



Advisen: Management liability claim payouts
and settlements tripled in eight years

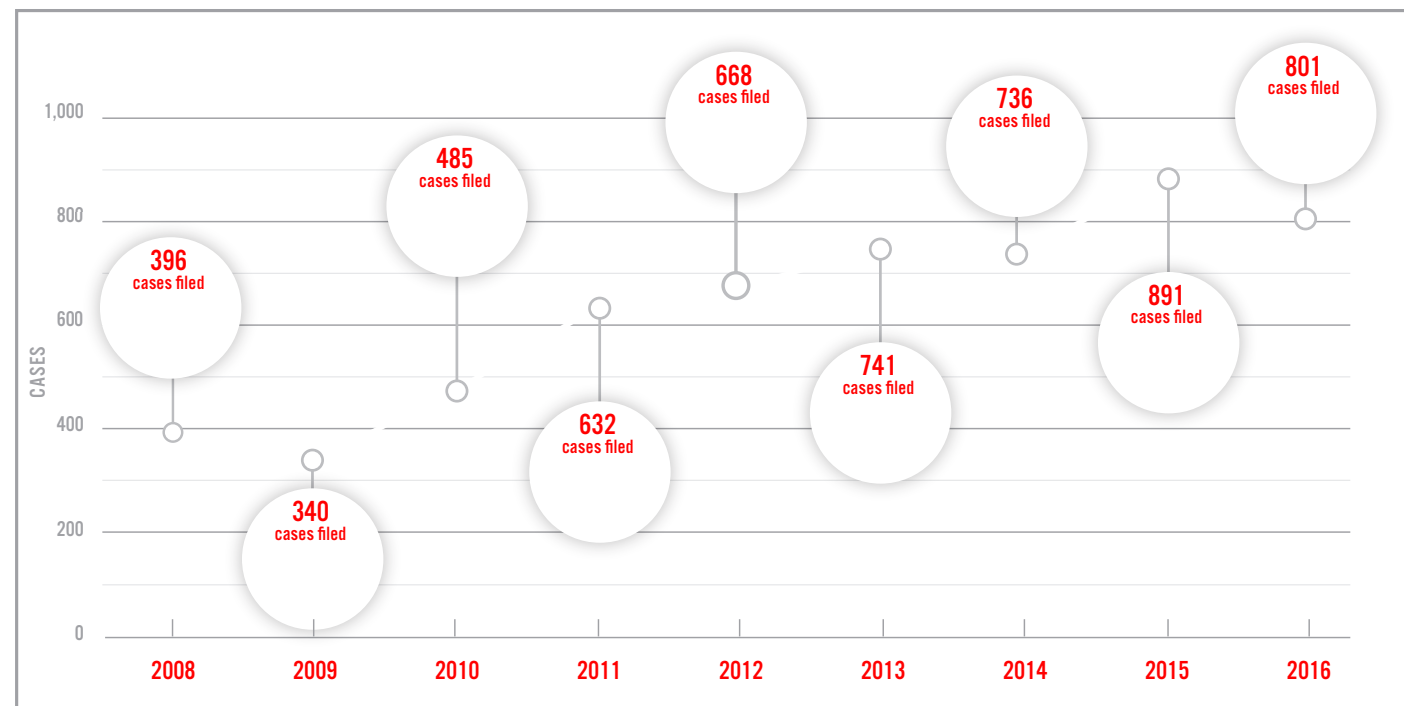
»»» Coverage in an age of healthcare change and uncertainty

insurance

management liability

Following the enactment of the Affordable Care Act, the management liability landscape for healthcare entities fundamentally changed. Confronting thin margins, healthcare entities have been subject to consolidation efforts, involving numerous mergers and acquisitions. As a result, they have eliminated programs and work with more limited resources. These actions create an inherent management liability risk, with the potential for more costly litigation.

From 2008 to 2016, the average settlement or awards of management liability cases in the healthcare industry has more than tripled. Cases filed have been on a general incline during the same period.



Healthcare segments included in the above data represent the following: Aging Services • Allied Healthcare Facilities • Doctors, Nurses and Dentists • Hospitals (less than \$1 billion in revenue) • Life Science Lines of business included: Directors & Officers • Employment Practices Liability • Fiduciary • Crime • Kidnap & Ransom

The enactment of the Affordable Care Act (ACA), as well as the uncertainty surrounding many of its provisions as a whole, continue to affect the healthcare industry. Notably, complex risks arise due to the evolving nature of the healthcare system, as well as potential effects of additional changes in the event that the law is amended in the future.

