



# Policy Research Perspectives

## Medical Professional Liability Insurance Indemnity Payments, Expenses and Claim Disposition, 2006-2015

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### Introduction

This Policy Research Perspective (PRP) presents new information on indemnity payments and expenses for medical professional liability (MPL) claims that closed between 2006 and 2015. An indemnity payment is money paid to a claimant/plaintiff for adjudicated damages. Expenses are defense and cost containment expenses incurred in the process of administering or adjudicating a claim, such as for defense attorneys and expert witnesses. The PRP also describes how claims are disposed, such as whether they are settled or dropped, and how indemnity payments and expenses vary by claim disposition.

The information contained in this report comes from the 2016 edition of the PIAA's *Closed Claim Comparative* (CCC).<sup>1</sup> PIAA is an insurance industry trade association that represents entities doing business in the MPL arena. Its members insure more than two-thirds of America's private practicing physicians as well as dentists, nurses, nurse practitioners, and other health care providers.<sup>2</sup> To better evaluate trends in liability claims, in 1985 the PIAA began to share and aggregate individual member data through the Data Sharing Project (DSP). Participating PIAA members report MPL claims data to the DSP, and national trends in that data are reported in the CCC. The 2016 CCC is based on data from 90,473 health care professional liability claims that closed between 2006 and 2015.

### Indemnity Payments and Expenses on Closed Claims, 2006-2015

#### *Indemnity Payments*

Data on average and median indemnity payments are presented in Table 1. Those data are based on claims that closed between 2006 and 2015 and for which indemnity payments were made to the claimants (hereafter *paid claims*). The averages and medians are also reported in "real" terms. This adjusts each year's values for inflation to make them comparable with those in 2015.<sup>3</sup> Figure 1 shows the same information graphically.

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<sup>1</sup> Earlier data (from 1985) came from a previous edition of the CCC. Editions of PIAA's reports that were published prior to 2013 were titled *Claim Trends Analysis*.

<sup>2</sup> PIAA Closed Claim Comparative, 2016 Edition.

<sup>3</sup> Values that are not adjusted for inflation are called "nominal."

In 2015, the average indemnity payment was \$365,503—a 10.7 percent increase from 2006. Much of that increase occurred during the end of that period. In fact, average indemnity payments increased by 11.5 percent between 2013 and 2015. However, after accounting for inflation, average indemnity payments were actually 5.9 percent lower in 2015 than in 2006. This indicates that average payments were not rising as fast as inflation.

The trends in median payments were generally similar to the trends in the averages. However, because some indemnity payments are relatively very high, the averages are higher than the medians. The median payment was \$200,000 for most of the 2006-2015 period.

Table 2 shows how paid claims are distributed over different ranges of payment, and provides context for why average payments are higher than median payments. Thirty-three percent of paid claims involved payments that were less than \$100,000. However, they accounted for only 3.6 percent of indemnity payments in total. In contrast, although only 11.2 percent of paid claims involved payments of \$1 million or more, those large claims accounted for 41.9 percent of total indemnity payments.

There was a relative increase in claims with large payments between 2013 and 2015 (results not shown), which explains part of the recent increase in the average payment noted above. The 41.9 percent share of total indemnity that results from payments of at least \$1 million is up from 33.9 percent in 2013.

### *Expenses*

Table 3 and Figure 2 show that average expenses have increased substantially between 2006 and 2015.<sup>4</sup> In 2015, the average expense was \$54,165—3.8 percent higher than in the previous year. It increased by 46 percent from 2006 to 2009, and by another 10.6 percent between 2013 and 2015. Over the ten-year study period, average expenses rose by 64.5 percent, and even after accounting for inflation, the increase was almost 40 percent.

## **Indemnity, Expenses and Distribution by Claim Disposition, 2015**

### *Indemnity Payments*

Table 4 reports indemnity payments for claims that closed in 2015 according to how they were disposed. Similar to all paid claims, average payments were higher than the medians for all types of disposition.

