SESSION TWO

Insurance: Weakness in the Front Line of Fiscal Defense

JOHN CHINO
Senior Vice President
Arthur J. Gallagher & Co.

DAVE GEORGE
Chief Executive Officer
Schools Excess
Liability Fund (SELF)

MICHAEL POTT
Chief Operating Officer
Public Risk Innovation, Solutions,
and Management (PRISM)

Risk Financing: California Public Entities

AGENDA

- Public entity risk financing – Joint Power Authorities (JPAs)
- Legislative overview since 2020; AB218 and AB452
- Insurance/Reinsurance landscape in California for public agencies
- Moving forward; Risk management and risk financing


400TX
400
400
TIME
$1.95
Sorry, America,
Your Insurance
Has Been
Canceled
How
Machine
Works

Joint Power Authorities- History

- A response to an acute insurance crisis in the early 1980's
- California law allows JPA's for needs/services among multiple public agencies (e.g. bridge authorities, special education services, etc.)
  - Risk financing JPA's began forming in the late 1970's and really took off in the 1980's during the insurance crisis
  - For the past 45+ years, nearly all public agencies in CA participate in a risk JPA
  - Tend to specialize by public service provided; cities, schools, special districts etc.
  - Many types of coverage: liability, property, workers' compensation, employee benefits

Joint Power Authorities- Structure

- A contract among members to provide for mutual risk sharing and financing of that risk
- It is **not** insurance
- Instead, it is self-insurance often supported by commercial insurance/reinsurance markets to enhance cost stability
- There is not an insurance policy issued. Instead, a Memorandum of Coverage is issued that sets forth the coverage that has been developed by the members. It is tailored to the needs of public agencies and the services they provide
- Each member pays a contribution to fund the risks assumed-actuarially determined
- JPAs are public entities and are **not for profit**

Legislative History

- AB 218: Became law January 1, 2020
- Revivor statute for victims of childhood sexual assault
  - 3-year window with no statute (2020-2022)
  - Moved the prior statute of limitations of age 26 to age 40 following that window
- One of 33 states that enacted a revivor statute during a similar period of time
- AB 452: Effective January 1, 2024, the legislature eliminated the statute of limitations for any sexual assault claims that occur after that date

Third Party Litigation Funding

- Private equity “invests” in lawsuits and funds them to conclusion
- This can take many forms – sometimes it is funding the lawsuit, other times it is advancing money to the plaintiff and/or defense attorney at an exorbitant interest rate
- No regulation
- Estimated to be over $15.2B in investments in the U.S. alone

Third Party Litigation Funding- Problems

- Allows outsiders to secretly use courtrooms as a trading floor
- Incentivizes the filing of non-meritorious litigation
- Allows funders to exercise undue control or influence over the litigation
- Contravenes legal ethics rules that are designed to ensure that lawyers act in the best interest of their clients
- Funders often paid before plaintiff
- National security risk

Claims Impacts of AB 218 and AB 452

- Defending claims that are decades old creates unique challenges
  - Availability of written evidence
  - Availability of witnesses; former employees, deceased employees
- Legal landscape
  - Very sensitive topic that is highly emotional
- Nuclear verdicts
  - $102M for two persons- Northern CA
  - $137M for two persons- Southern CA

Claims Impacts of AB 218 and AB 452 (cont. 2 of 2)

- The value of these claims is much different now than it was 20 or more years ago
- These same challenges will continue to exist in the future for claims with no statute of limitations
- These challenges lead to entities being forced to settle claims for much larger numbers than were seen in the past

New Costs to Public Entities- Retroactive

- Insurance archaeology
- Public entity — Self-insurance
- Pooled risk — JPA’s (still largely self-insured)
  - Assessments
  - Capital reserves (recall rebate ability)
  - Irrespective of your own claim experience

New Costs to Public Entities - Prospective

- Actuarial forecasts (and thus contributions) are seeing high double-digit inflationary trend year over year for the past 6+ years

