

**American Legislative Exchange Council
Health & Human Services Task Force
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MICRA: *The Real Experience*

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Creation of MICRA
Public/Patient Benefits
The Statutes
Results
Corroboration

Creation of MICRA



California 1975

- Approx. 75% of all malpractice suits in 20th century to date filed between 1970-1975
- Unprecedented rate increases, followed by withdrawal of commercial insurers
- Response:
 - Physician strikes
 - Marches on the capital
 - Special session of the legislature
- Creation of the physician-owned insurers like The Doctors Company

MICRA: Goals

Direct Patient Benefits

- **Sustainable** insurance mechanism providing full indemnification of actual loss.
- Preserves **access** to medical care without impeding access to courts for truly injured patients.
- More **rapid** settlements to provide injured patients with compensation sooner.
- The patient **keeps** more of the award.
- **Assures** money is available at the time it is needed.
- Society does not incur **double** costs.

1. \$250,000 cap on noneconomic damages
2. Collateral source rule
3. Periodic payments of future damages
4. Sliding scale limit on attorneys' contingency fees

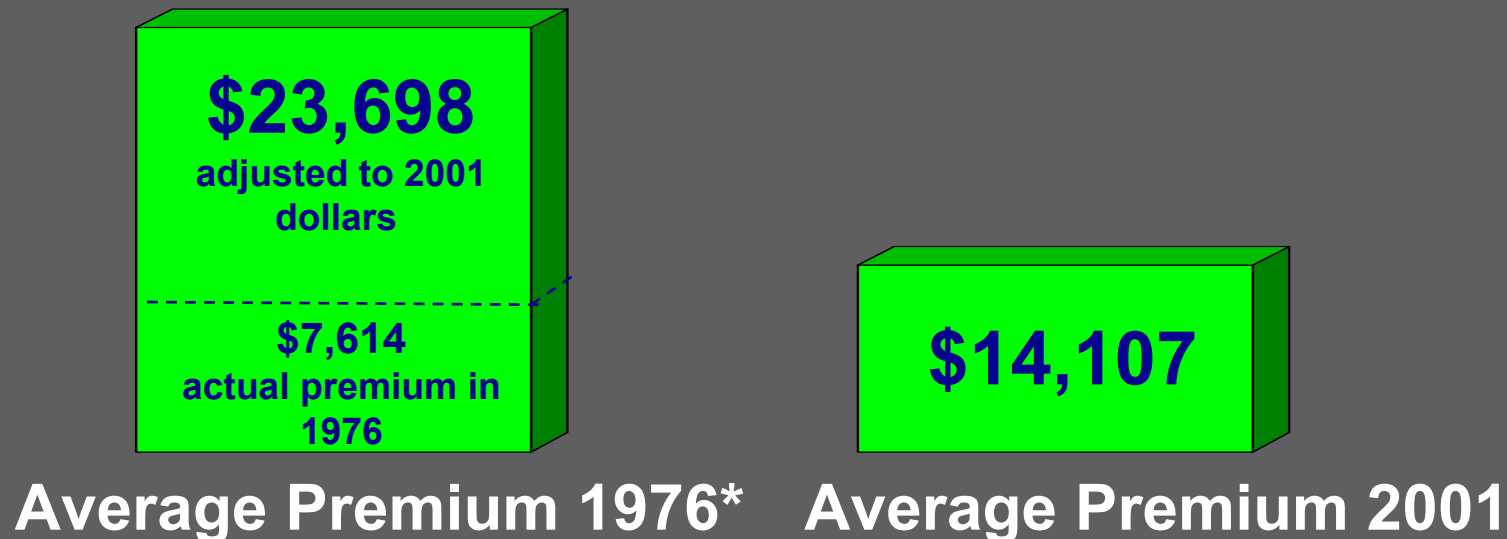
5. Statute of limitations reform
6. 90-day “Notice of Intent to Sue”
7. Allows arbitration