Trial awards were much larger than indemnity payments from other disposition types. The average trial award was \$1,121,815, compared to \$341,015 for settlements and \$256,596 for claims resolved by an alternate dispute resolution (ADR) or contract agreement.

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<sup>4</sup> Based on the 2012 edition of the PIAA report, by far the largest share of expenses is for defense attorneys (approximately 70 percent). About 17 percent is for expert witnesses, and 14 percent for "other" expenses. This distribution of expenses by category is no longer provided in recent editions of the PIAA reports.

Indemnity payments made on all paid claims resemble those from settlements rather than those from trial awards. This is because the vast majority of paid claims (93.6 percent) are settled, whereas only 3.5 percent result from plaintiff verdicts.

### *Expenses*

Table 5 reports average expenses and the share of total expenses for each type of claim disposition. By far, the highest average expense was for tried claims that resulted in plaintiff verdicts (\$262,141). The next highest was for those resulting in defendant verdicts (\$191,341). That was almost 2½ times the average expense incurred on settled claims (\$78,906). The smallest average expense was for claims that were dropped, dismissed or withdrawn (\$30,475). Despite being the smallest, however, because such a large fraction of claims (68.2 percent) fall into that category, those claims accounted for 38.4 percent of total expenses.

### *Claim Disposition*

Table 6 shows the distribution of claims that closed in 2015 according to the type of disposition and whether indemnity was paid. Most claims (68.2 percent) were dropped, dismissed or withdrawn, and 23.3 percent were settled. In contrast, relatively few claims (7.0 percent) were decided by trial verdict, and the vast majority of those (87.5 percent) were won by the defendant. In fact, less than 1 percent of claims resulted in plaintiff verdicts. Finally, just above 1 percent of claims were decided by an ADR or contract agreement, 55 percent of which involved an indemnity payment. Thus, indemnity payments were made to claimants in only about a quarter (24.8 percent) of claims—a share that was generally stable over the 2006-2015 period.

### **Conclusion**

This PRP presents new data on claim disposition, indemnity payments, and expenses for MPL claims that closed between 2006 and 2015. As in previous years, it finds that in 2015 most claims (68.2 percent) were dropped, dismissed or withdrawn (DDW). However, those claims do not come without a cost. Although their average expense is much lower than for settled and tried claims, DDW claims account for the highest share (38.4 percent) of total expenses.

In contrast to the prevalence of DDW claims, only 7.0 percent of claims were decided by a trial verdict. Of those, the vast majority (87.5 percent) were won by the defendant.

In about 25 percent of claims, an indemnity payment was paid to the claimant. The average payment was \$365,503 in 2015—a notable increase (11.5 percent) from two years prior. Among the types of claim disposition, plaintiff verdicts were the lowest in frequency, but had the highest indemnity payments, with an average of \$1,121,815.

A relatively small fraction of claims contributed to a disproportionate share of total indemnity payments. Although only 11.2 percent of paid claims involved payouts of at least \$1 million, they accounted for 41.9 percent of indemnity payments in total. There was a notable increase in this share in recent years, likely explaining part of the recent increase in average indemnity.

Expenses incurred on claims have risen over time. From 2006 to 2015, average expenses increased by almost 65 percent. In fact, total expenses have been rising much faster than total indemnity payments. Whereas total indemnity was 3 times higher in 2015 than in 1985, the increase in total expenses was more than seven-fold.<sup>5</sup> Consequently, the share of total costs (indemnity plus expenses) incurred on expenses increased from 19 percent to 37 percent. Although most medical liability claims continue to be dropped, dismissed or withdrawn and involve no indemnity payments, they have become increasingly costly to defend.

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<sup>5</sup> The earliest year for which PIAA provided data is 1985.