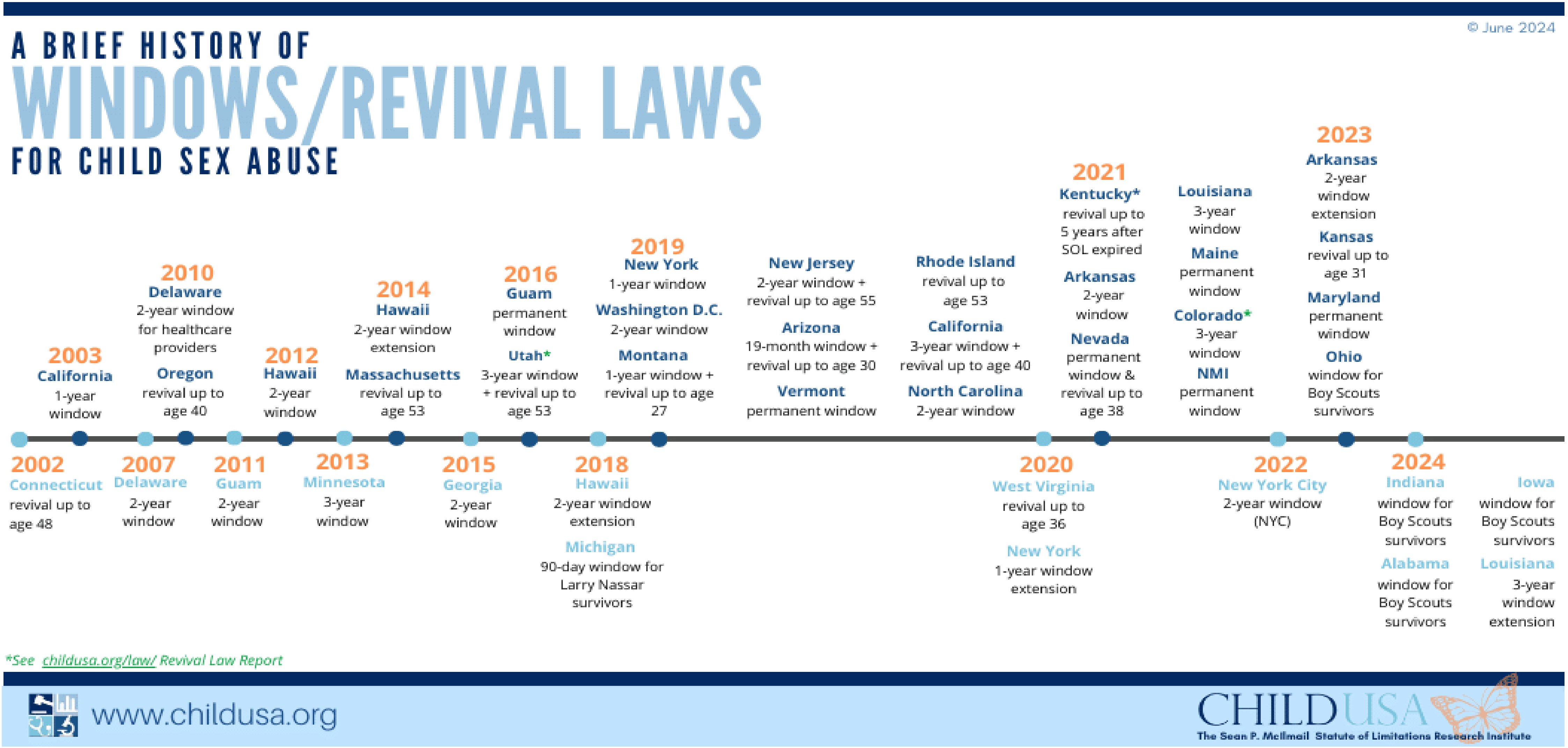
- Commercial insurance/reinsurance is tracking the same