MICRA: *Results*

MICRA Helps Reduce California Medical Liability Premium Rates by 40%

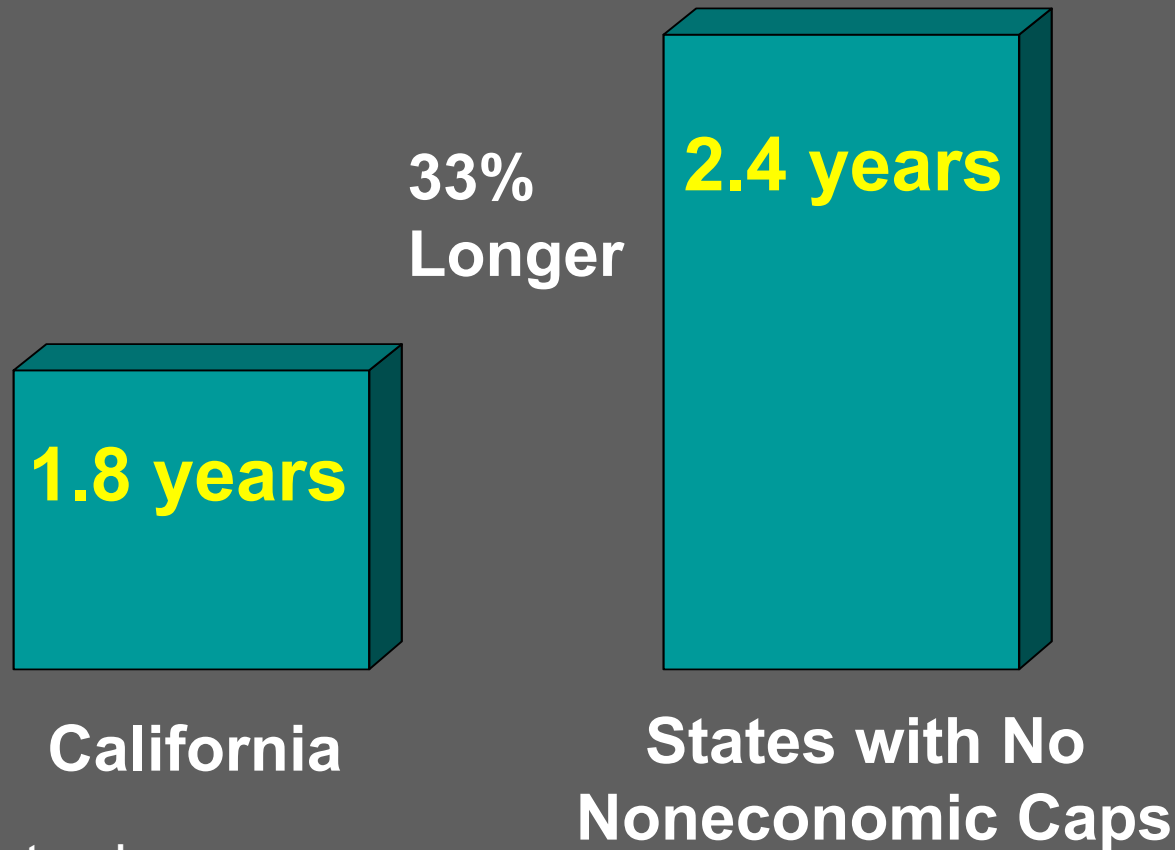


The Doctors' Company 1976-2001



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

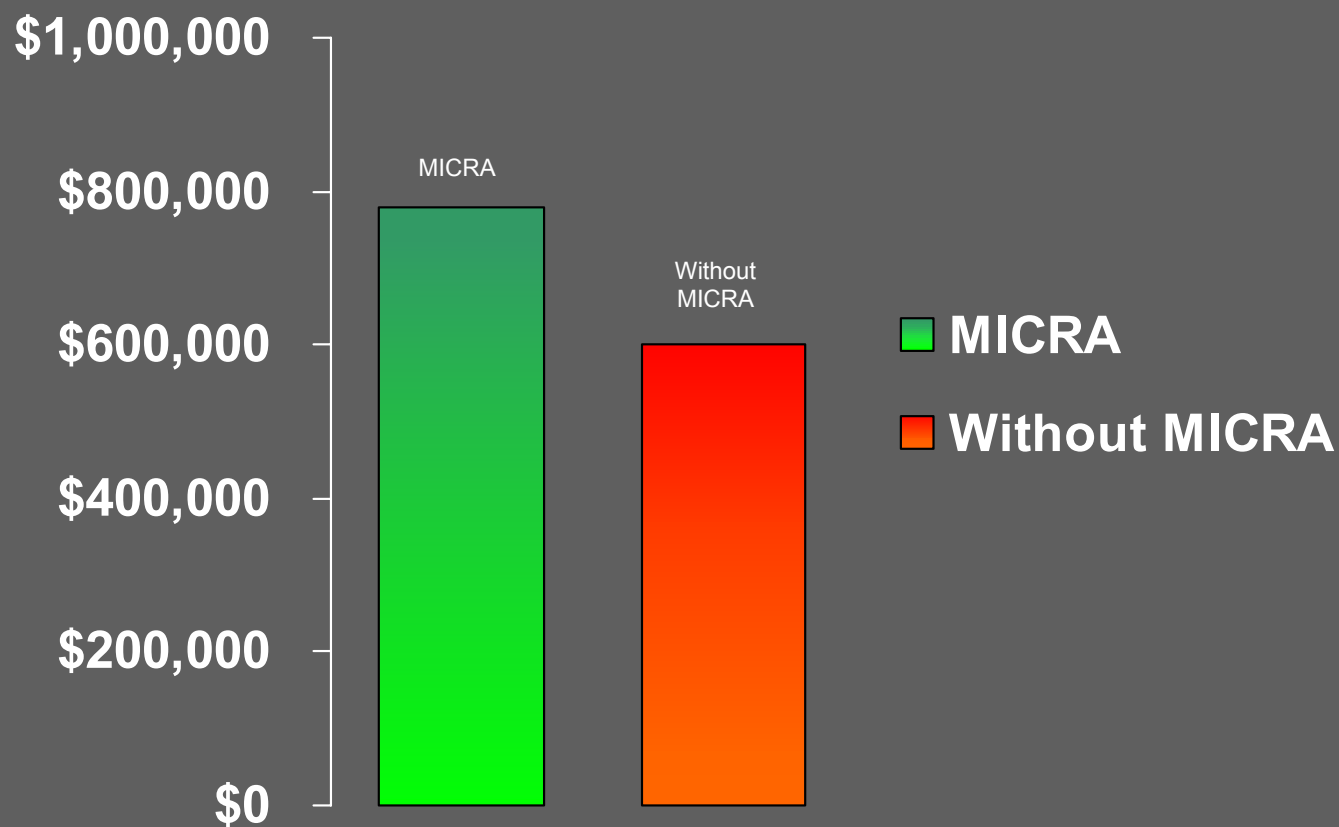
MICRA Reduces Average Time to Settlement



