

The Crisis of 2002-2003: Causes and Solutions

PLUS Medical Professional Liability Symposium
Chicago, March 12, 2003

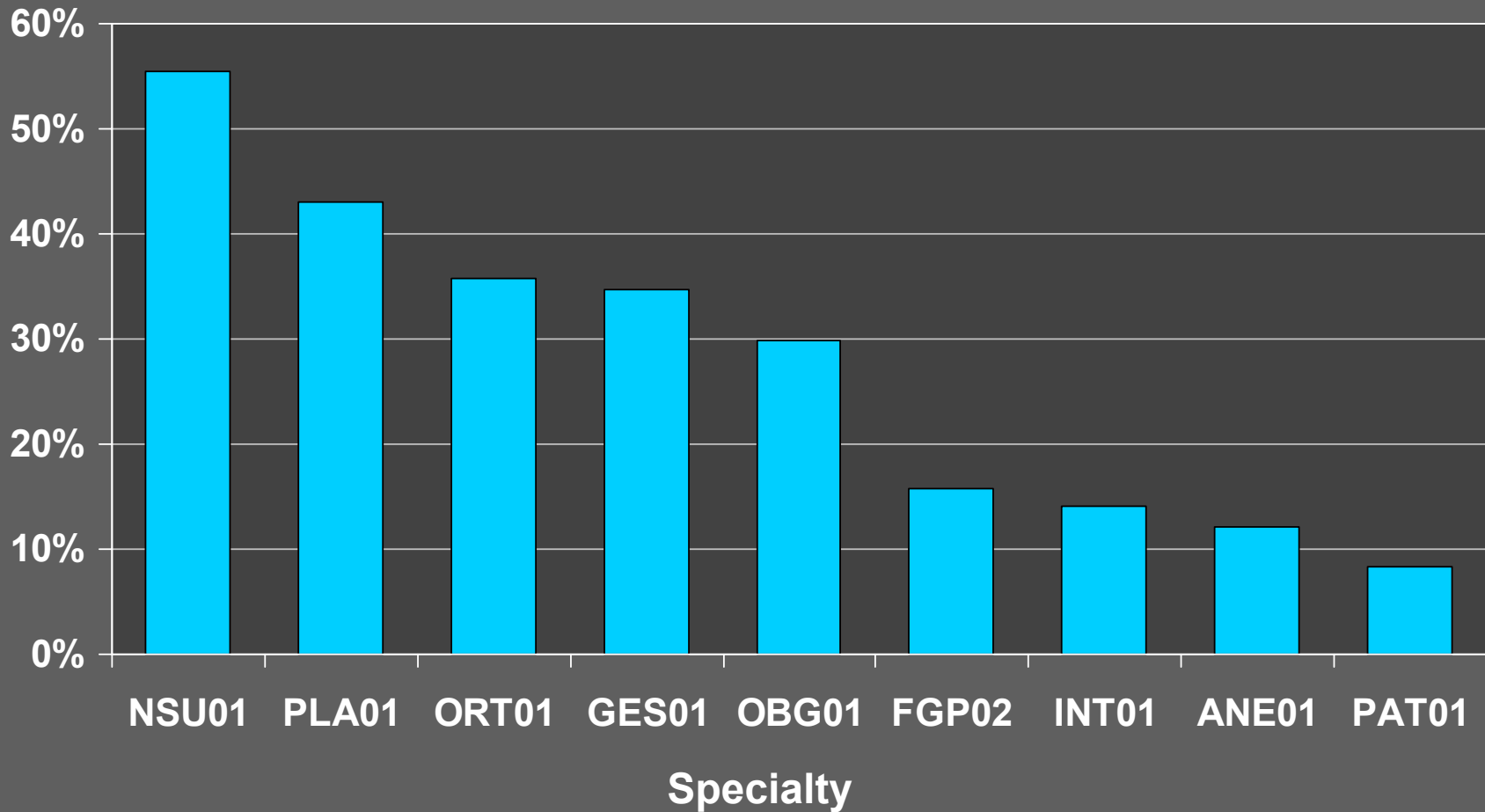
Richard E. Anderson, M.D.
Chairman
The Doctors Company

- Problems
 - Frequency
 - Severity
 - Randomness
 - Fallacy of the bad doctor
- Solutions
 - Tort reform: theory and practice

Frequency by Specialty 1995-2001



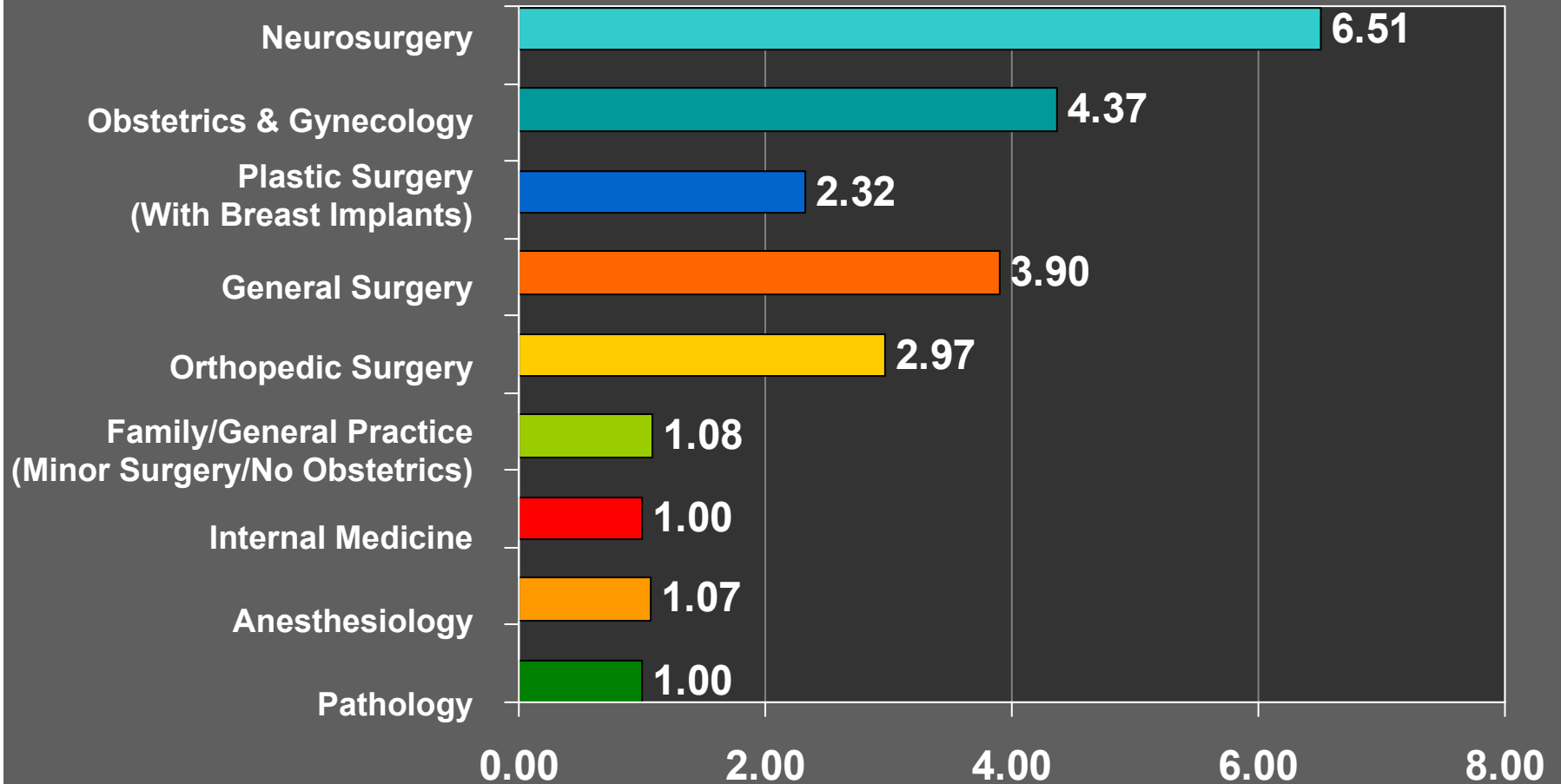
Frequency



Meaning

- On any given day there are more than 125,000 malpractice suits in progress against America's doctors.

Specialty Relativity Nationwide



Increasing Severity: Why?



