MEDICAL LIABILITY
MONITOR
PUBLISHING NEWS ABOUT MALPRACTICE ISSUES SINCE 1975

IN THIS ISSUE
JUNE 2022 VOL 47, NO 6

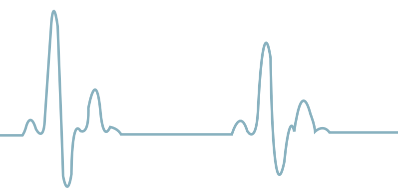
3 **WEBINAR EXAMINES MPLI'S NEGATIVE OUTLOOK**
A roundtable webinar investigated the data behind AM Best's continued negative outlook for the MPL segment.

4 **ATRA FILES AMICUS REGARDING DAUBERT STANDARD**
The American Tort Reform Association asks the Supreme Court to stop circuit court divergence from the *Daubert* standard.

5 **MPL ASSOCIATION ANNUAL CONFERENCE LOOKS TOWARD THE FUTURE**
With two-thirds of Americans fully vaccinated and most states lifting health-related restrictions, optimism we are settling into a new normal permeated the three-day, in-person conference.

6 **PROASSURANCE REPORTS Q1 2022 RESULTS**
ProAssurance Specialty P&C reported an almost 5-point combined ratio improvement, but still underwriting at a loss.

8 **ISSUES AT RISK**
A new abortion law in Texas — and perhaps elsewhere soon — could boost medical malpractice lawsuits.



MPLI LOSSES NARROW, BARRIERS TO UNDERWRITING PROFIT REMAIN

by Jim Auden, CFA, and Gerry Glombicki, CPA, ARM

The U.S. medical professional liability insurance (MPLI) market posted an underwriting loss for the sixth consecutive year, with a 108% combined ratio in 2021. This result represents a significant improvement from 113% in 2020, and reverses a trend of four consecutive years of weakening performance. Strong written premium growth, driven by a level of premium rate increases unseen in many years, provides a basis for further performance improvement in 2022. However, the segment's return to a future underwriting profit is tempered by uncertainty about the durability of pricing momentum and the effects on incurred losses from economic volatility, higher inflation and any post-pandemic revival of heightened litigation activity.

Property & Casualty industry MPLI net written premiums are approaching $10 billion, following more than 10% growth last year as a hardening phase of the commercial insurance market cycle has more clearly reached the MPLI line. Annual premium expansion averaged 4% for the years 2018 - 2020.

Combined ratio reductions are partly attributable to premium-growth-driven expense ratio improvement and favorable prior-year reserve development that accounted for more than 3% of the segment's earned premiums. Still, the segment's return to larger underwriting losses in the last five years coincides with a weakening of reserve strength. Favorable development averaged 12% of annual earned premiums from 2015 -2019.

Accident-Year Loss Ratio Improves, Remains High

A trend of higher accident-year loss ratios reversed with the industry reporting an 85% result last year. Including underwriting expenses and dividends, this figure corresponds with an accident-year combined ratio of approximately 110% or higher, indicating a need for additional pricing and underwriting actions.

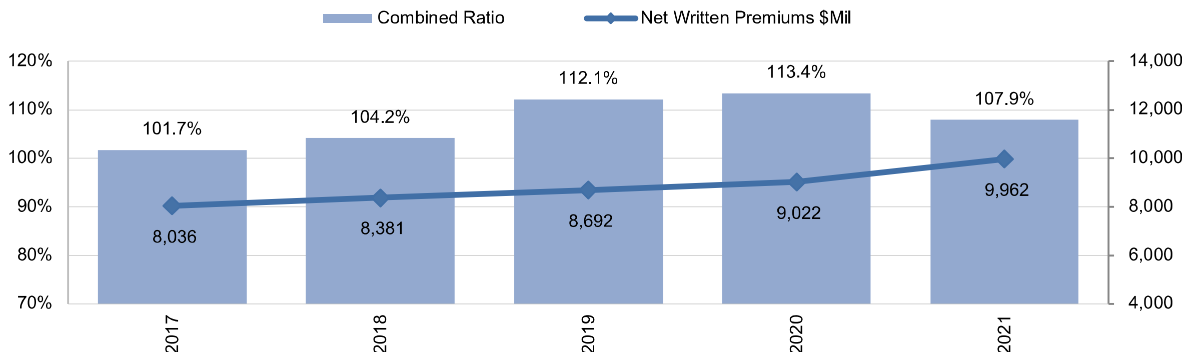
Accident-year 2022 is likely to demonstrate further progress, but continuing loss severity issues add uncertainty regarding ultimate loss projections. While segment reserves overall continue to develop favorably, loss ratios moved upwards from original loss estimates for most recent accident years, 2017-2020, including a 5-percentage-point development for the 2018 underwriting year. This adverse experience is centered in claims-made business (approximately 75% of all MPLI premiums), while occurrence business exhibits greater stability in loss estimates.

Claims Uncertainty Slows Pricing Momentum

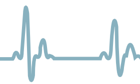
Pricing trends in MPLI remain positive following many years of flat to declining rates. Publicly held MPLI writer ProAssurance Corp.

