

The Crisis of 2002-2003

American College of Physicians

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Chairman, The Doctors Company



“Let me through. I’m a lawyer.”

Context

- Loss of capacity
- Rapidly increasing severity
- Reinsurance costs rising
- Harvard, IOM, and the concept of medical error

Internal medicine claims

Cost of coverage

Financial markets

- Truth and consequences

Tort reform

25 Companies Recently Exiting Underwriting Medmal Insurance



1. American Physicians Assurance – Withdrew from FL
2. Associated Physicians Insurance Co – Insolvent
3. Caduceus Trust – Financial distress merger
4. Clarendon National – Withdrew from line of business
5. CNA Re of London – Ceased operations
6. Farmers Insurance – Withdrew from FL
7. Reciprocal of America – Taken over by VA DOI
8. Frontier – Withdrew from line of business
9. Insurance Corp of America – Insolvent
10. Legion – Insolvent
11. Lloyd's Syndicates 376, 991, 1007 – Ceased operations, placed in runoff
12. MAG Mutual – Withdrew from hospitals

25 Companies Recently Exiting Underwriting Medmal Insurance

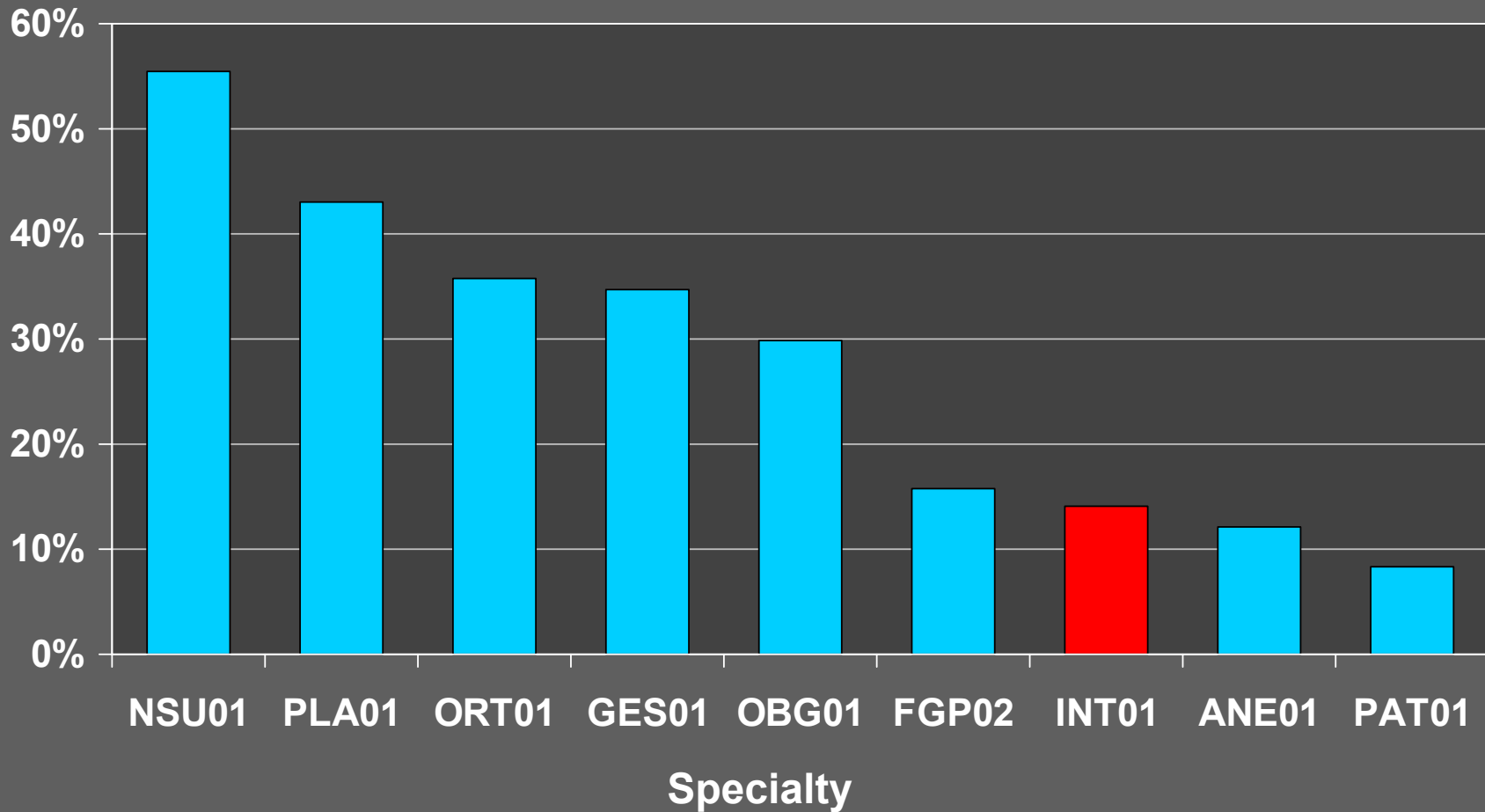


13. MIIX – Ceased operations, placed in runoff
14. MMI – Financial distress merger
15. PHICO – Insolvent
16. PIE Mutual – Insolvent
17. Princeton – Withdrew from medmal in PA
18. Professional Medical – Insolvent
19. Reliance – Insolvent
20. Safeco – Withdrew from physician business
21. SCOR Re – Withdrew from line of business
22. Swiss Re – Withdrew from line of business
23. St. Paul – Withdrew from line of business
24. UnionAmerica – Ceased operations, placed in runoff
25. Zurich – Withdrew from physicians, except in select circumstances