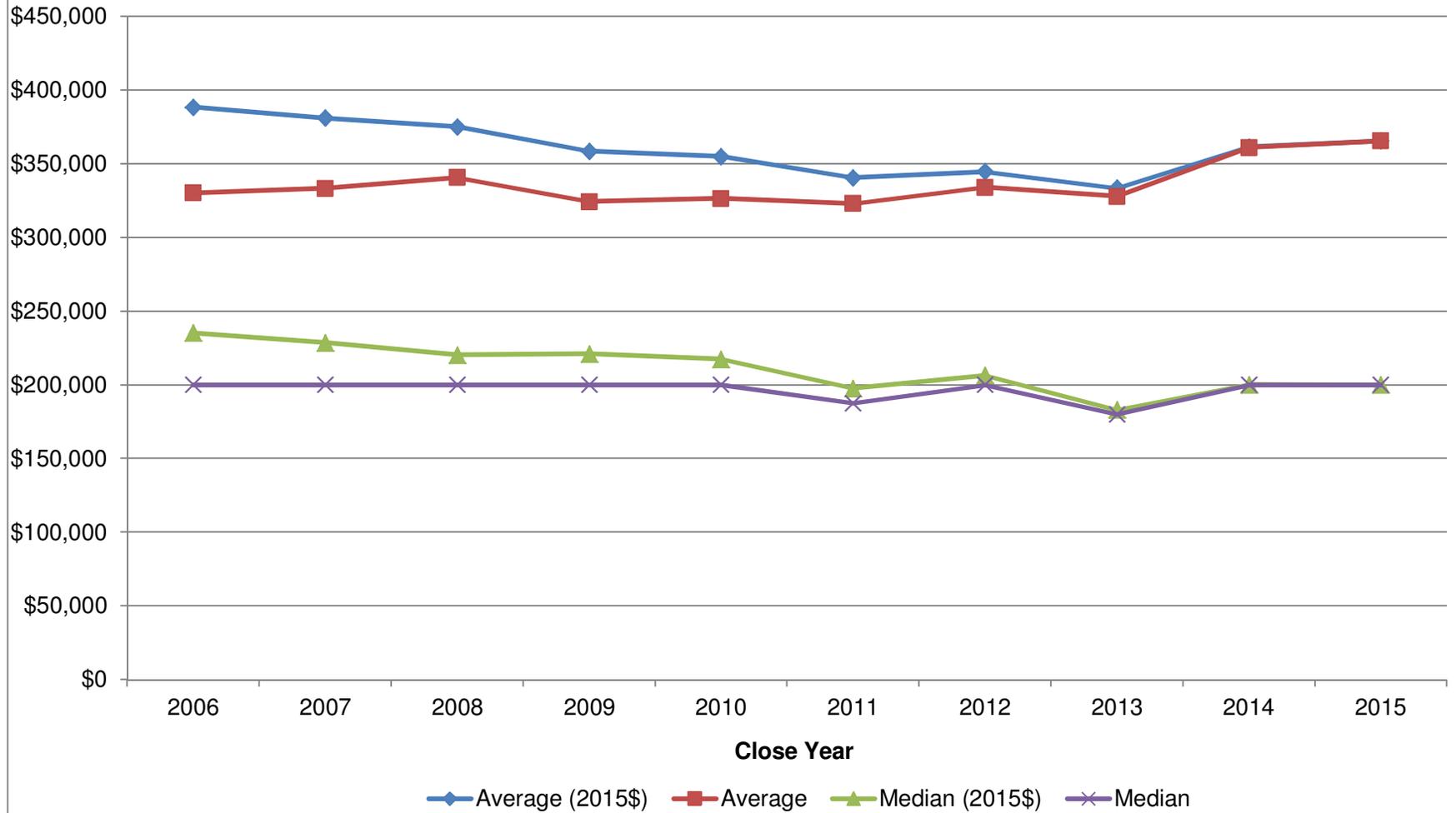
**Table 1. Indemnity Payments for Paid Claims, 2006-2015**

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Change '06-'15	Avg. Annual Change '06-'15
	(\$)											
Average	330,213	333,308	340,712	324,371	326,450	323,004	334,026	327,895	361,108	365,503	10.7%	1.1%
Average (2015\$)	388,330	380,972	375,124	358,430	354,851	340,446	344,715	333,469	361,469	365,503	-5.9%	-0.7%
Median	200,000	200,000	200,000	200,000	200,000	187,500	200,000	180,000	200,000	200,000	0.0%	0.0%
Median (2015\$)	235,200	228,600	220,200	221,000	217,400	197,625	206,400	183,060	200,200	200,000	-15.0%	-1.8%
# Paid Claims	2,146	2,339	2,291	2,534	2,765	2,798	2,613	2,392	2,325	1,903		

Source: PIAA Closed Claim Comparative, 2016 Edition.

