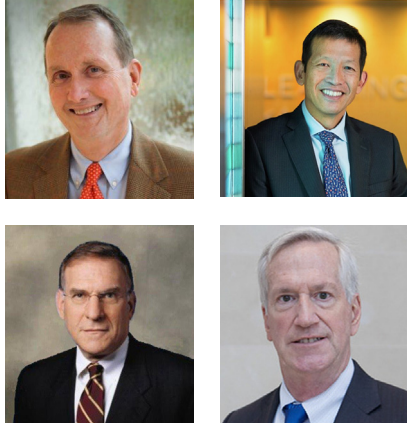


LEADERSHIP PAGE



Professional Liability

The Problem That Will Not Go Away



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Cardiovascular clinicians have long been sensitive to the potential threats of malpractice lawsuits on the ability to practice high-quality, cost-effective medicine. Beyond the effects of angst and distraction on practitioners, the increased cost of defensive medicine is estimated to be 8% to 20% in some situations.¹ While the described effects on the cost of health care have not always been consistent², most clinicians *feel* the impact—an impact that is not limited to those in the United States. Problems exist in other countries as diverse as Italy, Mexico, and Sweden, with varying methodologies for management.³⁻⁵ Recent data suggest significant impact even in China.⁶

Some of the U.S.-based trends in medical malpractice (and premiums) are surprising. Based on data supplied by The Doctor's Company (the largest physician-owned medical malpractice carrier in the United States and the second largest overall), the frequency of malpractice claims in the United States has trended downward in the last 10 to 15 years. There is, however, a recent flattening of the curve and a disconcerting uptick in cardiac claims in 2022 (Figure 1). More problematic is the upward trend in the “severity” of claims (Figure 2), driven in large part by “nuclear” jury verdicts, those in excess of \$25 million (Figure 3).

The impact of increased high-cost verdicts (perhaps coupled with concerns about increased claims frequency) has an effect on the cost of insurance. Malpractice premiums for medical professionals

fell rather dramatically from 2005 to 2018, but since then they have risen by about 20% (still nowhere near the heights of the mid-2000s) (Figure 4).

Efforts by ACC Advocacy on both the national and state levels have been arduous, with some progress in selected states. In 2010, a Georgia law limiting economic damages was overturned by the state Supreme Court. This year, the Medical Association of Georgia and allies, including the ACC's Georgia Chapter, are considering seeking a sponsor for legislation to restore the cap.

New York's annual budget will likely include funding to defray the cost of medical malpractice premiums for doctors. In 2023, Nebraska legislation that would have established caps for noneconomic damages failed to pass. Currently, 26 states are in session, and it is anticipated that more states will introduce legislation this year.

In 2008, the ACC began exploring vehicles for direct engagement with the situation, focusing on the insurance industry as having some common concerns. This resulted in the formation of the ACC Medical Professional Liability Insurance Work Group in 2012. These members are charged to work with partners to monitor the malpractice landscape and trends and to explore causal factors with the intent of aiding membership in understanding (and avoiding) malpractice encounters. An alliance with The Doctor's Company has resulted in the ability to cooperate in a bilateral fashion: the ACC receives information regarding insurance trends and The Doctor's