*Indemnity payments only

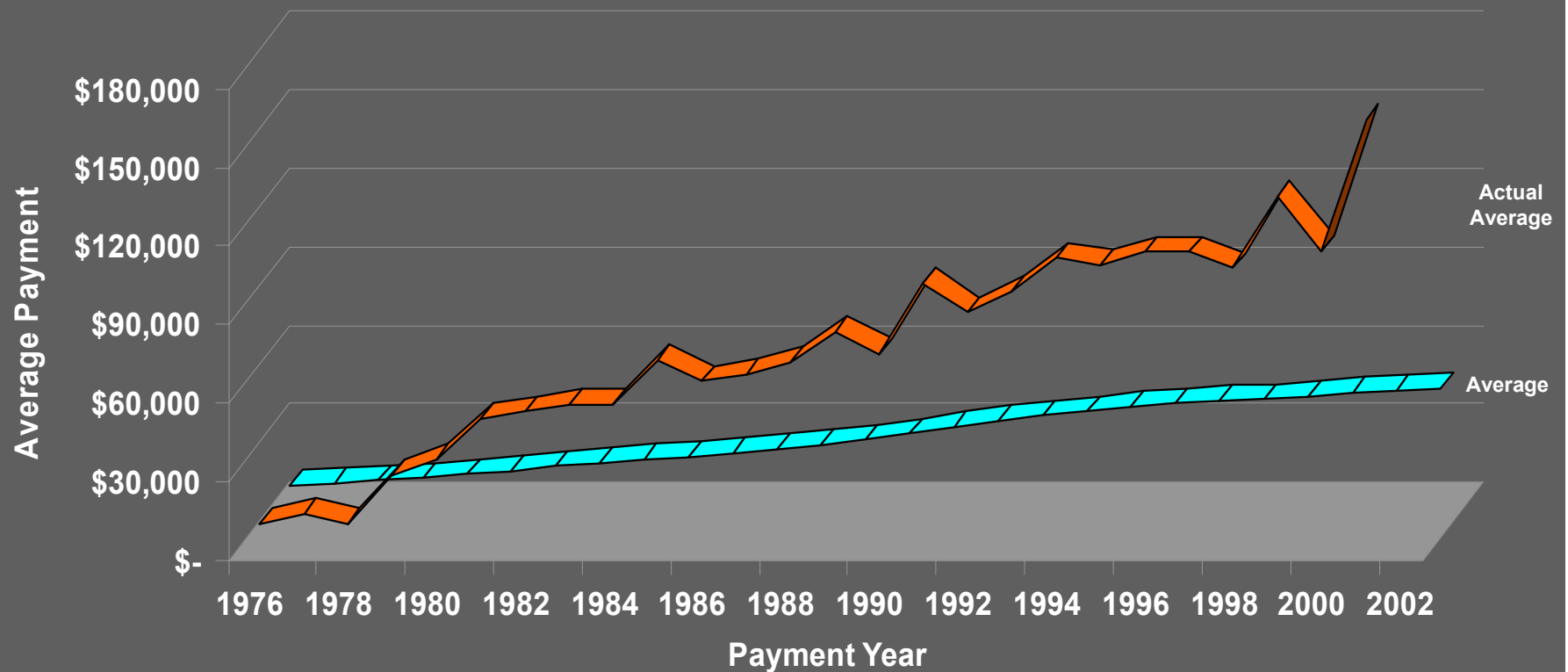
The Doctors' Company, 1997-2001



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



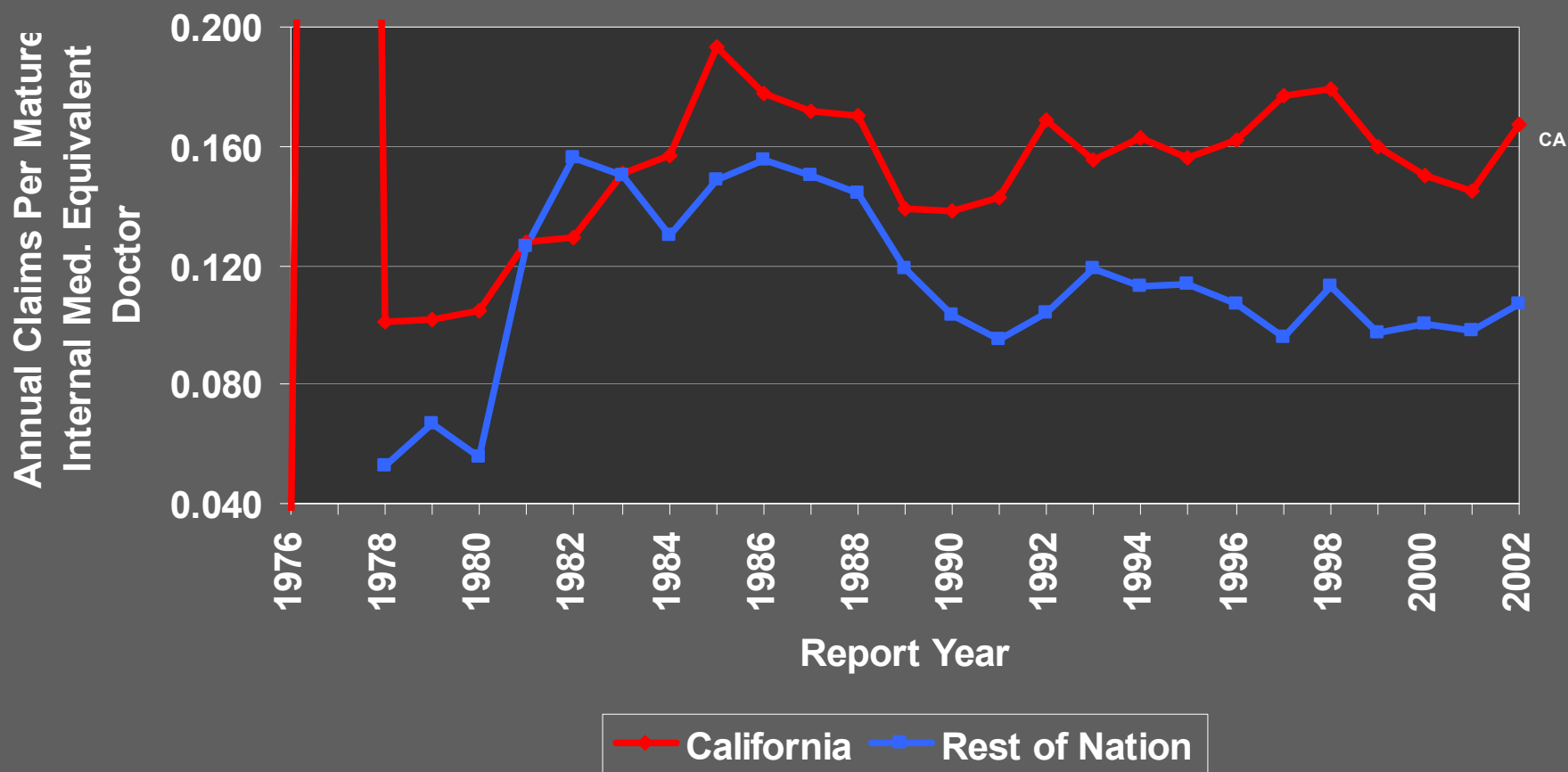
	Total % Increase 1984-2000	Average Annual Increase
Average Indemnity Cost	153.1%	5.6%
Health Care Cost	144.2%	5.4%
All Consumer Items Inflation	65.7%	3.0%