- “Insurability” is becoming a real question

Funding

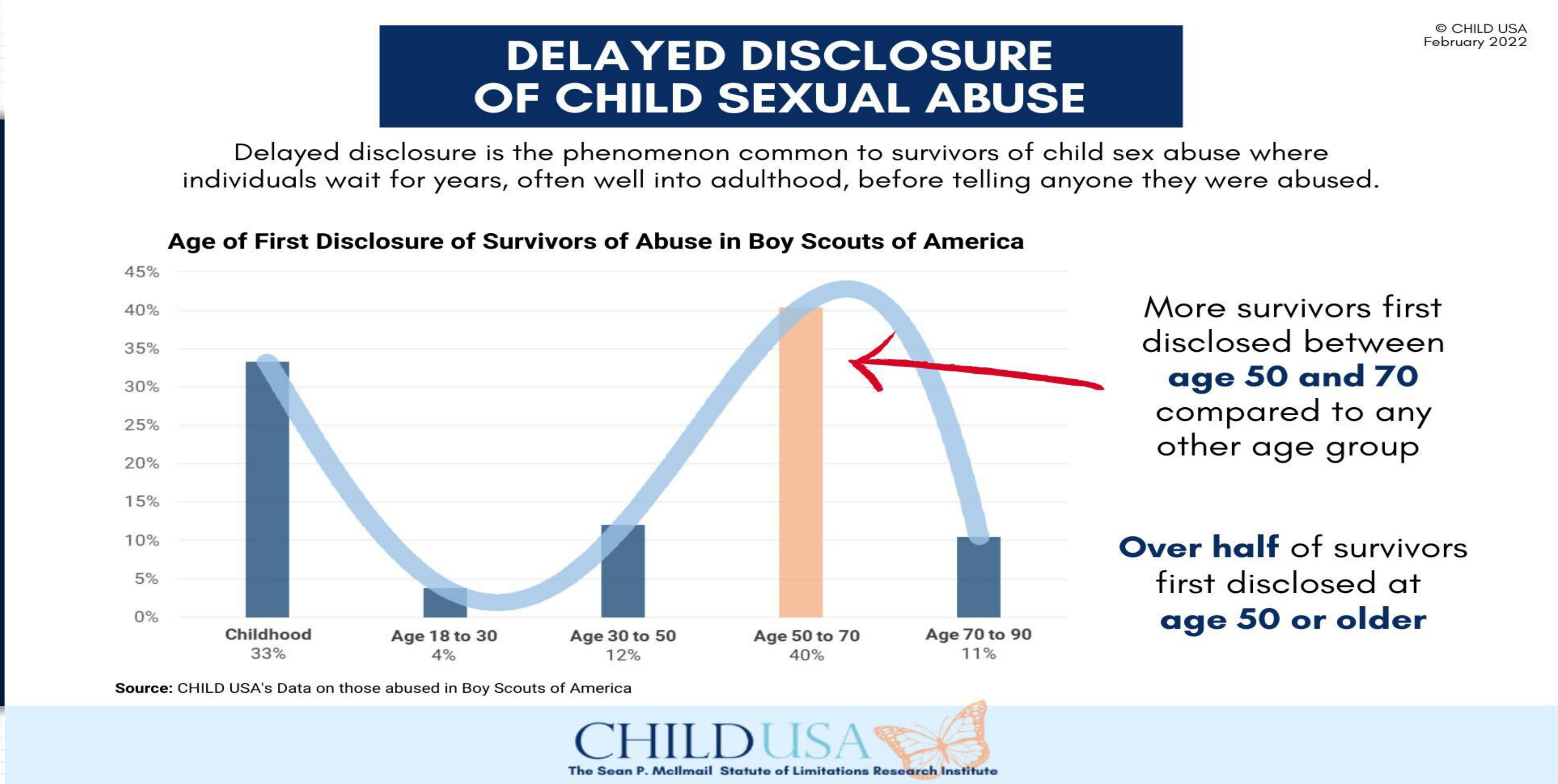
- Historical insurance policies, assuming they can be identified and the company is still in business - See Policy Archeology
- JPA's for claims since the 1980's
- Both of these on a historical basis often provide limits insufficient for the size of today's settlements
  - Occurrence based coverage
- Public agency general fund
- Financing option post-verdict

33 States Have Enacted Statutes



Why Have Sexual Abuse Claims Increased Dramatically?

The National Trend to Expand the Statute of Limitations (SOL) and Create a Reviver Window



