

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

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companies engaged in fierce competition for premium dollars to invest and maximum returns. They severely under price premiums for policies and insure very poor risks to get premium dollars to invest. This is known as the "soft" insurance market. When the investment climate turns sour, however, the industry responds by sharply increasing premiums and reducing coverage, creating a "hard" insurance market, usually degenerating into a "liability insurance crisis."²⁴ This is precisely what is proven conclusively by reviewing the comments and premium surveys discussed above.

Moreover, the Hunter report concluded that since the early 1980's, medical malpractice paid claims per doctor has tracked (approximately) medical inflation. In fact, inflation-adjusted payouts for physicians dropped between 2000 and 2002.²⁵ This data confirms that neither jury verdicts nor any other factor affecting total claims paid by insurance companies that write medical malpractice insurance have had much impact on the system's overall costs over time. Even more compelling, since 1975, the data shows that in terms of constant dollars, per doctor written premiums, the amount of premiums that doctors have paid insurers have gyrated almost precisely with the insurer's economic cycle which is (again) driven by such factors as changing insurance rates, mismanaged business and accounting practices as well as other causes.²⁶

MEDICAL MALPRACTICE IN ALASKA – THE REALITY

In summary, what is being touted as a basis for the passage of this legislation is without merit. The following facts underscore why this legislation is bad for Alaskans.

1. Fact: Citizens who are elderly or retired, citizens living a subsistence lifestyle, stay at home parents, and children will be without any legal remedy for even the most egregious instances of medical malpractice. Since they have little or no economic loss, they will not be able to obtain legal counsel to pursue a medical malpractice claim even if they are blinded, crippled, maimed, rendered sexually dysfunctional, or die after a sustained period of suffering. The cost of bringing such claims will easily exceed any potential recovery.

Real-Life Examples:

Linda McDougal -- this is the much-publicized case involving the 46-year-old Navy veteran who underwent a double mastectomy after mistakenly being diagnosed with an aggressive breast cancer. Her pathology results had been mistakenly switched with another woman who in fact had breast cancer. This woman is now horribly scarred for

²⁴ Americans for Insurance Reform, Medical Malpractice Insurance: Stable Losses/Unstable Rates in Wyoming, Feb. 2004.

²⁵ *Id.*

²⁶ *Id.*

life.

Jennifer -- Jennifer was a beautiful and vibrant 12-year-old Alaskan who was misdiagnosed twice over a three-day period with gingivitis. She was actually suffering from acute leukemia, which was very treatable and survivable but requires a timely diagnosis and urgent medical intervention. This could have been determined with a simple and inexpensive blood test. Unfortunately, given the delay in her diagnosis, she hemorrhaged and died before she could be properly diagnosed. Although this was a clear-cut case of negligence, over \$100,000 in out-of-pocket costs were expended before the case settled. Under the proposed legislation, this case could never have been prosecuted and Jennifer, her parents, and three siblings would have been without any remedy at all.

Susan -- Susan was an Alaskan in her early 30's when she was misdiagnosed and refused treatment by several health care providers over a five-day period. Unfortunately, she was suffering from a well-known medical and orthopedic emergency known as cauda equina syndrome. By the time she was finally correctly diagnosed, she had suffered permanent saddle anesthesia (no feeling from her waist to her mid thigh); permanent lower extremity neurological injuries requiring leg braces; and intermittent bowel and bladder dysfunction. Under this legislation, since she could still work at her profession, she would be left with a remedy of \$250,000. Despite clear-cut negligence, costs of over \$200,000 were expended before settlement was reached.

Traven -- Traven was an adventurous eight-year-old Alaskan boy who sustained lower extremity burns that were entirely survivable and treatable. Unfortunately, due to a series of medical mistakes, he languished for days with an increasingly more severe infection and ultimately lapsed into a coma (with his parents present). He was finally flown to Seattle Children's Hospital where he died. Under this legislation, it would be financially difficult or impossible to bring this claim since his entire family, like Jennifer's above, as well as his estate would be limited to \$250,000 in non-economic damages. Although an economic loss to his estate could be claimed, those losses are more difficult to establish for children and are usually so low as to not warrant prosecution of a claim absent non-economic damages.

Mrs. Strong -- Mrs. Strong was a 32-year-old Alaskan mother of two children who was drastically over dosed with a highly caustic chemotherapy drug. The overdose was approximately 8 times what she was supposed to be given and was repeatedly administered over the course of 4 days. She died a horrible death, essentially burning up from the inside out over the course of 6 days. She never had a chance to say goodbye to her children, husband, or her parents. Since she was a mom and essentially out of the work force, she would have had little economic loss and, under this bill, her estate and entire family would be limited to \$250,000 in losses.

These are only a few of the many actual cases that we can provide this committee as concrete examples of why this bill works such gross inequities on the innocent people in

Correction !!!

Americans die annually from medical errors in hospitals. On December 12, 2002, the New England Journal of Medicine reported that 4 out of 10 Americans and 1 out of 3 doctors say that they or their family members have been the victims of a preventable medical error; ~~10%~~ of doctors say that a family member died as a consequence.²⁸ How will this legislation address these problems other than to make it financially easier on negligent health care providers and their insurance carriers?

→ should be 7%
Fact: Repeat offender physicians are responsible for most medical errors. According to a study recently conducted in North Carolina, 3.2% of North Carolina doctors had paid out two or more medical malpractice settlements to patients but were responsible for a total of nearly 42% of all payments reported to the National Practitioner Data Bank.²⁹ A study conducted by researchers at Vanderbilt University found that doctors with a history of malpractice claims can be expected to have "appreciably worse claims experience" than other doctors in the future.³⁰ This legislation would protect those health care providers by sharply limiting their exposure for continued malfeasance.

Fact: Medical Malpractice insurance costs are declining as a percentage of physician expenses. A recent USA Today report stated that, on average, doctors currently pay 3.2% of their revenue for medical liability insurance.³¹ In 1987, medical malpractice insurance costs were, on average, 12.1% of the physician's total expenses. In the ensuing decade that share was cut in half, falling to less than 7% of total expenses in the late 1990's. Based on the most current statistics available from the American Medical Association, there is a clear and consistent decline in medical malpractice costs as a percentage of a physician's total expenses.³²

In conclusion, this is without a doubt the most offensive example of self-interest legislation proposed in the last 25 years in Alaska. It is utterly without any reliable factual support for the premise of its proposed utility. It will only serve to benefit the insurance industry and those physicians who engage in negligent and sometimes reckless misconduct. While there are relatively few cases filed in this state alleging medical malpractice, this legislation will severely impact if not entirely eliminate a substantial portion of legitimate and worthy claims. It will leave horrifically injured

²⁸ *New England Journal of Medicine*, December 12, 2002.

²⁹ *Medical Misdiagnosis in North Carolina*, Public Citizens Congress Watch, April 2003.

³⁰ "Medical Malpractice Experience of Physicians: Predictability or Haphazard?" *Journal of the American Medical Association*, 1989--cited in *Medical Misdiagnosis*, *Id.*

³¹ "Hype Outpaces Facts in Malpractice Debate," *USA Today*, March 3, 2003.

³² American Medical Association, *Socioeconomic Characteristics of Medical Practice*, 2000 as quoted from N.C. trial lawyer expose.

our State who are the most vulnerable. If you would like to hear about them, please advise and we will provide additional summaries.

Fact: The passage of this legislation will have no impact on medical malpractice premiums in this state and will have no impact on the ability to attract health care professionals to practice here. Other than anecdotal and unsupported comments to the contrary, there is absolutely no evidence to suggest that health care providers stay away from Alaska because of medical malpractice insurance premiums. Indeed, it is considered one of the top 75 places in the United States to practice medicine.²⁷ This is based in no small part on the lack of managed-care. Further, according to the State Medical Board, the number of medical board licensees has more than doubled since 1985.²⁸ As discussed above, the argument that the lack of caps discourages doctors from practicing has been posited and rejected by the CBO and others.

Fact: The Institute of Medicine reported three years ago that as many as 98,000 Americans die annually from medical errors in hospitals. On December 12, 2002, the *New England Journal of Medicine* reported that 4 out of 10 Americans and 1 out of 3 doctors say that they or their family members have been the victims of a preventable medical error; 10% of doctors say that a family member died as a consequence.²⁹ How will this legislation address these problems other than to make it financially easier on negligent health care providers and their insurance carriers?

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²⁷ Modern Physician, "The List" www.modernphysician.com.

²⁸ Chart "Total Medical Board Licensees by Fiscal Year, 1985-2003. Division of Occupational Licensing

²⁹ *New England Journal of Medicine*, December 12, 2002.

³⁰ *Medical Misdiagnosis in North Carolina*, Public Citizens Congress Watch, April 2003.

³¹ "Medical Malpractice Experience of Physicians: Predictability or Haphazard?" *Journal of the American Medical Association*, 1989--cited in *Medical Misdiagnosis, Id.*

currently pay 3.2% of their revenue for medical liability insurance.³² In 1987, medical malpractice insurance costs were, on average, 12.1% of the physician's total expenses. In the ensuing decade that share was cut in half, falling to less than 7% of total expenses in the late 1990's. Based on the most current statistics available from the American Medical Association, there is a clear and consistent decline in medical malpractice costs as a percentage of a physician's total expenses.³³

Fact: Medical malpractice cases make up a very small percentages of cases filed in Alaska.

Fact: Most medical malpractice verdicts in Alaska are in favor of the defendant doctor. In the history of Alaska there is only one jury verdict against health care providers that was over one million dollars.

In conclusion, this is without a doubt the most offensive example of self-interest legislation proposed in the last 25 years in Alaska. It is utterly without any reliable factual support for the premise of its proposed utility. It will only serve to benefit the insurance industry and those physicians who engage in negligent and sometimes reckless misconduct. While there are relatively few cases filed in this state alleging medical malpractice, this legislation will severely impact if not entirely eliminate a substantial portion of legitimate and worthy claims. It will leave horrifically injured patients and their families with a lifetime of misery, pain, and suffering with no remedy.

There is a substantial statistical chance that this legislation will affect one or more of you or a member of your family on a very personal basis during your lifetime. When you consider that it is estimated by health care safety monitors in Alaska that over 30 percent of providers don't even wash their hands before examining a patient, the chances of negligently passing on infectious disease is very high.³⁴ At least consider your safety and the safety of others before passing this grossly unfair legislation.

Very Truly Yours,

The Alaska Action Trust
Melissa Fouse, Executive Director

³² "Hype Outpaces Facts in Malpractice Debate," *USA Today*, March 3, 2003.

³³ American Medical Association, *Socioeconomic Characteristics of Medical Practice*, 2000 as quoted from N.C. trial lawyer expose.

³⁴ Anchorage Daily News, March 2, 2004, Page D-1 "Patient Power"



Medical Malpractice Caps

**The Impact of Non-Economic Damage Caps on
Physician Premiums, Claims Payout Levels,
and Availability of Coverage**

by

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Medical Malpractice Caps

The Impact of Non-Economic Damage Caps on Physician Premiums, Claims Payout Levels, and Availability of Coverage

Executive Summary

Soaring premiums on medical malpractice insurance (“med mal”) are a national crisis, invading the practice of medicine, threatening the availability of care, and prompting widespread public outcry. Physicians and the insurance industry place the blame on out-of-control jury awards, and, in response, 19 states have implemented caps on non-economic damages—a key measure now included in various congressional proposals. However, the actual experience of the states with caps does not support these proposals. It shows that:

Caps did reduce the burden on insurers...

- In states with caps, the median payout between 1991 and 2002 was 15.7% lower than the median in states without caps, despite the fact that many states did not impose the caps until late in the 12-year period.
- Moreover, in states with caps, the payouts increased by 83.3% from 1991 to 2002, while the rate of increase in states without caps was 127.9%.

But most insurers continued to increase premiums at a rapid pace, regardless of caps...

- In states with caps, the median annual premium went up by 48.2%, but, surprisingly, in states *without* caps, the median annual premium increased at a *slower* clip—by 35.9%.
- Among the states with caps, only 10.5% experienced flat or declining med mal premiums. In contrast, among the states *without* caps, the record was actually *better*: 18.7% experienced flat or declining premiums.

These counter-intuitive findings can lead to only one conclusion: There are other, far more important factors driving the rise in med mal premiums than caps or med mal payouts. These include:

- The medical inflation rate. In the 12-year period through 2002, medical costs rose 75%.
- The insurance business cycle. The property and casualty industry as a whole suffered an unusually long 12-year “soft” period in the insurance business cycle through 1999, resulting in loose underwriting practices—not enough money in premiums collected to cover anticipated claims. At the end of the cycle, in an attempt to catch up, insurers began to tighten underwriting standards and raise premium rates.

- The need to shore up reserves. Med mal insurers have been consistently under-reserving since 1997—to the tune of \$4.6 billion through December 31, 2001. The only way to shore up reserves is to increase premiums.
- A decline in investment income. With falling stock prices and declining interest rates, investment income for the entire property/casualty industry fell 23% in 2001 compared to 2000, and then *another* 2.5% in 2002. Moreover, investment income is particularly critical for lines of business like med mal where the duration of claims payouts typically spans several years.
- Financial safety. Based on the Weiss Safety Ratings, we find that 34.4% of the nation's med mal insurers are vulnerable to financial difficulties (those with a rating of D+ or lower), as compared to 23.9% of the property and casualty industry as a whole. In order to restore their financial health, many med mal insurers will remain under pressure to increase premiums despite new laws to cap payouts.
- Supply and demand. The number of med mal carriers increased until 1997, but has since fallen from 274 in that year to 247 in 2002. Moreover, in certain regions and medical specialties, there is evidence that some med mal insurers have pulled out or discontinued coverage.

Recommendations:

Legislators should put proposals involving non-economic damage caps on hold until convincing evidence can be produced to demonstrate a true benefit to doctors in the form of reduced med mal costs. *Regulators* must review and revise their parameters for approving rate increases. *Insurance companies* must never again allow marketing to divert or pervert prudent actuarial analysis and planning. The *medical profession* must assume more responsibility for policing itself, while states must be more pro-active in reviewing the licenses of individual practitioners. And *consumers* must not relinquish their right to sue for non-economic damages until the medical profession and/or state and federal governments provide more adequate supervision and regulation of doctors, hospitals, and other health care providers.

Introduction

In the last few years, soaring premiums on medical malpractice insurance ("med mal") have emerged as a national crisis, invading the practice of medicine, threatening the availability of care, and prompting widespread public outcry.

Many doctors, particularly in high-risk specialties, have received renewal notices announcing premium increases of 100% or even 200% over the previous year. Others have simply been dropped by their insurance carriers, forcing them to shop for new med mal coverage, practice without any coverage at all, or stop practicing medicine altogether—all painful alternatives.

The insurance industry places the blame on out-of-control jury awards. In response, legislators in many states, accepting this argument at face value, have implemented tort reform to restrict awards in their states. Their primary vehicle: *Non-economic damage caps*, which limit the awards to an injured patient for intangible injuries, such as pain and suffering. Since 1975, 19 states have implemented these caps¹ at various levels ranging from \$250,000 to \$1 million, as follows:

<u>State</u>	<u>Cap (\$)</u>	<u>Year Adopted</u>
Alaska	500,000	1997 ²
California	250,000	1975
Colorado	250,000	1998
Hawaii	375,000	1976
Idaho	682,000	1990*
Indiana	1,000,000	1990
Kansas	250,000	1994
Louisiana	500,000	1975
Maryland	805,000	1986*
Massachusetts	500,000	1997
Michigan	624,000	1993*
Missouri	547,000	1988*
Montana	250,000	1997
New Mexico	600,000	1996
North Dakota	500,000	1996
Utah	250,000	1996
Virginia	1,000,000	1992
West Virginia	1,000,000	1986
Wisconsin	350,000	1995* ³

*Caps are adjusted annually for inflation.

¹ The implementation of caps on non-economic damages has no impact on jury awards for actual damages such as medical expenses and loss of income.

² Applies to incidents occurring before August 1997. After August 1997: the cap is the greater of \$400,000 or life expectancy times \$8,000 except in the case of severe disfigurement or physical impairment in which the cap is the greater of \$1 million or life expectancy times \$25,000.

³ Applies to damages from all health care providers except in wrongful death cases. Damages in wrongful death are limited to \$500,000 for the death of a minor and \$350,000 for the death of an adult.

Now, in an attempt to cope with the emerging med mal crisis, the push to impose caps has reached the federal level, with a number of legislative proposals to institute reforms, usually including, as the most salient feature, a \$250,000 nationwide cap.

This white paper is not driven by a political ideology or industry-driven self-interest. It is, rather, an objective, data-driven analysis of:

- the real relationship between caps and med mal premiums (Part 1)
- other forces behind rising premium rates (Part 2)
- lessons to be learned from the crisis along with effective long-term solutions (Part 3).

Part 1. The Real Relationship between Caps and Med Mal Premiums

On the surface, the theory behind caps on non-economic damage awards seems logical: caps would limit the payouts by insurers, and the lower payouts, in turn, would naturally enable the insurers to reduce med mal premiums. As we shall demonstrate below, however, in the real world of the med mal insurance business, only the first half of this theory is working.

Caps do reduce the burden on insurers...

Using data provided by the National Practitioner Data Bank, we compared the median payouts in the 19 states with caps to those in the 32 states without caps⁴ for the period between 1991 and 2002, with the following results:

- **Payouts reduced.** In states without caps, the median payout for the entire 12-year period was \$116,297, ranging from \$75,000 on the low end to \$220,000 on the high end. In states with caps, the median was 15.7% lower, or \$98,079, ranging from \$50,000 to \$190,000.⁵ Since caps in many states were not imposed until late in the 12-year period, this represents a significant reduction.
- **Growth in payouts slowed substantially.** The median payout in the 32 states without caps increased by 127.9%, from \$65,831 in 1991 to \$150,000 in 2002. In contrast, payouts in the 19 states with caps increased at a far slower pace—by 83.3%, from \$60,000 in 1991 to \$110,000 in 2002.

In short, it's clear that caps do accomplish their intended purpose of lowering the average amount insurance companies must pay out to satisfy med mal claims.

But insurers continue to increase premiums at a rapid pace, regardless of caps.

Using 1991 to 2002 data published by the Medical Liability Monitor, we examined the median med mal premiums paid by doctors in three high-risk specialties—internal medicine, general surgery, and obstetrics/gynecology. The results:

1. **States with caps had sharper increases in median annual premiums.** Since the insurers in the states with caps reaped the benefit of lower med mal payouts, one would expect that they'd reduce the premiums they charged doctors. At the very minimum, they should have been able to slow down the rate of premium increases. Surprisingly, the data show they did precisely the opposite:
 - In the 19 states with caps, the median annual premium increased by 48.2%, from \$20,414 in 1991 to \$30,246 in 2002.

⁴ For the purposes of this analysis, the District of Columbia is being referred to as a "state" since it effectively operates as such with regard to insurance regulation.

⁵ Adjusted for inflation in order to evaluate figures spanning multiple years.

- In the 32 states *without caps*, the median annual premium actually increased at a *slower pace*—by 35.9%, from \$22,118 in 1991 to \$30,056 in 2002.

Thus, on average, *doctors in states with caps actually suffered a significantly larger increase than doctors in states without caps.*

2. A smaller proportion of states with caps were able to contain premium increases. In some states, the median annual premiums remained flat or even declined at various times during the period. Was *this* related to the imposition of caps? In the overwhelming majority of states, the answer is clearly “no.” Indeed...