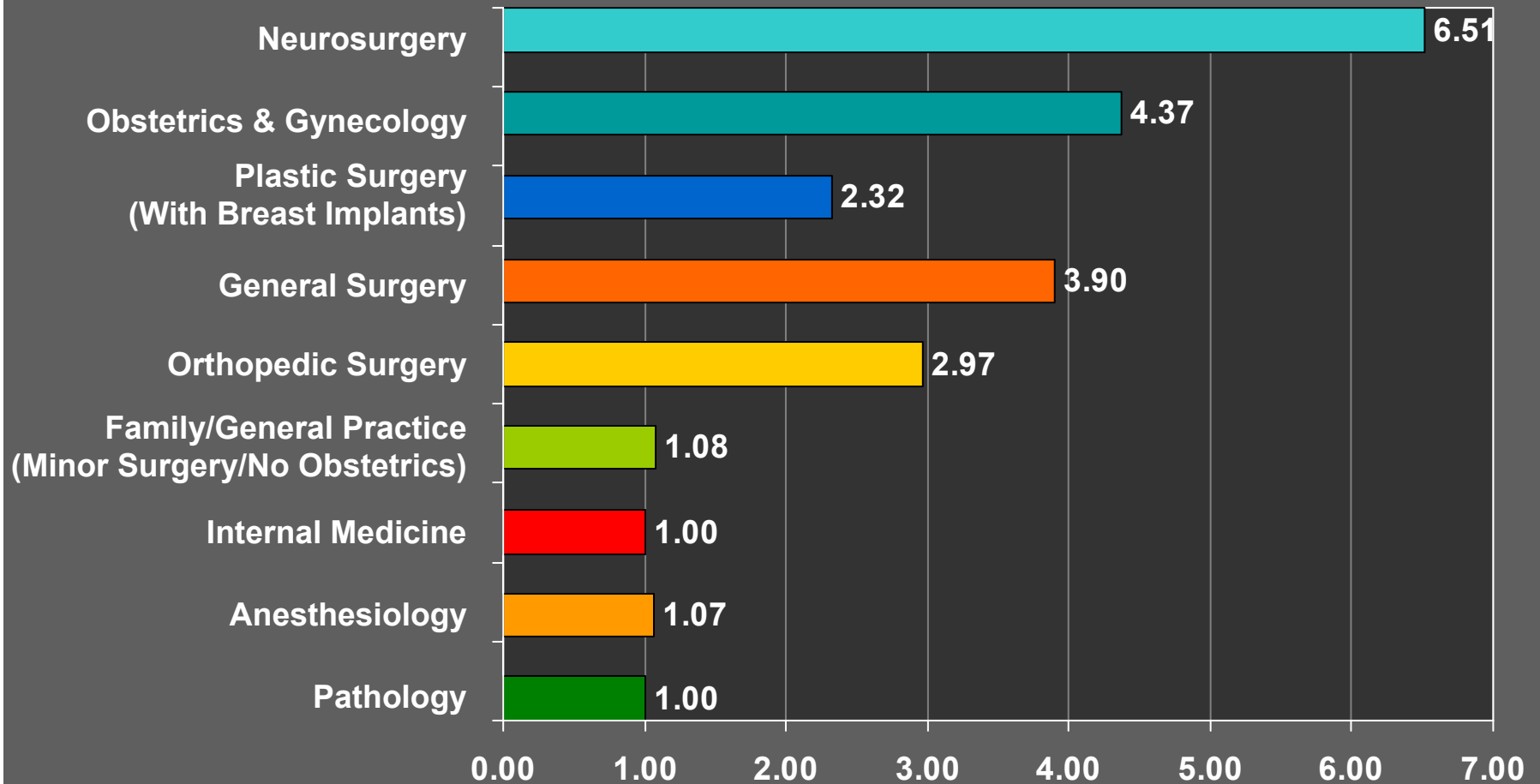
Frequency by Specialty 1995-2001



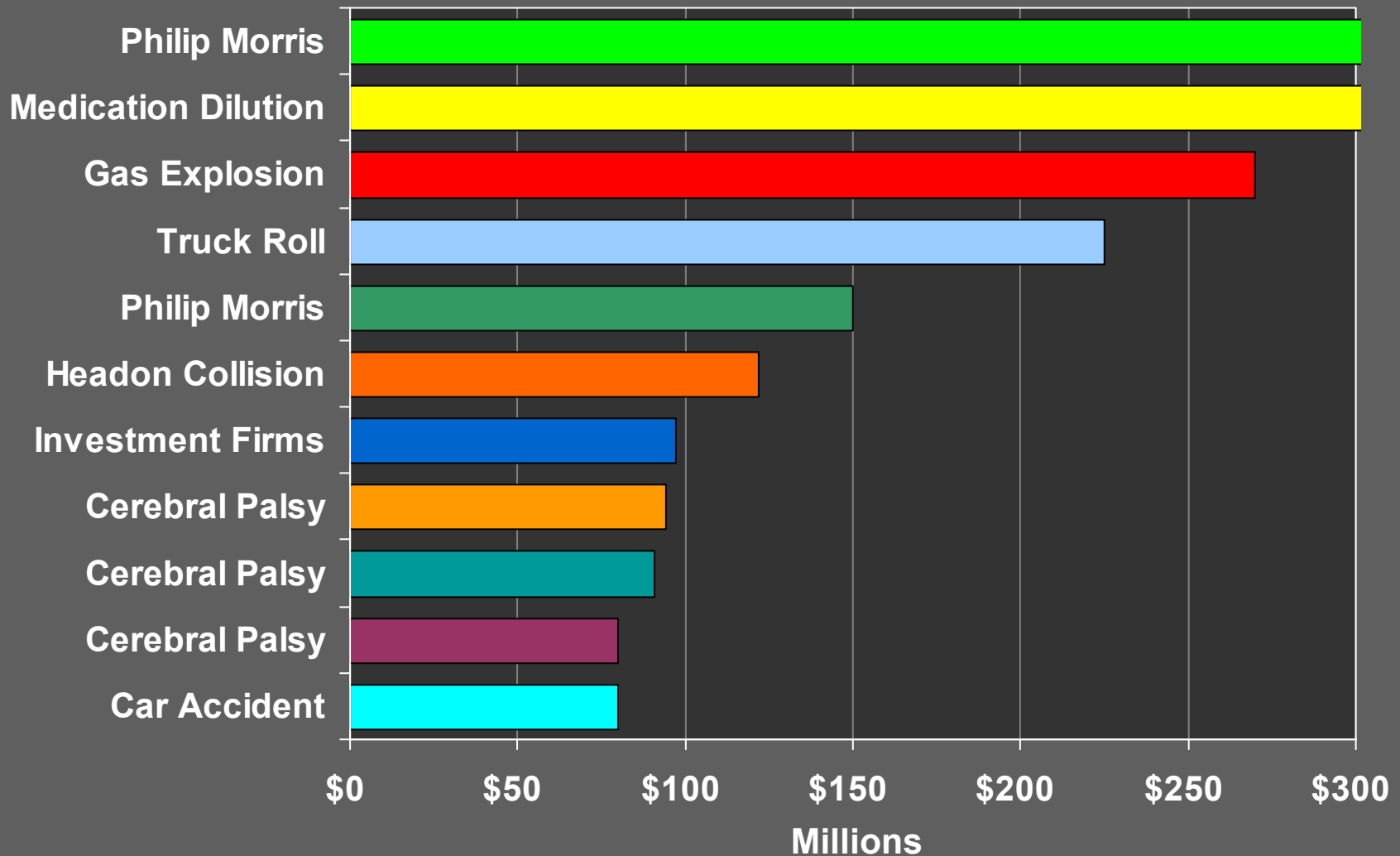
Frequency



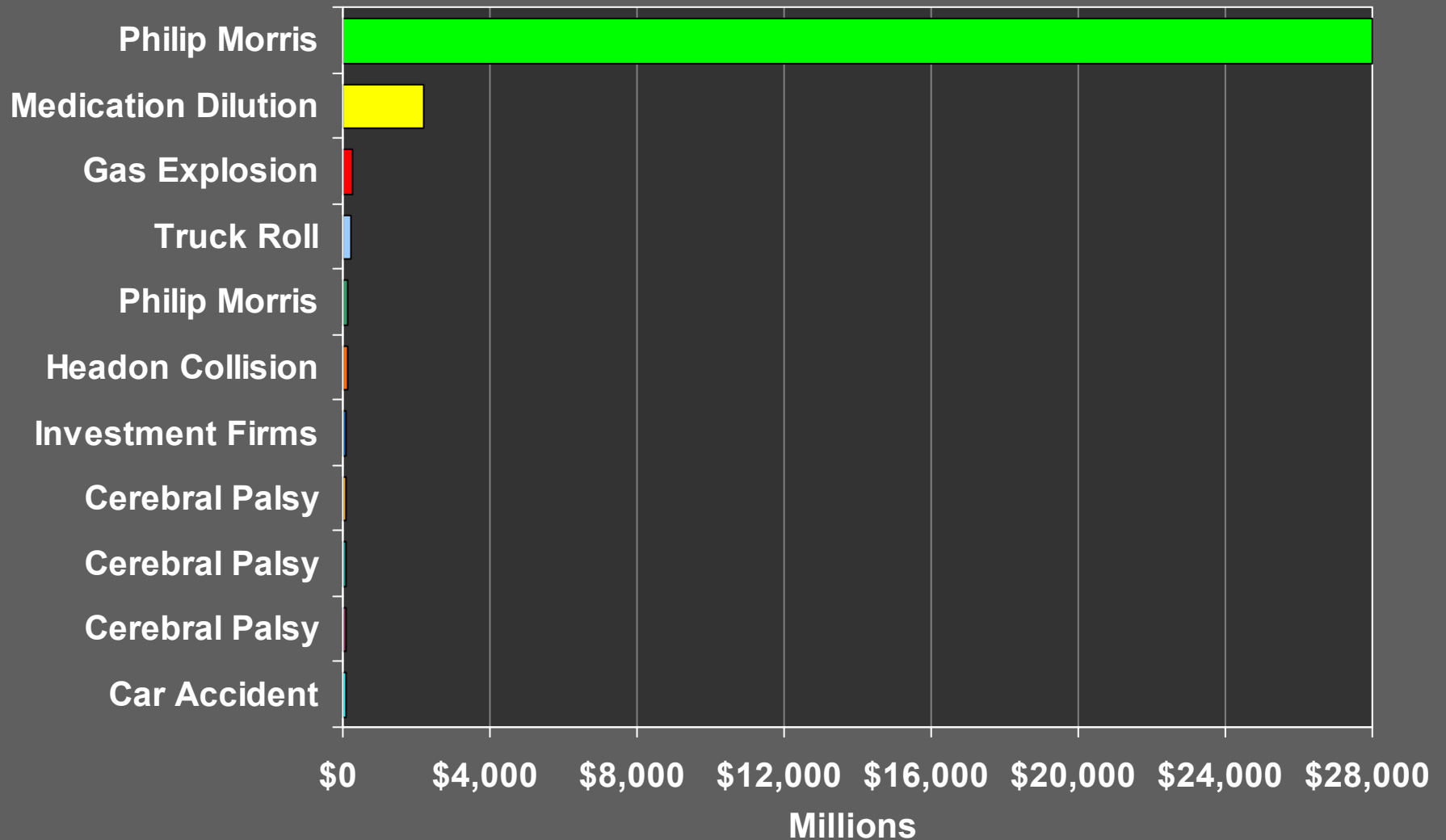
Specialty Relativity Nationwide



Top Jury Awards of 2002



Top Jury Awards of 2002

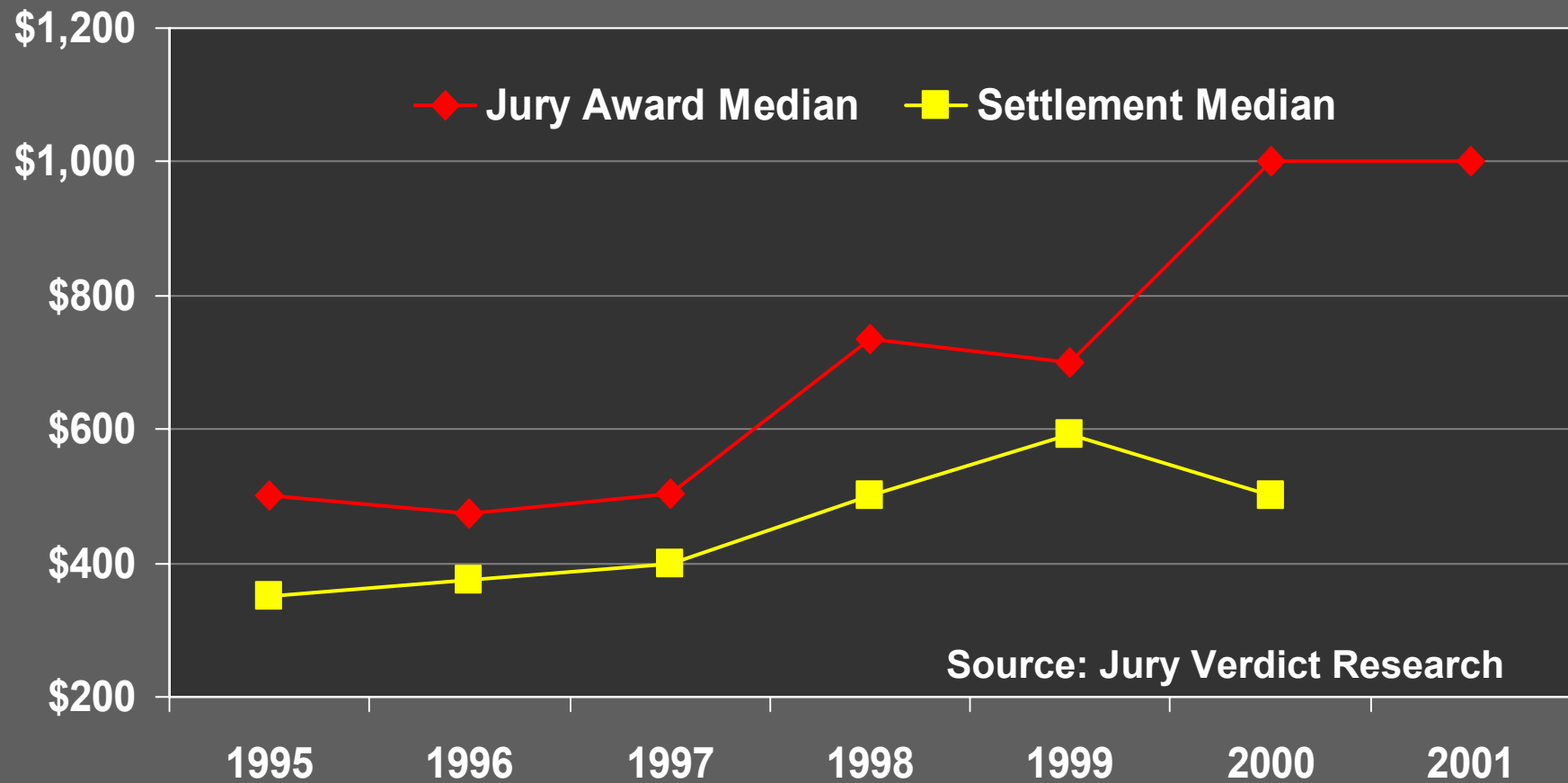


Severity: National Medians



National Jury Award and Settlement Medians for Medical Malpractice Cases

(000's)

