
Bracing for change

Medical Professional Liability (MPL)
insurance costs at a crossroads

Tim Landick FCAS, MAAA, Director - PwC
David Kaye FCAS, MAAA, Director - PwC

Agenda

MPL current trends

Future of MPL costs

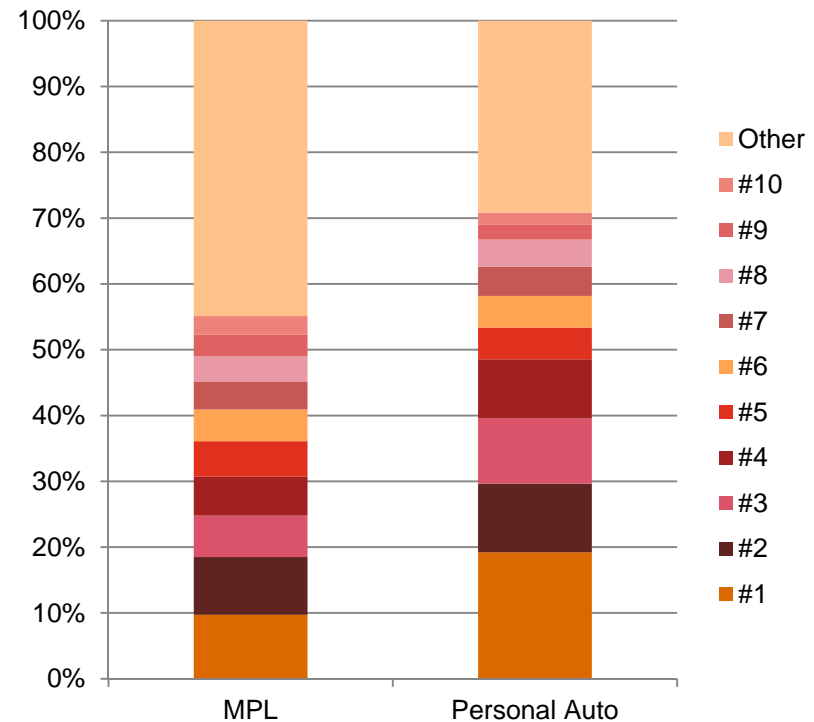
MPL current trends

- Structure of MPL market
- MPL insurance industry profitability
- MPL insurance costs cycle
- MPL insurance rate trends
- Expenses and consolidation
- Tort reforms and “mega” awards

Structure of MPL market

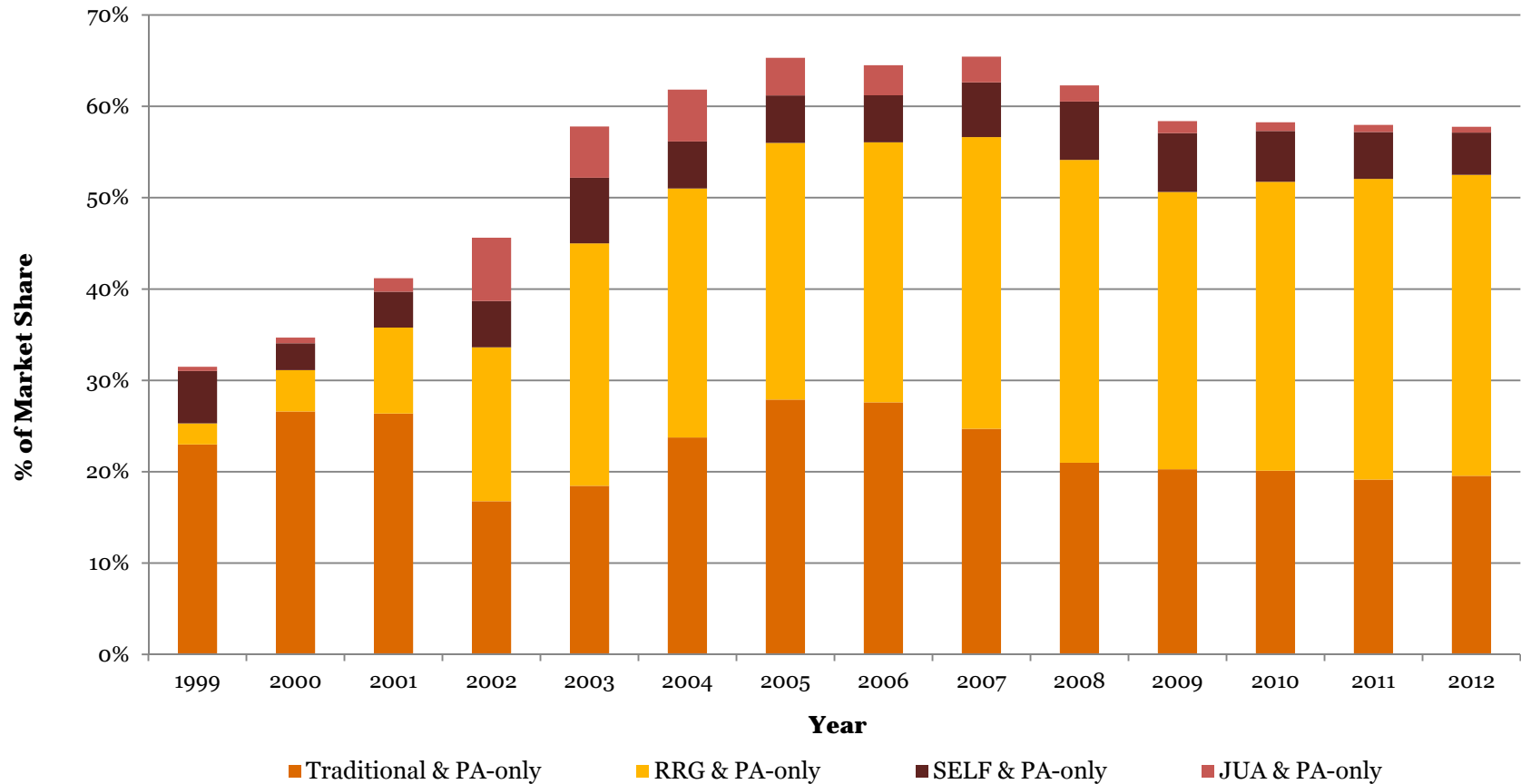
- Since mid-1970s the MPL market has shifted from multiline-dominated insurers to specialist monoline dominance.
- Top 10 writers in MPL only account for 55% of market share, whereas in personal auto liability they represent 71% of the market.

