

SVMIC™
Mutual Interests. Mutually Insured.

- ◆ Preparing the Physician for Deposition and Trial

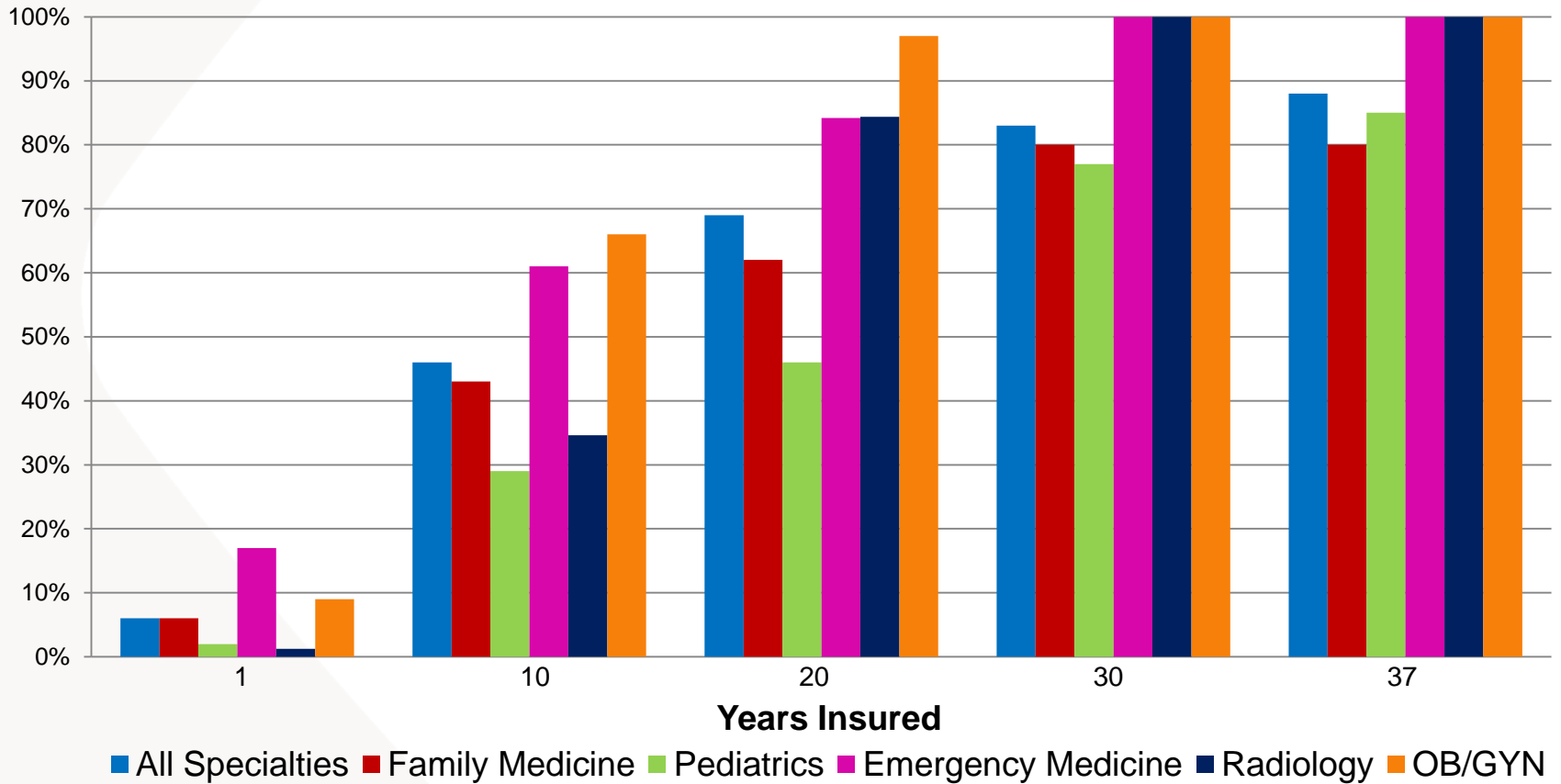
Objectives

Upon completion of this seminar, attendees should be able to:

