

# BATCH ME IF YOU CAN...

Moderator

**William J. McDonough**

Integro Insurance Brokers



# BATCH ME IF YOU CAN...

## Our Panel Today - Introductions

**Lainie Dorneker, President**

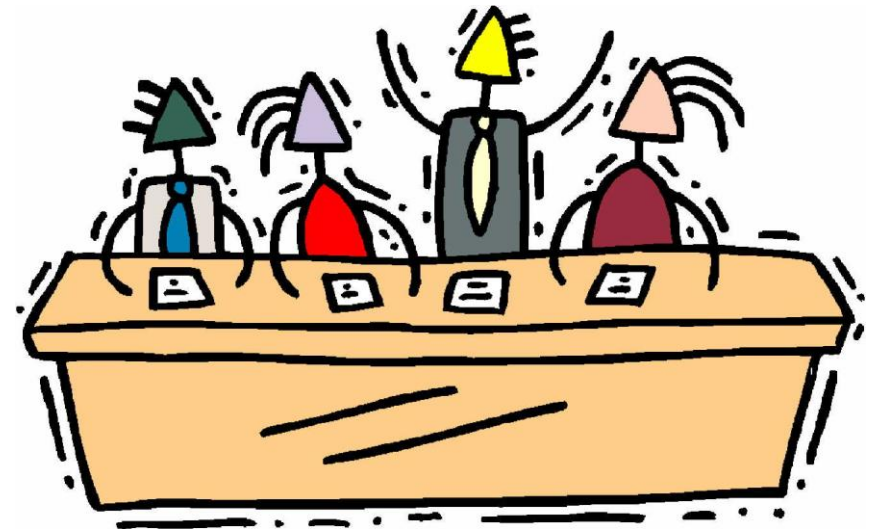
IronHealth  
Chicago, IL

**Randy Jacques, Senior Director Risk Financing**

UMass Memorial Health Care  
Worcester, MA

**Eileen Shanley, VP Captive Claims Management**

Steward Health  
Dallas, TX




- **Definition of “Batch”**
- **Basic Issues to Consider**
- **Typical Categories of “Batch” Claims**
- **Underwriter Perspective**
- **Captive Owner Case Studies**
- **Important Coverage Issues**
- **Cost of “Batch” Claims**
- **Conclusions and Q&A**

# AGENDA



# PLENTY TO GO AROUND



Injury

Brain

Head moves back and brain moves forward

**ORDAZ**  
LAW & APC  
A SAN DIEGO PERSONAL INJURY ATTORNEY

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**Bad Bug Law Team®**

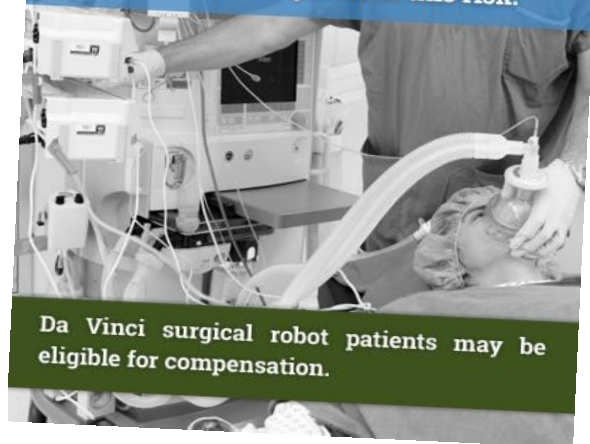


**PritzkerOlsen** attorneys 1-888-377-8900

## ROBOTIC SURGERY

may risk severe injuries, sometimes requiring invasive surgery to correct the damage.

Multiple medical studies have linked the da Vinci Surgical System to this risk.



Da Vinci surgical robot patients may be eligible for compensation.

## IVC FILTERS

(used to capture blood clots) may risk tissue damage, deep vein thrombosis, pulmonary embolism, and other serious side effects.



