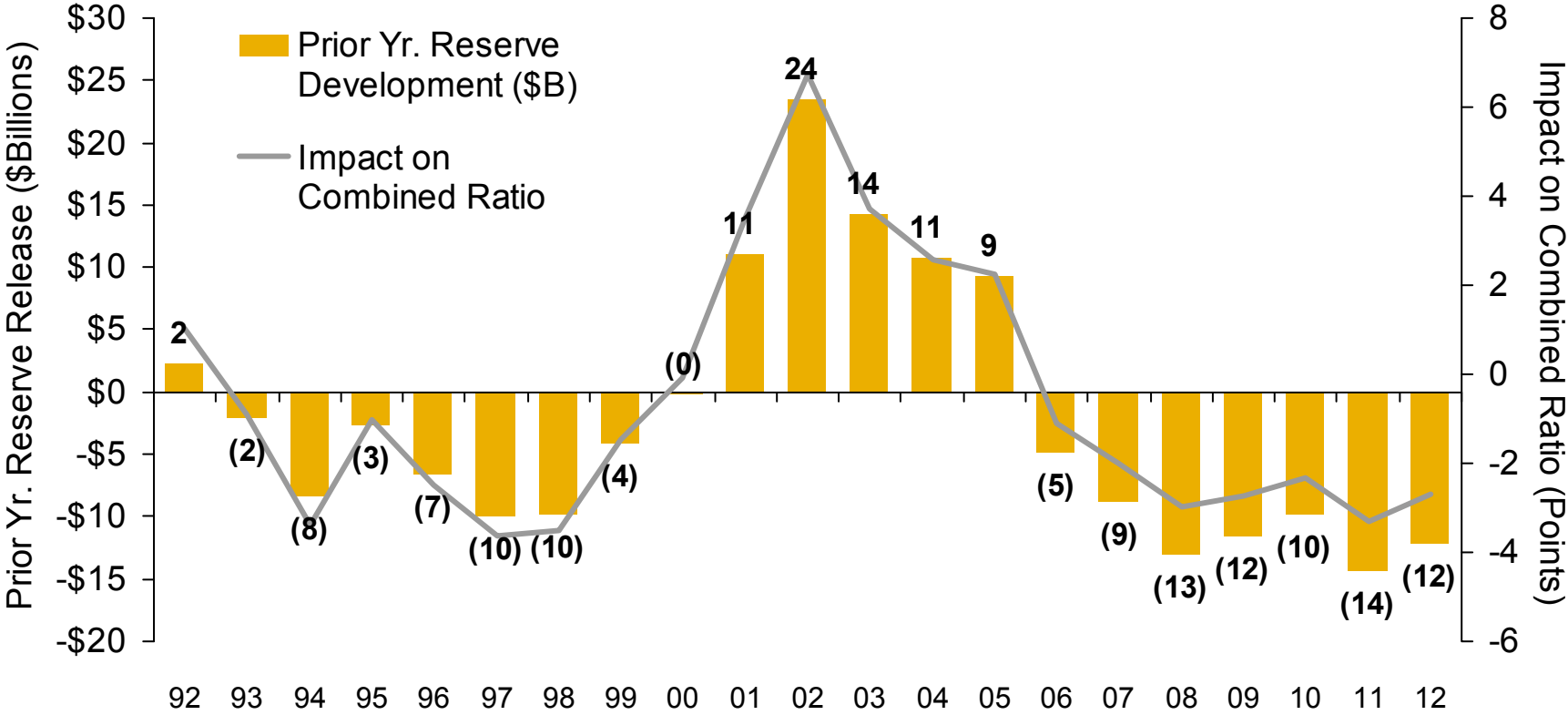
- A branch of the law that covers civil wrongs
- Under tort law, if someone suffers physical, legal or economic harm, then he/she is entitled to bring suit
 - A valid suit may lead to compensation
- The tort claim dispute resolution may be thought of as a continuum
- What happens when tort caps are overturned/do not exist?

The 2011 Towers Watson Tort Cost Trend Update shows that tort costs generally were relatively flat during the second half of the 2000's

Tort Cost as a % of GDP



Industry-wide P/C Reserve Development – Second half of 2000’s has generally been favorable with reserve decreases



Note: 2005 reserve development excludes a \$6 billion loss portfolio transfer between American Re and Munich Re. Including this transaction, total prior year adverse development in 2005 was \$7 billion. The data from 2000 and subsequent years excludes development from financial guaranty and mortgage insurance.