- Among the 19 with caps, only two states, or 10.5%, experienced flat or declining med mal premiums following the imposition of caps.
- Meanwhile, among the 32 without caps, the record was actually much better: Six states, or 18.7%, experienced flat or declining premiums.

3. Premiums in states with caps are more likely to exceed national median. Focusing on the most recent data, we find that:

- In 47.4% of the states with caps (9 out of 19), 2002 median premiums were below the national median premium of \$30,093.
- Meanwhile, in 50% of the states without caps (16 out of 32), 2002 median premiums were *below* the national median.

In short, the results clearly invalidate the expectations of cap proponents. To review the surprising facts:

- Insurers in states with caps raised their premiums at a significantly faster pace than those in states without caps.
- Even with the imposition of caps, insurers in nearly nine out of ten states continued to raise rates, while insurers in states without caps were actually *more* likely to hold or cut their premium rates.
- In states with caps, insurers are more likely to charge med mal premiums exceeding the national median than those in states without caps.

These counter-intuitive findings can lead to only one conclusion: There are other, far more important factors driving the rise in med mal premiums than caps or med mal payouts, the subject of the next section.

Part 2. Other Factors Driving Up Med Mal Premiums

We have identified six factors driving up premiums, each of which may be exerting a greater impact on premiums than the presence or absence of caps. These are (1) medical cost inflation, (2) the cyclical nature of the insurance market, (3) the need to shore up reserves for policies in force, (4) a decline in investment income, (5) overall financial safety considerations, and (6) the supply and demand of coverage. We examine each of these factors below.

1. Medical Cost Inflation

The medical inflation rate in the 12-year period was 75%⁶ (i.e., \$1 of medical expenses in 1991 cost \$1.75 in 2002). However, throughout the country, insurers had a general tendency to let their premium increases lag behind the pace of medical inflation. This was most likely due to the extended soft market experienced by the entire property and casualty insurance industry in the 1990s, explained below.

2. The Cyclical Nature of the Insurance Market

The market for property/casualty insurance, including med mal, is historically and fundamentally cyclical, with periods of rising premium rates followed by periods of steady or declining premiums. In the declining portion of the cycle—"a soft market"—insurers relax their underwriting standards and underprice their products in order to retain or gain market share.

The most recent soft market lasted longer than usual—12 years, from 1987 to 1999—probably because of the raging bull market in stocks. Insurers made so much money in their investments they were able to aggressively underprice their policies, deliberately lose money in their underwriting, and still turn a profit overall. As a result, losses in their core operations, more than offset by surging gains from the stock market boom, were largely overlooked by the industry and regulators alike.

All that changed when the stock market boom turned to bust. Property and casualty insurers had to confront the ramifications of their loose underwriting practices: not enough money in premiums collected to cover anticipated claims. That's when they began to seriously tighten underwriting standards and raise premium rates.

3. The Need to Shore Up Reserves for Policies in Force

When insurers write a new policy, they look at past claims experience, make some actuarial assumptions, and place a portion of that policy's premium into a reserve to cover expected future claims. A prudent insurer will make conservative assumptions and err on the side of having more in reserve than it ultimately needs to pay claims. At the end of each year, the insurer then evaluates its reserves for each block of business and determines if a change is warranted to either add or subtract reserves.

⁶ Medical inflation rate: 1991: 8.7%, 1992: 7.4%, 1993: 5.9%, 1994: 4.8%, 1995: 4.5%, 1996: 3.5%, 1997: 2.8%, 1998: 3.2%, 1999: 3.5%, 2000: 4.1%, 2001: 4.6%, 2002: 4.7%.

Data reported to the National Association of Insurance Commissioners (NAIC) show that med mal insurers have been consistently under-reserving since 1997—to the tune of \$4.6 billion through December 31, 2001. The under-reserving came to a head in 1999, at the tail end of the soft market. That's when loose underwriting practices caught up with the insurers, as claims rose to a higher level than expected. Thus, even before the bull market ended in the stock market, insurers were coming under increasing pressure to boost their reserves to make up for past shortfalls.

There's only one place these funds could come from—the company's capital; and there was only one way the company could maintain or build its capital—by making more profits. Thus, premium increases were inevitable.

4. A decline in investment income

Until 2000, most of the additional profits insurers needed could be covered by rising investment income and gains from the booming stock market. But during the three-year bear market from 2000 to 2002, as large stock market gains turned to even larger stock market losses, insurers were confronted with double trouble:

- After just one year of premium increases, they still had barely begun to restore their reserves.
- Now, aggravating their difficulties, they also needed to compensate for stock market losses. With falling stock prices and declining interest rates, investment income⁷ for the entire property/casualty industry fell 23% in 2001 compared to 2000, and then *another* 2.5% in 2002; and we must assume that med mal insurers suffered a similar decline. Indeed, investment income is particularly critical for lines of business like med mal where the duration of claims payouts typically span several years.

Thus, it was the combination of two powerful forces—under-reserving throughout most of the 1990s *plus* the rapid fall in investment income in the 2000s—that largely drove the unusually rapid premium increases, not only in med mal, but in many other property and casualty lines as well.

5. Financial Safety

If insurers do not replace capital that has been used to shore up reserves, the financial strength of the company deteriorates, ultimately leading to the possibility of financial failure.

The Weiss Safety Ratings measure an insurer's overall financial strength based on evaluations of its capitalization, reserve adequacy, profitability, liquidity, and stability. Among the 2,851 property and casualty insurers reporting to the NAIC, 247 companies wrote at least some med mal policies in 2002, with 90 of these deriving at least 50% of their total premiums from the med mal sector.

⁷ Investment income is defined as capital gains plus interest income.

Within this group of 70, which we define as “med mal insurers,” there were a higher-than-average number of vulnerable companies, as compared to the property and casualty industry as a whole (Table 1).

Table 1. Safety of Insurers: Med Mal vs. All Property and Casualty Insurers

Weiss Safety Rating Category	2003 All P&C Insurers	2003 Med Mal Insurers
Secure	76.1%	65.5%
Vulnerable	23.9%	34.4%

“Secure” includes companies rated A (Excellent), B (Good), and C (Fair).

“Vulnerable” includes those rated D (Weak) and E (Very Weak)

What progress have med mal insurers made in restoring their financial health by raising premiums? So far, none: Despite higher premiums since 1999, there has been no improvement in the financial safety of the med mal insurers. Quite to the contrary, the proportion of insurers in the “vulnerable” category has increased since 1999 (Table 2).

Table 2. Safety of Med Mal Insurers: 2003 vs. 1999

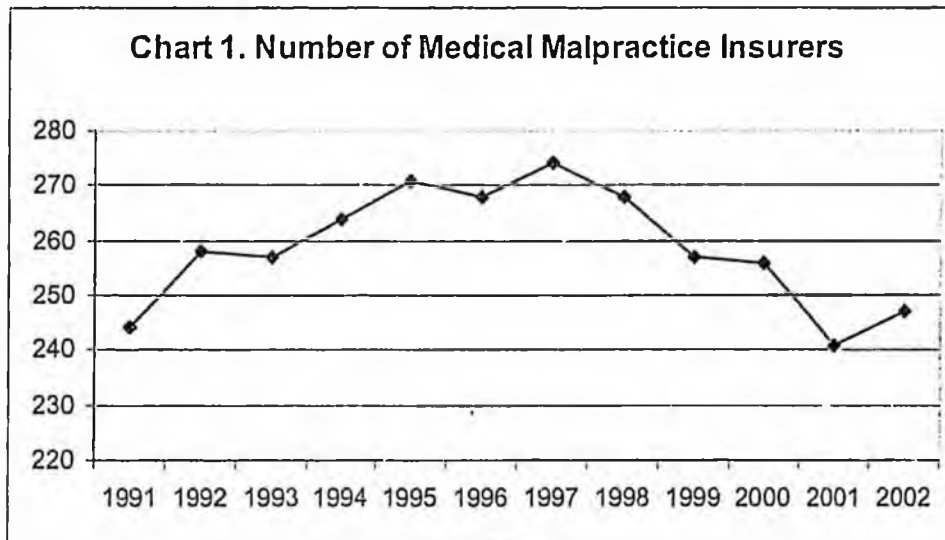
Weiss Safety Rating Category	2003 Med Mal Insurers	1999 Med Mal Insurers
Secure	65.5%	69.0%
Vulnerable	34.4%	31.0%

Thus, in order to restore their financial health, *many med mal insurers will remain under pressure to continue to increase premiums despite any new laws that are enacted to cap individual payouts.*

6. The Supply and Demand of Coverage

Press reports have highlighted the plight of physicians around the country who are closing up shop because their med mal insurer is pulling out of the local market.

To help determine if this is an industry-wide problem, for each year between 1991 and 2002, we counted the number of insurers that are writing new med mal policies and/or renewing existing policies (Chart 1).



The number of carriers providing med mal coverage nationwide increased from 244 in 1991 to a peak of 274 in 1997. Since 1997, however, the number of carriers declined steadily to a low of 241 in 2001, recovering slightly to 247 in 2002.

Compared to 1991, therefore, there has actually been a modest *increase* in the number of med mal carriers— from 244 to 247.

However, doctors are currently feeling the pressures of diminished supply reflected in the declining trend since 1997. Moreover, in certain regions and in certain medical specialties, there is abundant anecdotal evidence that certain med mal insurers have pulled out or discontinued coverage.

Part 3. Conclusions and Recommendations

There is no doubt that the implementation of non-economic damage caps has resulted in lower claim payouts for insurers. For caps to be considered successful, however, the lower payouts would need to translate into lower med mal premiums for medical professionals. Unfortunately, that has not been the case due to the continuing presence of other, far more significant factors driving premium rates higher.

Indeed, the 1991 to 2002 data indicate that the presence of caps may be *inversely correlated* to med mal premium levels. We have no data to pinpoint the reasons for this perverse result and therefore can only speculate as to what they may be. Some possibilities include:

- Legislatures in states with a preponderance of unprofitable med mal insurers may have been among those that were most pressured by those insurers and their lobbyists to impose caps. Meanwhile, states that have not imposed caps so far may be those in which med mal insurers were relatively less desperate to begin with. Insurers in states with caps may have *already* been on the path toward faster rate increases even before the caps were legislated, and the changes in the legislation may have merely been a symptom of—not an impediment to—this trend.
- Once caps were imposed, regulators in those states may have been somewhat more liberal in allowing rate increases, making the false assumption that caps alone would sooner or later help to correct the imbalances in the marketplace.

Furthermore, med mal insurers have also had to deal with the added burden of high medical inflation, which directly impacts their claims experience. By the end of the soft market in 2000, these insurers found themselves in a position where claims costs had increased, but premium income had not even kept pace with inflation.

All of these forces led to an inevitable increase in the med mal premiums insurers charge to doctors and other medical professionals. But despite the increase in revenue, the med mal insurers as an industry have continued to weaken financially and remain weaker than the overall property/casualty insurance industry.

In summary, we believe the broad market forces prevailing in the property/casualty industry have driven—and continue to drive—med mal premiums up, evidently overwhelming any reduction in jury awards.

Thus, by focusing on caps as a solution...

- The insurance companies and their supporters are diverting the public's attention away from long years of mismanagement by an industry that continually allowed actuarial prudence to take a back seat to marketing strategy.
- The insurers, insurance regulators and insurance legislators are avoiding a much-needed post-mortem on what really went wrong in the property and casualty industry

in general and in the med mal sector in particular. Was it prudent to rely so heavily on investment income while underwriting income stayed chronically in the red? Did industry decision makers get caught up in the stock market euphoria like nearly everyone else?

- Worst of all, many companies and legislators are using the insurance crisis opportunistically to push tort reform. However, tort reform, to be productive, merits more pondered and balanced debate based on its own merits, independent of the insurance crisis.

We recommend the following steps:

First, legislators must immediately put on hold all proposals involving non-economic damage caps until convincing evidence can be produced to demonstrate a true benefit to doctors in the form of reduced med mal costs. Right now, consumers are being asked to sacrifice not only large damage claims, but also critical leverage to help regulate the medical profession—all with the stated goal that it will end the med mal crisis for doctors. However, the data indicate that, similar state legislation has merely produced the worst of both worlds: The sacrifice by consumers *plus* a continuing—and even worsening—crisis for doctors. Neither party derived any benefit whatsoever from the caps.

Second, regulators must review and revise their parameters for approving rate increases. The big lesson to be learned from the past decade is that it's dangerous to count on volatile investments—especially common stocks—to compensate for poor operations.

For many years, we have warned that rather than evaluating the property and casualty business based on total profits (including investment income), the focus should be on underwriting profits and losses, independent of investment income.⁸ Had our warnings been heeded, premium rate increases may have risen gradually over time, rather than jumping suddenly during an already-painful bear market.

Third, insurance companies must never again allow marketing to divert or pervert prudent actuarial analysis and planning. Consumers and medical professionals can accept rate increases provided they are spread out evenly over time, and provided they are given good value for their premium dollars in terms of claims paying ability and stability. They cannot accept rate increases that are designed to cover up, or compensate for, serious mismanagement.

Fourth, the medical profession must assume more responsibility for policing itself, while states must be more pro-active in reviewing the licenses of individual practitioners who have a significantly higher-than-average number of claims against them in their specialty, in proportion to their level of activity. These individuals

⁸ "Property & Casualty Insurers Cashing in on Wall Street Windfalls to Offset Underwriting Losses," February 28, 1997. "Property and Casualty Insurers Suffer 40% Decline in Net Income in 1994," April 18, 1995.

greatly increase the risk associated with their specialties, pushing med mal premiums up for all doctors in that sector. States must also make major strides to share data on high-risk doctors. At the very minimum, they must cease licensing doctors who have lost their licenses in other states, often due to high-cost medical mistakes.

Fifth, consumers must not relinquish their right to sue for non-economic damages until the medical profession and/or state and federal governments provide more adequate supervision and regulation of doctors, hospitals, and other health care providers.

The imposition of caps will not make a significant dent in the problem, and may even have adverse impacts. It is no substitute for longer-term, fundamental solutions that address the actual factors behind the med mal crisis.

Appendix 1

States with Caps: Median Medical Malpractice Payouts/Premiums 1991 - 2002

State	Year Imposed	Amount of Cap (\$000)	1991 Median Payout (\$)	2002 Median Payout (\$)	% Change 1991 to 2002	1991 Median Premium (\$)	2002 Median Premium (\$)	% Change 1991 to 2002
Alaska	1997	500	125,000	165,000	32.0	N/A	27,940	N/A
California	1975	250	31,700	67,500	112.9	20,354	30,430	49.5
Colorado	1998	250	25,000	100,000	300.0	22,678	33,651	48.4
Hawaii	1976	375	30,000	250,000	733.3	23,334	25,756	10.4
Idaho	1990	682	22,000	100,000	354.5	N/A	14,199	N/A
Indiana	1990	1,000	35,000	50,000	42.9	N/A	22,886	N/A
Kansas	1994	250	75,000	103,765	38.4	14,669	23,335	59.1
Louisiana	1975	500	65,000	100,000	53.8	20,291	37,280	83.7
Maryland	1986	605	75,000	180,000	140.0	24,193	34,771	43.7
Massachusetts	1997	500	100,000	250,000	150.0	N/A	30,246	N/A
Michigan	1993	624	60,000	77,000	28.3	65,946	68,225	3.5
Missouri	1988	547	80,000	162,500	103.1	25,999	38,759	49.1
Montana	1997	250	30,000	100,000	233.3	18,697	27,011	44.5
New Mexico	1996	600	100,000	110,000	10.0	N/A	67,161	N/A
North Dakota	1996	500	57,500	75,000	30.4	N/A	16,238	N/A
Utah	1996	250	20,000	115,000	475.0	20,474	37,290	82.1
Virginia	1992	1,000	50,000	200,000	300.0	16,497	21,343	29.4
West Virginia	1986	1,000	100,000	140,465	40.5	N/A	56,989	N/A
Wisconsin	1995	350	90,000	256,357	184.8	18,111	17,213	-5.0
Total			60,000	110,000	83.3	20,414	30,246	48.2

Source: Compiled and analyzed by Weiss Ratings, Inc. from data supplied by Medical Liability Monitor and the National Practitioners Data Bank

Appendix 2

States without Caps: Median Medical Malpractice Payouts/Premiums 1991 - 2002

State	1991 Median Payout (\$)	2002 Median Payout (\$)	% Change 1991 to 2002	1991 Median Premium (\$)	2002 Median Premium (\$)	% Change 1991 to 2002
Alabama	75,000	200,000	166.7	25,629	23,490	-8.3
Arizona	66,875	169,240	153.1	37,601	38,571	2.6
Arkansas	72,495	125,000	72.4	10,422	16,384	57.2
Connecticut	66,663	250,000	275.0	29,198	40,146	37.5
Delaware	73,539	150,000	104.0	N/A	24,731	N/A
District of Columbia	172,000	162,500	-5.5	28,085	40,871	45.5
Florida	95,000	162,500	71.1	43,600	95,474	119.0
Georgia	75,000	175,000	133.3	27,998	30,093	7.5
Illinois	115,000	320,000	178.3	39,260	49,948	27.2
Iowa	41,250	102,500	148.5	21,140	18,607	-12.0
Kentucky	48,258	49,000	1.5	23,666	44,834	89.4
Maine	75,000	250,000	233.3	22,118	18,583	-16.0
Minnesota	45,000	125,000	177.8	8,117	10,142	25.0
Mississippi	45,000	131,500	192.2	19,726	30,871	56.5
Nebraska	39,000	131,250	275.0	N/A	14,710	N/A
Nevada	32,500	175,000	438.5	24,988	59,776	139.2
New Hampshire	50,000	250,000	400.0	N/A	27,157	N/A
New Jersey	75,000	210,000	180.0	20,162	38,307	90.0
New York	75,000	200,000	166.7	48,026	50,970	6.1
North Carolina	72,000	195,000	170.8	11,294	31,687	180.6
Ohio	24,667	137,500	457.4	31,450	52,764	67.8
Oklahoma	50,000	97,000	94.0	9,137	12,766	39.7
Oregon	65,000	95,000	46.2	17,268	26,711	54.7
Pennsylvania	100,000	200,000	100.0	11,433	71,260	523.3
Rhode Island	62,500	125,000	100.0	N/A	27,922	N/A
South Carolina	59,475	100,000	68.1	12,984	21,337	64.3
South Dakota	25,000	150,000	500.0	9,618	13,853	44.0
Tennessee	58,750	110,000	87.2	15,601	30,018	92.4
Texas	70,347	150,000	113.2	27,945	55,951	100.2
Vermont	42,500	40,865	-3.8	N/A	15,690	N/A
Washington	40,000	150,000	275.0	18,158	23,100	27.2
Wyoming	80,000	125,000	56.3	22,758	39,829	75.0
Total	65,831	150,000	127.9	22,118	30,056	35.9

Source: Compiled and analyzed by Weiss Ratings, Inc. from data supplied by Medical Liability Monitor and the National Practitioners Data Bank

Appendix 3

Weakest Medical Malpractice Insurers

Company	2002 Total Med Mal Premium (\$000)	2002 Total Premium (\$000)	Weiss Safety Rating
Academic Health Professionals Insurance	16,484	16,484	E
American Association of Orthodontist RRG	4,505	4,506	D
American Excess Insurance Exchange RRG	33,682	39,747	E
American Physicians Assurance	170,440	230,224	D
American Physicians Insurance Exchange	34,887	34,887	D
Campmed Casualty & Indemnity of MD	3,750	7,237	E+
Commonwealth Medical Liability Insurance	29,648	29,893	D+
Delaware Professional Insurance	732	732	E+
Eastern Dentists Insurance RRG	6,961	7,314	D
Franklin Casualty Insurance RRG	19,377	19,377	D-
Hanys Insurance	74,529	76,260	D+
Hospital Casualty	22,637	26,112	E
Hospital Underwriting Group	22,620	22,776	E
Lion Insurance	51	86	D+
MCIC Vermont RRG	155,021	162,325	D
MedAmerica Mutual RRG	7,838	7,838	D+
National Guardian RRG	7,422	7,422	E
New England Medical Center of VT	1,166	1,166	D-
Northwest Physicians Mutual Insurance	33,094	33,200	D+
OHIC Insurance	136,926	151,597	D
PACO Assurance	3,171	3,172	D+
Physicians Liability Insurance	40,626	75,071	E+
Physicians Reciprocal Insurers	185,333	186,924	E+
Physicians Reimbursement Fund	2,193	2,193	E+
Preferred Physicians Medical RRG	24,906	24,905	D+
Princeton Insurance	240,266	374,811	D
SCPIE Indemnity	100,198	101,675	D+
Texas Hospital Insurance Exchange	7,304	14,009	D-
Tri Century Insurance	24,238	24,238	D+
VHA Risk Retention Group	29,071	30,616	D-
Virginia Health Systems Alliance	12,058	12,242	E

A = Excellent; B = Good; C = Fair; D = Weak; E = Very Weak

Source: Weiss Ratings, Inc.

