

The Medical Malpractice Insurance Crisis and

The Case for Legal Reform

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- June 25, 2005

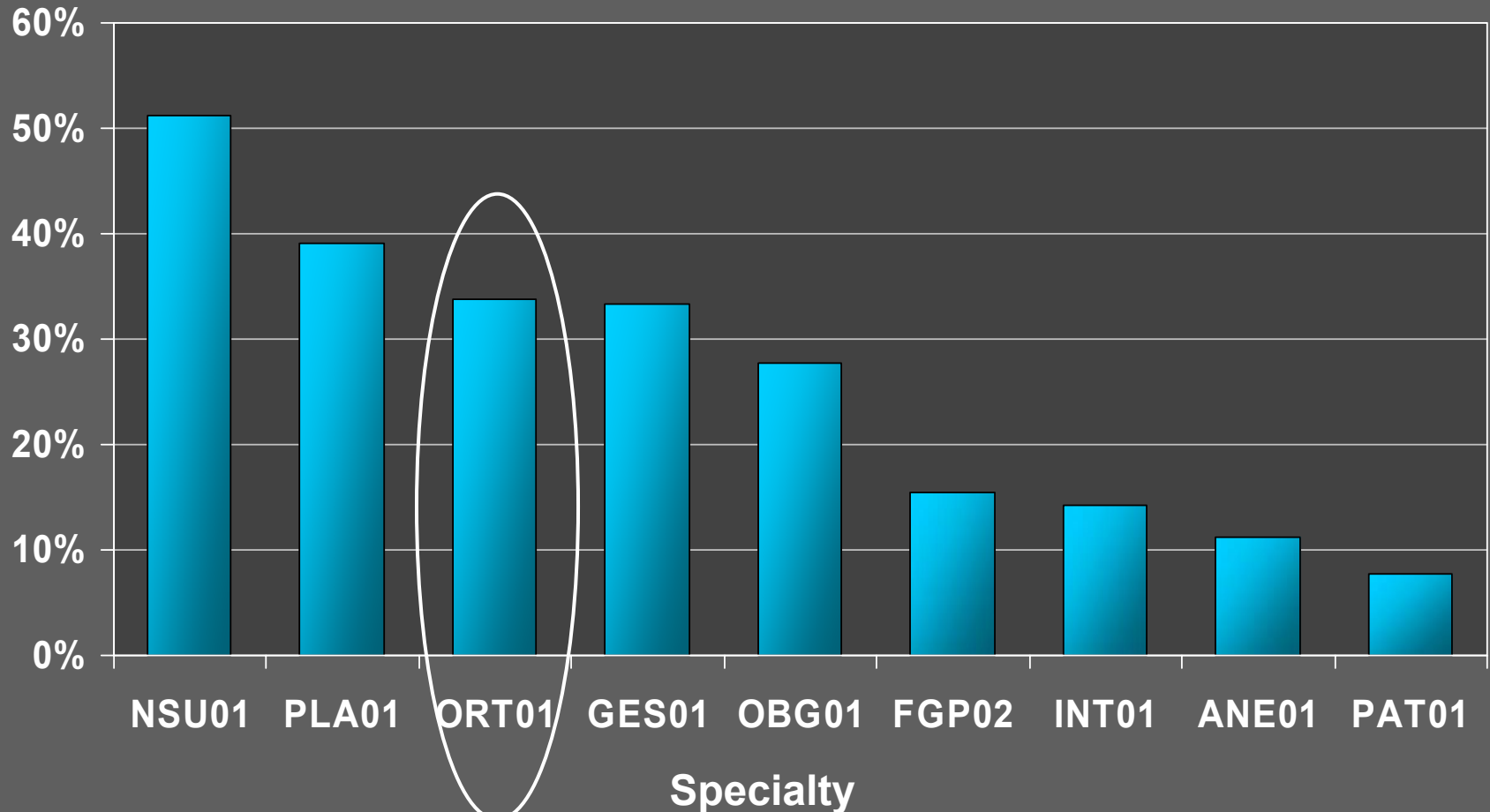
- *If by crisis you mean:*
 - The vast majority (>75%) of malpractice claims are found to be without merit
 - Malpractice premiums are becoming unaffordable
 - More than 50% of premium dollars goes to attorneys rather than to injured patients
 - The current system distorts medical decision-making and adds significantly to the cost of medical care
- *Then there is a malpractice insurance crisis, and most of the contrary argument is empty rhetoric.*

- *If by effective, you mean*
 - Rates are lower and become predictable
 - Insurance markets operate normally
 - Outlier verdicts are reduced
 - Access to the courts is preserved
 - Successful attorneys are still wealthy
- *Then MICRA-based legal reform is effective.*