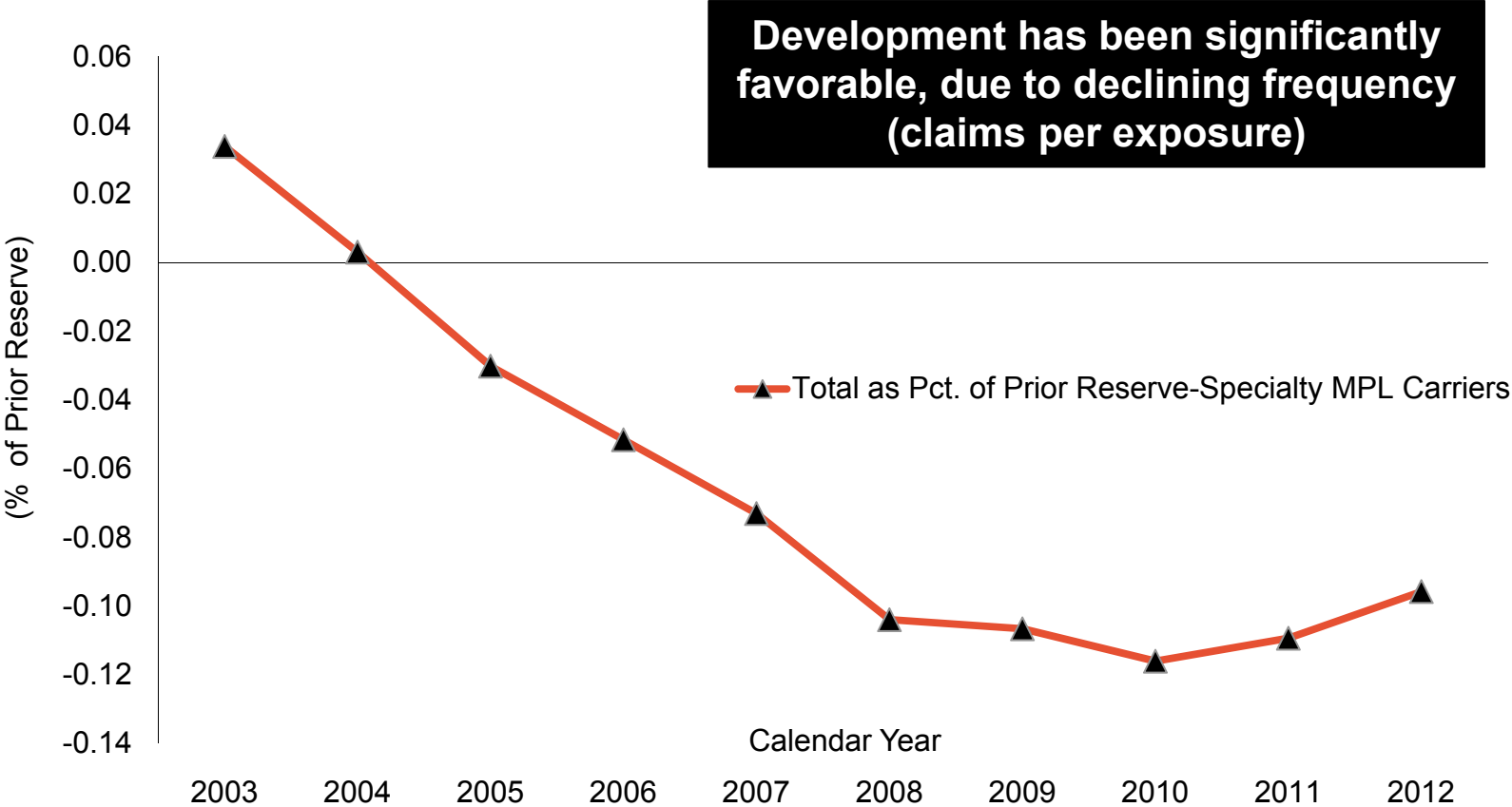
Sources: A.M. Best, ISO, Barclays Research (estimates). *From Insurance Information Institute presentation dated 8/19/2013.*

What is the status of the medical professional liability tort system?