Appendix 4

Other Studies and Position Statements published by Participants in this Debate

"Florida's Medical Malpractice Insurance Crisis: An Examination of Strategic Public Policy Issues." The Florida Center for Public Policy and Leadership at the University of North Florida. March 2003. This study is currently being updated, but will be available at http://www.unf.edu/thefloridacenter/press_room/index.shtml when complete.

"Hype Outpaces Rates in Malpractice Debate; Degree of Crisis Varies Among Specialties and From State to State." *USA Today*. March 4, 2003.
http://www.usatoday.com/news/nation/2003-03-04-malpractice-cover_x.htm

"Medical Malpractice Analysis." Milliman USA on behalf of Florida Hospital Association. November 7, 2002.
http://heal-fl-health-care-pdf.netcomsus.com/resources_MillimanUSAstudy.pdf

"Medical Malpractice Insurance: Stable Losses/Unstable Rates." Americans for Insurance Reform. October 10, 2002.
<http://www.insurance-reform.org/StableLosses.pdf>

"Medical Malpractice: Questions and Answers." American Trial Lawyers Association.
http://www.atla.org/ConsumerMediaResources/Tier3/press_room/FACTS/medmal/icqanda.aspx

"Premium Deceit: The Failure of 'Tort Reform' to Cut Insurance Prices." Center for Justice & Democracy. July 29, 1999; reissued February 12, 2002.
<http://www.insurance-reform.org/PremiumDeceit.pdf>

"President's Medical Malpractice Plan Based on Biased, Inaccurate Information; CFA Identifies Insurer Practices as Cause of Soaring Rates." Consumer Federation of America. July 31, 2002.
<http://www.consumerfed.org/073102medmalrelease.html>

"Update on the Medical Litigation Crisis: Note the Result of the 'Insurance Cycle'." U.S. Department of Health and Human Services, Office of Disability, Aging and Long-Term Care Policy. September 25, 2002.
<http://www.aspe.hhs.gov/daltcp/reports/mlupd2.htm>

Statement by the Physician Insurers Association of America. January 29, 2003.
http://www.thepiaa.org/publications/pdf_files/January_29_Piaa_Statement.pdf

Americans for Insurance Reform - Fact Sheet

California Restrictions On Malpractice Victims Have Not Affected Malpractice Premiums Premium Data Shows California Law Is No Model For The Nation

Data released today by two consumer groups show that California's 22-year experience with the nation's most draconian limits on the rights of medical malpractice victims has failed to slow premium increases for doctors and hospitals. In fact, over the last decade, the average malpractice premium in California has grown more quickly than it has in the nation overall.

The California-based Foundation for Taxpayer and Consumer Rights and New York-based Center for Justice & Democracy (CJ&D) hired nationally recognized actuary J. Robert Hunter, former Texas Insurance Commissioner and Federal Insurance Administrator under Ford and Carter, to compare national malpractice premium trends to those in California. Hunter found that from 1991 to 2000, malpractice premiums in California have stayed close to national premium trends. The 2000 average premium per doctor in California was only 8.2 percent below that of the nation (\$7,200.61 vs. \$7,843.75) while the average malpractice premium in California between 1991 and 2000 actually grew more quickly (3.5 percent), than it did in the nation overall (1.9 percent.) According to Hunter, "there is not much difference in the rates or the rate of change between California and the nation based on the latest decade of experience."

In the mid-1970s, California enacted severe laws restricting the rights of patients who have been injured by malpractice, allowing them to recover no more than \$250,000 in noneconomic compensation no matter how egregious the malpractice or serious the injury. The medical establishment is campaigning to spread this severe cap on damages not only to other states, but to the entire nation in recently introduced federal legislation (H.R. 4600), arguing falsely that this cap has kept premiums dramatically downward.

"If there are savings to limiting the rights and recovery of innocent victims of dangerous and culpable doctors, then insurers have not passed them on to physicians," said Jamie Court, executive director of the Foundation for Taxpayer and Consumer Rights. "California is a failed model for the national restrictions being proposed on patients. California patients have been denied adequate compensation and representation for their injuries, and California doctors have seen almost no premium savings. Only the insurers have gotten rich in the good times."

"This study disputes one of the most sensationalized fictions driving the movement to limit lawsuits against malpracticing doctors and hospitals – the notion that California's brutal restrictions on patients' rights, enacted in the mid-1970s, have slowed the growth of malpractice premiums," said CJ&D Executive Director Joanne Doroshow. "In fact, the opposite has happened. Over the last 10 years, California's premiums have grown faster than the nation's."

"This analysis has, for the first time, exposed as an insidious public relations scam the notion that California's cruel law has controlled the growth of malpractice insurance premiums. This law has had terrible consequences for many innocent people, while doing nothing to improve the affordability of liability insurance for doctors."

Americans for Insurance Reform

<http://centerjd.org/air/issues/carestrictions.html>

Year	California number of Doctors in State	U.S.A. Number of Doctors	California Med Mal Premium Earned (In thousands)	U.S.A. Med Mal Premium Earned (In thousands)	Average Med Mal Premium per Doctor in California	Average Med Mal Premium per Doctor in U.S.A.
1991	76043	631400	529056	4882170	6957.33	7700.62
1992	76387	652100	528496	5138395	6894.29	7879.77
1993	76411	670300	563004	5174055	7368.10	7719.01
1994	77311	684400	576771	5931898	7460.40	8667.30
1995	78169	720300	597680	6080639	7645.74	8441.81
1996	79048	737800	610003	5992394	7716.87	8121.98
1997	80341	756700	628858	5917038	7827.36	7819.53
1998	81762	777800	652801	6195047	7981.72	7963.81
1999	82872	797600	611785	6155241	7382.29	7717.20
2000	84675	812800	609712	6375401	7200.61	7843.75
1991 to 2000 percent change					3.5	1.9
1991 to 2000 percent change (annualized)					0.4	0.2

Sources:

Doctors USA: Statistical Abstract of the United States;

Doctors CA: California Department of Consumer Affairs;

Earned Premiums: NAIC Report On Profit By Line By State

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(AIR is a project of the Center for Justice & Democracy)



Medical Malpractice Insurance: Stable Losses/Unstable Rates 2003

*** NEWLY UPDATED STUDY BASED ON 2002 DATA***

November 2003

Introduction and Summary of Findings

In October 2002, Americans for Insurance Reform (AIR), a coalition of over 100 consumer groups around the country, produced for the first time a comprehensive study of medical malpractice insurance from the 1970s through 2001. The study, *Stable Losses/Unstable Rates*, examined what insurers have taken in and what they've paid out over the prior 30 years. AIR found that the amount medical malpractice insurers paid out, including all jury awards and settlements, directly tracked the rate of medical inflation. On the other hand, medical insurance premiums charged by insurance companies have not corresponded to increases or decreases in payouts. Rather, they have risen and fallen in sync with the state of the economy reflecting gains or losses experienced by the insurance industry's market investments.

Now, AIR has added to this analysis newly-released insurance data from the year 2002, the year when many doctors around the country began experiencing sharp increases in insurance rates. Insurers told doctors that these premium increases were necessary because payouts and costs had dramatically risen. The data, however, does not support this view. Instead, 2002 reflects exactly the same trends as those of prior years.

This new study makes two major findings:

- First, contrary to what the insurance and medical lobbies have alleged, the years 2001 and 2002 saw no "explosion" in medical malpractice insurer payouts or costs to justify sudden rate hikes. In fact, rather than exploding, inflation-adjusted payouts per doctor dropped from 2001 to 2002. Payouts (in constant dollars) have been essentially been flat since the mid-1980s.
- Second, medical malpractice insurance premiums rose much faster in 2002 than was justified by insurance payouts. The 2002 hike is similar to the rate hikes of the past, which occurred in the mid-1980s and mid-1970s and were not connected to actual payouts. Rather, they reflect a weakened economy and losses experienced by the insurance industry's market investments and their perception of how much they can earn

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on the investment "float" (which occurs during the time between when premiums are paid into the insurer and losses paid out by the insurer) that doctors' premiums provide them.

Background

The nation's insurance companies are advancing a legislative agenda to limit liability for doctors, hospitals, HMOs, nursing homes and drug companies that cause injury. Federal and state lawmakers and regulators (and the general public) are being told by medical and insurance lobbyists that doctors' insurance rates are rising due to increasing claims by patients, rising jury verdicts and exploding tort system costs in general.

The insurance industry argues and, worse, convinces doctors to believe that patients who file medical malpractice lawsuits are being awarded more and more money, leading to unbearably high losses for insurers. Insurers state that to recoup money paid to patients, medical malpractice insurers are being forced to raise insurance rates or, in some cases, pull out of the market altogether.

Since insurers say that jury verdicts are the cause for the current "crisis" in affordable malpractice insurance for doctors, the insurance industry insists that the only way to bring down insurance rates is to limit an injured consumer's ability to sue in court.

Insurance rates for doctors have skyrocketed twice before: in the mid-1970s and in the mid-1980s, each "crisis" occurring during years of a weakened economy and dropping interest rates. Each of these periods was followed by a wave of legislative activity to restrict injured patients' rights to sue for medical malpractice. Medical and insurance lobbyists told legislators that changes in tort law were needed to reduce medical malpractice insurance rates.

However, history shows that the insurance industry has not cut, and has no plans to cut, insurance premiums as a consequence of tort restrictions. The American Insurance Association (AIA) and representatives of the American Tort Reform Association (ATRA) have already gone on record admitting this, with the AIA stating on March 13, 2002, "[T]he insurance industry never promised that tort reform would achieve specific premium savings."

The Center for Justice & Democracy's 1999 study, *Premium Deceit — the Failure of "Tort Reform" to Cut Insurance Prices*, found that tort law limits enacted since the mid-1980s have not lowered insurance rates in the ensuing years. Some states that resisted enacting any "tort reform" experienced low increases in insurance rates or loss costs relative to the national trends, and some states that enacted major "tort reform" packages saw very high rate or loss cost increases relative to the national trends. In other words, there was no correlation between "tort reform" and insurance rates.

More recently, Weiss Ratings, an independent insurance-rating agency in Palm Beach Gardens, Florida, found that between 1991 and 2002, states with caps on noneconomic damage awards saw median doctors' malpractice insurance premiums rise 48 percent -- *a greater increase than in states without caps*. In states without caps, median premiums increased only 36

Stable Losses/Unstable Rates 2003, Page 2.

percent. Moreover, according to Weiss, "median 2002 premiums were about the same" whether or not a state capped damage awards.

In January 2003, Ohio lawmakers enacted a cap on compensation for patients injured by medical malpractice. Almost immediately, all five major medical malpractice insurance companies in Ohio announced they would not reduce their rates. One insurance executive predicted his company would seek a 20 percent rate increase.

In Mississippi, lawmakers enacted a cap on medical malpractice verdicts in October 2002. Four months later, investigative news articles reported that surgeons still could not find affordable insurance and that many Mississippi doctors were still limiting their practice or walking off the job in protest.

Nevada also enacted a severe cap on compensation in 2002. Within weeks of the law's enactment, two major insurance companies proclaimed that they would not reduce insurance rates for at least another year to two, if ever. The Doctor's Company, a nationwide medical malpractice insurer, then filed for a 16.9 percent rate increase. Two other companies filed for 25 percent and 93 percent rate increases.

The "liability insurance crises" of the mid-1970s and mid-1980s were ultimately found to be caused not by legal system excesses but by the economic cycle of the insurance industry. Just as these liability insurance crises were found to be driven by this cycle and not a tort law cost explosion as many insurance companies and others had claimed, the "tort reform" remedy pushed by these advocates failed.

As this study confirms, it will fail again.

The 2003 Study

AIR, under the direction of actuary J. Robert Hunter (Director of Insurance for the Consumer Federation of America, and former Federal Insurance Administrator and Texas Insurance Commissioner), has produced a comprehensive study of medical malpractice insurance, examining specifically what insurers have taken in and what they've paid out, in constant dollars, over the last 30 years through 2002. AIR examined everything that medical malpractice insurers have paid in jury awards, settlements and other costs over the last three decades, and compared these actual costs with the premiums that insurers have charged doctors, as well as with the economic cycle of the insurance industry.

This AIR study explores whether or not there is, as the insurance industry claims, an explosion in lawsuits, jury awards or tort system costs justifying an increase in insurance premium rates, or whether premium increases simply reflect the economic cycle of the insurance industry, driven by interest rates and investments.

Stable Losses/Unstable Rates 2003, Page 3.

The Insurance Industry's Economic Cycle

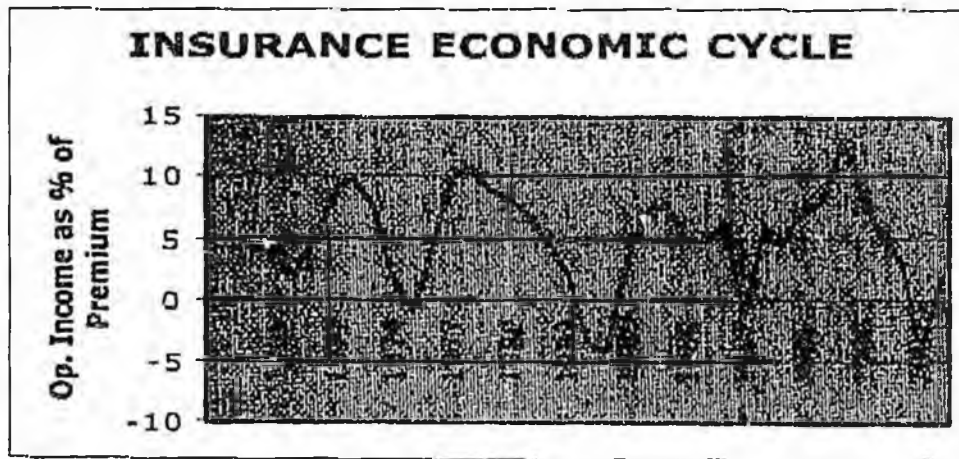
Insurers make most of their profits from investment income. During years of high interest rates and/or excellent insurer profits, insurance companies engage in fierce competition for premium dollars to invest for maximum return. Insurers severely underprice their policies and insure very poor risks just to get premium dollars to invest. This is known as the "soft" insurance market.

But when investment income decreases — because interest rates drop or the stock market plummets or the cumulative price cuts make profits become unbearably low — the industry responds by sharply increasing premiums and reducing coverage, creating a "hard" insurance market usually degenerating into a "liability insurance crisis."

A hard insurance market happened in the mid-1970s, precipitating rate hikes and coverage cutbacks, particularly with medical malpractice insurance and product liability insurance. A more severe crisis took place in the mid-1980s, when most liability insurance was impacted. Again, in 2002, the country experienced a "hard market," this time impacting property as well as liability coverages with some lines of insurance seeing rates going up 100% or more.

The following Exhibit shows the national cycle at work, with premiums stabilizing for 15 years following the mid-1980s crisis. (The 1992 data point was not a classic cycle bottom, but reflected the impact of Hurricane Andrew and other catastrophes in that year.)

Exhibit 1. The Insurance Cycle



Prior to late 2000, the industry had been in a soft market since the mid-1980s. The strong financial markets of the 1990s had expanded the usual six- to-ten year economic cycle. No matter how much they cut their rates, the insurers wound up with a great profit year when investing the float on the premium in this amazing stock and bond market. (The "float" occurs during the time between when premiums are paid into the insurer and losses paid out by the insurer —e.g., there is about a 15 month lag in auto insurance and a 5 to 10 year lag in medical

Stable Losses/Unstable Rates 2003, Page 4.

malpractice.) Further, interest rates were relatively high in recent years as the Fed focused on inflation.

But in 2000, the market started to turn with a vengeance and the Fed cut interest rates again and again. This took place well before September 11th. The terrorist attacks sped up the price increases, collapsing two years of anticipated increases into a few months and leading to what some seasoned industry analysts see as gouging.¹ However, the increases we are witnessing are mostly due to the cycle turn, not the terrorist attack or any other cause. This is a classic economic cycle bottom.

Smoking Guns

AIR tested two hypotheses advanced by the insurance industry: First, if large jury verdicts in medical malpractice cases or any other tort system costs are having a significant impact on the overall costs for insurers' and are therefore the reason behind skyrocketing insurance rates, then losses per doctor should be rising faster than medical inflation over time. Second, if lawsuits or other tort costs are the cause of rate increases for doctors -- rather than decreasing interest rates and other economic factors -- those losses should be reflected in rate increases in line with such losses, not in ups and downs that instead reflect the state of the economy, the well-documented insurance economic cycle (Exhibit 1), interest rates, the stock market or the level of insurers' investment income.

AIR finds both hypotheses are completely false, demonstrated by Exhibits 2 and 3 below. First, these charts show that since 1975, medical malpractice paid claims per doctor have tracked medical inflation very closely (slightly higher than inflation from 1975 to 1985 and flat since). In other words, payouts have risen almost precisely in sync with medical inflation. Moreover, contrary to what the insurance and medical lobbies have alleged, the years 2001 and 2002 saw no "explosion" in medical malpractice insurer payouts or costs to justify sudden rate hikes. In fact, rather than exploding, inflation-adjusted payouts per doctor *dropped* from 2001 to 2002. These data confirm that neither jury verdicts nor any other factor affecting total claims paid by insurance companies that write medical malpractice insurance have had much impact on the system's overall costs over time.