Frequency by Specialty 1995-2003



Frequency



Frequency

Meaning

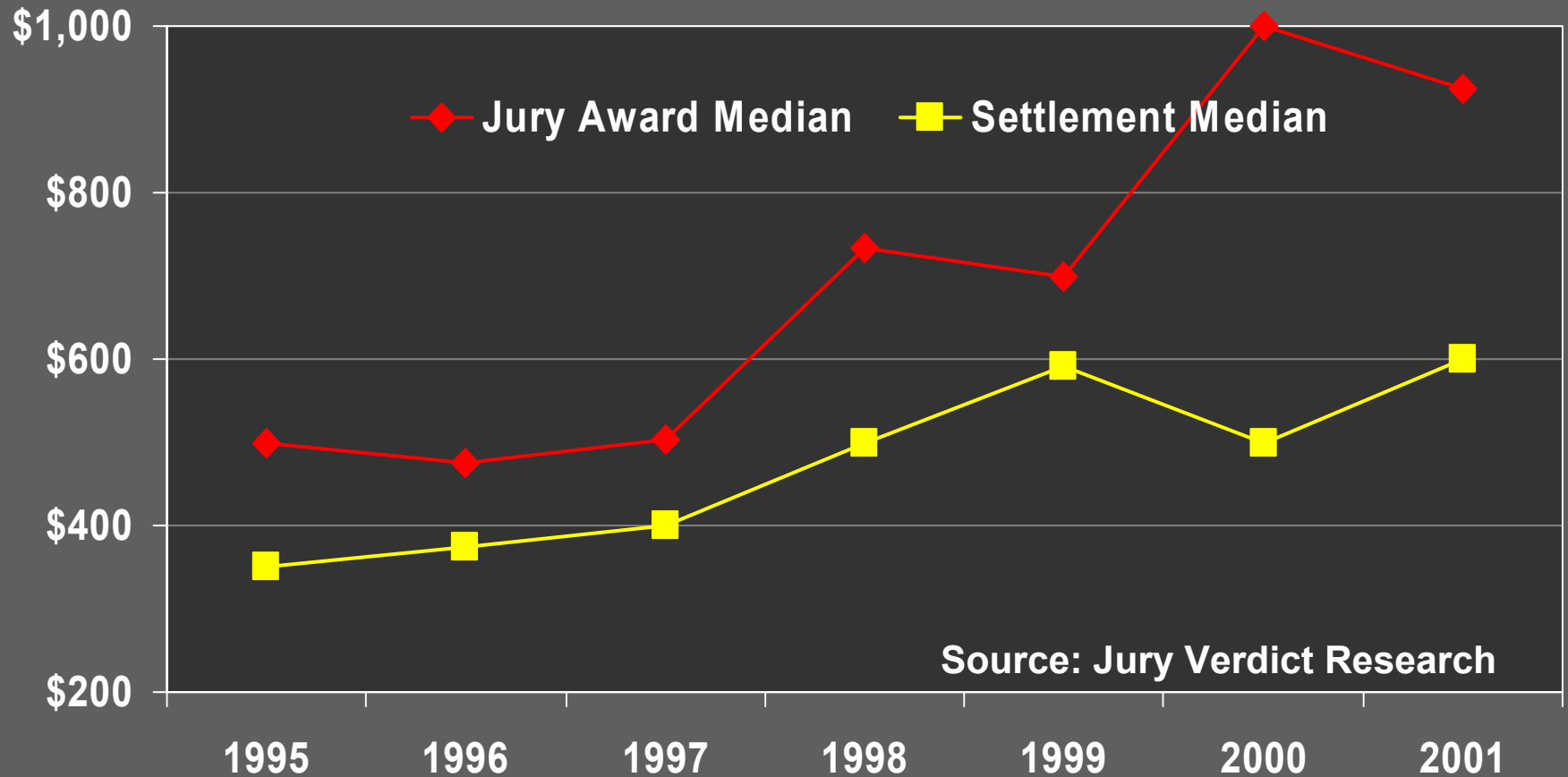
- On any given day, there are more than **125,000** malpractice suits in progress against America's 700,000 doctors.

