

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

10869 HOUSE JUDICIARY

Testimony About The Florida Problem

Consumer Perspective

Upon being injured, the victim of medical malpractice is forced to step into the legal system in order to receive some type of remedy. At the same time, patients are aware of the need to have access to affordable healthcare. The Task Force heard that consumers want a system that ensures quality medical coverage is available in Florida.²⁹¹ Consumers also want a system that minimizes medical errors; and, when they are made, to hold medical care providers responsible.²⁹² Finally, consumers want a system that allows physicians to learn from their mistakes.²⁹³

Some consumers argue that this so-called "crisis" is nothing more than the underwriting cycle of the insurance industry, and driven by the same factors that caused the "crises" in the 1970s and 1980s.²⁹⁴ According to consumer activist, Ms. Joanne Doroshow, with each crisis, there has been a severe drop in the investment income for insurers, which has been compounded by severe under-pricing of insurance premiums in the prior years.²⁹⁵ Ms. Doroshow explained, during years of high interest rates or excellent insurer profits that are invested for maximum return, the insurance companies engage in fierce competition for premium dollars by selling under-priced premiums and insuring very poor risks.²⁹⁶ Then, Ms. Doroshow noted, when investment income drops, either due to decreases in interest rates or the stock market, or due to low income resulting from unbearably low premiums, the insurance industry responds by sharply increasing premiums and reducing coverage.²⁹⁷

Thus, tort reform changes will do nothing to alleviate the insurance crisis, but will impact significantly injured patients.²⁹⁸ The tort reform changes in the 1980s had nothing to do with the flattening of rates. The flattening was caused instead by modulations in the insurance cycle throughout the country.²⁹⁹

²⁹¹ Nick Bartol, testimony, Oct. 21, 2002, pg. 138.

²⁹² *Id.* at 112.

²⁹³ *Id.*

²⁹⁴ Joanne Doroshow, testimony before the U.S. House Subcommittee on Commercial and Administrative Law, Oversight Hearing on Healthcare Litigations Reform, "Does Limitless Litigation Restrict Access To Health Care?" (June 2, 2002).

²⁹⁵ *Id.* at 2.

²⁹⁶ *Id.* at 6.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.* at 3.

To illustrate this and support their claim, the Center for Justice and Democracy presented actuarial data to the Task Force. The data show tort reform changes in California, including the cap on damages, did not cause the rate of change in insurance premiums in California to be significantly different from the rate of change in the rest of the country.³⁰⁰ The Center further argued that, although the California law had little impact on premiums, it had a devastating impact on people injured by malpractice.³⁰¹

Testimony to the Task Force meetings included the following statements regarding consumer concerns:

- The 1999 Institute of Medicine (IOM) report stated that 44,000 to 98,000 patients die every year as a result of medical errors in hospitals.³⁰²
- Evidence indicates that between 8 to 15 percent of companies are dropping health insurance coverage for their employees. In small companies, those with between two and fifty employees, the figure is much higher.³⁰³
- About 14 to 15 percent of Americans are uninsured. Last year there were 142 million Americans who had employer-sponsored coverage. If one in seven of them fell out of the system, the number of uninsureds would increase by approximately 20 million people, which would be a 50 percent increase.³⁰⁴
- The message from the IOM report regarding patient safety has become distorted. A Kaiser Family Foundation survey done after the release of the IOM report found that about one-third of the public believes that the IOM report was about bad doctors and that the necessary solution is more punitive malpractice laws to punish those doctors.³⁰⁵
- In the 1990s, numerous insurance companies with no experience in medical malpractice entered Florida's medical malpractice insurance market. Their inexperience led them to take bigger risks than other companies, which drove up costs, because of their mishandling of claims. These insurers also kept rates artificially low as they tried to

³⁰⁰ *Id.* at 4. J. Robert Hunter, former Texas Insurance Commissioner and Federal Insurance Administrator under Presidents Ford and Carter, compared national malpractice premiums trends to those in California.

³⁰¹ *Id.* at 4.

³⁰² Becky Cherney, testimony, Oct. 21, 2002, pgs. 123-125.

³⁰³ Brian Klepper, Ph.D., testimony, Nov. 4, 2002, pgs. 231-232.

³⁰⁴ *Id.* at 233-234.

³⁰⁵ Michelle Mello, J.D., Ph.D., testimony, Nov. 4, 2002, pg. 293.

undercut the established insurers, and write as many policies as possible to better turn this capital into investment income.³⁰⁶

- At the same time doctors are being squeezed by their malpractice insurers, they also are facing reduced reimbursement rates from Medicare and HMOs.³⁰⁷
- According to the National Practitioner Data Bank, the average payout to victims of medical negligence in Florida for the year 2000 is only \$259,000. This places Florida twenty-first in the nation in average payout to victims.³⁰⁸
- Punitive damages are very rare. According to the Bureau of Justice Statistics, only 1.1 percent of medical malpractice plaintiffs, who won their cases, were awarded punitive damages in 1996.³⁰⁹
- According to the American Medical Association, states without caps have 4.4 percent more physicians per capita than those states that do have caps on damages. Also, the average malpractice premium for doctors of internal medicine is 2.2 percent higher in states that cap damages than in states that do not cap damages.³¹⁰
- In Nevada, even after caps were passed, the insurance companies stated that they would not bring down rates. In Mississippi, they said the same thing. Even after tort reform was enacted in Florida in 1986, capping non-economic damages, Aetna and St. Paul said they were not going to reduce rates.³¹¹
- Filings by 104 insurers in Florida in 1986 showed that out of 277 filings, 175, or 63 percent, showed no savings from tort reform, while none showed savings of more than 10 percent.³¹²
- In a 1999 study, trends in insurance rates since the mid-1980s in every state in the country were plotted against and correlated with the exact tort reforms that had passed. The study found absolutely no correlation between the enactment of tort reform and insurance rates.

³⁰⁶ Academy of Florida Trial Lawyers, Medical Malpractice: The Facts Behind the Insurance Rate

Increases, 1-2.

³⁰⁷ Id. at 2.

³⁰⁸ Id. at 3.

³⁰⁹ Id.

³¹⁰ Id.

³¹¹ Joanne Doroshov, testimony, Oct. 21, 2002, pg. 150.

³¹² Id.

Many states that had enacted severe tort reform saw approximately the same kind of rate increases as states that did nothing.³¹³

- The cost of medical negligence has been estimated variously at \$20 billion to \$29 billion a year, depending on the source. The total cost of medical liability insurance in this country is \$6.4 billion, or approximately one-third the cost of medical errors.³¹⁴
- There are approximately 710,000 adverse events a year. However, there are only 10,000 payments made a year to plaintiffs for medical malpractice.³¹⁵
- Physicians tend to misjudge their legal risks on a radical scale. Physicians have about a 2 percent risk of being sued over a negligent injury. Nonetheless, when physicians are surveyed about their perceived risk, they believe it is closer to 60 percent. Additionally, physicians underestimate the link between injuring their patients negligently, and being sued.³¹⁶
- A company with 5,000 active employees and approximately 1,500 retirees is forecasting double-digit benefit cost increases for the next five years. Its costs will escalate from \$41 million in 2002, \$49 million in 2003, \$58 million in 2004, and \$68 million by the year 2005 if changes are not made to its benefits program. Owing to costly ineffective insurance products, in order to afford retiree healthcare costs, this company is going to have to either reduce its costs or make reductions in benefits.³¹⁷
- Iris Roche is a 94-year-old woman who has just learned that her own surgeon is retiring early because his insurance costs increased greatly.³¹⁸
- In the thirtieth week of her pregnancy, Carla Rachel Borchers' obstetrician informed her that her doctor would not longer practice obstetrics due to rising malpractice insurance costs. Ms. Borchers had to find a new obstetrician to deliver her daughter, even though she was well into her third trimester.³¹⁹

³¹³ *Id.* at 150-151.

³¹⁴ Jackson Williams, testimony, Oct. 21, 2002, pg. 155.

³¹⁵ *Id.* at 157.

³¹⁶ Michelle Mello, J.D., Ph.D., testimony, Nov. 4, 2002, pg. 295.

³¹⁷ Wendy McCoy, testimony, Oct. 21, 2002, pgs. 126-129.

³¹⁸ Iris Roche, testimony, Oct. 21, 2002, pgs. 129-133.

³¹⁹ E-mail from Carla Rachel Borchers to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 27, 2003) (Vol. 11, Tab 585).

- In June 1980, Nick Bartol's wife died of a malpractice issue. He believes there should be fair compensation for individuals affected by medical errors and related medical costs and loss of income potential where applicable. However, with regard to medical care, he is also concerned that physicians will not try new procedures because of the risk.³²⁰
- Two academic studies have found that the number of medical errors greatly exceeds the number of claims for malpractice. Data from the Florida Agency for Health Care Administration indicate that reports of preventable adverse incidents coming from Florida hospitals exceed malpractice claims reported by those hospitals by a ratio of six-to-one.³²¹
- In 1999, Jacqueline Imbertson's husband was the victim of medical negligence, when he was hospitalized for heart by-pass surgery. A nurse mistakenly gave him an entire bag of Lidocaine in less than five minutes, instead of the Hespain that he was supposed to have received. As a result, he went into cardiac arrest, suffered catastrophic damage, is in constant and excruciating pain and must now undergo a heart transplant. Jacqueline Imbertson has taken on the role of her husband's full-time caregiver.³²²
- Charles Dubie's mother died after having negligently been given an overdose of a heart medication at a nursing home. Although he and his brother retained legal counsel, he states that he would trade any amount of money to have his mother back or at least know that her final days were peaceful.³²³
- Data from the Department of Insurance shows that, per 100,000 people, from 1991 to 2001, there has been no dramatic increase in the number of claims being paid or the number of lawsuits being brought. In fact, they are now looking to be below the 1991 level.³²⁴
- The average paid claim for 2001 was \$249,000, which was below the national average of approximately \$310,000. The National Practitioner Database ranks Florida 21st in the nation in average payouts.³²⁵

³²⁰ Nick Bartol, testimony, Oct. 21, 2002, pgs. 138-139.

³²¹ Jackson Williams, testimony, Oct. 21, 2002, pgs. 153-154.

³²² Jacqueline Imbertson, testimony, Oct. 21, 2002, pgs. 162-165.

³²³ Charles Dubie, testimony, Oct. 21, 2002, pgs. 349-350.

³²⁴ Neal Roth, J.D., testimony, Oct. 21, 2002, pg. 273.

³²⁵ Id.

- Florida has seen a 40 percent increase in the number of physicians practicing in the state over the last forty years.³²⁶
- Florida's two largest medical malpractice insurers are FPIC and Pro Assurance. Both are healthy and very profitable. FPIC has made a profit in each of the last ten years and Pro Assurance has made profits in nine out of the last ten years. FPIC and Pro Assurance also saw their surpluses grow from 1991 to 2001, by over 259 percent and 563 percent, respectively.³²⁷

Healthcare Provider Perspective

The testimony of healthcare providers indicated a very different perspective. As a group, physicians and hospitals are reeling from the rapid increase in medical malpractice insurance premiums. Physicians are being forced to leave Florida to practice in other states where insurance rates are more acceptable or obtainable.³²⁸ The Task Force heard that the financial burden of escalating liability insurance premiums makes the continued practice of medicine in Florida increasingly unsustainable.³²⁹ The immediate and long-term effects of this crisis are a decreasing number of doctors staying in practice.³³⁰ The doctors that remain are forced to practice unnecessary defensive medicine.³³¹

Many high-risk specialties are even more acutely affected by this crisis. Obstetricians in Florida have seen a 40 percent increase in premium rates since 1999, with even more substantial increases looming on the immediate horizon.³³² At present, obstetricians contracting for the statutorily required \$250,000 worth of coverage pay premiums ranging from \$90,000 to \$107,000 a year. In addition, many of these obstetricians are seeing their insurance carriers leave the market, and find themselves unable to find coverage elsewhere.³³³ The results are that hospitals are discontinuing obstetrical services and obstetricians are curtailing medical care to high-risk patients for fear of liability exposure.³³⁴

At the same time, physicians that do continue to practice, practice expensive and unnecessary defensive medicine. One physician noted,

³²⁶ *Id.* at 274.

³²⁷ *Id.* at 275.

³²⁸ Joel Rose, D.O., testimony, Oct. 21, 2002, pg. 37.

³²⁹ Joel Saranko, M.D., testimony, Oct. 21, 2002, pg. 39.

³³⁰ George Tershakovec, M.D., testimony, Oct. 21, 2002, pg. 45.

³³¹ Robert W. Yelverton, M.D., The Impact of the Professional Liability Insurance Crisis on Quality Healthcare for Florida Women, presentation, Oct. 20, 2002.

³³² Robert Yelverton, M.D., testimony, Oct. 21, 2002, pg. 56.

³³³ *Id.*

³³⁴ *Id.* at 56-61.

“Defensive medicine is the seldom-discussed tragedy of the litigation crisis. Unable to rely any longer on sound judgment molded by years of training and experience, OB/GYNs, by necessity, are performing more Cesarean sections and ordering expensive diagnostic procedures in order to protect themselves legally, . . . discontinuing or severely limiting high risk or technically sophisticated surgical procedures.”³³⁵

Testimony from the Task Force meetings, related to doctors’ concerns, included the following statements:

- 1975 was the first year that actuaries informed insurance carriers that they could not guarantee the premiums that they were recommending the carriers charge today, would pay tomorrow’s claims.³³⁶
- What we have, after 27 years of studying and trying to solve this problem, is a problem that is 3,074 percent worse than it was when we started.³³⁷
- The Physician Insurers Association of America (PIAA) Data Sharing Project is a medical cause-of-loss database with information from nearly 190,000 claims made since 1985. Data from this source show that the mean average indemnity payment over this period of years has risen precipitously. Today, the average indemnity payment is about \$326,000 per defendant in a medical malpractice case, and in each malpractice claim, there is usually more than one defendant.³³⁸
- If an indemnity payment is made on a claim, the average payment is about \$43,000 in mostly legal fees. If an indemnity payment is not made, insurance companies still pay about \$23,000 to \$24,000 in legal fees just to handle those claims.³³⁹
- Of all claims reported to the database in 2001, 61 percent were dropped or dismissed, because they were without merit; in 5.7 percent, there was a verdict for the defense. In two-thirds of all claims, there was no payment to the plaintiff. Only 1.3 percent of the claims ever reported, were paid verdicts; the remaining payments were made via settlements.³⁴⁰

³³⁵ Robert W. Yelverton, M.D., The Impact of the Professional Liability Insurance Crisis on Quality Healthcare for Florida Women, presentation, Oct. 20, 2002.

³³⁶ Robert E. White, Jr., testimony, Oct. 21, 2002, pg. 181.

³³⁷ Id.

³³⁸ Lawrence Smarr, testimony, Oct. 21, 2002, pgs. 201-202.

³³⁹ Id. at 202.

³⁴⁰ Id. at 202-203.

- The mean verdict was almost \$500,000 on behalf of an individual doctor and claim. When an insurance company wins at trial, it pays \$91,000 to win the case. If it loses, it spends about \$86,000. Whether or not the suit is dropped or dismissed, the company still spends almost \$17,000 to handle those cases.³⁴¹
- Between 1997 and 2000, the average jury award in medical malpractice cases doubled from about \$500,000 to about \$1,000,000. Settlements also have gone up commensurately.³⁴²
- On average nationally, there are 10,454 services per thousand; in Florida, there are 12,602. On a national basis, radiology services represent 252 per thousand, but 368 in Florida; nationally there are 758 lab services per thousand, but 1,087 in Florida.³⁴³
- In a national poll of physicians, the overwhelming majority of doctors say that the threat of malpractice lawsuits does not make them deliver better quality care. Over nine out of ten doctors think the threat of liability suit has increased defensive medicine. And over half of the physicians surveyed say that the current medical liability system makes physicians less willing to report medical errors.³⁴⁴
- The average neurosurgeon has a claim every other year. Fifty percent of neurosurgeons are sued every year, 40 percent of plastic surgeons, 35 percent of orthopedists, 30 percent of general surgeons, and 30 percent of obstetricians. We are not suing America's bad doctors; we are suing all physicians in America.³⁴⁵
- A 1996 Harvard Medical Practice study that appeared in the New England Journal of Medicine concluded that there is no correlation between the presence or absence of medical negligence, and the outcome of malpractice litigation. The only variable that they could find that related to the outcome of medical malpractice litigation was the degree of injury. If you are more severely injured, you are more likely to be compensated.³⁴⁶
- Health and Human Services estimates that the cost of defensive medicine is \$100 billion a year.³⁴⁷

³⁴¹ *Id.* at 203.

³⁴² Richard Anderson, M.D., testimony, Nov. 4, 2002, pgs. 41-42.

³⁴³ David Lubben, J.D., testimony, Oct. 21, 2002, pgs. 107-108.

³⁴⁴ Steve Demontmolin, testimony, Oct. 21, 2002, pgs. 111-113.

³⁴⁵ Richard Anderson, M.D., testimony, Nov. 4, 2002, pg. 37.

³⁴⁶ *Id.* at 48-49.

³⁴⁷ *Id.* at 59.

- Over the past twenty years, healthcare premiums have risen at a constant multiple of twice the general inflation. In 2001, those premiums increased an average of 12.7 percent across the United States. This was eight times the rate of general inflation. In 2002, healthcare premiums are expected to go up between 15 and 23 percent, or about ten to eleven times the general inflation.³⁴⁸
- Many hospitals are facing premium increases of 300 percent.³⁴⁹
- Many physicians on staff at statutory teaching hospitals are refusing to continue voluntary teaching. These physicians do not want the liability associated with the medical students and high-risk patients, given the kind of medical malpractice verdicts that are occurring.³⁵⁰
- At the same time, as not-for-profit hospitals find their insurance premiums increasing, they are unable to invest services back into their hospital.³⁵¹
- Although hospitals realize that they may be able to operate without capital, they are fearful that they will not be able to operate without physicians.³⁵²
- In Broward County alone, 400 physicians have left the state, or retired early in the past year. Nationally, since 1991, overhead costs have increased by 48 percent. In Florida, due to the increase in premiums for liability insurance, [overhead costs] have increased about 60 percent. In South Florida, physicians are working seven to eight months of the year to simply pay their overhead costs, and much of the overhead dollars are attributed to liability premiums. In one instance, a Fort Lauderdale pediatric orthopedic surgeon's premiums went from \$32,000 to \$96,000 a year. Because of the increase, this physician is planning to return to his home state, Louisiana, as that state has tort reform.³⁵³
- In Florida, one in every two neurosurgeons and one in every three general surgeons will be sued at some point.³⁵⁴
- Palm Beach Gardens Hospital has lost all but one of its neurosurgeons, and this particular surgeon can take calls only part of

³⁴⁸ Brian Klepper, Ph.D., testimony, Nov. 4, 2002, pgs. 230-231.

³⁴⁹ Rich Reiner, testimony, Oct. 21, 2002, pg. 296.

³⁵⁰ John Hillenmeyer, testimony, Oct. 21, 2002, pg. 289.

³⁵¹ *Id.* at 294.

³⁵² Rich Reiner, testimony, Oct. 21, 2002, pg. 298.

³⁵³ Robert E. Cline, M.D., testimony, Oct. 21, 2002, pgs. 19-20.

³⁵⁴ *Id.* at 21.

the time. As a result, neurological surgical care is void for a couple of weeks a month.³⁵⁵

- Jacksonville's forty-four obstetricians will see their premiums go from \$40,000 to \$100,000 per year per person. The same is true for the fifty-two physicians providing obstetrical services in Tampa.³⁵⁶
- Teriesita Hernandez, M.D. completed a geriatric fellowship because she wanted to help nursing home patients, but has since found that she is unable to practice that profession because the malpractice insurance is so high. She is unable to find a carrier outside the state, and for part-time coverage, she would have to pay \$31,000. She has become so frustrated that she is no longer seeing patients.³⁵⁷
- According to testimony provided by a representative of the Florida Medical Directors Association (FMDA) to the Florida House Select Committee on Liability Insurance for Long Term Care Facilities, medical malpractice premiums for medical directors increased 500 percent in the last year. In addition, results from a recent FMDA survey showed that 27 percent of the physicians who practice in nursing homes have been notified that their medical malpractice insurance will either not be renewed or that their premiums will increase further specifically because they are primary care physicians for nursing home residents. Fifty-six percent of the medical directors who responded to the survey indicated that they would not continue to serve as a medical director if their professional liability insurance is cancelled.³⁵⁸
- Largo Medical Center is just one of six obstetrical centers that has closed, or will be closing, its maternity ward by the end of the year, because it has lost two obstetricians because of the soaring costs of liability insurance. Liability rates for one of the obstetricians went from \$43,000 per year to \$180,000, which forced her to stop practicing. The patients left behind are impacted because they must find another physician to deliver their babies, if they can.³⁵⁹
- Nearly 70 percent of all residents trained in family medicine traditionally have remained in Florida to practice their specialty. Conversely, in 2002, new residency graduates often cannot practice in

³⁵⁵ *Id.* at 26.

³⁵⁶ *Id.* at 27.

³⁵⁷ Teriesita Hernandez, M.D., testimony, Oct. 21, 2002, pg. 35.

³⁵⁸ Letter from Jancgale Boyd, President/CEO & Jack M. Norton, Chair, Florida Association of Homes for the Aging, to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Oct. 14, 2002) (Vol. 11, Tab 480).

³⁵⁹ Joel Rose, D.O., testimony, Oct. 21, 2002, pg. 37.

Florida because they cannot obtain or afford the insurance necessary to do so.³⁶⁰

- Insurance premiums for general surgeons have skyrocketed 300 percent from 1999 to 2001. The rates for 2002 will increase another 20 to 30 percent and it is anticipated that the following two to three years will show a continued upward increase in premium charges at that rate or higher.³⁶¹
- This past May, one physician group that staffs six emergency departments in South Florida experienced a 400 percent increase in its malpractice premiums.³⁶²
- OB/GYN physicians have experienced a 40 percent increase in medical malpractice premiums beginning in 1999.³⁶³
- One million dollars in coverage, a traditional policy amount for OB/GYNs, costs \$70,000 to \$110,000 per year for those OB/GYN physicians who can even find such a policy. Policy coverage in the amount of \$250,000 is what most Florida obstetricians have had to settle for, and this minimum policy amount ranges in price from \$90,000 to \$107,000 per year.³⁶⁴
- Most Florida obstetricians are taking legal measures to protect assets with plans to meet the state requirements for practicing without professional liability insurance. For example, in Miami, 80 percent of the OB/GYNs currently carry no insurance, and it is anticipated that the rest will follow their lead in 2003.³⁶⁵
- Orlando has lost twelve OB/GYNs in the last year, which represents 10 percent of their work force. Twenty to 25 percent of the OB/GYNs now work without insurance.³⁶⁶
- In Tampa, a similar phenomenon is occurring. Three OB/GYNs have quit or retired early and many more are planning to practice without insurance.³⁶⁷

³⁶⁰ *Id.* at 38.