Structure of MPL and PAL Markets
(Market Share by 2012 DWP)



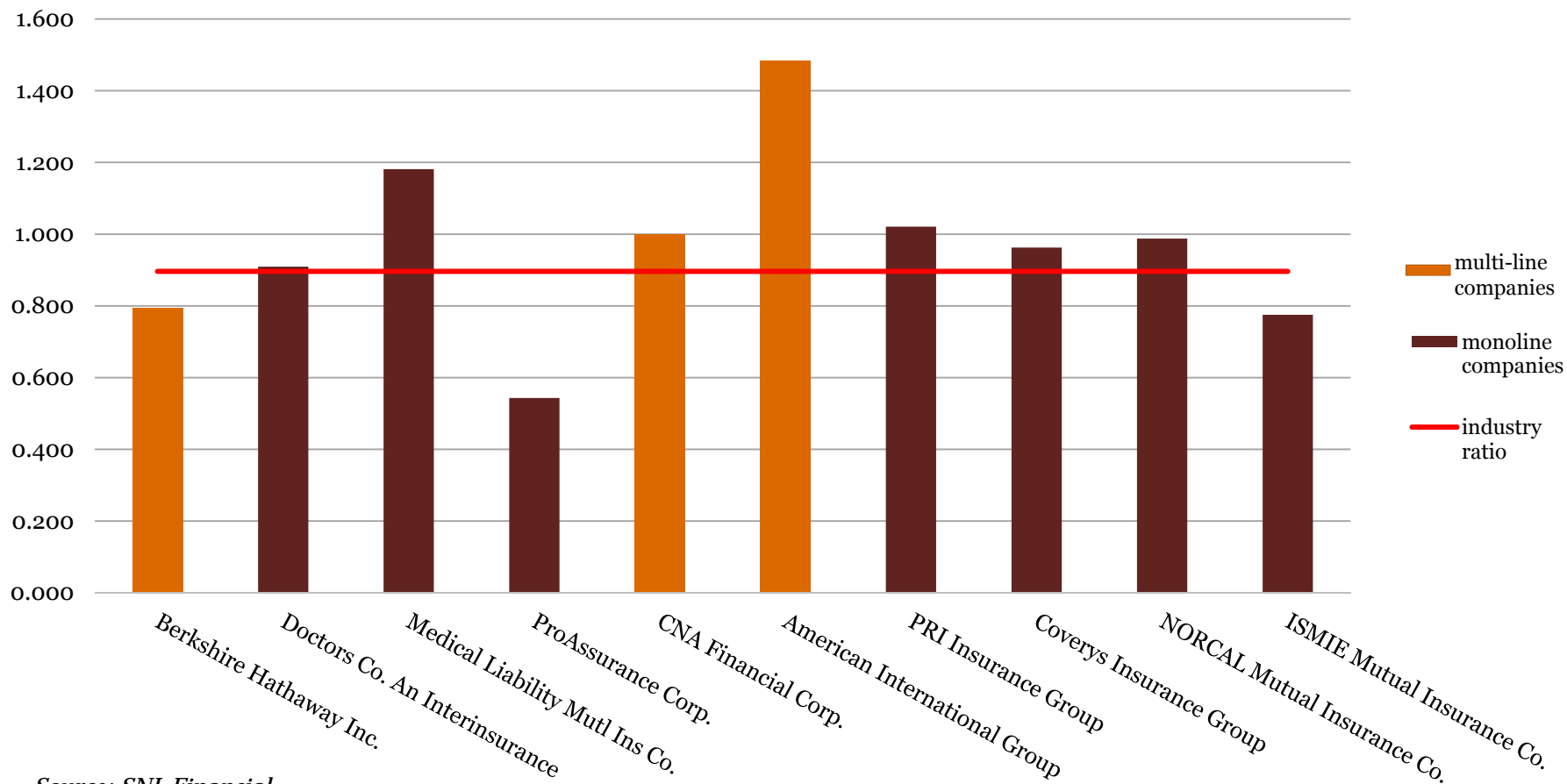
Structure of MPL market

Market share of PA-only Med Mal Insurers



MPL Profitability – Combined ratios

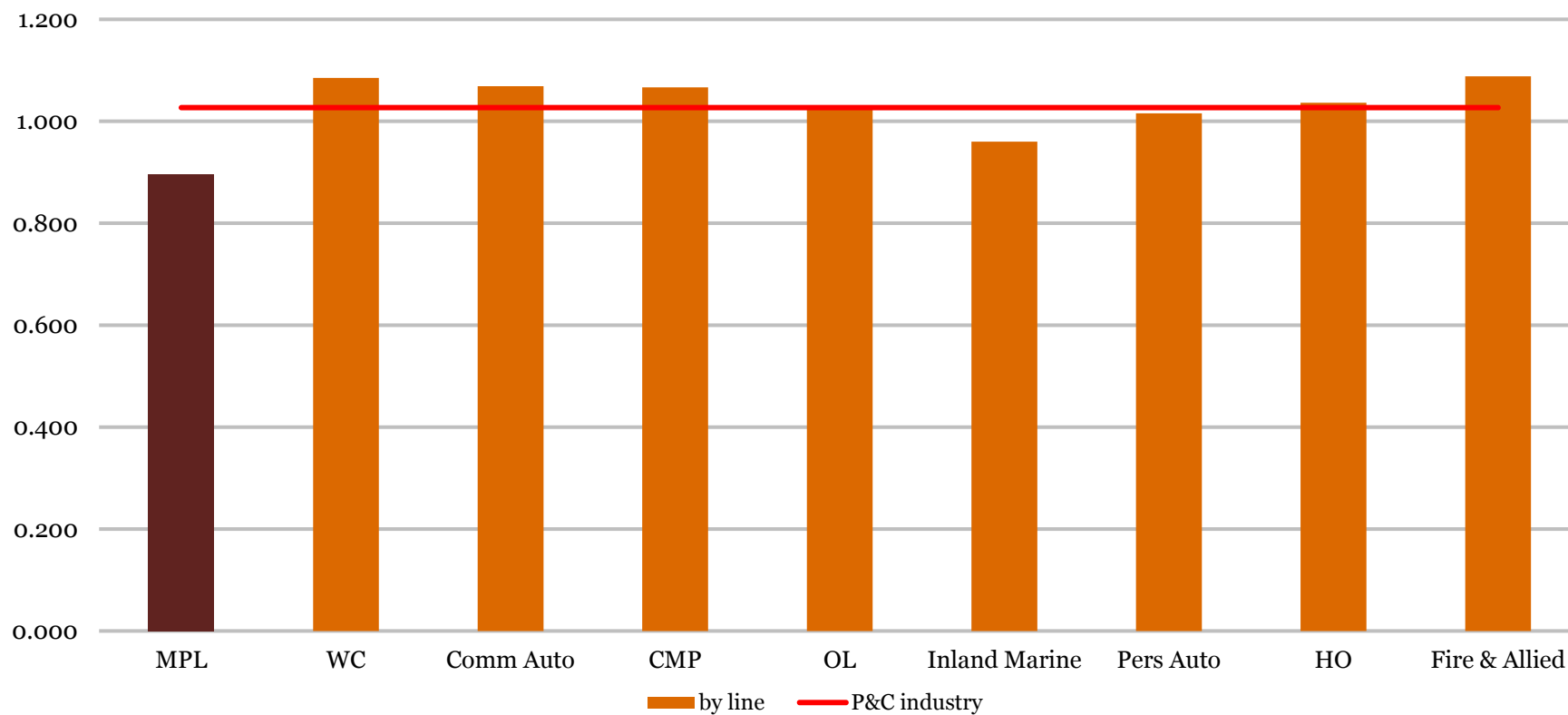
Medical Professional Liability 2012 Combined Ratios