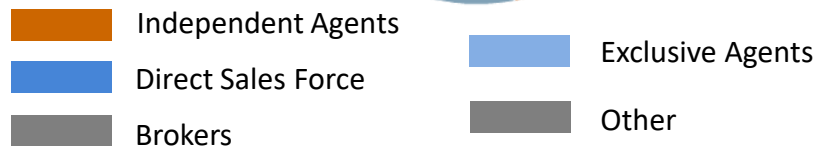
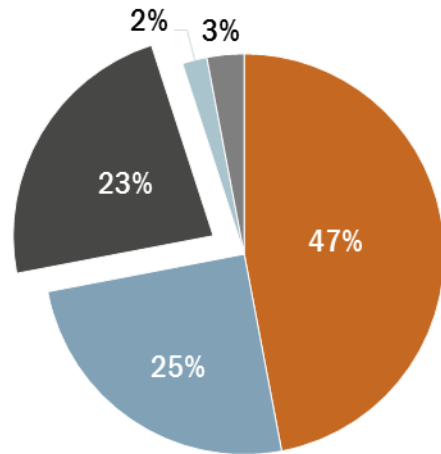
Patients who experienced complications from an IVC Filter may be eligible for compensation.



**Founded in 1912**

Revenue	\$39B		
Assets	\$120B		
Capital	\$29B		
Fortune 100	75 <sup>rd</sup>		
	AM Best	S&P	Moody's
Financial Strength Ratings	A	A	A2

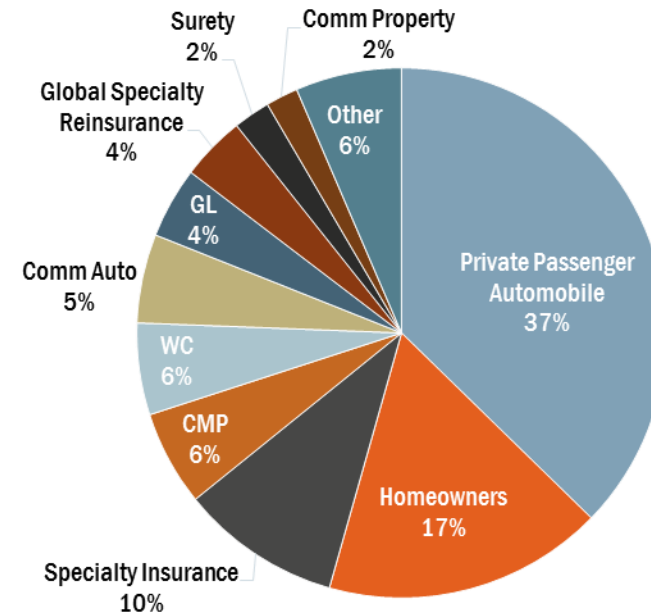
Distribution Mix



**Rankings**

- 1<sup>st</sup> in **U.S.** commercial buyer unaided brand awareness and brand preference
- 3<sup>rd</sup> largest **U.S.** commercial & specialty lines writer
- 4<sup>th</sup> largest **U.S.** P&C writer
- 6<sup>th</sup> largest **U.S.** personal lines writer
- 6<sup>th</sup> largest **global** P&C insurer
- 7<sup>th</sup> largest **U.S.** surplus lines carrier

Lines of Business











### Global Risk Solutions

Dennis Langwell      Kevin Kelley  
President                  Vice Chairman

Liberty Specialty Markets  
Global Surety  
National Insurance

**North American Specialty**  
Matt Dolan, President

### Ironshore US

 **IronHealth**       **Casualty**  
 **IronPro**       **Environmental**  
 **Property**       **Political Risk**

Liberty Mutual Canada  
Garth Pepper, President

**Global Risk Solutions** unifies the organization and allows us to offer unparalleled risk expertise, consistency and predictability in appetite, which results in a collaborative culture focused on solutions and exceptional partnership.

**Ironshore's** acquisition by **Liberty Mutual** and merger with Liberty International Underwriters (LIU) U.S. in 2017 enables us to bring even greater scale, expertise, innovation and product offerings to market. As a combined operation with approximately \$2.9 billion in gross written premium, brokers now have access to a top-tier insurer with greater capacity and product lines for a wide range of risks.



## IronHealth

**Founded in 2008**

GWP	\$500M
Employees	147
Unique Products	+17

IronHealth is focused on evolving healthcare related exposures, including:

- **Liability Risks**
- **Financial Risks**
- **Regulatory Risks**
- **Alternative Risk Transfer/Risk Financing**

The combination of **unrelenting financial pressure and healthcare reform** is transforming the way healthcare is financed, delivered and consumed.