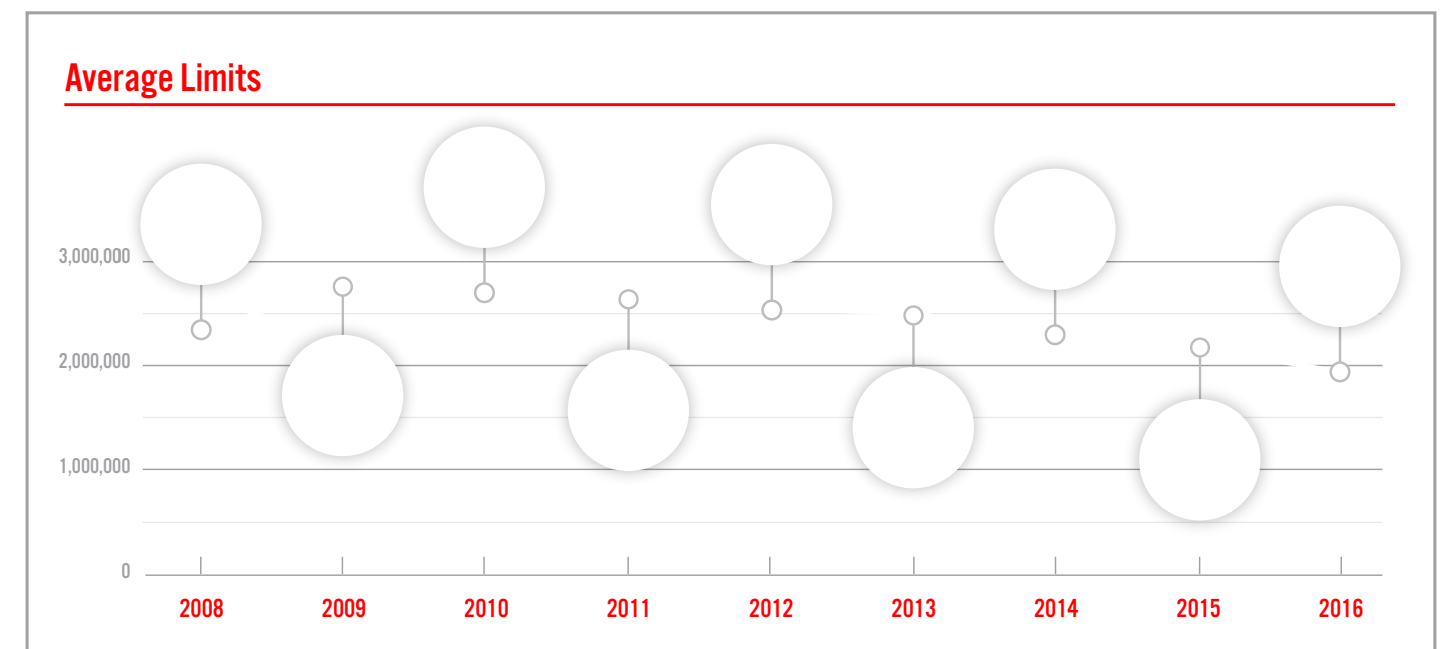
“The landscape fundamentally changed after the passage of the ACA,” said Paul Larson, Senior Vice President, Financial Institutions and Management Liability, CNA. Following its initial enactment, healthcare

entities were required to adapt to numerous regulatory changes while continuing to preserve revenue and make appropriate clinical and management decisions, Larson says. Moreover, industry consolidation continues in an area affected by increasing costs, which presents ongoing and pervasive challenges. Larson believes that these factors, including the sensitivity surrounding the public perception that healthcare entities have deep pockets, have resulted in a market vulnerable to lawsuits and claim activity.

In addition to typical management liability claims,

ADVISEN CLAIMS TRENDS	
FREQUENCY	SEVERITY
Employment Practices Breach of Contract Business Disputes	Antitrust Regulatory Fraud and Abuse

Should healthcare entities begin to consider the purchase of increased insurance limits due to the vulnerability posed by higher frequency and severity of loss? According to Advisen data, they have not yet pursued this course of action. Average limits of the focused segments have remained consistent (even dropping below \$2 million for the first time since 2008), with the hospital and life sciences groups traditionally purchasing about twice the limits of other groups.



a steady increase in mergers and acquisitions (M&A) within the industry also has a correlative effect on [Directors & Officers](#) claims. According to Dominic Senese, Vice President, CNA Private and Not-for-Profit, Management Liability, “CNA has experienced D&O claim activity from antitrust and M&A exposures, which are central concerns in underwriting healthcare entities. An entity’s position vis-à-vis its competitors and its own providers can increase exposure.” He also notes that CNA has seen False Claims Act claims in conjunction with *qui tam* whistleblower actions alleging fraud. Healthcare entities, “either choose to vigorously defend the allegations, or they are eager to settle in order to avoid the threat of government investigations that may follow,” added Senese.

Within a thriving healthcare institution, Larson is also seeing an increase in [claims resulting from employees](#). Claims involving allegations such as wrongful termination and retaliation often result in large settlements or awards, as the actions, “tend to be brought by physicians or other medical personnel who may be high wage earners, or those who maintain an ownership interest in the healthcare entity, which drives up the settlement value,” Larson added. In addition, disagreements between owners, or attempts to oust a partner or employee, can lead to costly claims.

To meet these increased insurance demands, CNA has been, “expanding [management liability](#) writings for healthcare,” said Senese. With a falling number of primary markets willing to underwrite this business due to its exposures, brokers are seeking alternatives, and CNA is focusing on an enterprise approach.

As a leader in the [healthcare professional liability](#) marketplace, CNA seeks to offer its expertise and broad product offerings in commercial, professional liability, and [management liability insurance](#) writings to healthcare entities.

“THIS IS AN AREA WHERE SPECIALIZATION IS CRITICAL,” SAID PAUL LARSON, SENIOR VICE PRESIDENT, FINANCIAL INSTITUTIONS AND MANAGEMENT LIABILITY, CNA.

“This is an area where specialization is critical,” said Larson. “CNA already has a relationship with so many of these healthcare entities due to our significant healthcare business in the professional liability space.”

The takeaway? Policyholders benefit from understanding the coverages that will address certain exposures, as well as access to specialized and experienced claim professionals. By working with those who are knowledgeable in the risk management philosophy implemented by healthcare organizations, and a company with insurance products and solutions to address a myriad of complex issues, CNA serves as an industry leading provider of [management liability insurance](#) for the healthcare industry.

