Shock Verdicts and their Impacts

The Effects of Massive Jury Awards on Actuarial & Underwriting Analysis

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Risk & Insurance | Employee Benefits | Retirement & Private Wealth

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Panelists



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Welcome

1 Shock/Nuclear Verdicts

2 Actuarial Implications

3 Underwriting Implications

4 Q&A

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Nuclear Verdicts



The Rise of Nuclear Verdicts

- Generally defined as a verdict $10M
- More recently, however:

  *“Unexpectedly high damage awards that appear to exceed rational parameters….”**

  Exceptionally high jury awards that surpasses what should be a reasonable amount



*https://www.alfainternational.com/publications_news/the-nuclear-verdict/

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Nuclear Verdicts – Not Unique to Healthcare

- **$1b** – Trucking (Aug 2021, FL)

  Death of college student struck from behind by semi-truck

- **$366m** – Employment Practices (October 2022, TX)

  Wrongful termination of FedEx employee after she raised concerns of racial discrimination. (TX)

- **$159m** – Failure to Safeguard (January 2024, MO)

  Awarded against RR company operating a train on which decedent was shot by another passenger

- **$96m** – Trucking (April 2023, MI)

  Death of father and son enroute to a funeral when they were hit by tractor trailer whose driver suffered from Parkinson's

- **$72.5m** – Personal Injury (February 2024, NY)

  Pedestrian struck by MTA bus and dragged 20 feet

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Nuclear Verdicts: Healthcare

- 3/24/22 **$97.4m** Birth Injury (Iowa)
- 9/8/22 **$77m** Death (Georgia)
- 9/29/22 **$111m** Acute Compartment Syndrome (Minnesota)
- 10/27/22 **$75m** Brain Injury (Georgia)
- 2/13/23 **$43m** NFL career ending knee injury (Pennsylvania)
- 3/28/23 **$35m** Unnecessary C-section / Birth Injury (Maryland)
- 4/21/23 **$40m** Birth Injury (Illinois)
- 5/1/23 **$183m** Birth Injury (Pennsylvania)

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$120m New York (November 2023)

- *Lee v. Westchester Medical Center*
- 11/27/18: 41yr old patient transported via EMS with suspected stroke
- Alleged failure timely dx basilar artery occlusion
- Despite thrombectomy, extensive brain injury occurred
- $120m including:
  - $20m medical costs
  - $50 pain and suffering
  - $50m for spouse's loss of services

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$261m Florida (November 2023)

- *Kowalksi v. John Hopkins All Children's Hospital*
- Netflix: "Take Care of Mya"
- Child with preexisting dx complex regional pain syndrome
- Admitted via ER in 2016
- Suspicion of Munchhausen by Proxy and removed from parent's care for 3 months
- Mother committed suicide
- JHAC found liable for false imprisonment, battery, and intentional infliction emotional distress to child; intentional infliction emotional distress & wrongful death of mother

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$535m Illinois (March 2024)

- Universal Health Services subsidiary Pavilion Behavioral Health
- 2020 alleged rape a 13 yr old female patient by 16 yr old male patient
- Alleged negligence regarding understaffing and allowing male patient to cover a security camera and distract staff while luring the victim to his room
- Verdict consisted of
  - $60m compensatory
  - $475m punitive damages

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Nuclear Verdicts: Underlying Causes

- Shift in attitudes of jurors
  - Lingering social frustration from COVID
  - Altered Opinions of the Medical Profession
  - Changes in Views towards Corporations
- Lotto Effect
- Reptile Theory
- Third-Party Litigation Funding
- Plaintiff Counsel Advertisements



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Nuclear Verdicts: Implications

- Impact on Providers Themselves
- Settlement Inflation
- Premium Cost



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Settlement Demands

- PCs set up with: Reptile theories
- Sound bites of deps including corp rep
- Leverage
- Mediation with their chosen preferred mediator
- Mediator unintentionally becomes PC advocate
- Aim to scare companies and carriers



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Settlement Demands

- “Going to get the next record verdict”
- “When I get this verdict, company stock will drop…”
- “Going to cancel your company”