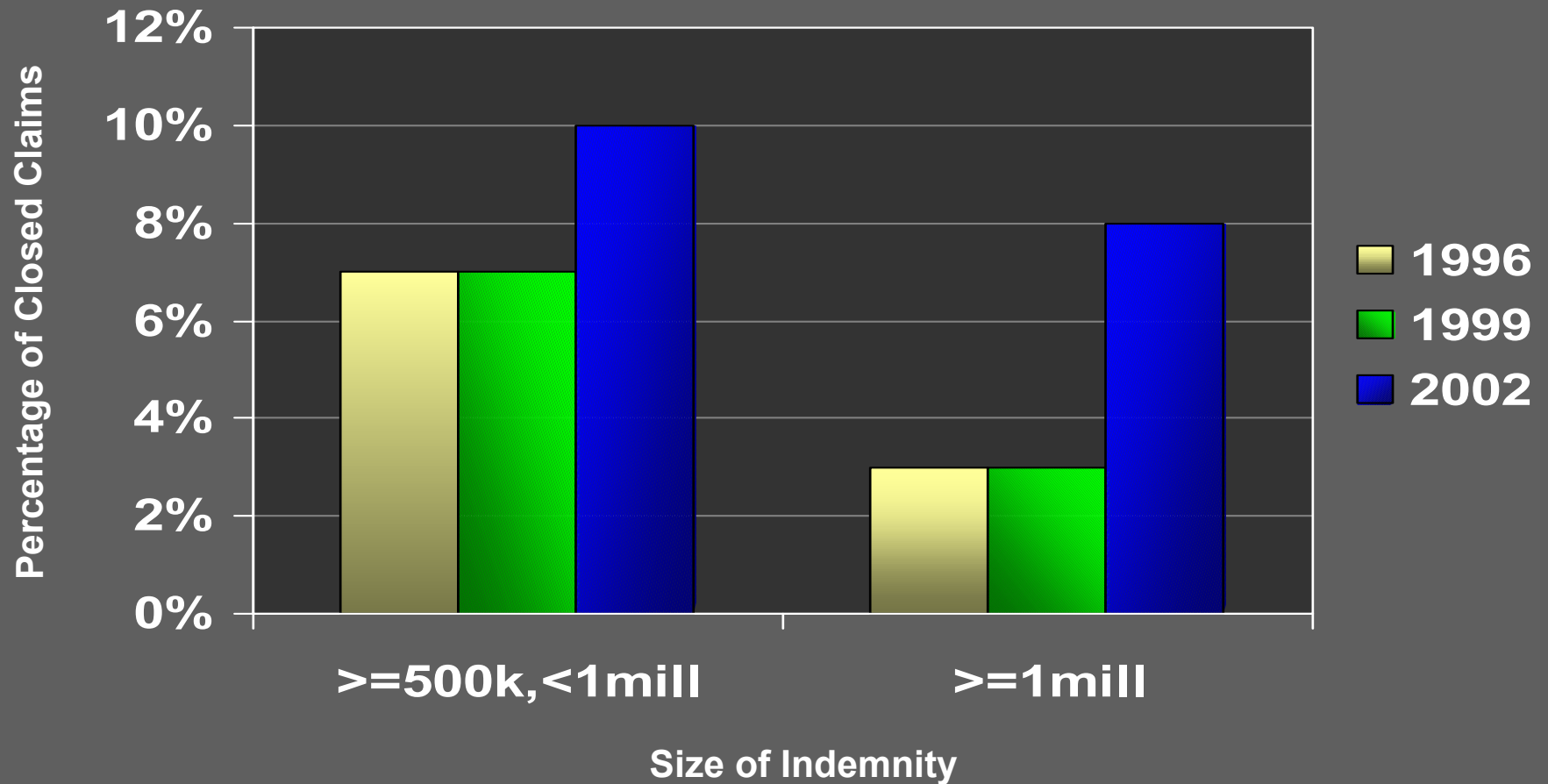


Source: Jury Verdict Research

Severity – Distribution of Claims by Size of Indemnity



Distribution of Claims by Size of Indemnity
By Closing Year



Large Claims Analysis



Total number of claims 1998-2002: **16,398**

- **0.8%** (140) paid \$1 million or more, **28.5%** of paid indemnity
- **2.3%** (378) paid \$500,000 or more, **55.4%** of paid indemnity

Total *paid* claims 1998-2002: **3,307**

- **4.2%** (140) paid \$1 million or more, **28.5%** of paid indemnity
- **11.4%** (378) paid \$500,000 or more, **55.4%** of paid indemnity

Increasing Severity



Dissatisfaction with medicine

- Managed care
- High-tech care
- IOM Study

Loss of doctor-
patient relationship

Value of money

Risk-free society

Incomprehensibly large judgments in
other areas

Institute of Medicine Study



- 44,000 to 98,000 deaths annually due to malpractice
- Goal: 50% reduction over 5 years

Harvard Study



- NYS 1984
- More than half of cases met screening criteria
- Concordance rate of medical reviewers on existence of an adverse event: **10%**
- Failed to replicate their own data
 - 318 records, different events, similar rates
 - It doesn't matter whether we convict the guilty or the innocent, as long as the rate of incarceration matches the crime rate.

Harvard Study



- Did not distinguish between major and minor events
- Did not distinguish events under physician control
- 30-fold variation among venues and specialties

Harvard Study



- Extrapolation: 180 inadequately classified deaths became 98,000 Americans dying every year due to malpractice.
- No correlation whatever between the presence or absence of medical negligence and outcome of malpractice litigation

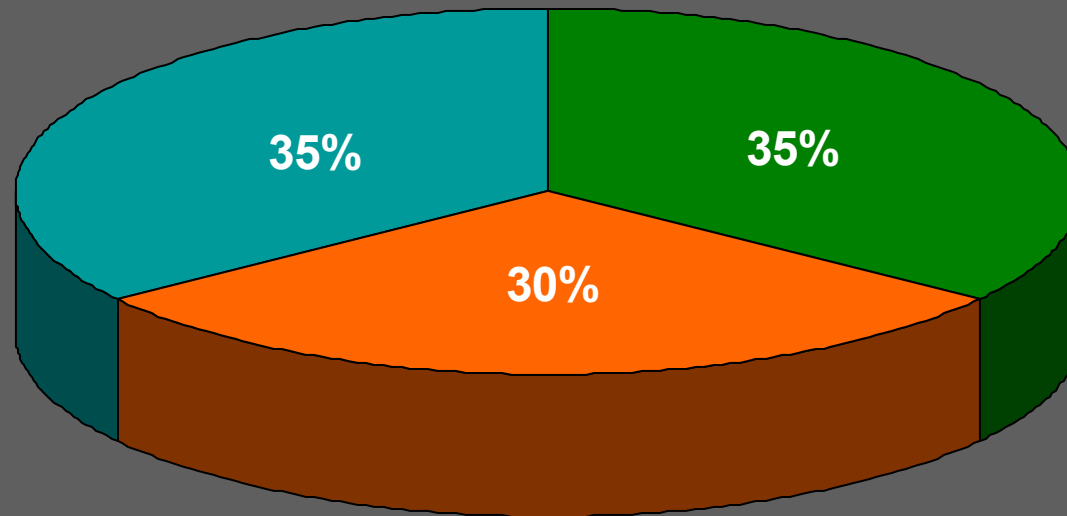
Claims in Internal Medicine

Types of Claims



Communication

Delay in Diagnosis



Adverse Outcomes of Disease Management

Types of Claims



35%: *Delay in Diagnosis*

- Breast cancer
- Iron deficiency anemia
- Chest pain
- Lung cancer

30%: Adverse outcomes of disease management

- Diabetic complications
- Drug reactions

Types of Claims



Communication (35%)

- Documentation
- Information
 - Lab and x-ray results, sign-out
 - Doctor-patient, -nurse, -doctor
- Informed consent
- Compliance
- Patient anger

Complex cases in which the suit is precipitated by straightforward issues of communication

- Pancreatitis in an alcoholic patient who harbored mild hyperparathyroidism
- CVA in patient with mild reactive thrombocytosis
- MI in patient with operable CAD which referring physicians were led to believe was inoperable

Difficult Diagnoses



60-y.o. with fever, nausea, vomiting and radicular low back pain. Negative MRI spine, CT abdomen and gallium scan.

- L.P. not performed until day 12.

14-y.o. presented to e.r. at midnight with chills, fever, and emesis x2. T 102 B/P 74/40. 4000cc iv fluid did not raise pressure. CBC drawn, pt. admitted and antibiotics started just after pt. developed generalized ecchymoses.

Trends



- More medically complex cases
- Allegations of premature hospital discharge
 - Elder abuse
- More claims involving geriatric patients
- “Failure to prevent” claims now seen
 - Complications of hypertension and diabetes
 - Breast and colon cancer
 - Responsibility for screening
- Continued difficulty with dx of chest pain and breast cancer

Medication Claims



For internists:

- Anti-coagulants
- Steroids
- Aminoglycosides

Overall:

- Oxytocic agents
- Psychotropic
- Analgesics
- Anti-arrhythmic

Costs of Coverage

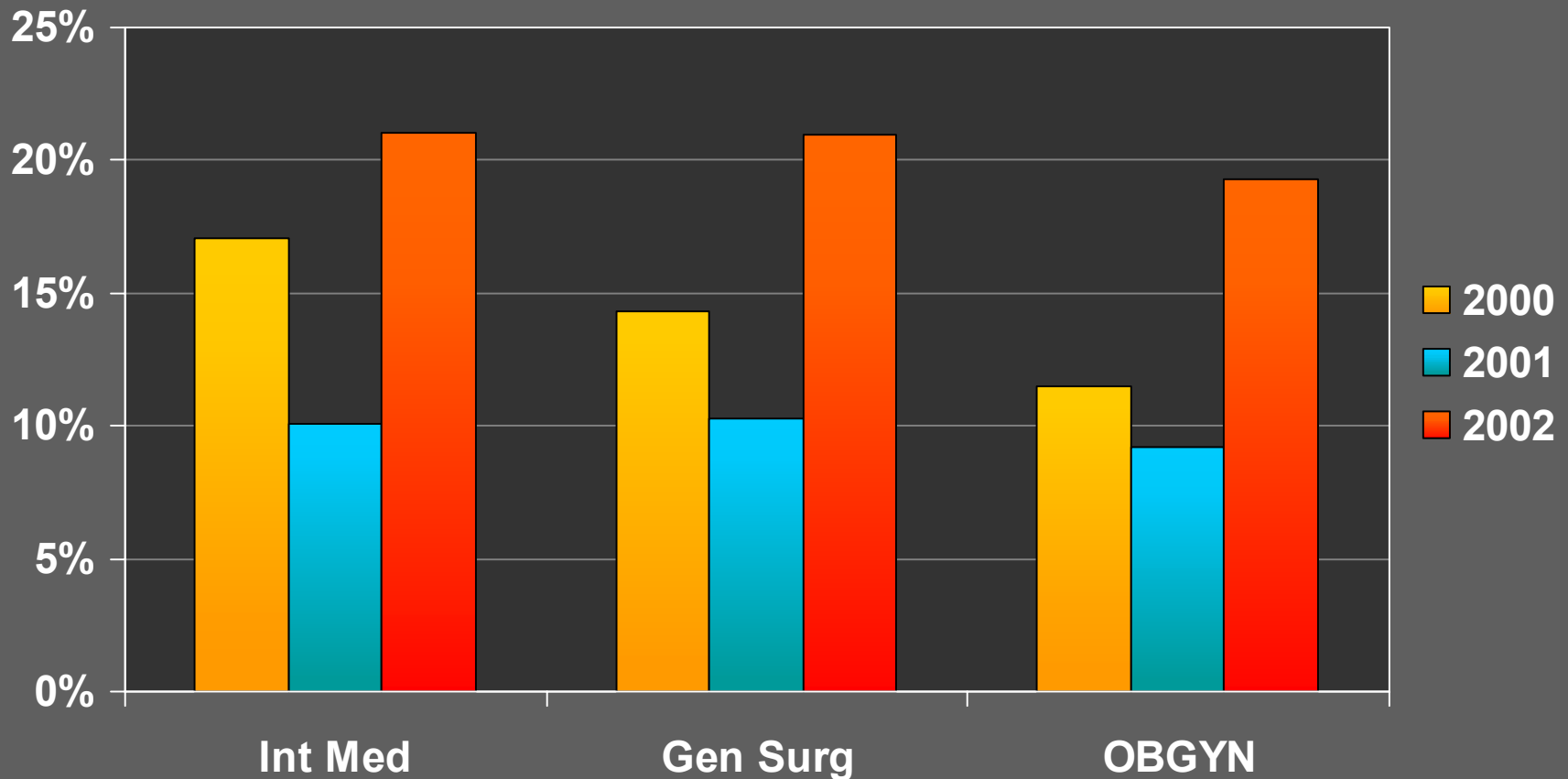
Reinsurance



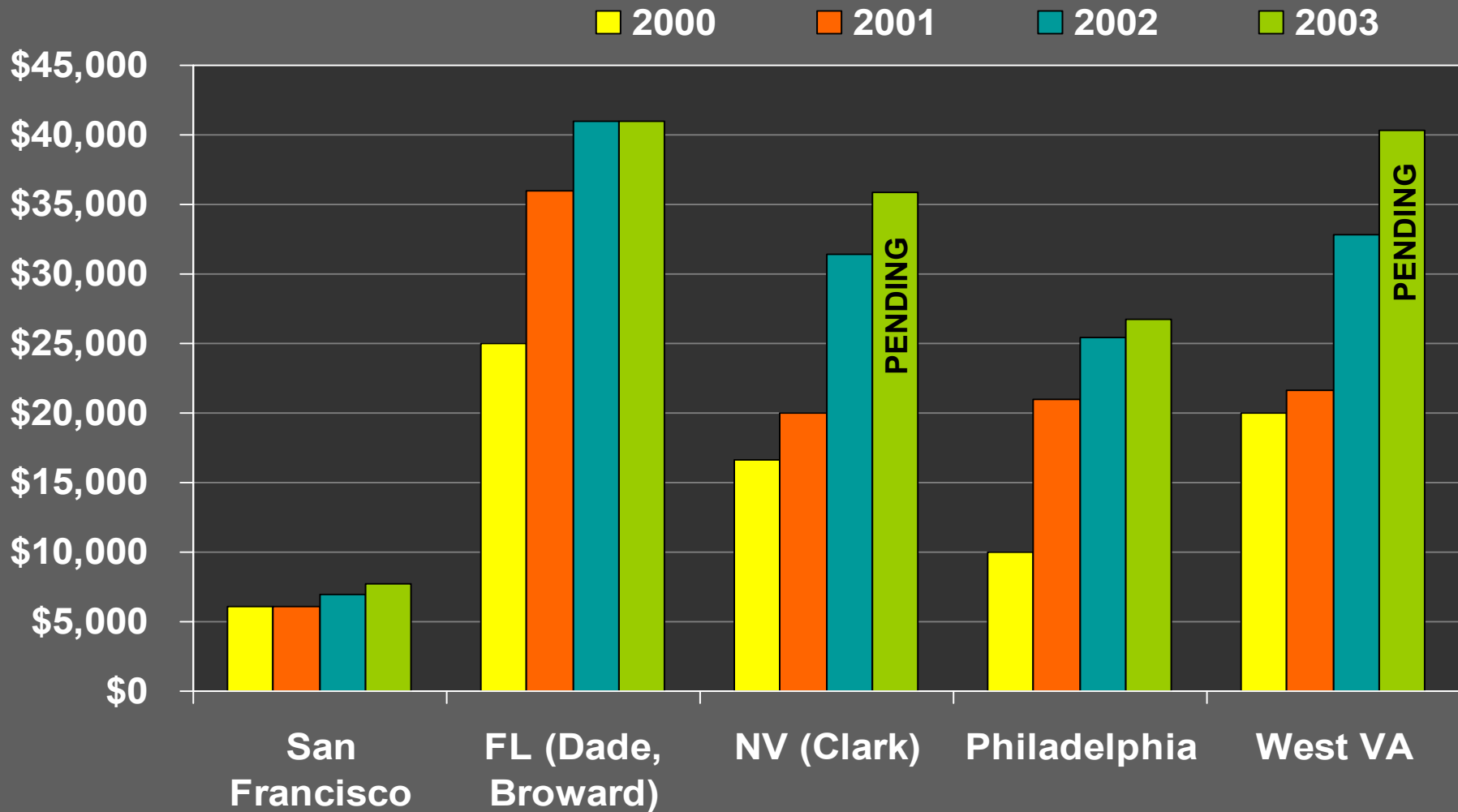
September 11

Effect is inversely proportional to the size
of the insurance company

Average Rate Increases



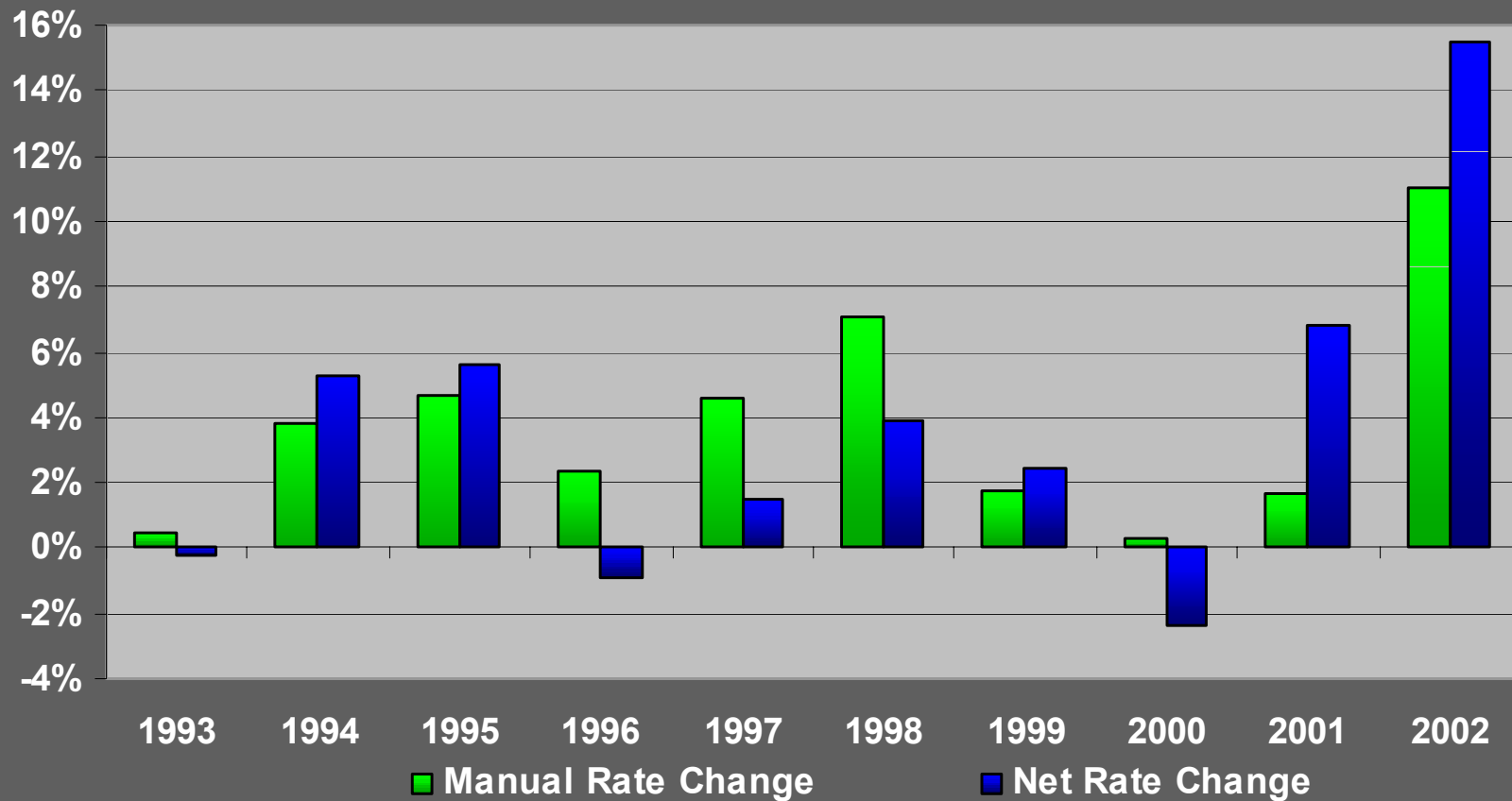
Recent Internal Medicine Rates



Pricing Trends



TDC Calendar Year Nationwide Average Rate Changes



Trial Lawyer Trial Balloons



Old

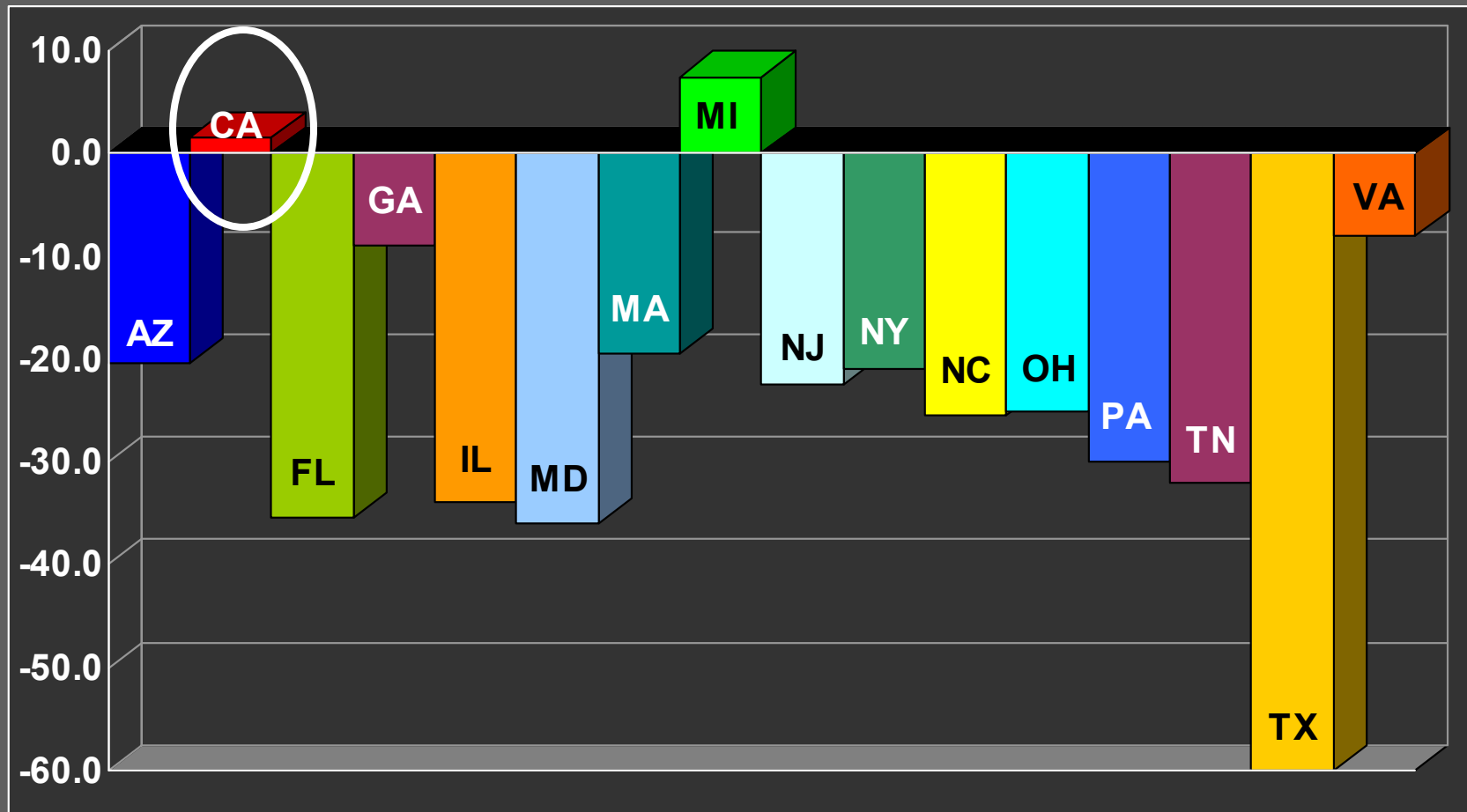
- It's just a few bad doctors...

New

- It's not the doctors, it's the insurance companies...

**Apparently
we were
misinformed**

Underwriting Results 1991-2000



Texas State Senate Prompt Payment Committee, August 15, 2002