Alternative Risk Financing Options

LEAST RISK

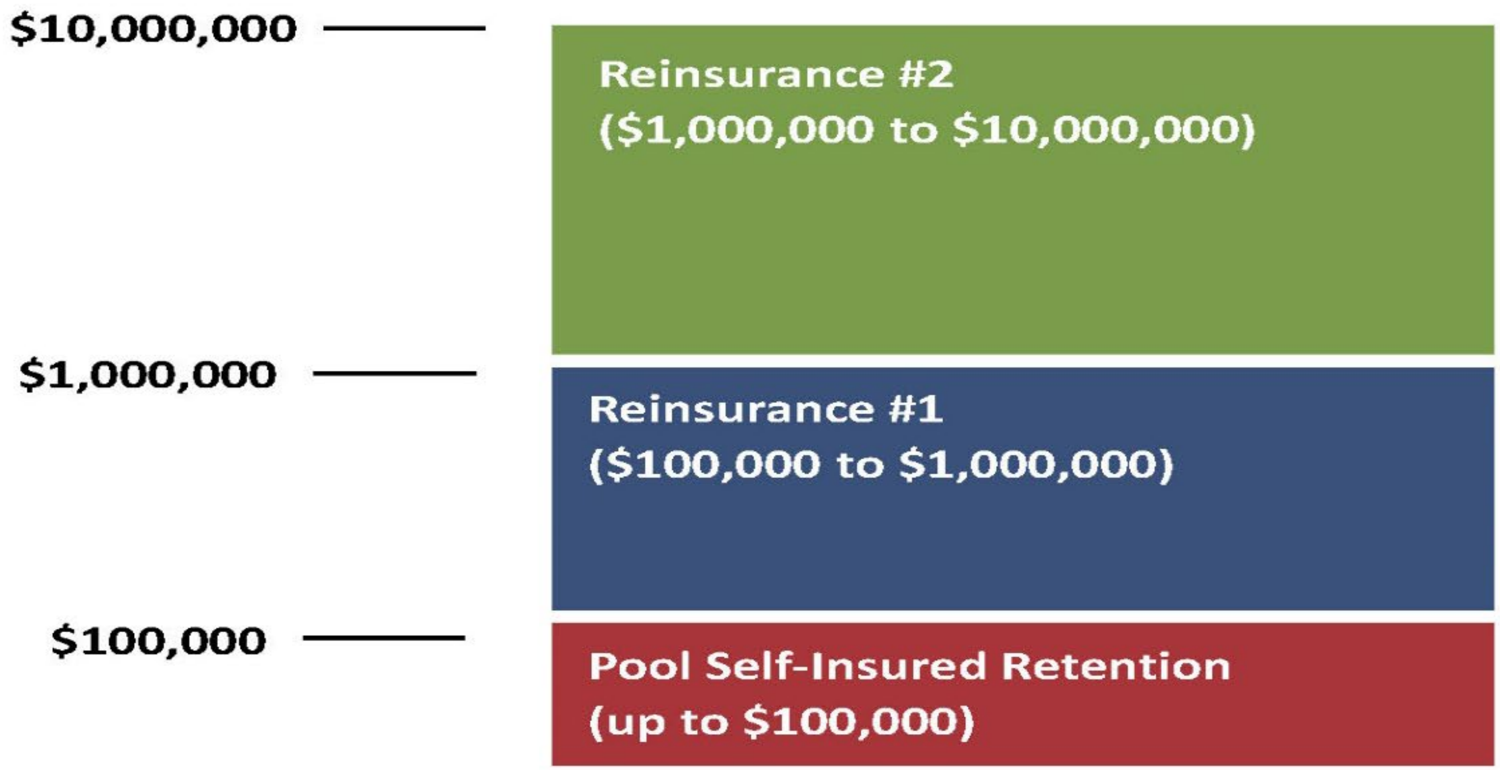
Guaranteed Cost (No Deductible)	Dividend Plan	Retrospective Rated Program (Retro)	Small Deductible	Large Deductible (Incurred Loss)	Large Deductible (Paid Loss)	Group Captive	Single Parent Captive	Self-Insurance