³⁶¹ George Tershakovec, M.D., testimony, Oct. 21, 2002, pg. 44.

³⁶² Arthur Diskin, M.D., testimony, Oct. 21, 2002, pg. 50.

³⁶³ Robert Yelverton, M.D., testimony, Oct. 21, 2002, pg. 56.

³⁶⁴ *Id.* at 56-57.

³⁶⁵ *Id.* at 58-60.

³⁶⁶ *Id.* at 59.

³⁶⁷ *Id.* at 59-60.

- Judeo Christian Clinic is going to have to close its gynecological clinic for lack of staffing. Largo Medical Center and Doctors' Hospital have also closed.³⁶⁸
- Because of the egress of doctors from the state, Arnold Lazar, M.D., an OB/GYN, has several patients in his practice who have seen two other obstetricians during their current pregnancy.³⁶⁹
- Collier County has 50,000 residents under the age of eighteen. Although there are five neurosurgeons in Collier County, none of them see pediatric patients. Last year, 139 Collier trauma patients had to be transported by helicopter to the nearest Level II trauma center in Lee County for treatment. Some of these were pediatric patients who had suffered head trauma. However, neurosurgeons in Lee County also avoid taking on patients under the age of eighteen. Thus, these patients are typically flown in a second helicopter to Tampa for treatment. The reason neurosurgeons in Collier County and Lee County are avoiding these young patients is because of the risk of \$10,000,000 jury awards.³⁷⁰
- Rates for physicians practicing in skilled nursing facilities and nursing homes have increased by as much as 500 percent.³⁷¹
- A survey requested by the Florida House Select Committee on Liability Insurance for Longer-Term Care Facilities and conducted by the Florida Medical Directors Association shows that 16 percent of physicians have stopped following nursing home patients in the last twelve months due to the liability coverage. Another 22 percent of physicians in nursing homes report they will not be able to see patients due to the liability rate increases in the coming year. And 27 percent report that they have been notified that their insurance will not be renewed this year due to the fact that they follow nursing home residents.³⁷²
- Fleur Sack, M.D. is a physician who, although trained to take care of fractured fingers, is no longer able to do so as her insurance carrier does not support this. Dr. Fleur must now refer those patients to orthopedists who in turn are starting to refer the patients to even more specialized hand surgeons who already have high caseloads.³⁷³

³⁶⁸ *Id.* at 60.

³⁶⁹ Arnold Lazar, M.D., testimony, Oct. 21, 2002, pg. 65.

³⁷⁰ Frank Schwerin, M.D., testimony, Oct. 21, 2002, pgs. 67-70.

³⁷¹ John Potomski, M.D., testimony, Oct. 21, 2002, pgs. 75-76.

³⁷² *Id.* at 77-79.

³⁷³ Fleur Sack, M.D., testimony, Oct. 21, 2002, pgs. 80-83.

- Florida neurosurgeons get sued once every 2.5 years. As a result, many neurologists are no longer performing brain surgery. For example, one neurosurgery group is no longer performing pediatric neurosurgery after having done so for the last twenty years because of the threat of suit.³⁷⁴
- In 1988, Florida was the site of 25 percent of all the United Health Group Company's professional liability litigation; it has now become home to 42 percent of such litigation. During the same period, Florida's share of the company's litigation costs for the entire enterprise has increased from 30 to 42 percent. Over half of the company's professional liability suits are in Florida.³⁷⁵
- According to the National Practitioner's Data Bank, \$326,000,000 was paid out on behalf of Florida physicians only last year, and the total paid to patients has increased 33 percent since 1999.³⁷⁶
- The top-ten jury awards in Florida have all occurred since 1998.³⁷⁷
- Nationally, one out of every forty-four doctors pays an indemnity payment; in Florida, it is one out of every eighteen doctors.³⁷⁸
- The most prevalent rate in the rest of the United States for a doctor is one million dollars per claim. Many states' doctors carry multi-million dollar claim limits. However, in Florida, over half the doctors that carry insurance today can only afford to carry a \$250,000 policy limit.³⁷⁹
- In Georgia, physicians pay from \$5,000 to \$6,000 for \$1,000,000 of coverage. Thirty miles south, in Jacksonville, that costs \$27,000. This difference is due to the difference in the tort system between the two states.³⁸⁰
- The nation's second largest medical malpractice carrier, St. Paul, had its loss ratio from 1997 to 2001 range from 107.5 percent to 365 percent. They withdrew from the Florida market.³⁸¹

³⁷⁴ *Id.* at 87.

³⁷⁵ David Lubben, J.D., testimony, Oct. 21, 2002, pgs. 106-107.

³⁷⁶ Robert E. White, Jr., testimony, Oct. 21, 2002, pgs. 181-182.

³⁷⁷ *Id.* at 182.

³⁷⁸ *Id.* at 183.

³⁷⁹ *Id.*

³⁸⁰ *Id.* at 185.

³⁸¹ David McKenney, testimony, Oct. 21, 2002, pg. 191.

- Nationwide, just over 30 percent of plaintiffs receive an indemnity payment; in Florida, one out of every two individuals receives an indemnity payment.³⁸²
- The GE Medical Protective Insurance Company is the oldest writer of medical malpractice insurance in the United States. In Florida, its frequency of claims has been consistently higher compared to those countrywide. In 2001, there were approximately fourteen claims per 100 physicians insured in Florida, versus approximately nine claims per 100 physicians insured on a nationwide basis.³⁸³
- It is more difficult to close non-meritorious claims here in Florida as compared to the rest of the country. On a paid-to-reported basis in 1996, it was paying out approximately 44 percent of the cases that were reported in Florida; on a nationwide basis, this figure is between 32 to 33 percent. In 1996, its average Florida payment was \$200,000, compared to the nationwide average of \$210,000. However, by 2001, the average had increased to approximately \$280,000 per Florida case, versus \$225,000 countrywide.³⁸⁴
- From 1981 to 1991, Florida has experienced an 86 percent increase in litigation as its population increased only 41 percent.³⁸⁵
- Orlando Regional Healthcare's medical liability insurance program, which was a \$2 million self-insured retention with up to \$40 million in aggregate coverage, was costing it \$1.3 million a year. Beginning May 1, 2002, its self-insured retention was raised to \$5 million, and for the same \$40 million coverage, Orlando Regional Healthcare's new premium is \$9.8 million a year.³⁸⁶
- Orlando Regional Healthcare's Level I trauma center is at risk because it takes in the highest-risk cases from a twenty to twenty-five county area. It now has physicians who will not take Level I trauma calls.³⁸⁷
- On average, statutory teaching hospitals lose about \$93,000 per resident each year, because training residents requires more time and additional staff. Orlando Regional Healthcare depends on private community physicians to help train its residents. But, it is finding that more and more physicians are refusing to continue the voluntary

³⁸² *Id.* at 194.

³⁸³ William E. Daley, testimony, Oct. 21, 2002, pgs. 208-209.

³⁸⁴ *Id.* at 209-210.

³⁸⁵ George Meros, J.D., testimony, Oct. 21, 2002, pg. 249.

³⁸⁶ John Hillenmeyer, testimony, Oct. 21, 2002, pg. 286.

³⁸⁷ *Id.* at 287.

teaching, because they do not want the liability associated with the students.³⁸⁸

- The Florida Hospital Association's most pressing issue is dealing with the physician shortage. Some of its member facilities are unable to provide basic services such as orthopedics. For example, a hospital in Highlands County has four orthopedists on the medical staff. One, in his middle-50s and who has served that community for twenty-five years, cannot afford the 100 percent increase in his insurance premiums and will leave by January 1. Three remaining orthopedists in the community may pick up the slack, or may alternatively choose to limit their exposure. Thus, people living in this rural community may have to go to Orlando emergency rooms for their care.³⁸⁹
- In East Pasco, two OB/GYNs—half the OB department—have dropped off staff because they were unwilling to pay the insurance premiums.³⁹⁰
- The Orlando area has lost four neurosurgeons this year because they will not pay the increases. These doctors are going to states where there is a better environment for the practicing of medicine.³⁹¹
- Because of this crisis, one large radiology group cannot recruit new radiologists, using the same caliber and yardstick of quality they historically have wanted to use. This radiology group recently found that their rates had tripled, yet their coverage had been reduced by two thirds. Most of the radiologists are contemplating eliminating the reading of any mammograms, in order to eliminate that high-risk exposure.³⁹²
- Between eight to ten OBs in Central Florida have left the state, or have dropped their OB privileges. This will translate into longer emergency room waits.³⁹³
- An OB/GYN recently came to work in Central Florida and was told by her group that her medical malpractice insurance was going to be \$137,000 for \$250,000 worth of coverage, so they revoked her offer of employment.³⁹⁴

³⁸⁸ *Id.* at 289-290.

³⁸⁹ Rich Reiner, testimony, Oct. 21, 2002, pg. 297.

³⁹⁰ *Id.*

³⁹¹ *Id.* at 298.

³⁹² *Id.*

³⁹³ *Id.* at 299.

³⁹⁴ *Id.* at 302-303.

- The malpractice crisis is affecting the midwives profession in a manner similar to the way it is affecting the other practitioners. However, midwives are unique in that the JUA is their only source of malpractice coverage at this time. Their premiums constitute 10 to 20 percent of their annual income. In the last year, their premiums have increased about 25 percent. Fees in Florida are about 30 to 40 percent higher than the fees of other midwives in other states.³⁹⁵
- Dr. Elizabeth Hancock, a family physician in private practice in Indialantic does not offer health insurance to her employees, nor does she herself have it. She does not give her employees paid days off because she cannot afford to. Dr. Hancock states that she is looking for a job in radio broadcasting.³⁹⁶
- Florida has thirty-three rural counties, twelve of which have been designated as severely underserved with less than fifty physicians per 100,000 population.³⁹⁷
- We have major disparities in healthcare delivery, particularly for minorities in our cities and rural areas. The infant mortality rate is over twice that of Caucasians in the African-American population in Florida.³⁹⁸
- Although we are the state with the largest percentages of geriatric patients, we already have a shortage of geriatricians.³⁹⁹
- Because healthcare represents one in every eleven jobs in the workforce right now, and one dollar in every seven in the economy right now, the dramatic reductions in funding healthcare in the economy would ripple throughout all healthcare and would also ripple through the economy at large, and it would be a very catastrophic event that would be unprecedented.⁴⁰⁰
- In 1995, average nursing home insurance costs were \$240 a bed. In 2001, they were almost \$2,400 a bed, or a 100-fold increase over six years. In Florida, the average cost is even higher than that, in excess of \$10,000 a bed, according to some data.⁴⁰¹

³⁹⁵ Rebecca Ricco, testimony, Oct. 21, 2002, pgs. 315-316.

³⁹⁶ Elizabeth Hancock, M.D., testimony, Oct. 21, 2002, pgs. 321-322.

³⁹⁷ Robert Brooks, M.D., testimony, Nov. 4, 2002, pg. 191.

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ Brian Klepper, Ph.D., testimony, Nov. 4, 2002, pgs. 234-235.

⁴⁰¹ William Sage, M.D., J.D., testimony, Nov. 4, 2002, pg. 261.

- In 1998, there were thirty-two carriers that were writing premiums in Florida. In 2001, that number has fallen to twenty-six insurance companies. Since the beginning of 2001, nine insurance companies have notified the Department of Insurance that they are leaving the state; this represents 18 percent of 2001's written premiums. Of the top fifteen carriers that remain here in the state, four of them have said that they will not be writing any new business.⁴⁰²
- A collective of five nursing home facilities in Florida experienced a 57.42 percent increase in their insurance rates. Additionally, although one of the companies that currently writes for them, Hartford, has renewed this year, it is not going to renew next year. More significantly, another one of their current insurance companies, Lloyds of London, has withdrawn their umbrella this year, so now the facilities are unable to get umbrella insurance.⁴⁰³
- Don Robertson, M.D. is a family physician with fourteen years experience in Florida, and who has never been sued for malpractice. Nevertheless, Dr. Robertson's malpractice insurance rate has increased over 400 percent in thirteen months. He can find only one malpractice carrier who will write him a policy. After fourteen years in practice, he had to borrow money from the bank to pay his malpractice premiums.⁴⁰⁴
- Aaron Elkin, M.D.⁴⁰⁵ has been in practice for eight years and has no claims. In spite of this, his rates have increased 55 percent this year. He cannot afford to carry insurance anymore. Aventura Hospital, where Dr. Elkin is the Vice Chief of Obstetrics, will no longer be delivering babies, even though it has had no claims. It costs the hospital \$1,000 per birth just for insurance, while the average reimbursement for the hospital is just \$2,500 per delivery.⁴⁰⁶
- Raymond S. Waters, M.D. is a cardiovascular surgeon who has practiced for twenty-three years, and has practiced fourteen years at Bayonet Point Regional Medical Center in Hudson; earlier this year, Bayonet Point was ranked 27th in the nation in the latest U.S. News and World Report categories for cardiovascular surgery. Although Dr. Waters himself has never had a successful malpractice claim placed against him, this year his insurance company is leaving the state because it can no longer practice under the business pressures that it finds itself. He notes that the company has asked him to

⁴⁰² Steve Roddenberry, testimony, Nov. 4, 2002, pgs. 386-388.

⁴⁰³ Judy Boco, testimony, Nov. 4, 2002, pgs. 417-418.

⁴⁰⁴ Don Robertson, M.D., testimony, Nov. 4, 2002, pgs. 418-419.

⁴⁰⁵ In the Nov. 4, 2002 transcript, Dr. Elkin is improperly identified as "Dr. Narkin."

⁴⁰⁶ Dr. Aaron Elkin, M.D., testimony, Nov. 4, 2002, pgs. 425-427.

purchase "tail" coverage for \$146,000, which Dr. Waters cannot afford. On December 31, he will therefore have no malpractice insurance. His partner, Dr. Marshall DeSantis, just accepted a premium of \$120,000 a year for \$250,000 worth of coverage per year with a \$20,000 deductible from FPIC.⁴⁰⁷

- John D. Guarneri, M.D., FACOG, an obstetrician in Winter Park, states that "[i]t is simply not possible for physicians to continue to practice in Florida if the medical liability insurance rates continue to skyrocket." According to Dr. Guarneri, patients are having to wait longer to see doctors, and sometimes cannot get an appointment for months. Dr. Guarneri has personally had to book patients two months in advance. This added stress is leading many doctors to restrict taking on new patients or to retire early. In fact, he notes, if the Legislature fails to act, he will be forced to give up his obstetrics practice.⁴⁰⁸
- Elizabeth M. Louie, M.D., 43-years-old, will be retiring from medicine on February 28 because her malpractice has risen to a point where she can no longer afford to practice medicine. She is not willing to risk going bare although she has very few assets at this time in her life. Her malpractice insurance cost just went up to 58 percent of her gross income. She works part-time, three days a week. The cost of her malpractice insurance went from just over \$8000 to \$40,000. It has increased almost five-fold. She makes about \$69,000 a year gross income. After taxes, answering service, beeper, and cell phone expenses for the year, she has very little income left to continue to live on. She is leaving the practice of medicine to start a center to evaluate children with learning differences.⁴⁰⁹
- Richard L. Beck, M.D., F.A.C.S., P.A., is an Altamonte Springs plastic surgeon who recently learned that his medical malpractice insurance rate for 2003 increased 75 percent. Dr. Beck has tried to obtain the services of M.D. anesthesiologists, but has had no success.⁴¹⁰
- Dale L. Lind has been a nursing home professional for nearly 30 years. He currently serves as the Executive Director of Waterman Village of Mount Dora, a facility that has been widely recognized as a quality provider, traditionally receiving good state surveys and

⁴⁰⁷ Letter from Raymond S. Waters, M.D. to Governor Jeb Bush (Nov. 5, 2002) (Vol. 10, Tab 313).

⁴⁰⁸ Letter from John D. Guarneri, M.D., FACOG to Governor Jeb Bush (Sept. 26, 2002) (Vol. 10, Tab 120).

⁴⁰⁹ E-mail from Elizabeth M. Louie, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 9, 2003) (Vol. 11, Tab 487).

⁴¹⁰ Letter from Richard L. Beck, M.D., F.A.C.S., P.A. to Governor Jeb Bush (Sept. 27, 2002) (Vol. 10, Tab 121).

experiencing no major lawsuits. In fiscal year 2000, Waterman Village of Mount Dora enjoyed liability insurance coverage with \$1,000,000/\$3,000,000 coverage and a \$5,000,000 umbrella; the cost for this coverage was \$70,000 for the year. In fiscal year 2001, the facility's costs had skyrocketed to \$400,000 for the year for \$1,000,000/\$3,000,000 coverage with no umbrella and a \$100,000 deductible. In fiscal year 2002, faced with a premium increase to \$550,000, and acting on the advice of its insurance consultant and attorney, Waterman Village of Mount Dora elected to self-insure. When it became clear that the law required the facility to be insured, it purchased a \$50,000 compliance policy at a cost of \$57,000.⁴¹¹

- Nadia Hilal, R.Ph. is the Administrator of the MNH Surgical Center in Maitland. She states that its tail coverage quote is \$63,000 per year. They started their surgery center (Endoscopy Suite) in 1998, and were then paying \$5,000 annually for facility malpractice insurance. This year they had to go with a new company at \$30,000 annually, and next year they are looking at malpractice premiums of \$90,000 per year.⁴¹²
- Scott Ravede, D.O., an emergency room physician in Volusia County, writes that his malpractice insurer is no longer providing coverage for emergency medicine, and as a result, his group is scrambling to find alternate coverage.⁴¹³
- Elizabeth A. Etkin-Kramer, MD, FACOG had to give up obstetrics because she could not afford professional liability insurance. In the 1990s she was insured through her employer and now has a tail for those years. However, since 2001, she has been financially responsible for her own insurance. With a clean record, her rates for 250K/750K went from \$18,000 in 2000, to \$48,000 in 2001. If she had continued to practice obstetrics, the rates would have increased again to \$96,000 in 2002. Also, these rates do not include the NICA assessment of \$5,000 per year. After her partner and she realized that they could not afford to practice obstetrics with insurance unless they did very high volume (which could have significantly compromised patient care), they made the decision to practice gynecology only. However, now they are finding that, essentially, they cannot get professional liability insurance for gynecology only. As a result, they have been forced to self-insure or go bare. There are two firms that write for OB/GYN in South Florida. The first, FPIC, would only

⁴¹¹ Letter from Dale L. Lind, Executive Director, Waterman Village of Mount Dora, to John C. Hitt, Ph.D., President, University of Central Florida (Nov. 8, 2002) (Vol. 11, Tab 328).

⁴¹² Letter from Madia Hilal, R.Ph., Administrator, MNH Surgical Center, to Governor Jeb Bush (Nov. 6, 2002) (Vol. 10, Tab 316).

⁴¹³ Letter from Scott Ravede, D.O. to U.S. Representative John Mica (Aug. 13, 2002) (Vol. 10, Tab 93).

offer gynecology-only coverage at \$40,000 a year if Dr. Etkin-Kramer and her partner maintained tail insurance for the two years of obstetrics (2001 and 2002) at an additional flat rate of \$123,000. The second company, Pronational/Proassurance denied them any quotes. Many of Dr. Etkin-Kramer's patients have begged her to deliver their babies, and have asked her whether they could not just sign a form stating that they would not sue.⁴¹⁴

- Timothy H. Tillo, DPM, President of the Florida Podiatric Medical Association, writes that the medical malpractice crisis will have a number of adverse effects on the delivery of podiatric medical care in Florida. For example, he explains that the risk of a malpractice claim is higher in the diabetic podiatric patient, and that in an attempt to lower their exposure to this risk, podiatric physicians may refuse to treat the diabetic patient. As a result of this denied access to healthcare, important preventative foot care is not rendered, leading to a possible increase in complications related to diabetes, as well as an increase in healthcare costs.⁴¹⁵
- Michael Branch, M.D., an ear, nose, and throat physician in Central Florida, has been trying to recruit a partner to expand his practice and fill a void in a nearby city where there is no ear, nose, and throat physician. However, because of the malpractice crisis in Florida, the candidate for the position is declining to relocate from another state. Thus, patients in that city will continue to go without a local ear, nose, and throat physician. Dr. Branch also notes that he must restrict his practice from doing some of the high-risk surgical procedures he is trained to do because of the serious and ever-present threat of malpractice lawsuits. As a result, Dr. Branch's patients are often required to travel long distances to undergo these procedures.⁴¹⁶
- Jason Conley, M.D., a second-year emergency medicine resident in Orlando writes: "I truly want to stay and practice in Central Florida, but I am afraid that the current medical liability crisis will make that unfeasible. Once I am finished with residency, I will have put in 13 years of higher education and assumed almost \$150,000 in debt. I have taken on these responsibilities so that I may have the privilege of taking care of my patients. It is disheartening to know that after all of

⁴¹⁴ E-mail from Elizabeth A. Etkin-Kramer, MD, FACOG to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 9, 2003) (Vol. 11, Tab 494).

⁴¹⁵ Letter from Timothy H. Tillo, DPM, President, Florida Podiatric Medical Association, to unidentified recipient (Oct. 2002) (Vol. 10, Tab 127).

⁴¹⁶ Letter from Michael Branch, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Oct. 16, 2002) (Vol. 10, Tab 243).

my studying, all of my tests and years of training, that my best may not be good enough."⁴¹⁷

- Tom Mahan, M.D., F.A.C.S. is a general surgeon in his fourth year of practice in Winter Park and at Florida Hospital. As of January 1, 2003, he will have no insurance, and may end up having to leave the state for the safety of his career and family. Alternatively, if he remains in Florida, he will have to practice without insurance.⁴¹⁸
- Tom Hicks, M.D. is one of sixteen family doctors in the Patients First group in Tallahassee. The 80 percent increase the group experienced in PLI premiums in January 2002 had to be recovered in order for the group to stay in practice. The entire increase was distributed to the very patients who often are the least able to pay—the uninsured or underinsured. These patients now pay a 20 percent surcharge for PLI premiums when they come to Dr. Hicks' office. His question to these patients is "Do you value [the] unlimited right to sue me enough to pay a 20 percent tax on your bill?"⁴¹⁹
- David P. Johnston, Jr., M.D. practices general surgery and is Chief of the Department of Surgery at St. Vincent's Medical in Jacksonville. His group has elected to cease performing high-risk surgery such as pancreatic surgery. If the group's radiologists cannot obtain adequate malpractice insurance before January 1, 2003, it will elect to discontinue performing all breast surgery.⁴²⁰
- Mark Antony LaPorta, M.D., FACP found that his MLI went from \$5,000 to \$21,000 the same year. His office is now closed.⁴²¹
- Gerald Tuite, M.D. is a pediatric neurosurgeon in Tampa Bay. His practice is cutting its coverage to \$250,000/\$750,000, is not seeing certain patients who may require high-risk procedures, and is considering positions in other states where the medical malpractice risk is less.⁴²²
- Hieu T. Nguyen, M.D. recently received a letter of non-renewal of the general practitioner's malpractice insurance from the carrier APA Capital. The company asked for \$25,000 for only the tail coverage.