Source: 2000 NAIC Profitability Report

Bond markets

- Falling interest rates decrease investment income

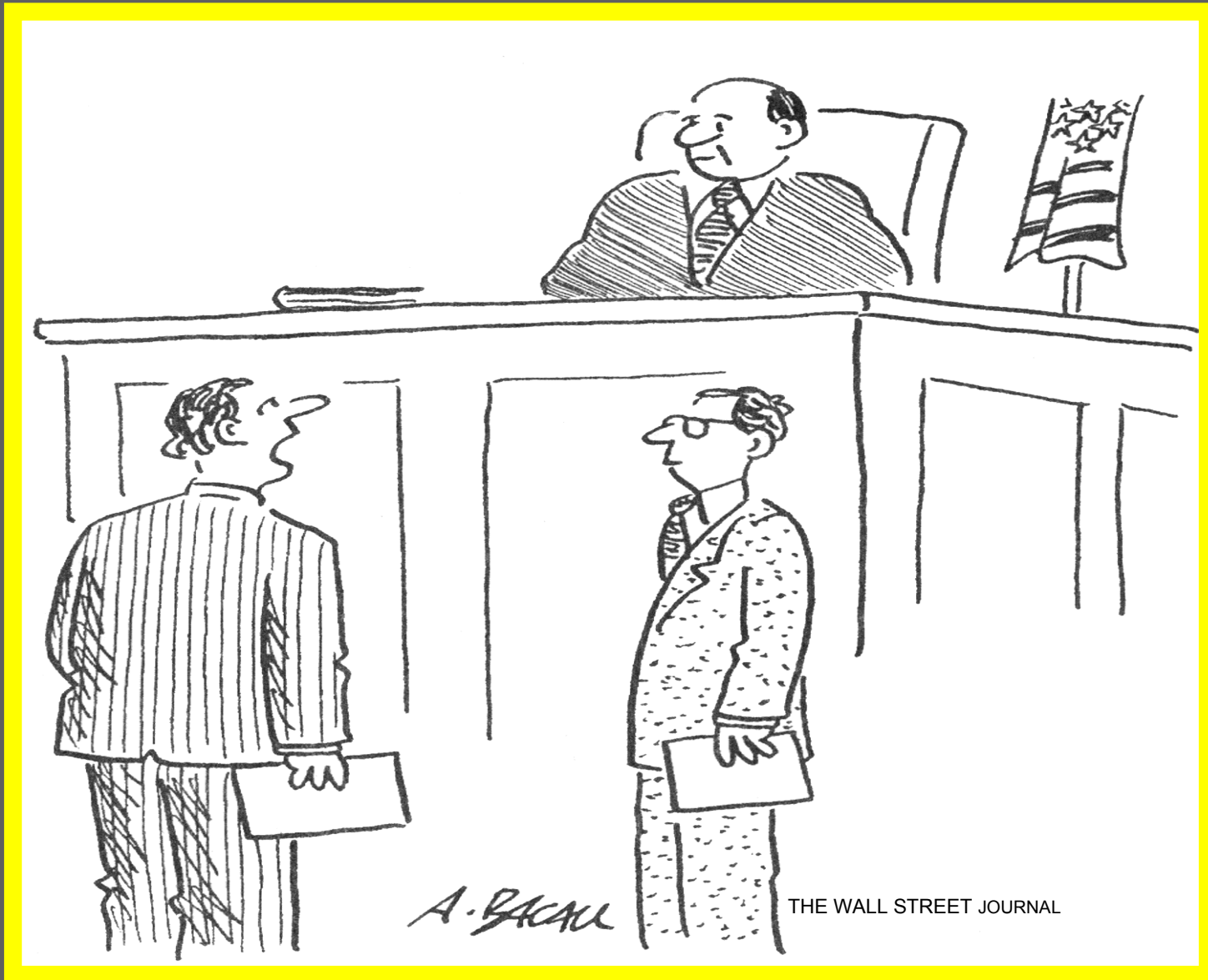
Stock market

- Less than 10% of assets

Era of subsidies is over

- Alternative: insolvency

Tort Reform



*“Your Honor, we need more time to prepare
to make a mockery of the law.”*

Goals and Benefits

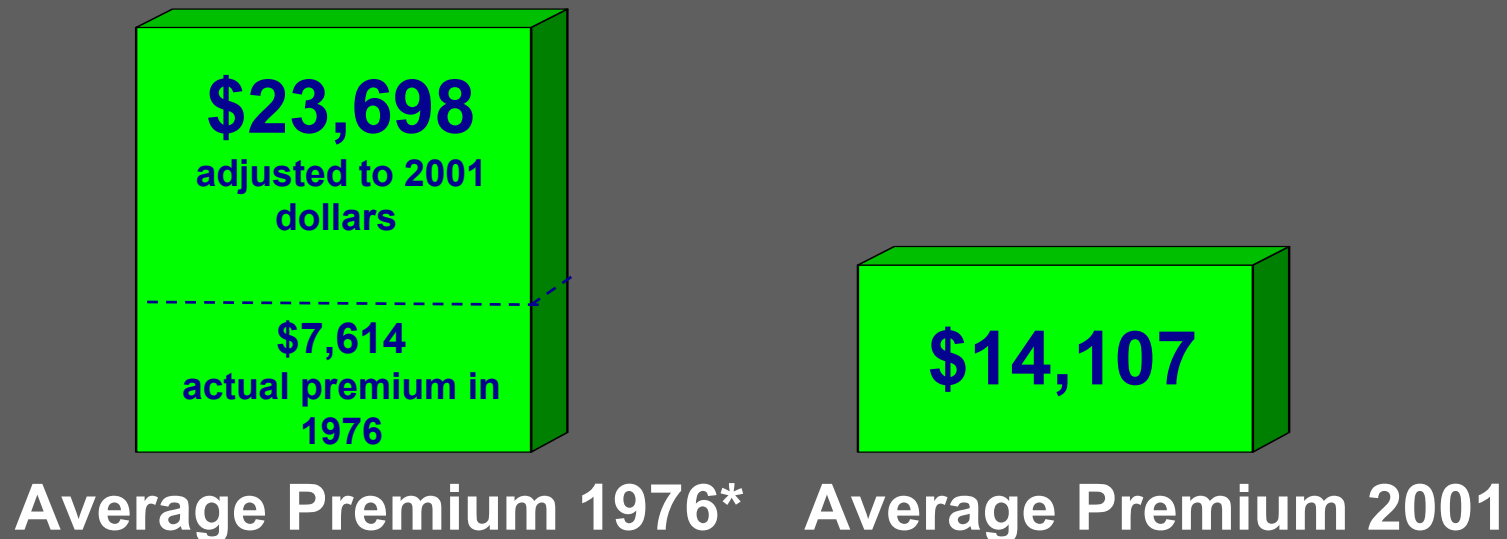


- **Sustainable** insurance system providing full indemnification of actual loss
- **More** money for injured patients
- **Faster** settlements
- Preserve **access** to medical care without impeding access to courts for truly injured patients
- Society should not incur **double** costs
- **Assure** money is available at the time it is needed