Dissatisfaction with medicine: erosion of doctor-patient relationship

- Managed care
- High -tech care
 - Sterile environment
 - Unrealistic expectations
- IOM Study

Value of money

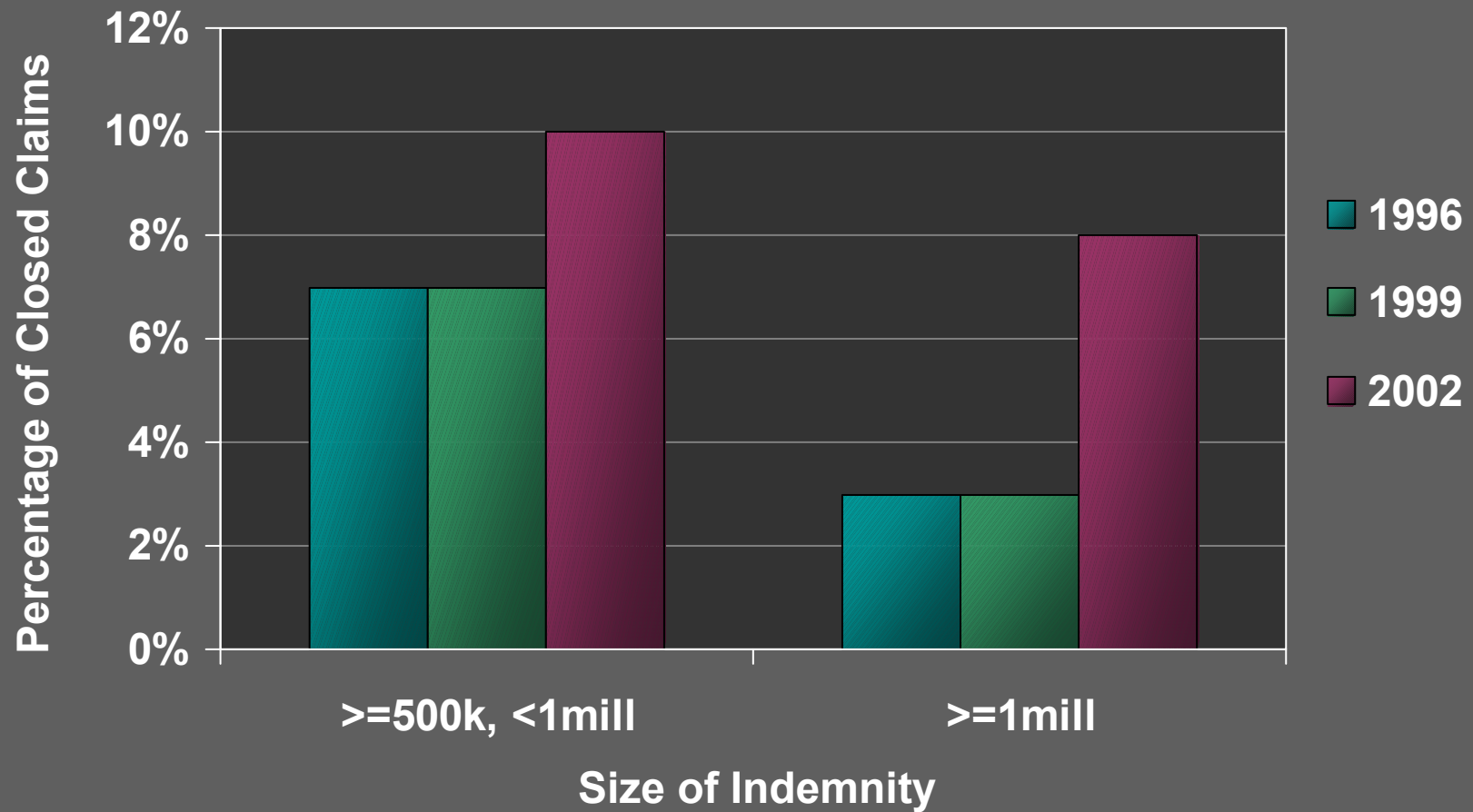
Risk-free society

Incomprehensibly large judgments in other areas

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**

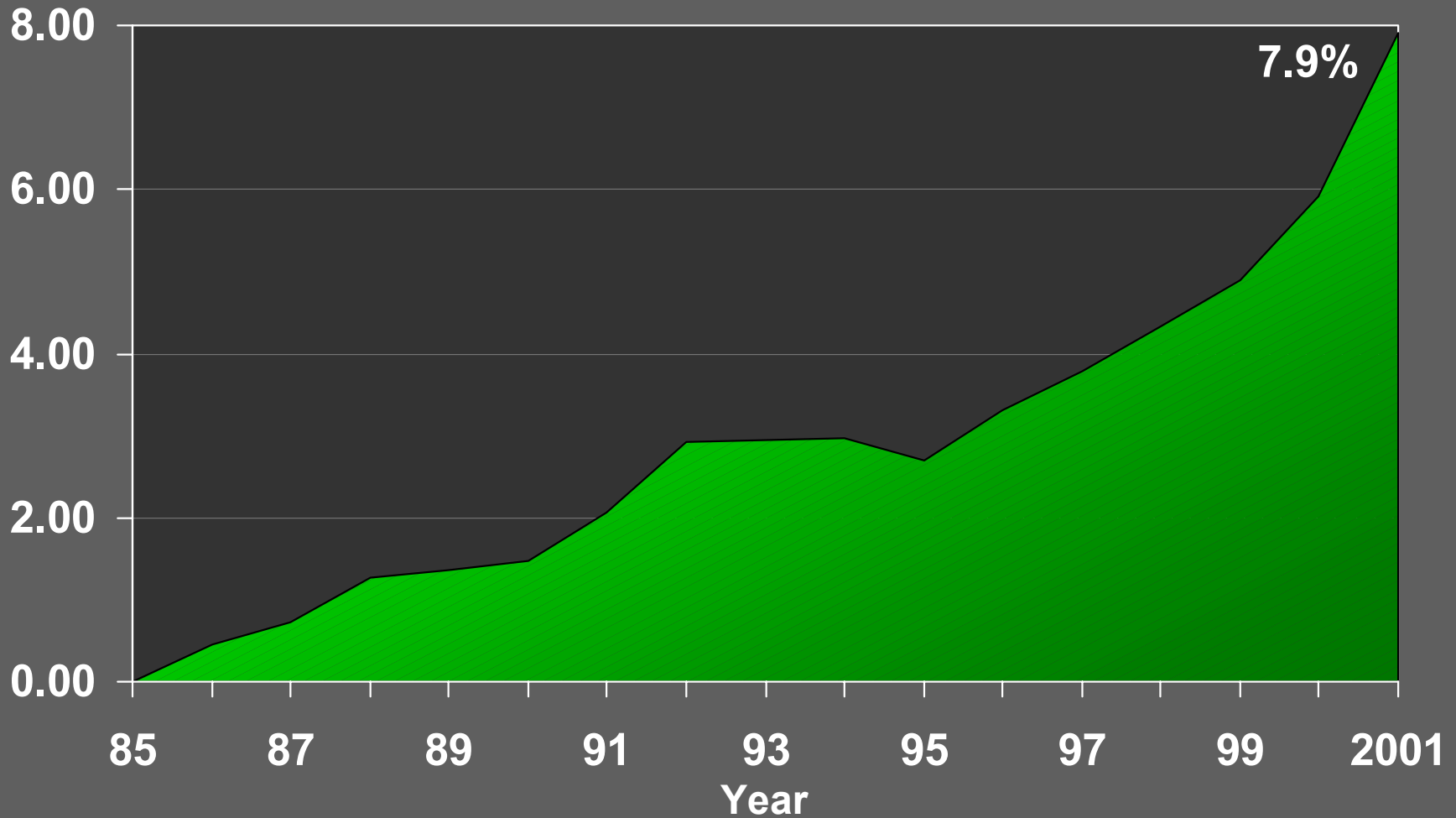
- **4.2%** (140) paid \$1 million or more, **28.5%** of paid indemnity
- **11.4%** (378) paid \$500,000 or more, **55.4%** of paid indemnity