- Historical perspective
- Nationally
- State specific

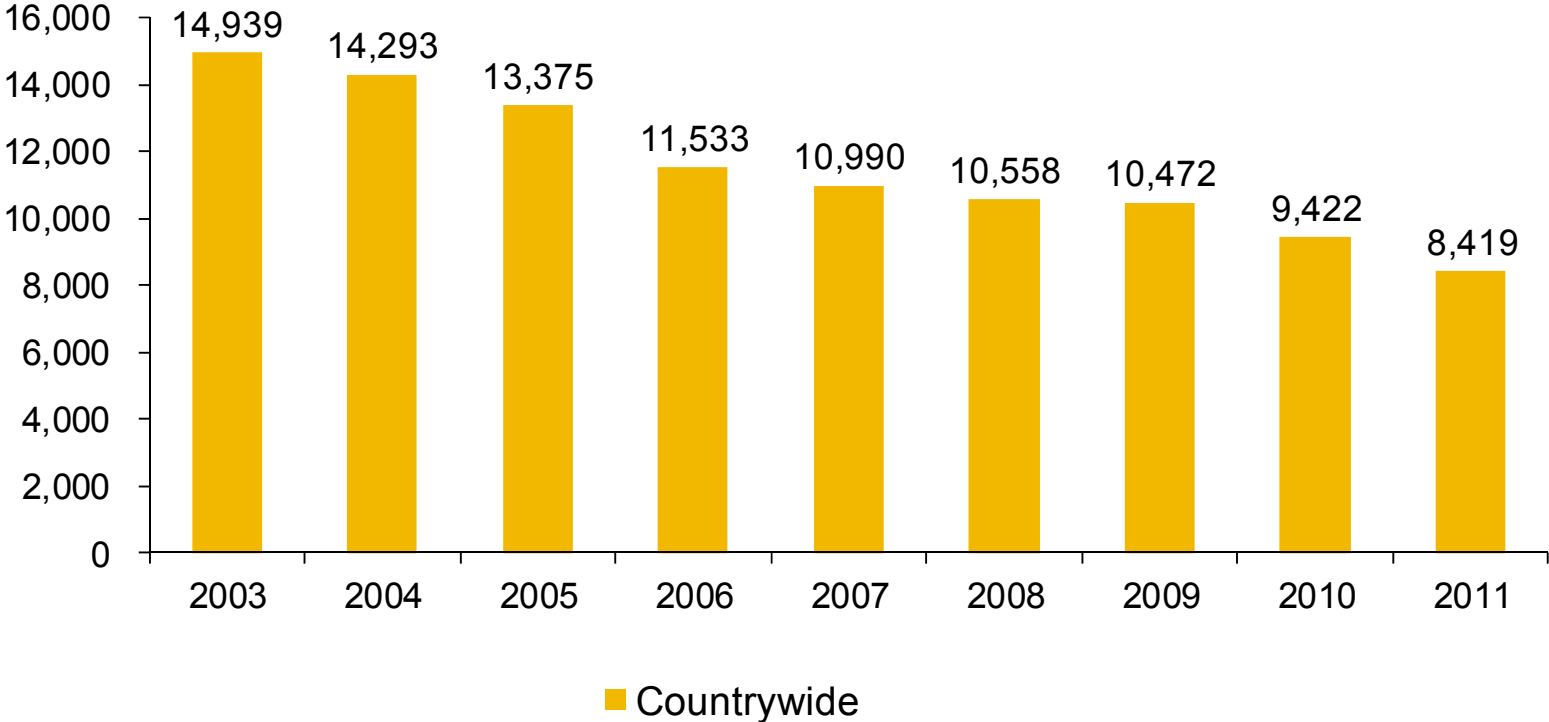
Specialty MPL carrier reserve development