Severity: National Medians



National Jury Award and Settlement Medians for Medical Malpractice Cases

(000's)



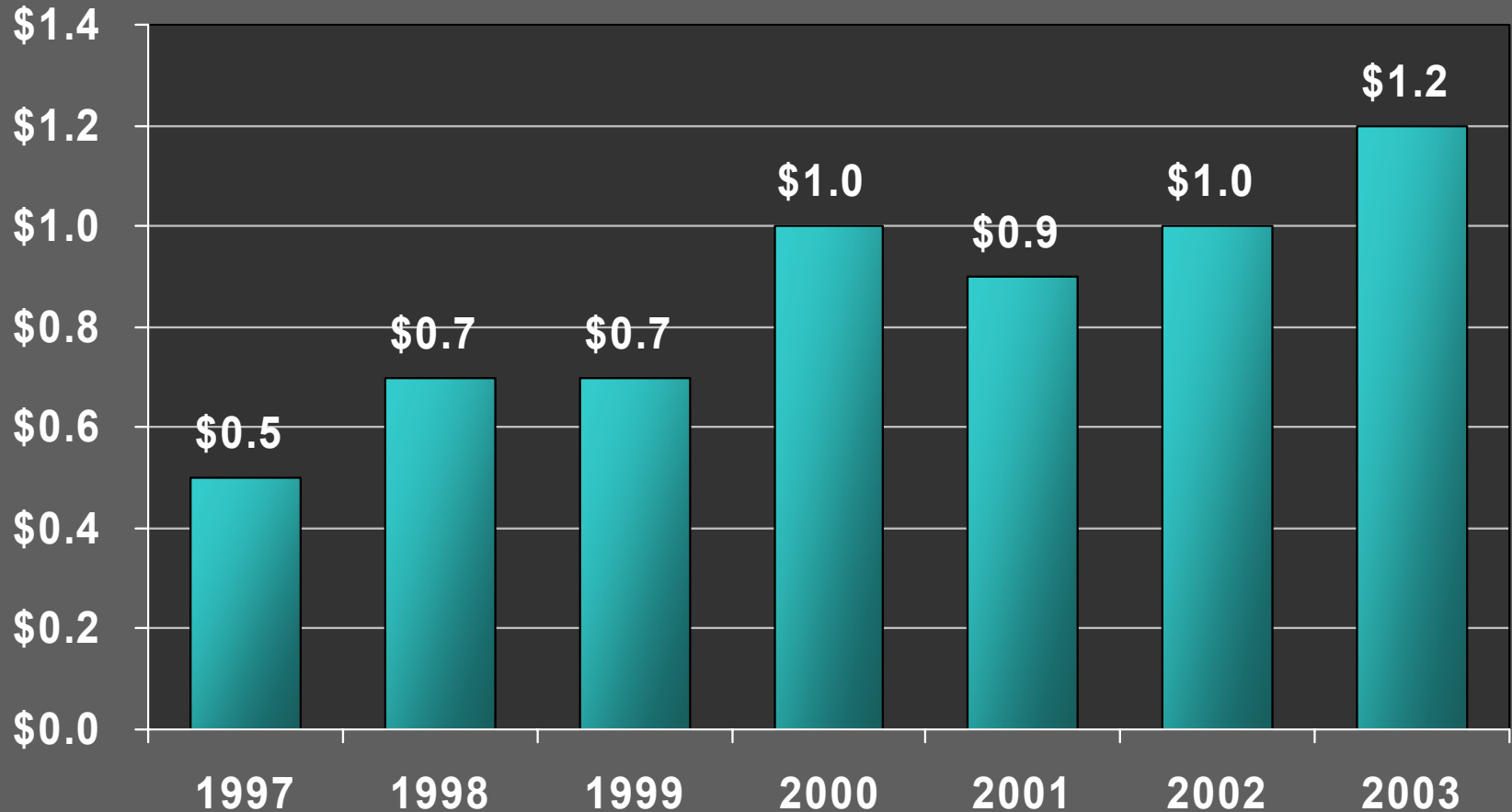
Source: Jury Verdict Research

Medical Malpractice Award Trends 1997-2003



Millions

Award Medians



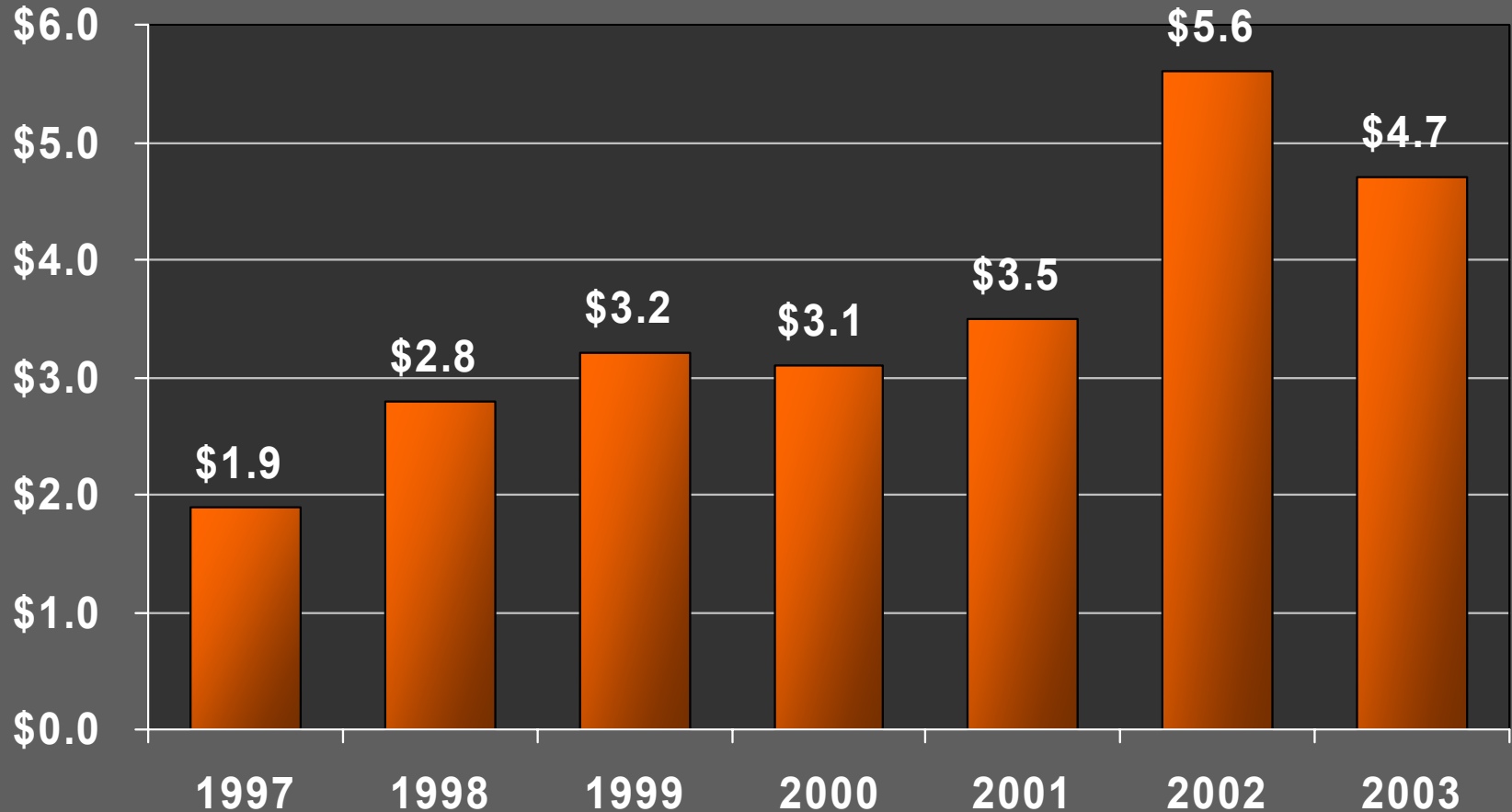