MOST RISK

LESS CONTROL

MORE CONTROL

Alternative Risk Financing Relies on Insurance



Increasing Costs, Reduced Capacity

2025 Praesidium SML Carrier Survey: trends over the next three years.

59% Expect the SML market will continue to harden

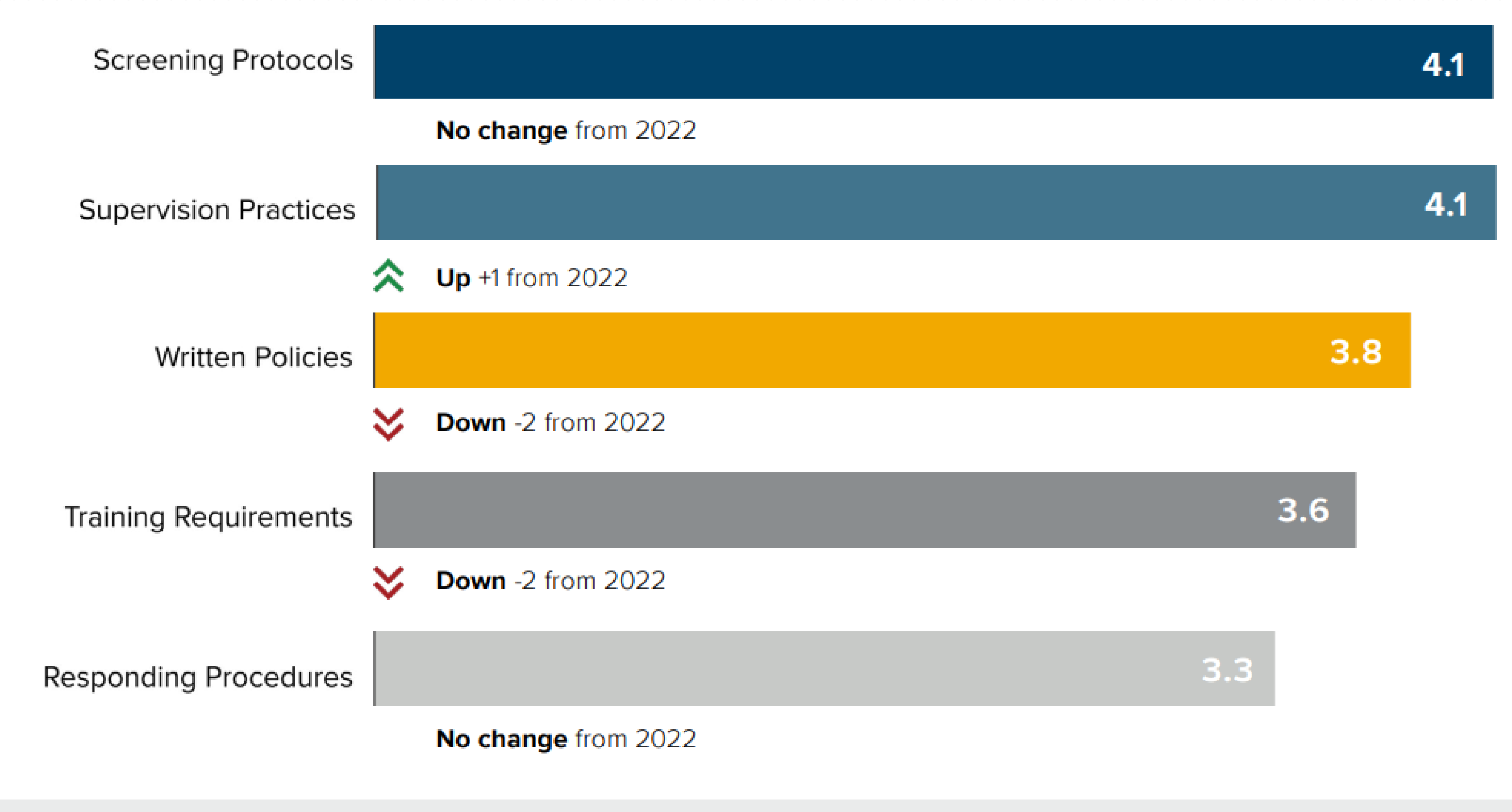
65% See limits of liability decreasing

71% Project underwriting expectations to increase

Praesidium, (2025, February) Insurance Carrier Benchmarking: Sexual Abuse and Molestation Liability. https://bit.ly/SMLBenchmarking24

Increasing Underwriting Expectations

2025 Praesidium SML Carrier Survey: carrier-ranked importance of risk mitigation efforts.



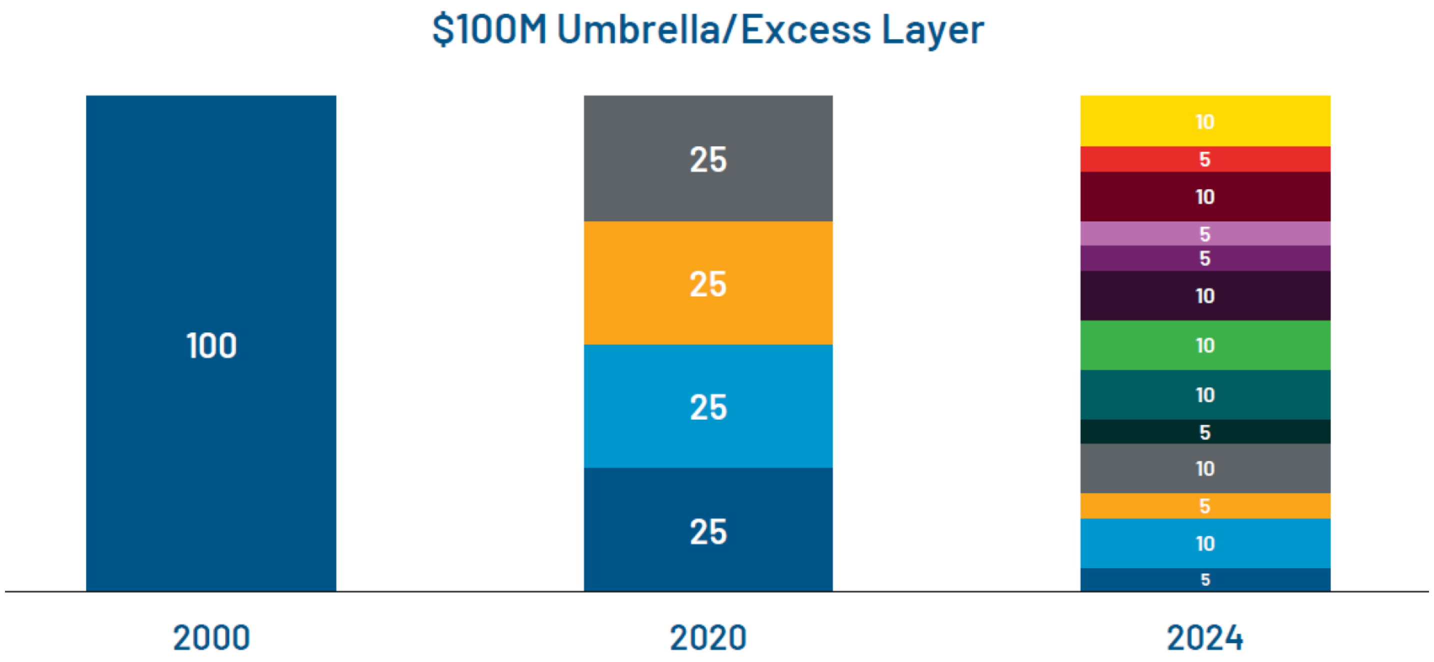
Praesidium, (2025, February) Insurance Carrier Benchmarking: Sexual Abuse and Molestation Liability. https://bit.ly/SMLBenchmarking24