⁴¹⁷ Letter from Jason Conley, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Oct. 25, 2002) (Vol. 10, Tab 288).

⁴¹⁸ E-mail from Tom Mahan, M.D., F.A.C.S. to Michelle Jacquis (Dec. 7, 2002) (Vol. 11, Tab 406).

⁴¹⁹ E-mail from Thomas Hicks, M.D. to Michelle Jacquis (Dec. 9, 2002) (Vol. 11, Tab 422).

⁴²⁰ E-mail from David P. Johnston, Jr., M.D., Chief, Department of Surgery, St. Vincent's Medical, to Michelle Jacquis (Dec. 10, 2002) (Vol. 11, Tab 428).

⁴²¹ E-mail from Mark Antony LaPorta, M.D., FACP to Michelle Jacquis (Dec. 9, 2002) (Vol. 11, Tab 421).

⁴²² E-mail from Gerald Tuite, M.D. to Michelle Jacquis (Dec. 9, 2002) (Vol. 11, Tab 419).

Dr. Nguyen's 2001 premium was \$7,200. Dr. Nguyen tried to apply for insurance with several other insurance companies, but was declined; one company gave a premium quote of \$46,995.⁴²³

- Steven Varady, M.D. is a urologist whose group has stopped seeing pregnant patients since they represent an overwhelming level of risk. The practice has been much more likely to refer complex and risky patients to tertiary referral centers. It has had to deal with the stress of looking at every single patient, every single day, as a potential threat. Dr. Varady writes that "it is very difficult to be caring when every patient is a potential threat; I often feel as though a man or a woman enters the examination room and aims a bow and arrow at me, pulls back on the bow and says, 'Help me.'"⁴²⁴
- Scott Posgai, M.D. is a family practitioner in Orlando who has stopped doing hospital admissions.⁴²⁵
- Gary J. Bowers, M.D. is a general surgeon and surgical oncologist practicing with North Florida Surgeons in Jacksonville. Because of the current malpractice climate, he no longer offers limb perfusions for melanoma patients. This is a high-risk procedure for select patients with extremity disease. He is the only surgeon in North Florida who has offered this procedure for the past nine years. Recently, he was referred a patient from within the community who was in need of the procedure, but because of the present situation, he referred the patient out-of-state.⁴²⁶
- Dolores Lowe, M.D. and her partner found out that their carrier is leaving the state; the carrier offered to put them in a "pool" with other physicians that were "rated" at more than twice the cost. She writes that "a career at McDonald's sounds inviting about now!"⁴²⁷
- Ivan Castro, M.D. is a practicing general internist in Winter Park. For the second year in a row, his malpractice carrier has left Florida, necessitating him to obtain tail coverage two years in a row. From last year to this year, he has experienced a 100 percent increase in his yearly premium. Finally, as of this year, due to stipulations from his new carrier, he can no longer see patients in nursing homes.⁴²⁸

⁴²³ Letter from Hieu T. Nguyen, M.D. to unidentified Senator (date unknown) (Vol. 11, Tab 426).

⁴²⁴ E-mail from Steven Varady, M.D. to Michelle Jacquis (Dec. 9, 2002) (Vol. 11, Tab 420).

⁴²⁵ E-mail from Scott Posgai, M.D. to Michelle Jacquis (Dec. 8, 2002) (Vol. 11, Tab 407).

⁴²⁶ E-mail from Gary Bowers, M.D. to Michelle Jacquis (Dec. 9, 2002) (Vol. 11, Tab 418).

⁴²⁷ E-mail from Dolores Lowe, M.D. to Michelle Jacquis (Dec. 8, 2002) (Vol. 11, Tab 410).

⁴²⁸ E-mail from Ivan Castro, M.D. to Michelle Jacquis (Dec. 8, 2002) (Vol. 11, Tab 409).

- Nigel A. Spier, M.D., FACOG was forced to cut his practice's staff positions by four employees. As a result, patients now have longer waiting times to get an appointment, longer waiting times for the phones to be answered, and longer waiting times to speak to a physician.⁴²⁹
- Marcelle G. Habib, M.D., FAAP, P.A., a pediatrician who opened his own practice in Palm Harbor in early 2001 has found that his already-high malpractice insurance has increased to the point where it is unaffordable for the year 2003.⁴³⁰
- Scott A. Rodger, M.D., a family practitioner in the small town of Eustis, states that his malpractice carrier has left the state, as have most of the other insurance carriers. This has forced him to buy two policies, resulting in an increase in his insurance costs of over 400 percent. At 49 years of age, Dr. Rodger is strongly considering early retirement, or moving to a more favorable malpractice climate. In Eustis alone, he notes, two of the community's best gastroenterologists have elected to retire early, and one of its best surgeons was lured to another state without malpractice policies such as those currently found in Florida.⁴³¹
- Alexis Rojas, M.D. is an OB/GYN in Leesburg. Dr. Rojas' insurance carrier left the state and now this physician is finding it increasingly difficult to find adequate liability coverage.⁴³²
- Lubomir Yazov, M.D., is a doctor in Fort Lauderdale who is facing double or triple increases in his medical malpractice insurance premium (which, he notes, is for one-fourth his previous coverage, and which offers no coverage for past events). According to Dr. Yazov, this precludes him from practicing normal medical and compels him to close his office.⁴³³
- Wei-Shen Chin, M.D., a radiologist in Orlando, writes that the escalating cost of malpractice insurance has placed the doctor in a difficult situation. Dr. Chin explains, ". . . either I stop reading the

⁴²⁹ E-mail from Nigel A. Spier, M.D., FACOG to Michelle Jacquis (Dec. 8, 2002) (Vol. 11, Tab 408).

⁴³⁰ Letter from Marcelle G. Habib, M.D., FAAP, P.A. to Governor Jeb Bush (Oct. 25, 2002) (Vol. 10, Tab 289).

⁴³¹ Letter from Scott A. Rodger, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Oct. 17, 2002) (Vol. 10, Tab 253).

⁴³² Letter from Alexis Rojas, M.D. to unidentified recipient (Oct. 17, 2002) (Vol. 10, Tab 255).

⁴³³ Letter from Lubomir Yazov, M.D. to Governor Jeb Bush (Oct. 22, 2002) (Vol. 10, Tab 271).

approximately 4000 mammograms that walk through my clinic each year or I leave the state in order to protect my family."⁴³⁴

- Silvia F. Garcia, M.D. is a solo practitioner who recently found that the insurance company that underwrote her policy for the past two years (AP Capital) decided to leave Florida in order to remain financially solvent, due to the very high numbers of claims and awards. As a result, this dermatologist will be underwritten by a new plan at a much higher (125 percent) rate increase, and she must pay \$11,785 in tail insurance. Like many other doctors, Dr. Garcia has dropped the most risky procedures from her practice, in her case, the skin surgeries and flaps and grafts; she notes that if other dermatologists follow suit, such advanced treatments will no longer be available in Collier County. Dr. Garcia notes that she has a spotless liability record with absolutely no claims and asserts that she should not be penalized with such heavy fees for malpractice insurance because of the litigious nature of the Florida healthcare system.⁴³⁵
- Gaspar R. Salvador, M.D., a physician who has practiced family medicine in Sun City Center since 1979, recently found his medical professional liability policy with Interstate Fire and Casualty "non-renewed" when the company stopped writing medical liability insurance. Through an insurance agency, Dr. Salvador applied to seven carriers to obtain coverage. Five of these carriers turned him down due to "nursing home exposure" because, in addition to his private practice, for twenty-three years he has also been the Medical Director of a nursing home. Two companies turned him down due to "claims history"—although, he notes, he has not had a claim in almost ten years. Thus, he writes that he was forced to turn to the Florida Medical Malpractice Joint Underwriting Association for coverage for an annual premium of \$31,103, which does not include any prior acts coverage. Interstate offered an "Extended Reporting Period" option, which would cover his "prior acts" for one year for \$49,596. Because he cannot afford this astronomical premium, Dr. Salvador reports that he has no choice but to go "bare" on his prior acts coverage.⁴³⁶
- Dumitru-Dan Teodorescu, M.D. is an Arcadia-based OB/GYN who has been in practice since 1981, and is one of two obstetricians who

⁴³⁴ Facsimile from Wei-Shen Chin, M.D., Chairman, Department of Radiology, Orlando Regional Medical Center, to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Oct. 28, 2002) (Vol. 10, Tab 294).

⁴³⁵ Letter from Silvia F. Garcia, M.D. to Governor Jeb Bush (Oct. 25, 2002) (Vol. 10, Tab 295).

⁴³⁶ Letter from Gaspar R. Salvador, M.D. to John C. Hitt, Ph.D., President, University of Central Florida (Oct. 21, 2002) (Vol. 10, Tab 270).

take care of the obstetrical needs of the population of DeSoto County and part of Hardee County. One week before writing to Governor Jeb Bush, Dr. Teodorescu was informed that American Healthcare Indemnity Company, Physicians Protection Plan will not be renewing the doctor's medical professional liability insurance for the coming year (2003). Thus, if Dr. Teodorescu cannot find another carrier, the doctor will no longer be able to practice in Florida. "There will be only one obstetrician left here in DeSoto County and I am not sure that he will not be in a similar position," Dr. Teodorescu laments.⁴³⁷

- George H. Pope, M.D. is a plastic surgeon in Winter Park who has been in private practice in the Orlando area for fifteen years, and a member of a four-surgeon group, the largest plastic surgery group in Central Florida. His group is losing its medical liability insurance after December 31, 2002, because its insurance company will no longer be writing medical liability insurance in Florida after that date. The cost of tail coverage for Dr. Pope is \$94,044. His group has been unable to find a new liability insurance carrier. The two largest general surgery practices in Orlando area in the same situation. Dr. Pope's fear is that any new premium for coverage will be exorbitant. With his three children rapidly approaching college age, he is worried about his ability to pay for their college educations. His wife and he may need to sell their home. Dr. Pope currently holds a medical license in Louisiana, the state where he was raised and trained, and although he considers Florida his home state, he hopes that he will not have to return to Louisiana (a state which has a cap on "pain and suffering" awards) to be able to work with medical liability insurance.⁴³⁸
- Sebastian J. Ciancio, M.D. is an urologist in private practice in Orlando. His group of three urologists has cut back on the number and types of patients they will operate on because of concerns regarding liability. They are unable to afford to see Medicaid patients anymore, and the group's most senior partner is considering retiring early to avoid the ominous malpractice issues.⁴³⁹
- Douglas Slotkoff, M.D. practices in Miami, where he cares for a population of developmentally disabled children and adults at Sunrise Communities in South Miami. Although he has cared for them for about eight years, this year may be the last that he is able to do so, because of the rise in malpractice insurance rates.⁴⁴⁰

⁴³⁷ Letter from Dumitru-Dan Teodorescu, M.D. to Governor Jeb Bush (Oct. 25, 2002) (Vol. 10, Tab 296).

⁴³⁸ Letter from George H. Pope, M.D. to John Hitt, President, University of Central Florida (Nov. 18, 2002) (Vol. 11, Tab 350).

⁴³⁹ E-mail from Sebastian Ciancio, M.D. to Michelle Jacquis (Dec. 7, 2002) (Vol. 11, Tab 404).

⁴⁴⁰ E-mail from Douglas Slotkoff, M.D. to Michelle Jacquis (Dec. 7, 2002) (Vol. 11, Tab 403).

- Gerald Alan Spunt, M.D., FAAP is a pediatrician in Broward County, who has been in private practice for the last twenty-five years. Last year, when his group's malpractice insurance was due to renew, it found that its insurance cost had doubled. This year, the group received notice from its insurance carrier that the carrier is leaving the state. There are now only two malpractice insurance companies available to the group, and if it can obtain malpractice insurance, the rate will double again. According to Dr. Spunt, the best-case scenario is that the group will pay four times the rate it did two years ago. The worst-case scenario is that either it will be unable to afford malpractice insurance, or will be denied malpractice insurance and will be forced to go bare.⁴⁴¹
- Larry Vickman, M.D., MHA, FACEP, FACPE received his license to practice medicine in Florida in May 2002, and has been looking for a part-time position doing urgent care. Dr. Vickman interviewed at one site in Pinellas County, where he discovered that of the four companies that offered to insure him, two would not even consider him because of their all-or-none rule (i.e., if the company does not insure all the members of the group offering service at a site, it will not insure an individual doctor). Of the two remaining groups, the costs of the insurance were too high for him to consider. One group quoted him \$6,380 for the first year, leveling off at \$15,820 at the fifth year; the other group quoted him \$9,050 for the first year, and only told him it would be into the mid-\$20,000 level by the fifth year. The tail policy would be double or triple last year's premium.⁴⁴²
- Leffie M. Carlton, III, M.D. is a urologist and urologic surgeon who has scaled back his practice by no longer performing any open abdominal or pelvic cancer surgeries from a urologic standpoint.⁴⁴³
- Larry Fishman, M.D. is a neurosurgeon who has practiced in Hillsborough County for the past fourteen years. There are now many procedures which Dr. Fishman does not feel comfortable performing anymore due to the fact that they are high-risk, such as aneurysm surgery, surgery on many brain tumors, and most pediatric neurosurgery. For the past six months, he has also basically stopped providing care to Medicaid patients, because the potential risks and liability are simply too great. As time goes on, he is cutting back on his practice more and more and is basically just trying to do "simple

⁴⁴¹ Letter from Gerald Alan Spunt, M.D., FAAP to Governor Jeb Bush (Dec. 4, 2002) (Vol. 11, Tab 367).

⁴⁴² Letter from Larry Vickman, M.D., MHA, FACEP, FACPE to Debbie Zorian, Executive Director, Hillsborough County Medical Association (Dec. 5, 2002) (Vol. 11, Tab 370).

⁴⁴³ Letter from Leffie M. Carlton, III, M.D. to Debbie Zorian, Executive Director, Hillsborough County Medical Association (Dec. 11, 2002) (Vol. 11, Tab 370).

bread and butter" procedures. He refers anything more complicated to a major medical center, which is often time-consuming, quite costly, and not covered by his patients' insurance.⁴⁴⁴

- Carlos J. Vazquez, M.D. had a very successful OB/GYN practice in Pinellas County. However, his malpractice insurance went up from \$30,000 to \$160,000, and he had no resort but to liquidate his practice and move to Broward County where he was permitted to practice without malpractice insurance.⁴⁴⁵
- Peter J. Pernicone, M.D., a physician based in Orlando, came to Florida ten years ago after completing a five-year training program in pathology at the Mayo Clinic in Rochester, Minnesota. Last year, he came very close to accepting a position in Idaho in an effort to escape the stress of the litigious climate of Florida. He notes that he knows of several young, competent physicians who have left Florida to find employment in other, friendlier, states.⁴⁴⁶
- Michael P. Kahky, M.D. is a general surgeon and surgical oncologist practicing in Orlando. In the past year he has referred many patients with complex problems to either Gainesville or Tampa. These are patients who he would have cared for locally a year ago, but now the risk is too great. Additionally, his six-person surgical group will be self-insured as of January 1, 2003.⁴⁴⁷
- Scottie Whiddon, M.D. is a family physician practicing in a rural setting for the last sixteen years. He is a medical director of a long-term care facility and all but one of the sixty patients there are under his care. This nursing home is now being threatened with closure, as a number in Florida already have, because of the incredible rise in malpractice insurance. If the nursing home goes "bare," then Dr. Whiddon, as the medical director of the facility, would be the one the lawyers would go after, even though his is a minimally compensated position. As a result, Dr. Whiddon may be forced out of seeing patients in the long-term care setting.⁴⁴⁸

⁴⁴⁴ Letter from Larry Fishman, M.D. to Debbie Zorian, Executive Director, Hillsborough County Medical Association (Dec. 4, 2002) (Vol. 11, Tab 370).

⁴⁴⁵ E-mail from Carlos J. Vazquez, M.D. to Michelle Jacquis (Dec. 6, 2002) (Vol. 11, Tab 385).

⁴⁴⁶ Letter from Peter J. Pernicone, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Oct. 17, 2002) (Vol. 10, Tab 256).

⁴⁴⁷ E-mail from Michael P. Kahky, M.D. to Michelle Jacquis (Dec. 6, 2002) (Vol. 11, Tab 387).

⁴⁴⁸ E-mail from G.R. (Scottie) Whiddon, M.D. to Michelle Jacquis (Dec. 6, 2002) (Vol. 11, Tab 340).

- Kenneth Beer, M.D. is a physician who has had to fire employees. He has also stopped performing liposuction, and will stop taking melanoma patients because of the risk.⁴⁴⁹
- Suzan Streichenwein, M.D. practices geriatric psychiatry. Due to the malpractice crisis, she has stopped seeing patients at skilled nursing facilities and nursing homes, and has decided not to do inpatient psychiatry. Dr. Streichenwein is also decreasing the number of hours she spends seeing patients due to the high cost of insurance. Her carrier, FPIC, was just downgraded from an "A-" to a "B+"; she says she is holding her breath dreading a letter that the company will be leaving Florida any day.⁴⁵⁰
- Michael Binder, M.D. is a Tampa urologist. As of January 1, 2003, his malpractice insurance payments will have increased 113 percent over the past two years, in spite of the fact that he has never been sued in fifteen years of private practice. To help keep his rates down, he has given up performing any radical surgery, such as cystectomies and prostatectomies. He no longer performs any cosmetic surgery, and is also considering eliminating prosthetic surgeries. If these efforts fail to improve the situation, he will be forced to leave the state or retire. Finally, Dr. Binder notes, it has proven impossible to bring an associate in to help him.⁴⁵¹
- Nak Y. Paek, M.D. has been practicing general surgery in Jacksonville for the last twenty-two years. In 2002, Dr. Paek's liability insurance premium was \$26,000. In November 2002, Dr. Paek received a letter from the insurance company stating that it was pulling out of Florida. After two months of searching for coverage for general surgery, the best quote this surgeon received for 2003 was \$91,000. Dr. Paek cannot afford this more than 300 percent increase. Faced with losing hospital staff privileges, the only option Dr. Paek has is to try general practice.⁴⁵²
- Brad Chayet, M.D. is a member of a seven-person multi-specialty orthopedic group in West Broward. His medical premiums have just doubled, and are now more than \$90,000 per doctor for \$250,000/\$750,000 coverage. His intention is to go bare, and to avoid very high-risk procedures.⁴⁵³

⁴⁴⁹ E-mail from Kenneth Beer, M.D. to Michelle Jacquis (Dec. 6, 2002) (Vol. 11, Tab 389).

⁴⁵⁰ E-mail from Suzan Streichenwein, M.D. to Michelle Jacquis (Dec. 7, 2002) (Vol. 11, Tab 390).

⁴⁵¹ E-mail from Michael Binder, M.D. to Michelle Jacquis (Dec. 7, 2002) (Vol. 11, Tab 398).

⁴⁵² E-mail from Nak Y. Paek, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 6, 2002) (Vol. 11, Tab 474).

⁴⁵³ E-mail from Brad Chayet, M.D. to Michelle Jacquis (Dec. 7, 2002) (Vol. 11, Tab 399).

- Wayne Maxson, M.D. is a doctor who has responded to the malpractice crisis by dropping coverage and discontinuing hysterectomies, and by not performing more complicated operative laparoscopies.⁴⁵⁴
- Marc A. Melser, M.D., F.A.C.S. is an urologist who has never been sued. Nevertheless, his malpractice insurance has increased 88 percent this year. As a result, he may have to stop performing bladder removal surgery; he may also have to have a lower threshold for sending patients to a major referral center.⁴⁵⁵
- Desiree A. Rosenthal, M.D., a 54-year-old family practice physician who had practiced in Florida for the past twenty-two years, was forced to resign from her part-time practice of clinical medicine on November 1, 2002, some fifteen years before she had planned. In her letter to her patients informing them of her resignation, Dr. Rosenthal explained that she was no longer able to pay her malpractice insurance premium. The \$26,000 premium for her part-time work exceeded her part-time earnings of \$22,000. Dr. Rosenthal's premium increased from \$6,000 in 1999, to \$7,5000 in 2000, to \$10,000 in 2001, to \$12,500 in 2002, and finally, to \$26,400 for 2003.⁴⁵⁶
- Kathryn Pearson, M.D. is a fellowship-trained, breast-imaging radiologist in Jacksonville. Dr. Pearson believes that she may end up eliminating screening mammography with her forty-person radiology group if additional radiologists refuse to read mammography, and/or insurance companies refuse to cover mammography, as the limited manpower will only allow for diagnostic mammography. Furthermore, if her group's current insurance carrier (Mag Mutual) is forced to drop mammography from its coverage, she is prepared to leave Florida to return to California (where she has a medical license and is pursuing renewal of the same for this purpose alone).⁴⁵⁷
- Jonathon Bloch, M.D., a general surgeon, reiterates the point that many talented physicians are being forced to either retire early or leave Florida because of escalating malpractice costs and decreasing reimbursements.⁴⁵⁸

⁴⁵⁴ E-mail from Mayne Maxson, M.D. to Michelle Jacquis (Dec. 6, 2002) (Vol. 11, Tab 400).

⁴⁵⁵ E-mail from Marc A. Melser, M.D., F.A.C.S. to Michelle Jacquis (Dec. 7, 2002) (Vol. 11, Tab 401).

⁴⁵⁶ Letter from Desiree A. Rosenthal, M.D. to Patricia Handler, Executive Vice-President, Dade County Medical Association (Nov. 8, 2002) (Vol. 10, Tab 327).

⁴⁵⁷ E-mail from Kathryn L. Pearson, M.D. to Michelle Jacquis (Dec. 7, 2002) (Vol. 11, Tab 402).

⁴⁵⁸ E-mail from Jonathan Bloch, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Nov. 17, 2002) (Vol. 11, Tab 347).

- Richard M. Gray, M.D. is an orthopedic surgeon who specializes in hand and microvascular surgery. Doctors such as him are seeing rate increases of 100 percent last year and expect them to probably double again this year. This is not because of pending lawsuits, but rather because of their specialized field of practice, orthopedic surgery. The financial impact on Dr. Gray's group has prevented any further recruitment of new physicians. Also, patients are having to wait longer to see doctors and sometimes cannot get an appointment for months. Dr. Gray has personally had to increase new and follow-up patients slots and is now seeing patients from 8:30 a.m. until 7:00 p.m. His group is overbooking patient slots by 20-30 percent, and has also had to increase its operating room time, which now spans from 7:30 a.m. until 7:00 p.m.⁴⁵⁹
- Peter Marmarstein is the Chief Executive Officer of St. Mary's Medical Center in West Palm Beach. St. Mary's operates one of only eleven Regional Perinatal Intensive Care Centers (RPICC) in the state. These centers are designed to ensure that poor and low-income women who are high-risk obstetrical patients are provided with necessary perinatal services. The St. Mary's RPICC physician group has been confronted with a 124.8 percent (\$911,566) increase in their malpractice insurance premiums for 2003. As a result, these physicians have been confronted with the choice of paying this increased premium or foregoing medical malpractice insurance; should they choose the latter, the group has determined that it would be forced to abandon its coverage of St. Mary's RPICC and indigent obstetrical programs. Without physician providers, these programs cannot continue.⁴⁶⁰
- Celestino Palomino, M.D. has been with the same insurance company (Farmer's Insurance Group) for seventeen years, and has never been named in a malpractice suit. Nevertheless, two months ago, the company informed Dr. Palomino that his policy would not be renewed. As of January 1, 2003, he has not been issued a new policy and was forced to ask for a leave of absence from all three hospitals where he practices, as well as the five dialysis units where he has patients.⁴⁶¹
- Arthur Graves, M.D. is Chief of the Medical Staff at South Bay Hospital in Sun City Center. Thus far, the hospital has lost five qualified and competent physicians due to the medical liability problem. He writes that the hospital is finding it increasingly difficult

⁴⁵⁹ Letter from Richard M. Gray, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Nov. 17, 2002) (Vol. 11, Tab 348).