Source: Medical Liability Monitor

Medical Malpractice Award Trends 1997-2003



Millions

Award Means

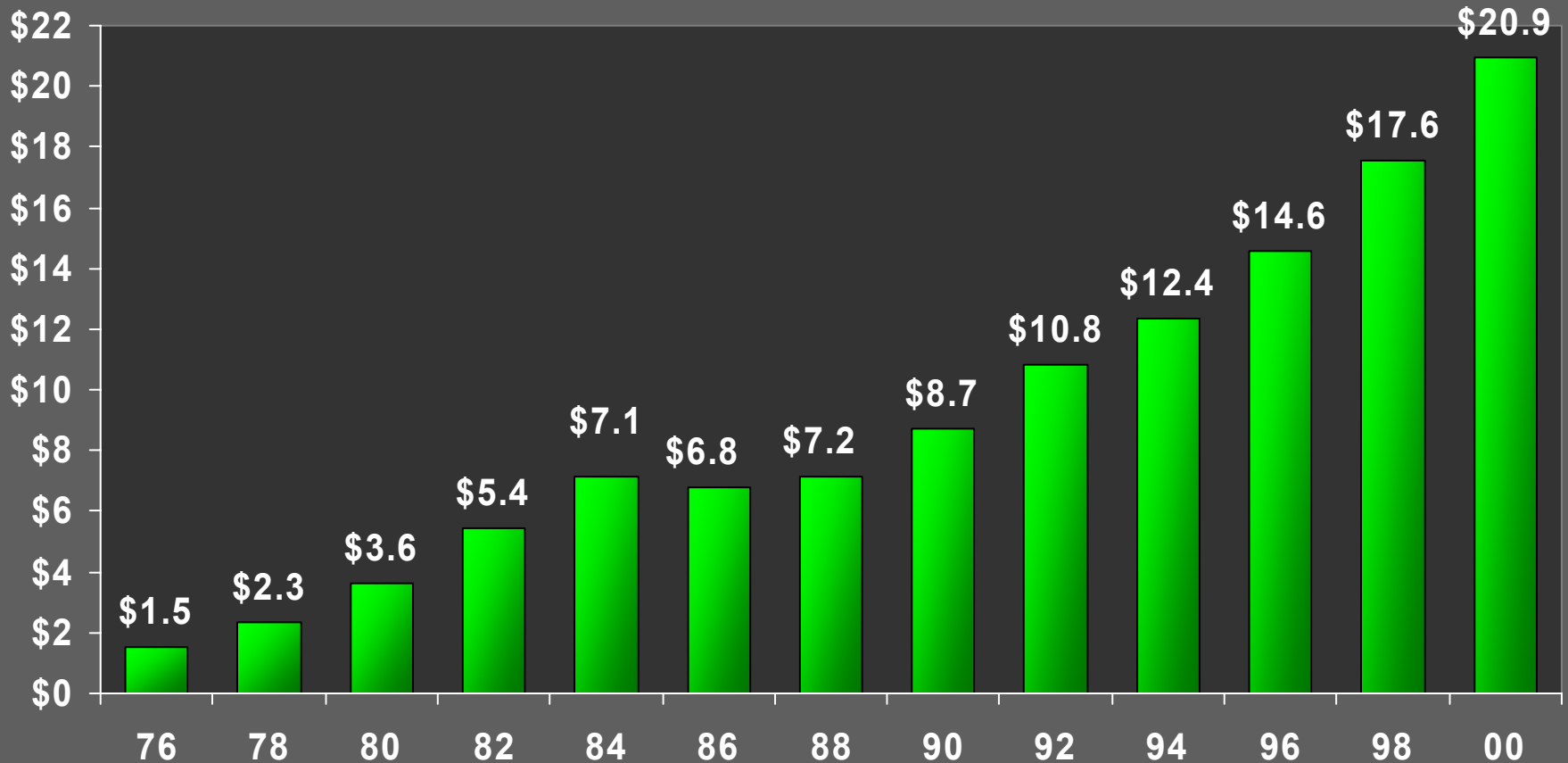


Source: Medical Liability Monitor

Medical Malpractice: Tort Cost Growth is Skyrocketing



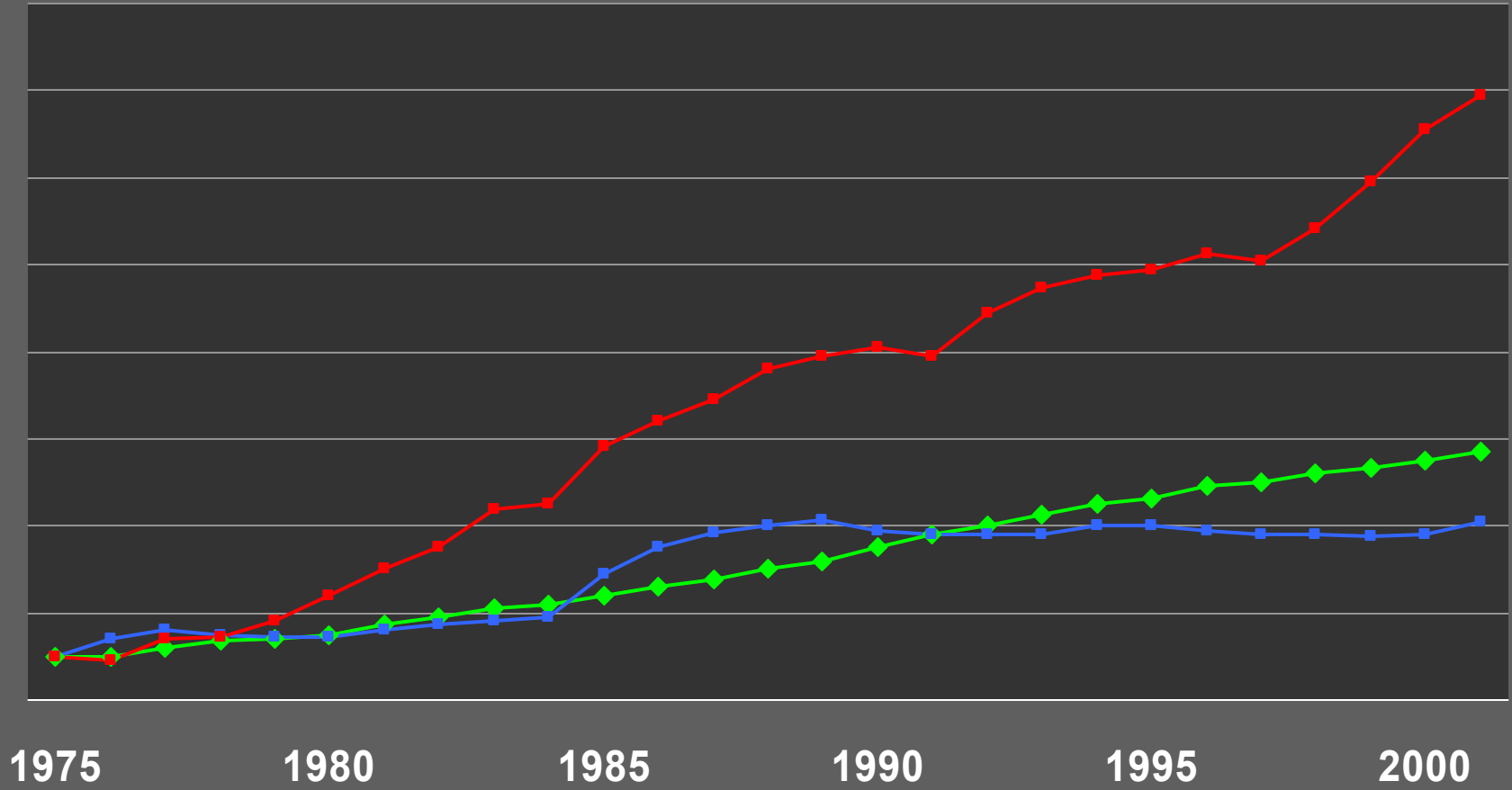
\$ Billions