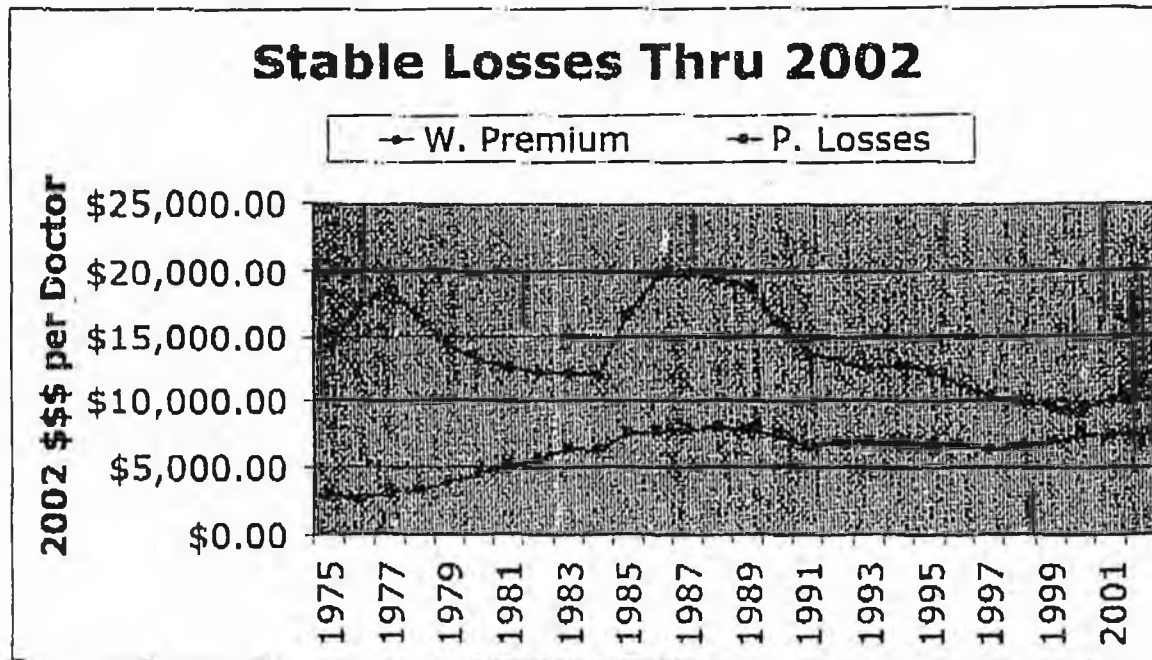
Second, while payouts closely track medical inflation, medical malpractice premiums are quite another thing. They do not track costs or payouts in any direct way. Since 1975, the data show that in constant dollars, per doctor written premiums — the amount of premiums that doctors have paid to insurers — have gyrated almost precisely with the insurer's economic cycle, which is driven by such factors as insurer mismanagement and changing interest rates, not by lawsuits, jury awards, the tort system or other causes. Moreover, medical malpractice insurance premiums rose much faster in 2002 than was justified by insurance payouts. This hike is similar to the rates hikes of the past, which occurred in the mid-1980s and mid-1970s and were not connected to actual payouts.

¹ "[T]here is clearly an opportunity now for companies to price gouge — and it's happening.... But I think companies are overreacting, because they see a window in which they can do it." Jeanna Hollister, consulting actuary, Tillinghast-Towers Perrin, quoted in, "Avoid Price Gouging, Consultant Warns," *National Underwriter*, January 14, 2002.

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In sum, the results of AIR's analysis illustrated in Exhibits 2 and 3 are startling; premiums rise and fall with the insurance industry's economic cycle, as illustrated in Exhibit 1, but losses paid do not.

Exhibit 2



Sources:

A.M. Best and Co. special data compilation for AIR, reporting data for as many years as separately available; U.S. Bureau of the Census, 1975²; Inflation Index: Bureau of Labor Statistics, 1975 (1985 estimated). See Exhibit 3 for underlying data.

Definitions:

- "W. Premium," "DPW" or "Direct Premiums Written" is the amount of money that insurers collected in premiums from doctors during that year.
- "P. Losses," or "Paid losses" is what insurers actually paid out that year to people who were injured—all claims, jury awards and settlements—plus what insurance companies pay their own lawyers to fight claims.³

² We calculate the paid losses on a per doctor basis to remove from the trend we are studying the effect of the ever increasing number of doctors in America. We acknowledge that the number of doctors includes a certain number of doctors that are retired or otherwise not in the medical malpractice system, but since we are interested in overall loss trends over time, and since the percentage of doctors in that category should not vary much year to year, this fact should not significantly impact our results.

³ "Paid losses" are a far more accurate reflection of actual insurer payouts than what insurance companies call "incurred losses." Incurred losses are not actual payouts. They include payouts but also reserves for possible future claims—e.g., insurers' estimates of claims that they do not even know about yet. While incurred losses do exhibit more of a cyclical pattern, observers know that this is because in hard markets, as we are currently experiencing,

Exhibit 3

Year	Direct	Direct	Loss	Number	Medical	Direct	Direct	Year	Direct	Direct
	Premiums	Losses				Premiums	Losses		Premiums	Losses
	Written	Paid	Ratio	Doctors	Care	Written	Paid		Written	Paid
	(thousands)	(thousands)		in USA	Inflation	per doctor	per doctor		per doctor	per doctor
				(active)	(CPI-U)				2002 Dollars	2002 Dollars
1975	865,208	190,867	0.221	366,425	47.3	\$2,361.21	\$520.89	1975	\$14,307.06	\$3,156.17
1976	1,187,978	188,545	0.159	378,572	51.7	\$3,138.05	\$498.04	1976	\$17,395.85	\$2,760.91
1977	1,423,091	248,969	0.175	381,969	56.8	\$3,725.67	\$651.80	1977	\$18,798.90	\$3,288.86
1978	1,412,555	294,456	0.208	401,364	61.3	\$3,519.39	\$733.64	1978	\$16,454.42	\$3,430.03
1979	1,405,991	391,800	0.279	417,266	66.9	\$3,369.53	\$938.97	1979	\$14,435.09	\$4,022.55
1980	1,493,543	521,849	0.349	435,545	74.5	\$3,429.14	\$1,198.15	1980	\$13,191.82	\$4,609.27
1981	1,616,470	665,570	0.412	444,899	82.1	\$3,633.34	\$1,496.00	1981	\$12,683.50	\$5,222.34
1982	1,815,056	847,543	0.467	462,947	91.9	\$3,920.66	\$1,830.76	1982	\$12,226.99	\$5,709.41
1983	2,033,911	1,079,862	0.531	479,440	100.1	\$4,242.26	\$2,252.34	1983	\$12,146.18	\$6,448.76
1984	2,282,590	1,197,979	0.525	511,090	106.4	\$4,466.12	\$2,343.97	1984	\$12,029.98	\$6,313.74
1985	3,407,177	1,556,300	0.457	514,000	113.1	\$6,628.75	\$3,027.82	1985	\$16,797.52	\$7,672.62
1986	4,335,863	1,709,883	0.394	519,411	121.6	\$8,347.65	\$3,291.97	1986	\$19,674.65	\$7,758.86
1987	4,751,084	1,905,491	0.399	534,692	129.9	\$8,941.75	\$3,563.72	1987	\$19,728.30	\$7,862.67
1988	5,166,811	2,128,281	0.412	549,160	138.2	\$9,408.57	\$3,875.52	1988	\$19,511.55	\$8,037.08
1989	5,500,540	2,273,628	0.413	559,988	148.5	\$9,822.60	\$4,060.14	1989	\$18,957.29	\$7,835.93
1990	5,273,360	2,415,117	0.458	572,660	161.9	\$9,208.54	\$4,217.37	1990	\$16,301.21	\$7,465.70
1991	5,043,773	2,423,418	0.480	594,697	176.2	\$8,481.25	\$4,075.05	1991	\$13,795.27	\$6,628.31
1992	5,228,362	2,808,838	0.537	605,685	189.4	\$8,632.15	\$4,637.46	1992	\$13,062.16	\$7,017.40
1993	5,469,575	3,028,086	0.554	619,751	201.1	\$8,825.44	\$4,885.97	1993	\$12,577.68	\$6,963.30
1994	5,948,361	3,174,987	0.534	632,121	210.4	\$9,410.16	\$5,022.75	1994	\$12,818.21	\$6,841.83
1995	6,107,568	3,326,846	0.545	646,022	219.8	\$9,454.12	\$5,149.74	1995	\$12,327.34	\$6,714.81
1996	6,002,233	3,556,151	0.592	663,943	227.8	\$9,040.28	\$5,356.11	1996	\$11,373.77	\$6,738.63
1997	5,864,218	3,587,566	0.612	684,605	234.4	\$8,565.84	\$5,240.34	1997	\$10,473.42	\$6,407.35
1998	6,040,051	3,957,619	0.655	707,000	242	\$8,543.21	\$5,597.76	1998	\$10,117.70	\$6,629.42
1999	6,053,323	4,446,975	0.735	720,900	251.1	\$8,396.90	\$6,168.64	1999	\$9,584.03	\$7,040.75
2000	6,303,206	4,988,474	0.791	737,500	261.4	\$8,546.72	\$6,764.03	2000	\$9,370.66	\$7,416.11
2001	7,288,933	5,424,197	0.744	755,000	273.1	\$9,654.22	\$7,184.37	2001	\$10,131.45	\$7,539.51
2002	8,928,252	5,806,463	0.650	780,000	286.6	\$11,446.48	\$7,444.18	2002	\$11,446.48	\$7,444.18

insurers will increase reserves as a way to justify price increases. In fact, the current insurance "crisis" rests significantly on a jump in loss reserves in 2001. Historically, reserves have been later "released" to profits during the "softer" market years. For example, according to a June 24, 2002, *Wall Street Journal* front page investigative article, St. Paul, which until 2001 had 20 percent of the national med mal market, pulled out of the market after mismanaging its reserves. The company set aside too much money in reserves to cover malpractice claims in the 1980s, so it "released" \$1.1 billion in reserves, which flowed through its income statements and appeared as profits. Seeing these profits, many new, smaller carriers came into the market. Everyone started slashing prices to attract customers. From 1995 to 2000, rates fell so low that they became inadequate to cover malpractice claims. Many companies collapsed as a result. St. Paul eventually pulled out, creating huge supply and demand problems for doctors in many states. Christopher Oster and Rachel Zimmerman, "Insurers' Missteps Helped Provoke Malpractice 'Crisis,'" *Wall Street Journal*, June 24, 2002.

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A Word About Loss Ratios

Loss ratios are the percent of premiums that insurers pay out in claims. These ratios will drop during hard market years reflecting sudden rate hikes, as they did during the years 1985-1987, and again in 2002, which this study shows. Otherwise, they tend to trend up as insurers cut premiums during the soft market.

Exhibit 3 shows this precise phenomenon of steadily increasing loss ratio between 1988 and 2001. This simply demonstrates the insurance cycle at work, which is the point of this study. Insurers did not respond to higher loss ratios during these years by raising rates because they were making significant money from investments. In fact, during the soft market, insurers are expected to take a larger underwriting loss (a combined loss ratio over 100 percent) than during the hard market as they benefit from more investment income during these times. As we show, when this income drops, insurers will then raise rates and loss ratios will also drop. This is indeed what is now happening.

Conclusion

Like the 2002 study, *Stable Losses/Unstable Rates*, this updated version analyzes what medical malpractice insurers have taken in and what they've paid out over the last 30 years, including jury awards, settlements and other costs. Its findings are startling. While insurer payouts directly track the rate of medical inflation, medical insurance premiums do not. Rather, they rise and fall in relationship to the state of the economy. Not only has there been no "explosion" in lawsuits, jury awards or any tort system costs at any time during the last three decades, but the astronomical premium increases that some doctors have been charged during periodic insurance "crises" over this timeperiod are in exact sync with the economic cycle of the insurance industry, driven by interest rates and investments. In 2001, rates began to spike, but payouts dropped. In other words, insurance companies raise rates when they are seeking ways to make up for declining interest rates and market-based investment losses.

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WHERE'S THE CRISIS?

HAS AMERICA BEEN DUPED BY THE AMA?

*By Emily Gottlieb and Joanne Doroshow**

SUMMARY

The American Medical Association, a lobby group that is pushing for liability limits for doctors in approximately 18 states as well as Congress, continues to release "surveys" of its members in support of its campaign. The most recent survey was issued on April 3, 2003. According to the AMA, these states are experiencing "liability crises," necessitating laws that severely limit compensation for the families of those killed or injured by medical malpractice..

What the AMA consistently fails to disclose is that numerous local news outlets have released evidence over the past year that not only fails to support the AMA's allegations of a lawsuit "crisis" in these states, but actually contradicts it. Moreover, within the last year three of these states - Nevada, Mississippi and Ohio - gave the AMA what is asked for by enacting caps on damage awards; in each case, doctors are still struggling to find affordable insurance.

This is not to deny that some doctors in some states (but not all) are being hit with sudden insurance rate hikes. But as the state Attorneys General put it some 17 years ago in what has sadly become a entirely predictable and recurring insurance phenomenon, "The facts do not bear out the allegations of an 'explosion' in litigation or in claim size, nor do they bear out the allegations of a financial disaster suffered by property/casualty insurers today. They finally do not support any correlation between the current crisis in availability and affordability of insurance and such a litigation 'explosion.' The available data indicate that the causes of, and therefore solutions to, the current crisis lie with the insurance industry

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independent judiciary for all
Americans."*

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itself." *Current Crisis of Unavailability and Unaffordability of Liability Insurance* (Boston, Mass.: Ad Hoc Insurance Committee of the National Association of Attorneys General, May, 1986).

The following states have been identified as "liability crisis" states by the AMA (defined as rising claims, skyrocketing awards and fleeing doctors) in the group's push for a cap of \$250,000 on non-economic damages. Yet a simple scan of local media stories, which report on what local courtroom and medical data actually show, establishes the following:

- **Arkansas:** No evidence damage awards are rising (because no entity compiles these records)
- **Connecticut:** Little change in number of lawsuit filings for a decade; numbers of neurosurgeons and OB/GYN's increasing
- **Florida:** Jury awards have dropped as state has grown; number of claims and payouts steadily falling
- **Georgia:** Number of claims paid is down 25 percent; doctors win 85 percent of time
- **Illinois:** Number of claims steady throughout the 1990s; 76 percent dismissed without payment
- **Kentucky:** Doctors per capita increasing faster than the nation
- **Mississippi:** State gaining doctors; only four states grew faster in physician population; cap passed in 2002 but doctors still can't find affordable insurance
- **Missouri:** Number of claims fell 29 percent since 1987.
- **New Jersey:** Lawsuits down 16 percent since 1997; less than 10 percent of doctors experiencing large rate increase
- **Nevada:** Number of doctors increased 41 percent since 1992; cap passed in 2002 but insurers haven't reduced premiums
- **New York:** Number one in nation for per capital surgical specialists; number three for OB/GYN's; largest insurer denied rate hike
- **North Carolina:** Number of doctors up 41 percent since 1992
- **Ohio:** Number of case filings equal to 1995; juries ruled for patients less than half as often as in 1995; cap passed in 2003 but insurers haven't reduced premiums
- **Oregon:** Cases against doctors decreased from 2000 to 2001
- **Pennsylvania:** Jury awards are dropping; million dollar awards down for second straight year
- **Texas:** Claims falling since 1999
- **Washington:** Little change in lawsuits filed; number of million dollar awards same as in 1999
- **West Virginia:** Claims down since 1993; amount paid to settle claims constants since 1993

State Breakdown

Arkansas

"Have civil damage awards, on average, actually been going up in Arkansas over the years? It's hard to say, because *no one entity in Arkansas is compiling records* on all of them. The

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Arkansas Administrative Office of the Courts collects data on court cases throughout the state, but individual counties' reporting has been sporadic over the years." (emphasis added). Laura Kellams and Michael Rowett, "Tort-reform bills in spotlight State, national lawmakers debate limits on some lawsuits," *Arkansas Democrat-Gazette*, March 2, 2003.

Connecticut

"In 2002, 368 medical malpractice lawsuits were filed in Connecticut, according to the State Superior Court in Hartford. *That number changed little during the past 10 years, from a low of 272 in 1991 to 1992 to a high of 389 in 1998 to 1999.*" In 2001 781 OB-GYNs were licensed to practice in Connecticut. In 2003, *the number had increased to 819. For neurosurgeons, the trend is the same: 96 neurosurgeons were licensed to practice in 2001, 108 in 2003.*" (emphasis added) Jane Gordon, "Doctors Upset Over Malpractice. Patients Are, Too," *New York Times*, March 23, 2003.

Florida

"A Gannett News Service analysis of state and federal insurance payment records shows *little to no increase in the payments insurance companies made to victims of medical malpractice in the past five years.* In fact, Gannett found, *the amount of medical malpractice awards reported to Florida regulators has dropped as the state has grown....* Florida's average malpractice award in 2001 was \$219,122 - less than the national average of \$219,461.... For the past five years, national records show, the state's total malpractice awards have increased at a rate of just 1 percent a year. A comparable state database of malpractice payouts shows *malpractice awards those same years dropping an average of 3 percent a year.... The average jury award - which insurance companies say drives them to agree to higher settlement amounts - has dropped every year since 1999* and is now \$326,070, Gannett analysis shows. (emphasis added) Paige St. John, "Malpractice crisis questioned," *News-Press* (Fort Myers, FL), March 26, 2003.

"A Florida Today examination of court records and state and national insurance data found ... *The number of malpractice claims paid per capita in Florida has decreased steadily since 1995,* state insurance records show. Floridians today get money in malpractice cases at their lowest rate since 1984.... *Total payouts by malpractice insurers statewide have dropped an average of 2 percent a year every year since 1997.*" (emphasis added) John A. Torres, "House passes malpractice cap," *Florida Today*, March 14, 2003.

Georgia

"Last year only five Georgia patients were paid more than \$2 million, according to the National Practitioner Data Bank. The database also says that *the number of medical malpractice claims paid in Georgia has gone down 25 percent since 1999.*" (emphasis added) Barnini Chakraborty, "Doctors, lawyers argue over malpractice caps," *Chattanooga Times Free Press* (Tennessee), March 10, 2003. A study published in 2000 in the *Georgia Law Review* of a half dozen Georgia counties found that tort filings are actually lagging behind Georgia's population growth.... Overall, the plaintiffs prevailed in a little more than half of the jury trials. But in medical malpractice trials by jury, *the doctors won roughly 85 percent of the time.* (emphasis added). Don Schanche Jr., "Storm brews

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in Ga. over malpractice; Sharply rising insurance expenses cause some doctors to drop services," *Macon Telegraph*, December 30, 2002.

Illinois

In Illinois, *the number of malpractice claims stayed about even over the course of the 1990s*. ... Payouts to people who sued both doctors and hospitals jumped sharply in the early 1990s, but they've held relatively even since then. ... *76 percent of malpractice claims were dismissed without payment in 1999.*" (emphasis added). Editorial, "Ups And Downs," *St. Louis Post-Dispatch*, February 3, 2003, part 1 of a 2 part series entitled, "Malpractice Insurance: Q & A."

Kentucky

"[T]he number of *doctors per person in Kentucky has increased faster than in the rest of the nation since the early 1980s.*" Gideon Gil, "2003 Kentucky General Assembly; Study: Jury award limits wouldn't cut doctors' premiums," *Courier-Journal* (Louisville, KY), February 25, 2003. "In 2001, 69 malpractice suits went to trial in Kentucky, according to the Kentucky Trial Court Review. Plaintiffs won only 19. And just six plaintiffs won \$1 million or more." John Cheves and Karla Ward, "Ob/Gyn, Eye Patient Illustrate Problem," *Lexington Herald-Leader*, February 4, 2003.

