

California Large Loss Trend Study

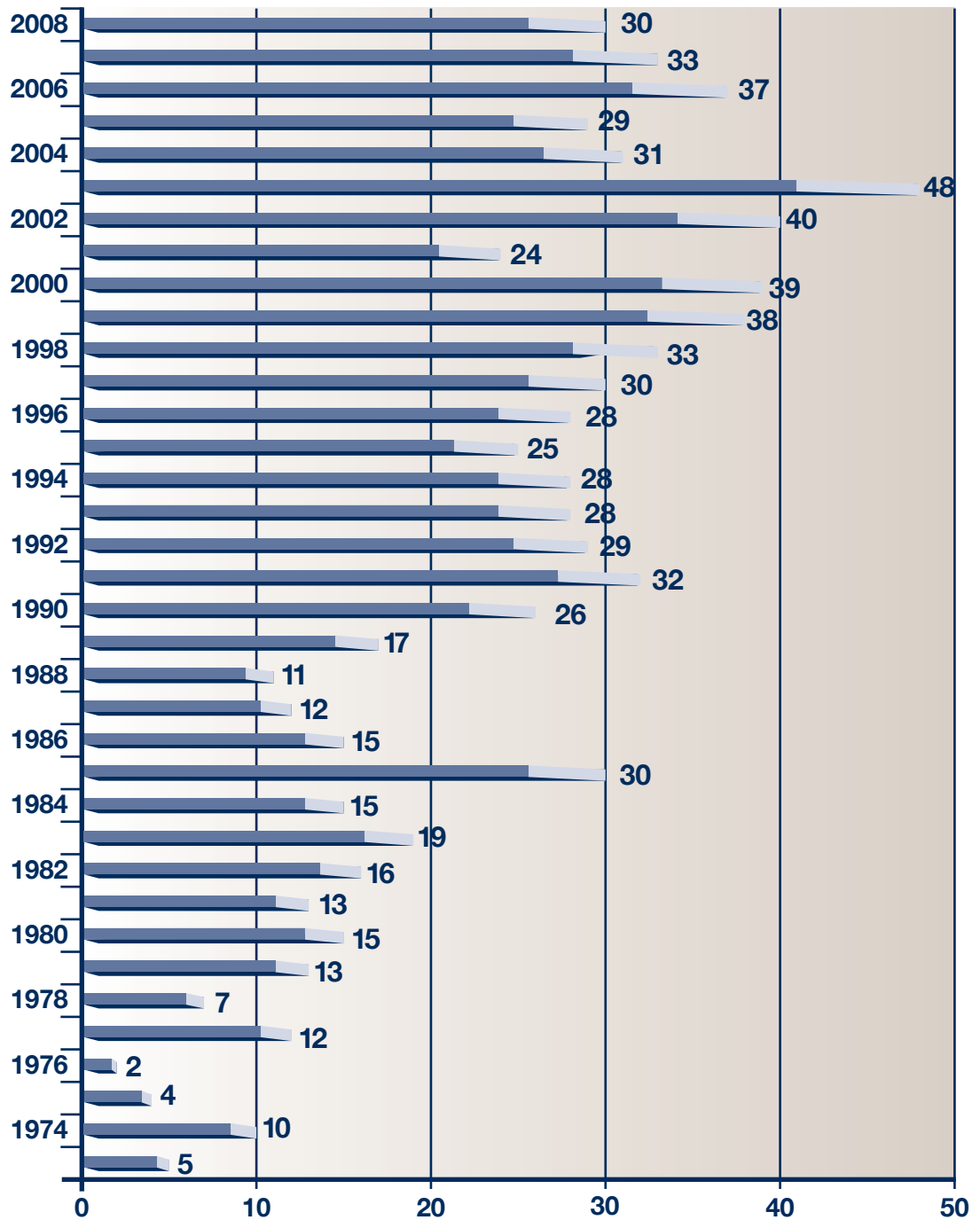
A survey of California malpractice awards and settlements over \$1 million

Highlights of the 2008 survey

- Only five (16.7%) of the 30 cases reported in 2008 were jury verdicts, continuing a recent trend that has seen far more cases being settled rather than tried. One of the 2008 cases was resolved through binding arbitration and the rest were settlements, including at least 3 settled on a 'structured' basis through purchase of annuities that will provide a long-term stable stream of payments to the injured plaintiffs. In 2007 only 7 of the 33 reported cases were jury trials, plus 3 arbitrations.