Inflation and Per Doctor Premiums and Losses

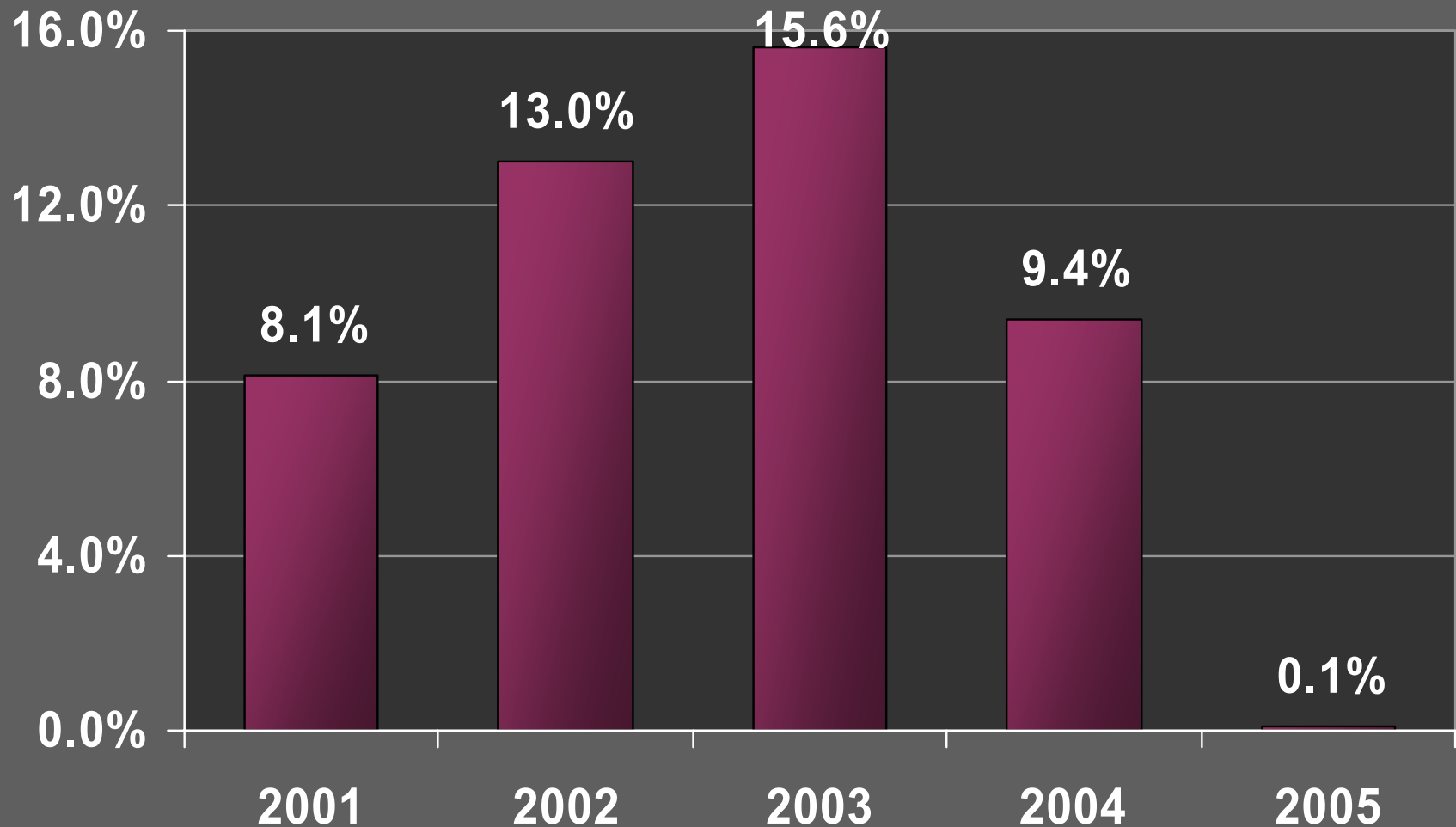


◆ Consumer Price Index ■ Premium/Doctor ◆ Paid Losses/Doctor



Source: Brown Brothers Harriman

TDC Nationwide Average Rate Changes – Orthopedic Surgery



Tort Reform

- California's Litigation Fairness (U.S. Chamber 2003): 44th among the 50 states.
 - Bottom 5 in:
 - Jury predictability
 - Punitive damages
 - Class action lawsuits

Goals and Benefits



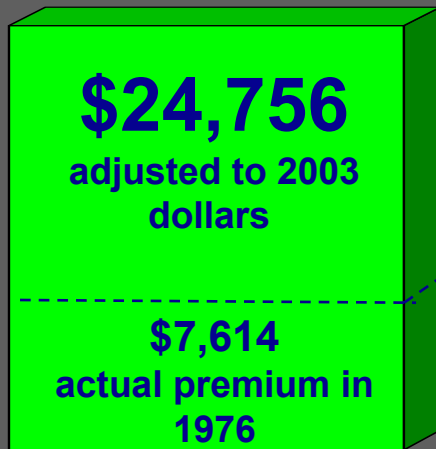
- **Sustainable** insurance system providing full indemnification of actual loss
- **More** money for injured patients
- **Faster** settlements
- Preserves **access** to medical care without impeding access to courts for truly injured patients
- Society does not incur **double** costs
- **Assures** money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

- 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.