⁴⁶⁰ Facsimile from Peter Marmarstein to Dwight Chenette (Dec. 6, 2002) (Vol. 11, Tab 393).

⁴⁶¹ Letter from Celestino Palomino, M.D. to Governor Jeb Bush (January 3, 2003) (Vol. 11, Tab 464).

to replace experienced, highly capable physicians who are restricting their practices or retiring early.⁴⁶²

- Thomas Peurifoy, M.D. is a general vascular surgeon who practiced in Sun City Center and Manatee County for nearly two decades. He moved to another state when his insurance carrier left the state and his premiums went up 300 percent.⁴⁶³
- John Dunne, M.D. is a board certified thoracic and vascular surgeon who has practiced in Sun City Center for twenty years. When his premiums went up to more than \$120,000, he limited his practice to cosmetic vein surgery in his office. He currently has no insurance for thoracic and vascular surgery, will not practice "bare," and has therefore been removed from emergency room call.⁴⁶⁴
- Richard Landrigan, M.D. is an urologist who, in October 2002, resigned from South Bay Hospital's emergency staff because of his inability to obtain insurance. He is no longer practicing in a hospital setting.⁴⁶⁵
- Jorge J. Villalba, M.D. was unable to obtain coverage from any carrier other than the JUA, which he could not afford. His premiums increased from \$3,800 for a \$1,000,000 policy to \$34,000 for a \$250,000 policy. Dr. Villalba is a child and adolescent psychiatrist who had to stop seeing developmentally disabled children in group homes when his insurance carrier left the state. He has been offered employment as a child psychologist in New Zealand and is considering moving his family there, although he hopes that the system will be changed and that truth will prevail.⁴⁶⁶
- Ann Giganti, A.R.N.P. works with a physician in Palm Bay and Indian Harbor Beach. She notes that in Miami, it costs an obstetrician \$200,000 for malpractice insurance. In Broward County, 400 physicians have left, and new graduates cannot afford to take their places. The surgeon who corrected undescended testes for their toddlers is no longer practicing, and she notes that his malpractice insurance would increase to \$150,000 over the next few years. They

⁴⁶² Letter from Arthur Graves, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 2, 2003) (Vol. 11, Tab 463).

⁴⁶³ Letter from Arthur Graves, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 2, 2003) (Vol. 11, Tab 463).

⁴⁶⁴ Letter from Arthur Graves, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 2, 2003) (Vol. 11, Tab 463).

⁴⁶⁵ Letter from Arthur Graves, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 2, 2003) (Vol. 11, Tab 463).

⁴⁶⁶ E-mail from Jorge J. Villalba, M.D. to Michelle Jacquis (Dec. 6, 2002) (Vol. 11, Tab 386).

now must send their patients an hour and a half away, to Orlando, where there is a backlog of patients needing care. In fact, she notes, the majority of adult specialists refuse to see her pediatric patients at all.⁴⁶⁷

- Douglas L. Shepard, M.D. is a neurologist in Naples. Although no suits or claims have been made against him, his rates have escalated to the point that he will be going with minimum coverage to maintain hospital privileges. Although he realizes that this maneuver may be somewhat risky, Dr. Shepard believes that it is morally reprehensible to pay the outrageous premiums to subsidize a flawed legal and, perhaps, insurance system.⁴⁶⁸
- Frank Loh, M.D., P.A. has been a practicing neurologist for the last twelve years, and relocated his practice to Bradenton from New York City two years ago. While practicing in New York, Dr. Loh's malpractice premiums were about \$22,000 per year. Last year, Dr. Loh was asked to pay \$35,000 in malpractice; this year his premium has tripled to \$104,000. Dr. Loh's earnings do not justify this expense. It was only two years ago that he was able to finish paying his medical school education loans. The thought of practicing without insurance causes him anxiety, and he has started to consider alternative occupations.⁴⁶⁹
- Marc A. Melser, M.D. is an urologist in Port Charlotte whose malpractice insurance went up 88 percent—from about \$13,000 per year to \$24,500 per year. Dr. Melser is in a multispecialty group; this group has opted to reduce its coverage in an effort to cut costs. Dr. Melser will also be reducing the services he provides, as he will no longer perform bladder removals. Patients needing this surgery will now have to go to a university setting.⁴⁷⁰
- Paul Shirley, M.D., who has been in practice for twenty-six years, has had to limit his Jacksonville practice to knee arthroscopy, a low-risk area of medicine. He had a \$500,000/\$1,500,000 policy, which increased 50 percent last year, from \$24,000 to \$36,000. In October, the insurance company informed Dr. Shirley that it would be leaving the market in Florida. He elected to "go bare," but has since discovered that many of the healthcare providers he contracts with do

⁴⁶⁷ Letter from Ann Giganti, A.R.N.P. to U.S. Senator Bill Nelson (Oct. 16, 2002) (Vol. 10, Tab 209).

⁴⁶⁸ E-mail from Douglas L. Shepard, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 9, 2003) (Vol. 11, Tab 497).

⁴⁶⁹ E-mail from Frank Loh, M.D., P.A. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 13, 2003) (Vol. 11, Tab 520).

⁴⁷⁰ E-mail from Marc A. Melser, M.D., to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 12, 2003) (Vol. 11, Tab 509).

not wish to keep providers who go bare. To maintain his practice, Dr. Shirley has again been soliciting quotes from insurance brokers. One quote he received was for \$250,000/\$750,000 for \$90,000, up 175 percent for one-half the coverage. A second was for \$250,000/\$750,000 for \$46,000. He is currently interviewing for positions in other states.⁴⁷¹

- Jonathan Daitch, M.D. is a pain anesthesiologist who has been insured through FPIC for the past twelve years. Although he has no claims against him, his professional liability insurance costs increased 50 percent in 2002, from \$14,000 to \$21,000. In 2003, his rate (after a 15 percent discount for no claims) will increase to \$52,000.⁴⁷²
- Robert S. Spiegel, M.D. is a St. Petersburg urologist who has been practicing in Florida for almost twenty years. Until October 2002, his malpractice carrier was Farmer's Insurance, and his premium for the last year of coverage was about \$16,000 for \$1,000,000 in coverage. Farmer's did not renew his policy and is pulling out of Florida. Dr. Spiegel obtained malpractice coverage from the South Pinellas Trust, also for \$1,000,000 in coverage. That premium is \$34,000 annually. He has curtailed some services due to concerns about liability/malpractice suits. For the past three years, he was the only urologist treating patients insured by Pinellas County Social Services, in the lower-third of Pinellas County. He has resigned as a participant in that plan because of his perception that those patients tended to be potentially more litigious than the population as a whole. He has also resigned from the staff at a local hospital, Northside, to avoid taking ER calls, which lead to potentially greater liability exposure. Finally, he has stopped performing a few surgeries, specifically cystectomies for bladder cancer, urinary diversions using segments of bowel, and penile prostheses. The reason for this change in practice is that these procedures are by their nature, more complex and more complications are possible. He prefers to avoid this exposure in today's medical-legal climate.⁴⁷³
- Thomas L. Greene, M.D. is a Tampa physician who has been practicing orthopedic hand surgery in Florida for twenty years, and who has not had any malpractice claims against him in that time. He has had the same carrier, The Medical Protective, for the past seven years. From March 2001 to March 2002, his annual premium was

⁴⁷¹ E-mail from Paul Shirley, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 12, 2003) (Vol. 11, Tab 508).

⁴⁷² E-mail from Jonathan Daitch, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 12, 2003) (Vol. 11, Tab 510).

⁴⁷³ E-mail from Robert S. Spiegel, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 12, 2003) (Vol. 11, Tab 512).

\$19, 709 for coverage of \$1,000,000/\$3,000,000. From March 2002 to March 2003, the rate increased to \$46,120, so Dr. Greene changed coverage at greater risk of personal exposure to \$250,000/\$750,000; for this coverage, his annual premium was \$27,296. He has received notice that for March 2003 to March 2004, for the same \$250,000/\$750,000 coverage, the annual premium will increase 63 percent to \$44,355. The new premium will be 125 percent more than what he was paying in 2001 to 2002 for one-third of the protection.⁴⁷⁴

- Matthew R. Mervis, M.D. is the administrative partner for a ten-physician OB/GYN practice in Winter Park. During the past six months, because multiple obstetricians have ceased practicing in metro Orlando, the practice has seen its wait times for new gynecological appointments balloon to four to six months. Additionally, its delivery volume has increased approximately 20 percent. Last year, the practice had liability coverage with limits of \$500,000/\$1,500,000, at \$40,000 per physician. To receive equal coverage in February 2003 would cost \$70,000 per physician. This practice has reduced coverage to \$250,000/\$750,000, at a cost of \$55,000 per physician—a 37 percent increase for only half the coverage. This practice has provided services to patients at two hospitals (ORHS and FHS) for twenty-six years, but starting January 1, has curtailed its practice to a single hospital because of potential legal liability. Finally, with a changing liability climate, the practice has seen a significant increase in its caesarian rate. Dr. Mervis will leave Florida in three years (when his child completes high school), if the malpractice insurance crisis remains.⁴⁷⁵
- John Fifer, M.D. is an orthopedic surgeon who no longer goes to the emergency room or performs spine or pelvic fracture work. Dr. Fifer was sued after he consulted on a trauma case for which he did not get paid, and because he was the only party with insurance and not covered by sovereign immunity, he ended up becoming the deep pocket in a directed verdict.⁴⁷⁶
- Jeffrey Livingston, M.D., is a young ear, nose, and throat doctor who was almost forced out of practice because malpractice insurance was exceedingly difficult for him to obtain. The local hospital required a \$250,000 letter of credit in lieu of insurance, and Dr. Livingston encountered great difficulty obtaining such a letter of credit because

⁴⁷⁴ E-mail from Thomas L. Greene, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 13, 2003) (Vol. 11, Tab 518).

⁴⁷⁵ E-mail from Matthew R. Mervis, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 12, 2003) (Vol. 11, Tab 513).

⁴⁷⁶ E-mail from John Fifer, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 12, 2003) (Vol. 11, Tab 514).

he has no assets. Eventually, he obtained malpractice insurance in the minimum amount required by law from the JUA. However, this coverage came at a more than 600 percent increase. His 2001 \$250,000/\$750,000 coverage, which was written by Clarendon (which has left Florida) was \$7,071; his 2002 insurance through the JUA increased to \$42,945. Dr. Livingston received several other quotes. Pulic gave him a quote of \$67,000 per year with a \$10,000 deductible, and no tail coverage. Evanston gave him a quote of \$87,000 per year plus taxes and fees, and no tail coverage. General Star gave him a quote of \$47,458 per year with a \$10,000 deductible, and no tail coverage. As a survival tactic, and for fear that a lawsuit could put him out of business, Dr. Livingston is limiting performance of complex otologic and head and neck procedures. He is also less able to participate in programs that do not reimburse well, and is considering canceling his contract with Children's Medical Services, even though he is the only CMS provider of ENT services in Indian River County that he is aware of.⁴⁷⁷

- Michael Widick, M.D. is an otolaryngologist in Cocoa Beach who recently separated from the Air Force. He has a "new physician's discount rate" that more than doubled last year, from \$6,000 to \$12,500. He anticipates that his rates will reach about \$50,000 per year after the next three years.⁴⁷⁸
- Martin Rothberg, M.D. is an internist who has practiced in Miami for twenty-eight years. Last year, his malpractice premium for a \$1,000,000/\$3,000,000 policy was \$21,000. His insurance company declined to reinsure him for this year, and made available a "tail" policy for \$61,000. The only coverage he could find for this year was a \$250,00/\$750,000 policy with a \$10,000 deductible for a premium of \$32,000. Because he could not afford \$93,000 in insurance premiums, he has been "bare" since October 1, 2002.⁴⁷⁹
- Mark Rubenstein, M.D. specializes in physical medicine and rehabilitation, and as such has always been on the "low end" of the malpractice insurance premium list. Nevertheless, his malpractice insurance has gone up by more than 200 percent, and his premium more than tripled from last year. After his insurance was renewed, the company informed him that it is leaving the state of Florida. He will therefore have to find replacement coverage in a market that is

⁴⁷⁷ E-mail from Jeffrey A. Livingston, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 12, 2003) (Vol. 11, Tab 511).

⁴⁷⁸ E-mail from Michael Widick, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 12, 2003) (Vol. 11, Tab 515).

⁴⁷⁹ E-mail from Martin Rothberg, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 11, 2003) (Vol. 11, Tab 502).

very difficult. As a result of this crisis, he has stopped taking referrals to do epidural steroid injections, a procedure he has been doing clinically in private practice for ten years. That procedure is the riskiest that he performs in his pain practice, so he has stopped performing it in an effort to avoid any insurance denial in the future.⁴⁸⁰

- Lee Fischer, M.D. has stopped admitting patients to the hospital and now uses hospitalists to care for his patients. Dr. Fischer has \$500,000/\$1,500,000 coverage. The premium for this in 2001 was about \$5,000, and in 2002, \$8,000. The one company that offered him insurance for 2003 for \$250,000/\$750,000 coverage quoted him \$19,000. He has elected to take it, and now has half the coverage and a 125 percent increase in his premium for doing nothing more than office family practice and no procedures.⁴⁸¹
- Christina Delgado, M.D. is a young practicing anesthesiologist in the Tampa Bay area whose malpractice insurance premiums jumped from \$12,000 with limits of \$1,000,000/\$3,000,000 to \$17,000 with limits dropped to \$250,000/\$750,000. This is an almost 40 percent increase in her premium, in spite of the fact that her coverage decreased. She is very concerned about her future ability to practice as an anesthesiologist.⁴⁸²
- Patrick T.G. Hennessey, M.D., MPH, FACP practices in the Orlando area. In 2001, his group's malpractice premium for \$500,000/\$1,500,000/\$3,000,000 shared policy was approximately \$7,800. In 2002, this was increased to almost \$18,000. Its renewal for 2003 was quoted at \$38,000, an increase of 487 percent in eighteen months. The group has had to restrict some of its services due to malpractice concerns. It has stopped caring for Workers Compensation patients and injured hotel guests. Even minor procedures (e.g., simple wound care, and minor gynecologic problems) now must routinely be sent to the emergency room because of malpractice concerns. Pregnant patients with non-OB problems are seen only on a case-by case basis. Soon, the group will be unable to accept Medicare patients.⁴⁸³

⁴⁸⁰ E-mail from Mark Rubenstein, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 11, 2003) (Vol. 11, Tab 505).

⁴⁸¹ E-mail from Lee Fischer, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 11, 2003) (Vol. 11, Tab 506).

⁴⁸² E-mail from Christina Delgado, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 11, 2003) (Vol. 11, Tab 501).

⁴⁸³ E-mail from Patrick T.G. Hennessey, M.D., MPH, FACP (Jan. 10, 2003) (Vol. 11, Tab 494).

- James Floyd, M.D. is an orthopedic surgeon in Bradenton. He recently moved here from Birmingham, Alabama, where he had coverage of \$1,000,000/\$3,000,000 for \$16,500 per year. Here in Florida, he must pay \$34,000 for only \$250,000/\$750,000 coverage. If this situation does not improve, Dr. Floyd will go back to Alabama by 2004.⁴⁸⁴
- A. Braun, M.D. is a busy surgeon in an Orlando hospital who has been voted one of Orlando's best doctors. His renewal for liability insurance is in June. His current policy is \$46,000 per year for general surgery, and his carrier will not discuss coverage or rates until required by law, forty-five days before. He is considering moving to another state to practice medicine.⁴⁸⁵
- Regina Bland, M.D., F.A.A.P. and Val Wynne, M.D., F.A.A.P. have been pediatricians in Palm Beach County since 1983 and 1989, respectively. Rather than close their practices, they dropped their medical malpractice insurance in December 2002, due to a rate increase of 600 percent from the prior year. They also dropped their hospital privileges and are now self-insured with responsibilities of \$100,000.⁴⁸⁶
- Gordon Rafool, M.D. is one of about forty-five physicians in a multi-specialty clinic in Winter Haven. The clinic's malpractice premium has increased this year from \$1,200,000 to \$1,800,000. The physicians are now self-insured for the first \$50,000. One physician has given up obstetrics, and all of them have stopped doing any high-risk procedures.⁴⁸⁷
- Graham F. Whitfield, M.D. has dropped his professional liability insurance, effective January 1, 2003. The Medical Insurance Company of America (MICOA) notified him in October 2002 that it would no longer write medical professional liability insurance in Florida. He checked into the other plans that were writing in Florida but the premiums were triple in price without a tail. Dr. Whitfield

⁴⁸⁴ E-mail from James Floyd M.D. (Jan. 10, 2003) (Vol. 11, Tab 490).

⁴⁸⁵ E-mail from A. Braun, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 10, 2003) (Vol. 11, Tab 491).

⁴⁸⁶ E-mail from Regina Bland, M.D., F.A.A.P. and Val Wynne, M.D., F.A.A.P. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 10, 2003) (Vol. 11, Tab 492).

⁴⁸⁷ E-mail from Gordon Rafool, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 10, 2003) (Vol. 11, Tab 493).

stopped doing spinal surgery a couple years ago due to the cost of the premiums.⁴⁸⁸

- Jon D. Wiese, M.D. is a general surgeon in Longwood, and has practiced in this area since finishing his residency in August 1988. His premium for professional liability insurance increased from \$30,576 in December 2001 to \$48,051 in December 2002 for \$500,000/\$1,500,000 coverage. He elected to drop the limits on his professional liability insurance to \$250,000/\$750,000, effective December 2002; the premium was \$35,002. He has stopped doing some surgical procedures and is contemplating leaving the state.⁴⁸⁹
- R. Gregory Smith, M.D. has practiced cosmetic surgery and maxillofacial surgery for the past twelve years in the Jacksonville area without a lawsuit. His insurance company (MICOA) suddenly decided to leave the state due to the "unsettled climate of the industry in the State of Florida," citing the increase in amounts of awards in Florida and the frequency of the occurrence of lawsuits. The offered him tail coverage for \$132,000. He is currently paying \$34,000 a year for coverage that will soon end. He expects to eventually have to go bare.⁴⁹⁰
- Ray Kordonowy, M.D. is a member of a five-person general internal medicine practice. The group is experiencing an average increase in annual premiums of 48 percent. The physicians are currently paying about \$20,000 per person (on average) per year through their present carrier (MICOA), which is going to pull out of the Florida market in August. They expect increases for comparable coverage to cost 100 to 300 percent more, based on information from two companies willing to give them bids. The group is being offered \$250,000 coverage with premium quotes higher than they paid for \$1,000,000 coverage a year ago. Members of the group cease in-hospital coverage in the next 3 to 9 months, so that arrangements can be made for asset protection and no liability insurance. They have already stopped admitting to two of the three hospitals they were attending. They ultimately plan on leaving Florida.⁴⁹¹

⁴⁸⁸ E-mail from Graham F. Whitfield, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 15, 2003) (Vol. 11, Tab 534).

⁴⁸⁹ E-mail from Jon D. Wiese, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 15, 2003) (Vol. 11, Tab 535).

⁴⁹⁰ E-mail from R. Gregory Smith, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 16, 2003) (Vol. 11, Tab 540).

⁴⁹¹ E-mail from Ray Kordonowy, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 14, 2003) (Vol. 11, Tab 532).

- Donald R. Dunlap, M.D. experienced a 36 percent rate increase in 2003. Rather than "go bare," he has decided to work part-time and pay 50 percent of the premium.⁴⁹²
- Joel A. Schneider, M.D. is a radiologist whose specialty is mammography. He has just paid \$94,000 for \$250,000 in malpractice insurance. This will be his last year of practice unless there is some reasonable relief.⁴⁹³

Data on the Problem

Office of Insurance Regulation Medical Malpractice Data Call

A recent data call by the Department of Insurance (now the Office of Insurance Regulation) ("Office") indicates that:

- There are fewer insurance companies writing new medical malpractice policies in Florida;
- There are fewer insurance companies willing to renew such policies in Florida; and
- Those that are providing coverage have implemented more restrictive eligibility criteria for health care providers.

In October 2002, the Office issued a data call to the top 15 writers of medical malpractice insurance in Florida. These insurers and their affiliates represent 94 percent of the market, as of December 31, 2001. By October 2002, three of these insurers had left or were in the process of leaving the market. The purpose of the data call was to determine the extent to which insurers were offering new and renewal medical malpractice policies. The data call was also designed to identify trends in the payment of claims at or in excess of policy amounts.

The requested information was due November 30, 2002, and was collected via the Internet. Responses were received from all fifteen insurers. Additionally, some respondents provided information on behalf of affiliated companies within their insurer group, even though the affiliated insurers are not actually ranked among the top fifteen writers. As a result,

⁴⁹² E-mail from Donald R. Dunlap, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 2003) (Vol. 11, Tab 531).

⁴⁹³ E-mail from Joel A. Schneider, M.D. to William Large, Counsel, Governor's Select Task Force on Healthcare Professional Liability Insurance (Jan. 17, 2003) (Vol. 11, Tab 548).

a total of twenty-six companies are represented in the responses. With two exceptions, (ProNational Insurance Company and Clarendon Insurance Company),⁴⁹⁴ complete responses were received from all insurers. During the months of December and January, the Office reviewed the data received and contacted insurers for clarification or additional information where responses appeared inconsistent or incomplete.

The data call queried two areas: coverage and writing practices and closed claim experience. Inquiries regarding closed claim experience were limited to claims in which an insurer's payout met or exceeded policy limits as well as those claims that included punitive damages or extra contractual (bad faith) obligations.

The following highlights certain information contained in the responses received.

Coverage and Writing Practices

Most of the policies written are to physicians and surgeons. For these categories, since 2001, the number of insurers willing to write new risks has been reduced by approximately 50 percent. A similar reduction has been experienced relative to hospitals. The table below provides a summary of responses from insurers regarding their willingness to write new risks in the years indicated.