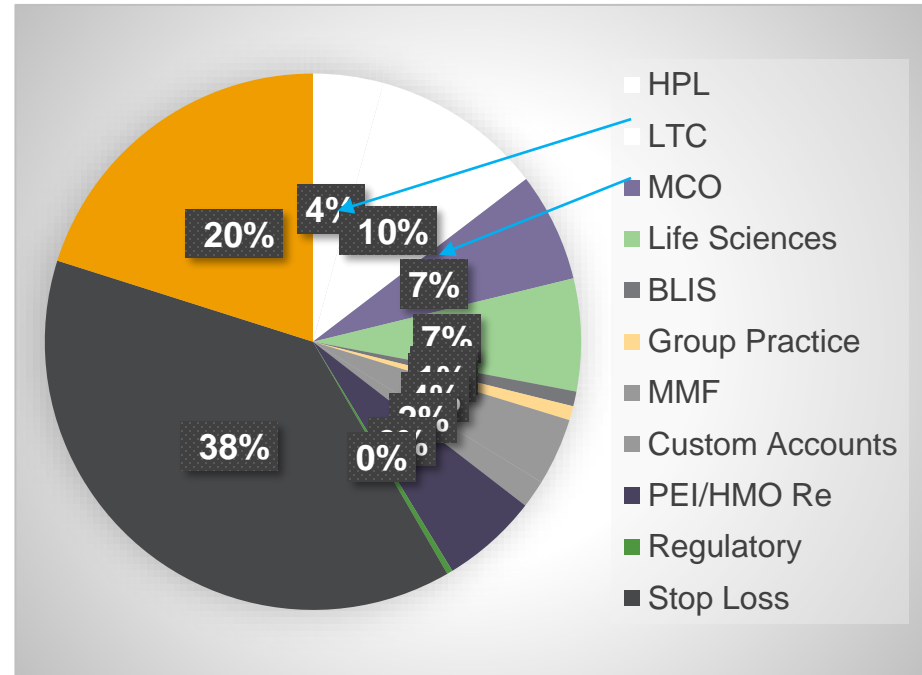
This transformation is being propelled, in large part, by **significant trends** that are changing healthcare's essential risk profile and challenging the market's ability to respond.

## OVERVIEW

**IronHealth** is committed to providing risk transfer solutions across the healthcare continuum from independent physicians to integrated delivery systems:

- Largest NAS Ironshore profit center  
Broad product suite that addresses the increasing level of integration in healthcare delivery
- Diverse product mix and aggressively managed portfolios across the healthcare spectrum
- Solution-oriented culture and deep contextual understanding of the healthcare market allows us to meet customer needs in a rapidly evolving environment

Lines of Business



No definitive guide, but considerations include:

**Size and surface area**

**Government or other internal investigations**

**Physician practice types**

- Use of chaperones

**Culture of compliance, safety and transparency**

**Credentialing intensity and background checks**

**Processes for identifying and reporting outlier events**

- Issues with same device/product
- Issues with same physician
- Issues with billing practices

**Past Batch Events**

**Insurance/Reinsurance**





## Claims Types & Theories

### Rogue Employees

- Sexual abuse/misconduct
- Angel of death; drug addiction-related offenses

### Product/Equipment Failures

- improper sanitation and sterilization practices;
- Malfunction of medication dispensing or radiation equipment

### “Financial Gain” Claims

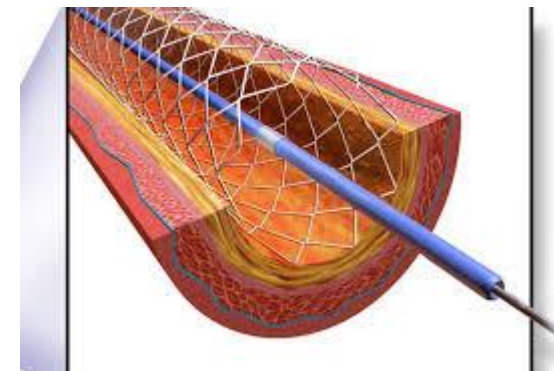
- Medical necessity
- Unnecessary procedures

**Common Thread: Misfeasance in delivery of professional medical services to a large number of patients. Resulting lawsuits are typically based on legal theories of direct corporate negligence by the Healthcare Organization or, alternatively, on vicarious liability theories.**

# Spikes in Frequency of Batch Claims – Why?

### Advances in Technology, such as:

- Unnecessary cardiac stent procedures
- Intuitive robotic surgeries
- Spine surgeries—experimental
- Genetic testing



Increasing revenue pressures upon healthcare systems to increase number of procedures performed

Inclusion of batch or related claim language in the professional and general liability policies

More aggressive/creative plaintiffs bar that enlists social media to sign up dozens, hundreds and even thousands of patients to obtain class action status to force healthcare institutions into expedited settlements

Healthcare institutions view liability insurance policies as backstopping their business decisions to invest or promote medical procedures which may ultimately be deemed to fall below the standard of care.