Source: SNL Financial

MPL Profitability – Combined ratios

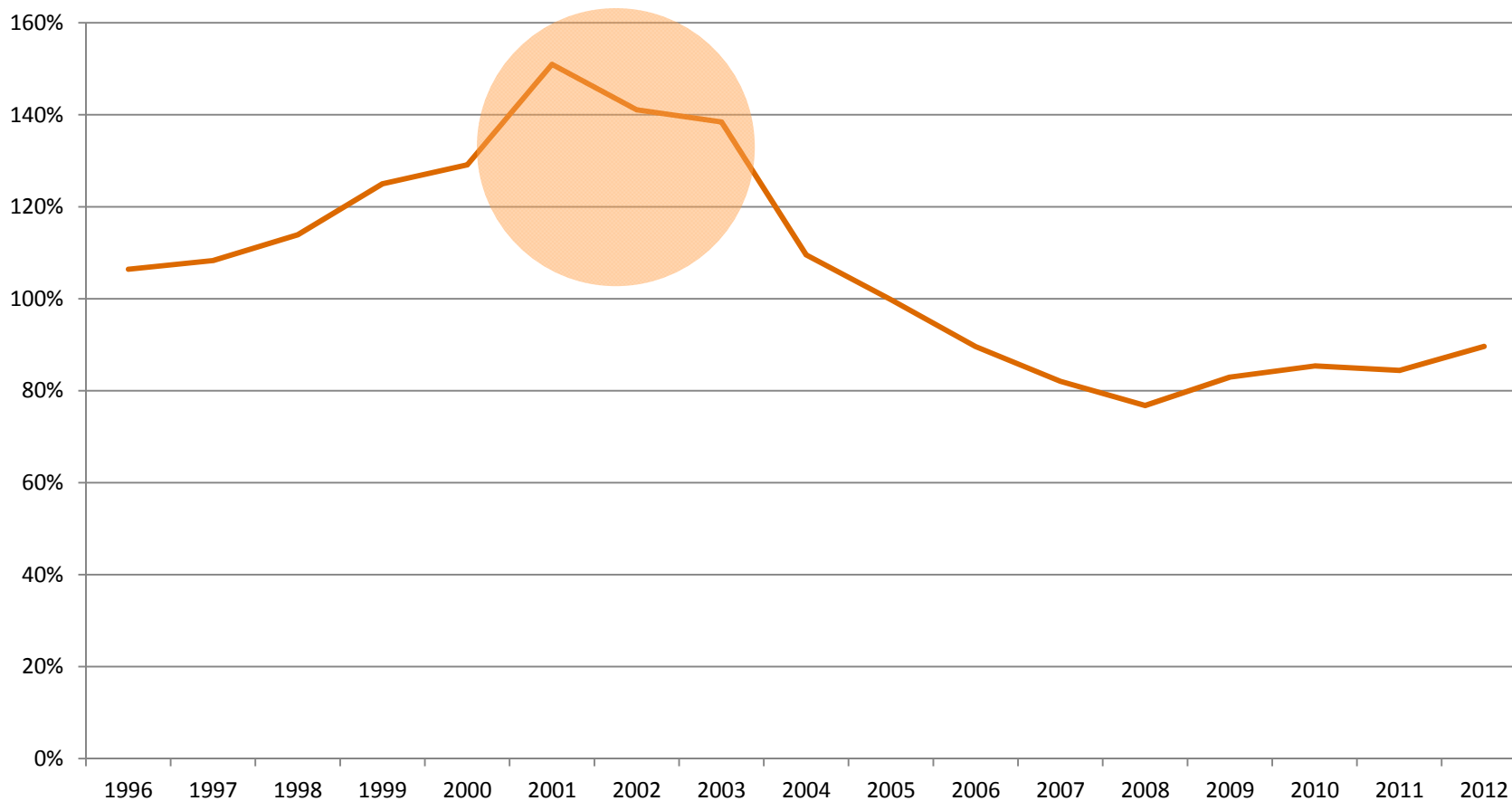
2012 Combined Ratios By Line of Business