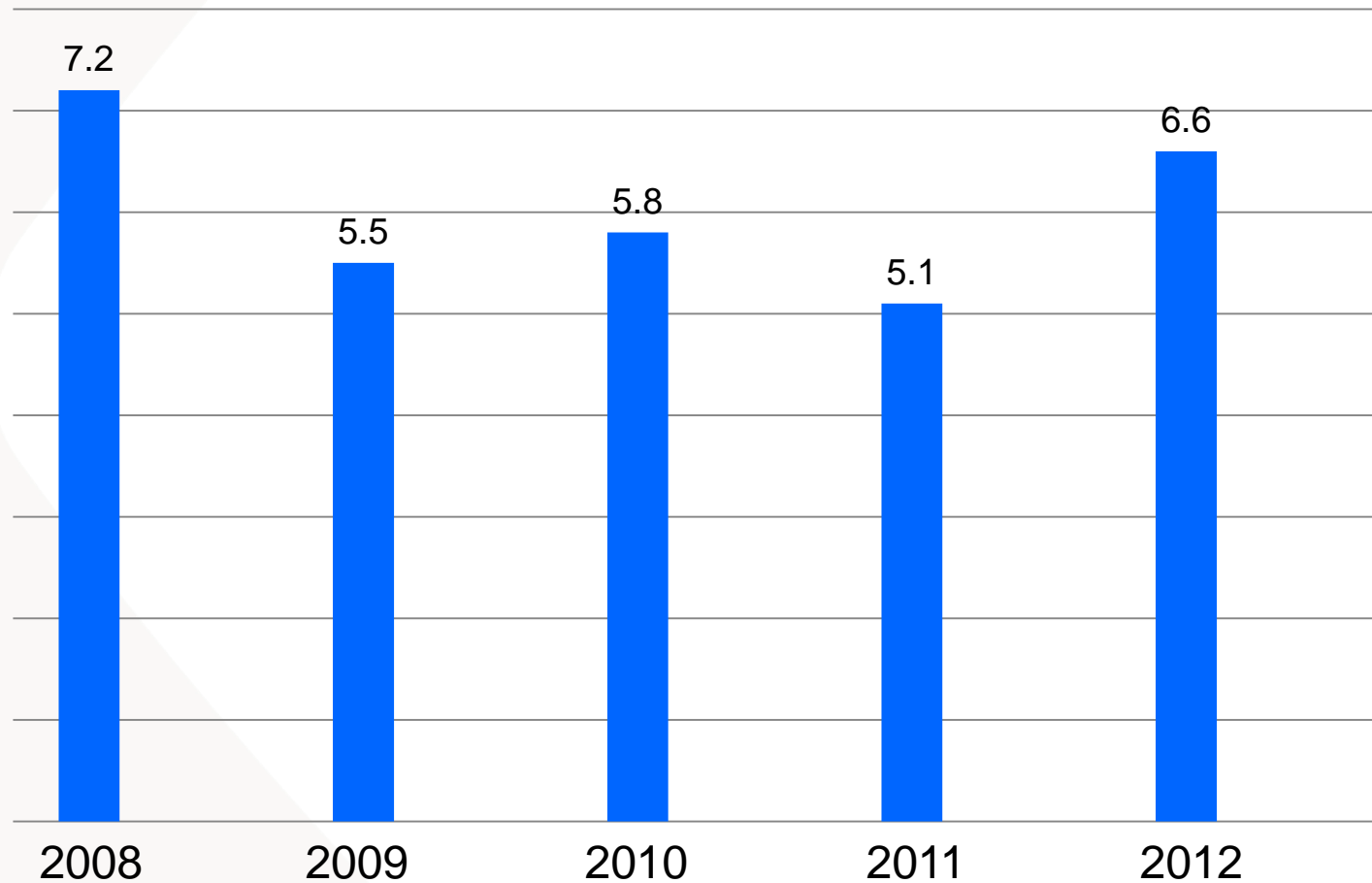
1. List ways in which the physician can act as their own advocate and take an active role in their own defense;
2. Understand the critical importance of depositions and trial to the successful resolution of any medical malpractice case, and why thorough preparation is essential; and
3. Outline the different types of questions the physician can expect to be asked during deposition and trial and how to best respond to those questions.