PIAA Data Sharing Project

Claim Payments =>\$1 Million



% of Paid Claims



The Most Expensive Claims



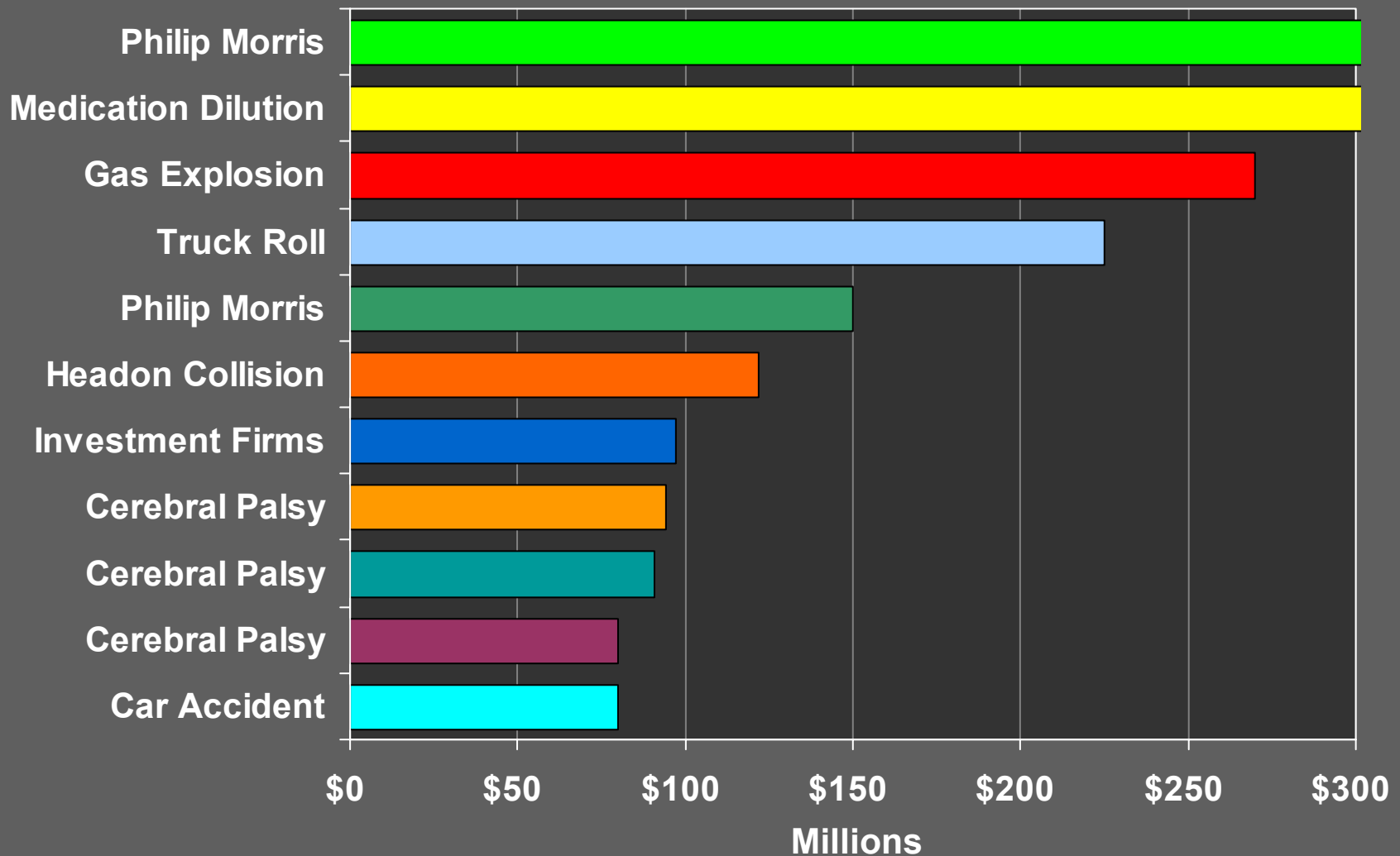
- Texas: \$268,000,000
- Many states: \$100,000,000
- Philadelphia: Jury verdicts exceed the entire state of CA over past 3 years.
- *Verdicts drive settlement value.*

Implications of Unlimited Verdicts

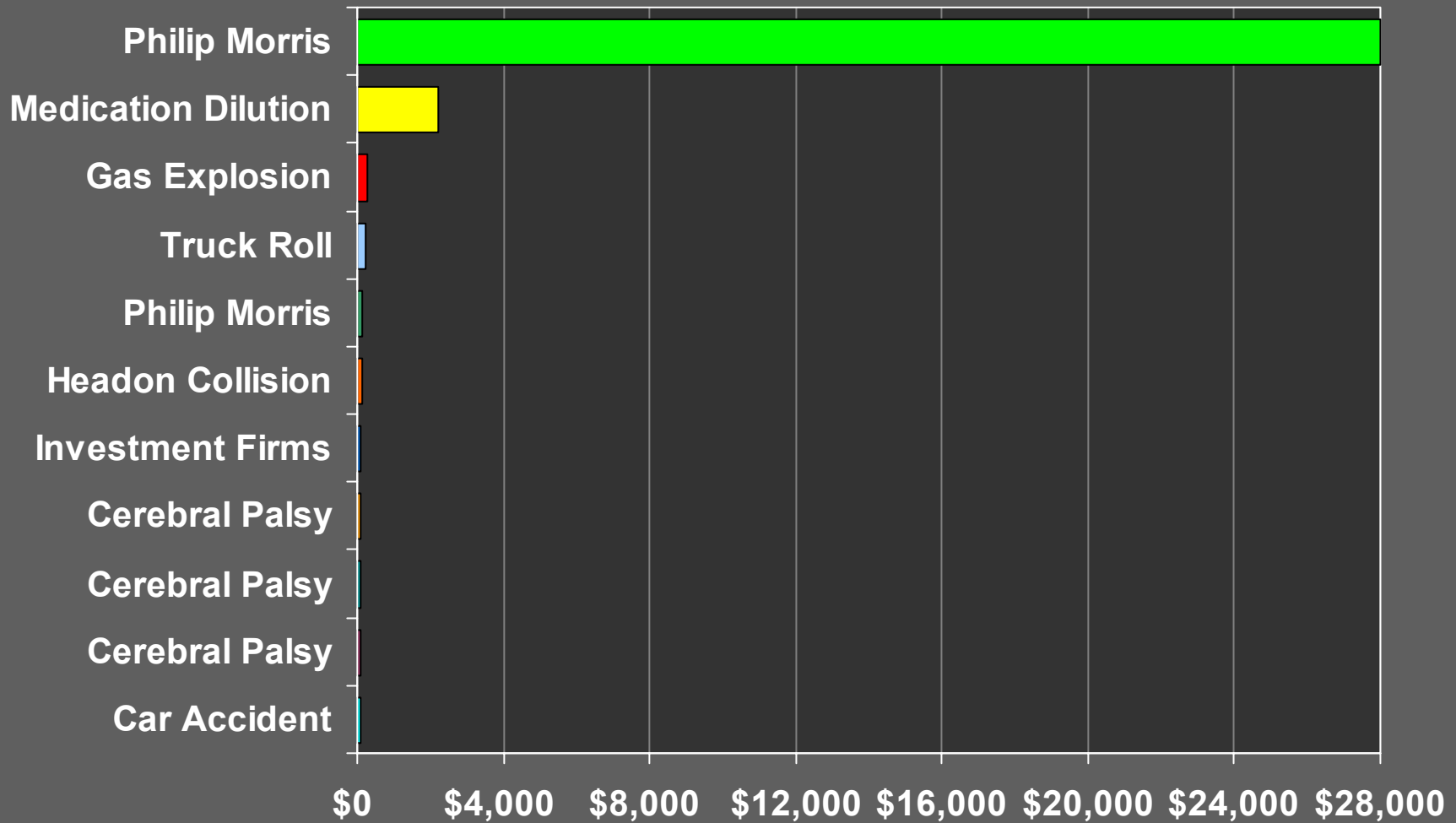


You cannot afford to go to court
Cost of settlement rises dramatically
Unlimited judgments require unlimited
premiums...
System of indemnification unsustainable