Source: SNL Financial

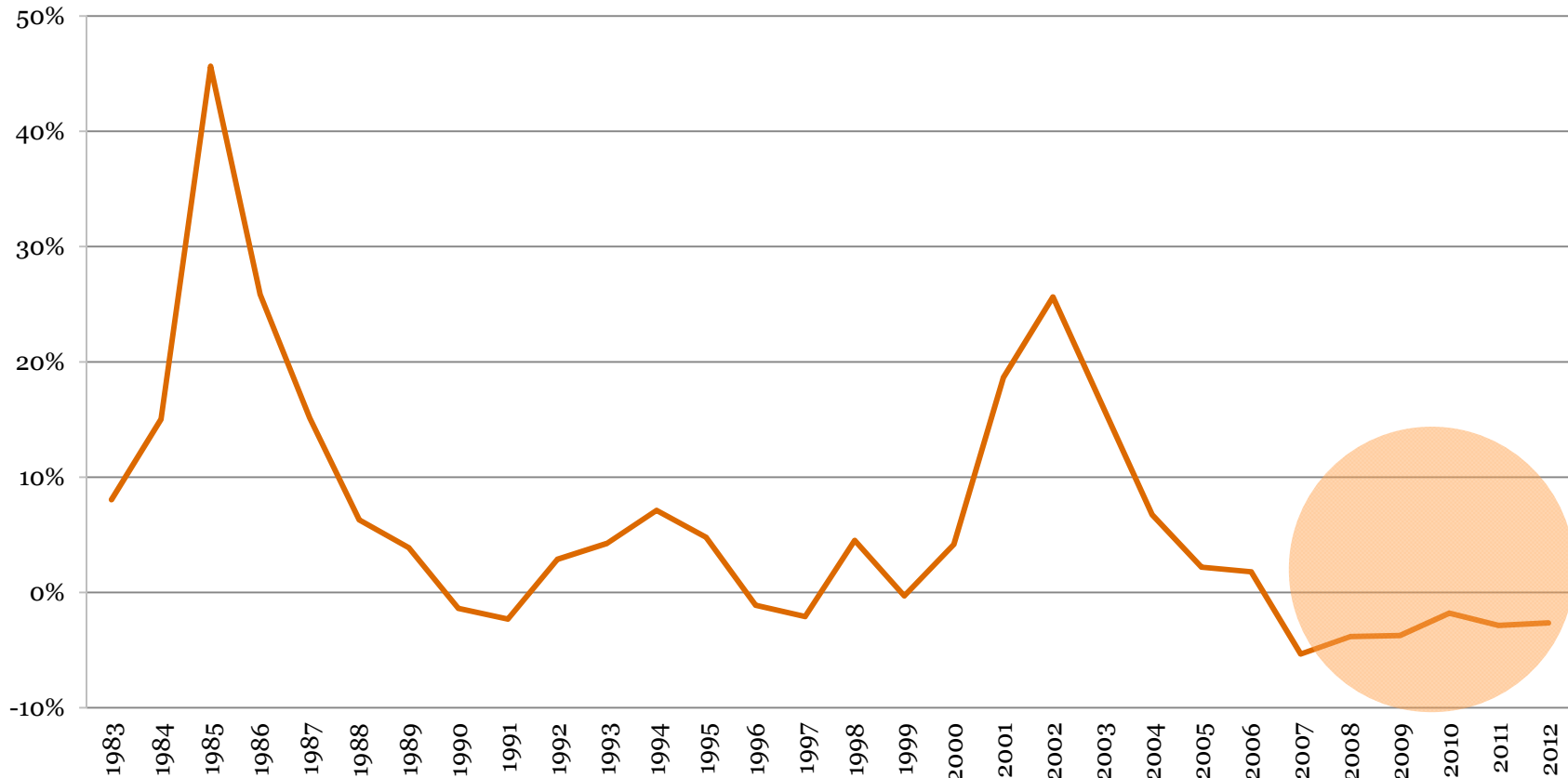
MPL Profitability – Combined ratios

MPL Combined Ratio



MPL insurance costs cycle

MPL Direct Written Premiums Annual Percentage Change



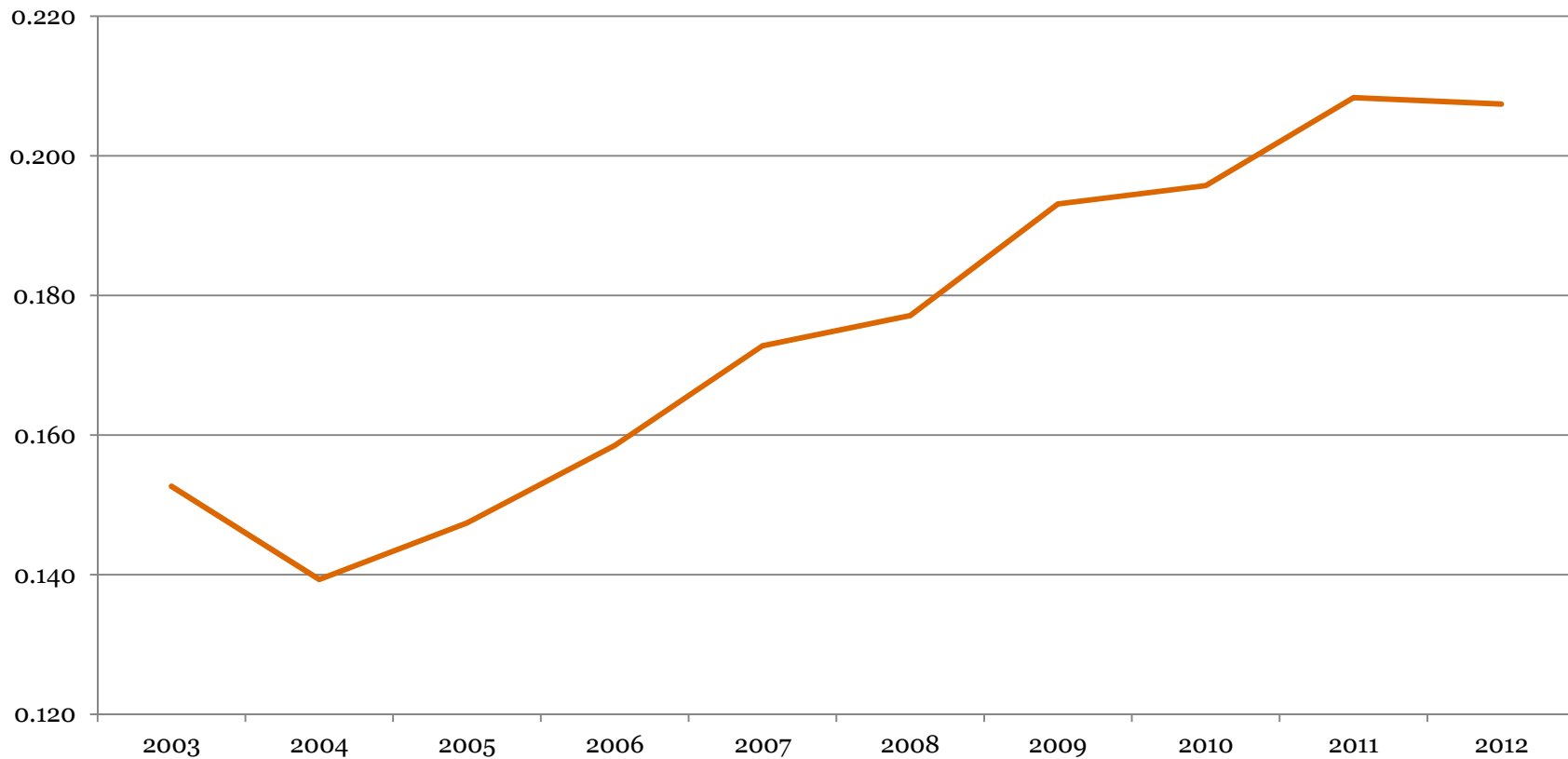
Source: 1983-1993 - A.M. Best Aggregates & Averages, 2003 P/C edition; 1994-2005 - Information included in statutory filings as collected by Highline data; 2006-2012- SNL Financial.

MPL insurance rate trends

- MPL rates peaked in early 2006 and have continued to drop since then.
- Steady decline in average price of commercial MPL insurance from 2006 through 2011.
- Decrease in premium rates partially driven by state MPL tort reforms, affecting both claim frequency and claim severity.
- Current rates may prove to be unprofitable for some insurers.

Structure of MPL market – Expenses

Medical Professional Liability Expense Ratio



Source: SNL Financial

Expense trends

- Combination of factors has contributed to expense trends:
 - Reduction in MPL insurer premium volume
 - Physician and hospital alignment
 - Rate Pressure
- Recent M&A activity:
 - Berkshire Hathaway (2011)
 - NORCAL Mutual (2011)
 - The Doctor's Company (2010 & 2011)
 - ProAssurance (2008, 2010 & 2013)

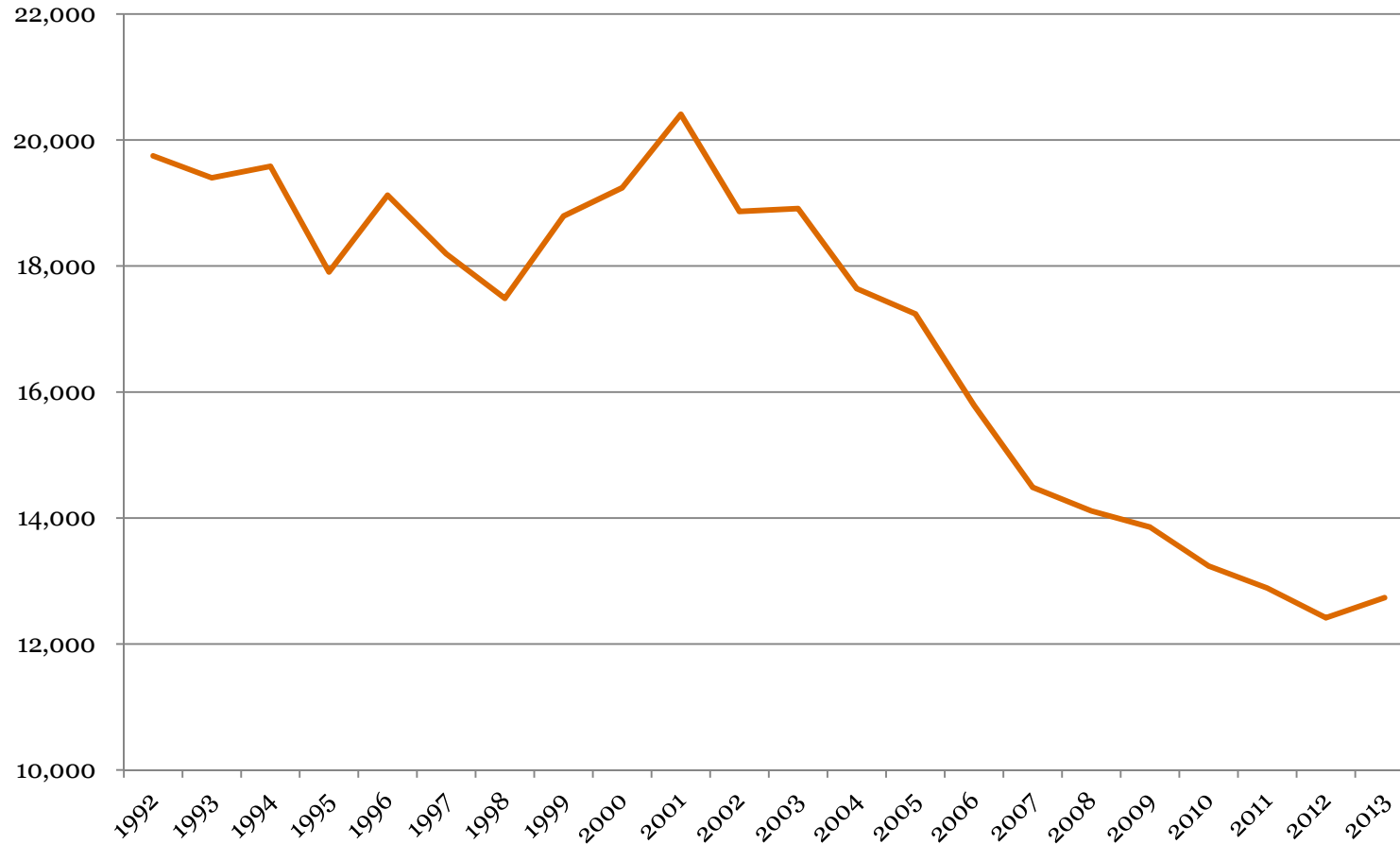
MPL insurance claim trends – Claim frequency