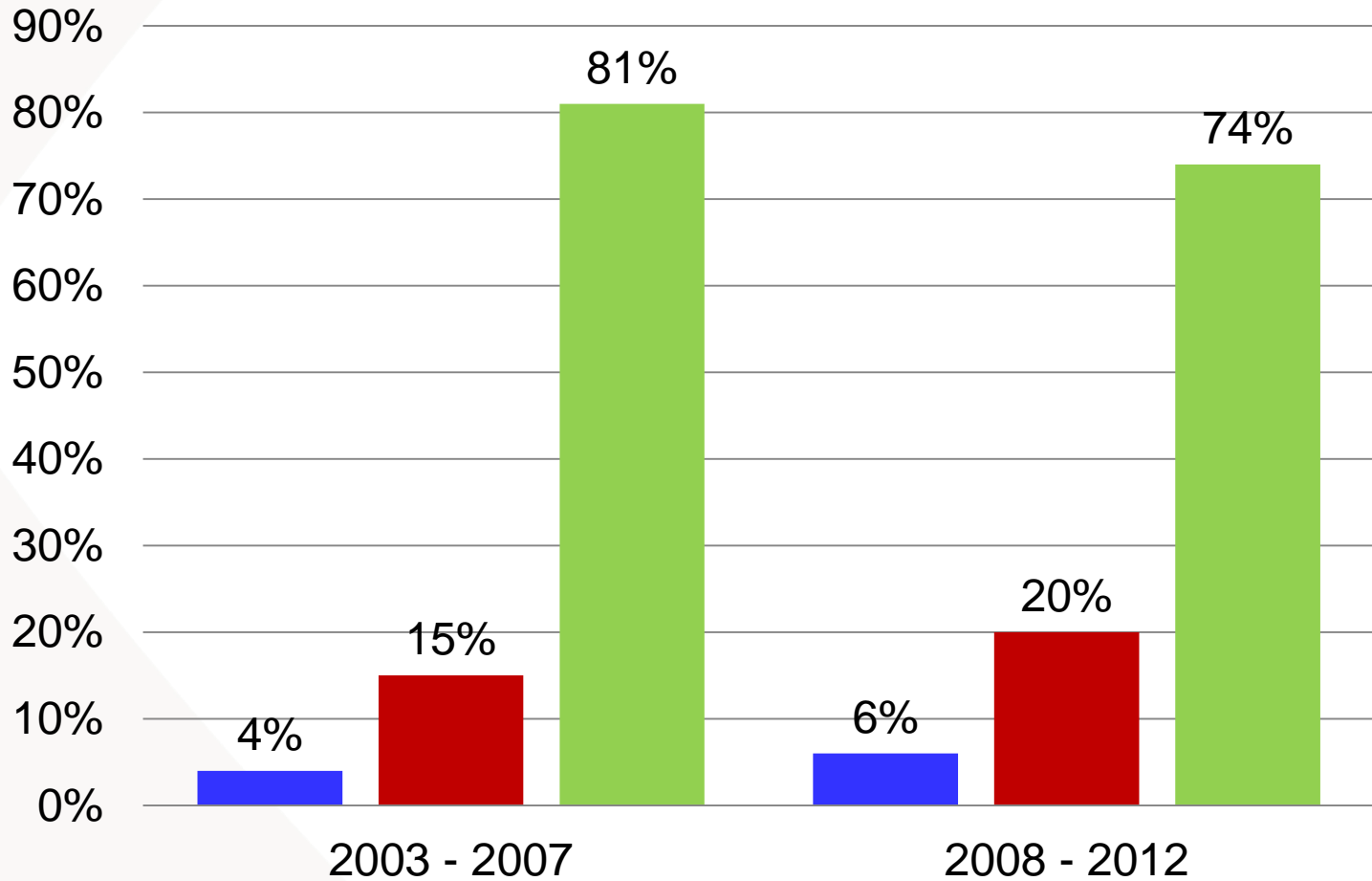
Percent of Physicians with a Claim



New Claims per 100 Physicians (Claim = lawsuit or demand for money)



Lawsuit Outcomes



SVMICTM



Filed



Settled



Resolved With No Payment

Litigation Steps (Chronology)

- Lawsuit
- Written Discovery
- **Depositions**
- Expert disclosures and depositions
- **Trial**

Deposition

Discovery

- Discover knowledge, recollection, position
- Pin down
- Evaluate witness
- Set traps

How to Prepare for Deposition?