Mississippi.

"Medical groups have claimed doctors are fleeing Mississippi, relocating to states with more stable legal climates. So far, the numbers don't bear that out. In fact, *the state has gained 564 doctors over the past five years.* The state Medical Association has said the growth in doctors lags behind the state's population growth. But while Mississippi still ranks last in the nation in the number of doctors per capita, it has made dramatic gains since 1995. *Only four states have grown faster in physician population: Alabama, Alaska, Arkansas and South Dakota.* (emphasis added). Joey Bunch, "Crisis or PR campaign?; Pro and con forces seek to win hearts and minds of Mississippians," *Biloxi Sun-Herald*, August 11, 2002.

In October 2002, lawmakers limited jury awards for non-economic "pain and suffering" damages to \$500,000. Despite enactment of the cap, premiums continued to skyrocket and, for some doctors, coverage is still unavailable at any price. See, e.g., Ben Bryant, "Tort reform has done little to ease malpractice crisis," *Biloxi Sun-Herald*, February 2, 2003.

Missouri

"[Gov. Bob] Holden's insurance report, a four-month study of the medical malpractice market, said *that litigation that resulted in a cash payment had dropped 42 percent from 1988 to 2001*, and that *the number of claims overall had fallen from 2,244 to 1,599, or 29 percent, since 1987.* (emphasis added). Deslatta Aaron, "Malpractice rates gain Holden's attention," *Springfield News-Leader*, February 7, 2003. "In Missouri, the number of malpractice claims actually dropped over the course of the 1990s. ... In Missouri, average payments to patients who sued doctors rose 23 percent from 1992 to 2001. But that was less than the 26 percent rise in the consumer price

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index." Editorial, "Ups And Downs," *St. Louis Post-Dispatch*, February 3, 2003, part 1 of a 2 part series entitled, "Malpractice Insurance: Q & A." In 2001, "fewer malpractice claims were filed against Missouri doctors than in 2000. That was about half as many as the number filed in 1987... [P]ain and suffering awards, which Missouri caps at \$540,000, averaged only about \$84,000.... Yet malpractice insurance premiums are going through the roof here." Editorial, *St. Louis Post-Dispatch*, October 11, 2002.

New Jersey

"Patients filed 1,656 lawsuits [in 2001] - a 16 percent decrease from 1997, when 1,971 were filed, according to figures from the Administrative Office of the Courts." (emphasis added). Wendy Ruderman, "Untangling the knots of medical malpractice; N.J. legislators must do right by doctors, insurers, lawyers and patients. A bill could come this month," *Philadelphia Inquirer*, February 19, 2003. The Administrative Office of the Courts "reported that out of 205 medical malpractice cases that went to trial in 2002, plaintiffs prevailed in only 54, or 26 percent. Of those, the average award was \$300,000 for economic and noneconomic damages combined." Michael Booth, "Medical Malpractice Reform Measure Fails as Neither Side Wants To Bend," *New Jersey Law Journal*, February 13, 2003. From January through August 2002, **less than 10 percent of medical malpractice policyholders experienced large rate increases.**" (emphasis added). "N.J. Regulators Say Few Providers Faced Large Med-Mal Premium Hikes," *BestWire*, January 27, 2003.

North Carolina

Doctors are not fleeing North Carolina. Instead, **the state has seen a 41 percent increase in the number of physicians since 1992.** "Doctors' need for bill challenged," *Raleigh News Observer*, April 8, 2003. "Average malpractice payouts in North Carolina have increased 69 percent over the past 10 years. But spending on national health care services has risen 87 percent over the same period, according to Kaiser Family Foundation." Sarah Avery, Matthew Eisley and Jean Fisher, "Malpractice fight brews," *News Observer* (Raleigh, NC), March 30, 2003.

Nevada

"State researchers found fewer doctors leaving Nevada due to rising insurance premiums than doctors' advocates reported. Thirty-five of the 4,700 medical doctors in Nevada closed their practices, 12 retired and six stopped practicing obstetrics, according to a study by the state legislative research division.... 'I was shocked to read the statistics,' Assembly Majority Leader Barbara Buckley, D-Las Vegas, told the *Las Vegas Review-Journal*. 'Certainly the impression we've been given was inaccurate.' (emphasis added). "State study says fewer doctors leaving Nevada than reported," *Associated Press*, February 28, 2003.

In the summer of 2002, Nevada enacted a \$350,000 cap on non-economic compensation in most medical malpractice cases. Within weeks of the law's enactment, two major insurance companies - American Physicians Assurance and the Medical Liability Association of Nevada - proclaimed that they would not reduce insurance rates. American Physicians Assurance, the primary insurer for Las Vegas obstetricians, said that it had no plans to lower premiums for

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several years, if ever. Bob Byrd, chairman of the Medical Liability Association of Nevada, said, "We're not lowering rates anytime soon." In January 2003, The Doctors Company filed for a 16.9 percent rate increase, shortly after two other companies filed for 25 percent and 93 percent rate increases, according to the Nevada State Division of Insurance. Joelle Babula, "Medical liability company requests premium increase," *Las Vegas Review-Journal*, February 11, 2003; Joelle Babula, "Medical Liability Laws: Doctors remain unsatisfied," *Las Vegas Review-Journal*, January 27, 2003; "Deliveries In Limbo: Women search for care," *Las Vegas Review-Journal*, January 10, 2003; Lawrence Messina, "Wise mulls trauma care solutions amid Nevada reports," Associated Press, October 7, 2003; Joelle Babula, "Obstetricians say problems remain," *Las Vegas Review-Journal*, October 1, 2002; Joelle Babula, "State insurance program holds off on lowering rates," *Las Vegas Review-Journal*, August 14, 2002; Joelle Babula, "Medical Malpractice: Insurer has no plans to lower costs," *Las Vegas Review-Journal*, August 10, 2002.

New York

The number of physicians practicing in New York State has skyrocketed and is increasing at a rate faster than the national average. *New York ranks first in the nation in surgical specialists, which are most likely to be sued, and third in the nation in the number of OB/GYN's per capita, well ahead of California (ranked 27th).* When compared to the region, only Connecticut (ranked 2nd) is ahead of New York State in the number of ob gyns per capita. *First Do No Harm: A Consumer Response to the Medical Lobby's Campaign to Limit The Legal Rights of Injured Patients*, NYPIRG et al., (September 2002) (emphasis added). In July 2002, *New York's largest medical malpractice insurer was denied its requested premium increase*, with State Insurance Superintendent Gregory Serio stating, "I don't think there is any further need for more rates at this point."

Ohio

A 2002 *Cleveland Plain Dealer* analysis of malpractice suits found that "*the number of malpractice cases filed in 2001 was almost the same as in 1995. Last year, juries ruled in favor of injured patients less than half as often as they did in 1995, court records show.* A smaller percentage of their verdicts involved million-dollar awards than in 1995, and the total for all verdicts was 28 percent lower last year." (emphasis added). Roger Mezger, "Pattern lacking in insurance rate hikes; PD analysis finds no tangible crisis in malpractice suits," *Plain Dealer*, October 20, 2002. "An exhaustive study of Franklin County cases by Ohio State law professors cast serious doubt on massive jury awards. It showed 114 medical malpractice cases going to trial in 12 years, 30 percent won by the plaintiffs, with a median jury award of \$198,000 – well below the \$300,000 cap on non-economic damages in a pending Ohio Senate bill. Four of the five highest awards were reduced by the trial judge or on appeal." Leigh Allan, "Cries For Tort Reform All Wet," *Dayton Daily News*, September 17, 2002.

Legislation capping non-economic damages in medical malpractice cases at \$500,000, with a \$1 million cap for catastrophic injuries, was signed into law in January 2003. After the caps were signed into law, all five major medical malpractice insurance companies in Ohio – American Physicians Assurance, the Doctors Company, GE Medical Protective, Medical Assurance and the Ohio Hospital Insurance Co. – said they had no plans to reduce their rates because of the legislation and that premiums could even rise." Laura A. Bischoff, "Taft Signs Malpractice Reform Bill; Cap on awards for pain and suffering," *Dayton Daily News*, January 11, 2003; Andrew Welsh-Huggins, "Doctors

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pushing for short-term relief from malpractice rates," *Associated Press*, January 10, 2003; "Despite new law, insurance companies won't lower rates right away," *Associated Press*, January 9, 2003; Spencer Hunt, "Docs look for insurance cure," *Cincinnati Enquirer*, November 26, 2002.

Oregon

"Statistics from the Oregon Board of Medical Examiners show *332 malpractice cases against doctors in 2000, which decreased to 302 cases in 2001.*" (emphasis added). Susan Tom, "Obstetricians play safe, avoid suits," *Statesman Journal* (Salem, OR), July 9, 2002.

Pennsylvania

"Across Pennsylvania, *the number of medical-malpractice awards for \$1 million or more is down for the second year in a row.... The overall amount of those big jury awards is dropping too.* So far, juries have awarded \$69 million in the first eight months of this year. In 2000, the total was \$415 million. ... In Philadelphia, patients still lose 60 percent of all malpractice trials, but that is much better than suburban counties, where patients lost 80 percent of the time or more." (emphasis added). Josh Goldstein, "Medical lawsuit payouts still high; Philadelphia awards and settlements made up nearly half of the \$348 million paid out by a state fund," *Philadelphia Inquirer*, September 22, 2002.

Texas

"The Office of Court Administration has recorded a steady drop in the number of personal injury lawsuits not involving a motor vehicle, the category that would include medical malpractice: from 31,050 suits in 1994-95 to 19,590 in 2000-2001.... *[State Board of Medical Examiners] statistics do show a shrinking number of claims since 1999, when the number spiked at 5,715.* Of the 4,445 claims closed that year, 617 resulted in payments, the average being \$208,592. In 2001, 4,083 claims were filed, but only 1,088 were closed. Of the 23 closed with payments, the average amount was \$267,253.... The Texas Department of Insurance showed a 4 percent increase in claims since 1996, according to an Austin America-Statesman report, far short of the surge in insurance rates." (emphasis added). Editorial, "Premium importance," *Fort Worth Star-Telegram*, March 24, 2003.

Washington

According to the state's Medical Quality Assurance Commission, in 2002, "there were 11 malpractice payments of \$1 million or more - exactly the same number as in 1999." Carol M. Ostrom, "Arguments, facts behind malpractice debate Q&A," *Seattle Times*, February 21, 2003. "The insurance premium rate increases are coming despite *little change in the number of malpractice suits filed each year against doctors in the state.* ... According to a report by Physicians Insurance, a self-funded mutual company operated by doctors that provides malpractice insurance for about two-thirds of the state's doctors, the frequency of claims per 100 insured clinics and physicians averaged 6.3 in 1990, then rose to 10.7 in 1995, but has since declined. In 2002, the claim frequency per 100 insured doctors was 6.2." (emphasis added). Julia Anderson, "Tort & Retort:

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WHERE'S THE EVIDENCE, PAGE 7

Doctors say they're dogged by rising costs of premiums and jury awards, while attorneys say it's not their fault," *The Columbian* (Vancouver, WA.), February 9, 2003.

West Virginia

"The number of claims against the state's doctors since 1993 has decreased and the amount of money spent to settle the claims has not changed, according to board of medicine records."

(emphasis added). Joy Davia, "Doctor dilemma; The Medical Malpractice Debate," *Charleston Gazette*, December 1, 2002. "Board of Medicine records show that the number of malpractice claims filed against doctors licensed in West Virginia dropped between 1992 and 2000." Lawrence Messina, Caution advised amid medical malpractice debate, *Associated Press*, November 18, 2002. **"The average West Virginia payout from 1999 to 2002 was less than the national average and lower than 27 states and the District of Columbia. ... A Gazette analysis, meanwhile, said the number of claims against the state's doctors since 1993 has decreased and the amount of money spent to settle the claims has not changed."** Joy Davia, "Putting a price on pain; State struggles to keep doctors, patients happy," *Charleston Gazette*, November 17, 2002. "Reporter Lawrence Messina combed through thousands of records of claims from the Board of Medicine. He found that the number of claims has been decreasing, and that the amount of money paid to settle claims has remained relatively constant since 1993.... He also found that less than one-fifth of the number of doctors licensed in the state had ever been sued for malpractice, and less than 4 percent of the doctors in the state were sued in any given year." Dan Radmacher (editorial), "Malpractice diagnosis incorrect," *Charleston Gazette*, August 23, 2002. "[Lawrence] Messina found that jury awards in West Virginia had fluctuated, but generally held steady between 1993 and 2000. The number of claims filed each year actually decreased. Messina found this out by examining Board of Medicine records that insurance companies are required to file. He looked at nearly 2,300 resolved claims." Dan Radmacher (editorial), "AP article misses malpractice mark," *Charleston Gazette*, July 26, 2002.



WHERE'S THE EVIDENCE, PAGE 8

Americans for Insurance Reform

<http://centerjd.org/air/issues/carestrictions.html>



Americans for Insurance Reform

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THE LIABILITY INSURANCE CRISIS — DÉJÀ VU ALL OVER AGAIN

In the mid-1980s, during this country's last liability insurance "crisis," great pressure was brought to bear on state legislatures to restrict the rights of innocent Americans to be compensated for their injuries and to hold wrongdoers accountable in court. Lawmakers in some 46 states succumbed to this pressure and passed "tort reforms" after being told by insurance companies and others that this was the only way to reduce skyrocketing insurance rates.

They were responding to news reports like these, virtually identical to reports of today:

- "An American Medical Association official says escalating costs of medical malpractice insurance are increasing health-care costs for the public and forcing doctors to curtail some services." *Baton Rouge Morning Advocate*, May 31, 1986.
- "Doctors are threatening to quit practicing some specialties or move out of the state while South Florida hospitals and trauma centers have threatened to shut down or have curtailed services." *St. Petersburg Times*, May 7, 1987.
- "Busloads of physicians from around [New York] state will travel to Albany on Wednesday, May 21, to rally for legislative reform of the state's medical liability system." *PR Newswire*, May 19, 1986.
- "Doctors and hospitals in [West Virginia] have been saying for weeks that they would have to close their doors at the end of this month when three major insurance companies planned to cancel malpractice insurance coverage for most of the state's medical providers." *Washington Post*, May 24, 1986.
- "Hundreds of doctors, especially those in high-risk specialties like obstetrics and orthopedics, refused to accept new patients last February when a state Insurance Division decision opened them up to massive retroactive premium increases." *The Record (New Jersey)*, July 24, 1986.

Eventually, a few years after the mid-1980s insurance crisis, the insurance cycle flattened out, rates stabilized and availability improved everywhere — until now, over a decade later. The flattening of rates had nothing to do with tort law restrictions enacted in particular states, but

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rather to modulations in the insurance cycle everywhere. In 1991, for example, Washington's insurance commissioner Dick Marquardt concluded in a report that it was "impossible to attribute stable insurance rates to tort-law changes or the damages cap," since rates also improved in states that did not pass tort reform.

Have we learned nothing from the past? The "liability insurance crisis" of the mid-1980s was ultimately found to be caused not by legal system excesses but by the economic cycle of the insurance industry.

Just as the liability insurance crisis was found to be driven by this cycle and not a tort law cost explosion as many insurance companies and others had claimed, the "tort reform" remedy pushed by these advocates failed.

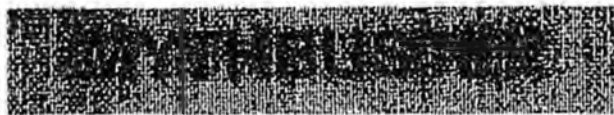
It will fail again.

Only effective insurance reforms will stop these cyclical insurance crises.

- **Volcanic eruptions in insurance premiums for doctors have occurred three times in the last 30 years – in the mid 1970s, again in the mid-1980s, and now today.** The cause is always the same: a severe drop in investment income for insurers compounded by pricing errors in prior years.
- **Each time, insurers have tried to cover up their mismanaged underwriting by blaming lawyers and the legal system.** To buy this position, one would have to accept the notion that trial lawyers or juries were particularly aggressive in the mid-1970s, then non-aggressive for a decade, then aggressive in the mid-1980s, non-aggressive for 17 years and are now aggressive again. This is ludicrous.
- **Reinsurers historically have targeted medical malpractice lines for rate hikes,** dictating premium increases even for doctor-owned mutual insurance companies that should be independent of the profit considerations that motivate pricing decisions by the rest of the industry.
- **The insurance industry has not cut, and has no plans to cut, insurance premiums as a consequence of tort restrictions.** The American Insurance Association (AIA) and the American Tort Reform Association (ATRA) have already gone on record admitting this, with the AIA stating on March 13, 2002, "[T]he insurance industry never promised that tort reform would achieve specific premium savings."
- **The Center for Justice & Democracy's 1999 study, *Premium Decelt —the Failure of "Tort Reform" to Cut Insurance Prices*, found that tort law limits enacted since the mid-1980s have not lowered insurance rates in the ensuing years.** Some states that resisted enacting any "tort reform" experienced low increases in insurance rates or loss costs relative to the national trends, and some states that enacted major "tort reform" packages, like New York, saw very high rate or loss cost increases relative to the national trends. In other words, there was no correlation between "tort reform" and insurance rates.



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10 Things You Should Know About ... MEDICAL MALPRACTICE

1. Insurance companies are paying victims of medical negligence on average approximately \$30,000. Average payouts have stayed virtually flat for the last decade.¹
2. Medical malpractice costs, as a percentage of national health care expenditures, are at an all time low, 0.55 percent.²
3. According to the National Academy of Sciences, up to 98,000 people are killed each year by medical errors in hospitals – far more than die from car accidents, breast cancer or AIDS.³
4. Total national costs (lost income, lost household production, disability and health care costs) of negligence in hospitals are estimated to be between \$17 billion and \$29 billion each year.⁴
5. Eight times as many patients are injured by medical malpractice as ever file a claim; 16 times as many suffer injuries as receive any compensation.⁵
6. According to the National Center for State Courts, between 1992 and 2001, medical malpractice filings per 100,000 population have only fluctuated minimally, with an overall 1 percent decrease in per capita filings.⁶
7. Injured medical malpractice patients win before juries in only 23 percent of cases⁷; in 1992, the rate was 7.5 percent higher at 30.5 percent.⁸ Only 1.1 percent of medical malpractice plaintiffs who prevail at trial are awarded punitive damages.⁹
8. According to studies in several states, there is no correlation between where physicians decide to practice and state liability laws or insurance rates.¹⁰
9. Tort law limits do not lower insurance rates; states with little or no tort law restrictions have experienced approximately the same changes in insurance rates as those states that have enacted severe restrictions on victims' rights.¹¹
10. Numerous hospital and medical procedures have been made safer as a result of lawsuits, including anesthesia procedures, catheter placements, drug prescriptions, hospital staffing levels, infection control, nursing home care and trauma care.¹²

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NOTES

¹ "New Study Shows Average Medical Malpractice Payout Over Last Decade Only \$28,524; New Data Reveals Same Trends in 2001," Americans for Insurance Reform, News Release, January 23, 2003.

² *Ibid.*

³ Kohn, Corrigan, Donaldson, Eds., *To Err is Human; Building a Safer Health System*, Institute of Medicine, National Academy Press: Washington, DC (1999).

⁴ *Ibid.*

⁵ Harvard Medical Practice Study, *Patients, Doctors and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York* (1990).