Medical Underwriters of California

Number of Cases over a Million



Highlights of the 2008 survey

- As in past years, the 2008 cases tried to verdict produced sharply higher average awards (\$3.8 million) than those which were settled prior to trial (\$2.6 million). The lone arbitration award was \$1.9 million. In 2007, jury awards averaged \$6.4 million, compared with an average settlement of \$3.5 million.
- These cases are taking longer than ever to reach settlement or verdict. In 2002's report the average time from incident to resolution was 3 years and 4 months. In the 2008 survey, the average lag time rose to 4 years and 3 months. This lengthening occurred despite California's decade long effort to 'fast-track' court calendars and limit discovery. Delays always add to legal costs and produce frustration for both plaintiffs and defendants.

Our 36th annual survey of California malpractice verdicts and settlements identified 30 cases with present value verdicts or settlements of at least \$1 million, continuing a three-year downward trend from 37 in 2006 and 33 in 2007.

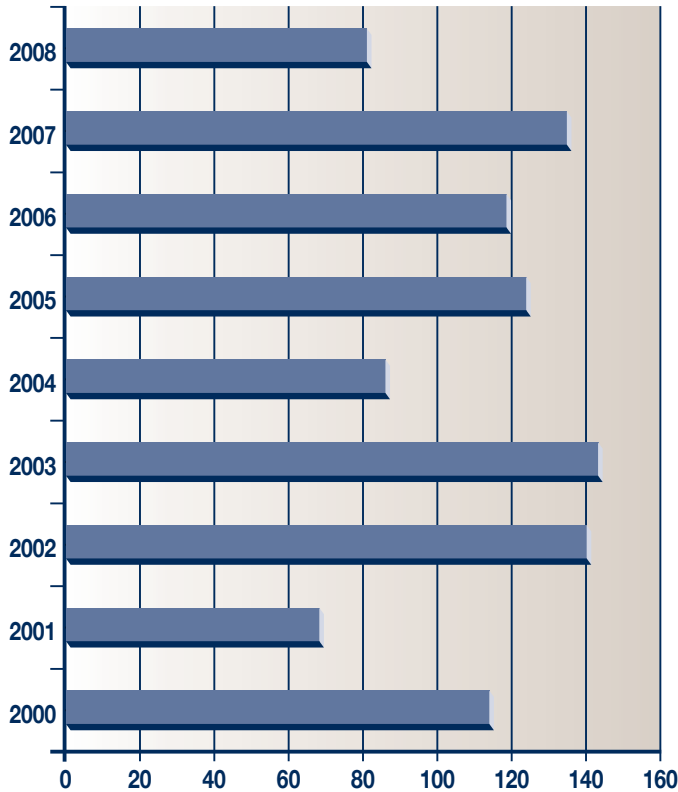
A total of \$82.3 million was awarded in 2008's cases. Average award was \$2.7 and the median was \$2.1. All three are down sharply from prior two years' totals and averages. This cannot be seen as a long-term change in trends because only a few additional reported cases in a relatively small database such as this significantly impact annual totals and averages. By comparing five-year blocks of data we can observe more indicative long term trends. The most recent five years (2004-2008) identified 160 cases with total present value verdicts and settlements of \$550.6 million (average \$3.44 million). In the prior five-year period (1999-2003), the study found 189 cases with total indemnity of \$624.4 million (average \$3.3 million). Thus while the number of cases declined slightly, average indemnity rose by 4.2%. A further limitation may be that some settlements are simply no longer being reported to the jury verdict and other legal periodicals we use as sources for this data.