MICRA Helps Reduce California Medical Liability Premium Rates by 40%



The Doctors' Company 1976-2001

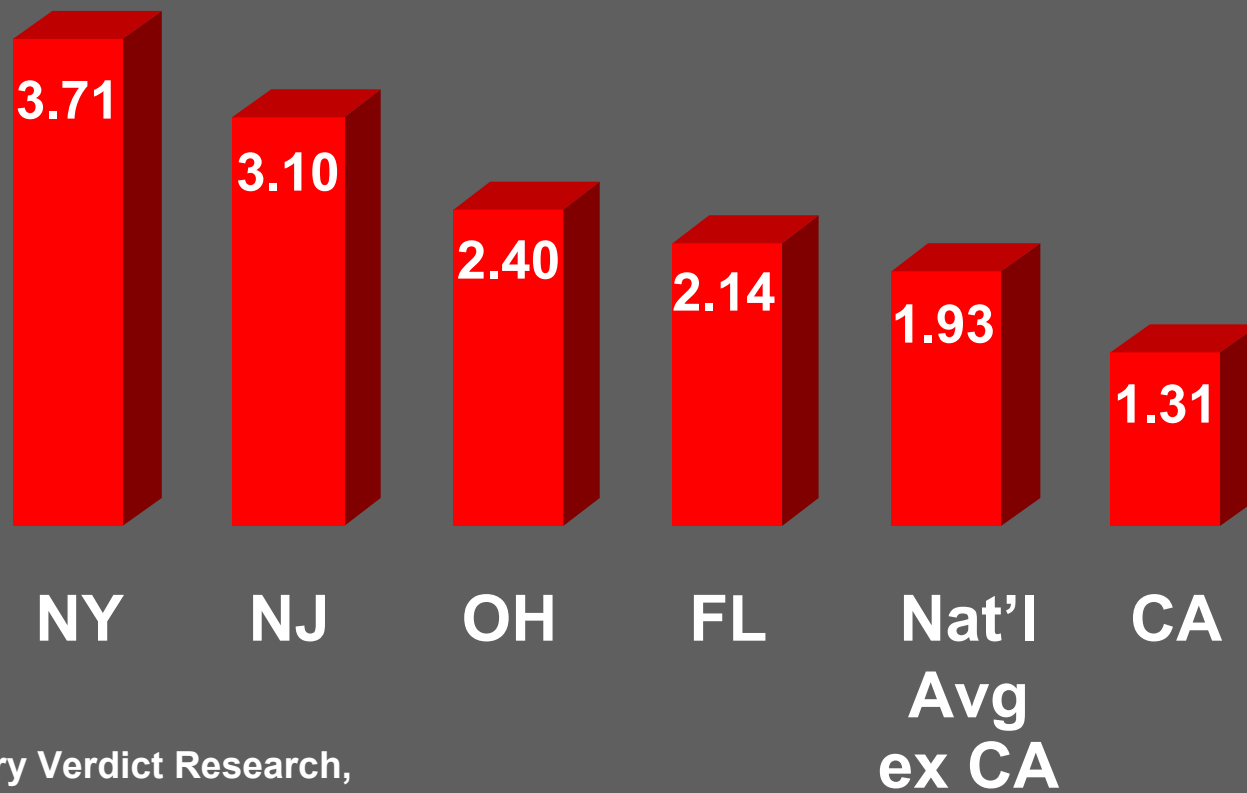


* \$7,614 average premium adjusted to 2001 dollars on the Annual Urban CPI Index for a \$1 Million/ \$3 Million Claims-Made Policy Premium