## A New Batch of Batch Claims?

### Description:

- These claims focus on the business side of healthcare brought upon by: hospital mergers and acquisitions; shrinking reimbursements ; need for investment capital, healthcare reform / new payment models, claiming that such factors result in systemic flaws and creating enterprise-wide liability. They tend to focus on the business of healthcare delivery rather than the medical outcome

### Theories:

- The type and quality of care received from the was medically inappropriate, not because of medical negligence, but because of financial pressure to contain costs/produce revenue. May also involve follow on suits from government investigations.
- Inventive plaintiff attorneys may ask a jury to “help me understand why my 125 clients did not receive the standard treatment for their cancer — was this denial of care based on money, managed care contracts, bundled payments?”<sup>1</sup>

## Illustrative Cases

### **Intuitive Surgical/Da Vinci Robots (Multi-state)**

- Allegation of institutional preference to use more costly technology when standard procedure may produced similar results
- 1,000+ patients filed actions against Intuitive; various institutions also implicated

### **Drs. Schlicht & Bryant (Otero County, NM)**

- Allegation of management company turning a blind eye to use of use of costly, revenue-producing off-label bone cement procedure
- 74 patients allege harm; \$32M+ paid to date in settlement; litigation ongoing

### **Dr. Midei/Cardiac Stent Cases (Baltimore, MD)**

- Medical necessity questioned in relation to insertion of stents in over 500 patients at St. Joseph Hospital
- \$37M patient settlement with follow-on regulatory action filed, which settled for \$22M

### **Dr. Farid Fata (Detroit, Michigan)**

- Physician intentionally misdiagnosed patients with cancer and provided subsequent treatment; over 550 patients received medically unnecessary infusions or injections
- Pleaded guilty to 13 counts of Medicare fraud, one count of conspiracy to pay or receive kickbacks and two counts of money laundering
- To Fata, "patients were not people. They were profit centers"
- Allegations that various institutions failed to intervene because of interest in profits

## Illustrative Issues

- Who decides whether claim can be batched
- Coverage litigation
- Civil vs criminal allegations
- Public relations (Reputational Risk)



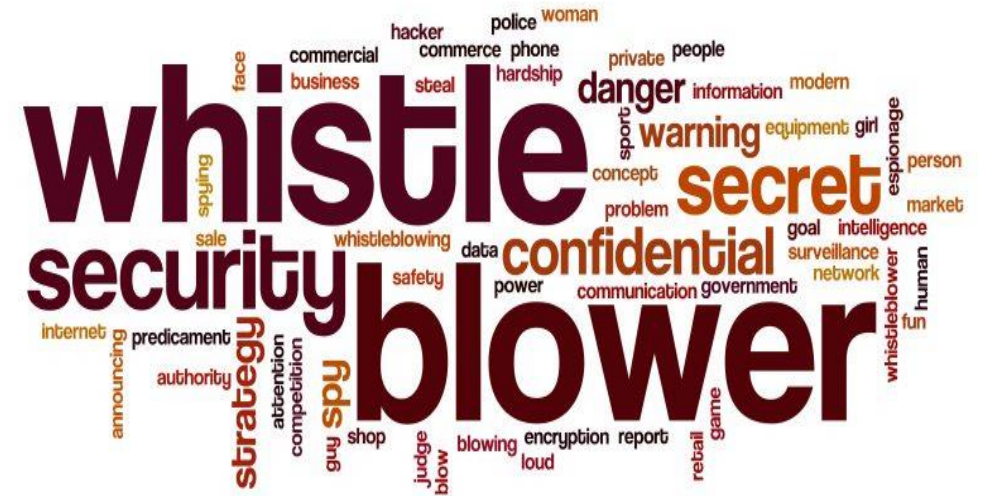
## Risk Management: High Risk Review

Larger healthcare systems with a high number of employed or contracted physicians where compensation is tied to volume of procedures or revenue producing procedures (i.e., economic credentialing).

Recent investments into certain volume enabling technology or equipment.

Rising or large revenues around certain procedures.

Whistleblower or DOJ investigation concerning medically unnecessary procedures.