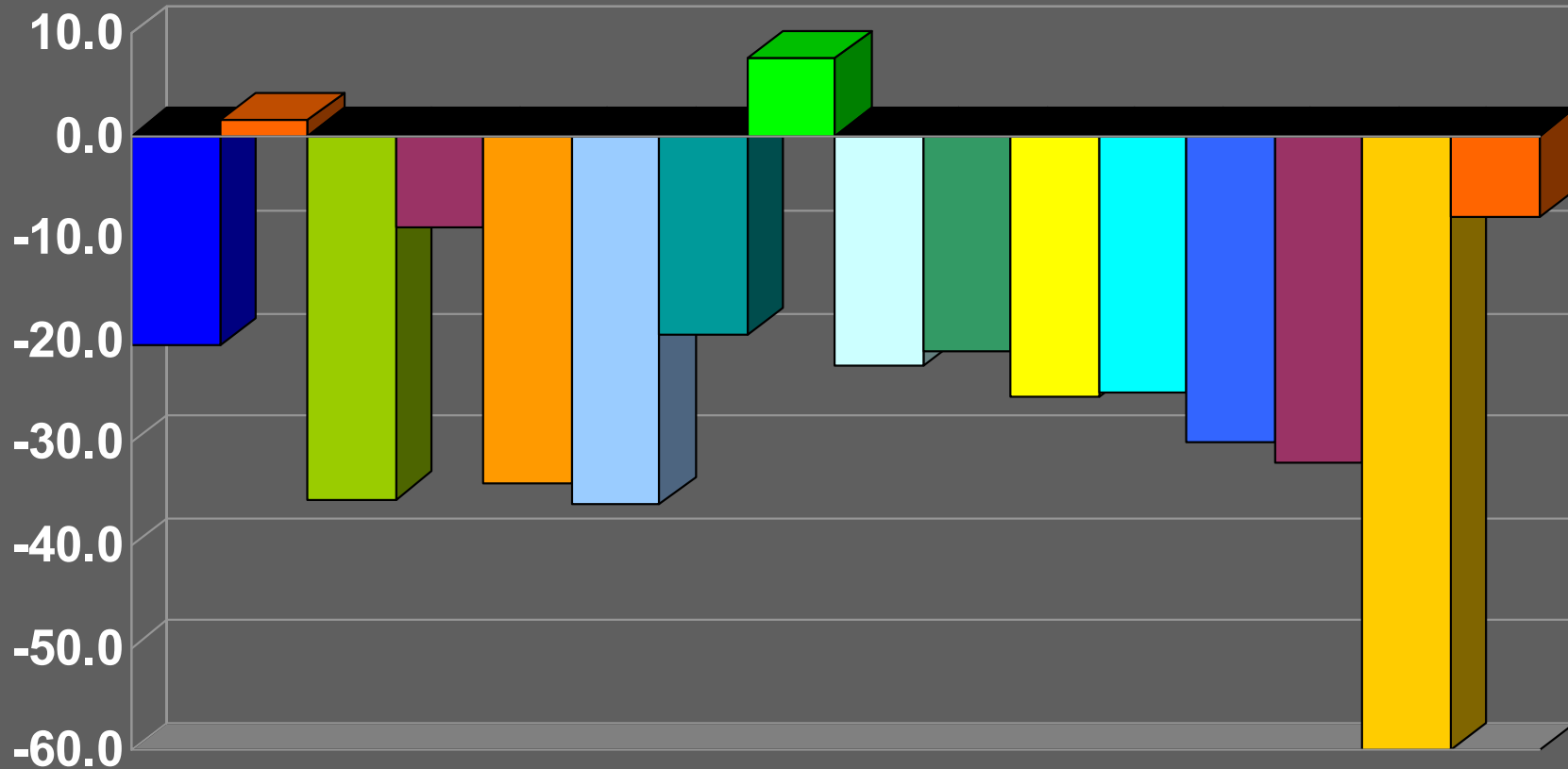
Top Jury Awards of 2002



Top Jury Awards of 2002



Underwriting Results 1991-2000



- | | | | |
|----------------|--------------|------------------|------------|
| ■ Arizona | ■ California | ■ Florida | ■ Georgia |
| ■ Illinois | ■ Maryland | ■ Massachusetts | ■ Michigan |
| ■ New Jersey | ■ New York | ■ North Carolina | ■ Ohio |
| ■ Pennsylvania | ■ Tennessee | ■ Texas | ■ Virginia |

Senate Prompt Payment Committee, August 15, 2002

Source: 2000 NAIC Profitability Report

Randomness

Harvard Medical Practice Study and the Institute of Medicine Report on Medical Errors

Institute of Medicine Study



44,000 to 98,000 deaths annually due to malpractice

Goal: 50% reduction over 5 years

Harvard Study



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: Consequent Distortions



Extrapolation:

- **180** inadequately classified deaths became 98,000 Americans dying every year due to malpractice.

Harvard Study: The Actual Claims



51 claims

8 involved “negligent adverse event”

43 involved no “negligent adverse event”

26 involved no medical injury at all

7.6 times as many negligent adverse events as malpractice claims.

Likelihood of a negligent adverse event resulting in litigation 1 in 65 (1.53%)

Malpractice Trial Outcomes:

- *No correlation whatever between the presence or absence of medical negligence and outcome of malpractice litigation*

The Bad Doctor Fallacy



- 2% of the doctors cause 50% of the losses
 - Mirror image of causation
 - Harvard: Degree of injury, not medical negligence, predicts outcome.
- Fewer than 1% of physicians have 2 paid claims over a 10-year period of time.
 - Only one in five doctors with a single paid claim gets a second within 10 years.

Tort Reform

Goals and Benefits



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

MICRA



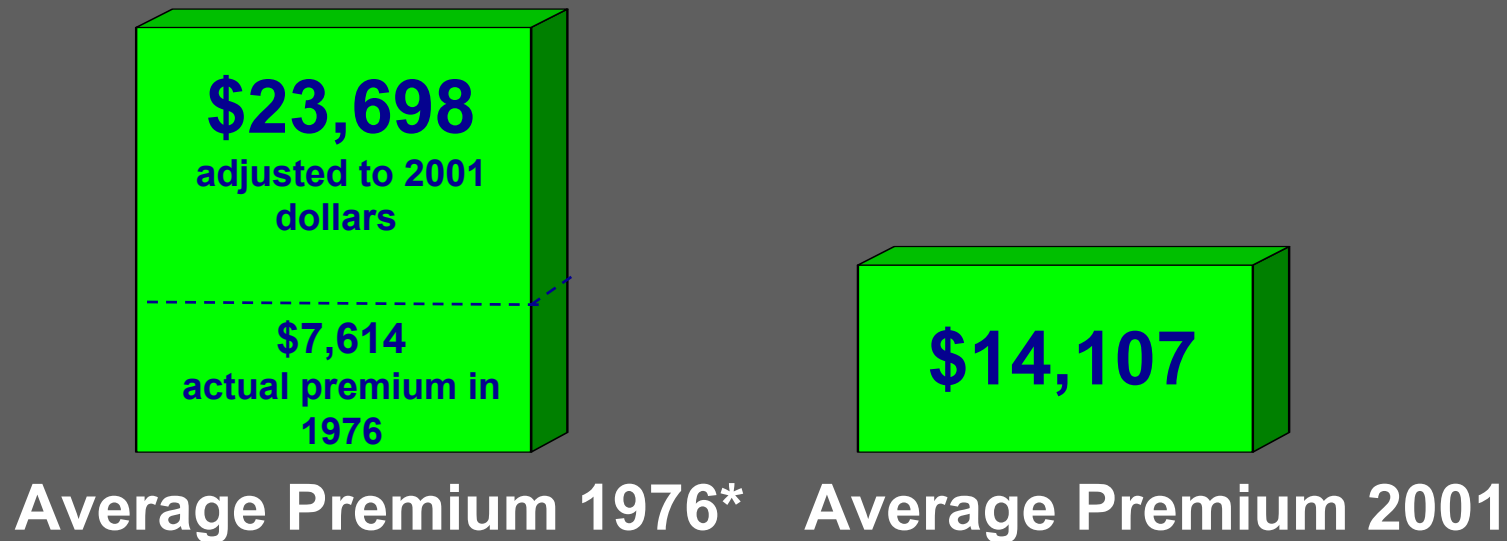
1. Mandates a \$250,000 cap on noneconomic damages ONLY.
2. Allows introduction into evidence of collateral sources of payment.
3. Allows periodic payments of future damages.
4. Provides for a sliding scale limit on attorneys' contingency fees.

5. Provides for a shorter statute of limitations.
6. Requires a 90-day "Notice of Intent to Sue."
7. Encourage and facilitate arbitration.