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

MICRA Does Not Limit Access to Courts



TDC PHYSICIAN CLAIM FREQUENCY

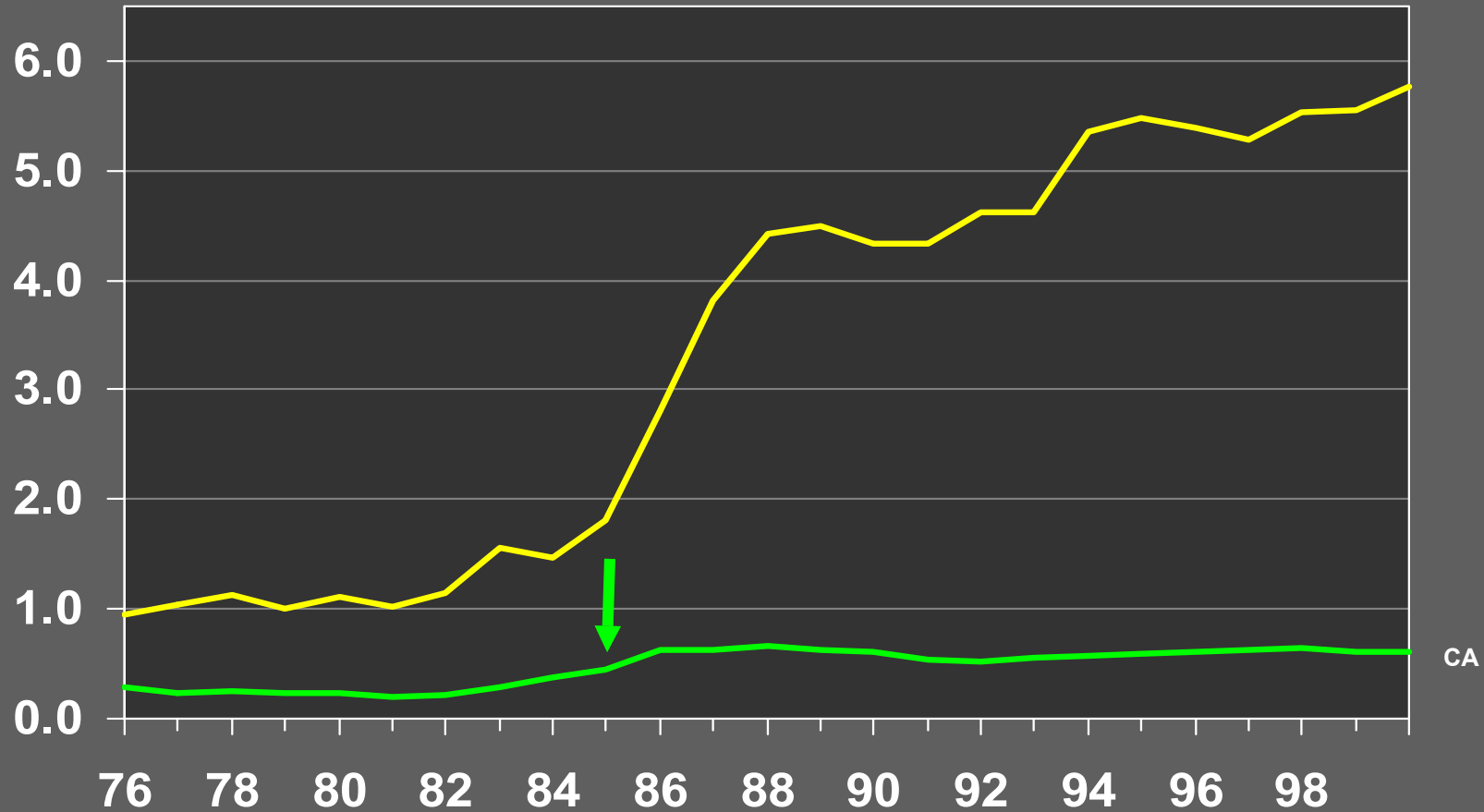