One-Year Loss Reserve Development



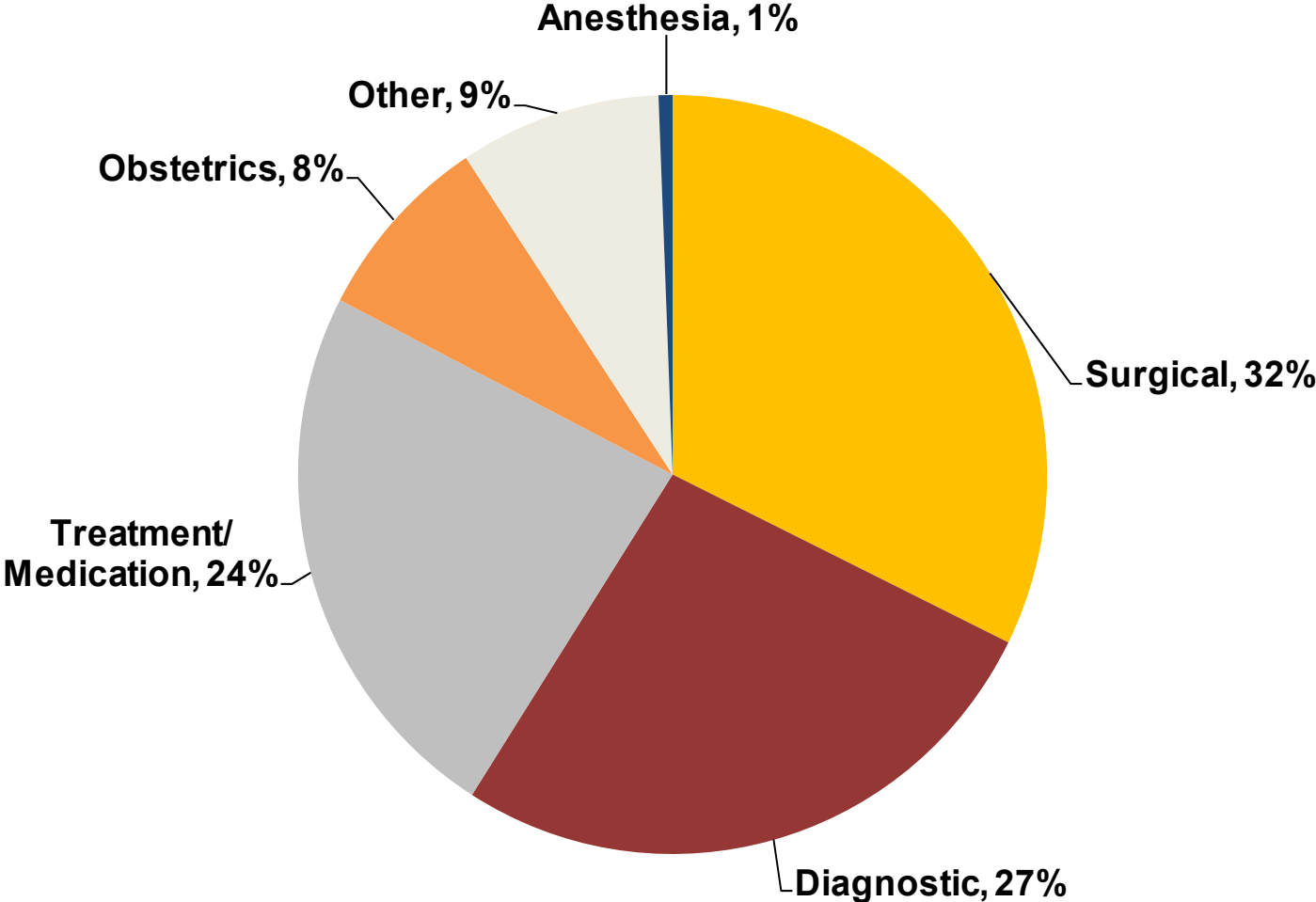
The number of medical malpractice payment reports has been steadily declining countrywide