- Claim frequency began to decrease in early 2000s.
- Flat since 2006.
- Factors that may mitigate frequency pressure:
 - Focus on education of providers;
 - Application of best practices and standards of patient care; and
 - Wide dissemination of risk-management programs to practicing health care providers.

What impact will HC reform, potential roll-backs of tort reform, etc. have on claim frequency?

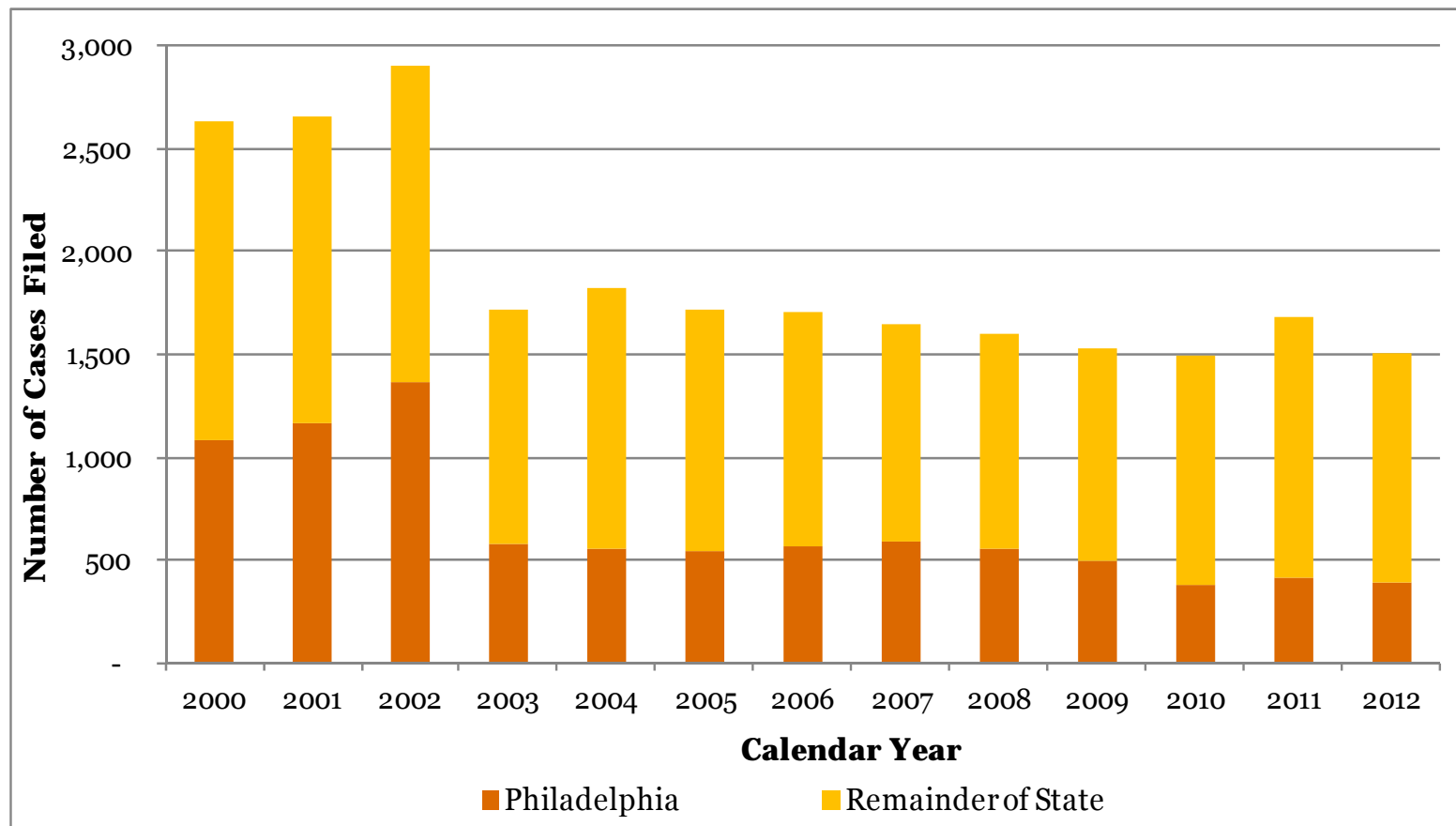
MPL insurance claim trends

Non-zero Claims / Year



Source: National Practitioner Data Bank public use data file, February 2014

MPL insurance claim trends



Source: Administrative Office of PA Courts (AOPC)

MPL insurance rate trends – Claim severity

- Claim severity has continued to increase over the last several years due to general inflationary pressures.
- Medical cost inflation continues to exceed general inflation.
- Reversal of noneconomic damage caps in several states and challenges in others may push up severity.

What impact will health care reform have on the cost to defend claims?

- *Electronic discovery may be made easier by increased informational systems requirements.*
- *New legal challenges may increase the costs to defend.*

Other factors

Tort challenges (recent examples)

➤ Elimination of non-economic damage caps

- Florida in March 2014 (decision specifically addressed wrongful death claims)
- Missouri in August 2012
- Georgia in March 2010
- Illinois in February 2010

Will societal shifts or changes in the political landscape result in the elimination of caps in other states?

Other factors

Tort reform

➤ New theories for containing costs

- March 2013: Oregon bill passed to set up a system of mediation between doctors and patients
- January 2013: Michigan enacted The Patients First Reform Package, designed to improve determination of jury awards
- August 2012: Massachusetts passes Disclosure, Apology & Offer approach
- June 2012: New Hampshire establishes “early offer” system for MPL claims

States are exploring alternative cost reduction measures.

Other factors

- Increase in “mega” awards (some recent examples)
 - December 2013: \$55 million award (Pennsylvania)
 - August 2012: \$24 million award (Louisiana), \$21 million award (Maryland), \$15 million award (Colorado)
 - June 2012: \$55 million award (Maryland)
 - May 2012: \$78.5 million award (Pennsylvania)

Are these data anomalies or a sign of rising sentiment for large plaintiff awards?