Note: *Paid claims* are closed claims in which an indemnity payment was made.

### Figure 1. Indemnity Payments for Paid Claims, 2006-2015



Source: PIAA Closed Claim Comparative, 2016 Edition

**Table 2. Distribution of Paid Claims and Total Indemnity Payments by Range of Indemnity Payment, 2015**

Indemnity Payment Range	Proportion of Paid Claims	Proportion of Total Indemnity Payments
Less than \$100,000	32.5%	3.6%
\$100,000 < = Payment < \$250,000	22.5%	10.2%
\$250,000 < = Payment < \$500,000	19.9%	17.8%
\$500,000 < = Payment < \$1,000,000	13.8%	26.5%
\$1,000,000 or more	11.2%	41.9%
Total	100.0%	100.0%

Source: PIAA Closed Claim Comparative, 2016 Edition.

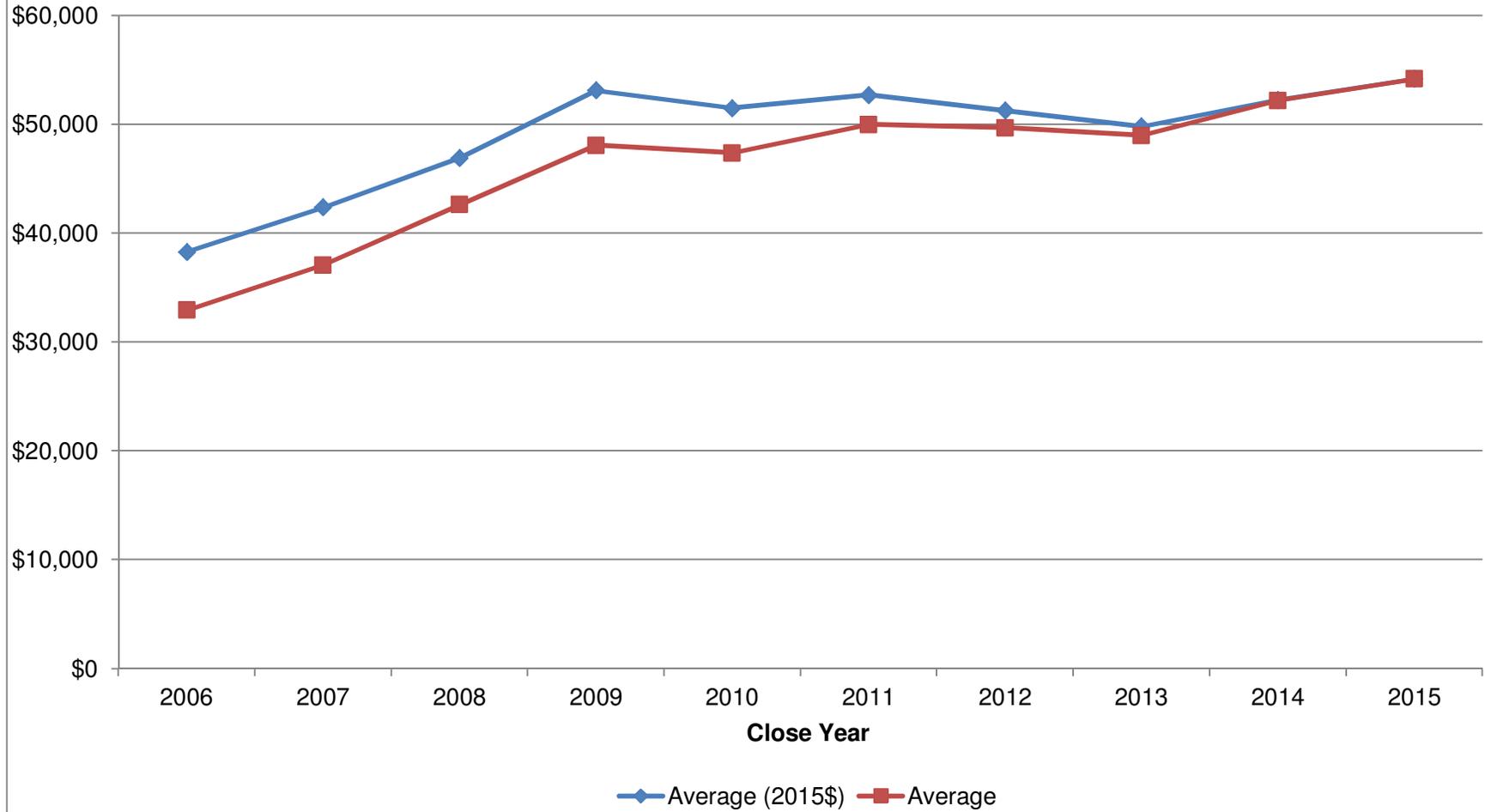
Notes: *Paid claims* are closed claims in which an indemnity payment was made. There were 1903 paid claims that closed in 2015. *Total indemnity payments* are the sum of payments across all paid claims.

