

# MEDICAL PROFESSIONAL LIABILITY JURY VERDICT TRENDS

Guy Carpenter Healthcare COE

May 2021

A business of Marsh McLennan

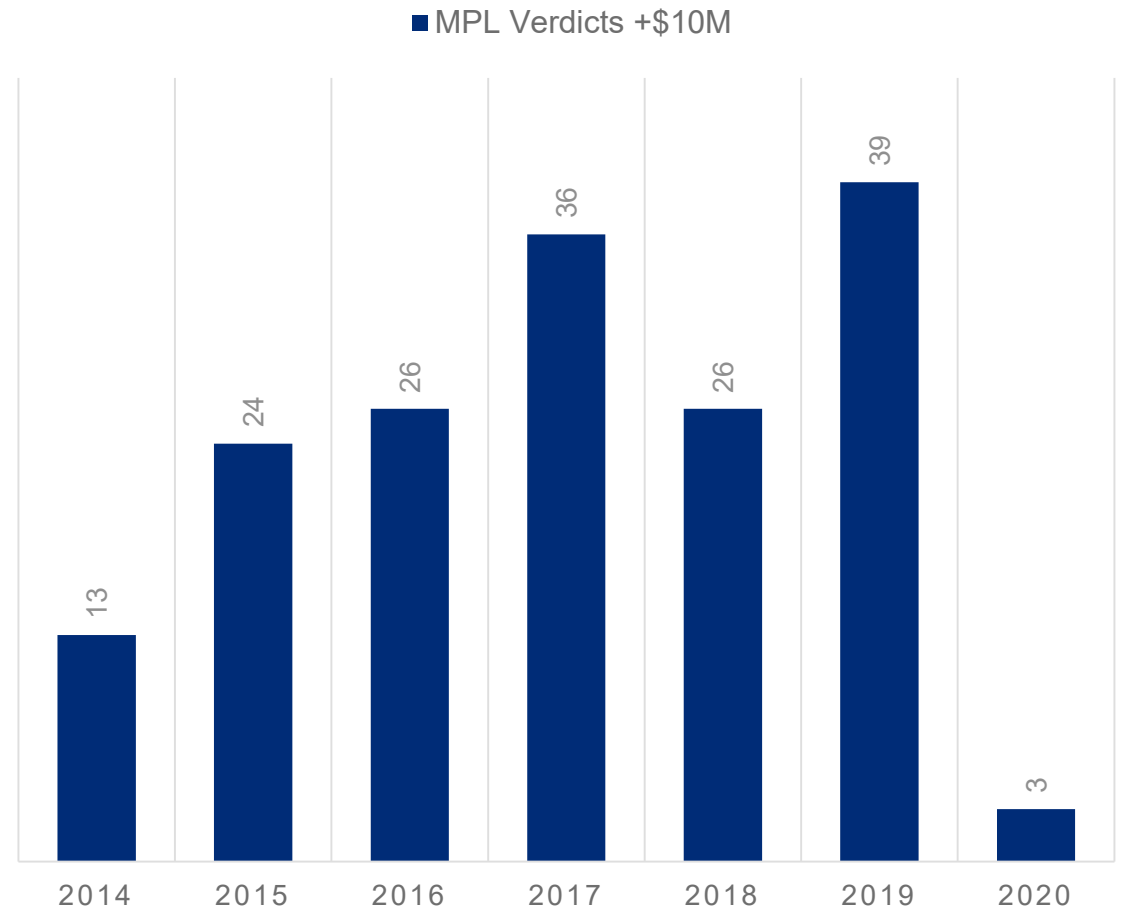


# Medical Professional Liability Jury Verdict Trends

## 2020 Observations: The Calm Before the Storm?

After witnessing a record number of jury verdicts greater than \$10M in 2017 and 2019 (three year annual average number of 34 verdicts greater \$10M), the wheels of justice slowed, driven by COVID-19.

Court trials came to an abrupt halt in early spring 2020, greatly impacting the number of large jury verdicts in 2020. In fact, there were only three verdicts greater than \$10M recorded in 2020; one each in Florida, Georgia and Pennsylvania.