# Risk Management Strategies

- Expansion of RM oversight to *all* operational areas
- Review of credentialing processes
- Attention to “outlier” procedures and revenue generatio
- Focus on compliance with organizational policies and procedures
- **INSURANCE , INSURANCE, INSURANCE** - With focus on terms and insurance *partners*



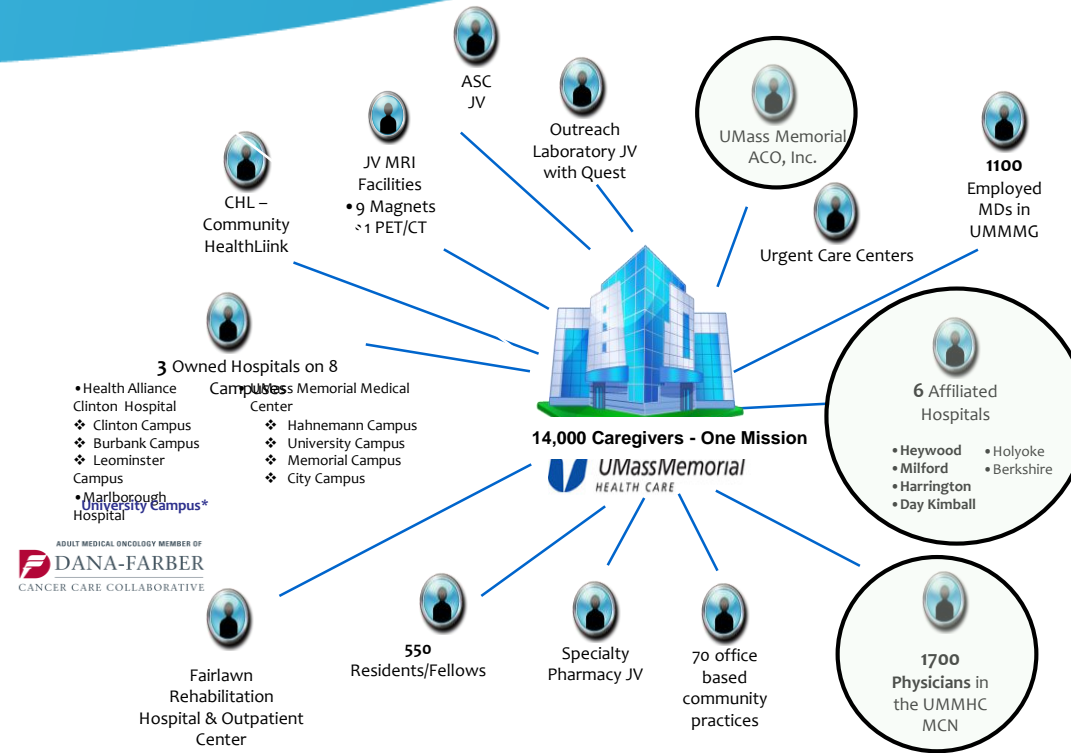
### Risk Management Strategies *if a Batch Event Occurs*

- If incident is ongoing, escalate internally per protocol, including calling general counsel and outside legal counsel:
- Stop the bleeding if the incident is ongoing
- Investigate/consider contacting law enforcement
- Assess whether or not there have been HIPAA or other security breaches
- Communicate and coordinate with internal PR and external crisis management teams
- Legal analysis of the situation
- Call your insurance carrier to put the carrier on notice





# UMASS MEMORIAL HEALTH CARE WHO WE ARE



The Clinical Partner of the University of Massachusetts Medical School

UMass Memorial Health Care is the largest health care system in Central Massachusetts. We are the clinical partner of UMass Medical School, with access to the latest technology, research and clinical trials.

Our hospitals receive full accreditation by the Joint Commission, a national organization that sets quality standards for hospitals. In addition to our fully equipped medical centers, our system also includes home health and hospice programs, behavioral health programs and community-based physician practices.