⁴⁹⁴ ProNational, actively writing new business, is ranked third in direct written premium with approximately 9.6 percent of market share. ProNational provided written responses to some questions in the coverage and writing practices section. It provided no detailed response to the closed claim experience section. ProNational's legal counsel asserted confidentiality or trade secret concerns regarding certain questions and indicated that some information being requested was not "easily available" as it was not "stored in their computer system." Clarendon Insurance Company was ranked twelfth in direct written premium with approximately 3.7 percent of the market share. Clarendon Insurance Company is not actively writing new or renewal business. Clarendon Insurance Company provided complete responses to the coverage and writing practices section but provided no data for the closed claim experience section. These matters are being pursued with each insurer.

Table 6

Number of Insurers Writing New Risks in Years Indicated												
	2002		2001		2000		1999		1998		1997	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Physicians	7	19	15	11	18	8	18	8	17	9	15	11
Surgeons	8	18	14	12	18	8	18	8	18	8	15	11
Hospitals	3	22	6	19	8	17	6	19	8	17	7	18
Pharmacists	5	20	6	19	6	19	6	19	5	20	5	20
Nurses	6	19	10	15	10	14	11	14	7	18	6	19
Occupational Therapists	6	19	7	18	6	19	7	18	6	19	5	20
Physical Therapists	6	19	7	18	8	17	6	19	6	19	5	20
Midwives	3	22	5	20	5	20	5	19	5	20	4	21
Others	9	16	14	11	17	8	19	6	20	5	18	7

Less than half of those responding to the data call have indicated a willingness to renew their existing risks. Insureds whose policies are not renewed must seek coverage from insurers with which they did not have an immediately preceding relationship.

Table 7

Number of Insurers Currently Renewing Existing Business as of November 2002		
	Yes	No
Physicians	12	14
Surgeons	12	14
Hospitals	4	21
Pharmacists	6	19
Nurses	8	17
Occupational Therapists	7	18
Physical Therapists	7	18
Midwives	4	21
Others	9	16

The reduction in the number of insurers renewing existing business, in conjunction with departures of several insurers and the unwillingness to write new policies by most of those remaining, have combined to severely restrict access to medical malpractice insurance in Florida. Healthcare providers that were previously insured by one of the insurers that has left the market, are attempting to find coverage in a market that is not universally writing new business. These healthcare providers are also competing for coverage with those insureds that are being nonrenewed by their current insurer.

Many insurers have indicated that they had implemented significant changes to their eligibility criteria in the last twenty-four months. These

changes have had the effect of reducing the number of applicants and insureds who would qualify for prospective coverage. These changes, when combined with the reduced number of insurers writing new and renewal business, have served to further restrict healthcare providers' access to coverage. The data call requested that responders explain the nature and reason for such changes.

Examples of changes in eligibility and underwriting criteria include:

- Enhanced limitation on willingness to provide coverage for prior acts ("tail") coverage.
- Restricting maximum limits of coverage to \$1,000,000 per occurrence with a \$3,000,000 policy aggregate.
- Reviewing all physicians with past or present claims or suits by re-underwriting the entire book of business.
- Non-renewing policies with losses
- Non-renewing medical groups with over three physicians and physicians practicing within certain specialties.

Thirty-one percent of insurers have policies which specifically exclude punitive damages. Arguably, the absence of this exclusion does not necessarily obligate an insurer to pay punitive damages.

Closed Claim Experience

The responses to the closed claim experience section obviously focus on claims that have been closed in the years indicated. The frequency and severity of claims closed in any one year will not likely reflect the frequency and severity of those claims currently being incurred. Typically, the frequency and severity of claims is reflected in loss reserves and reserves established relative to claims that have been incurred, but for which no claim has yet been filed.

Some insurers have indicated, and the responses seem to reflect, an inability to easily identify and distinguish payout amounts of punitive and bad faith damages from the total amounts paid on each claim.

Responses to the closed claim experience section indicate a measurable increase in the percentage of closed claims that were paid at or above policy limits. While the actual percentage relative to total closed claims for 2001 remains low at 5.5 percent, the substantial increase in the percentage from 1.5 percent in 1997, suggests an unfavorable trend that, if

continued, may further weaken the resolve of those insurers remaining in the market to continue to offer coverage.

The impact of these percentages is even more telling when taking into account that there are fewer large insurers writing medical malpractice insurance in Florida today than there were in 1997. A growing number of claims paid in excess of policy limits is being spread among a smaller population of insurance companies.

For a more detailed summary of responses, see Table 8.

Table 8

2001 - Market Share and Rank

Market Share Rank	Company Name	2001 Med Mal Dir Prem Written	Market Share
1	First Professionals Ins Co	109,672,505	19.1%
2	Health Care Ind Inc	88,970,154	15.5%
3	Pronational Ins Co	55,259,931	9.6%
4	Truck Ins Exch	35,245,611	6.1%
5	Medical Protective Co	31,096,627	5.4%
6	American Physicians Assur Corp	26,690,239	4.6%
7	MAG Mut Ins Co	26,525,321	4.6%
8	St Paul Fire & Marine Ins Co	24,422,097	4.2%
9	Continental Cas Co	23,542,376	4.1%
10	Doctors Co An Interins Exchn	23,223,681	4.0%
11	TIG Ins Co	21,469,578	3.7%
12	Clarendon Natl Ins Co	21,456,110	3.7%
13	American Healthcare Ind Co	20,235,101	3.5%
14	Chicago Ins Co	12,461,372	2.0%
15	Anesthesiologists Pro Assur Co	11,835,465	2.0%
17	American Cas Co Of Reading PA	4,828,738	0.8%
22	American Continental Ins Co	2,515,415	0.4%
32	St Paul Guardian Ins Co	427,533	0.07%
35	Athena Assur Co	350,252	0.06%
38	TIG Ind Co	152,070	0.02%
40	National Fire Ins Co Of Hartford	56,211	0.00%
53	Valley Forge Ins Co	-	
61	Transportation Ins Co	-	
	St Paul Mercury Insurance		
	TIG Insurance Co of Michigan		
	Transcontinental Insurance Co		

93.45%

Source: Direct Written Premium as reported in 12/31/01 Annual Statement.

Florida Department of Health Financial Responsibility

Florida, unlike most other large states, requires as a matter of licensure that the licensee must demonstrate to the satisfaction of the licensing boards and the Department of Health financial responsibility to pay claims and costs arising out of the failure to render the appropriate medical care.⁴⁹⁵ The Florida Department of Health maintains data on physician financial responsibility. As of January 30, 2003, the Department's data on this issue is reflected in Table 9.

Table 9 indicates:

- 35,416 Florida physicians carry medical malpractice insurance (32,500 medical doctors and 2,826 osteopathic doctors).
- 728 Florida physicians carry an irrevocable letter of credit (600 medical doctors and 128 osteopathic doctors).
- 2,076 Florida physicians do not carry medical malpractice (1,907 medical doctors and 105 osteopathic doctors).
- 18,587 physicians fall under one of the statutory exemptions listed above or do not practice in Florida (16,924 medical doctors and 1,663 osteopathic doctors).⁴⁹⁶

⁴⁹⁵ Section 458.320(1), Florida Statutes.

⁴⁹⁶ Section 458.320(5)(a)-(f), Florida Statutes.

Table 9

pro. cde	fin. resp. code	financial exempt	count
1501			67
1501		Government	3910
1501		Limited License	47
1501		Teaching	1074
1501		Not Practicing in Florida	8740
1501		Other Criteria	3086
1501	Liability under \$100,000		3800
1501	Liability under \$100,000	Government	16
1501	Liability under \$100,000	Limited License	1
1501	Liability under \$100,000	Teaching	3
1501	Liability under \$100,000	Not Practicing in Florida	88
1501	Liability under \$100,000	Other Criteria	46
1501	Liability under \$250,000		28356
1501	Liability under \$250,000	Government	18
1501	Liability under \$250,000	Limited License	1
1501	Liability under \$250,000	Teaching	12
1501	Liability under \$250,000	Not Practicing in Florida	188
1501	Liability under \$250,000	Other Criteria	61
1501	Irrevocable Letter of Credit \$100,000		142
1501	Irrevocable Letter of Credit \$100,000	Other Criteria	1
1501	Irrevocable Letter of Credit \$250,000		452
1501	Irrevocable Letter of Credit \$250,000	Not Practicing in Florida	4
1501	Irrevocable Letter of Credit \$250,000	Other Criteria	1
1501	Not to Carry Medical Malpractice		1907
1501	Not to Carry Medical Malpractice	Government	3
1501	Not to Carry Medical Malpractice	Teaching	2
1501	Not to Carry Medical Malpractice	Not Practicing in Florida	20
1501	Not to Carry Medical Malpractice	Other Criteria	39
1901			19
1901		Government	250
1901		Limited License	9
1901		Teaching	40
1901		Not Practicing in Florida	1098
1901		Other Criteria	247
1901	Liability under \$100,000		468
1901	Liability under \$100,000	Not Practicing in Florida	11
1901	Liability under \$100,000	Other Criteria	4
1901	Liability under \$250,000		2303
1901	Liability under \$250,000	Government	2
1901	Liability under \$250,000	Not Practicing in Florida	24
1901	Liability under \$250,000	Other Criteria	14
1901	Irrevocable Letter of Credit \$100,000		31
1901	Irrevocable Letter of Credit \$100,000	Government	1
1901	Irrevocable Letter of Credit \$250,000		95
1901	Irrevocable Letter of Credit \$250,000	Not Practicing in Florida	1
1901	Not to Carry Medical Malpractice		100
1901	Not to Carry Medical Malpractice	Not Practicing in Florida	2
1901	Not to Carry Medical Malpractice	Other Criteria	3

Florida Hospital Association, January 2002 Survey

In a survey conducted in January 2002, the Florida Hospital Association documented some of the difficulty in obtaining, or affording medical malpractice insurance.⁴⁹⁷ Fifty-two percent of the acute care hospitals in Florida responded to the survey.⁴⁹⁸ Seventy-five percent of the hospitals reported having problems obtaining professional liability coverage. Of those not reporting problems, many stated they had not yet received the 2002 renewal notice, but anticipated having problems.⁴⁹⁹ Fourteen hospital systems reported their insurance company had refused to renew the policy.⁵⁰⁰ Seven of those had been insured by St. Paul Insurance Company.⁵⁰¹ Seventeen hospitals reported premium amounts. For 10 of those hospitals, the liability costs more than doubled between 1999 and 2001, with premium increases averaging 140 percent for the two-year period.⁵⁰²

Florida Medical Association, September 2002 Survey

In September, the Florida Medical Association also conducted a survey of its members to determine the availability of medical malpractice insurance. This survey collected information on how physicians had changed their practice to deal with the high cost, and lack of available medical malpractice insurance. More than 2,647 physicians responded representing over 40 specialties, and 42 of 67 Florida counties.⁵⁰³ Of the 2,647 respondents, 98 percent believed they were impacted by the increase in malpractice insurance, and provided the following explanations of the impact:⁵⁰⁴

- 98, or 3.7 percent of the respondents, reported discontinuing the practice of medicine as a result of the lack of availability of medical malpractice insurance.
- 624, or 23.57 percent, had discontinued calls at nursing homes.
- 915, or 34.57 percent, had cut back on hospital coverage.
- 1,080, or 40.8 percent, had stopped, or reduced emergency room calls.

⁴⁹⁷ Florida Hospital Association, Survey on the Availability and Affordability of Liability Coverage in Florida (May 2002).

⁴⁹⁸ Id. at 5.

⁴⁹⁹ Id.

⁵⁰⁰ Id.

⁵⁰¹ Id.

⁵⁰² Id.

⁵⁰³ Florida Medical Association & Florida Hospital Association, Access to Care Survey, presentation, Dec. 20, 2002.

⁵⁰⁴ Id.

- 1,360, or 51.38 percent, had discontinued or cut back on Medicaid patients.
- 1,732, or 65.43 percent, had stopped seeing certain types of patients.
- 1,795, or 67.81 percent, had reduced or stopped certain procedures.
- 832, or 31.44 percent, had difficulty getting new partners.
- 981, or 37.05 percent, had changed referral patterns.
- 1,228, or 46.39 percent, were considering discontinuing the practice of medicine.

Floridians for Quality Affordable Healthcare 2002 Survey

Floridians for Quality Affordable Healthcare conducted a survey of physicians in Dade, Broward and Palm Beach Counties in late October and early November 2002 to assess the impact of the medical malpractice insurance crisis.⁵⁰⁵ Surveys were sent to approximately 9,000 physicians in the area, and responses were received from 1,573.⁵⁰⁶ The survey had the following findings:

- Most South Florida physicians have been sued at least once, with the odds of being sued highly correlated to certain specialties. (Table 10).⁵⁰⁷ Every neurosurgeon and vascular surgeon in the survey had been sued, and for the 1,460 physicians who answered this question, the average number of suits was 1.44.⁵⁰⁸ The highest number of lawsuits per individual physician occurred for neurosurgeons with an average of 5.2 suits per physician.⁵⁰⁹

⁵⁰⁵ RCH Healthcare Advisors, LLC, Floridians for Quality Affordable Healthcare, Summary of Results, Physician Professional Liability Survey 1.

⁵⁰⁶ Id.

⁵⁰⁷ Id.

⁵⁰⁸ Id.

⁵⁰⁹ Id.

Table 10. Average Number of Lawsuits and Percentage of Physicians Who Have Been Sued by Specialty

SPECIALTY	LAWSUITS Ave. No. Total	% Who Have Been Sued	Sample Size
Neurosurgery	5.21	100.0	12
Vascular Surgery	3.14	100.0	11
Cardiovascular or Thoracic Surgery	3.62	94.1	17
General Surgery	2.69	90.5	63
Radiology	3.31	88.9	27
OB-GYN	2.61	78.6	84
Emergency Medicine	1.69	77.8	9
Other Surgical ⁵¹⁰	1.89	76.9	13
Infectious Diseases	3.22	71.4	14
Radiation Oncology	1.33	71.4	7
Cardiology	1.37	71.1	76
Physical Medicine & Rehabilitation	1.70	70.0	10
Neurology	1.55	68.8	41
Pulmonary	1.56	67.4	43
Gynecology	2.63	66.7	18
Pediatric Medical Specialties	1.19	66.7	9
Orthopedic Surgery	1.97	61.5	96
Anesthesiology & Pain Management	0.97	61.1	18
Otolaryngology	1.44	60.9	23
Urology	1.02	58.8	34
Pediatric Surgery/Surgical Specialties	1.97	58.3	12
Internal Medicine	1.28	54.6	183
Ophthalmology	0.93	52.6	57
Plastic Surgery	1.62	52.1	73
Hematology-Oncology	0.91	50.0	32
Pathology	0.84	50.0	12
Other Medical ⁵¹¹	2.00	50.0	8
Gastroenterology	0.92	48.4	64
Podiatry	1.48	47.1	17
Family Practice and General Practice	0.74	46.8	139
Dermatology	0.67	45.9	37
Unidentified Specialty ⁵¹²	0.72	41.7	17
Nephrology	0.70	38.5	13
Pediatrics	0.40	29.3	99
Psychiatry	0.48	28.2	39
Endocrinology	0.25	25.0	8
Rheumatology	0.22	22.2	9
Allergy and Immunology	0.00	0.00	14
Weighted Averages & Total Sample	1.44	57.4	1,460

Source: RCH Healthcare survey of South Florida physicians, November 2002.

⁵¹⁰ Includes hand surgery, maxillofacial, oculoplastics, oncologic, spine, and cataract surgery.

⁵¹¹ Includes critical care, geriatrics, infertility, neonatology, and nuclear medicine.

⁵¹² Specialty was not provided by respondent.

- The number of physicians “going bare” has increased. In 2001-02, 94.6 percent of the respondents had purchased medical malpractice insurance.⁵¹³ When asked if they had purchased medical malpractice insurance this year (2002) only 83.6 percent answered yes.⁵¹⁴
- The amount of coverage purchased has also decreased.⁵¹⁵

Table 11. Changes in Coverage Limitations

Percentage Buying:	Last Year	This Year
\$1,000,000/\$3,000,000	35.0%	20.7%
\$500,000/\$1,500,000	12.5%	11.4%
\$250,000/\$750,000	47.1%	51.5%
No Malpractice Coverage	5.4%	16.4%
Total	100.0%	100.0%
Sample Size	1,506	1,454

Source: RCH Healthcare survey of South Florida physicians, November 2002.

- More than 52 percent of the respondents indicated they were considering “going bare” in 2003.⁵¹⁶
- The cost of medical malpractice between 2001 and 2002 has increased by 33 percent.⁵¹⁷
- When the decrease in coverage is factored out of the increase in cost, then the cost for the same coverage has increased from an average of \$4,667 per \$100,000 to a cost of \$8,400 per \$100,000, or an increase of 80 percent.⁵¹⁸
- Some specialties, such as neurosurgery, thoracic surgery, and obstetrics, pay well over \$100,000 per physician, per year, for medical malpractice coverage.⁵¹⁹
- Fifty-four respondents closed their practice, retired early, or moved to another state, and 34 percent of all respondents report they are considering this option.⁵²⁰

⁵¹³ *Id.* at 3.

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*

⁵¹⁹ *Id.*

⁵²⁰ *Id.* at 4.

- More than 41 percent, or 517 respondents, have already stopped offering some high-risk procedures.⁵²¹ An additional 15 percent are considering this action.⁵²²
- Eight of the 18 gynecologists responding to the survey have stopped delivering babies accounting for a loss of 745 deliveries.⁵²³
- Forty-five of the 94 obstetricians who responded have stopped some high-risk procedures.⁵²⁴
- Seven of the 29 radiologists responding have stopped reading mammograms taking more than 15,000 readings out of the system, and another eight radiologists are considering discontinuing this service.⁵²⁵
- About 41 percent, or 647 respondents, have cut back on staff or delayed purchasing equipment to reduce costs.⁵²⁶ The types of equipment purchases delayed include: mammography, breast biopsy, ultrasound, laboratory, and x-ray equipment; a visual field machine, and retinal camera; electronic medical records software; computer upgrades; and office renovations.⁵²⁷
- Almost 31 percent, or 482 respondents indicated they have limited their hospital emergency room practice and 6 percent, or 87 respondents, are considering this reduction.⁵²⁸
- Approximately 16 percent, or 256 respondents, have limited nursing home practice and another 2 percent, or 30 respondents, are considering the reduction.⁵²⁹
- Approximately 11 percent, or 172 respondents, have limited services in ambulatory surgery centers and another 2 percent, or 23 respondents, are considering this limit on services.⁵³⁰

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ *Id.* at 5.

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ *Id.*

- 50 percent, or 787 respondents, reported discontinuing services to some high-risk patients.⁵³¹
- 44 percent, or 699 respondents, are discontinuing some high-risk services.⁵³²
- 66 percent, or 1,062 respondents, reported performing more tests for defensive reasons.⁵³³
- 30 percent, or 467 respondents, reported longer waiting times for an appointment.⁵³⁴

It should be noted that the Academy of Florida Trial Lawyers took exception to the techniques used by the Floridians for Quality Affordable Healthcare. According to the Academy, "the conclusions of the materials are based on reported survey data. However, the methodology of the reported survey is flawed to the point that the results would not be accepted in any way in terms of the social science academic community."⁵³⁵

According to Dr. James T. Kitchens, a statistician retained by the Academy, the use of mail or fax surveys always presents obstacles in obtaining valid results. The results of the materials presented represents one of the studies described by Norman Bradburn and Seymour Sudman, who have been honored for their contributions to methods of conducting surveys. In their book, Polls and Surveys: Understanding What They Tell Us, they write "There are so many examples of carefully conducted mail surveys with cooperation rates in the 80-90 percent range. There are also horrible examples of mail surveys with cooperation rates in the 10-20 percent range, or even lower. The biases in such studies are so great as to make the results almost meaningless." The cooperation rate for the Floridians for Quality Healthcare study is 17.5 percent. This means the actual finding could vary by as much as 82.5 percent if the cooperation rate had been 100 percent.⁵³⁶

Dr. Kitchens believes that without a true random sampling technique, the responses from a mail or faxed survey always have some built-in bias. The respondents to this study may be doctors more interested in the topic or they may have been sued more often than the average doctor. In this study, since there is no signature line on the response form, it is not even

⁵³¹ Id. at 6.

⁵³² Id.

⁵³³ Id.

⁵³⁴ Id.

⁵³⁵ James T. Kitchens, Ph.D., Analysis of Reports by RCH Healthcare Advisors (Jan. 2003).

⁵³⁶ Id.

certain the responses are from doctors. The form may have been completed by anyone, such as an office administrator or nurse.⁵³⁷

Dr. Kitchen concluded, "this survey cannot claim a legitimate margin of error or statistical confidence level. Therefore, the conclusions and the assertions made on the basis of this survey data must be viewed as suspect considering the lack of discipline in terms of acceptable research methodology."⁵³⁸

Dr. Kitchen believes the survey and information presented to the Task Force amounts to no more than a public relations document presented by one side in a political policy debate. The methodology of this reported study is so flawed that the results have no statistical validity. If it were a research paper, it would receive a failing grade even in a basic undergraduate research course.⁵³⁹

The Task Force finds the comments of Dr. Kitchens to have some merit. Dr. Kitchens' main concern seems to be that there is a lack of responses from doctors to the survey. Dr. Kitchens notes, "if the data indicates the respondent physicians are angry or frustrated, it may explain why they responded to the survey and the other 82.5 percent of the physicians did not."⁵⁴⁰ The Task Force would welcome Dr. Kitchens or any other stakeholder to attempt to reach out to the remaining 82.5 percent of the physicians in South Florida. However, the Task Force believes that, based upon the numerous letters, e-mails, and testimonials, that the remaining 82.5 percent of the physicians who did not respond to this survey (if they are still practicing) would mirror the responses of the 17 percent of the physicians that did respond. Although there is always going to be a need for more data on this problem, the Task Force finds the FMA and RCH survey to be compelling measures of physicians' attitudes in the state of Florida.

Closed Claim Data

In an effort to provide a quantitative analysis of the healthcare professional liability insurance problem and possible solutions, the Florida Hospital Association retained Milliman USA, Inc. to perform a data analysis. The Florida Academy of Trial Lawyers retained Dr. Lance deHaven-Smith to perform an analysis of the Florida problem as well, and provide an independent study. To assist the Task Force in considering the

⁵³⁷ *Id.*

⁵³⁸ *Id.*

⁵³⁹ James T. Kitchens, Ph.D., Analysis of Reports by RCH Healthcare Advisors (Jan. 2003).

⁵⁴⁰ *Id.*

extensive data analyses performed in these two reports, Task Force staff performed an independent analysis of each of the reports.⁵⁴¹

Florida Hospital Association Report Analysis, Prepared by Milliman USA, Inc.

The Florida Hospital Association contracted with Milliman USA, Inc. to evaluate the healthcare professional liability insurance problem in Florida, and formulate recommendations for changes that would be effective in addressing the problem. The report examined data from the Florida Department of Insurance Medical Malpractice Closed-Claim Database, the National Practitioner Data Bank Public Use Data File (NPDB), the Texas Department of Insurance Closed-Claim Database, the Physicians Insurers Association of America Claim-Trend Analysis, and the statement of rate filings in insurance company annual statements.⁵⁴² The report compared Florida, and national data and trends, with loss payments, including average payouts, ratios of economic to non-economic damages, and premium increases.