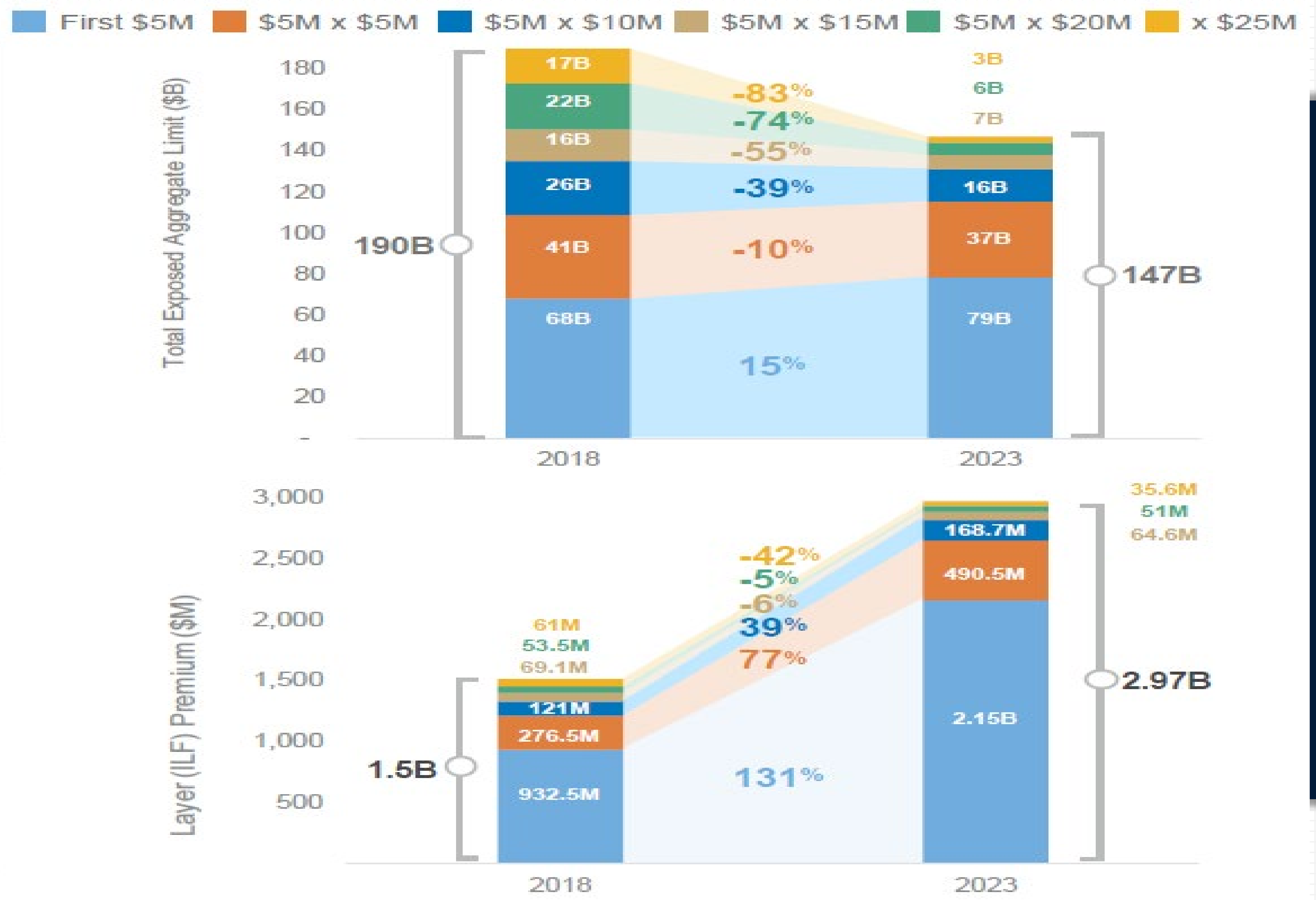
Emerging Risks

Insurance Industry Response

1. Retreat entirely
2. Claims made coverage
3. “Sunset Clauses”
4. Lower limits, higher deductibles & raise prices
5. Knowledge equals an exclusion
6. Aggregate limits matching claim limit
7. Per Victim Attachment
8. Mandatory Loss Control