Future of MPL costs

- Tort reform challenges
- Increased utilization
- Affordable Care Act

MPL tort reforms

Examples include:

- Caps on damages:
 - Non-economic (e.g. pain and suffering)
 - Economic (actual monetary loss due to negligence)
- Shortened period for statutes of limitation
- Limitation of attorney fees
- Establishing/improving expert witness standards

Prior reforms have helped control MPL insurance cost inflation and have led to lower insurance and self insurance costs.

MPL tort reforms

- Approximately 30 states limit damages in MPL cases through statute
- Approximately 20 of these states specifically limit non-economic damages
- Recent challenges in several states (discussed previously)

Repeal of state tort reforms will accelerate increase in insurance and self insurance costs beyond normal inflationary and market trends.

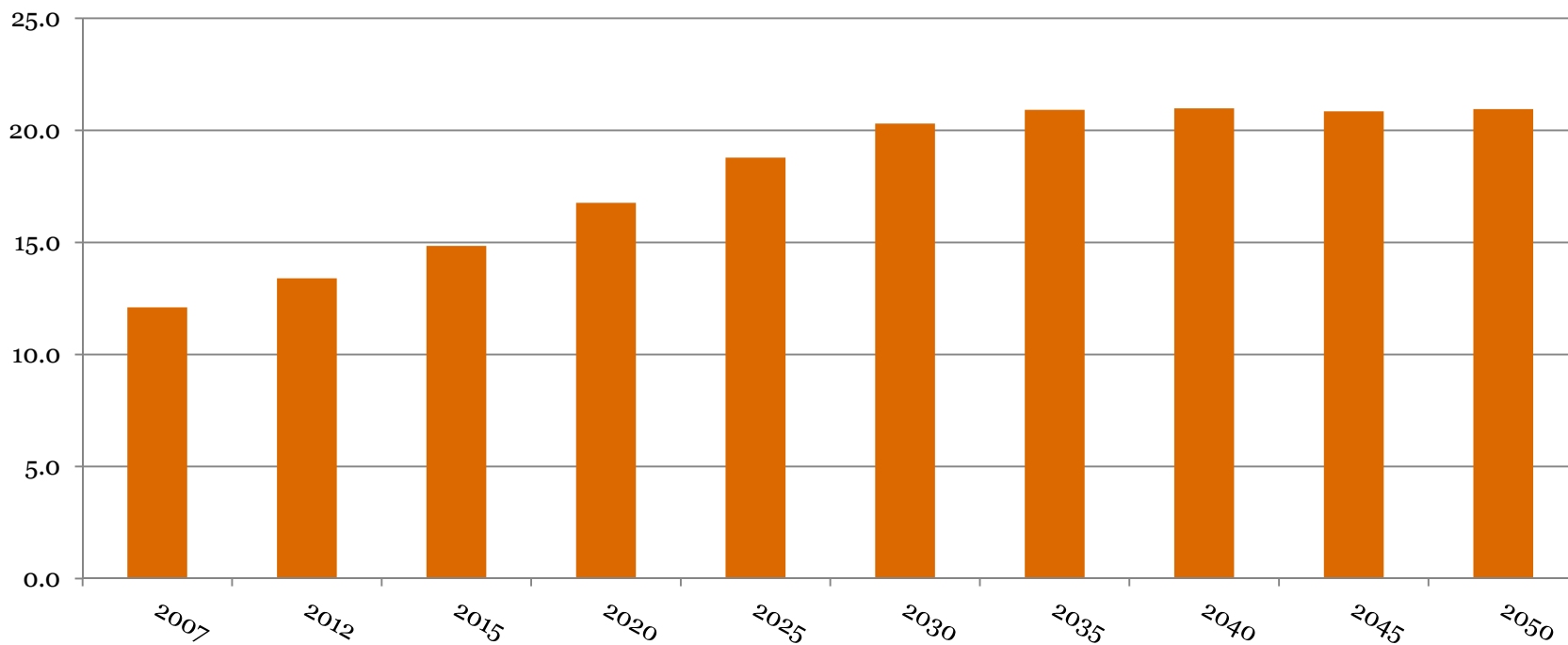
Increased healthcare utilization – Baby Boomers

Baby Boomers

- Born between 1946 and 1964.
- Just starting to reach retirement age.
- Beginning to access healthcare through Medicare.
- Demand for healthcare services will increase as they age.
- Will contribute to increase in healthcare utilization.

Increased healthcare utilization – “Baby Boomers”

Percentage of US Population 65 and older



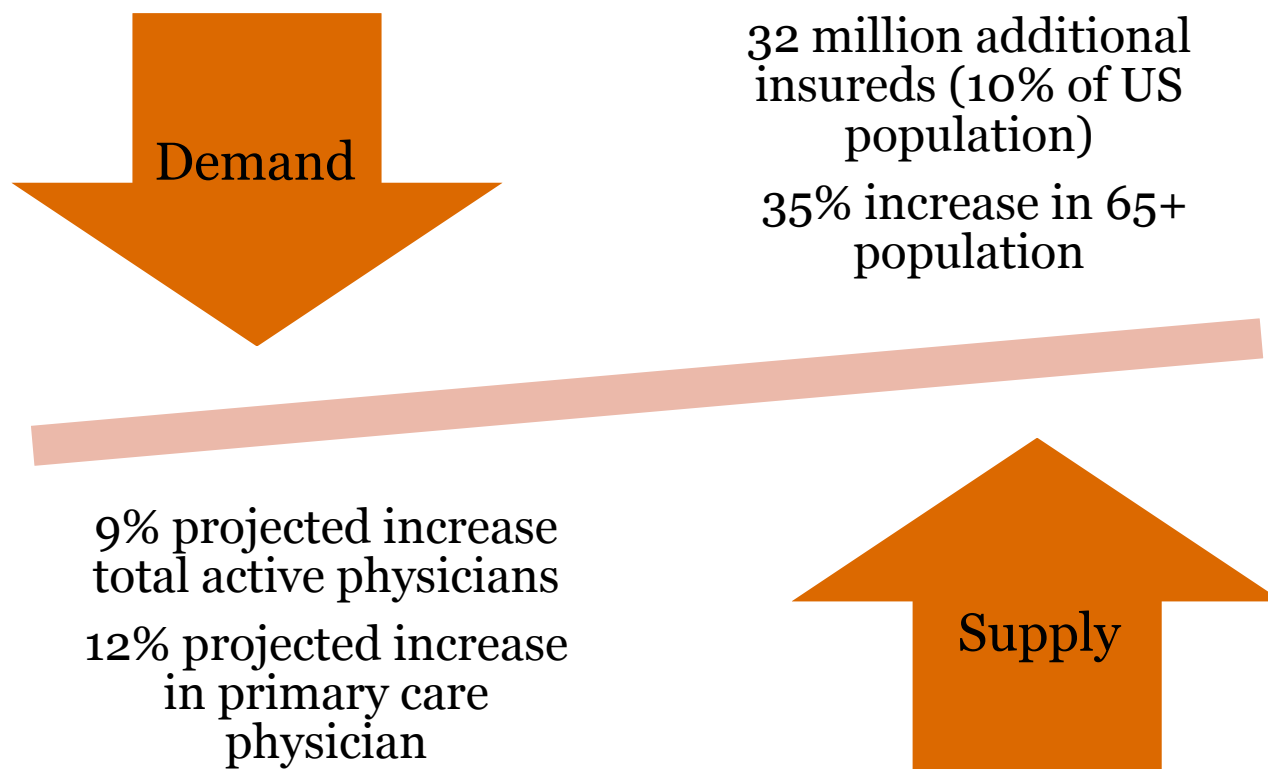
Source: Population Division, U.S. Census Bureau 2007 - 2012 actual figures; 2015 and subsequent projections