To identify California malpractice verdicts and settlements, our survey uses case descriptions from several verdict and settlement periodicals, including *Verdicts, Settlements & Experts*, *VerdictSearch California*, *National Medical Malpractice Review & Analysis*, and *Professional Liability Newsletter*. These publications print summary reports of malpractice settlements and verdicts, most of which are sent to them by law firms representing plaintiffs. Our study recognizes that the database is not a complete listing of all California malpractice verdicts and settlements in any particular year, and we caution readers to be mindful of this. However, the long-term trends about the nature and direction malpractice litigation results, going back to the mid-seventies, can be observed and compared. We strive to compile the present value of reported cases, including adjustments made by courts to conform verdicts to MICRA limitations.

The study does not include any legal and related costs incurred by the defendant doctors and hospitals in these cases. We do know that high damage medical malpractice cases involve complex and costly discovery procedures often lasting for years. Legal and related defense costs will routinely run into the hundreds of thousands of dollars per case. Those that are tried to a jury verdict can cost \$250,000 or more in defense expenses.

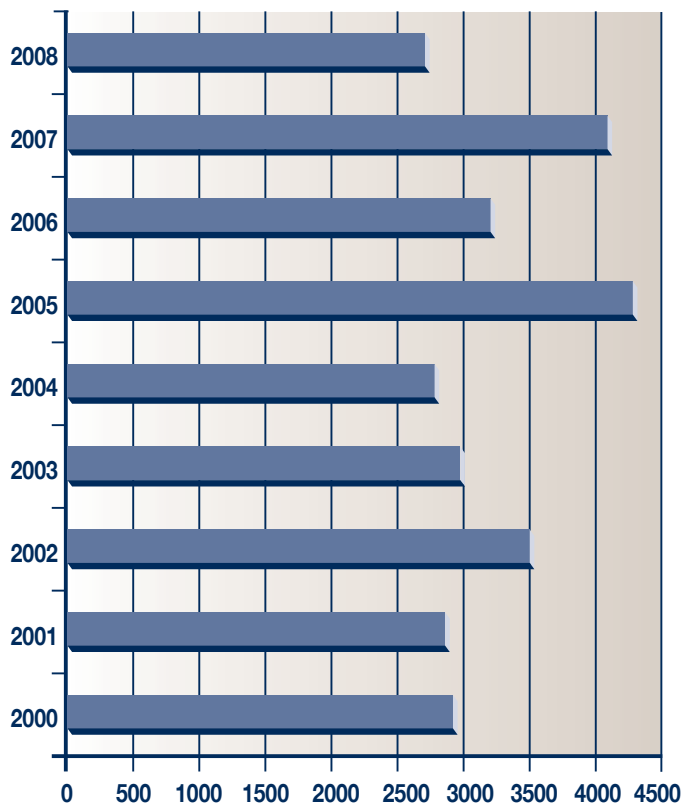
Total Indemnity- 1,000,000+ cases

(in millions)



Average Indemnity- 1,000,000+ cases

(in thousands)



Highlights of the 2008 survey

- Southern California cases continued to account for a majority of 2008's total cases 73% and awards – 70%. In 2007 they comprised 70% of cases and 74% of awards..
- Fewer of the cases resulted from hospital located incidents (76.7% in 2008 vs. 90% in 2007), and they accounted for less of the total awarded (75.9% in 2008 vs. 96.5% in 2007).
- Birth injury, failure to treat and delay/failure to diagnose accounted for 26.7%, 30% and 30% of cases respectively in 2008, and roughly the same percentage of total indemnity awarded. Only one of the five largest cases in 2008 was a birth injury case.