Trends in Loss Payments and Premiums for Medical Liability Claims

Total loss payments

- Total amount of paid losses in Florida for 2000 is more than 150 percent higher than the amount paid in 1991. This includes an increase of 28 percent from 1999 to 2000.
- In comparison, the total amount of paid losses for the United States is 80 percent higher in 2000 than the amount paid in 1991.
- Florida losses are now in excess of \$400 million per year.

⁵⁴¹ It should be noted that there have been previous well-documented attempts to study Florida's closed-claim data. A study of the Florida medical malpractice environment from 1975 to 1986 is particularly enlightening. See e.g., David J. Nye et al., The Causes of the Medical Malpractice Crisis: An Analysis of Claim Data and Insurance Company Finance, 76 *Georgetown Law Journal* 1495 (1988). This study found that the primary cause of malpractice premium increases, measured over a nine-year period, was the increase in loss payments to claimants. The frequency of claims payments was not primarily responsible for increased claims costs, since the likelihood that a Florida physician would be sued for malpractice has not changed from 1975 to present. It is rather the "huge increase in the size of claims payments, particularly the increasing frequency of very large payments" that accounted for the total increase in paid losses. Nye et al. note: "The causes of the increases in claims payments in Florida are not clear. The increases may reflect the belief of defense lawyers and insurance claims managers that their risk at trial would be greater than in 1975. This might be derived from 'more serious iatrogenic injuries, a concern that juries are more likely to award larger verdicts and that judges are less likely to control them, a sense that the plaintiffs' trial bar is more able than before, or a concern that the insurer will be held liable under a bad faith claim if it fails to settle within policy limits.'" *Id.* at 1560.

⁵⁴² Richard S. Biondi et al., Milliman USA, Inc., Florida Hospital Association, Medical Malpractice Analysis (Nov. 7, 2002).

- Hospital losses account for 38 percent of total losses.
- Physician-paid losses grew from approximately \$120 million in 1991 to more than \$300 million in 2000 for an average annual growth of 10.8 percent.
- National losses are now in excess of \$3.8 billion.
- Physician-paid losses grew only 6.8 percent from 1991 to 2000.

Average loss payments (severity of claims)

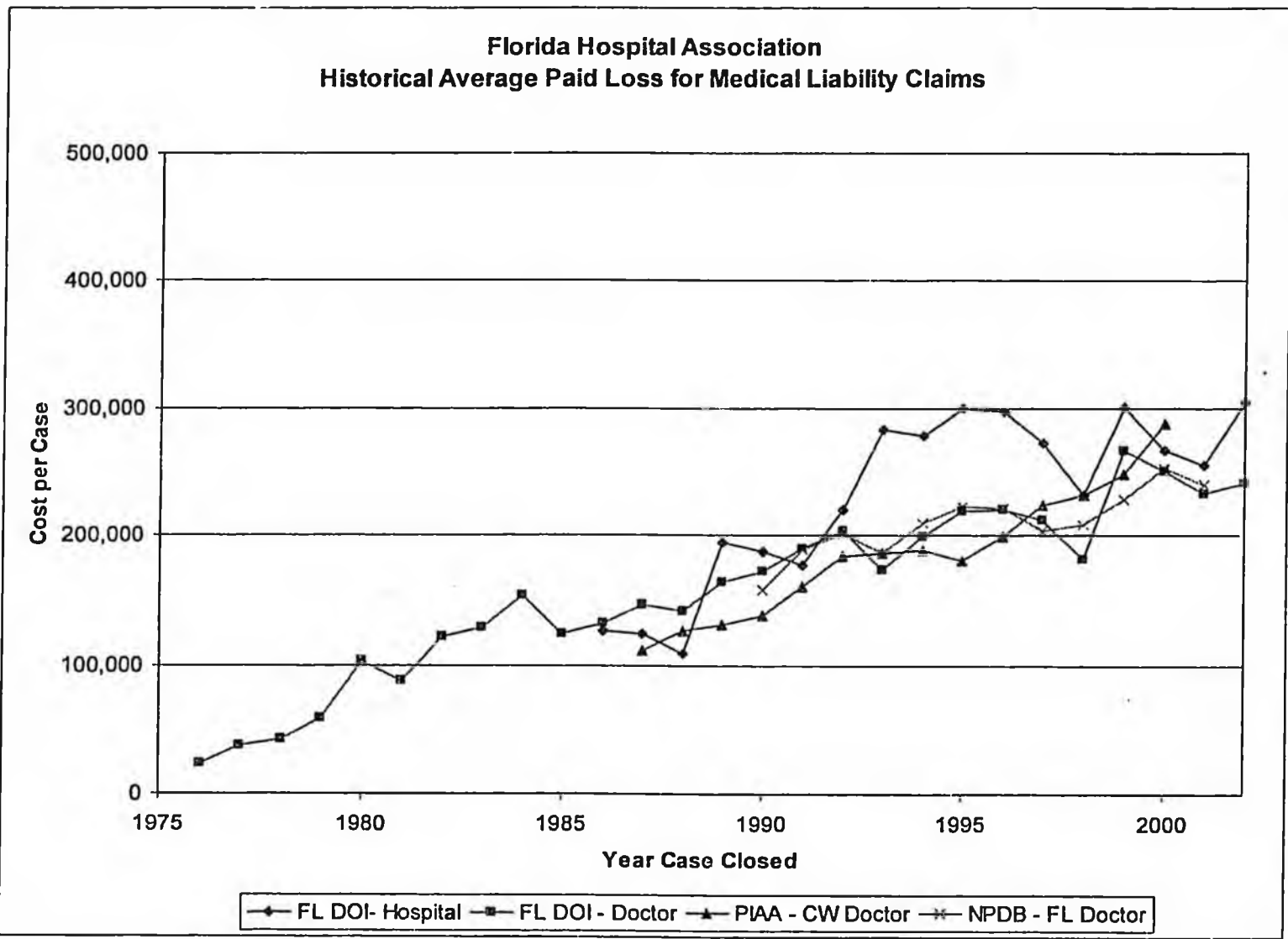
The average loss paid in Florida, and the nation, has shown an increasing trend since 1975. (Graph 1)⁵⁴³

- The loss per Florida doctor exceeds the national average, and has grown from 15 percent above the national average in 1991, to 50 percent higher in 2000. (Graph 2)⁵⁴⁴

⁵⁴³ Id., Graph 1.

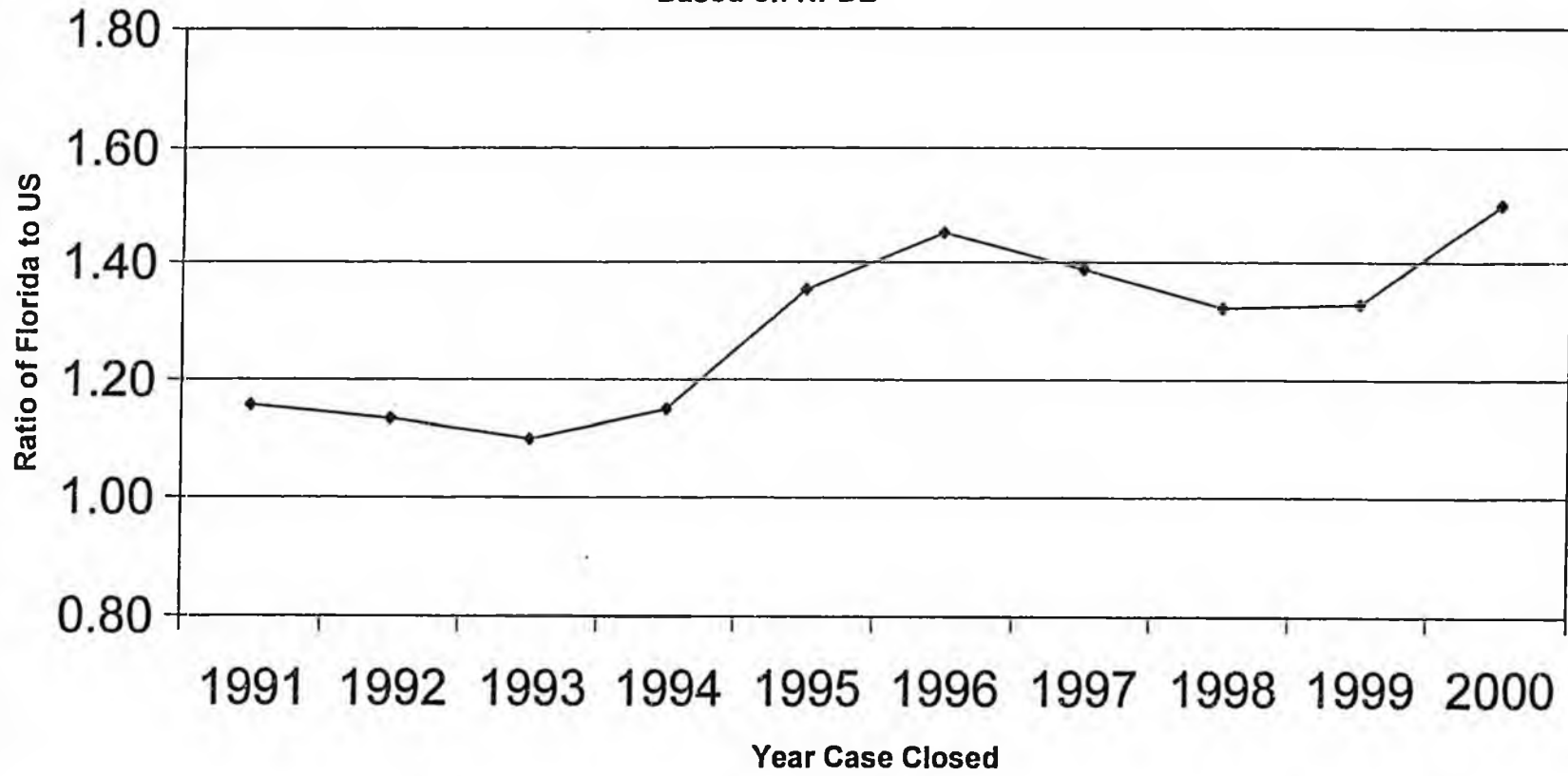
⁵⁴⁴ Id., Graph 2.

Graph 1



Graph 2

Florida Hospital Association
Florida Loss per Doctor (pure premium) Compared to US Average
Based on NPDB



- California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas account for about two-thirds of medical malpractice losses in the United States.⁵⁴⁵

Frequency of claims

- Nationally, the frequency of claims based on number of claims per 100,000/population, has been relatively stable since 1991. The frequency of claims has varied from a low of 5.11 in 1998 to a high of 5.77 in 1994. (Graph 3)⁵⁴⁶
- Florida claims-frequency per 100,000/population increased over the same period with a low of 4.82 in 1991 to a high of 7.56 in 2000. (Graph 3)⁵⁴⁷
- This claims-frequency is only exceeded by Nevada, West Virginia, Pennsylvania, and Montana.⁵⁴⁸

Ratios of economic and non-economic damages

- A review of available⁵⁴⁹ data in the Department of Insurance Closed-Claim Database indicated economic damages were approximately 25 percent of awards, and non-economic damages were approximately 77 percent. (Graph 4)⁵⁵⁰

Premium increases

- Since 1996, commercial insurance premiums for Florida have increased 64 percent to \$650 million.⁵⁵¹
- Since 1996, commercial insurance premiums nationally have increased only 26 percent.⁵⁵²
- The average malpractice premium, per doctor in Florida, is 55 percent greater than the national average.⁵⁵³

⁵⁴⁵ Id. at 20.

⁵⁴⁶ Id. at 17.

⁵⁴⁷ Id.

⁵⁴⁸ Richard S. Biondi et al., Milliman USA, Inc., Florida Hospital Association, Medical Malpractice Analysis 20, Exhibit 7 (Nov. 7, 2002).

⁵⁴⁹ In Department of Insurance closed claim data, only about 25 percent of the archive database and about 87 percent of the current database contained a breakout of damages paid.

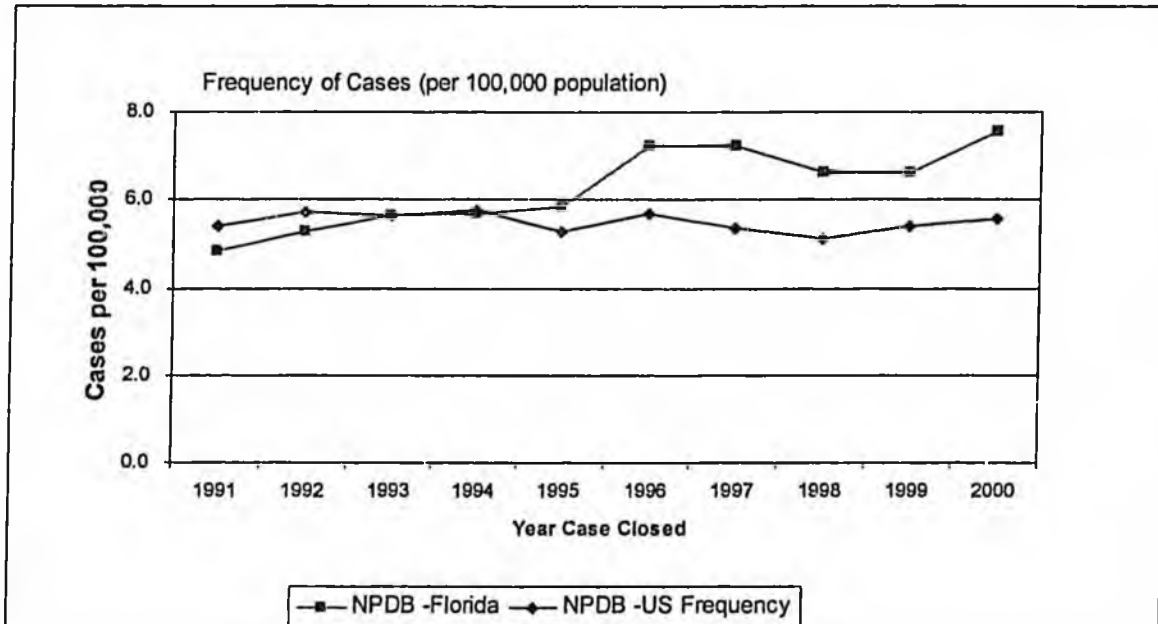
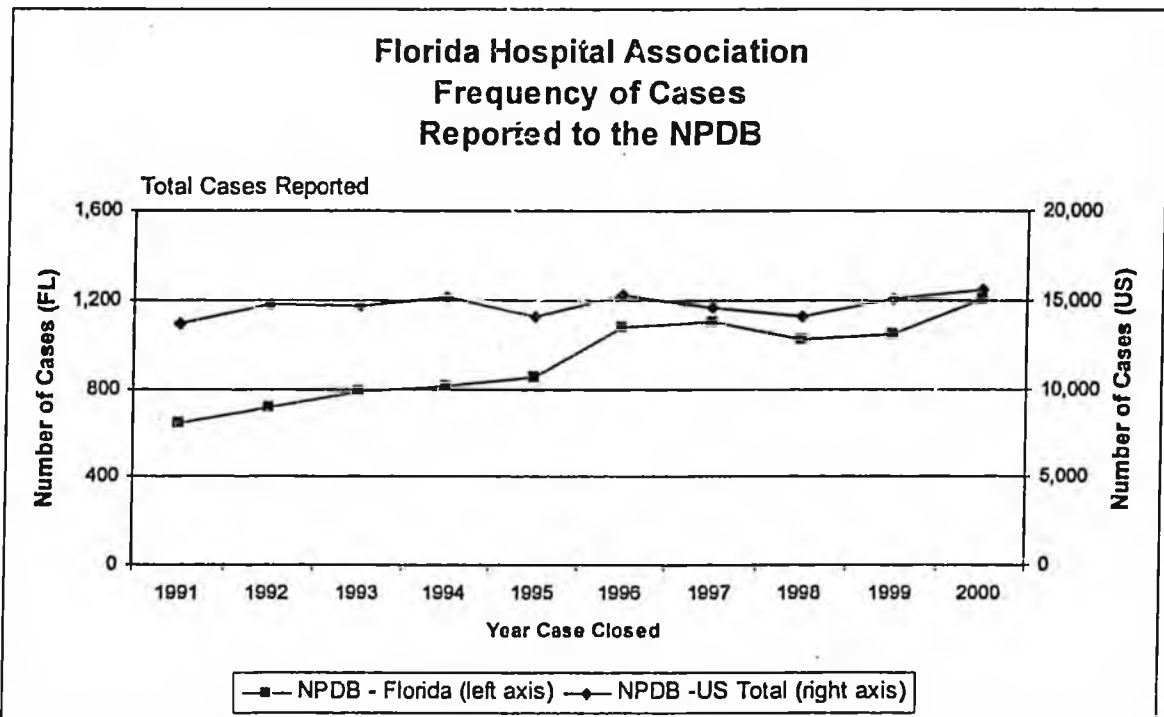
⁵⁵⁰ In only 55 percent of the cases did the non-economic and economic damages stated add to the total of damages paid.

⁵⁵¹ Richard S. Biondi et al., Milliman USA, Inc., Florida Hospital Association, Medical Malpractice Analysis 13, Exhibit 2a. (Nov. 7, 2002).

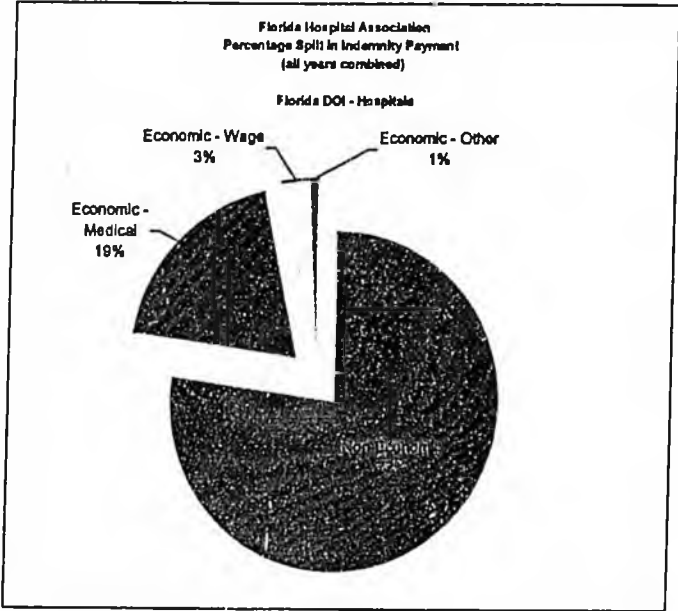
⁵⁵² Id.

⁵⁵³ Id. at 13, Exhibit 2b.

Graph 3



Graph 4



Florida Academy of Trial Lawyers Medical Malpractice Claims Analysis, Prepared by Lance deHaven-Smith

The Florida Academy of Trial Lawyers retained Dr. Lance deHaven-Smith to perform an analysis of closed-claims data in the Department of Insurance Closed-Claims Database for physicians and surgeons. His analysis did not include hospitals.

Total claims paid

- The claims-paid data for physicians, without an inflation adjustment, showed a 24 percent increase between 1999 and 2001.⁵⁵⁴
- Closed-claims peaked in 1996, dropped in 1997 and 1998, and began increasing again in 1999. (Graph 5)⁵⁵⁵
- When adjusted by medical-care inflation rates, the claims-paid have been down since 1996, and have just now reached the 1991 levels, approximately. (Graph 6)⁵⁵⁶

Average claims paid

- The average claim value, adjusted for medical-care inflation, is down from the levels in 1991, and is even below levels for 1995 and 1996. (Graph 7).⁵⁵⁷
- Severe claims are rare. (Graph 8).⁵⁵⁸

Non-economic damages vs. economic damages

According to Dr. Smith, there is a .110 correlation between economic and non-economic damages. This indicates, "if you get a high economic award, you're more likely to get a higher non-economic award. . . . [I]t is not a strong relationship, but it is statistically significant, and suggests that even those non-economic damages are not unexplainable or irrational."⁵⁵⁹

⁵⁵⁴ Lance deHaven-Smith, Ph.D., Figure 1, Total Value of Claims 1999-2001.

⁵⁵⁵ Lance deHaven-Smith, Ph.D., Figure 2, Claims Adjusted for Inflation Table, and testimony, Nov. 22, 2002, pg. 84.

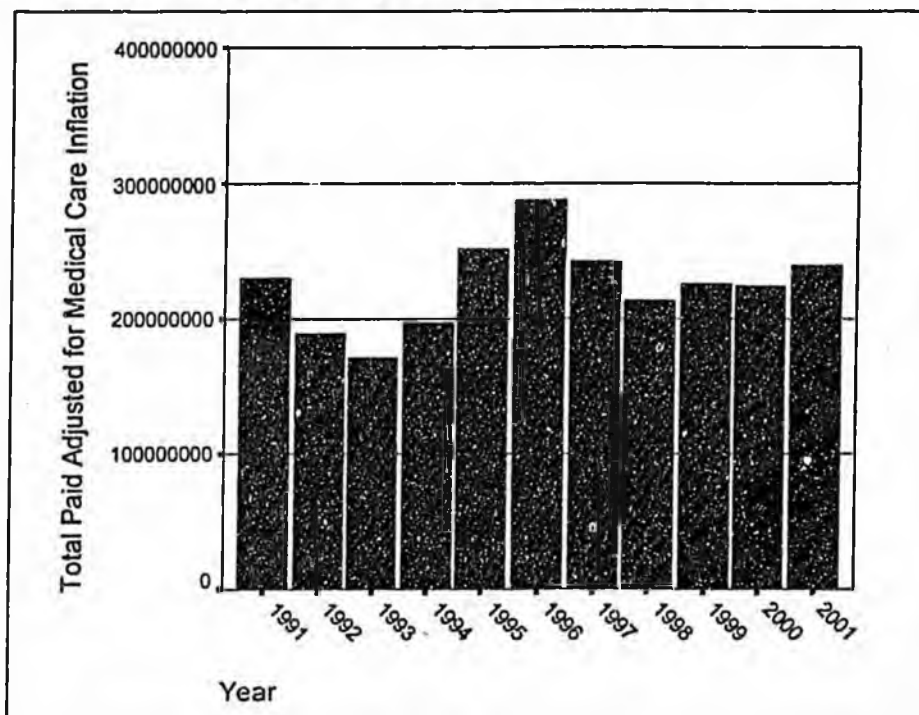
⁵⁵⁶ Id. Figure 3.

⁵⁵⁷ Lance deHaven-Smith, Ph.D., Figure 5, Average Claim Value, Adjusted for Inflation.