of Malpractice Payment Reports



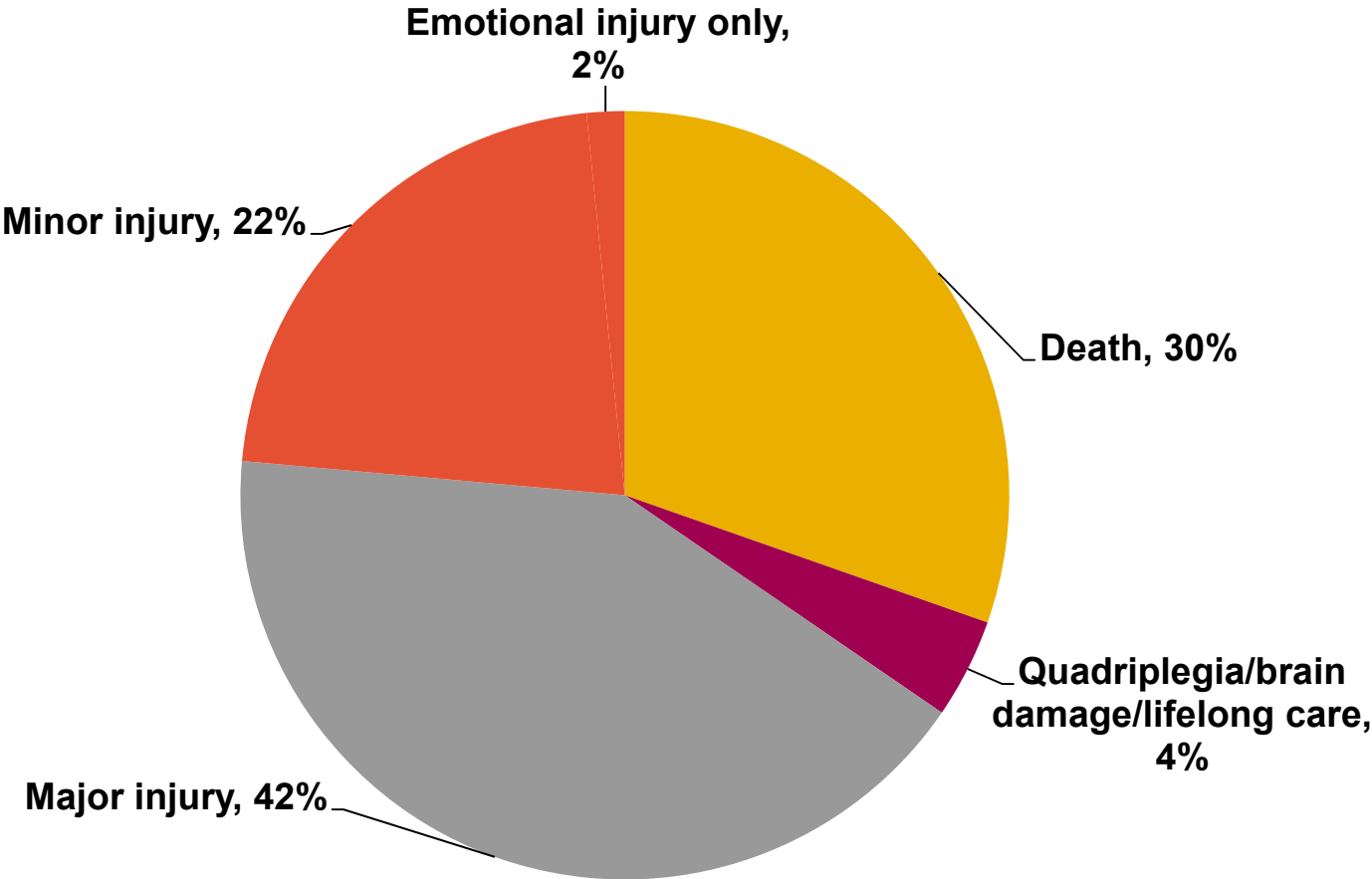
Source: National Practitioner DataBank

Frequency of claims by event type



Source: 2012 American Medical Association

Frequency of claims by outcome



Source: 2012 American Medical Association

MPL Experience for the past 15 years

- Various levels of tort reform may have affected the favorable results
- Beginning in 1999, MPL insurance companies experienced claim costs that exceeded established reserves
 - Significant losses and reduced capital
- In 2002/2003, many companies were forced to leave the market or implement significant rate increases
- Second half of the 2000's has been a softer market for the MPL insurance industry
- Emerging circumstances may put more pressure on MPL rates in the near term

Highlights of Recent Tort Reforms

- Tort reforms are generally maturing, having a favorable impact on claim frequency
- 42 states have enacted some type of reform (e.g., caps on non-economic damages)
 - Of these, about 35 states have legislation limiting non-economic and/or total damages on MPL cases
 - Of those challenged, two-thirds have been upheld in state supreme courts