CONTINUED ON PAGE 7

MPLI CALENDAR-YEAR UNDERWRITING RESULTS



Source: S&P Global Market Intelligence, Fitch
Statutory Accounting Practices - P/C Industry Aggregate



MPLI LOSSES NARROW: BARRIERS TO UNDERWRITING PROFIT REMAIN

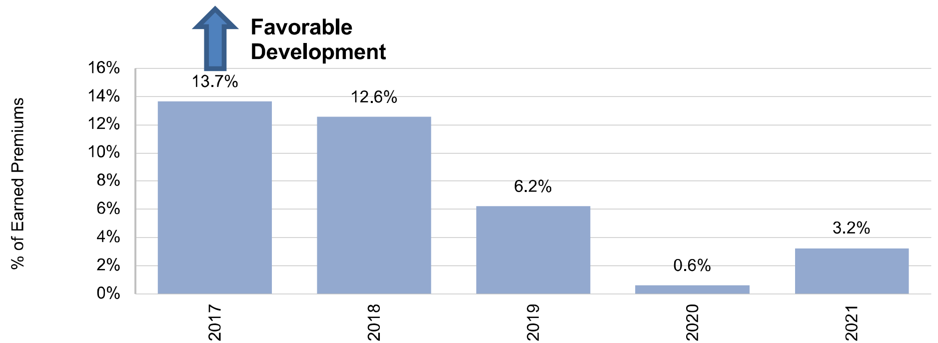
CONTINUED FROM COVER

reported healthcare professional liability business renewal rate increases of 9% for full-year 2021 and first-quarter 2022. Broker Willis Towers Watson's latest Marketplace Realities report projects rate increases of 5% to 15% for physician business for the remainder of 2022. Signs of waning momentum in rate increases are evident across multiple liability lines, including MPLI, which adds concerns about whether pricing can keep pace with loss cost trends over an extended period.

A pandemic-related pause in claims settlement patterns and judicial activity is now subsiding as courts reopen and healthcare utilization returns to prior norms. Rising incurred losses are a function of more frequent multi-million dollar settlements and verdicts. Social inflation — or changes in societal norms, legislation and jury sentiment that expand litigation activity and settlement costs — has greatly affected MPLI in recent years. A return to higher U.S. general inflation is anticipated to place further pressure on loss severity.

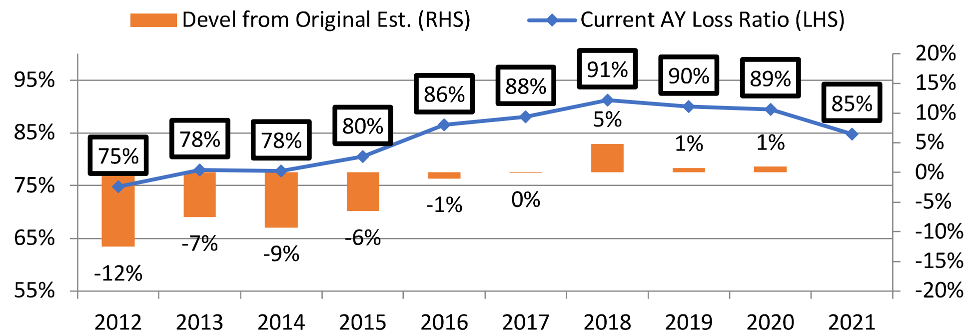
Prior litigation reforms in various jurisdictions regarding limits on items including noneconomic damages or attorney fees are never permanent, as evidenced by changes to California's long-standing MICRA legislation that will move non-economic damage caps from $250,000 to $750,000 over the next 10 years (see MLM, May 2022). Sentiment in the public policy realms for passage of new litigation reforms related to MPLI appears limited.

MPLI CALENDAR-YEAR RESERVE DEVELOPMENT/EARNED PREMIUMS



Source: S&P Global Market Intelligence, Fitch. Calendar year reserve development / net earned premiums Statutory Industry Aggregate Adjusted for unuslual items for MAG Mutual in 2020.

P/C INDUSTRY MPLI ACCIDENT-YEAR LOSS & LAE RATIOS



Source: S&P Market Intelligence, Fitch MPLI Claims Made & Occurrence Segments Combined

Further Profit Improvement Hindered by Market Fundamentals

Several trends in the U.S. healthcare market and the MPLI business are anticipated to affect segment growth and profitability going forward. Consolidation of hospitals and medical facilities through merger activity and a shift of physicians away from independent practices to employment by hospitals and larger medical groups reduces demand for traditional MPLI coverage. Larger groups' purchasing practices gravitate more towards self-insurance and use of captives to manage risk.

Prior reductions in MPLI premium volume are attributable to these changes, which continued through the COVID-19 pandemic. A recent study from the Physicians Advocacy Institute indicates that the percentage of U.S. physicians working for hospitals or corporate entities moved from 62% in January 2019 to more than 69% in January 2021. Larger MPLI writers are adapting to these conditions by expanding product offerings and services offered to medical facilities, but many smaller regional carriers lack the expertise and capacity to move beyond physician coverage.

The MPLI market is unique relative to other commercial insurance product lines as many national multi-line carriers do not participate in the business, and more than 55% of premiums are centered with specialty underwriters focused on MPLI coverage with limited geographic business scope. Most MPLI specialists are very well capitalized based on statutory capital measures and risk-based capital ratios that surpass industry norms. These specialty carriers also have limited opportunities to deploy capital profitably outside of MPLI.

As the market for physician coverage shrinks, carriers tended to emphasize retaining existing business with less regard to pricing adequacy and returns on capital. As such, a return to significant underwriting profits in the MPLI lines is likely predicated by erosion of capital for specialty writers via an extended period of large underwriting losses or greater market consolidation through merger activity.

While the 2021 acquisition of NORCAL by ProAssurance Corp. may portend further acquisition activity in the space, there are still likely more active buyers than willing sellers among MPLI specialty writers.

Longer-term profit potential in MPLI may be partly reflected by limited new capacity entering the market despite recent pricing movement. Other insurance segments, including excess and surplus lines, professional liability and other specialty segments, have seen capacity enter the market from start-ups and existing carriers as profits emerge from better market conditions.

Jim Auden is a managing director, and Gerry Glombicki a senior director, at Fitch Ratings.