FIGURE 1 Frequency of Malpractice Claims in the United States

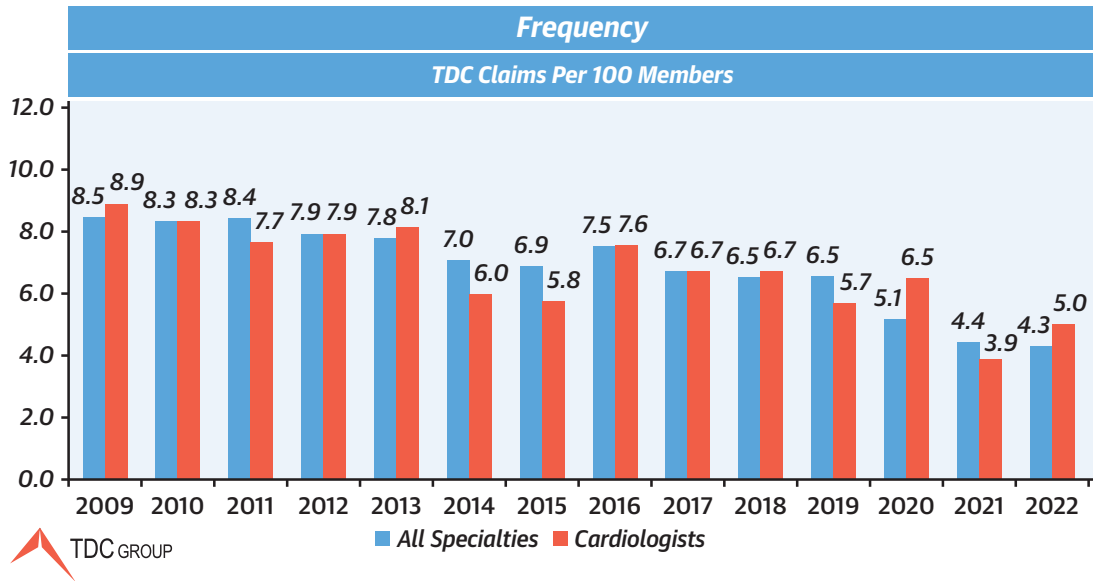


FIGURE 2 Severity of Malpractice Claims in the United States

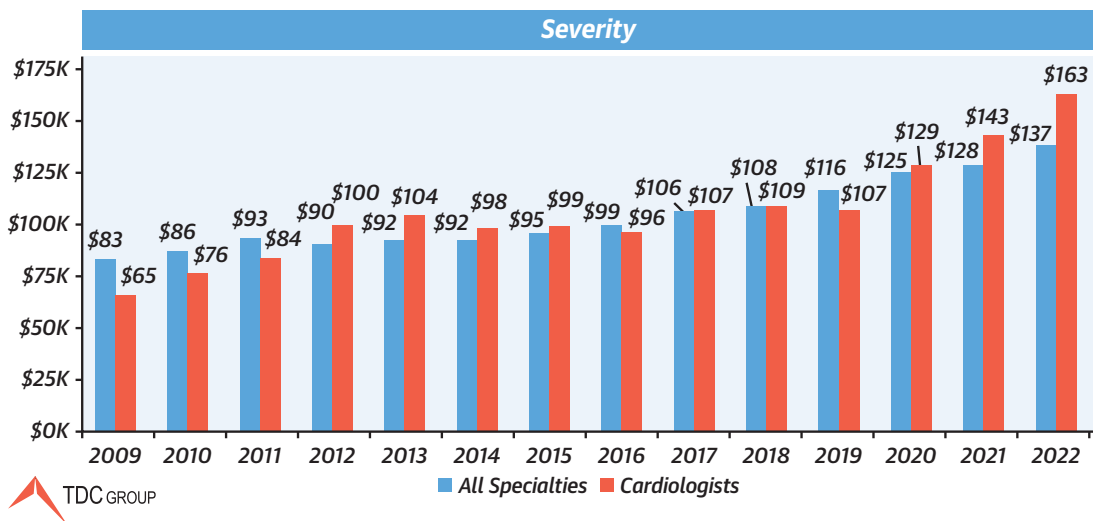
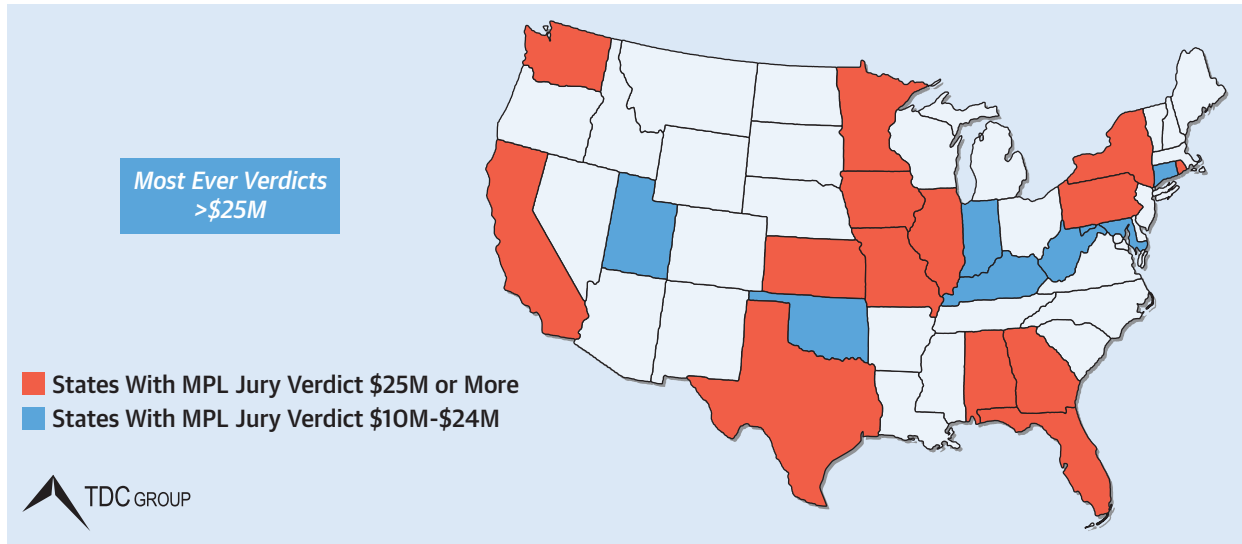
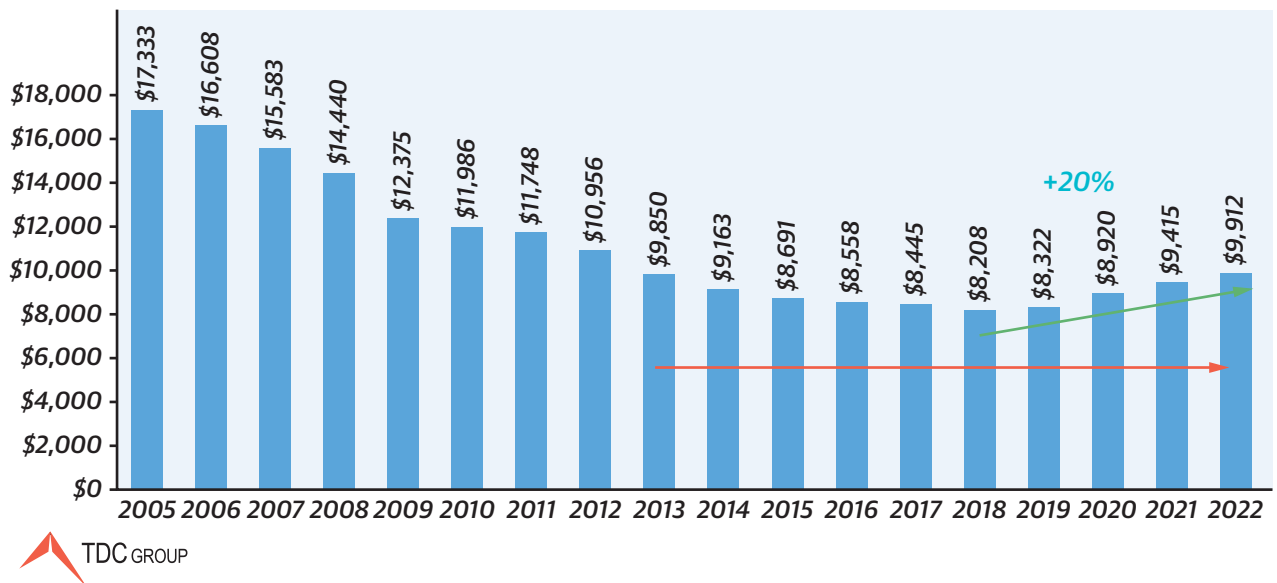