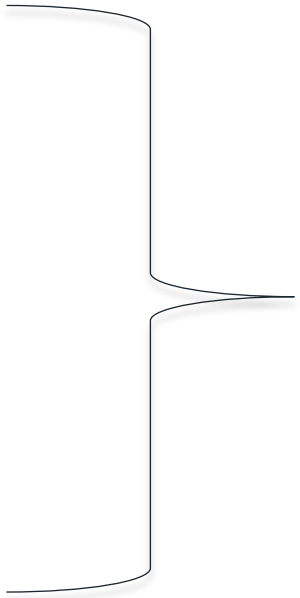
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Actuarial Implications



Standard Actuarial Data

- Historical Losses
- Exposure (RIBs, etc.)
- Policy Information



Quantitative

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Standard Actuarial Data

- What might be missing?
- What are the inherent assumptions and limitations of purely quantitative data?



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Qualitative/Contextual Data

- Info on Significant Claim Movement
- Changes in Quality of Risk
- Adjustments to Reserving Methodology
- Pipeline/Anticipated Claim Activity



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Partner, Not Provider

- Proactive vs Reactive Communication
- Expanding/Customizing Capabilities
- Interim Check-Ins or Updates
- Educational Resources/Opportunities



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Underwriting Implications

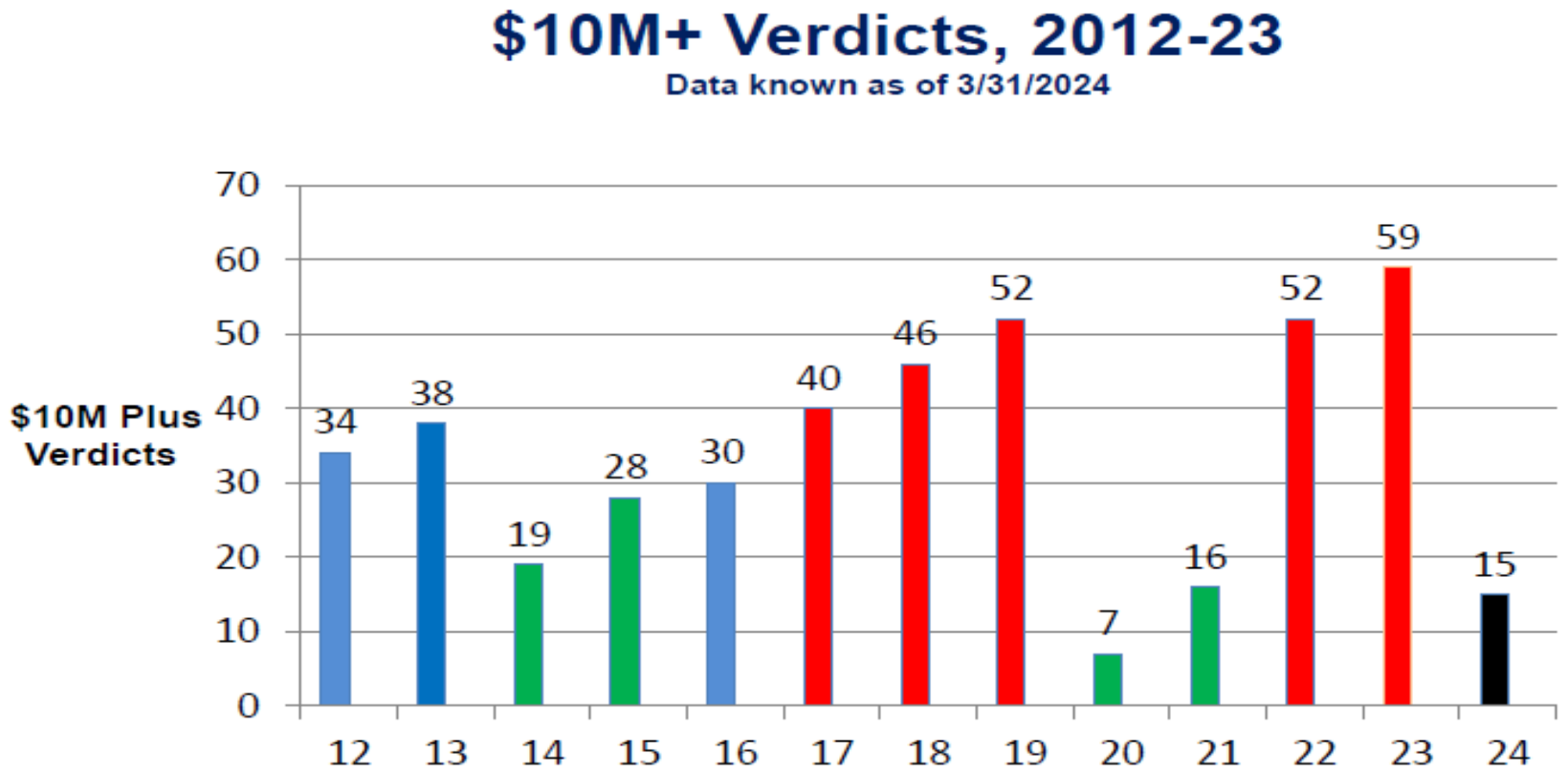


TOPICS

- State of the market
- Carrier reactions
- Underwriting concerns
- Underwriting considerations