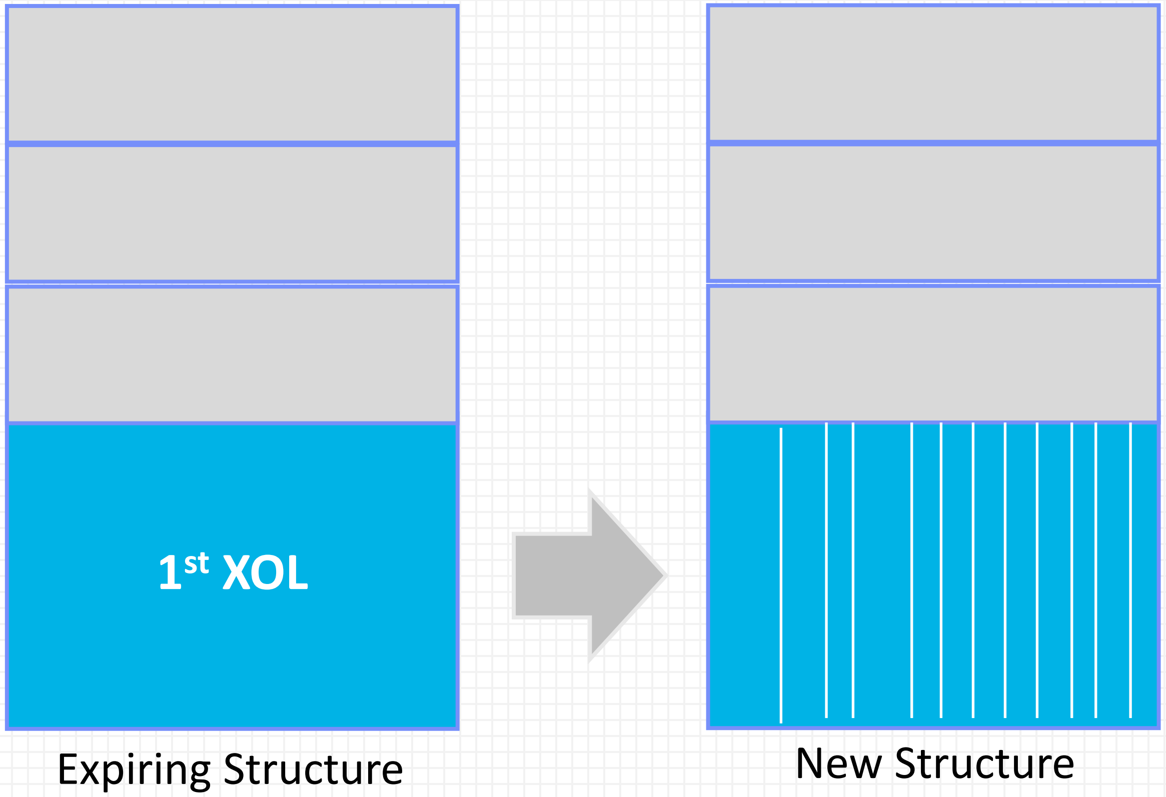
Social Inflation & Thermonuclear Verdicts Limits Compression




First $5M
$5M x $5M
$5M x $10M
$5M x $15M
$5M x $20M
x $25M
Total Exposed Aggregate Limit ($B)
180
160
140
120
100
80
60
40
20
-
17B
22B
16B
26B
41B
68B
190B
-83%
-74%
-55%
-39%
-10%
15%
3B
6B
7B
16B
37B
79B
147B
2018
2023
Layer (ILF) Premium ($M)
3,000
2,500
2,000
1,500
1,000
500
61M
53.5M
69.1M
121M
276.5M
932.5M
1.5B
-42%
-5%
-6%
39%
77%
131%
35.6M
51M
64.6M
168.7M
490.5M
2.15B
2.97B
2018
2023

Tower syndication / Quota Share

Syndication of one layer while expanding aggregate limit



- Syndication of layer introduced friendly competition
- 13 treaty markets support one contract
- Layer aggregate limits increased by 33%

$10,000,000 Primary Layer/ $32,000,000 Pool Aggregate

$8,000,000 xs $2,000,000 SIR / $28,800,000 Pool Aggregate
90% Placed via Syndicated Reinsurance Panel

WSRMP Co-participation	10.00%
Berkley Reinsurance Company	3.75%
MS Reinsurance	5.00%
Peak Reinsurance Company	7.25%
Greenlight Reinsurance Limited	7.25%
Convex Insurance UK Limited	7.50%
Amlin Syndicate 2001	6.25%
Argenta Syndicate 2121	6.25%
ARK Syndicate 4020	3.50%
Atrium Syndicate 609	1.50%
Canopius Syndicate 4444	5.75%
Chaucer Syndicate 1084	15.00%
Liberty Syndicate 4472	15.00%
QBE Syndicate 566	5.00%
Sirius International Syndicate 1945	1.00%

$5M/$5M SAM only placed at 90%

Self Insured Retention (SIR) $2M

Availability of CSA Insurance Coverage

- The changes in the statute of limitations in California has had a deleterious effect on not only the pricing of this insurance, but constriction of available limits of insurance
  - Transportation (buses) $5,000,000 minimum and still available but very expensive
  - $1,000,000 limit for counselors is still available but very expensive
  - Many other parties with exposures for litigation are finding it difficult to buy more than $100,000 per occurrence / $3,000,00 aggregate limits
  - This is devastating for public sector risk that rely on thousands of contractors to provide necessary services.