Highlights of the 2008 survey

- Failure to treat or delay in treatment was the major allegation in 9 (30%) of the 2008 cases. In 2007 this category accounted for only 12%. In the prior 3 years these cases represented 18%, 10% and 6.5% of the total. We may be witnessing one manifestation of ever-increasing caseloads in doctors' practices, hospital emergency and outpatient diagnostic departments that is a reality of today's managed care, limited reimbursement environment.
- As in past years, a very high percentage – 91.7% - of total indemnity awarded was in cases where the injuries are described as major - permanent or major – grave.

MICRA effect on awards

MICRA's sliding scale limitation on contingent fees once again meant that a higher percentage of the awards actually went to the injured plaintiffs and their families instead of being consumed by attorney fees. In the 2008 cases, this meant that an additional \$18.4 million of the total awards reached the injured parties. In the past nine years' cases from this survey, MICRA contingent fee limitations allowed injured parties to receive an additional \$240 million that would otherwise have been paid as attorney fees.

Other provisions of MICRA, mostly the \$250,000 limitation on non-economic damages, were specifically mentioned in four of the case descriptions, but had an influence on virtually every one of the cases.

Malpractice verdicts and settlements of \$1 million or more are not uncommon in California, their numbers have increased over the past ten years. Severely injured plaintiffs receive full compensation for their economic damages, which can run to \$5 million or more over the course of a lifetime.

In the early years after the enactment of MICRA's tort reforms in 1975, most trial courts refused to enforce many of its provisions, especially the limitation on non-economic damages, in the belief that the California Supreme Court would eventually invalidate the law as unconstitutional. Only after the court upheld all the key provisions of MICRA in 1985 were they uniformly applied.

The long-term trend in the number of \$1million+ cases reviewed in this study confirms that MICRA has not negatively affected them. Quite the opposite is true: in the early years (1973-84) this survey included an average of 11 \$1 million+ awards each year, in the middle years (1985-96), right **after** MICRA reforms were found constitutional, the number of \$ 1 million+ cases grew to an average of 23 per year, and in the most recent 11 years 1997-2008, the survey listed an average of 34 per year. Skillful attorneys are available and quite willing to represent aggrieved plaintiffs, even under the financial limitations of MICRA.

Historic comparison

	2008	2007	2006	2005	2004
Number of cases	30	33	37	29	31
Total Indemnity	\$ 82,286,542	\$136,079,534	\$119,827,077	\$125,137,980	\$ 87,269,026
Average Indemnity	\$ 2,742,885	\$ 4,123,622	\$ 3,238,570	\$ 4,315,103	\$ 2,815,130

The contrast of California and other states

To get some perspective we decided to compile news articles describing medical malpractice verdicts and settlements throughout the country. We surveyed publications and websites for about 9 months in 2008 and early 2009, looking for descriptions of medical malpractice verdicts

or settlements of \$5 million or more. We found articles describing 35 such cases, with over \$463 million in total awards, an **average** of \$13.2 million. The largest were truly astounding verdicts and settlements in the \$13 to \$30 million range, including millions for pain and suffering, not always related to the severity of the injury. Birth injuries accounted for 12 of the 35 cases, far more than any other single category.

Not surprisingly, states with reputations for large awards and little or no effective tort reforms were disproportionately represented – New York and Illinois (4 each) Florida and Pennsylvania (3 each). More surprisingly, Oregon and Wisconsin also had 3 each. California also had 3 cases, but the awards were 24% lower than the national average.