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State of the Market

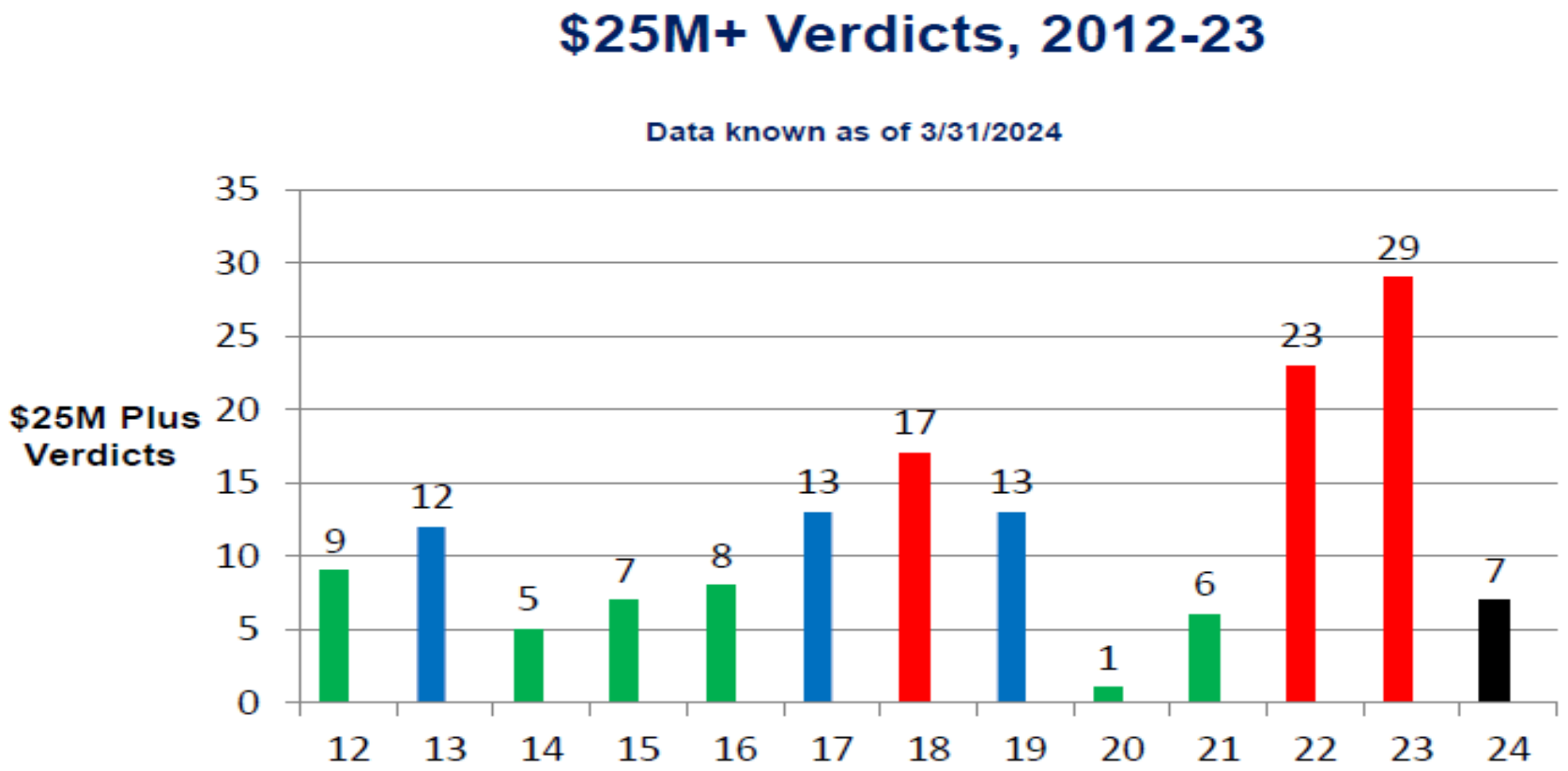


TransRe
We value risk.