Details of Tort Reforms in Recent Years

- In 2011, North Carolina and Tennessee enacted reforms while Oklahoma reduced its cap
 - In Tennessee, limits on non-economic damages now exist
- In early 2012, the Louisiana Supreme Court ruled the state's \$500,000 MPL tort cap was unconstitutional
 - Ending more than six years of legal wrangling
- Other recent national trends due to successful tort reforms
 - Recent legislative activity to reduce significant costs from defensive medicine
 - Ohio advocates itself as a model for the nation under the 'Medical Care Access Protection Act of 2013'
 - Georgia bill to transform medical liability judicial system to a non-fault WC-like system fails in 2013 legislative session
 - Oregon Governor signed a procedural law in March 2013 which got strong approval
 - Florida passed Medical Liability tort reforms in July 2013
 - abolition of similar specialty standard of care and
 - revisions to the law of physician-patient confidentiality

The 2012/13 American Tort Reform Foundation (ATRF) Report

- ATRF report called “Judicial Hellholes” is released annually and documents abuses of the civil justice system
- Each report lists the five states or counties that the ATRF considers the worst in the nation for liability climate
 - As well as geographic regions of concern on their “Watch List”
 - And especially egregious court decisions in its “Dishonorable Mentions”
- Medical liability plays a large role in the report

The 2012/13 ATRF Findings

- The most recent report highlighted
 - Attacks against CA's Medical Injury Compensation Reform Act (MICRA)
 - West Virginia's Supreme Court holding of a non-economic damages cap
 - Philadelphia was moved to the ATRF Watch List from its prior #1 ranking
 - South Florida moved from the Hellhole list onto the Watch List, contingent on the FL Supreme Court
 - Missouri topped the Dishonorable Mention list due to its \$350,000 cap overturn
 - West Virginia, Kansas and Louisiana received praise due to upholding their non-economic damages cap

Unpredictability of a lack of tort reform

- In recent years, some states have ruled caps on damages are unconstitutional (e.g., Illinois and Georgia in 2010, Missouri in 2012)
- As a result, some judgments may be unpredictable
 - A handful of cases in a low number of states in recent years have totaled over \$1B in damages
 - In 2011, cases in six states contributed to over 50% of the payments nationally
 - In recent years, there has been an increase in the number of jury awards in excess of \$50M per claim
- Large awards are expected to continue

An Example of Unpredictability - Illinois' lawsuit climate ranks among the nation's worst

- Illinois ranked 46th overall in 2012
- One of the worst ranks for “having and enforcing meaningful venue requirements”
 - Also poor ranks for
 - “scientific and technical evidence”
 - judge impartiality and competence and
 - jury fairness
- Cook County recently named the most unfair and unreasonable jurisdiction
 - Madison County
 - One of the most unfair counties
 - Also has very high litigation activity
 - “Magnet courts” that are hospitable to plaintiffs?

The average medical malpractice payment amount in IL was 122% higher than the countrywide average in 2011

Payment Amount	% Countywide	% Illinois
Less than \$50,000	1%	1%
\$50,000 to \$99,999	3%	2%
\$100,000 to \$249,999	13%	8%
\$250,000 to \$499,999	19%	16%
\$500,000 to \$999,999	29%	35%
\$1 million to \$2 million	22%	23%
Greater than \$2 million	12%	15%
Total	100%	100%
Average	\$896,000	\$1,095,000

Source: National Practitioner DataBank

Texas' tort reform in 2003 proved effective

- Tort reform effective for claims reported September 1, 2003 and subsequent
- The limit for non-economic damages is \$250,000 per claimant
- The tort reform impact is estimated to be more than a 50% reduction in loss costs
 - Lower severity contributed to a portion of the savings
 - Lower claim frequency appears to have the greatest impact
- How long will tort reform savings last with recent pressures?
 - Inflation
 - Increased attorney representation
 - Recent large settlements

Other Tort-reform Provisions Beyond Caps

- Other provisions have contributed to favorable loss cost trends
 - Restrictions on joint and several liability
 - Prevention of venue shopping
 - Use of affidavits of merit
 - Shortened statutes of limitations
 - Reductions of vicarious liabilities
 - Non-admissibility of apologies
- Weakening of this legislation may have implications to MPL insurers

Conclusions

- Recent MPL loss development has been significantly favorable
 - Pro-tort reform environments have likely contributed
 - Results depend on the state legislation
- Weakening of tort legislation may have implications to MPL insurers generally

Discussion