Increased healthcare utilization – Healthcare reform

Patient Protection and Affordability Care Act and the Healthcare and Education Reconciliation Act of 2010 (“healthcare reform law”):

- Expands Medicaid eligibility
- Requires healthcare insurance coverage for all Americans (including those with pre-existing conditions)
- Will contribute to increase in healthcare utilization.
 - Could result in an over burdened system and more medical errors
 - Better access to primary care could result in better outcomes and lower MPL costs
 - ❖ Routine physical exams
 - ❖ Access to prenatal care

Increased healthcare utilization – supply and demand for healthcare services



Increased reliance on physician extenders will be required to meet the elevated demand for healthcare services.

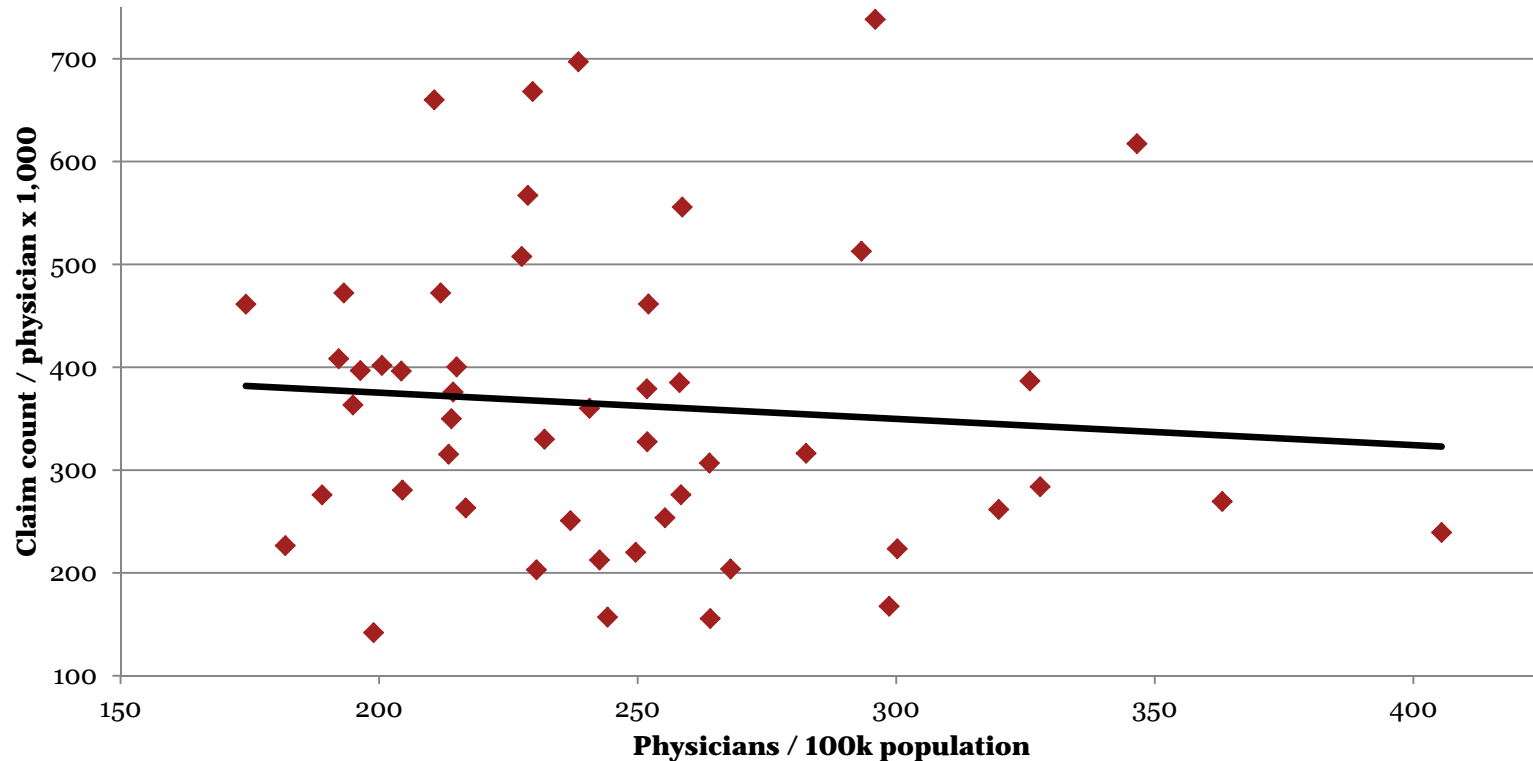
Increased healthcare utilization – Impact

Increased demand for services without commensurate increases in healthcare professionals could lead to:

- More medical errors and misdiagnoses
- Delays in diagnoses
- Longer wait times to see primary care physicians
- Change in the relationship between individuals and their healthcare providers

All leading to an increase in the number of MPL lawsuits and corresponding increase in insurance rates and self insurance costs?

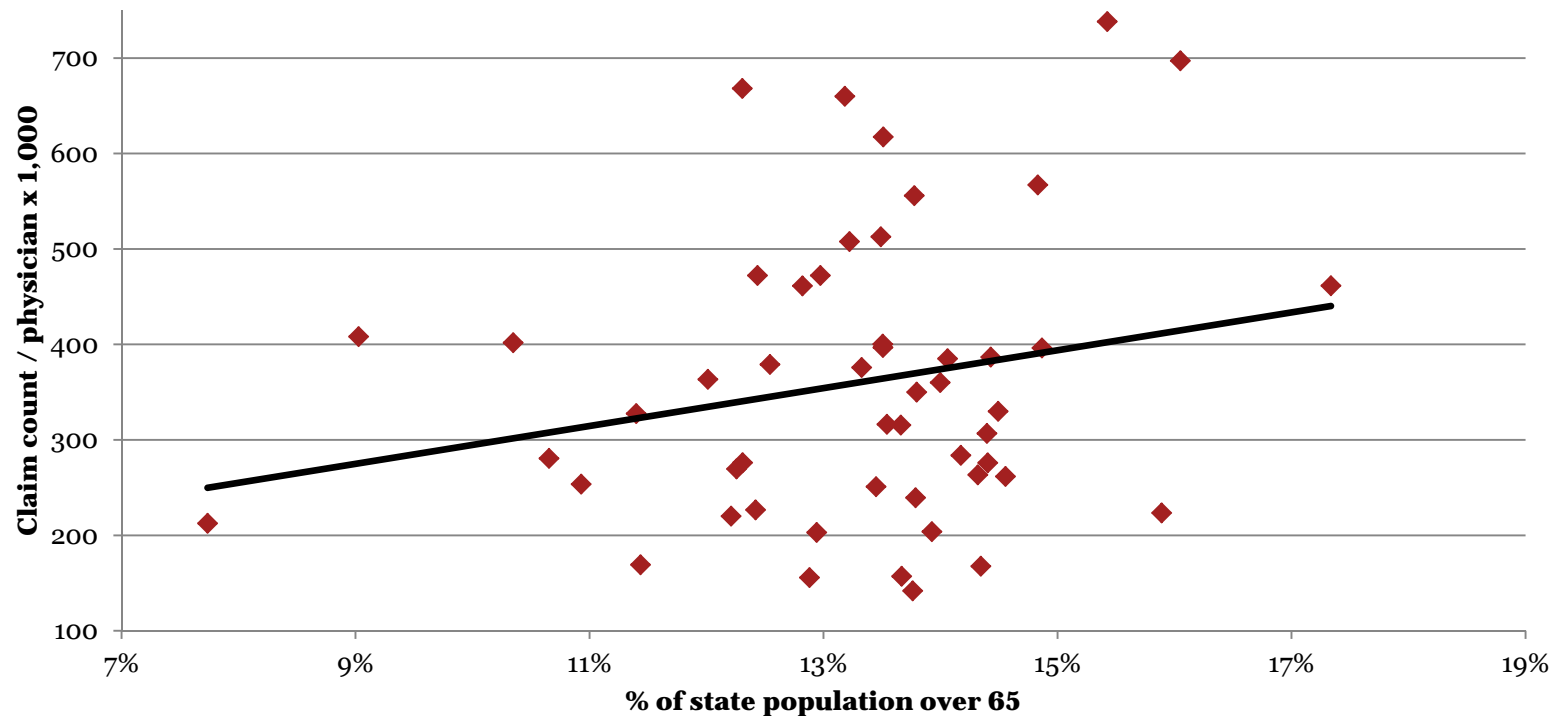
Increased healthcare utilization – impact of physician population on claim experience