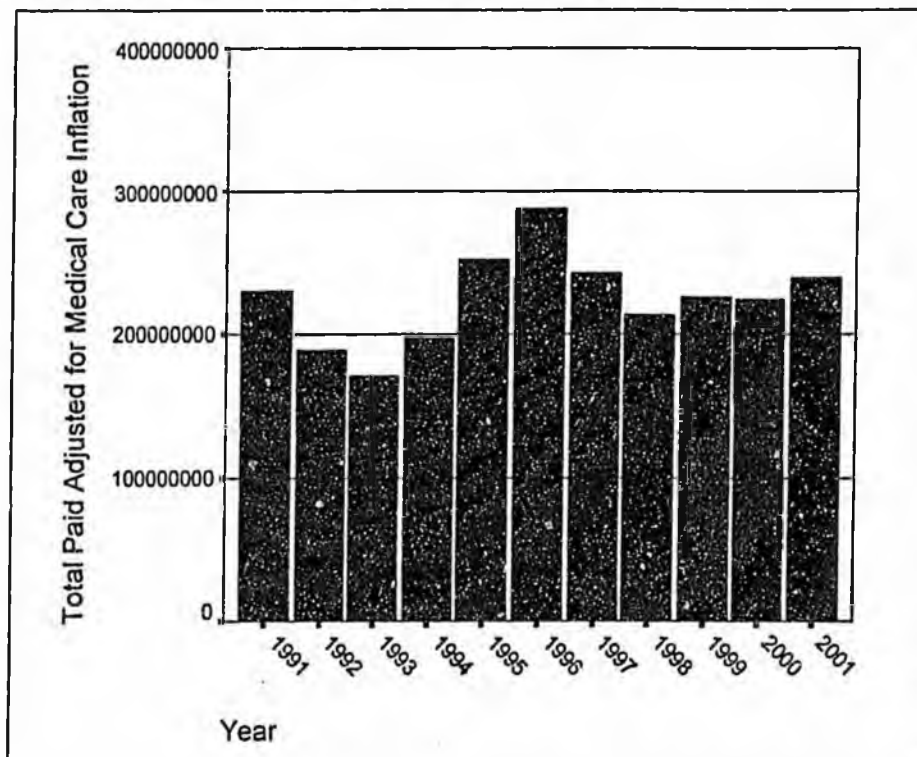
⁵⁵⁸ Lance deHaven-Smith, Ph.D., Figure 2, Outliers.

⁵⁵⁹ Lance deHaven-Smith, Ph.D., testimony, Nov. 22, 2002, pg. 89.

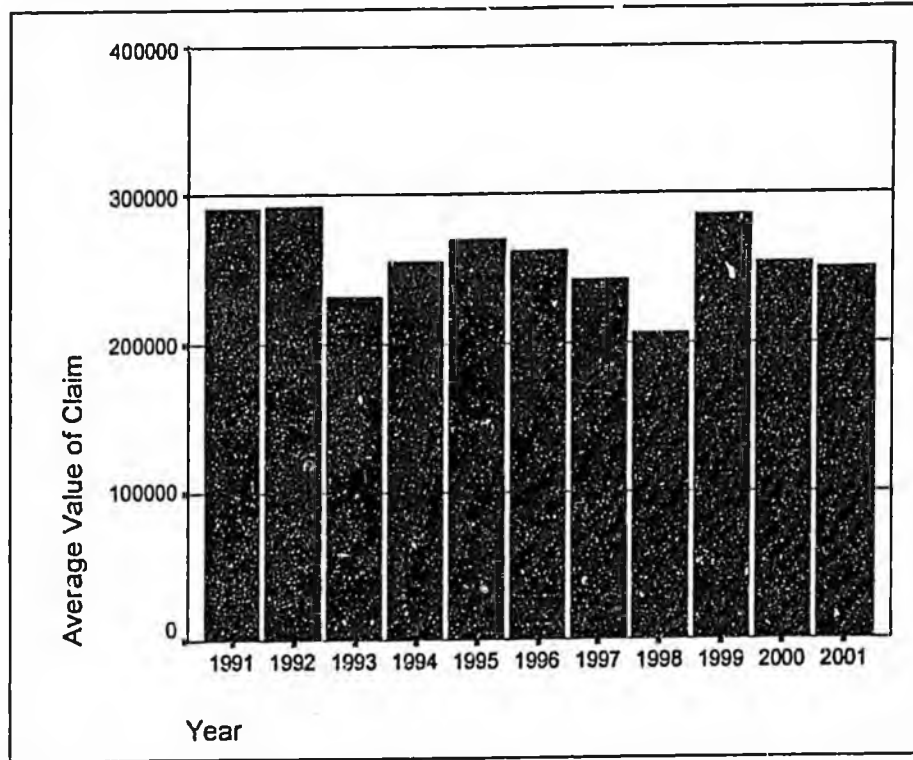
Graph 5: Total Payout per Year, Adjusted for Medical Care Cost Inflation



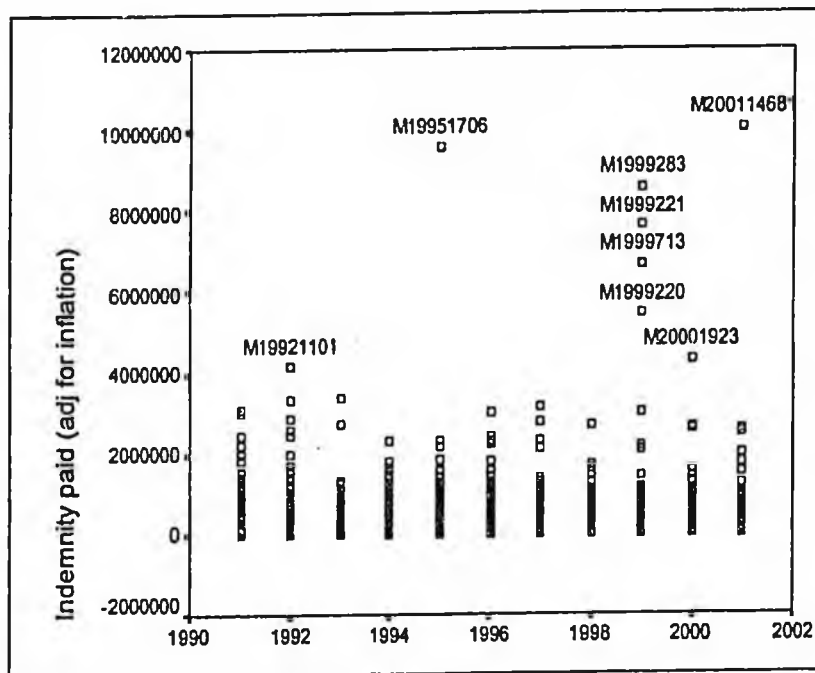
Graph 6: Total Payout per Year, Adjusted for Medical Care Cost Inflation



Graph 7: Average Payout Per Claim, Adjusted for Medical Care Cost Inflation



Graph 8
Scatterplot of Individual Payouts, Showing Outliers



Analysis for the Governor's Select Task Force on Healthcare Professional Liability Insurance

This analysis reviews the Florida Hospital Association Report prepared by Milliman USA, Inc., and the Florida Academy of Trial Lawyers Medical Malpractice Analysis prepared by Dr. deHaven-Smith, and independently evaluates the condition of the Florida professional healthcare liability insurance industry.

Comparison of Reports

Databases Used

The study by Dr. deHaven-Smith consists of basic statistical analyses of the Florida Department of Insurance (FLDOI) medical professional liability databases for years 1991 through 2001. Milliman performs similar analyses of the entire FLDOI databases for the years 1974 through 2002. However, limited analysis is done for the year 2002 and the years prior to 1991. Milliman's report is primarily for years 1991 through 2001.

The FLDOI database is composed of two different databases: "Archive" that contains data for claims closed before June 25, 1999 and "Current" that contains data for claims closed between June 25, 1999 and April 30, 2002. Milliman reports some adjustments to the two databases were required. Adjustments were made to the Current database to remove duplicate records in cases involving multiple defendants. The Archive database does not require this adjustment. However, the Archive database includes claims closed without payment while the Current database does not. To account for this discrepancy Milliman confined their analyses to claims closed with indemnity payments. Milliman performed overall analyses of the closed claim databases and they also examined closed claims broken down into physicians and hospitals. deHaven-Smith reports he also analyzed non-zero closed claims for physicians and surgeons. He states "the two datasets were restructured by the author to make them compatible and were then consolidated..." The specific steps taken were not reported.

Milliman's report also included several other analyses including an analysis of closed claims for physicians reported to the National Practitioner Data Bank (NPDB), an analysis of the Texas Department of Insurance Closed Claim Databases (Texas DOI), an analysis of the claim trends of the Physicians Insurers Association of America (PIAA) and analyses of other data obtained from annual statements and rate filings.

Statistical Methods Used

deHaven-Smith Report

deHaven-Smith first computes the raw totals of claim amounts and then adjusts them by the Medical Care Cost Index.⁵⁶⁰ He then performs basic statistical analyses based on these adjusted numbers. These analyses include total payout per year, average payout per claim, distribution of claims by severity, average payout for claims broken down by the severity of injury and a scatter plot showing outliers. He also performs analyses based on the number of closed claims per year and runs Pearson Correlations between the payout and other factors as well as between economic and non-economic damages.

deHaven-Smith calculates the medical care cost index has increased 54 percent from 1991 to 2001 and 14 percent since 1997.⁵⁶¹ The Medical Care Price Index (MCPI), a component of the Consumer Price Index, is in Table 12.⁵⁶² While claim severity is certainly affected by medical costs, weaknesses in the construction of the MCPI must be considered. Graboyes (1994) writes a price index "measures the average price of a set of goods and services in one period against the average price of the same goods in another period." The index changes proportionally to the price of goods in the basket. Implicit in this calculation is that the basket of goods consumed does not change over time and the satisfaction level of the basket remains the same from period to period. Technological progress in the field of medicine has caused problems with accurately measuring the MCPI. Medical care received in 2001 greatly differs from medical care received in 1950. For example, diseases that were previously untreatable are now almost routine. Advanced techniques such as laparoscopic procedures now replace older ones. Advances such as antibiotics, vaccines, and electronic monitoring of patients have reduced costs. On the other hand the use of defensive medicine has increased costs.⁵⁶³ In addition, the type and quality of medical care that people use over time changes.

⁵⁶⁰ Although this method is correct for adjusting prior years claims amounts to 2001 levels, one can't help but wonder what the effect would be if premiums were treated in a similar way.

⁵⁶¹ This is an error. The MCPI has actually increased 16 percent since 1997.

⁵⁶² Bureau of Labor Statistics, U.S. Department of Labor website (www.bls.gov).

⁵⁶³ Brostoff (1993) refers to a study by Lewin-VHI, Inc. that estimates costs of \$36 billion per year for defensive medicine.

Year	CPI - All Items	YTY % change	MCPI	YTY % change
1991	136.2		177	
1992	140.3	0.03	190.1	0.074
1993	144.5	0.03	201.4	0.059
1994	148.2	0.026	211	0.048
1995	152.4	0.028	220.5	0.045
1996	156.9	0.03	228.2	0.035
1997	160.5	0.023	234.6	0.028
1998	163	0.016	242.1	0.032
1999	166.6	0.022	250.6	0.035
2000	172.2	0.034	260.8	0.041
2001	177.1	0.028	272.8	0.046

Berndt, Griliches, and Rosett (1993) found the Bureau of Labor Statistics (BLS) gives too little weight to new goods. At the same time, new goods tend to have lower price increases compounding the effect and causing the price index to be too high. Prior to January 1995, the CPI did not adequately measure generic drugs. Scherer (1993) found that generic drugs were considered new products in the market basket and the resulting effect of a price decrease for the older drug did not show up. However, since that time, the BLS has implemented changes to more accurately measure the impact of generic drugs on costs to consumers.⁵⁶⁴

Graboyes (1994) notes other problems with the price index. List prices are used instead of actual transaction prices. Prior to January 1997, the list price charged by a hospital was used in the calculation of the MCPI. However, beginning in January 1997 the BLS restructured the hospital portion of the CPI to focus more on treatment outcomes.⁵⁶⁵ Now the unit of measure is a hospital visit rather than the individual components making up that visit. The BLS has also improved their data collection procedures and identifies the payor, diagnosis, and reimbursement agreement. Using the reimbursed rate for a hospital rather than the list price for services is a great improvement in the MCPI. There are also other sampling biases that occur. For example, a store may have a product listed at one price but actually sell it at another.

The MCPI practice of measuring payments by non-Medicare and Medicaid patients results in a higher index due to cost shifting. Graboyes

⁵⁶⁴ U.S. Department of Labor, Bureau of Labor Statistics, Measuring Price Change for Medical Care in the CPI website (www.bls.gov/cpi/cpifact4.htm).

⁵⁶⁵ *Id.*

notes that the MCPI includes health insurance premiums paid directly by the consumer but not by employers who benefit from group discounts.

In summary, the MCPI most likely overstates the actual cost of medical care. Regardless, it is the best index that we have at this time to measure the cost of medical care.⁵⁶⁶

Milliman Report

Milliman performs many different statistical tests. As in deHaven-Smith, they also compute the raw claims totals. They then use this unadjusted data and perform the following analyses using the FLDOI databases:

- Calculate the historical average annual increase in loss payments.
- Categorize the loss payments between economic and non-economic damages, defense costs, wages, and medical bills.
- Compare the wages and medical increases to the inflation index for wages and healthcare.
- Examine the rate at which economic, non-economic, and defense costs are growing.
- Compute historical trends on claim frequency and that same trend adjusted for population growth.
- Perform a comparison of claims and premium data between South and North Florida.

Milliman also performs several other statistical tests using data other than that provided by the FLDOI. Using this other data they are able to make comparisons between Florida and the rest of the country.

Each study uses vastly different methods. Therefore, only the raw claim totals illustrated in Table 13 are directly comparable between these two reports. Both reports calculate the total unadjusted payout per year and the number of claims closed per year.

⁵⁶⁶ Graboyes (1994) notes that some feel the MCPI is understated.

Table 13 Unadjusted Claim Totals

YEAR	DeHaven-Smith Florida DOI Databases		Milliman USA, Inc.			
	Total Amount Paid (\$)	Claims Closed	Florida DOI Databases		NPDB Database*	
			Total Amount Paid (\$)	Claims Closed	Total Amount Paid (\$)	Claims Closed
1991	148,875,447	786	146,534,933	771	121,368,350*	644
1992	131,380,435	643	133,781,196	657	144,527,850	719
1993	126,156,950	736	125,845,187	724	146,440,000	786
1994	152,405,900	769	159,777,554	802	169,668,850	811
1995	203,347,516	933	206,449,199	942	188,983,050	849
1996	241,080,279	1,100	239,875,827	1,087	237,694,550	1,076
1997	208,843,088	1,003	202,750,624	955	223,530,000	1,100
1998	189,263,865	1,032	182,241,758	1,001	214,219,300	1,025
1999	207,541,531	791	220,966,498	828	238,864,100	1,045
2000	214,481,970	881	223,149,549	891	306,424,550	1,209
2001	239,237,089**	958	205,677,297**	882	102,483,600**	427

* National Practitioner Data Bank Public Use File, April 30, 2001, U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, Division of Quality Assurance as cited by Milliman USA, Inc. in their report provided to the Governor's Select Task Force on Healthcare Professional Liability Insurance meeting on November 22, 2002.

**1991 was the first complete year that data was collected by the NPDB so the data may be incomplete.

**This data may be incomplete depending on when the data was obtained due to delays in reporting.

An examination of the raw numbers from the two reports reveals some mild to moderate discrepancies. While the total payout amounts appear to be similar in the earlier years appearing to diverge by only \$1-2 million dollars from 1991 to 1993, beginning with 1994 the figures become more and more erratic. In 1999 there is a difference of \$13 million, \$9 million in 2000 and \$34 million in 2001. Interestingly, deHaven-Smith's totals are higher in 1991, 1993, 1996, 1997, 1998, and 2001. Milliman's totals are higher in the other years. In 2001, deHaven-Smith's numbers are much larger but he may have had more complete data for 2001 if he obtained the data from the DOI much later in the year 2002 than did Milliman. The number of claims closed per year follows the same pattern as total amount paid. It appears these discrepancies result from different data screening procedures used by the researchers.

Analysis of Findings

deHaven-Smith Report

deHaven-Smith presents a summary of findings in his written report. His main finding is "the annual payout amount after adjusting for inflation has not escalated over the decade." He finds this holds for both annual payout totals and average payouts per claim. Based on the statistics and

adjustments that he performed and the information he provided the Task Force these are reasonable findings.

His second major finding is "payout amounts are quite rational and predictable." He appears to base this statement on the findings that (1) "the amount paid for any given claim is largely a function of the severity of the injury sustained..." and (2) there is a "statistically significant correlation between the payout for economic losses and payouts for non-economic factors."

The most complex statistical test that deHaven-Smith performs is a Pearson Product Moment Coefficient of Correlation. The other tests performed are simple basic statistical calculations of totals, averages, and identification of outliers. He illustrates these figures with histograms. There is no indication that any other tests are performed.

The Pearson correlation is a measure of the strength of the linear relationship between two random variables and ranges between +1 and -1. A value near or equal to 0 indicates there is little or no linear relationship between the two variables. The closer the value gets to 1, the stronger the relationship between the two variables. A -1 indicates a perfect negative relationship between the two variables. As the value of one variable decreases, the value of the other variable increases. A +1 indicates a perfect positive relationship between the two variables.

It should be noted that Pearson correlations are simple correlations and do not calculate or remove any influence that other variables may have. Also, correlations between two variables do not indicate causation. This being said, deHaven-Smith finds the Pearson correlation, r , for economic and non-economic damages is .110. Since r was found to be significant, he states there is a significant correlation between economic and non-economic losses. However, while significant, the value of .110 actually indicates a very weak, positive linear relationship between economic and non-economic damages. In fact, there is very little linear relationship between economic and non-economic damages.

deHaven-Smith finds four payments exceeded \$5 million in 1999, one payment exceeded \$4 million in 2000, and in 2001 one payment exceeded \$10 million dollars and was the highest payment ever. It is common knowledge that once a very high award occurs all parties' expectations regarding the values of future, similar claims are raised accordingly. Therefore, even though the distribution of severity or the probability of the type of injury occurring may be highly predictable, the actual payout required to settle a claim may not be. deHaven-Smith's conclusions that payout amounts are "quite rational and predictable" and "future annual payouts can be predicted with a high degree of accuracy" is not reasonable

based on his findings in his report and on the very weak relationship found between economic and non-economic damages.

Lastly, deHaven-Smith states "payout amounts depend on injury severity." Once again, there is no statistical basis for making that conclusion. The simple correlations calculated between the payout and other variables appear to be the basis for this statement. As previously explained, correlation is not causation and should not be interpreted as such.

Milliman Report

In order to retain a common basis with the deHaven-Smith report the findings by Milliman using data from the Texas DOI, New York, and PIAA will not be discussed. This report will concentrate on those findings that can be obtained from data available from the FLDOI closed claim databases. The unadjusted claim totals referred to below are in Table 14. NPDB data are also discussed since it contains many of the same data items contained in the FLDOI database.

Milliman performed analyses based on FLDOI data and NPDB data. Their observations/conclusions are simply statements of statistical facts calculated by them. Their first conclusion is "Florida medical malpractice paid losses rose over 150 percent between 1991 and 2000" and 28 percent from 1999 to 2000. These figures were obtained from the NPDB. The corresponding analysis using Milliman's figures from the FLDOI closed claim database shows only a 52 percent increase from 1991 to 2000 and a 1 percent increase from 1999 to 2000. deHaven-Smith's unadjusted figures show a 44 percent increase from 1991 to 2000 and a 3 percent increase from 1999 to 2000.

Similarly, using NPDB data, Milliman finds that claim frequency has increased 57 percent from 1991 to 2000 and 14 percent from 1999 to 2000. They adjusted these figures for population growth. Using unadjusted data for 1991 to 2000, Milliman shows an 88 percent increase in NPDB closed claims and a 16 percent increase in FLDOI closed claims. deHaven-Smith's unadjusted figures reveal a 12 percent increase for this time period.

From these figures it appears that the concerns raised by stakeholders at Task Force meetings that the FLDOI closed claim database understates claim amounts, especially in the later years, are valid. In addition, the United States General Accounting Office performed a study of reports received by the NPDB in September 1999. They found 24.4 percent of the malpractice payment reports did not include amounts for damages.

Milliman also concludes non-economic damages account for approximately 77 percent of loss payments for hospitals in Florida. What

they do not point out is that they also find non-economic damages account for a similar large portion of loss payments for Florida physicians. In the last ten years non-economic damages have ranged from a low of 70 percent of total payout in 1998 to a high of 88 percent in 1992. Non-economic damages accounted for 72 percent of total loss payouts in 2001 and 80 percent in 2002.⁵⁶⁷ deHaven-Smith did not provide information on this type of analysis so a direct comparison with his study on these figures cannot be made.

Finally, Milliman found that from 1991 to 2000, "medical malpractice paid loss dollars per unit of population increased 8.7 percent per year." deHaven-Smith did not perform this type of analysis so no comparison can be made.

Quality of Databases

Florida Department of Insurance Closed Claim Databases (DOI)

The FLDOI database is available on CD and comes with the following disclaimer.

"Neither the Department of Insurance nor the State of Florida accepts legal liability or responsibility for the accuracy, completeness or usefulness of this information on closed claim reports filed by insurers. This information is unaudited."

The FLDOI database consists of two databases. "Archive" contains years 1975 up to mid-July 1999 and "Current" contains data from mid-July 1999 to present. The Department of Insurance provides very specific information regarding duplicate records and steps that need to be taken to successfully work with the data.

Concerns have been raised by some stakeholders at Task Force meetings that this database is incomplete due to underreporting of claims. Steve Roddenberry, Deputy Director of the Division of Insurer Services at the Florida Department of Insurance, confirms that some insurers may not report to the FLDOI as required. In addition, self-insurers, off-shore captive companies, risk retention groups, and surplus line companies do not report to the closed claim database.

⁵⁶⁷ The 2002 FLDOI database was incomplete at the time Milliman obtained the data.

National Practitioner Data Bank Public Use File (NPDB)⁵⁶⁸

Under Title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986, each entity that makes a medical malpractice payment for a healthcare practitioner must report to the NPDB. Payments made solely on behalf of entities such as group practices and hospitals as well as clinics are not required to report. Eligible payments must be reported within 30 days of payment date. In contrast to the FLDOI databases, each practitioner's portion of the claim payment is reported. The FLDOI reports the total claim payment for each physician and/or hospital, hence the duplicate records. Therefore, the average claim payment should be lower for NPDB data.

As opposed to the FLDOI, the NPDB requires any entity that makes a payment on behalf of a healthcare practitioner to report that payment. This database should include those entities such as self-insurers, risk retention groups, etc., that are not included in the DOI database. As a result, the total amount paid out per year should be higher for NPDB data than for FLDOI figures. However, as previously mentioned, even the NPDB suffers from underreporting and incomplete filing of reports. In addition, neither database has ever taken legal action against entities that file late reports, do not file reports, or file incorrect or incomplete reports.