2008 cases – Resolution by territory

Total Indemnity				
Type resolve	Northern CA	Southern CA	Grand Total	Pct
ARBITRATION		\$1,871,820	\$1,871,820	2.3%
SETTLEMENT	\$12,500,000	\$37,864,722	\$50,364,722	61.2%
STRUCT SETTL	\$8,000,000	\$3,200,000	\$11,200,000	13.6%
VERDICT	\$4,150,000	\$14,700,000	\$18,850,000	22.9%
Grand Total	\$24,650,000	\$57,636,542	\$82,286,542	100.0%
	30.0%	70.0%	100.0%	

Average Indemnity			
Type resolve	Northern CA	Southern CA	Average
ARBITRATION		\$1,871,820	\$1,871,820
SETTLEMENT	\$3,125,000	\$2,227,337	\$2,398,320
STRUCT SETTL	\$4,000,000	\$3,200,000	\$3,733,333
VERDICT	\$2,075,000	\$4,900,000	\$3,770,000
Average	\$3,081,250	\$2,619,843	\$2,742,885

Count				
Type resolve	Northern CA	Southern CA	Grand Total	Pct
ARBITRATION		1	1	3.3%
SETTLEMENT	4	17	21	70.0%
STRUCT SETTL	2	1	3	10.0%
VERDICT	2	3	5	16.7%
Grand Total	8	22	30	100.0%
	26.7%	73.3%	100.0%	

Highlights of the 2008 survey

- In cases where the defendant’s medical specialty was disclosed in the articles or obvious from the description, obstetrics and gynecology was involved in 9 (30%) of the cases. No other specialty was represented in more than 2 cases. This is consistent with past years’ findings.

2008 cases - by treatment and injury

Total Indemnity-Injury category						
Basic Category	DEATH	MAJOR/grave	MAJOR/perm	MINOR/perm	Grand Total	Pct
Birth injury		\$17,375,000	\$5,514,721		\$22,889,721	27.8%
Diag Error	\$1,100,000	\$1,920,000	\$22,471,820		\$25,491,820	31.0%
Drug/Rx				\$2,050,000	\$2,050,000	2.5%
Fail to treat	\$3,650,000	\$14,600,000	\$6,730,001		\$24,980,001	30.4%
Surg error		\$4,375,000	\$2,500,000		\$6,875,000	8.4%
Grand Total	\$4,750,000	\$38,270,000	\$37,216,542	\$2,050,000	\$82,286,542	100.0%

91.4% Major perm/grave

Average Indemnity					
Basic Category	DEATH	MAJOR/grave	MAJOR/perm	MINOR/perm	Average
Birth injury		\$2,895,833	\$2,757,361		\$2,861,215
Diag Error	\$1,100,000	\$1,920,000	\$3,210,260		\$2,832,424
Drug/Rx				\$2,050,000	\$2,050,000
Fail to treat	\$1,825,000	\$4,866,667	\$1,682,500		\$2,775,556
Surg error		\$2,187,500	\$2,500,000		\$2,291,667
Average	\$1,583,333	\$3,189,167	\$2,658,324	\$2,050,000	\$2,742,885

Count-Injury category						
Basic Category	DEATH	MAJOR/grave	MAJOR/perm	MINOR/perm	Grand Total	Pct
Birth injury		6	2		8	26.7%
Diag Error	1	1	7		9	30.0%
Drug/Rx				1	1	3.3%
Fail to treat	2	3	4		9	30.0%
Surg error		2	1		3	10.0%
Grand Total	3	12	14	1	30	100.0%

2008 cases – by primary defendant specialty & location of incident

Total Indemnity prime def spec.	Location of incident						Grand Total	Pct
	DRS OFFICE/ OTHER	HOSP/E.R.	HOSP/L&D	HOSP/O.R.	HOSP/ OTHER			
Emergency Medicine		\$7,350,000					\$7,350,000	8.9%
General Surgery				\$2,500,000	\$1,650,000		\$4,150,000	5.0%
Hospital		\$2,500,000				\$3,000,000	\$5,500,000	6.7%
Internal Medicine	\$1,920,000						\$1,920,000	2.3%
Neurosurgery	\$9,000,000				\$1,725,000		\$10,725,000	13.0%
Ob/Gyn			\$30,489,721				\$30,489,721	37.1%
Nursing Home					\$2,000,000		\$2,000,000	2.4%
Pathology	\$1,050,000						\$1,050,000	1.3%
Gastroenterology					\$2,830,001		\$2,830,001	3.4%
Radiology	\$1,100,000						\$1,100,000	1.3%
Family Medicine					\$3,046,820		\$3,046,820	3.7%
Occupational Med	\$3,700,000						\$3,700,000	4.5%
Pediatric anesthesiology					\$1,375,000		\$1,375,000	1.7%
VA Hospital					\$1,000,000		\$1,000,000	1.2%
Pain Management	\$2,050,000						\$2,050,000	2.5%
Physician's Ass't ER		\$3,000,000					\$3,000,000	3.6%
Urology	\$1,000,000						\$1,000,000	1.2%
Grand Total	\$19,820,000	\$12,850,000	\$30,489,721	\$2,500,000	\$16,626,821		\$82,286,542	100.0%
	24.1%	15.6%	37.1%	3.0%	20.2%			
Hospital total	75.9%							