MICRA Reduces Verdict Cost and Frequency

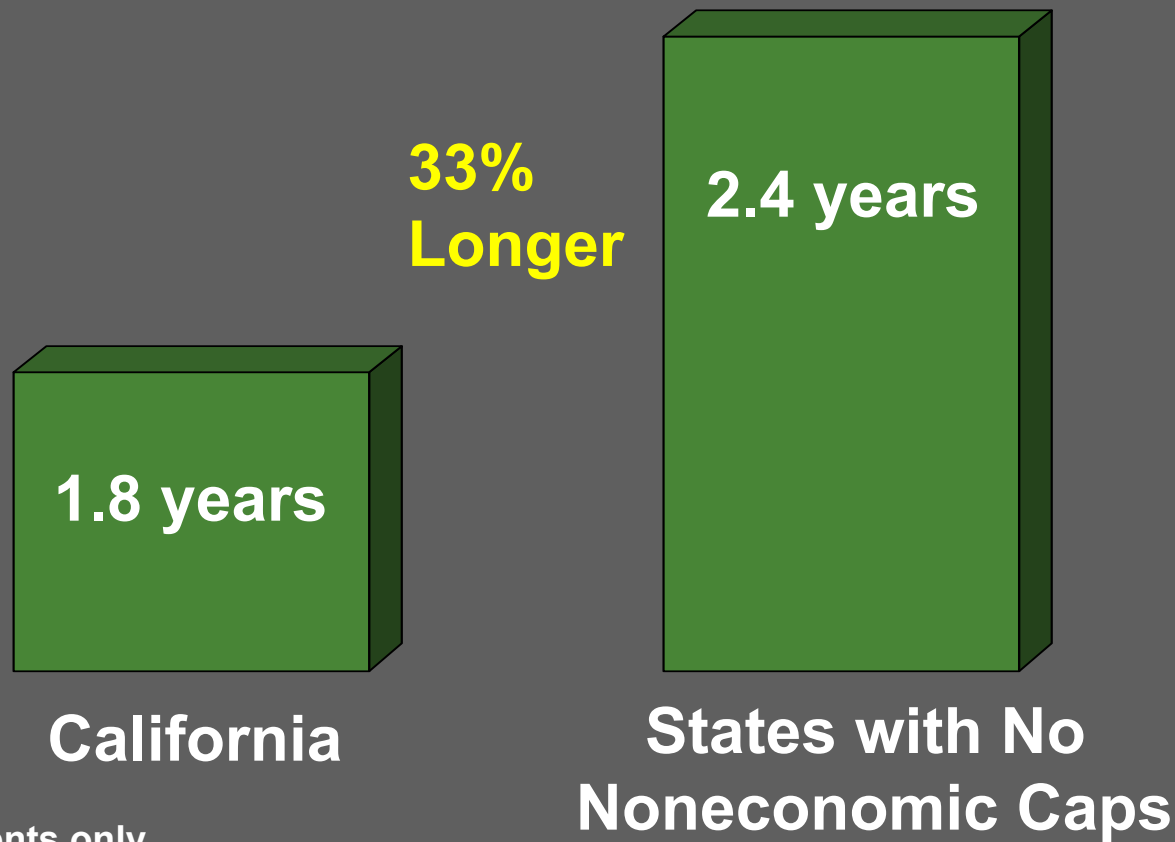


\$1 Million+ Verdicts Per 1,000 Doctors



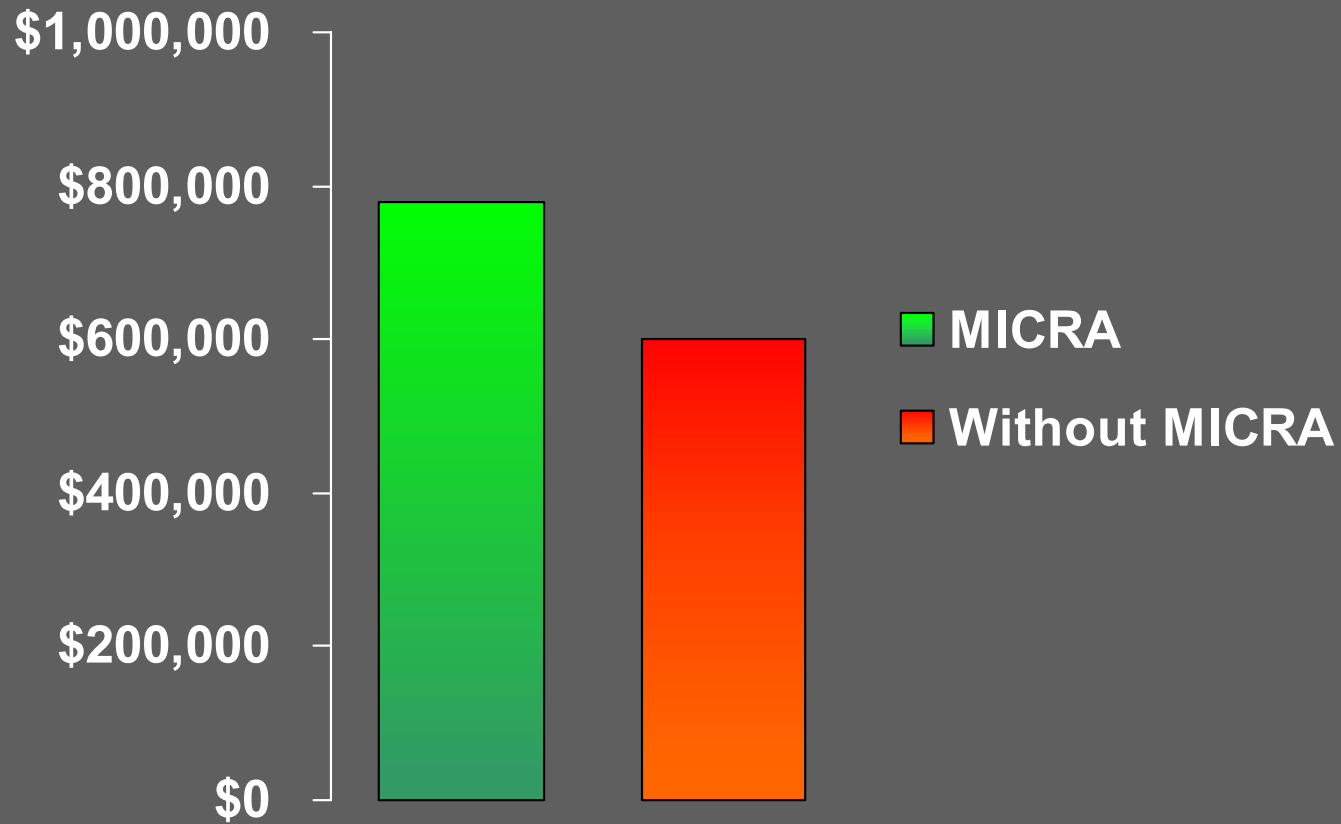
Sources: Jury Verdict Research,
AMA

MICRA Reduces Average Time to Settlement



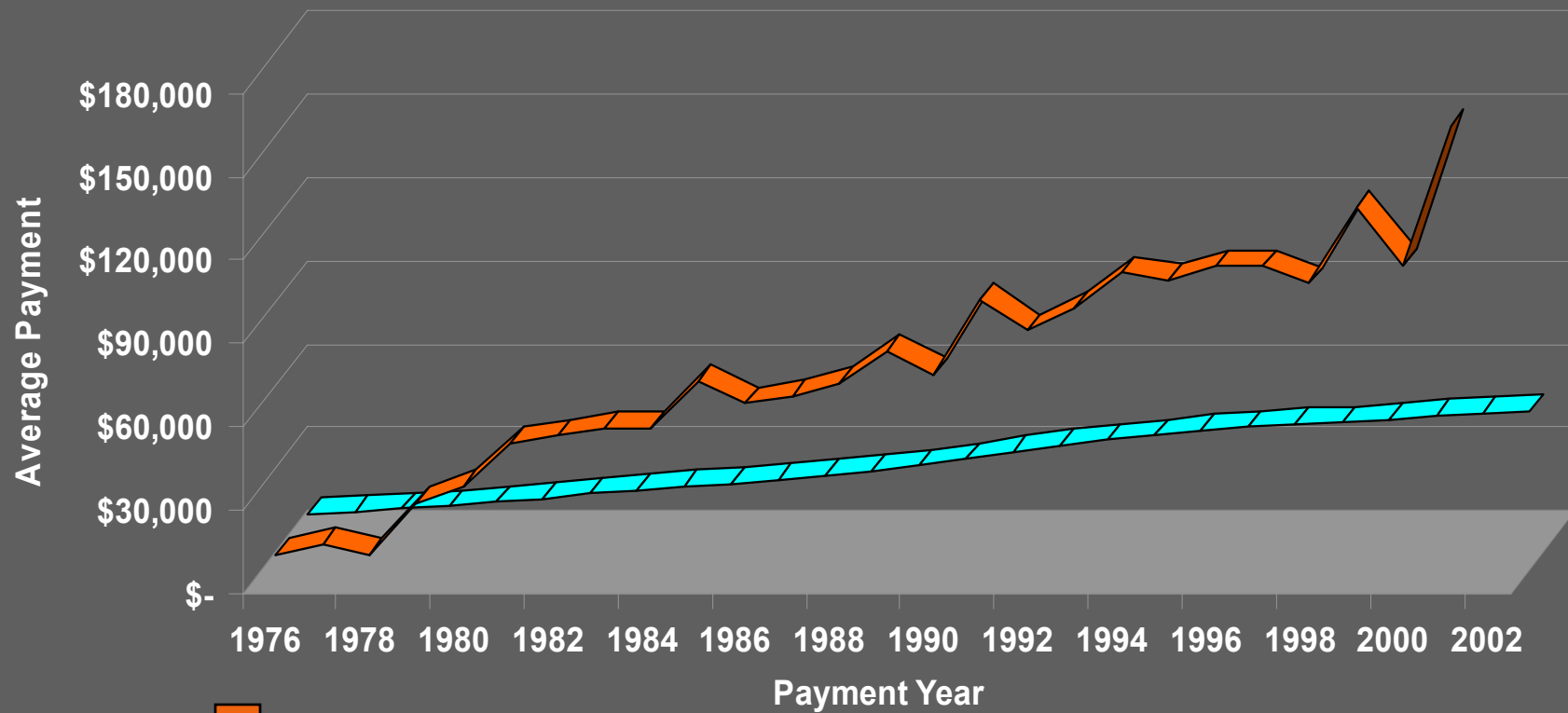
*Indemnity payments only

Injured Patients Benefit Directly



Proceeds of a \$1 Million Judgment

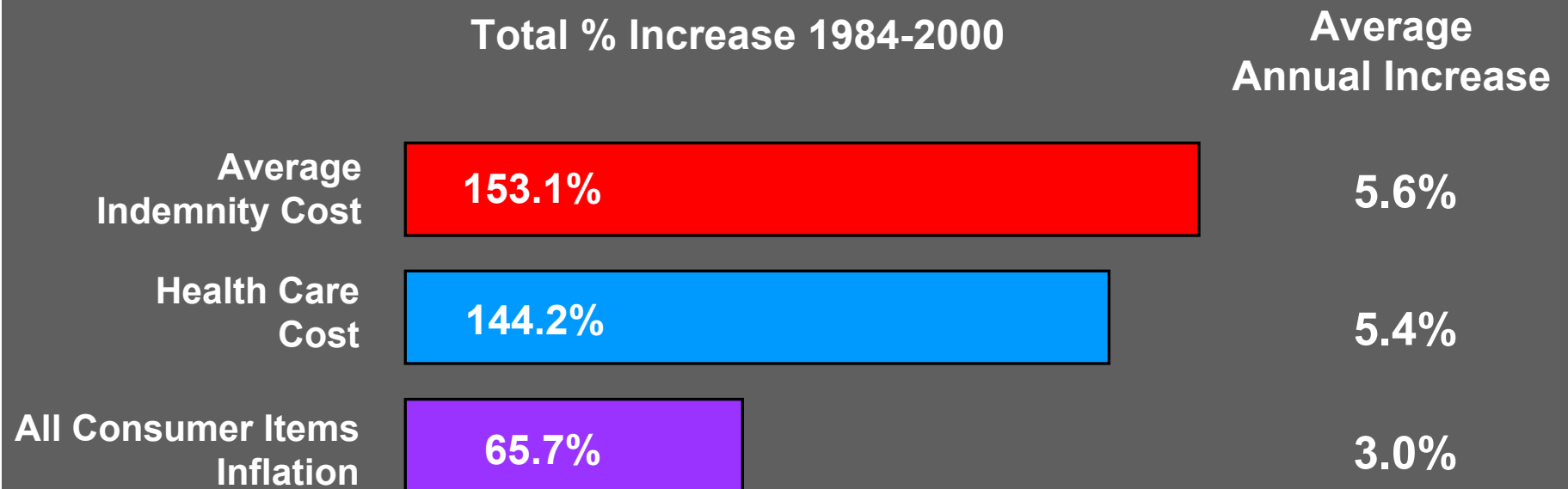
Average Medical Liability Claim in CA vs. Average Claim Adjusted for Inflation 1976-2001



- Actual average physician medical liability claim paid in CA 1976-2001.
- Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.