The number of physicians appears to have a favorable impact on malpractice claim experience.

Source: Population data from Census bureau, physician data from State Phys. Workforce Data Book, claim count data from National Practitioner Data Bank public use data file, February 2014

Increased healthcare utilization – impact of aging population on claim experience



An older population appears to have an adverse impact on malpractice claim experience.

Source: Population data from Census bureau, physician data from State Phys. Workforce Data Book, claim count data from National Practitioner Data Bank public use data file, February 2014

Increased healthcare utilization – additional thoughts

State differences cannot be entirely explained by number of physicians and age of population

Other drivers of cost include:

- Tort system / implementation of effective tort reform
- Differences in awareness of population to litigation potential
- Willingness of population in a particular state to file a claim / lawsuit

Some key provisions of the health care reform law

Effective years	3 Major tranches of health care reform
<i>Regulation & Coverage</i> 2010 - 2013	<ul style="list-style-type: none"> • Extending dependent care for adult children until age 26 • Eliminating pre-existing condition coverage exclusion for children • Temporary high risk pools for adults with pre-existing conditions • Eliminating annual and lifetime benefit caps • Patient-Centered Outcomes Research Institute (PCORI) • Medical loss ratio (MLR) requirement for health insurers • Value-based incentive payments for hospitals • Fees imposed on brand name pharmaceutical manufacturers • 'Payment bundling' national pilot program • Faster pathway to manufacture and license 'biosimilar'/generic versions of biotech drugs • Accountable care organization (ACOs)
<i>Major Expansion of Coverage</i> 2014	<ul style="list-style-type: none"> • Health insurance exchanges • Eliminating pre-existing condition coverage exclusion for adults • Fines imposed on individuals who refuse to purchase 'affordable' health coverage • Fines imposed on 'large' employers who fail to provide coverage to their employees • 'Small' employer and individual subsidies • Health insurer fees
<i>Bending the Cost Curve</i> 2015-2019	<ul style="list-style-type: none"> • Value-based payment modifier established under Medicare physician fee schedule • Reduced payment for hospital-acquired conditions • Independent Medicare Payment Advisory Board • Penalty imposed for not adopting electronic medical records

Patient Protection and Affordability Care Act and the Healthcare and Education Reconciliation Act of 2010 ("ACA")

Several components of the law could have an indirect impact on MPL insurance costs:

- Establishment of Patient-Centered Outcomes Research Institute (PCORI)
- Federal funding for state tort reform alternatives
- Establishment of Accountable Care Organizations (ACOs)
- Converting to Electronic Medical Records (EMRs)
- Other

ACA: Patient-Centered Outcomes Research Institute (PCORI)

- Established by the healthcare reform law to improve availability of unbiased, quality research.
- A private, non-profit entity.
- Not an agency or establishment of the US government.
- Over time expected to provide doctors with better research, which could result in:
 - Better patient care;
 - Quicker positive outcomes; and
 - Lower incidence of MPL lawsuits.

ACA: Patient-Centered Outcomes Research Institute (PCORI)

- ❖ December 2013: PCORI approved nearly \$100 million for 53 comparative effectiveness research studies and nearly \$95 million to build and expand 29 health data networks that will form “PCORnet”

Impact of PCORI on liability costs are uncertain. It could:

- Provide doctors with clearer guidance on outcomes of various treatments, giving them a defensible position in the event of a lawsuit;
- Increase the risk of liability for some doctors if PCORI research suggests that an alternative treatment is preferable to treatment selected by the doctor; and
- Increase the incidence of medical errors (or omissions of treatment) if doctors limit treatments based on PCORI research

ACA: Funding for state tort reform alternatives

- Most direct effect of the healthcare reform law on MPL.
- \$50 million in federal grants to states for “demonstration projects.”
- Exploring cost containment alternatives to tort reform litigation system.

ACA: Funding for state tort reform alternatives

Might include the following types of programs:

- Health Courts
- Early Offers
- Apology Programs
- Medical Review Panels
- No-fault system

Could have a beneficial impact on MPL insurance costs and overall healthcare costs.

ACA: Adjusting to Accountable Care Organizations (ACOs)

- ACO: a network of doctors (primary care and specialists) and hospitals that share responsibility for providing care to patients.
- Established to reduce cost of care for an assigned population of patients.
 - Services still billed under Medicare fee-for-service payment systems.
 - ACO members held accountable for quality of care (focus on preventive care & careful management of chronic disease patients).
 - Any cost savings from quality gains are shared across the organization.
- Efforts to increase efficiency
 - Could a focus on efficient (and cost) affect overall quality of care?
 - Will ACOs result in better coordination between various providers and result in better outcomes?

ACA: Converting to Electronic Medical Records

- Converting paper medical records to electronic medical records (EMRs) could positively or negatively impact MPL by:
 - Limiting or preventing routine medical errors and increasing efficiency with which medical records can be transferred between healthcare professionals;
 - Increasing MPL lawsuits due to input or software errors, incomplete information, or healthcare provider's decision to ignore EMR warnings; and/or
 - Increasing defense costs due to the increased availability of information for plaintiff attorneys.

ACA: Other effects

- Increased demand for healthcare services
 - Increased reliance on non-physician medical staff to fill demand
- Moving to alternative healthcare delivery models
 - Telemedicine

Recommendations

- Review current risk management programs and practices to determine if current legislation or cost drivers warrant a change in the focus of these programs.
- Develop a strategy to remain vigilant on emerging issues in MPL.
- Understand how new healthcare delivery systems (e.g. ACOs) and potential increased use of other healthcare providers (nurse practitioners, physicians assistants, etc.) may impact liability exposure.
- Consider use of advanced modeling techniques.

Questions and answers