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State of the Market

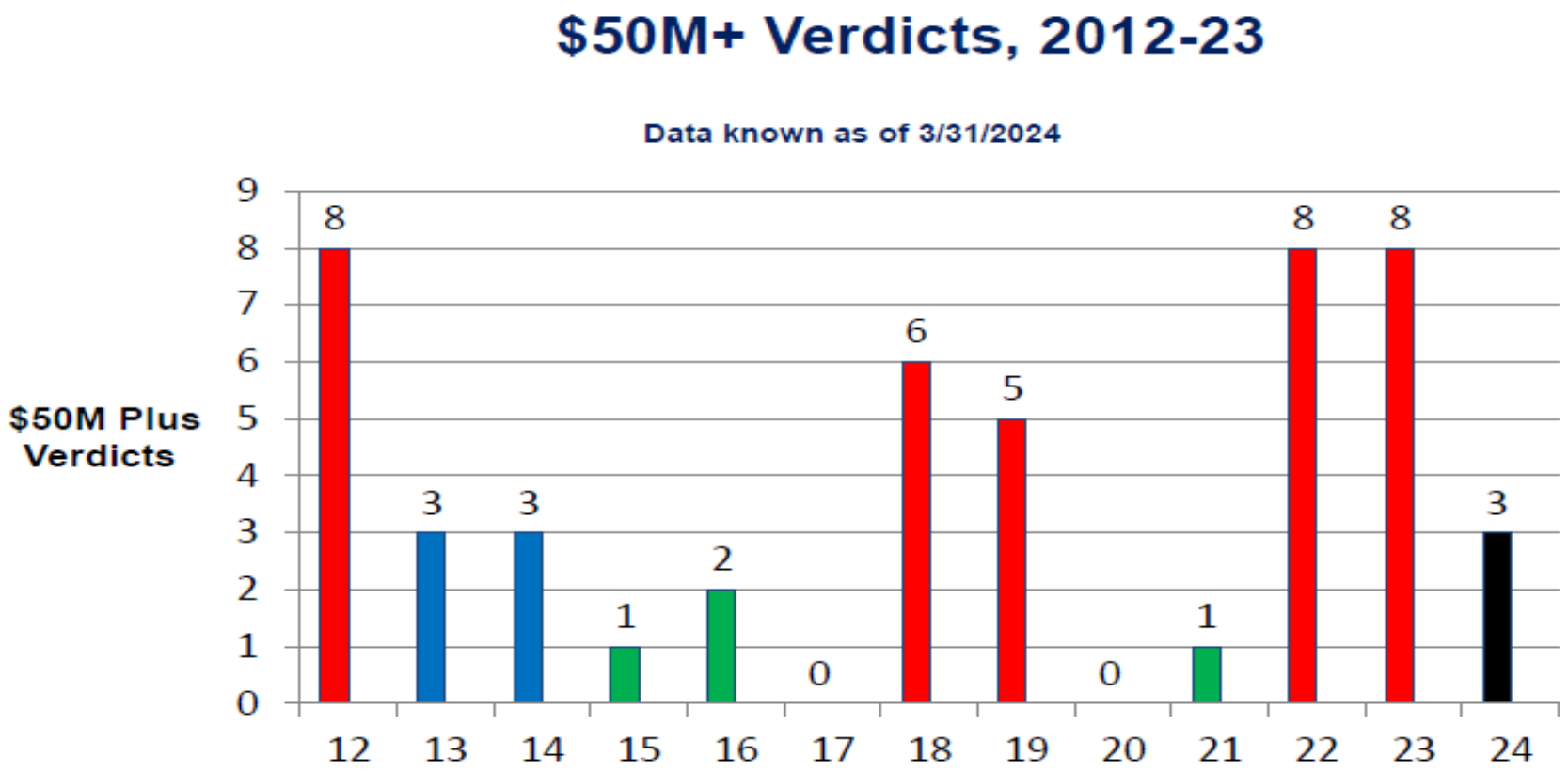


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