Increasing Cost of Malpractice Claims Despite MICRA

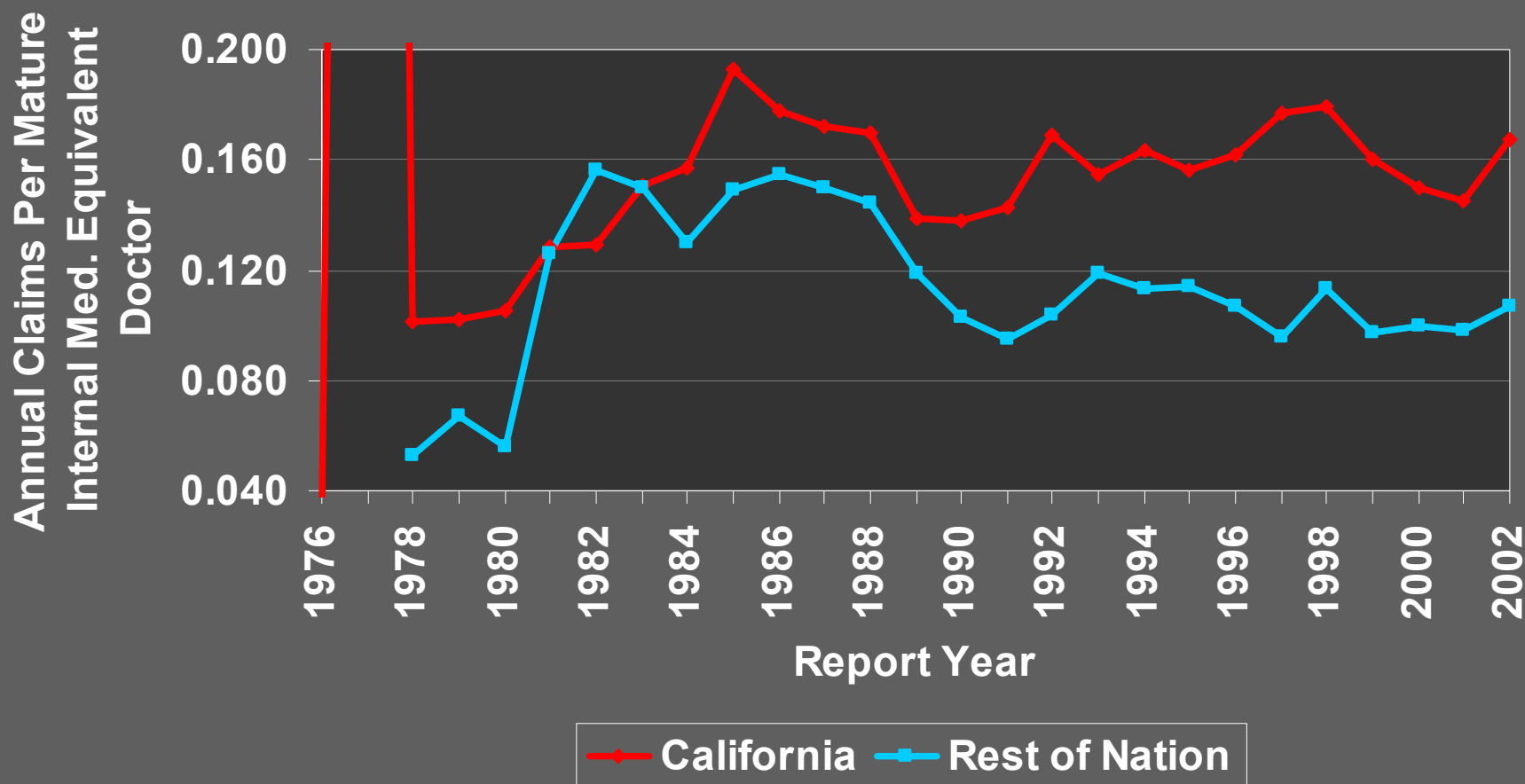


US Cities CPI vs. TDC California Allocated Claims Closed with Indemnity 70

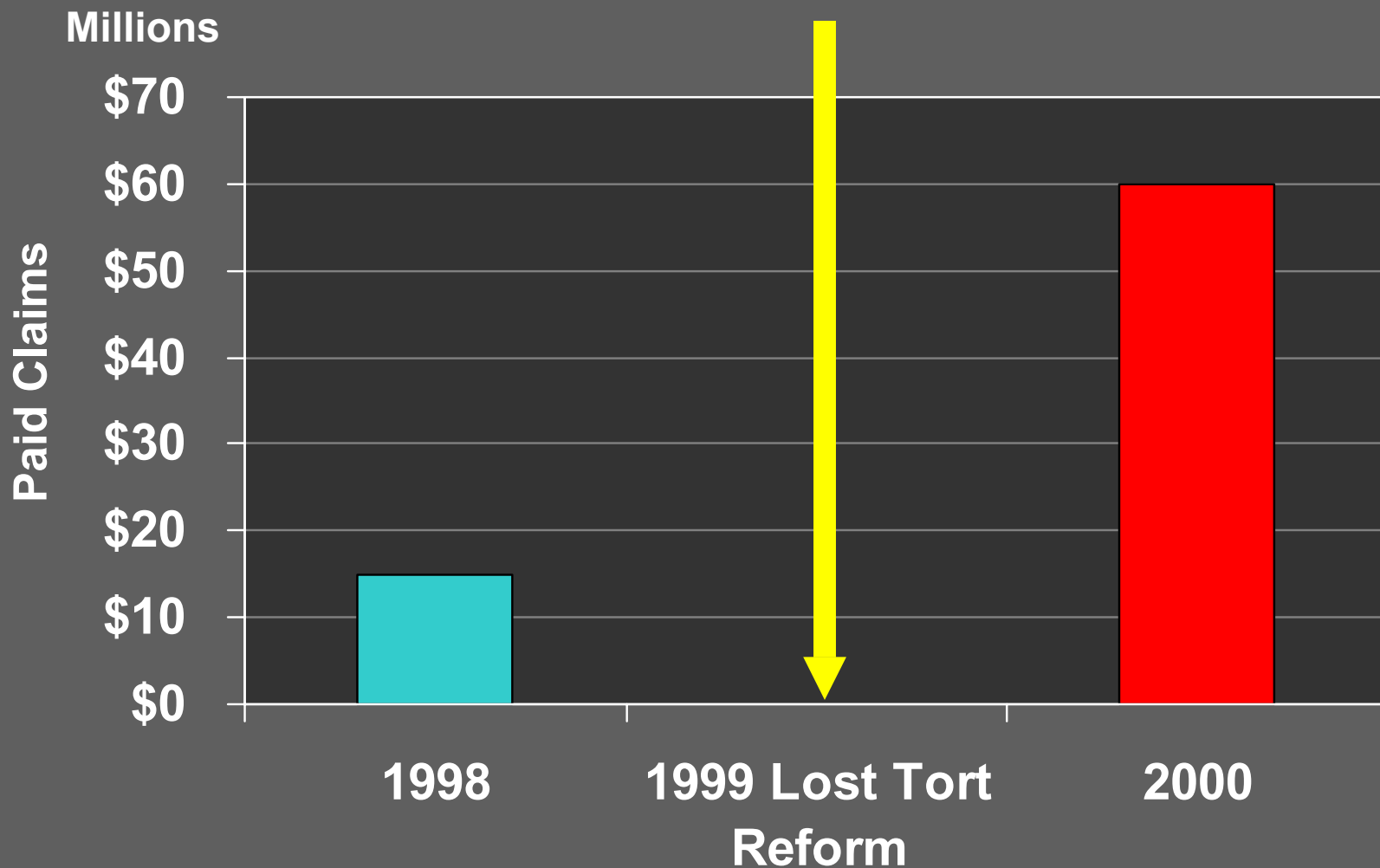
MICRA Does Not Limit Access to Courts



TDC PHYSICIAN CLAIM FREQUENCY



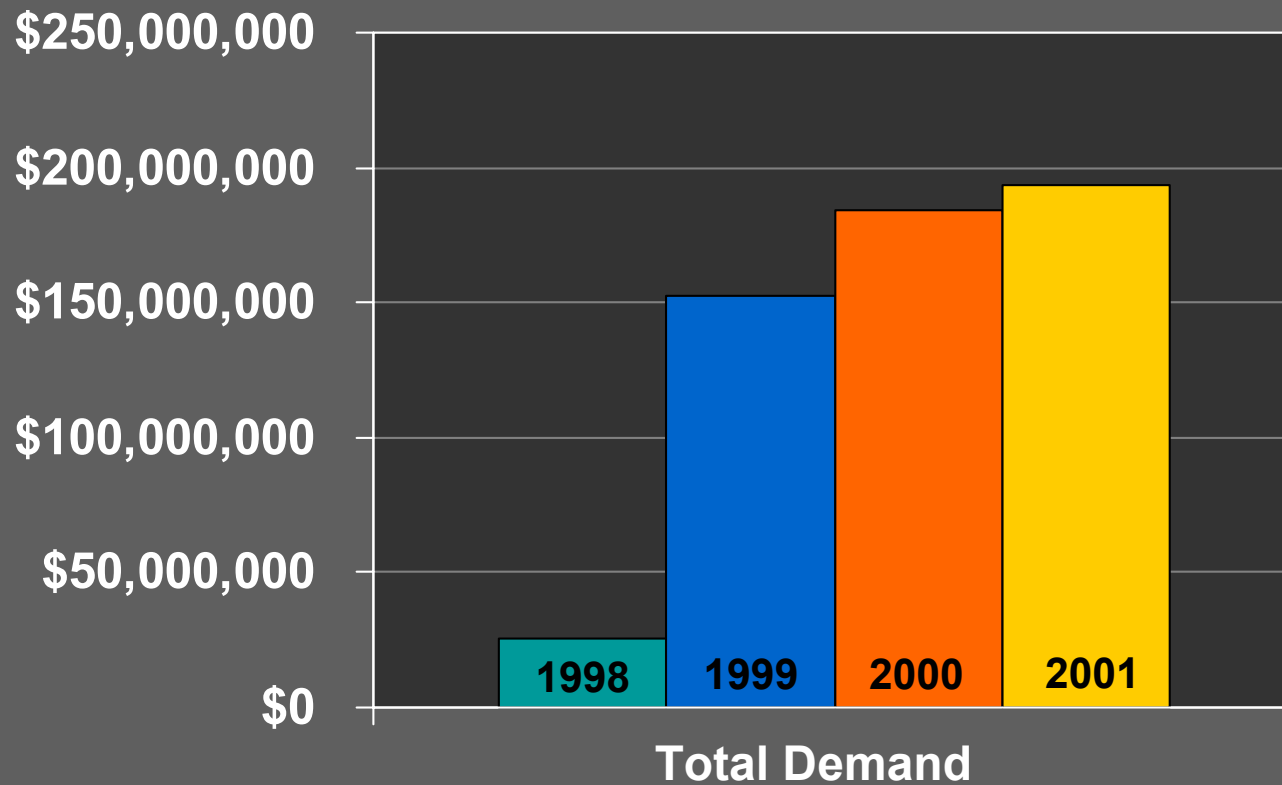
Oregon: Loss of Tort Reform



Oregon: Loss of Tort Reform



Total Plaintiff's Demand in Settled Cases



Ineffective Tort Reform



Worse than none

Texas

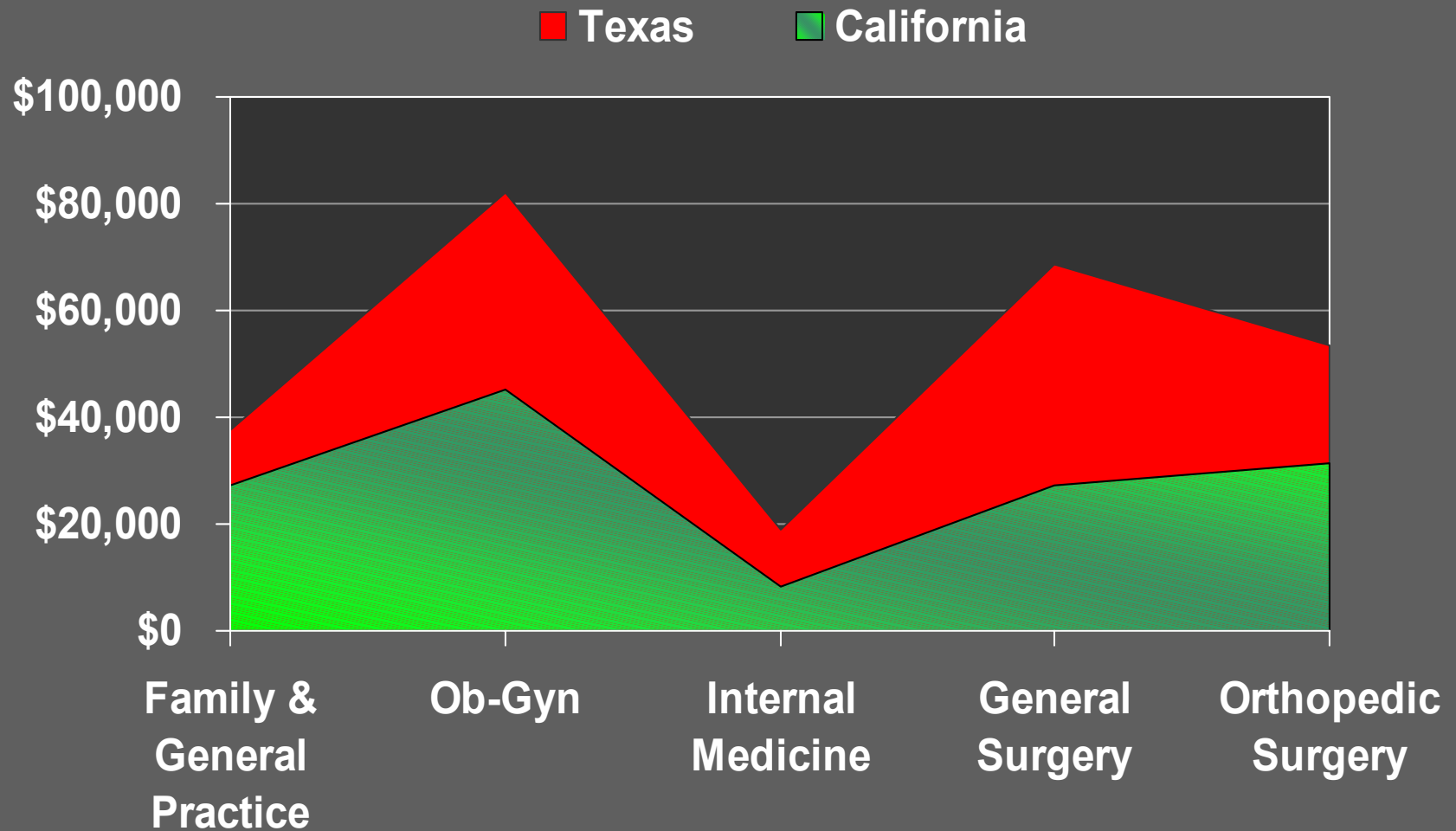
- 1995
 - Eliminated joint liability for defendants with less than 51% fault
 - Limited punitive damages
- 1997
 - Expert witness reform (board certification or substantial practice or teaching experience)
 - \$500,000 wrongful death cap adjusted for inflation, now \$1.3 million

Ineffective Tort Reform



- Counties authorized to adopt alternative dispute resolution systems
- 1998
 - Prohibits arbitration agreements without the signature of the patient's attorney

California vs. Texas Average Rate by Specialty (2002)



Stanford Study: The Cost of Defensive Medicine



States with effective tort reform lower health care costs 5-9%.

Savings nationally would be \$50 billion.

HHS estimates savings as high as \$110 billion.



MICRA Works



- CA: 27-year experience
- Congressional Budget Office
- American Academy of Actuaries
- Florida Governor's Select Task Force
 - “The primary cause of increased medical malpractice premiums has been the **substantial increase in loss payments...**”
 - \$250,000 cap
 - “...**will bring relief** to this current crisis”
 - “...a cap of \$250,000 per incident **will lead to significantly lower malpractice premiums.**”

MICRA Works



- “...there is **no other alternative** remedy that will immediately alleviate Florida’s crisis...”
- “Without the inclusion of a cap on potential awards of non-economic damages in a legislative package, no legislative reform plan can be successful in achieving the goal of controlling increases in healthcare costs, and thereby promoting **improved access to healthcare**”

- “If society wishes to have **unlimited judgments**, then insurance companies will be required to charge **unlimited premiums**. Unlimited medical malpractice premiums mean unlimited increases in the cost of healthcare. Unlimited increases in the cost of healthcare mean **decreased access** to healthcare. Limitations of access inevitably affect the most vulnerable members of our society.”

Summary



- Exposure is greater.
- Financial market subsidies have ended.
- Capacity is shrinking and reinsurance is more expensive.
- Internists face increasing exposure in more complex claims, for medication related errors, and for continuing issues in communication.
- We know, we do not speculate, real tort reforms work.

Summary



- If society wishes to have astronomical indemnities, it must accept astronomical premiums, and astronomical health care costs.
- TDC is proud to partner with ACP in the service of the specialty and the profession.