FIGURE 3 Medical Professional Liability Claims Exceeding \$25 Million



A total of 22 "nuclear" medical professional liability (MPL) verdicts in excess of \$25 million occurred in 2022.

FIGURE 4 Average Medical Professional Liability Premiums in the United States



Average medical professional liability premiums as reported by The Doctor's Company.

Company benefits from intelligence on emerging technologies and practice patterns that could affect the landscape. Beyond the information exchange, the collaboration has provided ACC members with premium discounts (amounting to a total of \$5 million to date).

The ACC Liability Workgroup has collated data, resulting in multiple publications on the topic of malpractice (in addition to publications from leadership on the topic).⁵⁻¹⁸ In addition, a series of clinical vignettes, accompanied by professional advice on causes and avoidance of malpractice claims, is published regularly in ACC's *Cardiology* member magazine.

A recent closed claims analysis of particular note published by Kusumoto, et al¹⁸ looked at 21,101 cases, demonstrating contributing factors that appear to lead to such claims. Their data showed clinical parameters that included technical performance, selection and management of therapy, patient assessment, and patient factors. Nonclinical parameters included communication between providers and patient, communication among providers, failure or delay in obtaining a consult, and insufficient documentation. Interestingly, nonclinical factors appear more frequently in cases associated with payment for claims with *communication* being a prominent factor (both among providers and between patient and

provider). Such information can inform clinicians in avoidance of malpractice issues.

Medical malpractice continues to be an issue in the United States and, unfortunately, has metastasized to involve ACC members outside of U.S. borders. Cardiologists and other clinicians should always be aware that a lack of communication is a common causal factor in malpractice suits. The College continues to explore trends and causes, and to seek legislative relief while working to provide improved practice pattern advice for this issue that seemingly will not go away.

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