**Table 3. Average Expense Payments for all Closed Claims, 2006-2015**

	2006	2007	2008	2008	2010	2011	2012	2013	2014	2015	Change '06-'15	Avg. Annual Change '06-'15
	(\$)											
Average	32,925	37,069	42,622	48,072	47,369	49,987	49,682	48,962	52,195	54,165	64.5%	5.7%
Average (2015\$)	38,720	42,370	46,927	53,120	51,491	52,686	51,271	49,794	52,247	54,165	39.9%	3.8%
Closed Claims	8,619	8,901	8,267	8,698	9,812	10,434	10,294	9,218	8,842	7,658		

Source: PIAA Closed Claim Comparative, 2016 Edition.

## Figure 2. Expense Payments for All Closed Claims



Source: PIAA Closed Claim Comparative, 2016 Edition

**Table 4. Indemnity Payments by Claim Disposition, 2015**

	All Paid Claims	Settlements	Plaintiff Verdicts	ADR/Contract Agreement
Average Payment	\$365,503	\$341,015	\$1,121,815	\$256,596
Median Payment	\$200,000	\$200,000	\$799,250	\$108,417
<i>N</i>	1903	1781	67	50

Source: PIAA Closed Claim Comparative, 2016 Edition. Medians are from a special data request provided by PIAA Data Sharing Project. Copyright 2017 PIAA. The information provided may be used for personal use only. Any other use requires prior permission of the PIAA.

Notes: *ADR* represents an alternative dispute resolution. There were 5 paid claims whose disposition is unknown.

**Table 5. Average Expenses by Claim Disposition, 2015**

Claim Disposition	Average Expense	Expenses as % of Total Expenses	<i>N</i>
Dropped, Dismissed, or Withdrawn	\$30,475	38.4%	5,223
Settlements	\$78,906	33.9%	1,781
Defendant Verdicts	\$191,341	21.7%	470
Plaintiff Verdicts	\$262,141	4.2%	67
ADR or Contract Agreement	\$72,968	1.6%	90
Unknown	\$38,088	0.2%	27
		100.0%	7,658

Source: PIAA Closed Claim Comparative, 2016 Edition

**Table 6. Distribution of Claims by Claim Disposition, 2015**

Claim Disposition	Percentage of All Closed Claims
Dropped, Dismissed or Withdrawn	68.2%
Settlements	23.3%
Defendant Verdicts	6.1%
Plaintiff Verdicts	0.9%
ADR or Contract Agreement	1.2%
Unknown	0.4%
Total	100.0%
Paid	24.8%
Unpaid	75.2%
Total	100.0%
Closed Claims	7,658

Source: PIAA Closed Claim Comparative, 2016 Edition