⁶ *Examining the Work of State Courts, 2002; A National Perspective from the Court Statistics Project* (2003), p. 28. This finding is based on medical malpractice data from 17 states.

⁷ *Examining the Work of State Courts, 2001; A National Perspective from the Court Statistics Project* (2001), p. 94.

⁸ "Tort Trials and Verdicts in Large Counties, 1996," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ-179769 (August 2000), p. 9.

⁹ *Ibid* at 7.

¹⁰ Wlazelek, Ann, "Doctors' ad campaign baseless; They're not fleeing Pa., but malpractice straits create 'hostile' climate," *Morning Call*, March 24, 2002; "Doctors not leaving Pittsburgh despite costly insurance," *Associated Press*, November 12, 2001; Goldstein, Josh, "Recent Census of Doctors Show No Flight from Pennsylvania," *Philadelphia Inquirer*, October 2, 2001; Leonard, Martha, "State has seen sharp increase in number of doctors," *Sunday Gazette Mail*, February 25, 2001; Kinney and Groufein, "Indiana's Malpractice System: No-Fault by Accident," 54 *Law & Contemp. Probs.* 169, 188 (1991), cited in Galanter, Marc, "Real World Torts," 55 *Maryland L. Rev.* 1093, 1152-1153 (1996); Kinney, "Malpractice Reform in the 1990s, Past Disappointment, Future Success?" 20 *J. Health Pol. Pol'y & L.* 99, 120 (1996), cited in Galanter, Marc, "Real World Torts," 55 *Maryland L. Rev.* 1093, 1152 (1996).

¹¹ Martin D. Weiss, Melissa Gannon and Stephanie Eakins, *Medical Malpractice Caps: The Impact of Non-Economic Damage Caps on Physician Premiums, Claim Payout Levels, and Availability of Coverage*, Weiss Ratings, Inc. (2003); J. Robert Hunter and Joanne Doroshov, *Premium Deceit: The Failure of "Tort Reform" to Cut Insurance Prices*, Center for Justice & Democracy (1999).

¹² Meghan Mulligan and Emily Gottlieb, *Lifesavers: CJ&D's Guide to Lawsuits that Protect Us All*, Center for Justice & Democracy (2002).

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From: "Neil Ferstand" Wednesday, January 14, 2004

Health Care Marketplace**Capping Awards in Medical Malpractice Lawsuits Would 'Do Little' To Slow Health Spending, CBO Report Says**

Legislation to cap damages in medical malpractice lawsuits would "do little to hold down health care spending" or eliminate the practice of "defensive medicine," according to a Congressional Budget Office report released last week, *CongressDaily* reports (*CongressDaily*, 1/13). The report found that malpractice insurance premiums have increased in recent years in part because insurers have experienced increases in claims costs, as the amounts of damage awards in malpractice lawsuits have increased. However, the report found that malpractice insurance premiums also have increased because of reduced income from insurer investments and short-term factors in the insurance market. The report found that although malpractice insurance premiums are lower in states with caps on damages in malpractice lawsuits, "even large savings in premiums" would have a small impact on total health care spending because malpractice insurance costs account for less than 2% of spending (CBO report, 1/8). In addition, the report found that a cap on damages in malpractice lawsuits would not likely end the practice of "defensive medicine" -- in which physicians order more procedures and tests than are medically necessary to avoid malpractice lawsuits -- because "physicians who practice defensive medicine may do so less because they fear liability than to generate more income," *CongressDaily* reports (*CongressDaily*, 1/13). The report did not reach a conclusion on whether caps on damages in malpractice lawsuits affect access to health care. According to the report, although the General Accounting Office confirmed cases in which access to emergency surgery and newborn delivery was reduced in "scattered, often rural areas where providers identified other long-standing factors that affect the availability of services," the GAO also found that many reported shortages of health care services "could not be substantiated" or "did not widely affect access to health care" (CBO report, 1/8).

Medical Errors

The CBO report also found no evidence that the current medical liability system prevents medical errors, a claim that some opponents of caps on damages in malpractice lawsuits have made (*CongressDaily*, 1/13). The report said that the medical liability system may not prevent medical errors because health care providers are "generally not exposed to the financial cost of their own malpractice" and because "very few medical injuries ever become the subject of a tort claim" (CBO report, 1/8).

http://www.kaisernetwork.org/daily_reports/print_report.cfm?DR_ID=21678&dr_cat=3

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**"YOU KNOW HOW I SAID WE NEEDED TORT REFORM? NOW THAT WE'VE GOT IT, WE'D
LIKE A GIANT RATE INCREASE AS WELL" – INSURANCE INDUSTRY OF AMERICA**

Predictions that skyrocketing medical-malpractice-premiums costs for doctors would drop after state lawmakers capped jury awards a year ago appear premature... Premiums are expected to rise this year, in some instances as much as 40 percent, and doctors are closing shop and moving from the state.

("Doctors still closing shop and voting with their feet," T.C. Brown, Cleveland Plain Dealer, February 20, 2004)

"Based on the trends of frequency and severity of medical-malpractice claims that we see in Florida right now, we will need to ask for some kind of rate increase."

Dean Davidson, spokesman for MedPro, Florida's third largest med mal carrier, explaining the company's desire for a 19.4% rate increase just three months after passage of Florida's new medical malpractice law. ("Insurer wants malpractice rate increase," Orlando Sentinel, October 7, 2003)

"[T]ort reform does not provide a magical 'silver-bullet' that will immediately affect medical malpractice insurance rates."

(Medical Assurance Co. of Mississippi, September 2002)

"No, we're not telling you that."

Patricia Costante, chairman and CEO of the MILX Group of Insurance Companies, replying to a question inquiring whether her company would not raise premiums if caps were enacted. (Meeting of the New Jersey Assembly Joint Committee of Banking & Insurance and Health & Human Services on Medical Malpractice, June 3, 2002)

"I don't like to hear insurance-company executives say it's the tort system – it's self inflicted."

Donald J. Zuk, Chief Executive of SCPIE, a leading malpractice insurer in California, (Wall Street Journal, June 24, 2002). A year later SCPIE lobbied the insurance commissioner unsuccessfully for a 15.6% rate increase.

"While MICRA was the legislature's attempt at remedying the medical malpractice crisis in California in 1975, it did not substantially reduce the relative risk of medical malpractice insurance in California."

(James Robertson, actuary and assistant VP for SCPIE, in written testimony to the California Insurance Commissioner, lobbying for the 15.6% rate increase)

"The cap (on non-economic damages of \$250,000) will not lower premiums. One of the reasons premiums won't go down is that even if non-economic damages are capped, the loss for economic losses-medical costs for example-are still in this current environment escalating at medical inflation that is running in the double digits- I forget exactly what it was last year. So, even if you were to cap non-economic damages, the economic damages would still cause acceleration in the premiums- so, in fact they will not go down. I want to clarify: I misspoke, and said we thought premiums would go down."

WA State Medical Association and Insurance Industry lobbyist Cliff Webster, answering a question regarding the effect of proposed caps on premiums. (Washington State House Judiciary Committee, February 21, 2003)

"We strongly believe there is good reason to hope that the worst soon will be in the past, but we realize that optimism —however well-founded—has little power to mitigate the current situation."

Jerome M. Buckley, CEO and Chairman of Colorado's COPIC, explaining away a 14.2% rate increase in 2003 and projected 13.82% rate increase for 2004 by blaming the legal environment. Colorado passed its most significant tort reforms in 1988. (COPIC Topic, No.88 October 2003)

"[A]ny limitations placed on the judicial system will have no immediate effect on the cost of liability insurance for health care providers."

(Final Report of the Insurance Availability and Medical Malpractice Industry Committee, a bi-partisan committee of the West Virginia Legislature, issued January 7, 2003)

"It will take several years for the effects of the new legislation to be felt."

Robert Byrd, Chairman of the Medical Liability Association. ("Doctors Still Wait to See Premium Improvement in Nevada," Best's Insurance News, August 20, 2002)

Farmers Insurance has "suffered significant underwriting losses" recently and plans to refocus on its core lines of home, business, auto and life insurance.

Farmers Insurance Group spokeswoman Michelle Levy, explaining the decision to quit the medical malpractice business in California despite three decades with a \$250,000 cap. ("Farmers Insurance Exits Malpractice Arena," AP, September 24, 2003)

"We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates."

St. Paul's found "a total effect of about 1% savings" from Florida's 1986 tort reforms, but that even this 1% might be inflated. St. Paul concluded that "the noneconomic cap of \$450,000, joint and several liability on the noneconomic damages, and mandatory structured settlements on losses above \$250,000 will produce little or no savings to the tort system as it pertains to medical malpractice."

Conclusion of a St. Paul study of the projected effect of Florida's tort reforms, which included a \$450,000 cap, on recently closed cases. (St. Paul Fire & Marine Ins. Co., Medical Professional Liability, State of Florida, 1986)

"Given that liability losses constitute such a low proportion of business owners' losses, GA feels it is prudent to continue with its original proposal of a 10 percent increase in base rates."

General Accident Insurance Company. (The Seattle Times, July 1, 1986). The Times went on to write that "the highly touted tort-reform legislation enacted by the Legislature early this year is not lowering liability-insurance rates as promised, according to preliminary filings made with the state insurance commissioner."

In asking for a 22% rate increase following passage of tort reform in Washington State, including a cap on all damage awards, the company said, "our proposed rate would not be measurably affected by the tort reform legislation."

Allstate Insurance Company of Washington State, (The Seattle Times, July 1, 1986)

After enactment of the 1986 Washington tort reforms, St. Paul said that the limit on plaintiffs' lawyers fees "probably will have no effect on loss costs," and that "a 'cap' can become a target in smaller dollar cases, thus actually working to increase costs. We do not have the data that would allow us to project the actual probable effect in either direction."

(Letter from Richard W. Tongen, Executive Vice President, St. Paul Fire and Marine Ins. Co., to Richard G. Marquardt, Washington Insurance Commissioner, June 12, 1986)

After the 1986 Washington tort reforms, the Great American West Insurance Company said that on the basis of its own study, "it does not appear that the 'tort reform' law will serve to decrease our losses, but instead it potentially could increase our liability. We elect at this point, however, not to make an upward adjustment in the indications to reflect the impact of the 'tort reform' law."

(Letter from Kevin J. Kelley, Director of Actuarial for Great American West Insurance Company, to Norman Figon, Rate Analyst, Washington Insurance Department, April 23, 1986)

Sherman Joyce, President of the American Tort Reform Association, ("Study Finds No Link Between Tort Reforms and Insurance Rates," Liability Week, July 19, 1999)

"Insurers never promised that tort reform would achieve specific premium savings . . ." (March 13, 2002 press release by the American Insurance Association)

"The conclusion of the study is that the noneconomic cap . . . [and other tort 'reforms'] will produce little or no savings to the tort system as it pertains to medical malpractice." (Internal documents citing a study written by Florida insurers regarding that state's omnibus tort "reform" law of 1986 - Medical Professional Liability, State of Florida, St. Paul fire and Marine Insurance Company, St. Paul Mercury Insurance Company)

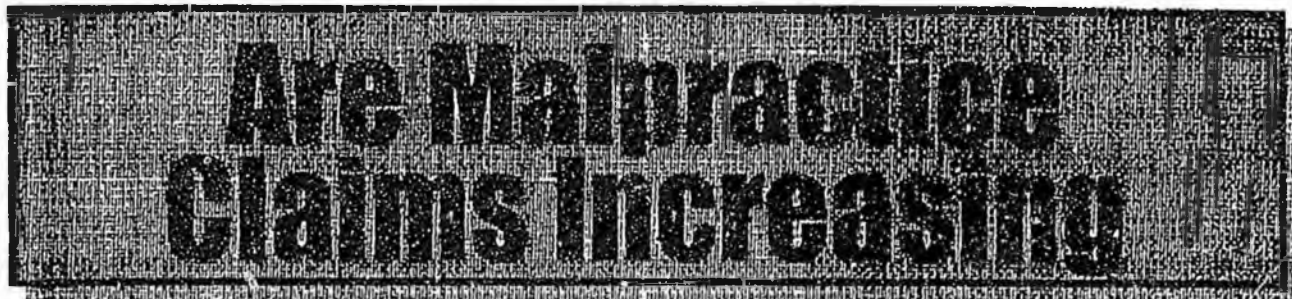
"[M]any tort reform advocates do not contend that restricting litigation will lower insurance rates, and 'I've never said that in 30 years.'" (Victor Schwartz, General Counsel, American Tort Reform Association, Business Insurance, July 19, 1999)

"[The insurance industry now says [tort reform] measures will have no effect on insurance rates. We have been disappointed by the response of the insurance industry. The reforms we passed should have led to rate reductions because we made it more difficult to recover, or set limits on recovery. But this hasn't happened." (Connecticut State Lawmaker, UPI, March 9, 1987)

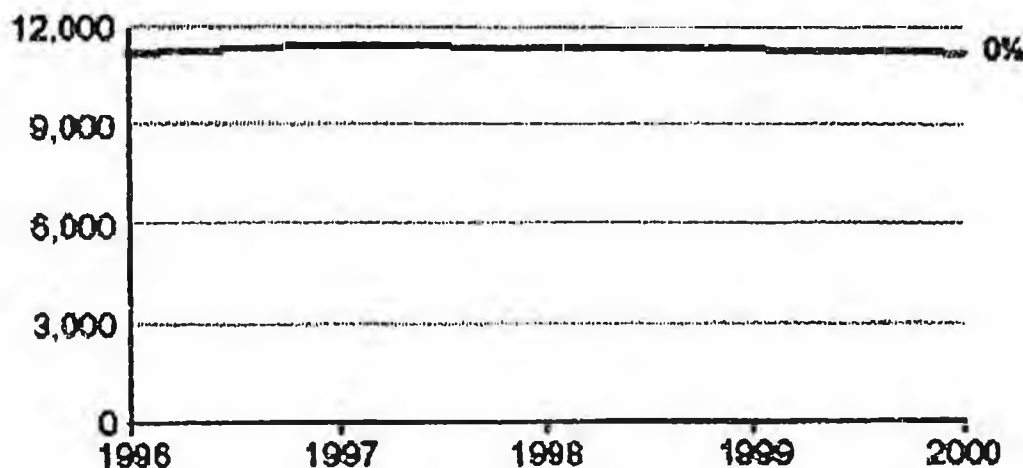
"[W]e believe the effect of tort reform on our book of business would be small. . . . [T]he loss savings resulting from the non-economic cap will not exceed 1% of our total indemnity losses. . . . [I]n our sample of liability claims, no claim was found that would have been affected by the joint and several restriction." And any savings due to alternative payment methods would be "negligible." (Letter from Robert J. Nagel, an Assistant Vice President at State Farm, to Ray Rather, Kansas Insurance Department, Oct. 21, 1986)

"[T]he review of the actual data submitted on these cases indicated no reduction of cost." Conclusion of an Aetna study of the projected effect of Florida's tort reforms, which included a \$450,000 cap, on recently closed cases. (Aetna Casualty & Sur. Co., Commercial Ins. Div., Bodily Injury Claim Cost Impact of Florida Tort Law Change, Aug. 8, 1986)

Medical Malpractice Insurance



Medical Malpractice Filings in 14 States, 1996-2000



The National Center For State Courts Says NO

“Between 1996 and 2000, medical malpractice data were available from 14 states. The chart clearly shows that there has been no change in the volume of medical malpractice cases in the last five years. Although filings crept up slightly (2.5 percent) in the first year, this increase was subsequently erased by a slow, steady decrease over the four remaining years” (page 31).

National Center For State Courts, Courts Statistics Project. 2002. Available online at <http://www.ncsconline.org/>

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FACTSHEET

Five Dangerous Myths About California's Medical Malpractice Restrictions

Myth#1: Legal Restrictions on Victims Lowered California Doctors' Malpractice Premiums.

Facts: Californians enacted the strongest insurance rate regulation in the nation in 1998 through insurance reform Proposition 103 (Prop 103), a ballot initiative passed by the voters and authored by FTCR president Harvey Rosenfield. This law resulted in a rate freeze, a rate rollback, and stringent regulation that reduced premiums in all lines of insurance -- including medical malpractice.

In 1975, California enacted a series of legal restrictions on injured patients -- the Medical Injury Compensation Reform Act (MICRA). Data from the National Association of Insurance Commissioners, summarized in graphs linked to below show that:

- Overall, California medical malpractice premiums increased dramatically during the first thirteen years with MICRA and substantially decreased after voters' approved Proposition 103. (See graph)
- Medical malpractice premiums remained extremely volatile after MICRA and did not stabilize until Prop 103 imposed rate regulation in 1988.
- In 1986, after a decade of MICRA, California was once again mired in an insurance crisis, with medical malpractice premiums rising at a rate of 26% annually, faster than premiums rose nationally during the same period. In fact, the year MICRA's cap of damages was upheld in court (1985), California malpractice premiums increased by 20% and the following year rates jumped an additional 40%.
- Conversely, after three years of insurance regulation under Prop 103, medical malpractice rates had fallen by more than 20%. During the first decade of regulation, premiums were down by 7% and, if we adjust for inflation, medical malpractice premiums are down by 35% since the enactment of regulation.

- California medical malpractice premiums tracked closely with national trends until Proposition 103 set California apart, by statutorily requiring lower insurance rates. (See graph)

Former Governor Jerry Brown, who signed the MICRA law, stated seventeen years later (on June 13, 1993) that he would not recommend it for the nation because in the interlude he "witnessed yet another insurance crisis and found that insurance company avarice, not utilization of the legal system by injured consumers was responsible for excessive premiums." "Saddest of all," Brown continued, is "the arbitrary and cruel effect upon victims of malpractice." (Read Brown's full statement)

Myth #2: Injured patients are still able to hold wrongdoers legally accountable because only "non-economic" damages are capped -- compensation for those damages not measured by wage loss, medical bills, or other tangible economic measures.

Facts: Only those patients with large wage loss or medical bills are typically able to find attorneys in California. Most medical malpractice victims cannot. For example, injured patients who, as a result of medical negligence, lose their fertility or are severely disfigured typically cannot prove "economic" damage. Similarly, the death of a child or senior citizen typically does not result in "economic" damage because there is no basis for wage loss or measuring medical bills. In these types of California cases, there is typically no legal accountability for wrongdoers

The situation stirred well-known insurance defense attorney Robert Baker, who defended malpractice suits for more than twenty years, to tell Congress about the problem. "In my view, these malpractice reforms have aided insurance companies and physicians, but have, to a significant extent, been detrimental to person injured by medical negligence," Baker testified before the House Judiciary Committee in 1994 on behalf of the American Board of Trial Advocates (ABOTA). "As a result of the caps on damages, most of the exceedingly competent plaintiff's lawyers in California simply will not handle a malpractice case.

"There are entire categories of cases that have been eliminated since malpractice reform was implemented in California. The victims of cases that have a value between \$50,000 and \$150,000 are basically without representation. As an example, incidents of failure to diagnose an appendicitis still occur, but suits are not filed to any extent in California."

Soon after the testimony, Baker's major clients -- the HMO Kaiser Permanente and malpractice insurer The Doctors' Company -- fired him. (Read Baker's full statement)

Legal fees and expenses are not added on to the "economic" damage award, so they must be subtracted from the capped "non-economic" damages portion. This makes expensive cases without significant economic damage components not viable for attorneys.

Myth #3 A one-size-fits-all cap on compensation is fair to patients who can receive "unlimited" economic damages.