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

Tort Reform Helps Reduce Colorado Medical Liability Premium Rates by 61%



The Doctors' Company 1986-2002



Average Premium 1986**

Average Premium 2002

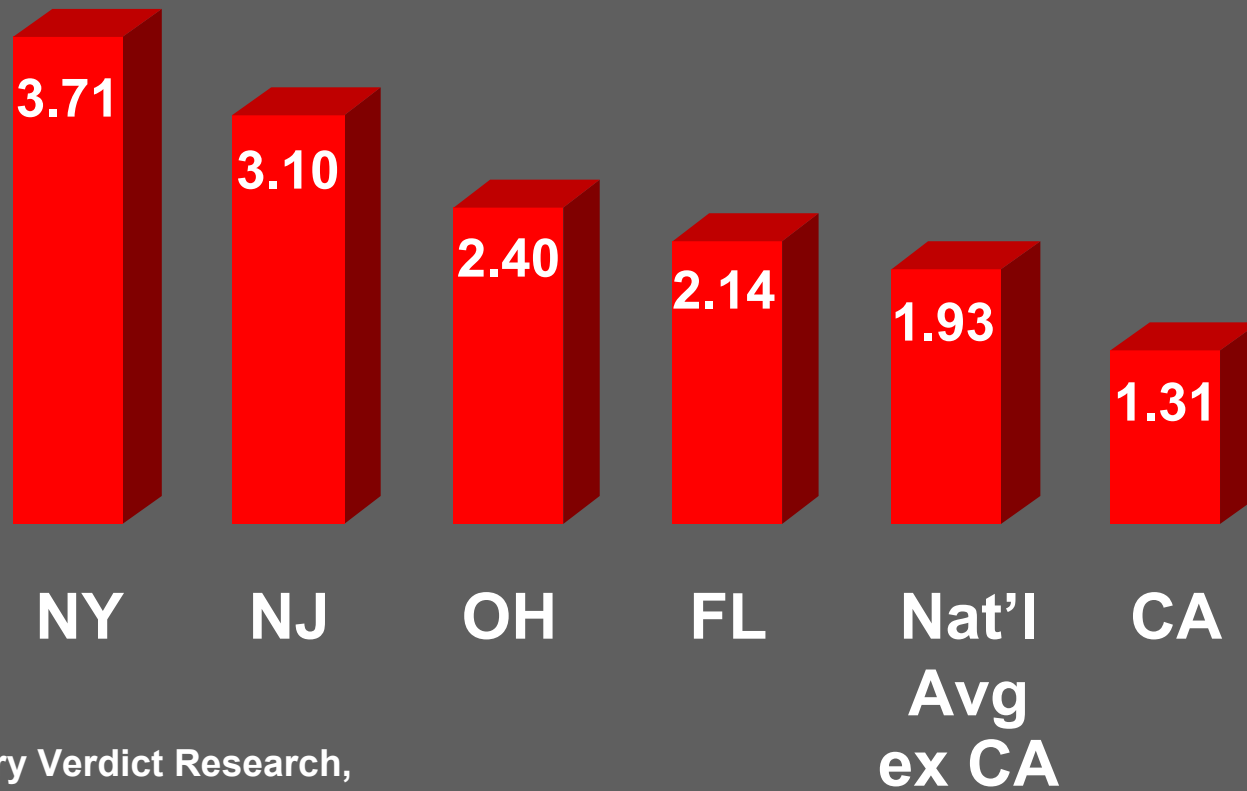
*The Doctors Company's average of all specialties including dividends for a \$1 Million/\$3 Million Mature Claims-Made Policy.

**Premium adjustments are made using the Annual Urban Price Index published by the Bureau of Labor Statistics.

MICRA Reduces Verdict Cost and Frequency

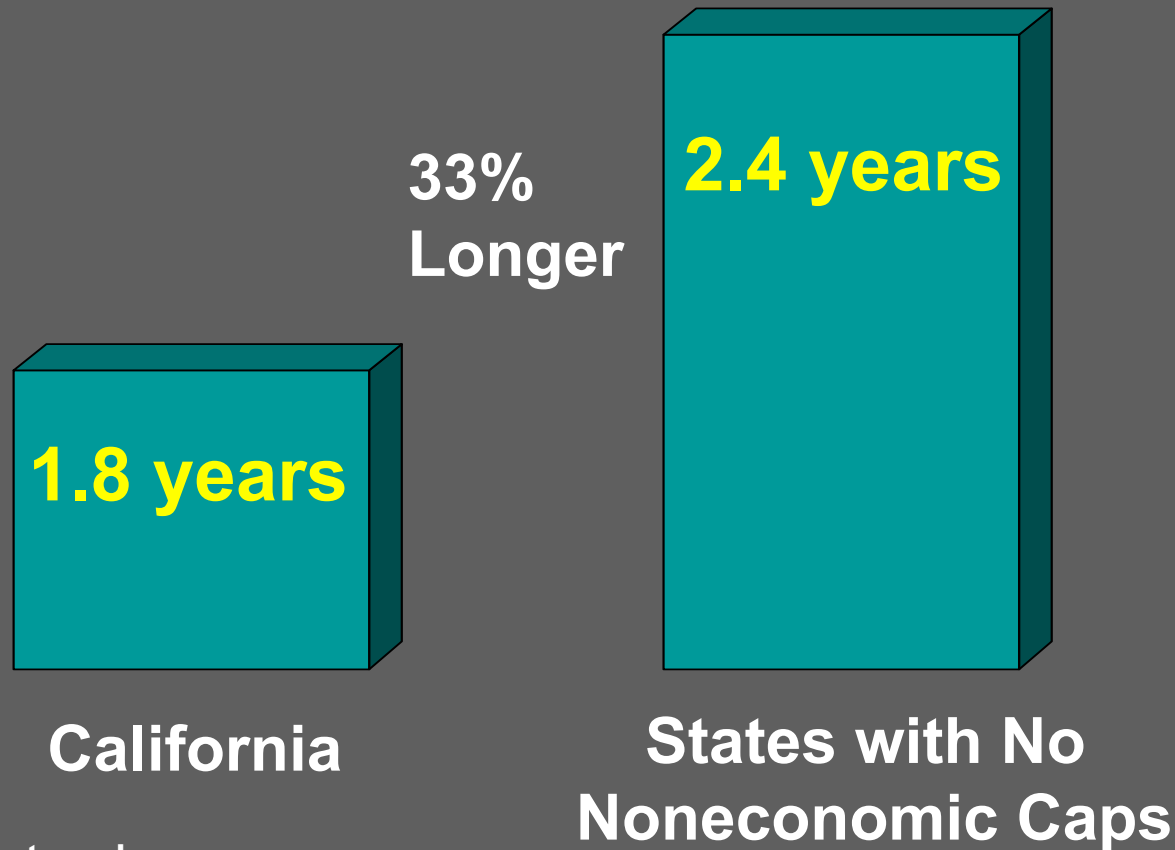


\$1 Million+ Verdicts Per 1,000 Doctors



Sources: Jury Verdict Research,
AMA

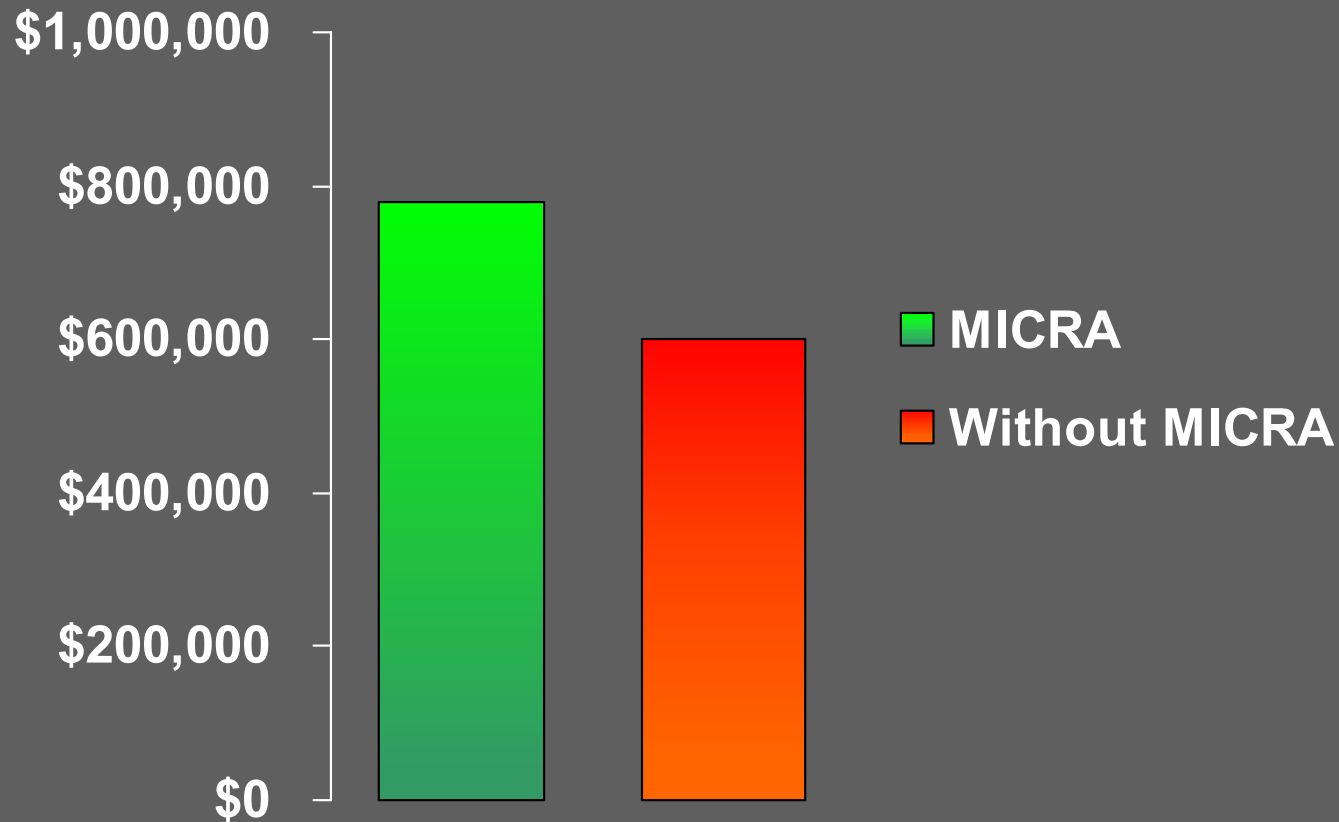
MICRA Reduces Average Time to Settlement