- Strategy and theme
- Semantics
- Items to review
- Research
- Mock depositions
- Witness prep consultant
- Plaintiff attorney's style
- Appearance and demeanor

Case Study

Medical Literature

- Impeachment
- Significance of questions re: literature
- Video example

Authoritative Text

Dr. Connor, Surgeon

Video Recap



Do Not Educate the Plaintiff's Attorney

- Fair, concise and direct response to question
- Use normal medical lexicon
- How much is too much?

Talking With Others

- Attorney/client privilege
- Other privileges
- No specifics
- Video example

Discussing The Case

Dr. Connor, Surgeon

Video Recap



Comparative Fault

- Apportionment (percentage) of blame
- Boiler Plate Assertions
- Finger pointing
- Party vs. Non-Party
- Negligence of the patient

Questions Regarding Care by Others

- Diplomatic charting and communication
- Ramifications of finger pointing
- Role of experts
- Video example

Comparative Fault

(Bad Version)

Dr. Stuart, PCP

Video Recap



Comparative Fault

(Good Version)

Dr. Stuart, PCP

Video Recap



Comparative Fault (Non-Party) Dr. Yune, Cardiologist



Video Recap



Phases of Trial

- Voir Dire
- Opening Statements
- Plaintiff's Evidence
- Defendant's Evidence
- Closing Arguments

General to Specific Questioning

- Every question has a purpose
- Plaintiff's strategy
- Defense tactics and theme
- Video example

General to Specific Questioning

(Bad Version)

Dr. Stuart, PCP

Video Recap



General to Specific Questioning

(Good Version)

Dr. Stuart, PCP

Video Recap



Hypothetical Questions

- Be wary/listen carefully
- Don't accept the facts as true
- Opportunity to explain your answer
- Reformulate the question
- Video example

Hypothetical Questions

Dr. Stuart, PCP

Video Recap



Burden of Proof

- Standard of care
- Deviation from standard
- Injury caused by deviation
- Damages (\$\$\$)
- Preponderance of the evidence

Meeting the Burden of Proof

- Role of expert testimony
- Statutory requirements
- Selection process

Conclusion of the Trial

- Closing argument
- Jury instruction
- Jury deliberation
- Sample jury verdict form

1. Rodney Stuart, M.D.:

- (a) Do you find that Rodney Stuart, M.D. violated the applicable standard of care during his care of Karen Jones?

Answer: _____(Yes or No)

(If you answered No” to part “a”, then stop your deliberations, have the foreperson sign this document, and notify the Court Officer. If you answered “Yes” to this question, proceed to part “b”.)

- (b) Do you find that this violation of the standard of care was a proximate cause of the death of Karen Jones?

Answer: _____(Yes or No)



2. Jay Connor, M.D.:

- (a) Do you find that Jay Connor, M.D. violated the applicable standard of care during his care of Karen Jones?

Answer: _____(Yes or No)

(If you answered No” to part “a”, skip part “b”. If you answered “Yes” to this question, proceed to part “b”.)

- (b) Do you find that this violation of the standard of care was a proximate cause of the death of Karen Jones?

Answer: _____(Yes or No)

Preamble to Question No. 3

If you found that one or both physicians listed above were at fault – i.e., you have answered “Yes” to both parts (a) and (b) with respect to Question 1 and 2 – then proceed to Question No. 3. If you have not found any of the physicians listed above to be at fault, then stop deliberations, have your foreperson sign the verdict form, and then return to the courtroom.

3. Percentage of Fault:

What percentage of fault, if any, do you assess against the following? If you have previously determined that one of the persons listed below was not at fault, then enter “0” in the line beside that name. (Your percentages must add up to equal 100%. Your number may not be greater than 100%.)