Savings from MICRA Reforms



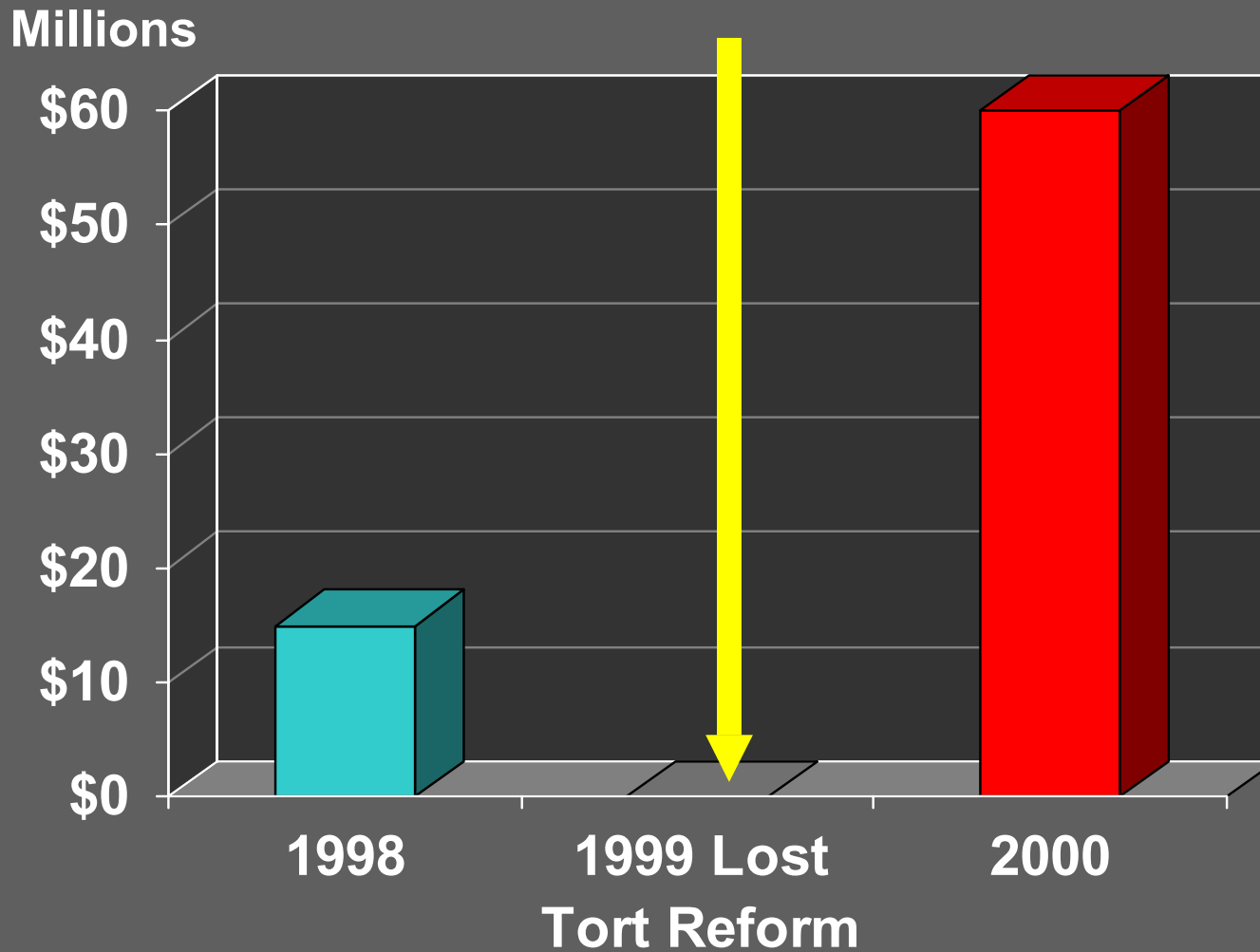
California vs. U.S. Premiums 1976 -2000

\$ Billions



Source: NAIC Profitability By Line By State