*Indemnity payments only

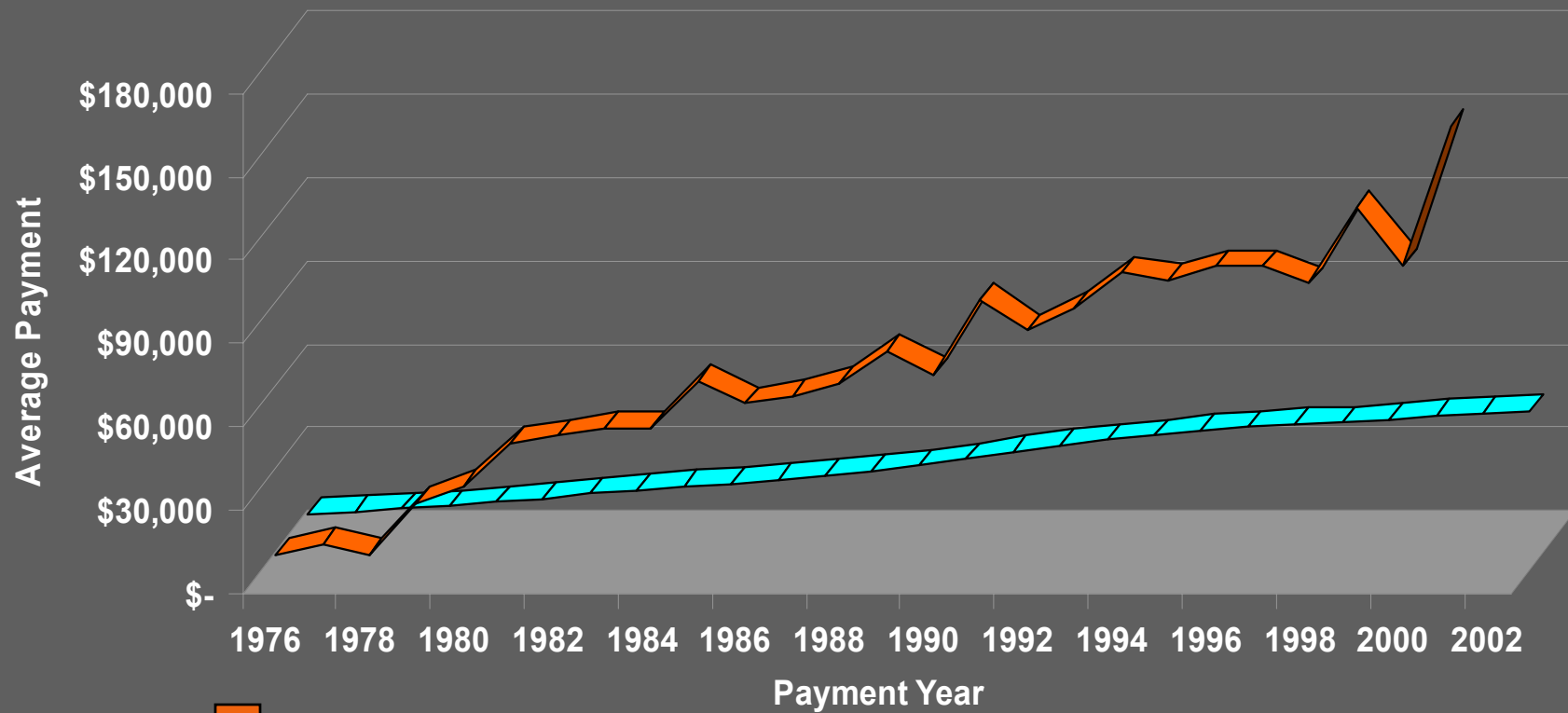
The Doctors' Company, 1997-2001

Injured Patients Benefit Directly



Proceeds of a \$1 Million Judgment

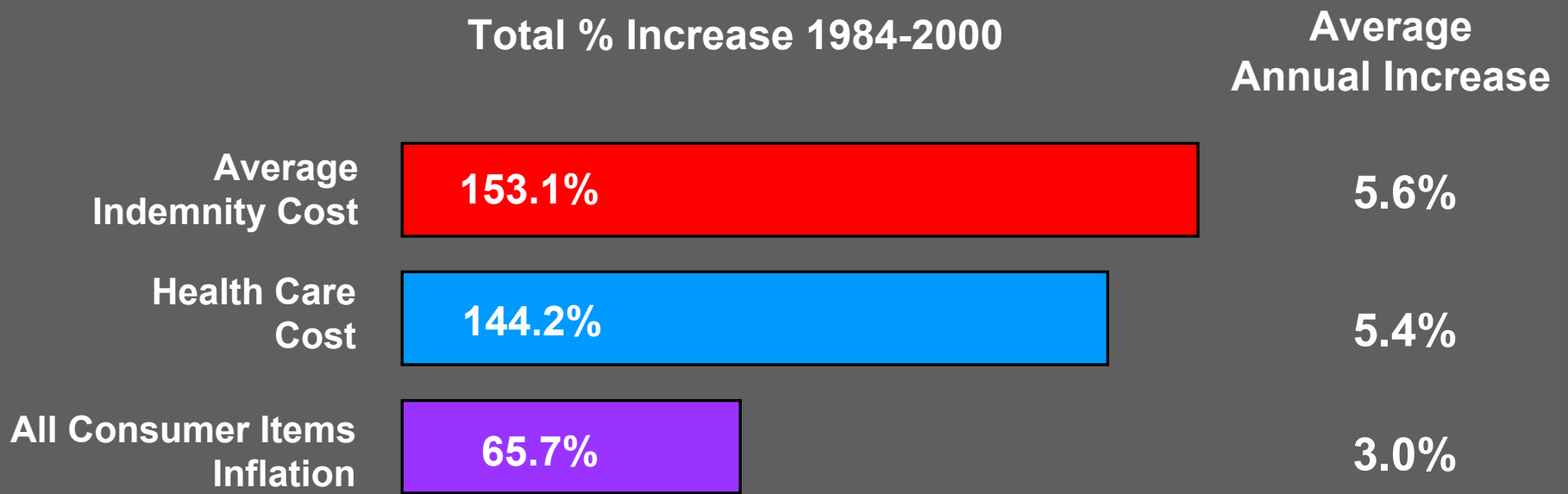
Average Medical Liability Claim in CA vs. Average Claim Adjusted for Inflation 1976-2001