# Medical Professional Liability Jury Verdict Trends

## 2020 Observations: The Calm Before the Storm?

What are the potential exposures of the MPL industry to COVID-19 cases:

- **Physicians:**

- Failure to diagnose COVID-19.
- Delay or denial of deemed “elective” or “non-essential” care to patients that is later asserted to be critical in the course of treatment.
- Alleged negligence whereby patients and family members are infected with COVID-19 by “community spread” in a clinic or office setting.
- Alleged negligent mistreatment of COVID-19 (e.g., overutilization of ventilators in patient protocols).

- **Hospitals:**

- Delay or denial of care due to lack of facility capacity (e.g., bed shortages) or access to medical equipment (ventilators, PPE etc.) caused by patient overload.
- Asserted negligence in “community spread” of COVID-19 in sensitive areas, such as ICU, cardiology, surgery, oncology, etc.

- **Nursing Homes/Long Term Care/Senior Living Facilities:**

- Several nursing home centers have experienced dramatic “community spread” of COVID-19 to elderly patients, with dire results.

- It remains to be seen how COVID-19 will impact the MPL industry from a jury verdict perspective:

- The plaintiff’s bar has already initiated lawsuits against nursing home/long term care facilities in several states.
- State Immunity Measures. Several jurisdictions have enacted immunities, which raise the bar of causation from ordinary negligence to gross negligence.
- “Halo Effect.” We believe that health care providers, at least initially, should receive the benefit of the doubt on the matter of MPL causation by jury pools, since most of the public view health care professionals as “heroes,” who have risked their own lives and personal safety in treating COVID-19 cases.

# Medical Professional Liability Jury Verdict Trends

## 2019 Observations

39 verdicts were recorded in 2019 that were in excess of \$10M, generating an aggregate total of over \$1.137B

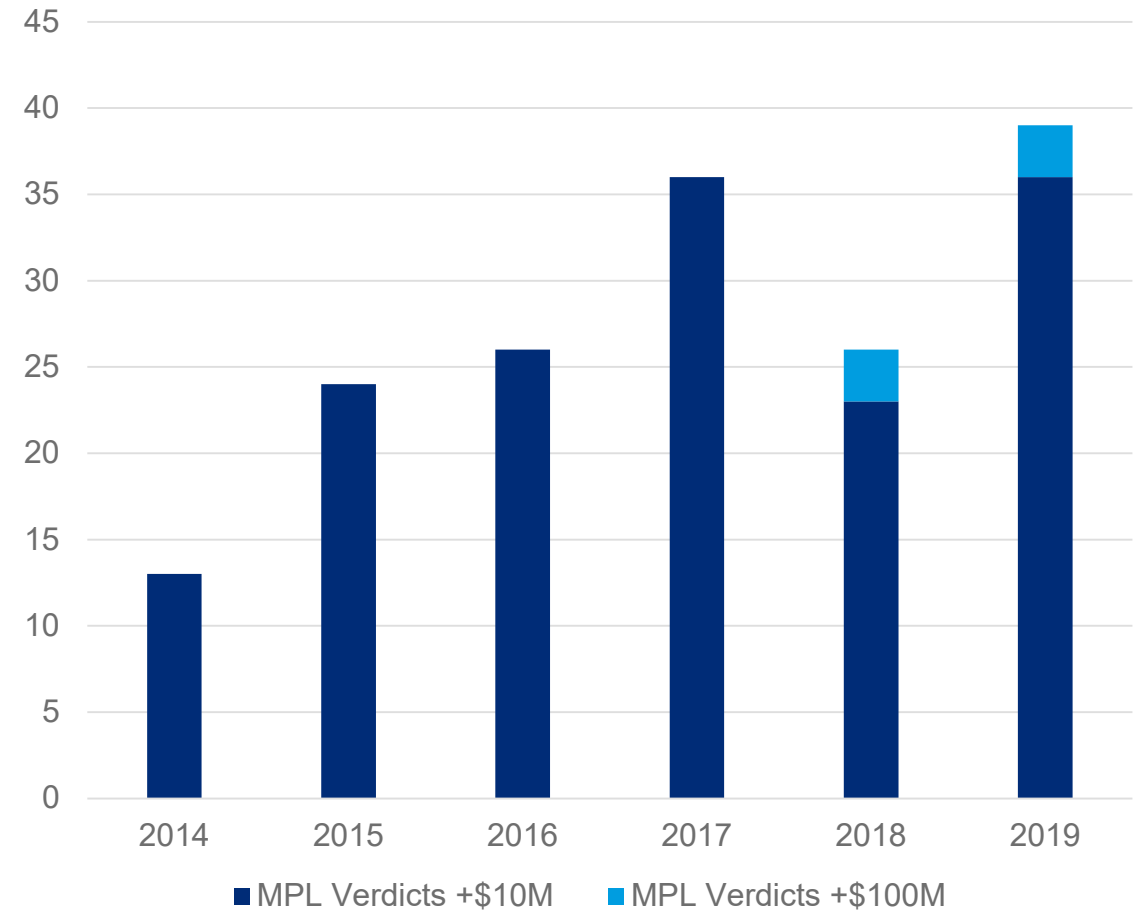
Of the 2019 MPL jury verdicts in excess of \$10M, New York, Florida and Illinois each produced 5, and Pennsylvania yielded 3