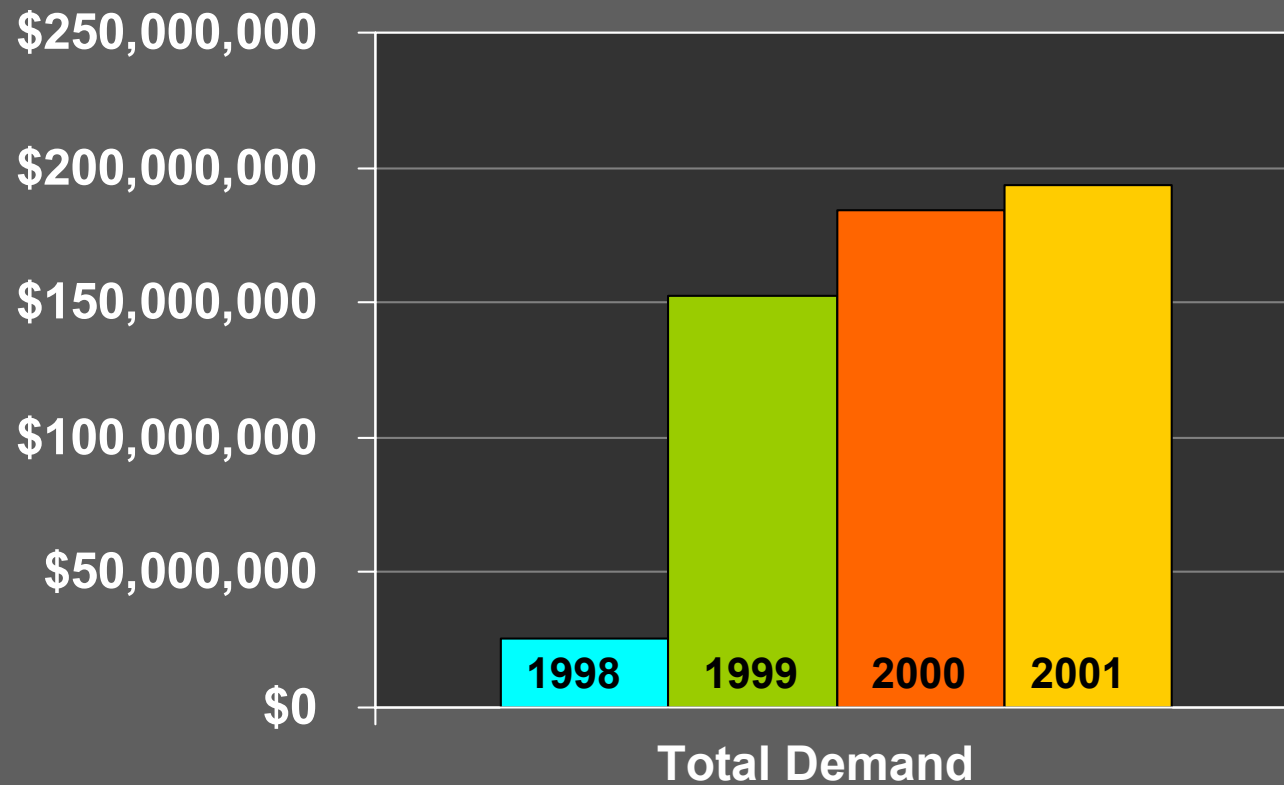
Oregon and the Loss of Tort Reform



Oregon: Loss of Tort Reform



Total Plaintiff's Demand in Settled Cases



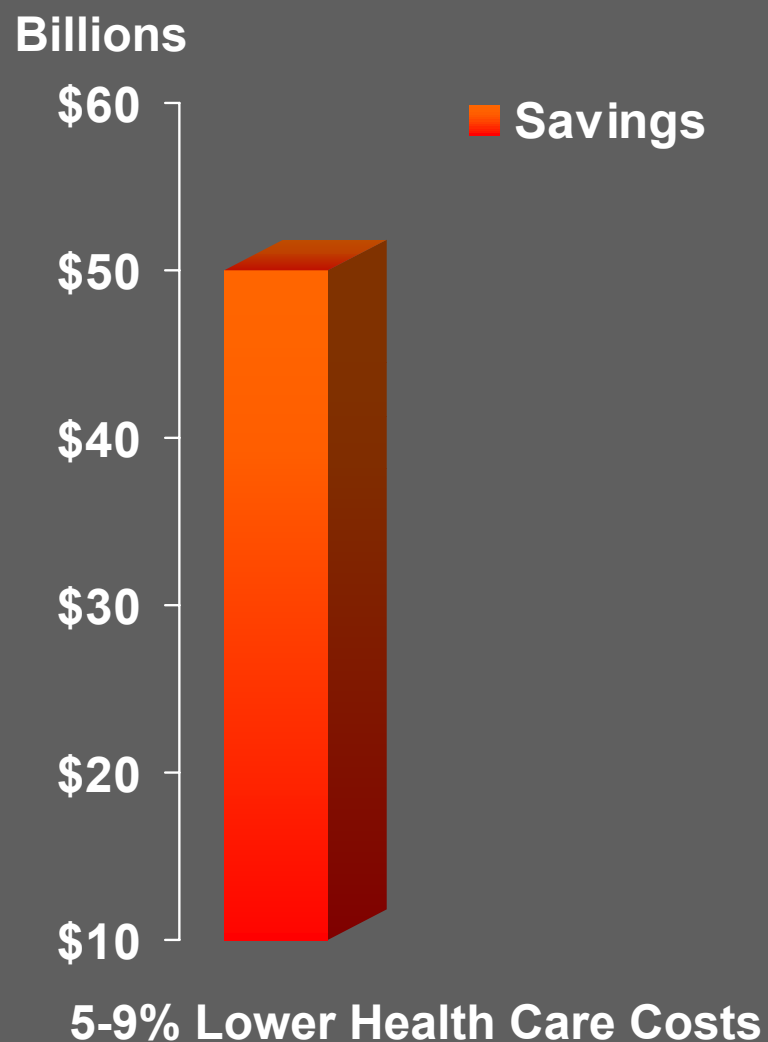