- 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

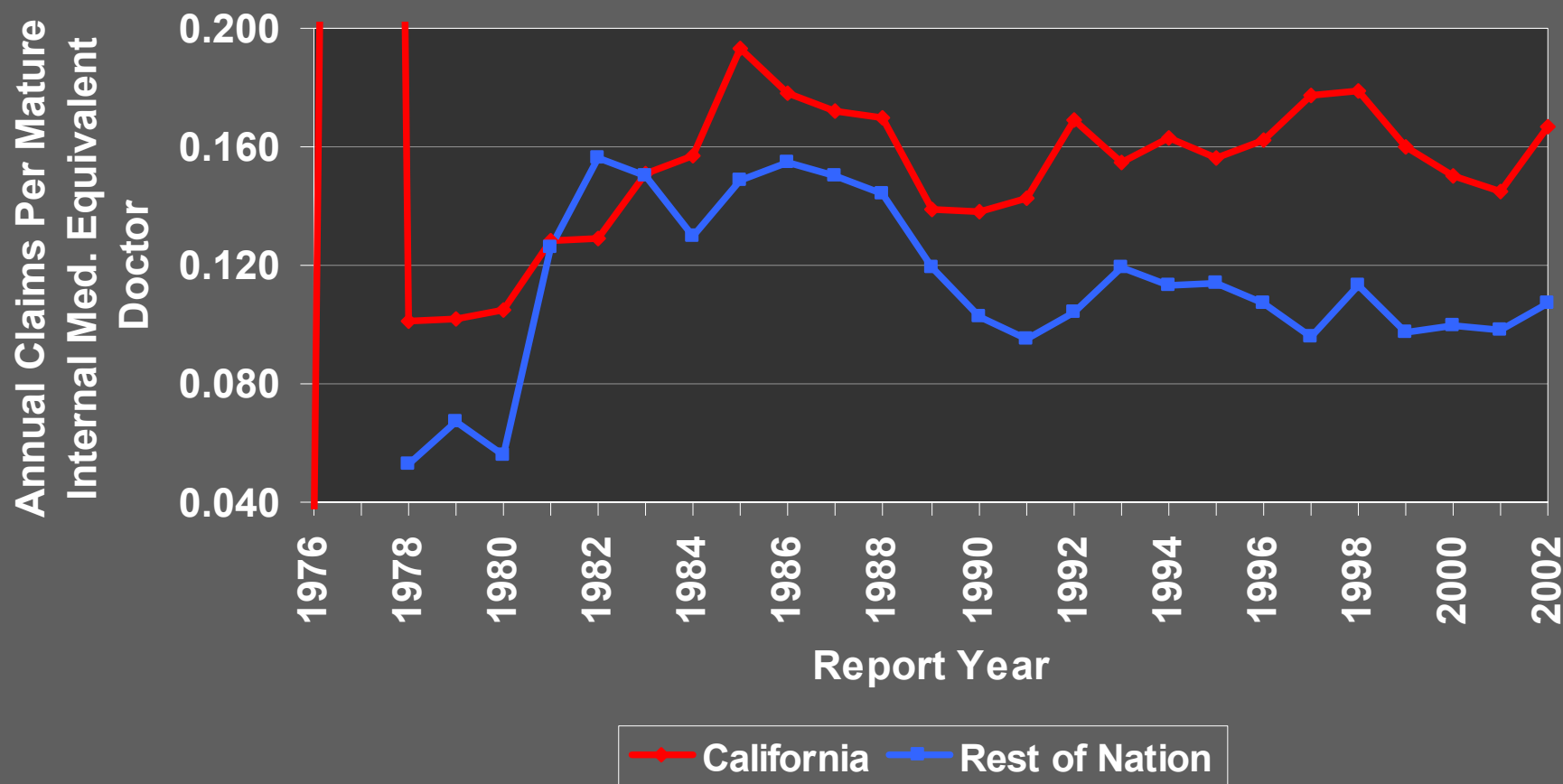


US Cities CPI vs. TDC California Allocated Claims Closed with Indemnity 70

MICRA Does Not Limit Access to Courts



TDC PHYSICIAN CLAIM FREQUENCY



Oregon: Loss of Tort Reform



Millions

\$70

\$60

\$50

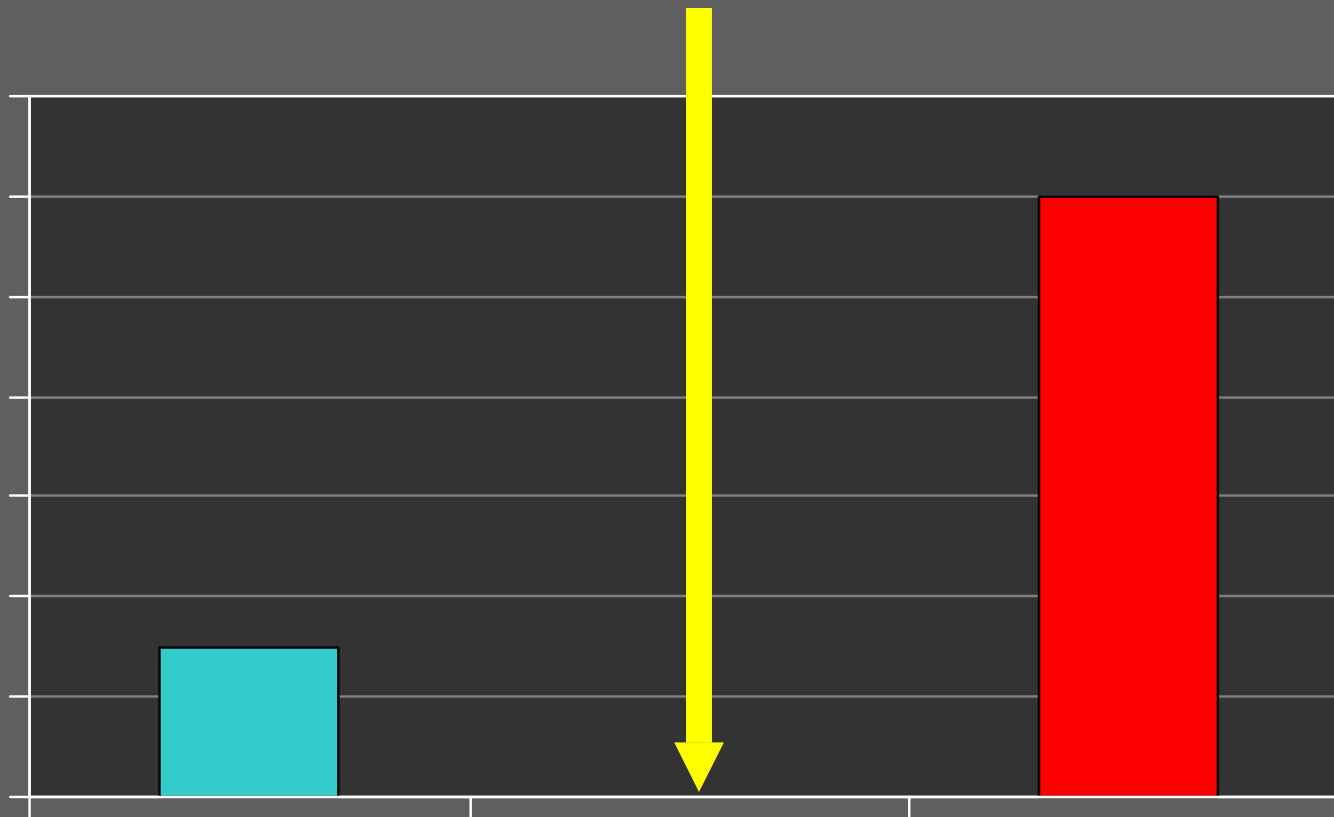
\$40

\$30

\$20

\$10

\$0



1998

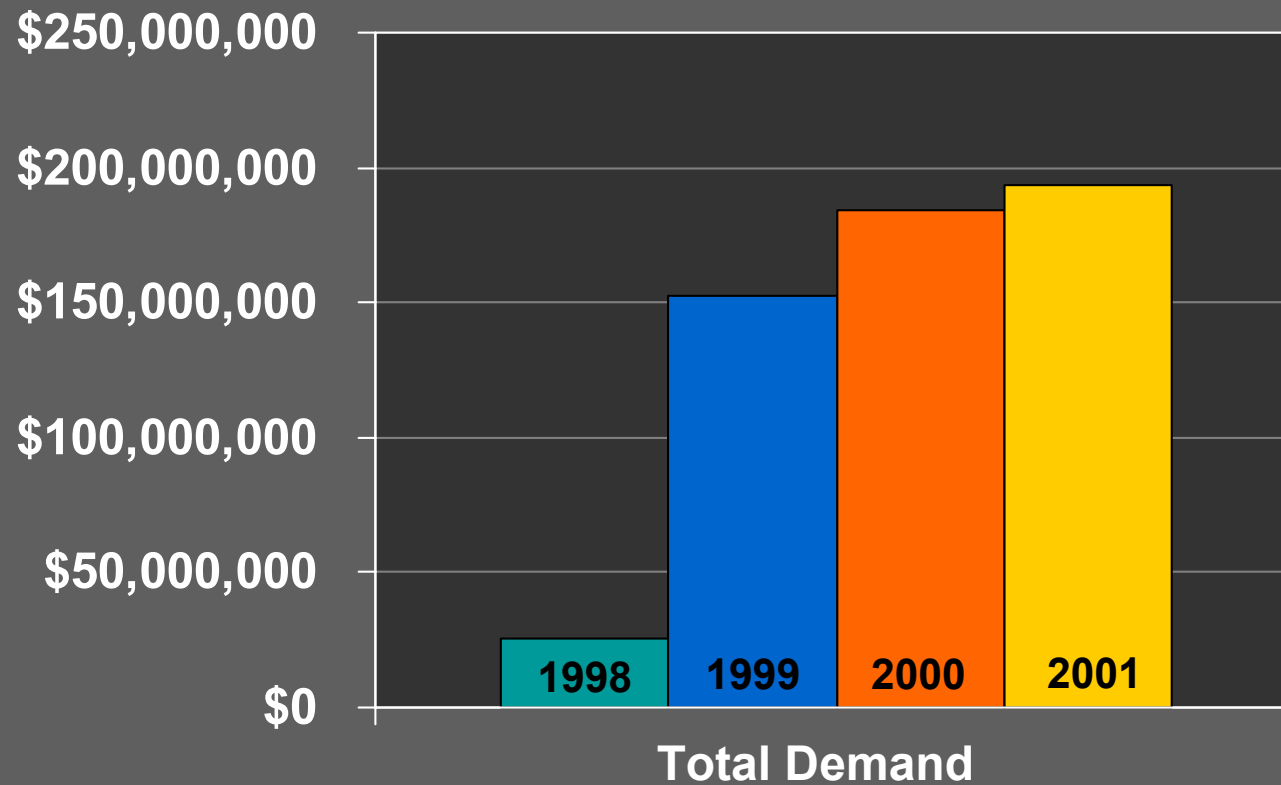
1999 Lost Tort Reform

2000

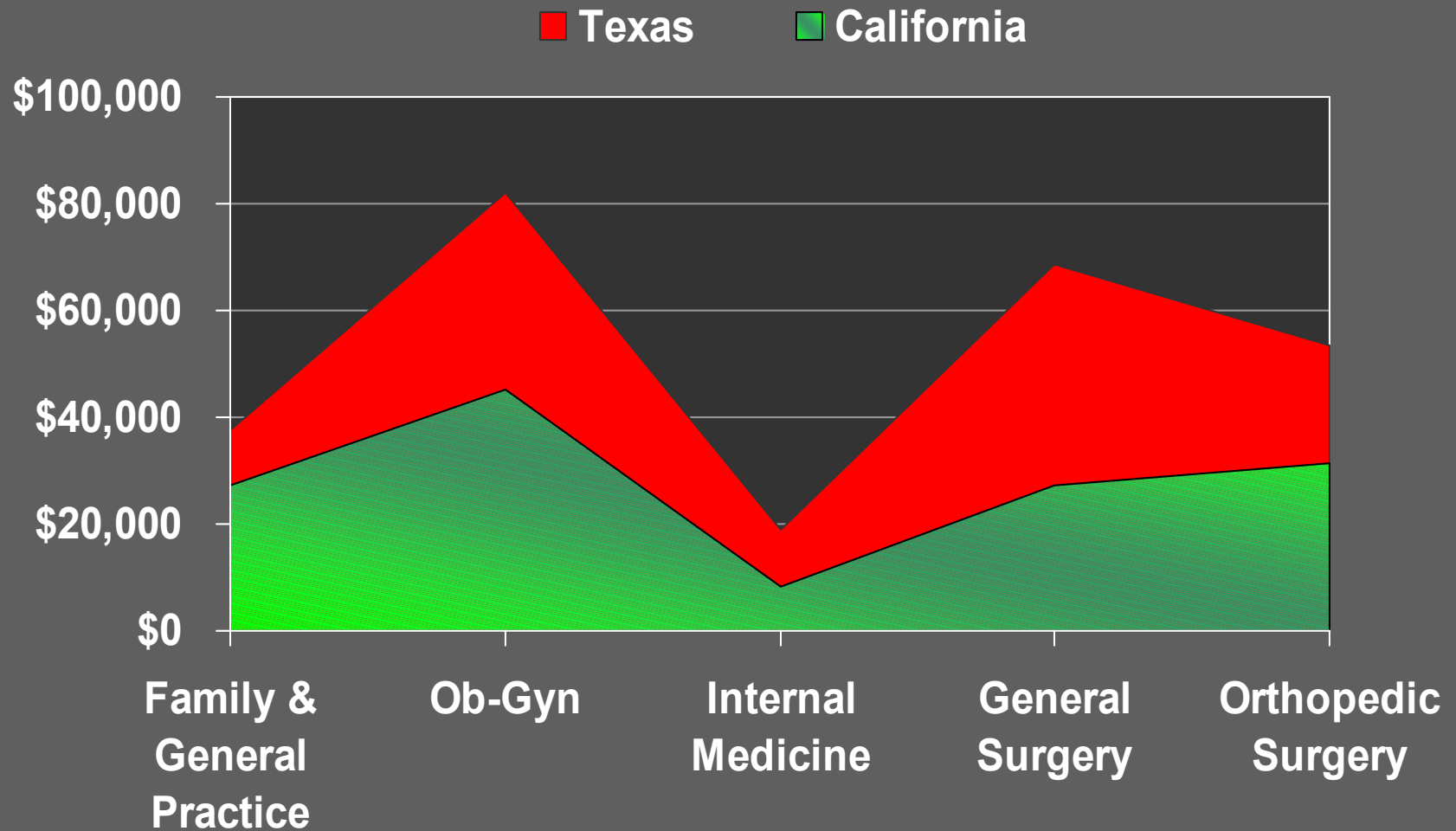
Oregon: Loss of Tort Reform



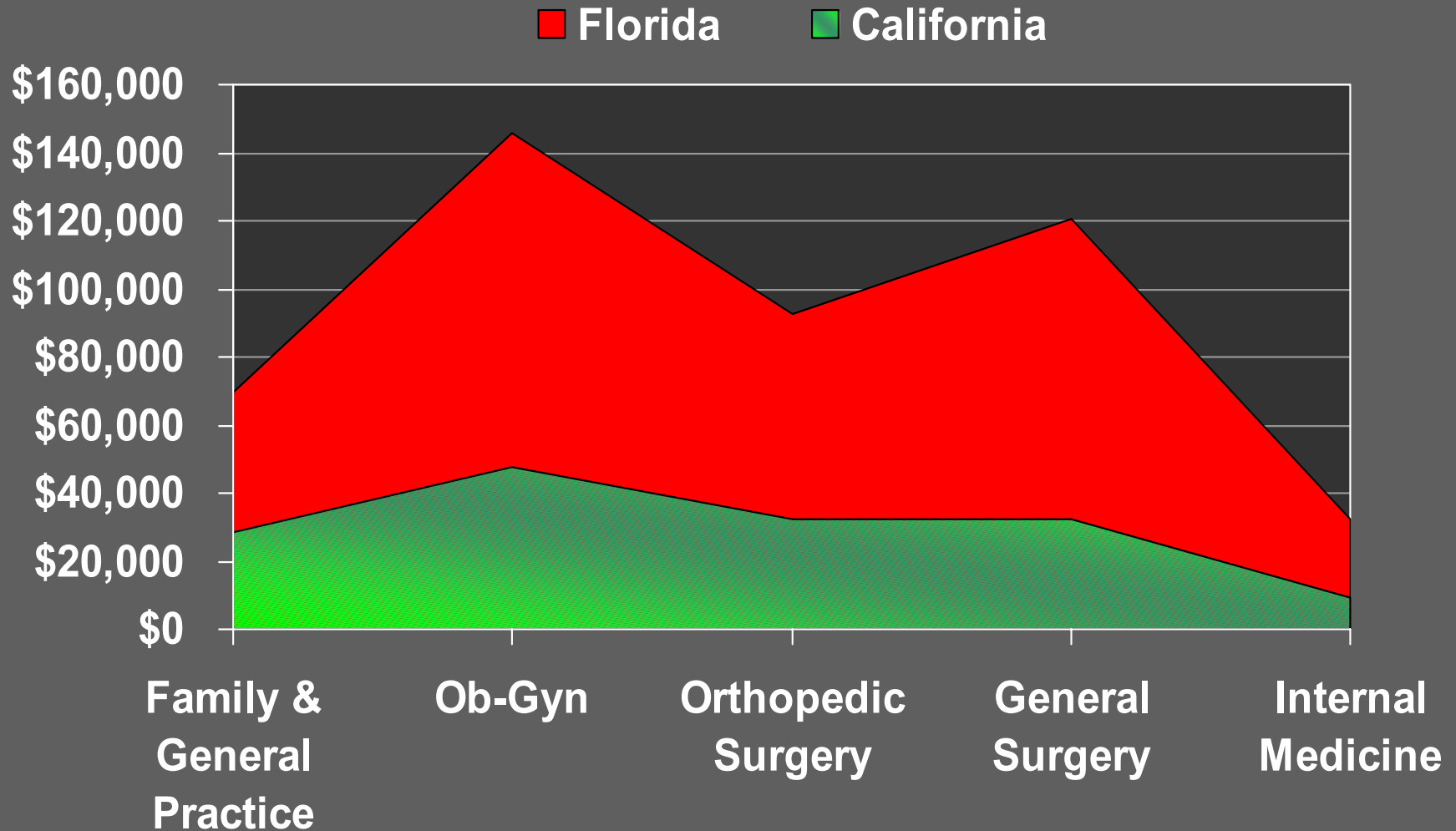
Total Plaintiff's Demand in Settled Cases



California vs. Texas Average Rate by Specialty (2002)



California vs. Florida 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”
 - “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”

MICRA Works



- “...there is **no other alternative** remedy that will immediately alleviate Florida’s crisis...”
- “...a cap of \$250,000 per incident **will lead to significantly lower malpractice premiums.**”
- “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



- Frequency is stable at extremely high levels.
- Severity is rising to unprecedented levels.
- This is a state crisis primarily because some states have effective legal reforms and some do not.
- Access to health care is imperiled.

Summary



- The failure of the states to act, and the fact the Federal Government purchases 45% of all healthcare in the U.S. today justifies national as well as state action.
- Ineffective reforms are worse than none.
- Proven remedies are available now.