In addition to the underreporting problems the General Accounting Office uncovered in their report dated November 2000 and referred to earlier in this report, they also found significant delays between the time payment was made and the data was actually entered into the NPDB. First, it was found that on average 25 percent of the reports received by the NPDB in September 1999 were approximately 85 days late.⁵⁶⁹ Second, delays occurred between the time the report reached the NPDB and the information was added into the database. These delays ranged from a low of 5 days to a length of 1 year before the information was added to the database. The median delay was calculated to be 13 days. On the bright side, the NPDB was scheduled to begin Internet-based reporting on October 1, 2000. However, without improved controls this form of reporting may actually worsen the problems of inaccurate and incomplete reports.

In summary, the NPDB requires more entities to report medical malpractice payments paid for healthcare practitioners. The NPDB total claim amount paid is more complete while the FLDOI database has more

⁵⁶⁸ Richard Biondi, Florida Hospital Association Medical Malpractice Analysis, presentation, Nov. 22, 2002, citing National Practitioner Data Bank Public Use File, U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, Division of Quality Assurance (April 30, 2001).

⁵⁶⁹ Reports are supposed to be filed within 30 days of the initial payment date.

detailed information on specific claim information. For example, the FLDOI contains information on the injuries and types of damages paid including a breakdown of economic, non-economic, incurred, and future damages. The FLDOI also has claim information on hospitals while the NPDB does not. However, from the above information and reviewing Milliman's numbers for the year 2000, it is apparent that these numbers are incomplete.

Analysis of NPDB Data Adjusting for Medical Costs

Due to the very real concerns that more entities report payments to the NPDB and the increase in medical costs caused the increased claim payments, an analysis of the Milliman NPDB figures using deHaven-Smith's MCPI indexing formula is performed.⁵⁷⁰ The results of this analysis are in Table 10.

This analysis finds after adjusting for increases in medical care costs from 1991 to 2000, the total amount paid out in medical malpractice payments increased 71.3 percent and the average claim paid decreased by 8.7 percent. Using unadjusted figures for the same time period the total amount paid out increased 152.5 percent while the average claim paid increased 34.5 percent. Further, the number of claims filed increased 87.7 percent from 1991 to 2000 while the total population of Florida increased approximately 23.5 percent from 1990 to 2000.⁵⁷¹ This implies the increase in total claims paid is largely attributed to the increased number of claims filed.

⁵⁷⁰ The formula is as follows: $adjusted\ value_t = raw\ value_t * index\ value_{2001} / index\ value_t$, where t = the year ranging from 1991 to 2001.

⁵⁷¹ www.state.fl.us/edr/population.

TABLE 14
NPDB Data Using MCPI Indexing
Figures Adjusted to 2001 Values*

Year	Unadjusted Total Amount Paid	MCPI	Adjusted Total Amount Paid	% Change in Adjusted Total Paid	Number of Claims Closed	Adjusted Average Claim Paid	% Change in Adj. Average Claim Paid
1991	121,368,350	177	187,058,112		644	290,463	
1992	144,527,850	190.1	207,402,407	10.9%	719	288,460	-0.7%
1993	146,440,000	201.4	198,355,670	-4.4%	786	252,361	-12.5%
1994	169,668,850	211	219,363,328	10.6%	811	270,485	7.2%
1995	188,983,050	220.5	233,807,601	6.6%	849	275,392	1.8%
1996	237,694,550	228.2	284,150,189	21.5%	1076	264,080	-4.1%
1997	223,530,000	234.6	259,927,468	-8.5%	1100	236,298	-10.5%
1998	214,219,300	242.1	241,383,829	-7.1%	1025	235,496	-0.3%
1999	238,864,100	250.6	260,024,447	7.7%	1045	248,827	5.7%
2000	306,424,550	260.8	320,523,839	23.3%	1209	265,115	6.5%
2001**	102,483,600	272.8	102,483,600	-68.0%	427	240,008	-9.5%

* Using the formula provided by Dr. deHaven-Smith

**Data for this year is incomplete.

Analysis of Florida Department of Insurance Market Performance Reports

Overview of Florida Professional Healthcare Liability Insurance Market

Insurance market performance reports for years 1988 through 2000 were provided to the Task Force by the Florida Department of Insurance. These yearly reports detail the Florida experience of twelve different lines of insurance. Copies of these reports are provided in Appendix 5⁵⁷². The lines of insurance contained in these reports are fire, homeowners, commercial multiple peril, medical malpractice, private passenger physical damage, private passenger auto liability, commercial auto liability, workers' compensation, other liability, product liability and directors and officers liability.⁵⁷³ Section 627.915, Florida Statutes, requires insurers writing at least 0.5 percent of the Florida market to report this information.

A review of the healthcare professional liability insurance industry's performance reveals some disturbing trends in the Florida market. These trends are outlined in Graph 9. As can be seen, the market was profitable in the late 1980s and early 1990s. However, beginning with 1994 net income went negative and has been negative in 5 of the last 7 years. In fact, with the exception of spikes in years 1996 and 1998, industry profitability has steadily deteriorated. Although the year 2000 produced the largest investment gain for the market since 1988, this increased income was not enough to offset the large increase in direct losses incurred that year and shown in Graph 9.⁵⁷⁴

As seen in Graph 10 direct losses incurred shows an increase in amount over the past 10 years with a large increase observed from 1999 to 2000. Specifically, direct losses incurred have increased 614 percent from 1991 to 2000 and 64 percent from 1999 to 2000. Similarly, direct losses paid have increased 352 percent from 1991 to 2000 and 50 percent from 1999 to 2000.

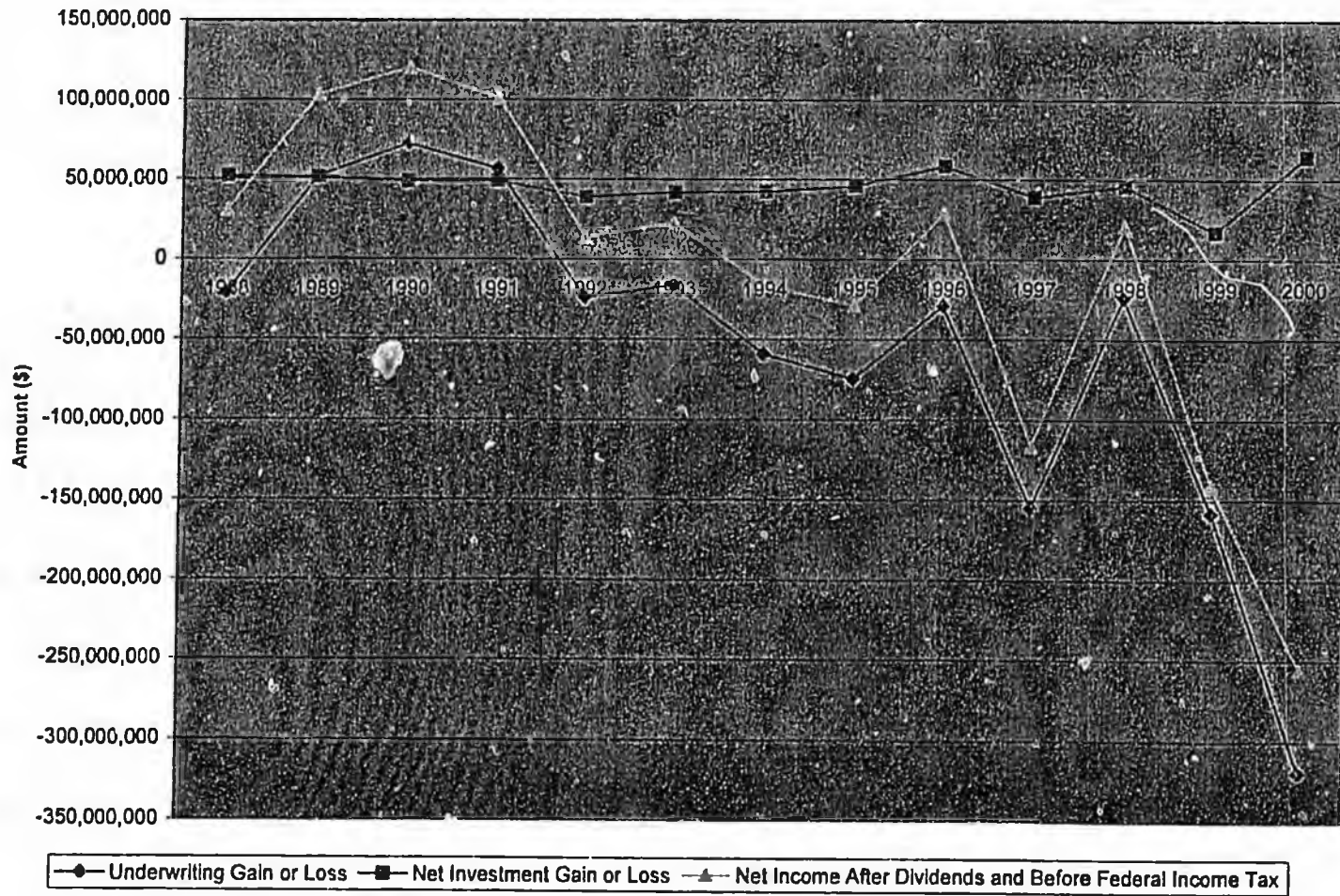
⁵⁷² Appendix 5 can be found in Volume 6, Speaker Comments, November 22, 2002 Task Force Meeting.

⁵⁷³ The Florida Department of Insurance uses the term "medical malpractice." The Task Force prefers the term "healthcare professional liability." They are used interchangeably in this report.

⁵⁷⁴ Section 625.305, Florida Statutes restricts insurers' costs of investments "in stock authorized by s. 625.324" to 15 percent of admitted assets, costs of investments in common stock to 10 percent of admitted assets, and costs of investment in "stock of any one corporation" to 3 percent of admitted assets. Regardless, investment income has become more erratic since 1995; see app. 1 for actual figures.

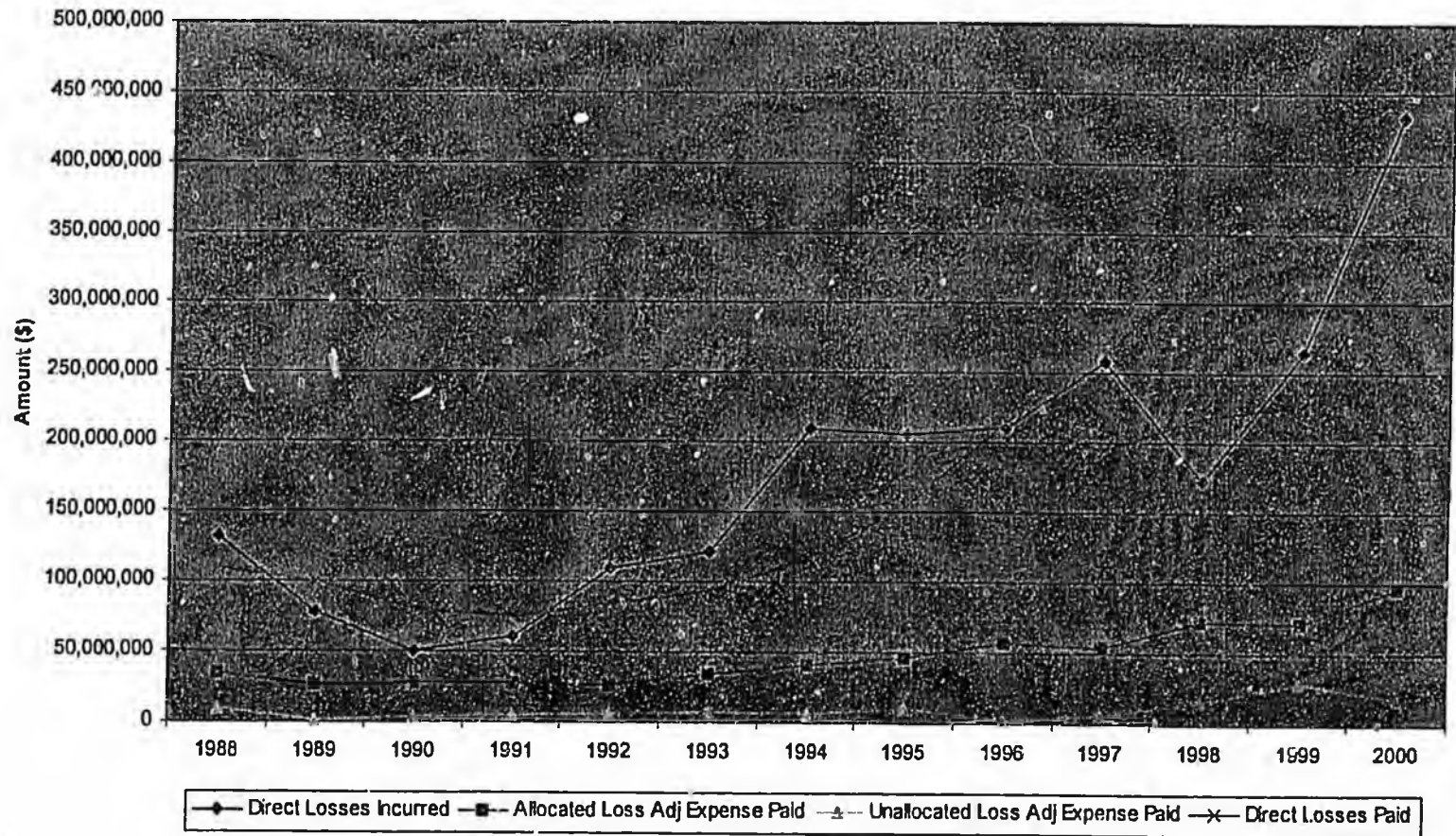
Graph 9

Healthcare Professional Liability Market Performance



Graph 10

Healthcare Professional Liability Losses and Expenses



Allocated loss adjustment expense paid has increased over 111 percent in the last 6 years and 254 percent from 1991 to 2000.⁵⁷⁵ Unallocated loss adjustment expense paid increased 258 percent from 1991 to 2000 and 85 percent in the past 6 years from 1995 to 2000.⁵⁷⁶

It should be noted these market reports reveal underreporting especially in later years when negative net income for the industry is experienced. Please see Appendix 1⁵⁷⁷ for the percentage of total market share of insurers reporting. Therefore, in years with negative net income total amounts are understated relative to years with positive net income. As a result, actual industry experience is most likely worse than reported.

Analysis of Financial Ratios and Rankings of Insurance Lines

The overall performance of the professional healthcare liability insurance market in the state of Florida can be measured by comparing its annual financial ratios realized with the ratios from the other 11 lines sold and referenced above. The use of ratios should mitigate the effects of underreporting by insurers both within and across lines of insurance. The use of ratios should also alleviate concerns regarding the effect of inflation on values.

One measure of insurer performance is the loss ratio. The loss ratio is the ratio of direct losses incurred to premiums earned.⁵⁷⁸ A 100 percent loss ratio means that for every \$1 in premium earned there is \$1 loss incurred. The annual loss ratios and resulting rankings for professional healthcare liability insurance are given in Table 15. The ratio of direct losses incurred to premiums earned and the resulting rankings for all lines is provided in Appendix 2.⁵⁷⁹ The results show since 1994, excluding 1998, the professional healthcare liability industry has experienced high losses relative to other lines of insurance. Please see Appendix 3.⁵⁸⁰ Interestingly, the cost to adjust these claims has always been relatively high compared to the cost of claims adjustment in other lines.

Underwriting results are measured by calculating the ratio of underwriting gain (loss) to premiums earned. The underwriting results and the resulting rankings are also in Table 15. The ratio of underwriting gain (loss) to premiums earned and the resulting rankings for all lines is provided in

⁵⁷⁵ Allocated loss adjustment expenses are specific charges that can be assigned to a claim. For example, defense attorney fees, photographer fees, appraisal fees, and independent physician reports.

⁵⁷⁶ Unallocated loss adjustment expenses include charges such as overhead expenses and other expenses not included under allocated loss adjustment expenses.

⁵⁷⁷ Appendix 1 can be found in Volume 6 Speaker Comments, November 22, 2002 Task Force Meeting

⁵⁷⁸ Direct losses incurred to premiums earned are provided in the market performance reports by the Florida Department of Insurance.

⁵⁷⁹ Appendix 2 can be found in Volume 6, Speaker Comments, November 22, 2002 Task Force Meeting.

⁵⁸⁰ Appendix 3 can be found in Volume 6, Speaker Comments, November 22, 2002 Task Force Meeting.

Appendix 4.⁵⁸¹ It is clear from these results that underwriting performance for professional healthcare liability insurance has greatly deteriorated in the past few years. This deterioration appears to be due to both increased losses and expenses. From Table 15 the direct loss incurred ratio has increased (worsened) by a large percentage. It is also apparent that this industry ratio is highly variable. The total loss adjustment expense ratio has also worsened over the past years but not as drastically as the direct loss incurred ratio.⁵⁸²

TABLE 15
Ratio Analysis of Healthcare Professional Liability Market
Ranked Results with Total Market

Year	Direct Losses Incur / Premiums Earned	Rank	Total LAE Incur / Premiums Earned	Rank	UW Gain / Premiums Earned	Rank
1988	72.2%	10	24.1%	10	-11.6%	11
1989	44.7%	2	12.6%	8	29.8%	1
1990	29.2%	1	17.3%	9	41.7%	1
1991	34.5%	1	19.4%	10	32.0%	1
1992	68%	4	28.7%	8	-15.10%	5
1993	59.7%	5	26.8%	11	-8.0%	8
1994	75.5%	11	28.5%	11	-21.3%	11
1995	87.1%	11	25.6%	11	-31.6%	11
1996	71%	10	24.2%	10	-9.8%	8
1997	113.6%	12	37.4%	10	-68.0%	12
1998	55.6%	5	34.5%	12	-7.8%	9
1999	91.8%	12	38.3%	11	-55.0%	11
2000	136.8%	12	47.4%	12	-100.8%	11

*A rank of 1 means that line had the best ratio (most favorable experience) in the industry for that year.

⁵⁸¹ Appendix 4 can be found in Volume 6, Speaker Comments, November 22, 2002 Task Force Meeting.

⁵⁸² Total loss adjustment expense incurred to premiums earned is provided in the market performance reports by the Florida Department of Insurance. It is the sum of the allocated loss adjustment expense incurred and unallocated loss adjustment expense incurred.

TABLE 16

Combined Ratio for Healthcare Professional Liability Insurance

Year	Combined Ratio*
1988	96.3%
1989	57.3%
1990	46.5%
1991	53.9%
1992	96.7%
1993	86.5%
1994	104%
1995	112.7%
1996	95.2%
1997	151%
1998	90.1%
1999	130.1%
2000	184.2%

The combined ratio is the sum of the loss ratio and the expense (LAE) ratio. A ratio of 100 percent means losses and expenses equal the premium earned or, in other words, for every \$1 earned there is \$1 in loss and expenses.

The combined ratio is simply the sum of the loss and total loss adjustment expense ratios. A combined ratio of 100 percent means losses and expenses equal the premium earned. In Table 16 losses and expenses have exceeded the premium earned in 5 of the last 7 years. The year 2000 was particularly bleak for the industry as a whole with losses and expenses exceeding earned premium by 84.2 percent.

In summary, the last few years have resulted in a marked decrease in profitability for healthcare professional liability insurance in the state of Florida. With an industry-combined ratio of 184.2 percent and a corresponding underwriting ratio of -100.8 percent in 2000, the viability of this market may be threatened if conditions continue to deteriorate.

Chapter 5 - FINDINGS

“Even in a world of perfect experience rating, the deterrent signal would still be blunted by a second problem: the poor fit between instances of negligence and suing. Research has found that most instances of medical negligence never give rise to a malpractice claim, and that many malpractice lawsuits are brought and won by patients even though expert reviewers can identify no evidence of negligent care. . . . A similarly poor fit between negligent injuries and claims was found in the [Harvard Medical Practice Study] sample. The total number of malpractice claims filed was about 14% of the total number of negligent injuries. However, this figure masks the incredibly small overlap between the group of patients injured by negligence and the group who brought suit. Less than 2% of those who were actually injured due to negligence filed a claim, and only about a sixth of the claims that were filed involved both negligence and an injury.”

Michelle Mello & Troyen A. Brennan, Deterrence of Medical Errors: Theory and Evidence for Malpractice Reform, 80 Texas Law Review 1595 (June 2002).

Task Force Findings

The Task Force received extensive testimony, documentation and letters related to the current medical malpractice insurance crisis. Based on the information and data received, the Task Force makes the following findings about the crisis:

Affordability: The cost of medical malpractice insurance has increased dramatically during the last several years. In 2002 the average medical malpractice premium per doctor in Florida was 55 percent higher than the national average. Florida’s average premiums have increased 64 percent since 1996 while nationally the average premiums have increased only 26 percent.

Availability: The number of companies writing medical malpractice insurance in Florida went from a high of sixty-six companies in 1999 to only twelve currently. Further, of the twelve currently writing premiums only four are generally writing medical malpractice insurance. The remaining eight companies are writing only selected policies.

Impact of the Underwriting Cycle: The business cycle for medical malpractice insurance companies has exacerbated the increases in medical malpractice insurance rates in Florida but claims paid have had the most significant impact. The late-1990s produced some of the largest investment gains for the market since the mid-1980s, but this increased income was not sufficient to offset the large increase in direct losses for the medical malpractice insurance industry that year. As a result, insurance companies writing medical malpractice suffered a loss ratio of 184 percent.

Frequency of Claims Payments: Florida's claims frequency which was an average of 4.82 claims per 100,000 population in 1991 has increased to an average of 7.56 claims per 100,000 in 2000. The national average has been between 5.11 and 5.77 claims during this same period with an average of 5.54 claims per 100,000 population in 2000. Thus, in 2000, Florida's frequency of claims was 36 percent higher than the nationwide average.

Severity of Claims Payments: The severity of claims in Florida and nationally showed a significant increase between 1998 and 2000. Further, the average "pure premium" loss per Florida doctor has grown from 15 percent above the national average in 1991 to 50 percent above that average in 2000.

Variations Among Medical Specialties: Specialists and other physicians performing high-risk procedures are much more likely to be sued. These specialties, particularly obstetricians and neurosurgeons, also see much higher medical malpractice insurance rates, regardless of whether they have ever been sued.

Changes in the Law: The very existence of the continuing medical malpractice crisis is proof that the previous reforms have failed to address the problem. Florida's use of many of the reforms considered or adopted by other states further demonstrates that the provisions related to medical malpractice adopted in Florida have not been sufficient in addressing the problem. The limitations on damages, the only provision shown to be effective in reducing the severity of judgments, was stricken by the Florida Supreme Court.

Access to Healthcare Services: The concern over litigation and the cost and lack of medical malpractice insurance has caused doctors to discontinue high-risk procedures, turn away high-risk patients, close practices, and move out of state. In some communities, doctors have quit delivering babies and discontinued hospital care.