Average Indemnity prime def spec.	Location of incident					Average
	DRS OFFICE/ OTHER	HOSP/E.R.	HOSP/L&D	HOSP/O.R.	HOSP/ OTHER	
Emergency Medicine		\$3,675,000				\$3,675,000
General Surgery				\$2,500,000	\$1,650,000	\$2,075,000
Hospital		\$2,500,000			\$3,000,000	\$2,750,000
Internal Medicine	\$1,920,000					\$1,920,000
Neurosurgery	\$9,000,000				\$1,725,000	\$5,362,500
Ob/Gyn			\$3,387,747			\$3,387,747
Nursing Home					\$2,000,000	\$2,000,000
Pathology	\$1,050,000					\$1,050,000
Gastroenterology					\$2,830,001	\$2,830,001
Radiology	\$1,100,000					\$1,100,000
Family Medicine					\$1,523,410	\$1,523,410
Occupational Med	\$3,700,000					\$3,700,000
Pediatric anesthesiology					\$1,375,000	\$1,375,000
VA Hospital					\$1,000,000	\$1,000,000
Pain Management	\$2,050,000					\$2,050,000
Physician's Ass't ER		\$3,000,000				\$3,000,000
Urology	\$1,000,000					\$1,000,000
Average	\$2,831,429	\$3,212,500	\$3,387,747	\$2,500,000	\$1,847,425	\$2,742,885

Number of cases prime def spec.	Location of incident						Grand Total	Pct
	DRS OF- FICE/OTHER	HOSP/E.R.	HOSP/L&D	HOSP/O.R.	HOSP/ OTHER			
Emergency Medicine		2				2	6.7%	
General Surgery				1	1	2	6.7%	
Hospital		1			1	2	6.7%	
Internal Medicine	1					1	3.3%	
Neurosurgery	1				1	2	6.7%	
Ob/Gyn			9			9	30.0%	
Nursing Home					1	1	3.3%	
Pathology	1					1	3.3%	
Gastroenterology					1	1	3.3%	
Radiology	1					1	3.3%	
Family Medicine					2	2	6.7%	
Occupational Med	1					1	3.3%	
Pediatric anesthesiology					1	1	3.3%	
VA Hospital					1	1	3.3%	
Pain Management	1					1	3.3%	
Physician's Ass't ER		1				1	3.3%	
Urology	1					1	3.3%	
Grand Total	7	4	9	1	9	30	100.0%	
	23.3%	13.3%	30.0%	3.3%	30.0%	100%		
Hospital total	76.7%							

This study is prepared annually by Ron Neupauer, once again with much appreciated assistance from Bonnie Troche.

Medical Underwriters of California (MUC) is headquartered in Oakland, California, with branch claims offices located in Boise and Honolulu. MUC is the management company for Medical Insurance Exchange of California (MIEC), the west's first physician-owned medical liability insurer, now in its 34th year of successful operation.

This report is available at MIEC's web site: www.miec.com. Printed copies of this report are available from Medical Underwriters of California for \$15 each. Call Bonnie Troche at 1-800-227-4527 to request a copy.