Medical Professional Liability: Caught in the Crosshairs

Prepared for: CAS Centennial Meeting

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Overview of Presentation

- Defense Costs
  - Observations
  - Insights and Management

- 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
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
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

Expenses, $45,082
Fees, $67,675

Expenses
Fees

Jan 2009
Apr 2009
Jul 2009
Oct 2009
Jan 2010
Apr 2010
Jul 2010
Oct 2010
Jan 2011
Apr 2011
Jul 2011
Oct 2011
Jan 2012
Apr 2012
Jul 2012
Oct 2012
Jan 2013
Apr 2013
Jul 2013
Oct 2013
**Defense Costs: Insights and Management**

**Costs and Duration by Claim Phase**

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<th>Number of Days</th>
<th>Pleadings No Data</th>
<th>Discovery: Prior to Depositions</th>
<th>Discovery: Litigants Depositions</th>
<th>Discovery: Pre-Expert Case Assessment</th>
<th>Discovery: Expert Depositions</th>
<th>Trial Prep</th>
<th>Trial</th>
<th>Post Trial</th>
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**Discovery:**
- Pre-Expert Case Assessment
- Expert Depositions
- Prior to Depositions
- Litigants Depositions
- Pleadings

**Costs:**
- $2,863/day
- $90/day
- $113/day
- $96/day
- $35/day
- $16/day
- $47/day
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

Time (Hours)

CWI Ratio

0% 5% 10% 15% 20% 25% 30% 35% 40% 45% 50%

0.0 1.0 2.0 3.0 4.0 5.0 6.0 7.0 8.0 9.0 10.0 11.0 12.0 13.0 14.0 15.0 16.0
Defense Costs: Insights and Management

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

CWI Ratio

Percent of Hours for Lead Attorney

0% 5% 10% 15% 20% 25% 30% 35% 40% 45% 50%

0 10 20 30 40 50 60 70 80 90 100
Defense Costs: Insights and Management

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

Time Lag (Days)

CWI Ratio

0% 5% 10% 15% 20% 25% 30% 35% 40% 45% 50%
Where are we headed?

TORT REFORM
Tort Reform Damage Caps

1995
Tort Reform Damage Caps

2005
Tort Reform Damage Caps
Current

[ mapa de los Estados Unidos con los estados marcados en verde o rojo para mostrar les limitaciones a los daños en los casos de tortura ]
Proposition 46

- Cap on Non-Economic Damages $1.1M

- Random drug testing of physicians

- 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

- Costs
  - One public estimate: 33% to 77% increase

- Access
  - Physicians may choose to practice elsewhere

- 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

- Frequency: as much as 30% increase
  - A.M. Best Briefing, 10/20/2014

- Severity: 25% indemnity increase
  - Rand Health Affairs study, Nov 2014

- Pure Premium ~ 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

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

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Data Reliance

- 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.