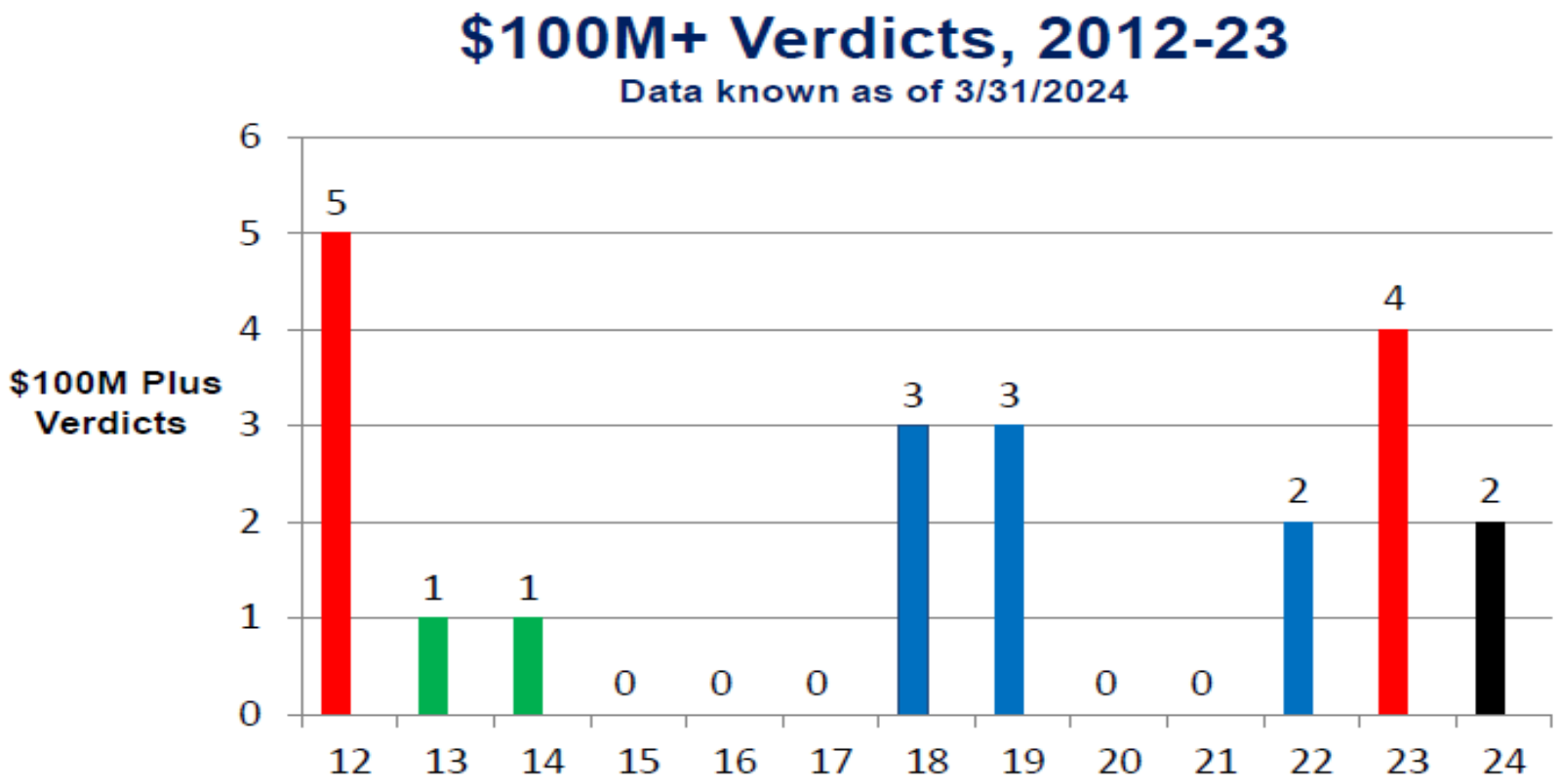


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State of the Market

Venues: Do they still matter?