Rodney Stuart, M.D. _____%

Jay Connor, M.D. _____%

 **SVMIC**™ TOTAL: 100%

4. What amount of damages do you find:

Loss of Earnings _____

Loss of Consortium _____

Loss of Enjoyment of Life _____

Medical Expenses _____

Pain & Suffering _____

Funeral and Burial Expenses _____

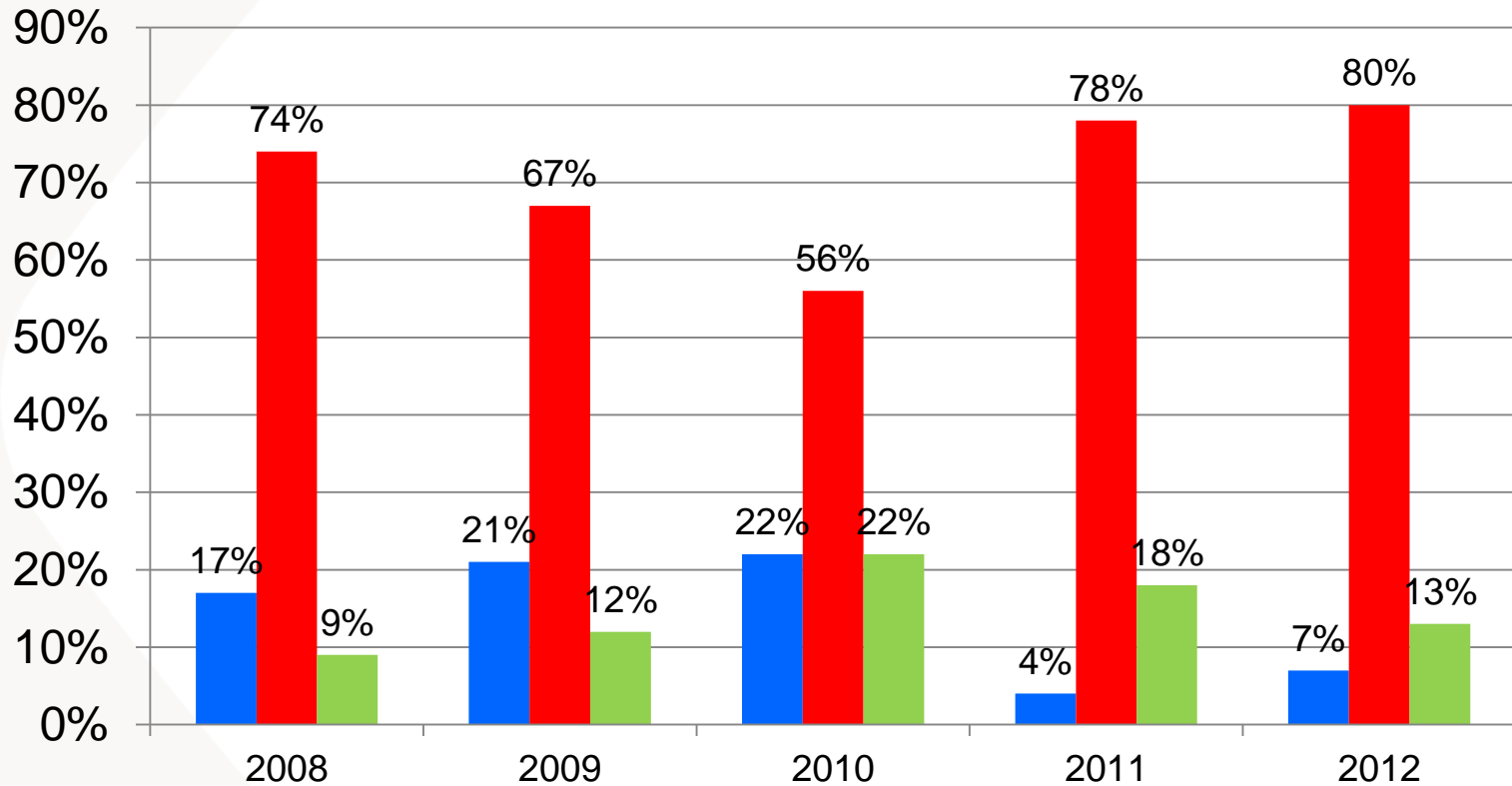
Total \$ _____

Signature of Foreperson

Date



Trial Results 2008 - 2012



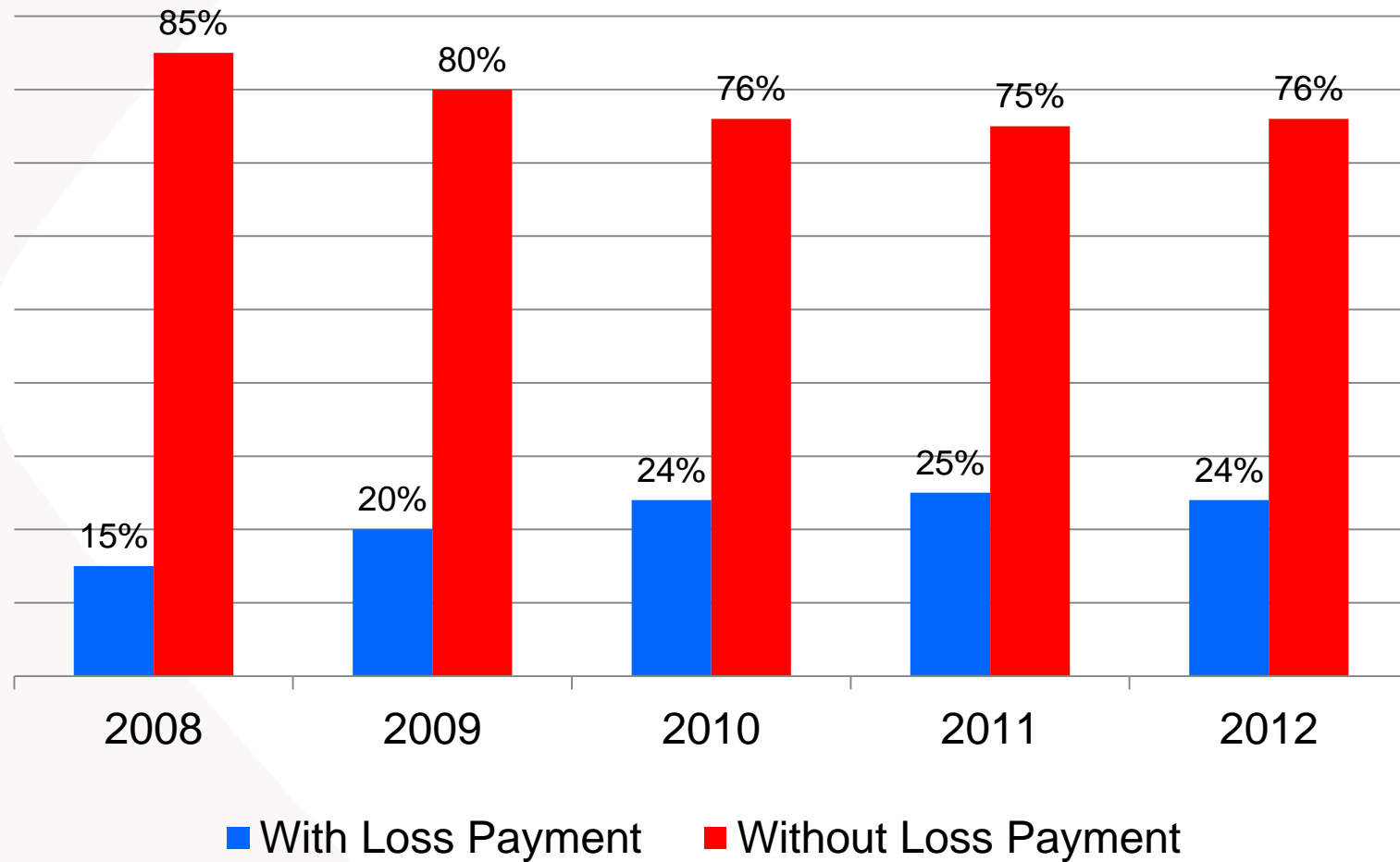