Facts: Economic damages cannot always be anticipated. California juries are not informed of the cap on non-economic damages, so they are often not careful about apportioning economic damages. In one famous case, for example, Harry Jordan, a Long Beach man, was hospitalized to have a cancerous kidney removed but the surgeon took out his healthy kidney instead. A jury awarded Jordan more than \$5 million dollars, but the judge was required to reduce the verdict to \$250,000 due to California's cap on "non-economic" damages - plus a mere \$6,000 in "economic costs". Jordan, who lived for years on 10% kidney function, could no longer work, though the jury (which lawfully can not be notified about the "non-economic" cap) did not take this into account. Jordan's court costs -- not including attorney fees -- amounted to more than \$400,000 and his medical bills, that arose after frequently being denied by insurers, totaled more than \$500,000. He paid \$1700 per month in health insurance.

The stories of other patients victimized by California's restrictions can be found in FTCR's testimony before Congress.

Read a letter from members of California's Congressional Delegations critical of MICRA.

Myth #4: Malpractice damage caps are about doctors vs. lawyers .

Facts: Malpractice caps are about patients vs. reckless HMOs and managed care corporations.

Twelve years old today, Steven Olsen is blind and brain damaged because, as a jury ruled, he was a victim of medical negligence when he was two years old. He fell on a stick in the woods while hiking. Under the family's HMO plan, the hospital pumped Steven up with steroids and sent him away with a growing brain abscess, although his parents had asked for a CAT scan because they knew Steven was not well. The next day, Steven Olsen came back to the hospital comatose. At trial, medical experts testified that had he received the \$800 CAT scan, which would have detected a growing brain mass, he would have his sight and be perfectly healthy today.

The jury awarded \$7.1 million in "non-economic" damages for Steven's avoidable life of darkness and suffering. However, the jury was not told of the two decade old restriction on non-economic damages in the state. The judge was forced to reduce the amount to \$250,000. The jurors only found out that their verdict had been reduced by reading about it in the newspaper. Jury foreman Thomas Kearns expressed his dismay in a letter published in the San Diego Union Tribune.

"We viewed video of Steven, age 2, shortly before the accident. This beautiful child talked and shrieked with laughter as any other child at play. Later, Steven was brought to the court and we watched as he groped, stumbled and felt his way along the front of the jury box. There was no chatter

or happy laughter. Steven is doomed to a life of darkness, loneliness and pain. He is blind, brain damaged and physically retarded. He will never play sports, work, or enjoy normal relationships with his peers. His will be a lifetime of treatment, therapy, prosthesis fitting and supervision around the clock. . . Our medical-care system has failed Steven Olsen, through inattention or pressure to avoid costly but necessary tests. Our legislative system has failed Steven, bowing to lobbyists of the powerful American Medical Association (AMA) and the insurance industry, by the Legislature enacting an ill-conceived and wrongful law. Our judicial system has failed Steven, by acceding to this tilting of the scales of justice by the Legislature for the benefit of two special- interest groups. . . I think the people of California place a higher value on life than this."

In 2001, Steven had 74 doctor visits, 164 physical and speech therapy appointments, and three trips to the emergency room. And his parents say that was a good year because Steven was not hospitalized. Steven's mother Kathy had to leave her job because caring for Steven is a full time job. She has to struggle constantly with the school district for Steven to receive special education classes. One day, Steven ate part of a light bulb, not an uncommon problem for children with brain injuries. He has to be watched constantly. Insurance executives that seek to limit jury awards for the individual's pain and suffering claim society must do so to save money. Yet these executives typically make millions every year without any of Steven Olsen's pain and suffering. Limiting their responsibility for the pain of individuals reduces not only the corporation's accountability, but the worth of the individual to that of a mere object.

Kathy Olsen said this about Steven: "It has been 10 years ago this month when Steven came home from a 5-month life changing stay at the hospital. He was only 2 years old. When he went into the hospital no one asked his party affiliation. He was a casualty of the system. The system that he had no say in. Which lawmakers were looking out for him? Now with all his disabilities he will never see, do things that the average person gets to do in their lifetime, or vote in an election. Please look out for all the Steven Olsens in this great country. Don't let this happen over and over again."

Myth #5 Defensive medicine is always bad, significantly drives up the costs of medicine and results from doctors facing full legal accountability.

Facts: In the managed care age, the financial incentives point the other way -- to less caution, not more. Proponents of limiting victims' rights claim that doctors' fear of lawsuits, so called defensive medicine, is driving them to perform unnecessary tests and procedures.

The Congressional Office of Technology Assessment foresaw this trend in July 1994, reporting that less than 8 percent of diagnostic procedures are likely to be caused by conscious concern about malpractice liability. "Defensive medicine is not always bad for patients," the agency stated. "Malpractice reforms that remove incentives to practice defensively, without differentiating between appropriate and inappropriate defensive medicine, could also remove a deterrent to providing too little

care at the very time that such mechanisms are needed."

###

▲ [back to top](#)

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Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 813 West Third Avenue • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 258-8751

TELECOPIER COVER SHEET

TO:

Lesil McGuire / 907-465-6592

Les Gara / 907-465-3518

FROM:

Donna J. McCready / Alaska Action Trust - Board Member

INTERNAL USE:

March 3, 2004

Number of Pages (including cover sheet): 28

Telecopier Operator: Barb Horn [9368.008]

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Alaska Action Trust

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(907) 258-4040 • FAX (907) 258-8751

March 3, 2004

VIA FACSIMILE

**Chair Lesil McGuire and
Committee Members
House Judiciary Committee**

**Re: HB 472 – Examples of Cases Where Rule 82 and Rule 79 Judgments Were
Sought Against Plaintiffs in Medical Negligence Cases**

Dear Madam Chair and Members of the House Judiciary Committee:

At the hearing last Wednesday, February 25, 2004, you requested information regarding Rule 82 judgments against plaintiffs in medical negligence cases. This letter responds to that request.

Rule 82 is the Court Rule that allows a prevailing party to obtain a judgment for a portion of his or her legal fees against the losing party. Rule 79 allows the assessment of certain costs against a losing party. The threat of fees and Rule 79 costs being assessed against a plaintiff at the end of a case is a tremendous disincentive to a plaintiff to go to trial because, unlike insured defendants, if the plaintiff loses they have to pay fees and costs out of their own pockets, facing the prospect of bankruptcy in many cases. Because costs and fees are generally quite high in medical negligence cases, judgments for costs and fees in malpractice cases can be a significant threat to a plaintiff.

The summary of cases below and attached judgments¹ show that Rule 82 and Rule 79 are in fact used against patients/plaintiffs who are not prevailing parties in medical malpractice cases.

The following cases were brought to my attention during the last week. There are undoubtedly other cases that have not been brought to my attention where judgments were sought and obtained by medical care providers and their insurers against patients who were not the prevailing party in a medical malpractice action. The following are simply examples of such cases.

¹ Where possible, I have attached a copy of the actual judgment to this letter.

Chair McGuire
March 2, 2004
Page 2 of 3

In the two cases cited by the sponsor of HB 472, Marsingill v. O'Malley, 3AN-95-9909 Ci, and Korman v. Mallin, 3AN-90-3486 Ci, defendants obtained judgments against the plaintiffs. In Marsingill the judgment for costs and fees was \$87,964.34 and in Korman the judgment for fees was \$3,931.00. [Both judgments are attached.]

In Kathleen Castle, as personal representative of the Estate of Wesley K. Johnson, individually and as next best friend to Kirsten Johnson vs. Greg McCarthy, et al., 3AN-97-1836 Ci, there was a judgment entered against the plaintiffs in the amount of \$149,258.17 in favor of the defendants for costs and fees. The plaintiff filed Chapter 7 Bankruptcy and ultimately the defendants received \$37,500.

In Moffitt v. Kralick, M.D. and John C. Godersky, M.D., 3AN-93-9935 Ci, Dr. Godersky was awarded costs in the amount of \$24,490.16 and fees in the amount of \$49,757.70. Dr. Kralick was awarded \$30,053.73 in costs against Moffitt and \$56,322.50 in fees. The final judgment for the total costs and fees against Moffitt in favor of his doctors was \$160,624.09. [Judgments attached.]

In Freitas v. Alaska Radiology Assoc., Inc., et al., 3AN-99-100664 Ci, the defendants obtained a judgment in the amount of \$51,454.90 against the plaintiff who was dying from breast cancer and her husband. [Judgment attached.]

In Snyder v. Jon F. Lieberman, M.D., et al., 4FA-98-3245 Civ., defendants were awarded \$16,425.63 in costs and \$39,142.35 in fees for a total of \$55,567.98. [Judgment attached.]

In Johnson v. George Siegfried, M.D., Dr. Siegfried was awarded \$14,270.13 in costs and \$28,113.60 in fees for a total of \$42,383.73. [Judgment attached.]

In Elgedawi v. Wrigley, 3AN-01-7057Ci, Dr. Wrigley obtained a judgment against his patient for \$41,524.47. [Judgment attached.]

In Griffin v. George Siegfried, M.D., 3AN-97-2981Ci, Dr. Siegfried obtained a judgment against his patient for fees in the amount of \$26,527.20 and costs in the amount of \$12,113.74 for a total award of \$38,640.94. [Judgment attached.]

In Giordano v. Valley Hospital Association, 3PA-96-860 Ci, Valley Hospital was awarded costs and fees in the amount of \$29,779.31 plus post-judgment interest on the unpaid balance. [Judgment attached.]

Chair McGuire
March 2, 2004
Page 3 of 3

In Thibault v. Mark Zimmerman, M.D., 3AN-93-11357 Ci, Dr. Zimmerman obtained a judgment in the amount of \$8,969.25 for costs and \$19,825.00 for fees, for a total of \$28,794.25 against Thibault. [Judgment attached.]

In Johnson v. Douglas Smith, M.D. and Kathleen Fields, 3AN-93-2919Ci, defendants were awarded costs in the amount of \$3,979.08 and fees in the amount of \$15,846.45, for a total award of \$19,825.53. [Judgment attached].

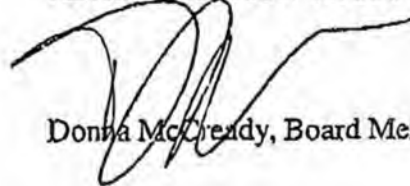
In Grummett v. Olsen, 1JU-98-00384 Ci, the defendant doctor obtained an award against the plaintiff for fees and costs and the plaintiff was then forced to file for bankruptcy protection.

In Sweet v. Sisters of Providence, 893 P.2d 1252 (Alaska 1995), the defendants obtained a judgment against the plaintiffs as well.

I sincerely hope this information is helpful to the committee.

Very truly yours,

ALASKA ACTION TRUST



Donna McCready, Board Member

8/26/00

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

VICKI MARSINGILL and)
PAUL MARSINGILL, Wife and)
Husband,)
)
Plaintiffs,)
)
v.)
)
JAMES O'MALLEY, M.D.,)
)
Defendant.)

Case No. 3AN-95-9909 Civil

FINAL JUDGMENT

On June 30, 2000, the jury rendered its special verdict, finding that defendant James O'Malley, M.D., was not negligent in the above-styled action. In accordance with the jury's finding,

IT IS HEREBY ORDERED that final judgment be entered in favor of defendant James O'Malley, M.C., and against plaintiff Vicki Marsingill for attorney's fees in the amount of \$ 51,160.57 ^{11/22/00 FR} entered pursuant to Alaska R. Civ. P. 82, and taxable costs of \$ 36,803.84 ^{11/22/00 SR} pursuant to Alaska R. Civ. P. 79, for a total judgment of \$ 87,964.34 ^{11/22/00 SA} against plaintiff Vicki Marsingill and in favor of Dr. O'Malley. The total judgment shall bear interest at the rate of 10.5 percent per annum from the date of entry of this judgment until completely satisfied.

JUL 24 2000

DELANEY, WILES,
HAYES, GERETY,
ELLIS & YOUNG, INC.
SUITE 400
97 8th AVENUE
ANCHORAGE, ALASKA
(907) 279-3581

113029

1502

DATED at Anchorage, Alaska, this 26th day of August, 2000.

Peter A. Michalski
Peter A. Michalski
Superior Court Judge

Final Judgment on behalf of James O'Malley, M.D., having been served by mail and received on the _____ day of July, 2000, at _____ o'clock _____ .m., is:

Approved as to form (initial)

Disapproved as to form (initial)

Acknowledged as to date and hour
Robert H. Wagstaff
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I heraby certify that a true and correct copy of this document was mailed/~~hand delivered~~ on the 26th day of July, 2000, to:

Robert H. Wagstaff
425 "G" Street, Suite 610
Anchorage, Alaska 99501

Kathy K. Conger
Kathy K. Conger
32033

I certify that on 8-28-00
a copy of the above was mailed to each of the following at their addresses of record:
[Signature] R. Wagstaff
H. Lezer
Secretary/Deputy Clerk

Resent to
Wagstaff
Lazar
6/22/00
SB

DELANEY, WILES,
HAYES, GERETY,
ELLIS & YOUNG, INC.
SUITE 400
101 ST 2ND AVENUE
ANCHORAGE, ALASKA
(907) 278-3881

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

JULIE KORMAN,
Plaintiff,
vs.
ROBERT E. MALLIN,
Defendant.

STATE OF ALASKA
APPEALS DIVISION

APR 09 1992

Clerk of the Court
R

Case No. JAN-90-3486 Civil

ORDER GRANTING ATTORNEY'S FEES

Upon the motion of Robert Mallin, M.D., defendant, for an award of attorney's fees, pursuant to Civil Rule 82, and this court having considered the memorandum, affidavit, and exhibits submitted in support of the motion, and the documents filed in opposition thereto, and this court having found that Robert Mallin, M.D. is the prevailing party herein and entitled to an award of reasonable attorney's fees incurred in his defense herein,

IT IS HEREBY ORDERED that Robert Mallin, M.D. shall recover \$ 3931.⁰⁰ in attorney's fees pursuant to Civil Rule 82, which sum shall be endorsed upon the judgment previously entered in his favor.

It is this court's considered view, that the forementioned sum properly serves to advance the purposes of Civil Rule 82 in view of the issues in this proceeding, the amount of plaintiff's

HAGANS, BROWN
GIBBS & MORAN
ATTORNEYS AT LAW
610 S. STEWART STREET, SUITE 200
ANCHORAGE, ALASKA 99501
407-276-8100

1401 153

damage claims, and the legal work required to prepare the defense of Dr. Hollin's behalf.

DATED at Anchorage, Alaska, this 9th day of April, 1992.

H. H. Hunt
Superior Court Judge

SPC:sd
308916,Ord

I certify that on 4-9-92
a copy of the above was placed to each
of the following at their addresses of
record:

W. Lab Ray
Secretary

HAGANS, BROWN
GIBBS & MORAN
ATTORNEYS AT LAW
314 STREET, SUITE 200
ANCHORAGE, AK 99501
1327 274-5214

Return to:
 Matthew K. Peterson
 Clapp, Peterson & Stowers
 711 H Street, Suite 620
 Anchorage, Alaska 99501-3442
 Tel: (907) 272-9272
 Fax: (907) 272-9586

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT

BERNIE W. MOFFITT, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 LOUIS L. KRALICK, M.D. and)
 JOHN C. GODERSKY, M.D.,)
 Defendants.)

FILED
 MAR 3 1995
 ANCHORAGE, ALASKA
 [Signature]

Case No. 3AN-93-9935 Civil

FILED MAR 3 1995

FINAL JUDGMENT

This matter, having been tried before a properly empaneled jury and the jury having returned its verdict in favor of Dr. Godersky and against Plaintiff, Bernie W. Moffitt, Jr., on December 15, 1995;

IT IS HEREBY ORDERED as follows:

1. Final judgment in favor of John C. Godersky, M.D. shall be and hereby is entered. All claims of plaintiff Bernie W. Moffitt, Jr. against Dr. Godersky are DISMISSED WITH PREJUDICE.

2. Dr. Godersky is awarded his costs pursuant to Alaska Civil Rule 79 in the amount of \$ 24,490.16 (319196.00)

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3. Dr. Godersky is awarded his attorney fees pursuant to Alaska Civil Rule 82 in the amount of \$ 49,757.70 (8-13-96 memo)
ORDERED, ADJUDGED AND DECREED this 29th day of January, 1996.

Peter Michalski

Peter Michalski
Superior Court Judge

96-044267
18 CC
ANCHORAGE REC. DISTRICT
REQUESTED BY Clapp, P. Stowers
'96 SEP 10 AM 9 08

THAT ON 3/19/96
A COPY OF THIS DOCUMENT WAS
MAILED/HANDED TO: Luca, Esq.
Lamb, Esq.
Peterson, Esq.
[Signature]
Secretary/Deputy Clerk

I certify a copy of this document was mailed/hand delivered to:

Lamb, Hensley Lane
Date: 12/22/95 By: KJA

Exhibit A
Page 7 of 13

I certify that on 1-30-96
a copy of the above was mailed to each
of the following at their addresses of
record: Deaney, Wiles, Hales, Gereth, & Ellis
Clapp, Peterson, Stowers
[Signature]
Secretary/Deputy Clerk

By *[Signature]*
Date 2/30/96
Clerk of the Trial Courts at Anchorage
ATTEST:
I hereby certify that this is a true and correct copy of the original on file in my office.

AUG 7 1996
Dr. DELANEY, WILES, HAYES,
GERETY & ELLIS, INC.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

BERNIE W. MOFFITT, JR.,)

Plaintiff,)

vs.)

LOUIS L. KRALICK, M.D., and)
JOHN C. GODERSKY, M.D.,)

Defendants.)

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

JAN 30 1996

Clerk of the Court
By BIC Deputy

Case No. 3AN-93-9935 Civil

FINAL JUDGMENT

THIS MATTER having been tried before a jury between November 27 and December 14, 1995, and the jury having returned a special verdict on December 15, 1995, with a finding of no negligence by either defendant, the court pursuant to Alaska R. Civ. P. 58 hereby enters final judgment in favor of the defendant Louis L. Kralick, M.D.

Defendant Louis L. Kralick, M.D., pursuant to Alaska R. Civ. P. 79, is awarded costs in the amount of \$ 30,053.73 and, pursuant to Alaska R. Civ. P. 82(b)(2), is awarded attorneys' fees in the amount of \$ 56,322.50, for a total judgment in favor of defendant Louis L. Kralick, M.D., and against plaintiff Bernie Moffitt, Jr., in the amount of \$ 86,376.23. This judgment shall bear interest on the total amount at the rate of 10.5 percent per annum.

DATED at Anchorage, Alaska, this 29th day of January, 1996.

Peter A. Michalski
Peter A. Michalski
Superior Court Judge

Exhibit 13 14

I certify that on 8-6-96
a copy of the above was mailed to each
of the following at their addresses of
record:

Luce
Lamb
Peterson

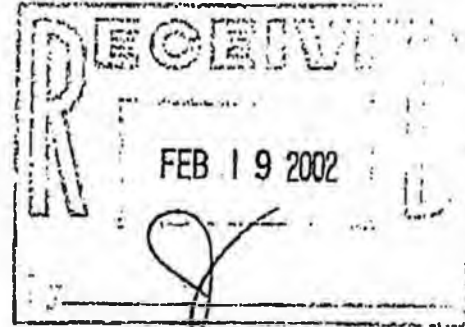
CERTIFICATION 3/19/96
A COPY OF THIS DOCUMENT WAS
MAILED/HANDED TO: Luce, Esq.
Lamb, Esq.
Peterson, Esq.