Stanford Study: The Cost of Defensive Medicine



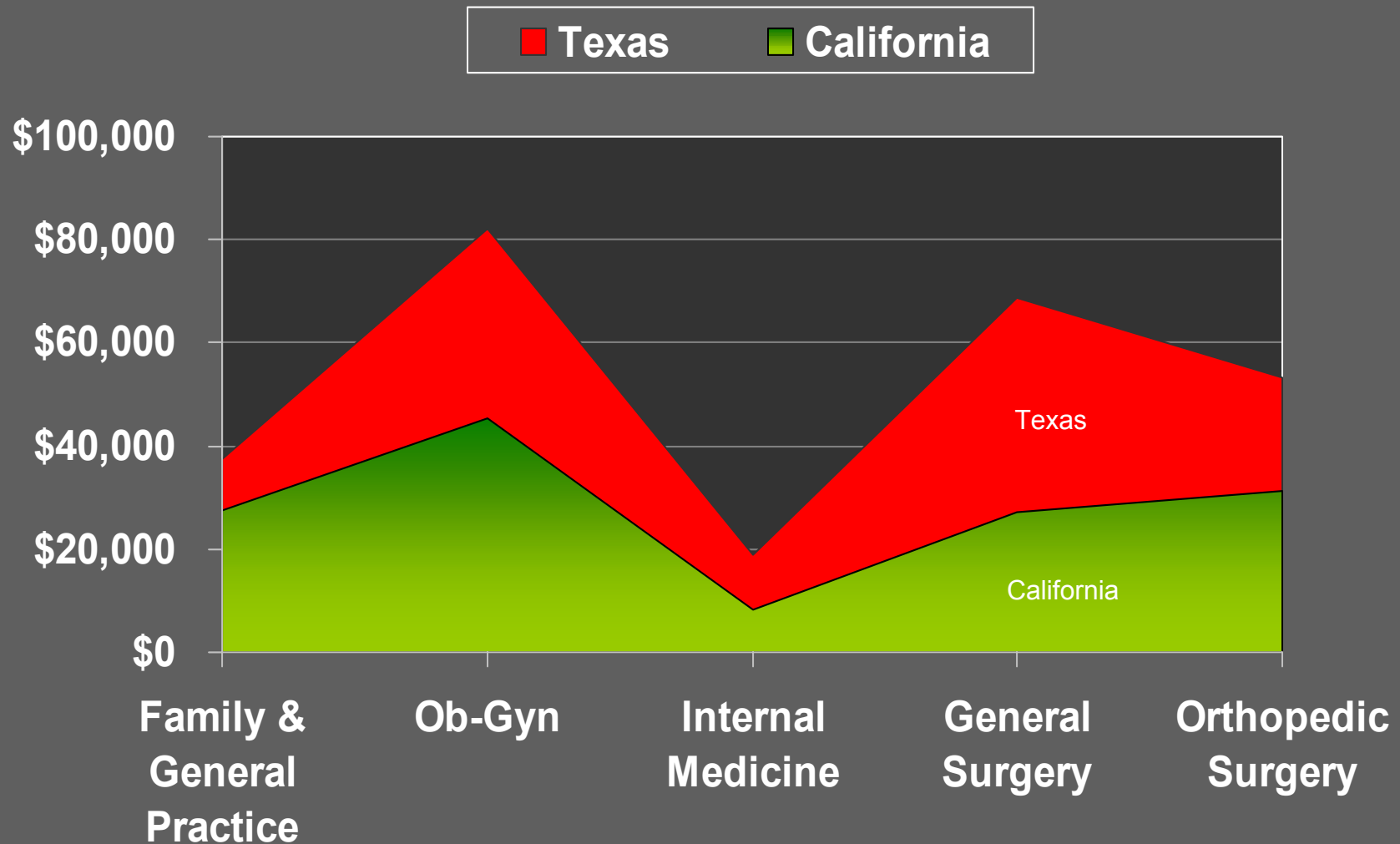
States with effective tort reform lower health care costs 5-9%.