Prevention is Possible.

New research indicates that *prevention efforts are paying off – over time.*

Prevention Global Desk Guide for YSOs

- The “Big 6” Youth Serving Organizations (YSOs)
- 20% decline in the prevalence of child sexual abuse

This is “a significant finding that indicates the capacity of all YSOs to better prevent CSA.”

And… K-12 schools are lagging behind

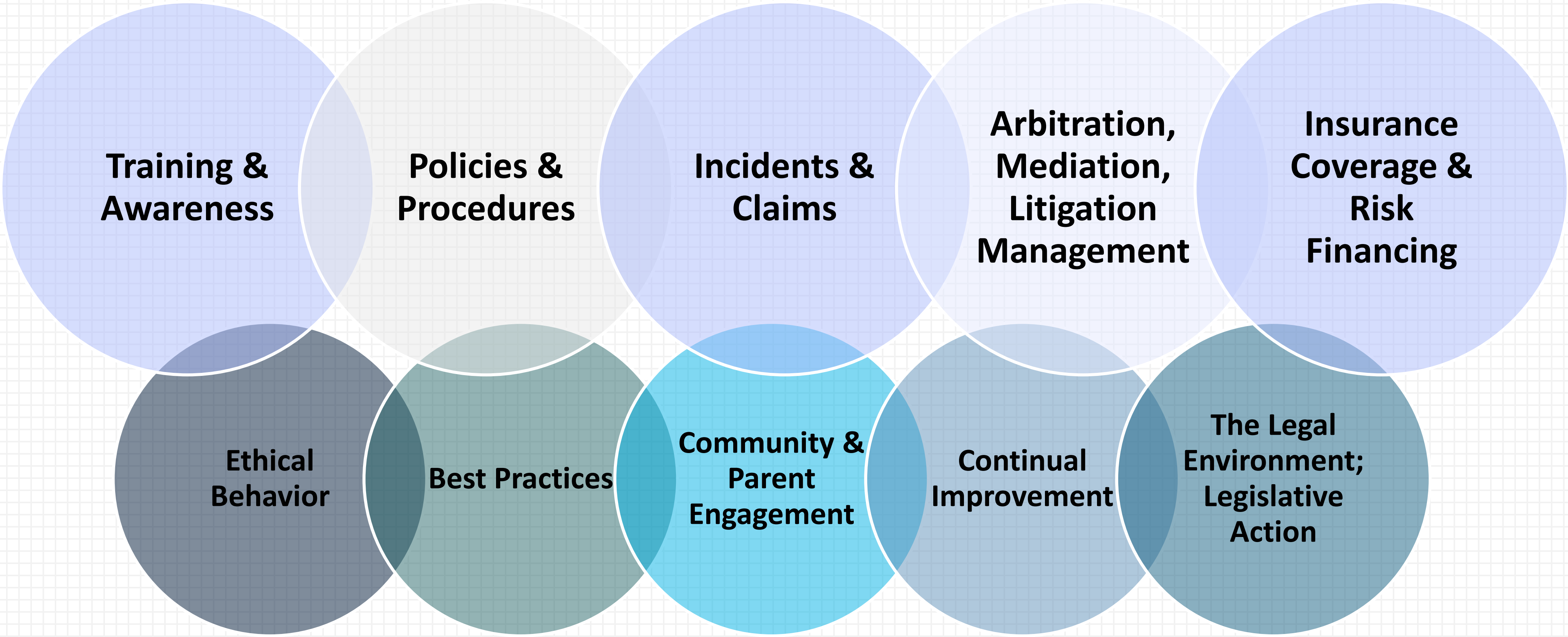
Assini-Meytin, L C., McPhail, I., Sun, Y., Mathews, B., Kaufman, K. L., & Letourneau, E. J. (2024). Child Sexual Abuse and Boundary Violating Behaviors in Youth Serving Organizations: National Prevalence and Distribution by Organizational Type. *Child Maltreatment.* https://doi.org/10.1177/10775595241290765.

RESOURCE Prevention Global Desk Guide: https://prevention.global/serving-youth

Transforming the Trend

Developing a broader understanding and approach. Together.

What can you start today?



https://www.ajg.com/us/transforming-the-trend-symposium-resources/

QUESTIONS

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