**UMassMemorial**  
**Health Care**

# CAPTIVE INSURANCE COMPANY PROFILE



- Cayman Captive in its 19<sup>th</sup> year of operation; **Commonwealth Professional Assurance Company, Ltd. (CPAC)** - UMMHC self-insured since 1985 (e.g. Trust prior to Captive)
- **Stable, mature and very experienced Board of Directors**  
*2 Physicians, the System CEO, Finance, Insurance, Legal and System Board representation; Claims Management & Clinical Risk updates at each Board meeting*
- **Batch Language added to CPAC Policy mid-2000's – 1 batch claim prior to adding language, near miss since language added (sterilization issue)**
- **UMMHC Senior Management and the CPAC Board of Directors are well informed on the topic of Batch Coverage**
- **Batch Claim reporting** (or confirmation of no Batch claims) ongoing to the UMMHC Self-Insurance Program Committee and the CPAC Board

## CLAIM Considerations – Batch Events

- Reach out to reinsurers as soon as initial investigation is complete. Early, open and honest discussion of event and intent to “batch”.
- Utilize reinsurer resources, they likely have experienced a “batch” event.
- Seek assistance as necessary for claims handling, batch event may overwhelm organization’s resources. Consider engaging TPA to help.
- Engage damages assessment experts/mediators with experience in batch.



**Utilize Experts. Ask Questions. Engage Others on the Front End of an Event(s)**

## CLAIM Considerations – Batch Events

- **Close coordination** of investigation between risk/claims, even at PCE stage.
- Be aware of “big picture” including **reputational risk**, publicity, financial impact on organization.
- Utilize **lessons learned from apology/disclosure cases**, similar approach.
- **Don't go it alone!** Seek assistance from broker, law firms with experience in batch claims.



# Steward Health Care System – Leading, Fully Integrated Health Care Organization

## Who We Are

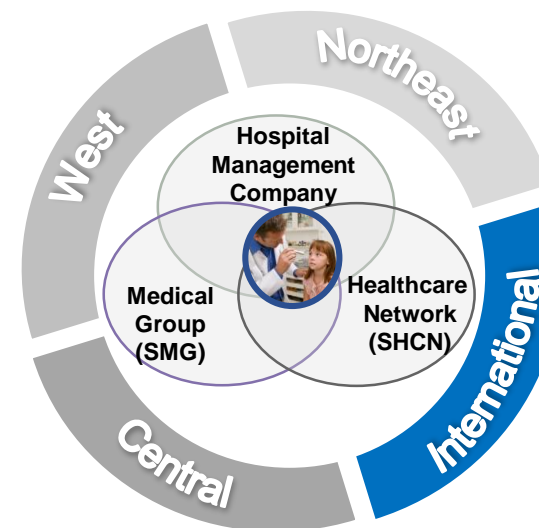
- Steward is an American based **nationally recognized, fully integrated health care system**, offering a comprehensive spectrum of services across 9 states in the United States
- Steward is the **largest private for-profit hospital operator in the United States** focusing on maximizing efficiency as a way to deliver the lowest cost / highest quality care for patients
- Operates **three scalable business units** – Steward Hospital Management Company, Steward Medical Group (“SMG”), Steward Health Care Network (“SHCN”) in North America as well as an international arm – Steward Health Care International (“SHCI”)

## Our Growth Trajectory

- Since Steward has continuously grown in Massachusetts:
  - Tripled its physician network and paneled lives; increased its managed lives by 900%
  - Significantly increased its access points along the spectrum of care (primary, acute, home, etc.)
  - Expanded its innovative, award-winning ACO model (\$50+ million of value to Steward)
- In 2017, Steward more than tripled its size in its national expansion:
  - Closed its acquisition of 8 hospitals from Community Health Systems in 3 states
  - Closed its merger with IASIS Healthcare of 18 hospitals across 6 states



World class health care where you live.



Leading fully-integrated community care organization positioned for continued growth



# CLAIMS MANAGEMENT AND PROACTIVE APPROACH

## THE PROCESS

- Integrated system with risk management to manage events with potential claims in mind
- Proactive claims investigations to identify potential batch issues
- Communication with PR to manage media exposure



# Steward Health Care System – Leading, Fully Integrated Health Care Organization

## Facts and Figures – By the Numbers

<b>Annual Revenue</b>	<b>~\$8 billion</b>
Employees	37,000
States	9
Hospitals	33
Total Beds	7,400
<i>Psych Beds</i>	1,050
Employed Providers	1,400
Practice Locations	385
Affiliated Providers	4,800
Paneled Lives	2,200,000
Total Patient Encounters	5,900,000



# SYSTEMS, RESERVES AND COVERAGE

- **Claims systems have challenges when entering batch claims with multiple plaintiffs**
- **Reserves should contemplate different injuries with variables considered for each plaintiff**
- **Consider utilizing coverage counsel to evaluate your policy**
- **Use your Captive Consultants!**



Our Captive Consultant





THANK YOU