Market commentary has not confirmed the impression, however, that large verdicts are trending downward:

- Many insurers/captives have **become more risk averse** in trying claims in front of a jury
- Excess insurers & reinsurers **exert pressure onto underlying insurers** to settle to avoid bad faith, even if it means paying more to settle the case

### **2017 – 2019 created the new high-water mark, over a data period of 18 years, for verdicts in excess of \$10M**

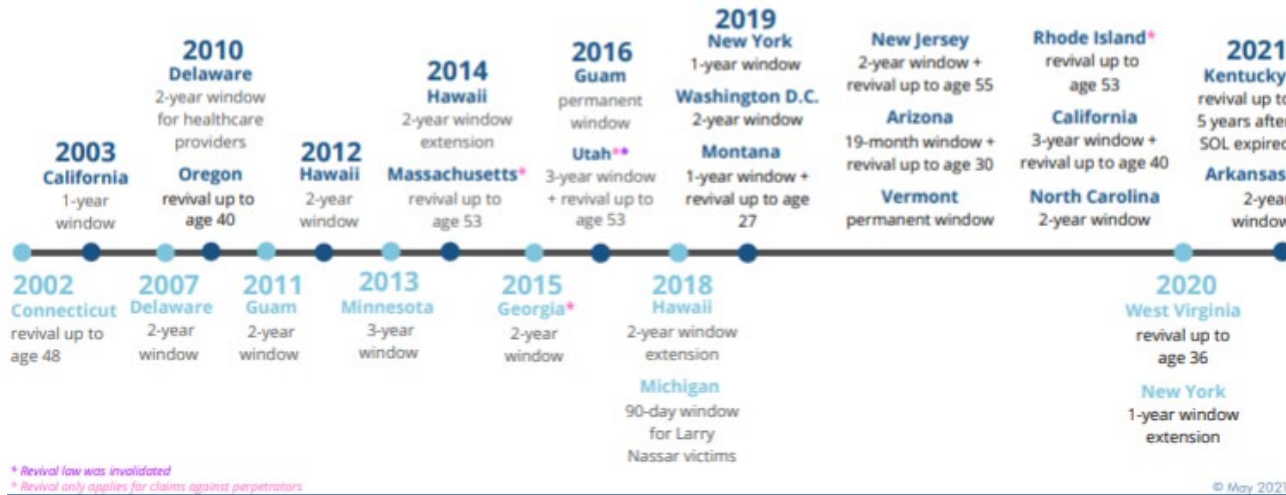
- Three verdicts >\$100M occurred in both 2018 and 2019; the last high-water mark for this was 2012 with five



# Batch Claims – Increased Concern

## “Reviver Laws”

- Twenty states, DC & Guam revived previously expired child sex abuse claims with a window and/or age limit revival law



**Why now?** Public sentiment, political climate, media exposure and investigations into high-profile institutions (Catholic Church, Boy Scouts) – all play a part

Hospitals/healthcare institutions noted as organizations to see impact:

- Batch claims are a favorable potential avenue of recovery for plaintiff attorneys
- The cost of defending is high; insurers can elect to settle even defensible claims in order to cut off mounting defense fees

*“We have seen this scenario arise more frequently and speculate whether someone employed by these defendants is informing plaintiff attorneys about potential claims. Many hospitals have surmised that a nurse or some other “insider” is alerting plaintiff attorneys to alleged bad-actors.”*

*O’Byrne Law Firm*

This is an excerpt from our full report. For more information, please reach out to a member of the MPL Segment team



A business of Marsh McLennan