■ Plaintiff Verdicts

■ Defense Verdicts

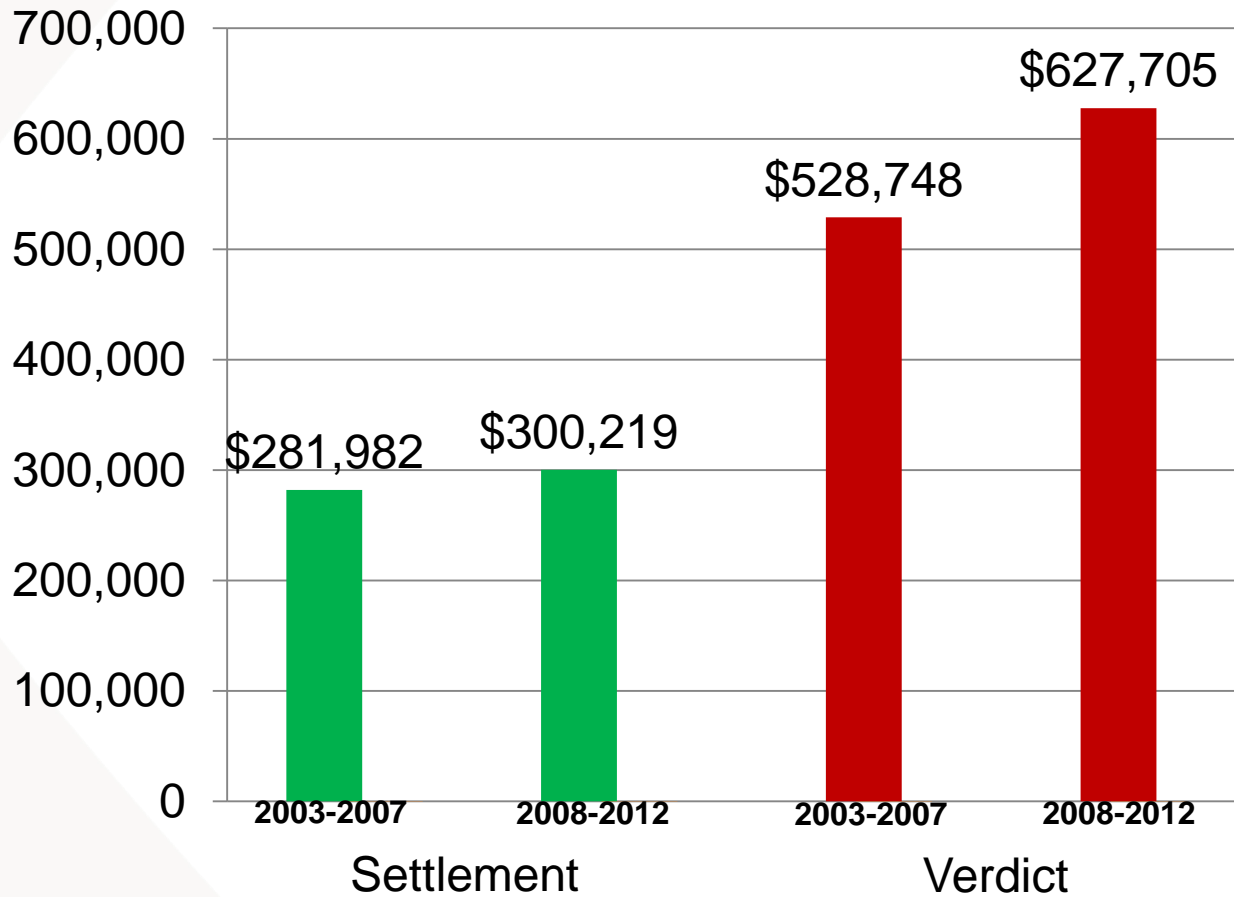
■ Mistrial/Nonsuit or Settled During Trial



SVMIC Lawsuits Closed 2008 - 2012



Average Settlement and Average Verdict



The Physician Experience