D. Hughes
Secretary/Deputy Clerk

DELANEY, WILES,
HAYES, GERETY
& ELLIS, INC.
SUITE 400
100 WEST 3RD AVENUE
ANCHORAGE, ALASKA
(907) 279-3581

I certify that on 1-30-96
a copy of the above was mailed to each
of the following at their addresses of
record: Delaney, Wiles, Hayes, Gerety-
BIC ELLIS

Secretary/Deputy Clerk 1400 Peterson + Stover



1 Matthew K. Peterson, Esq.
2 Clapp, Peterson & Stowers, LLC
3 711 H Street, Suite 620
4 Anchorage, Alaska 99501-3442
5 Telephone: (907) 272-9272
6 Telecopier: (907) 272-9586

7 IN THE SUPERIOR COURT, FOR THE STATE OF ALASKA
8
9 THIRD JUDICIAL DISTRICT AT ANCHORAGE

10 DONNA MAE FREITAS and
11 DANIEL FREITAS, husband and wife,

12 Plaintiffs,

13 vs.

14 ALASKA RADIOLOGY ASSOC., INC.
15 and JANICE M. ANDERSON, M.D.;

16 Defendants.

FILED in the Trial Courts
State of Alaska Third District

MAY 17, 2001

Clerk of the Trial Courts

By [Signature] Deput

Case No.: 3AN-99-10664 Civil

FINAL JUDGMENT

17 Upon a jury verdict dated April 16, 2001, finding no negligence on the part of
18 defendants;

19 IT IS ORDERED that judgment is entered as follows:

- 20 1. Defendants Alaska Radiology Assoc., Inc. and Janice M. Anderson,
21 M.D., shall recover from and have judgment of dismissal with prejudice of all claims
22 raised by Plaintiffs against them, and judgment shall be entered against Plaintiffs,
23 Donna Mae Freitas and Daniel Freitas, jointly and severally, as follows:

Date Received _____

_____ / _____ Copy to Client
Calendar & Tickler

Route Thru: [Signature] to _____

_____ / _____ File No. FRO-01

24 Final Judgment
25 Freitas v. Anderson, et al., Case #3AN-99-10664 Civ.

APR 24 2001

11/17/01

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a. Attorney's Fees \$ 31,811.40

SJA 2/14/02
Date Awarded: 12/18/01
Judge: TAN

b. Costs \$ 19,643.50

SJA 2/14/02
Date Awarded: 2/14/02
Clerk: Brenda Axtell

c. TOTAL JUDGMENT: \$ 51,454.90 *SJA 2/14/02*

d. Post-Judgment Interest Rate: 9.0%

May 17/01
Date

Tan Wang
The Honorable Sen K. Tan
Judge of the Superior Court

Certificate of Service:

I hereby certify that a copy of this document was mailed faxed hand-delivered on April 25, 2001, to the following:

Paula M. Jacobson, Esq.
Attorney at Law
604 West 2nd Ave.
Anchorage AK 99501

Sidney Stillerman Royer
Schroeter, Goldmark & Bender
500 Central Building
810 Third Avenue
Seattle WA 98104

By Done Shouster

I certify that on 5-17-01 a copy of the above was mailed to each of the following at their addresses of record.

E. Muller *Jacobson Peterson*
Secretary/Deputy Clerk

Re Mailed
2/15/02
SJA

ddg 1/12/10

CLAPP PETERSON & STOWERS, LLC
1603 College Road, Suite 200
Fairbanks, AK. 99709-4175
Tel: (907) 479-7776
Fax: (907) 479-7966

Filed in the Trial Courts
STATE OF ALASKA, FOURTH DISTRICT

JAN 4 2001

Clerk of the Trial Courts

By _____ Deputy

SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

JAMES M. SNYDER and BECKY SNYDER,
husband and wife,

Plaintiffs,

vs.

JON F. LIEBERMAN, M.D.,
TANANA VALLEY CLINIC LIMITED
PARTNERSHIP; and TANANA VALLEY
MEDICAL-SURGICAL GROUP, INC.,

Defendants.

Case No. 4FA-98-3245 CIV
ABA No. 6903004

FINAL JUDGMENT

IT IS ORDERED that judgment is entered as follows:

1. Defendants Jon F. Lieberman, M.D., Tanana Valley Clinic Limited Partnership, and Tanana Valley Medical-Surgical Group, Inc. shall recover from and have judgment against Plaintiffs, James M. Snyder and Becky Snyder, jointly and severally, as follows:

a. Principal Amount \$ _____

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b. Prejudgment Interest on \$ _____
(computed at the annual rate of _____%
from _____ to date of judgment) \$ _____

c. Sub-Total: \$ _____

d. Attorney's Fees \$ 39,142.35
Date Awarded: 3-6-01
Judge: STEINKRUGER

e. Costs \$ 16,425.63
Date Awarded: 3-7-01
Clerk: Deirda Bee
Chief Deputy

f. TOTAL JUDGMENT: \$ _____

g. Post-Judgment Interest Rate: _____%

Post-judgment interest shall accrue at the legal rate of interest from
December 14, 2000 until the judgment is paid in full.

Date 1/4/00

Niesje J. Steinkruger
Niesje J. Steinkruger
Superior Court Judge

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I certify that a copy of this document was served
via:
(X) First Class Mail
() Hand-Delivery
() Facsimile
to the following listed individuals:

Matt O'Meara, Esq.
Kenneth L. Covell, Esq.

Date: 12/10/02 By: Bodo-Gadkin

I certify that a copy of the foregoing was distributed via:
U.S. Postal Service Clara J. O'Meara
Hand Delivery Covell
Other for (w/o amounts)

REDISTRIBUTION

I certify that on 3-9-01 copies of this form were sent to
Clerk: [Signature] CP-S-JKS-est.
O'Meara
DP-Covell
w/ copy to ADP Files

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

Filed in the Tribal Court, STATE OF ALASKA, THIRD DISTRICT

SEP 29 1994

CLERK OF THE COURT

DEBRA L. JOHNSON,)
)
 Plaintiff,)
)
 vs.)
)
 GEORGE E. SIEGFRIED, M.D.,)
)
 Defendant.)

Case No. 3AN-89-3903 CI

FINAL JUDGMENT

Upon verdict of a properly impanelled jury, dated September 1, 1994, in favor of George E. Siegfried, M.D., Defendant, and against Debra L. Johnson, Plaintiff, following jury trial which commenced on August 18, 1994, judgment shall be and hereby is entered as follows:

1. All claims of Plaintiff Debra L. Johnson as against George E. Siegfried, M.D. are dismissed with prejudice.
2. George E. Siegfried, M.D. is the prevailing party in the litigation.
3. George E. Siegfried, M.D. shall be and hereby is awarded his costs in the amount of \$14,270.13 (125450)
4. George E. Siegfried, M.D. is hereby awarded his attorney fees in the amount of \$28,113.60 (13W 9-21-94)

ORDERED, ADJUDGED, AND DECREED this 28 day OF Sept, 1994.

Peter A. Michalski
The Honorable Peter A. Michalski
Judge of the Superior Court

I certify that on 9-28-94 a copy of the above was mailed to each of the following at their addresses of record: *Peter A. Siegfried / Peterson*

Exhibit A
Page 3 of 13

I CERTIFY THAT ON 11-15-94 A COPY OF THIS DOCUMENT WAS MAILED/HANDED TO:

Gemmingen, Esq. Peterson, Esq. Colbo, Esq.

Secretary/Treasurer/Clerk

Re. Sent 6-1-95

HUGHES THORGNESSE GANTZ POWELL & BRUNDIN ATTORNEYS AT LAW 808 WEST THIRD AVENUE ANCHORAGE, ALASKA 99501

ATTEST: *M.L.* Clerk of the Third Courts at Anchorage Final Judgment 187209W 11026-501

This is a true and correct copy of the original on file in my office. *R. G. D. ... 6/16/95*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ELSAID ELGEDAWI,)
)
Plaintiff,)
)
vs.)
)
JOHN B. WRIGLEY, M.D.,)
)
Defendant.)

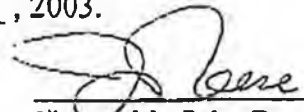
Case No. 3AN-01-7057 CI

JUDGMENT

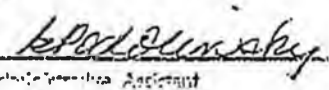
The above-entitled matter having come on regularly before this court for trial on the 16th day of July, 2003 for jury trial, plaintiff being present and through counsel, Charles W. Ray, Jr., and defendant being present and through counsel, Keith E. Brown, the jury having heard the testimony and evidence presented at trial and having entered a verdict in favor of defendant, judgment is hereby rendered in favor of defendant dismissing the plaintiff's cause of action with prejudice; costs incurred in the amount of \$3410.47; and attorney's fees pursuant to Civil Rule 82 in the amount of \$38,113⁵⁰, for a total judgment of 41,524.47 Dollars (\$41,524.47), on which interest shall accrue at the rate of 10.5 % per annum from Sept. 4, 2003 until paid in full.

LET EXECUTION ISSUE.

DATED this 4th day of Sept., 2003.


Honorable John Reese
Superior Court Judge

9/10/03
A copy of the above was mailed to each of the following at their addresses of record:

Resent 9/17/03
Ray/Reese

Administrative Assistant

Elgedawi v. Wrigley, Case No. 3AN-01-7057
Judgment
Page 1

Law Offices
BROWN, WALLER &
GINS
A Professional Corporation
821 N Street, Suite 202
Anchorage, Alaska 99501-3285
(907) 276-2050

FILED 07 2003

COUNSEL OF RECORD

CASE NO. 301701-07057 CI

KEEP ON TOP OF FILE

NAME	MAILING ADDRESS & PHONE NUMBER	FOR WHOM
Charles W. Ray	711 "H" Street, Suite 310 Anchorage AK. 99501 (907) 274-4839/ph 277-9414/fax 276-2050	PLT
KEITH E. BROWN	821 N Street, Suite 202 Anchorage AK. 99501 276-2051/fax	Δ

PTCF 6/12/03 JUTM 7/14/03
 IF-900 (3/00)(5 1/2 X 8 1/2)(canary cdsic) ~~W/22. 4/29/02~~ ~~JUTR 12/9/02 vacated - W/19-19-01~~
~~12/5/02 SCIT 12-16-02~~ ~~3/14/02 vacated PTCF 12/2/02 T/S 7/4/03~~

- OTHER CIVIL
- Foreclosure (FOR)
 - Injunctive Relief (INJ)
 - Quiet Title (QIT)
 - Other (OCI). Please describe: _____
- Administrative Appeal (ADR)
 Minor Settlement (MIN)

2. If you checked a box in the first column, fill in the name of each defendant below, one name per line. (Not required if this is a fast track case.)

Name of Defendant	Appearance	Answer	Request for Entry of Default	Notice of Dismissal by Plaintiff	Confession of Judgment
John B. Wrigley, M.D.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Defendant list continued on back.

Clerk Instructions: First be sure all defendant names are listed if the case is subject to Rule 16(b) (i.e., listed in column one of section 1 and not fast track). Then check the appropriate box when one of the listed documents is filed or when a defendant appears in a court hearing. When there is a check beside the name of each defendant, set the case for a Pretrial Scheduling Conference.

RECEIVED

MAR 05 2001

Clapp, Peterson & Stowers

1 Matthew K. Peterson, Esq.
 2 Clapp, Peterson & Stowers, LLC
 3 711 H Street, Suite 620
 4 Anchorage, Alaska 99501-3442
 Telephone: (907) 272-9272
 Telecopier: (907) 272-9586

5 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 6 THIRD JUDICIAL DISTRICT AT ANCHORAGE

7 MARK S. GRIFFIN,

8 Plaintiff,

9 vs.

10 GEORGE E. SIEGFRIED, M.D.,

11 Defendant.

Case No. 3AN-97-2981 Civ.

AUG 17 2000

13 FINAL JUDGMENT

14 Upon verdict of the duly and properly impaneled jury, dated August 10,
 15 2000, and a finding by said jury of no negligence on the part of Dr. Siegfried,
 16 defendant herein, the Court hereby orders that judgment shall be entered as
 17 follows:

18 1. All claims raised by plaintiff Mark Griffin, as against George Siegfried,
 19 M.D., shall be and hereby are DISMISSED WITH PREJUDICE.

20 2. Dr. Siegfried shall be and hereby is awarded his attorney's fees
 21 incurred in the defense of the action in the amount of \$ 210,527.20 ^{AR 1/8/01}, pursuant
 22 to Alaska R. Civ. 82.
 23
 24

MPRO

3. Dr. Siegfried shall be and hereby is awarded his costs pursuant to
 Alaska R. Civ. P. 79, in the amount of \$ 12,113.74 ^{AR 1/8/01}
 ORDERED, ADJUDGED and DECREED this 30 day of August,
 2000.

By: [Signature]
 Honorable Eric T. Sanders
 Judge of the Superior Court

Certificate of Service:

I hereby certify that a copy
 of this document was mailed
 faxed hand delivered on
 August 10, 2000, to the following:

Larry Caudle, Esq.
 2525 Blueberry Road, Suite 201
 Anchorage, Alaska 99503

By: [Signature]

I certify that on 8/30/00
 a copy of the above was mailed to
 each of the following at their addresses
 of record:

[Signature]
 Secretary/Deputy Clerk

CAUDLE/PETERSON

Resent 1/9/01
[Signature]

002072
 PALMER
 RECORDING DISTRICT

18^{cc}

2001 JA 17 PM 12:15

REQUESTED BY
 Northrise Bank

Exhibit A
 Page 5 of 3

I hereby certify that this is a true and correct
 copy of the original on file in my office:

ATTEST:

Clerk of the Trial Courts at Anchorage

By: [Signature] 1/12/01
 Clerk

AFTER RECORDING, RETURN TO:
 MATTHEW PETERSON, ESQ (1926-160)
 CLAPP PETERSON & STOWERS LLC
 711 H ST STE 620
 ANCHORAGE AK 99501-3442

FOR RECORDING IN THE
 PALMER RECORDING DISTRICT
 THIRD JUDICIAL DISTRICT
 STATE OF ALASKA.

1 Craig F. Stowers, Esq.
 2 Clapp, Peterson & Stowers, LLC
 3 711 H Street, Suite 620
 4 Anchorage, Alaska 99501-3442
 Telephone: (907) 272-9272
 Facsimile: (907) 272-9586

5 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 6 THIRD JUDICIAL DISTRICT AT PALMER

7 KATHERINE GIORDANO
 8
 9 Plaintiff,
 10 vs.
 11 VALLEY HOSPITAL ASSOCIATION,
 12 INC., an Alaska corporation,
 13 Defendant.

Received
 DEC 03 1999

Clapp, Peterson & Stowers
 Case No. 3PA-96-860 CI

14
 15 **CORRECTED**
 16 **JUDGMENT**

17 This matter was tried before a properly impaneled jury, with trial commencing
 18 May 19, 1999. A verdict was rendered in favor of defendant Valley Hospital
 19 Association and against plaintiff Katherine Giordano on May 28, 1999.

20 **THIS COURT ORDERS AS FOLLOWS:**

21 1. Judgment is entered in favor of Valley Hospital Association and against
 22 plaintiff Katherine Giordano.

Exhibit A
 Page 6 of 13

6561 03 1999

1 2. Pursuant to Alaska R. Civ. P. 79, Valley Hospital Association shall be
2 awarded its costs in the amount of \$6,836.31.

3 3. Pursuant to Alaska R. Civ. P. 82, Valley Hospital Association shall be
4 awarded its attorney fees in the amount of \$22,943.00.

5 Valley Hospital Association is awarded costs and attorney fees against
6 Katherine Glordano in the amount of \$29,779.31.

7 Further, the Court awards Defendant Valley Hospital Association post-judgment
8 interest on the unpaid balance of the judgment at the statutory rate of seven and
9 one-half percent (7.5%) per annum from July 20, 1999, the date of this Court's entry of
10 judgment in favor of Valley Hospital Association, until the date of satisfaction of the
11 entire judgment.
12

13
14 DATED: 11/30/99

Eric Smith
The Honorable Eric Smith
Judge of the Superior Court

16 Certificate of Service:
17 I hereby certify that a true and correct
18 copy of the foregoing was mailed X
19 faxed _____, hand delivered _____ on
20 November 12, 1999, to the following:
21 Benjamin I. Whipple, Esq.
22 14001 W. Arctic Ave.
23 Palmer, AK 99645

24 By: Diane L. Buzger

I certify that on 12-2-99
a copy of this document was sent to:
 CSED Attorney(s) of Record Whipple
 Plaintiff Defendant
 Other _____
at the address(es) of record.
Rec'd Jri: _____ Date _____ Deputy Clerk _____

1 Matthew K. Peterson, Esq.
2 Clapp, Peterson & Stowers
3 711 H Street, Suite 620
4 Anchorage, Alaska 99501-3442
5 Tel: (907) 272-9272
6 Fax: (907) 272-9586

RECEIVED: Clapp, Peterson & Stowers

Date: 10/16/96

B

7 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
8 THIRD JUDICIAL DISTRICT

9 JEAN THIBAUT,)
10 Plaintiff,)
11 vs.)
12 MARK ZIMMERMAN, M.D.,)
13 Defendant.)

FILED IN THE TRIAL COURTS
State of Alaska, Third District

AUG 13 1996

Clerk of the Trial Court

By *[Signature]* Deput.

Case No. 3AN-93-11357 Civil

14 FINAL JUDGMENT

15 Pursuant to verdict of a properly impaneled jury on July 11, 1996, in favor of
16 Mark Zimmerman, M.D. and against plaintiff Jean Thibault, the Court hereby ORDERS
17 as follows:

18 Final Judgment shall be and hereby is entered in favor of Dr. Zimmerman and
19 against Ms. Thibault on all claims.

20 Plaintiff's complaint is dismissed with prejudice.

21 Dr. Zimmerman is awarded his costs pursuant to Alaska Civil 79 in the amount
22 of \$8,969.26 ^{CSM} and his attorney fees pursuant to Alaska Civil Rule 82 in the
23 amount of \$19,825.00 ^{CSM 10-14-96}

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ORDERED, ADJUDGED AND DECREED this 13 day of August

1996 at Anchorage, Alaska.

B. Shortell

Brian C. Shortell
SUPERIOR COURT JUDGE

Received this 22nd day of July, 1996.

Approved as to form: _____

Disapproved as to form: ✓

STEPOVICH, KENNELLY & STEPOVICH
Attorneys for Plaintiff

Ted Stepovich
Ted Stepovich

I certify that on 8/14/96
a copy of the above was mailed to each
of the following at their addresses of
record: Stepovich / Peterson
Wardman
Secretary/Deputy Clerk
PRESENT 10-14-96 COMRADE

Certificate of Service:

I hereby certify that a copy
of this document was mailed _____,
faxed _____, hand delivered ✓, on
July 17, 1996, to the following:

Ted Stepovich, Esq.
Stepovich, Kennelly & Stepovich, P.C.
733 W. 4th Avenue, Suite 401
Anchorage, Alaska 99501

By: *S. Jones*

MKP/dij:pldg final judgment.doc

FINAL JUDGMENT
Page 2
Thibault v. Zimmerman

Exhibit A
Page 9 of 13