Savings nationally would be \$50 billion.

HHS: up to \$110 billion



California vs. Texas 2002 Average Rate by Specialty



Implications of a \$268,000,000 Verdict



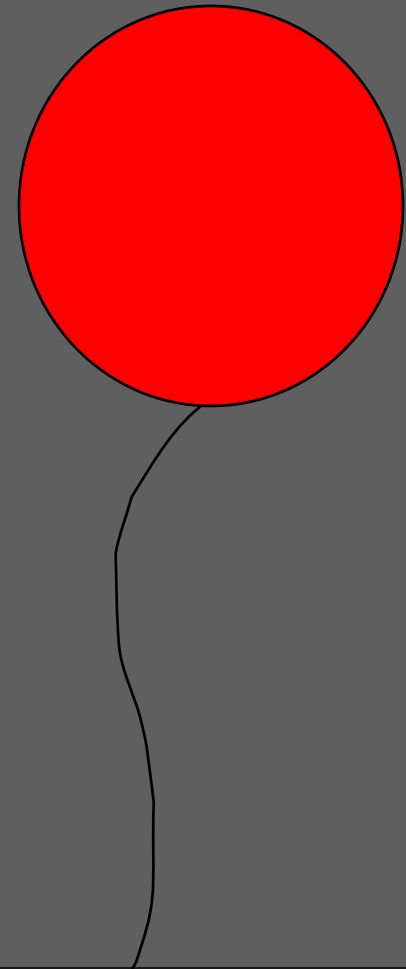
- You cannot afford to go to court.
- Cost of settlement rises dramatically.
- System of indemnification unsustainable.

Implications of a \$268,000,000 Verdict



- *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 means **decreased access to healthcare**. Limitations of access inevitably affect the **most vulnerable members of our society**.*

Trial Lawyer Trial Balloons



Trial Lawyer Trial Balloons



- It's just about the few bad doctors.
- It's about insurance companies' bad investments.
- It's about insurance companies not charging enough (sic).
- It's not about MICRA, it's about Prop. 103.
- Claims losses don't matter.

Insurance Company Investments



- Commendably, used to **subsidize** premium levels in relation to **claims losses**.
- No malpractice insurer has ever had *negative* investment income.
- Malpractice insurers average less than 10% of assets in equities.

The Proposition 103 Myth



MICRA 1975, final constitutional challenge 1985

Prop. 103 approved 1989, final court challenge 1993

- Med mal hearings 1991
- TDC had been paying dividends for **11 years** prior to its 103 dividend.
- TDC dividends were **higher in the 5 years prior** to 103 than they were in the 5 years after.

The Proposition 103 Myth



- The med mal insurers were specifically **exempted** from rate rollbacks.
- There has **not** been **a single** med mal rate increase denied under 103.

Corroboration

MICRA Works



- Congressional Budget Office
 - 25-30% reduction in premiums
- National Association of Insurance Commissioners
- American Academy of Actuaries
 - \$250,000 cap
 - Comprehensive set of reforms

- 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.”

Summary

- We know, we do not speculate that MICRA is effective
 - in providing sustainable insurance rates
 - in preserving access to medical care
 - In providing full indemnification of injured patients.
- We know unlimited judgments require unlimited premiums which lead to unlimited increases in the cost of healthcare and decreased access by the most vulnerable among us.

- We know
 - “There is an overpowering public necessity for the reform measures recommended in this report, and no alternative method of meeting such public necessity can be shown.” (p. 217)