- Likelihood of nuclear verdict in more litigious venues still higher than in less litigious venues BUT…..
- Likelihood of nuclear verdict in a less litigious venue much greater now than in the past.



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Carrier Actions

Volatility driving carrier actions:

- Reduction of limits
- Increase in attachment
- Continued rate increase
- Imbalance of rate vs. limit



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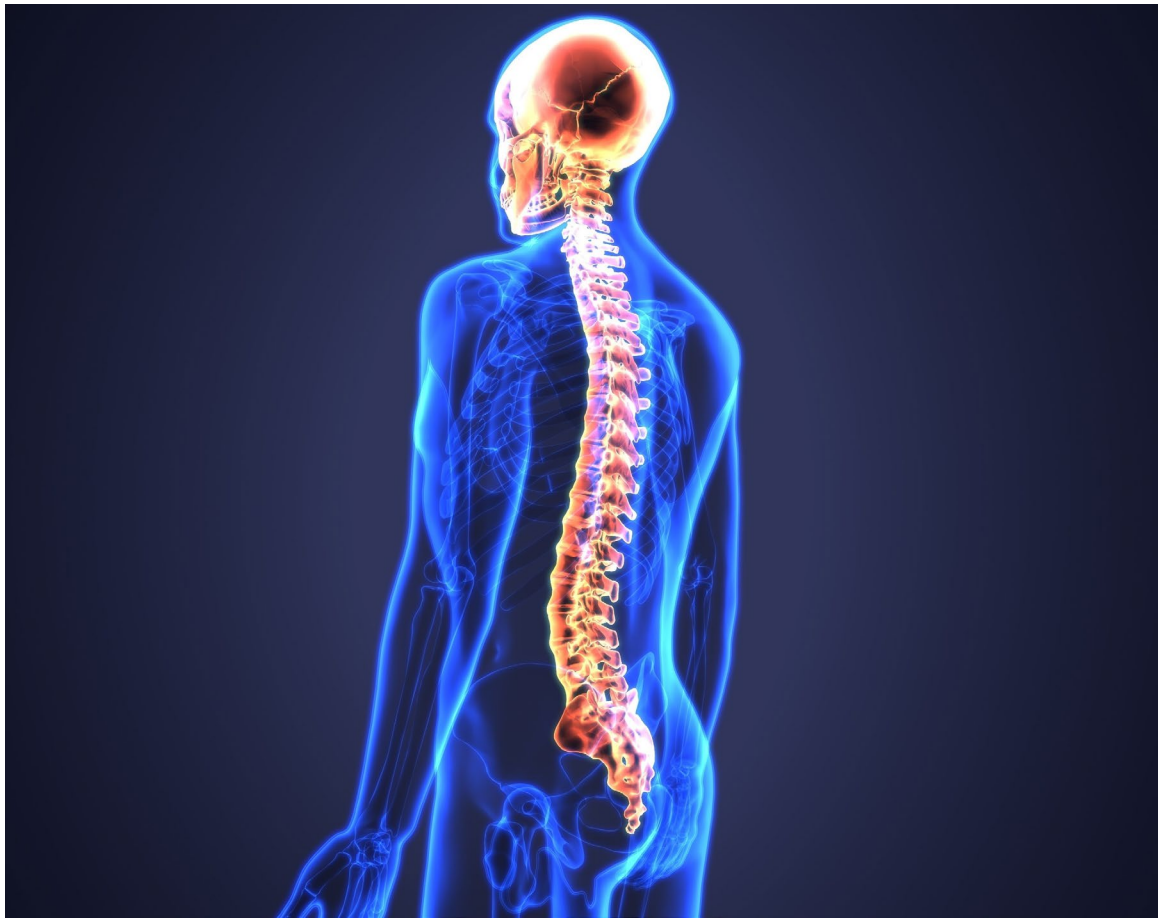
Carrier Actions



"But we've never had a loss get into the excess"

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Underwriting Concerns

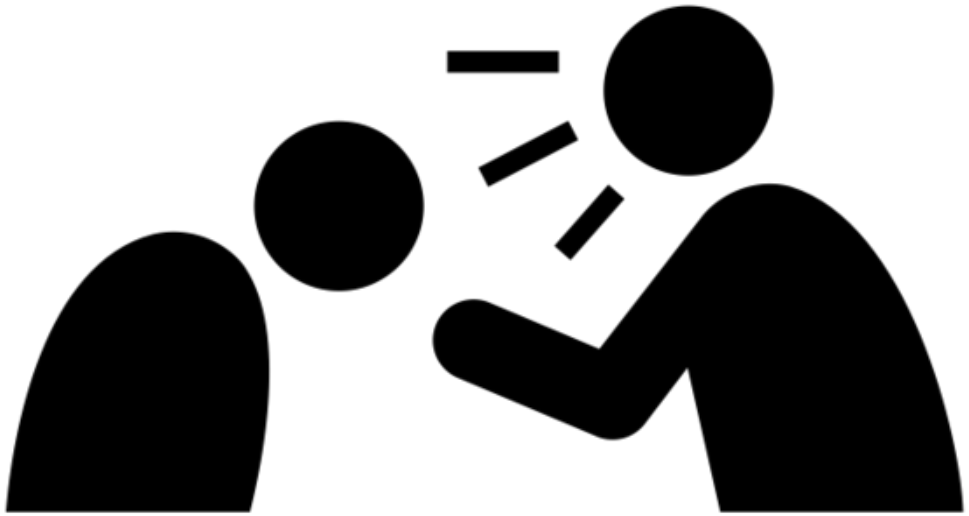


Neurological injuries

- Both birth related and non-birth related
  - Extremely sympathetic cases
  - Substantial life care plans
  - Juries award significant verdicts, regardless of whether or not the standard of care was met

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Underwriting Concerns



- **Abuse**
  - One of the largest drivers of mega verdicts
  - Generally, not something that can be underwritten
  - Difficult to prevent or detect through policies and procedures
    - ✓ Credentialing
    - ✓ Internal policies and procedures
- Legislation can change
  - Child Victims Act
- Will insurance coverage continue?

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Underwriting Concerns

Media

- What is the media impact on nuclear verdicts?
  - “Take Care of Maya” (Netflix documentary)
  - “Dr. Death” (NBC/Peacock docudrama series)
  - “The Good Nurse” (Netflix docudrama)
  - Social media platforms
- “We do not comment on potential or pending litigation”
  - Does this stance need to change? (Please consult your legal department)
  - Is there a response plan in place?



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Underwriting Considerations

- **Risk Management**
  - Early identification of potential serious events
  - Swift communication with family
  - Reporting of events to carriers
    - Get the carrier involved early – we can help!
    - Good reporting is a reflection of strong risk management policies and procedures.
- Culture of Safety and Transparency – walk the walk, not just talk the talk!
  - Train staff on difficult conversations
  - Stress the importance of a united front – not finger pointing amongst staff



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Underwriting Considerations

- **Risk Management (cont'd)**
  - Abuse mitigation
    - ✓ Chaperone policy and enforcement of that policy
    - ✓ Education to staff on communication with patients before sensitive exams.
    - ✓ Avoiding miscommunication/misunderstanding
    - ✓ Anonymous tip line and a culture where all feel empowered to speak up when something doesn't feel right

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Underwriting Considerations

- **Risk Management (cont'd)**
  - Lessons learned (following claims)
    - ✓ Root cause analysis
    - ✓ Changes made to policies and procedures
  - Transparency with your carriers
    - ✓ Share as much info as you can
    - ✓ Quarterly updates – tell us the great things going on at your organization
      - Claims
      - Risk

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Underwriting Considerations

- **Claims management**
  - For those with Self-Insured Retentions/Captives
    - Relationship with plaintiffs
    - Trial philosophy
    - High/Low agreements
    - Mock trials/jury selection consultants
    - Witness preparation
    - Use of third-party resources
      - ✓ Independent life care planning
      - ✓ National defense counsel

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Conclusions

- Nuclear verdicts don’t appear to be going away
- Proper carrier actions will help maintain the availability and sustainability of insurance despite the impacts of nuclear verdicts
- Hopefully, through strong risk and claims management strategies, nuclear verdicts can be tempered



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Q&A

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Thank you

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