MICRA Helps Reduce California Medical Liability Premium Rates by 33%



The Doctors' Company 1976-2004



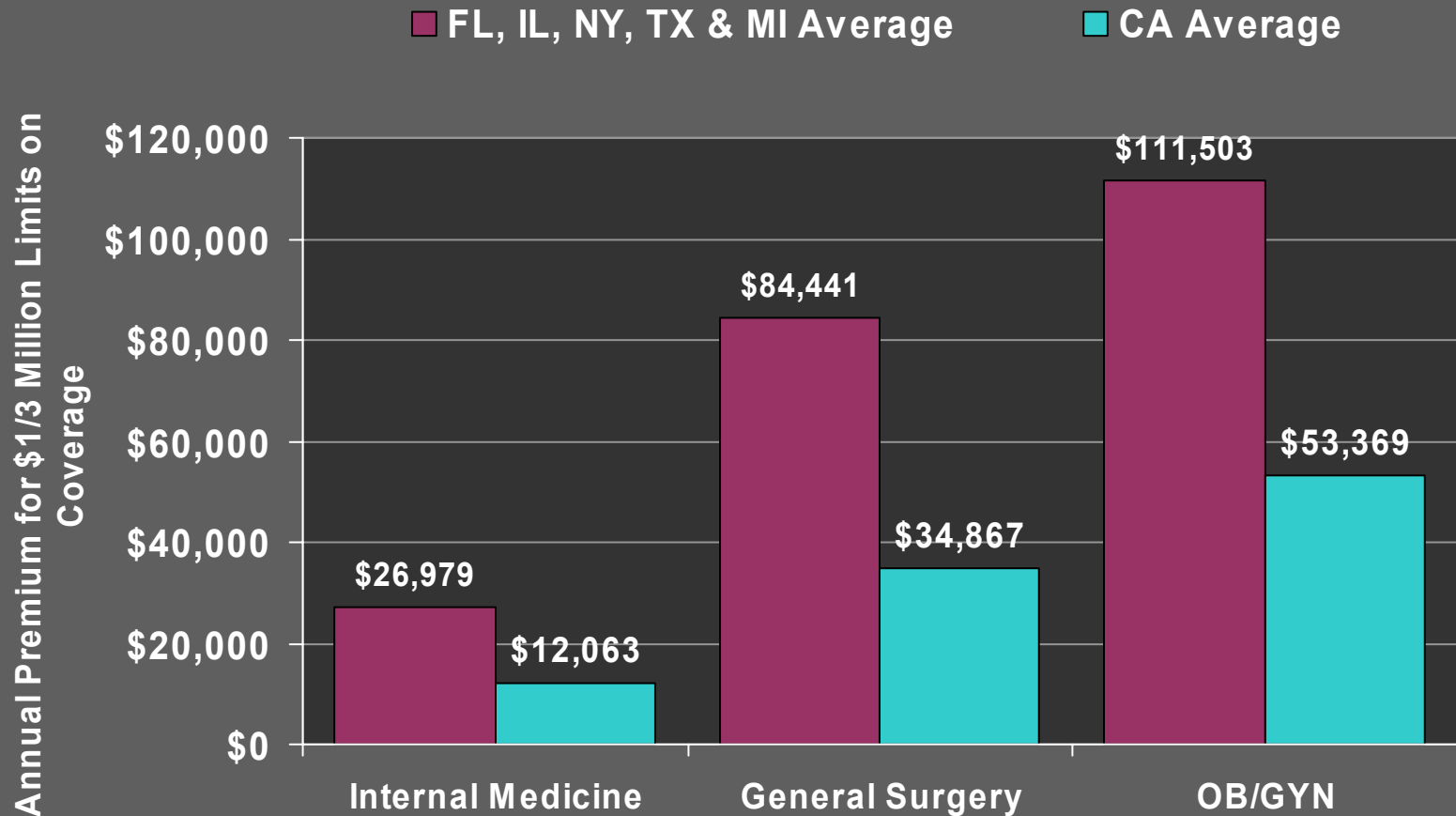
Average Premium 1976*



Average Premium 2004

* \$7,614 average premium adjusted to 2003 dollars based on the Average Consumer Price Index for a \$1 Million/ \$3 Million Claims-Made Policy Premium

California vs. Other States

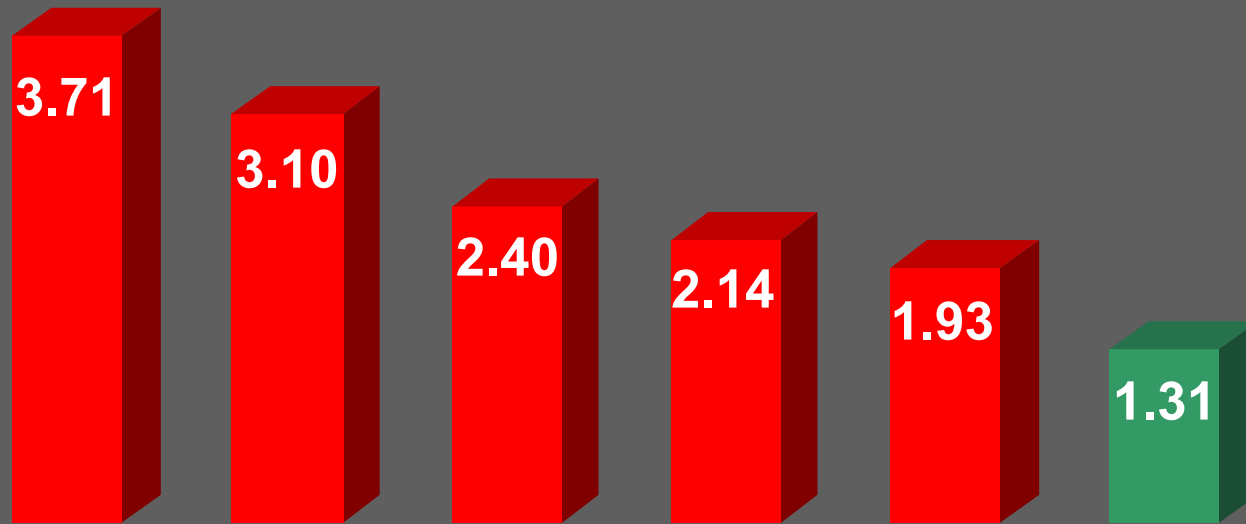


Source: 2003 Medical Liability Monitor

MICRA Reduces Verdict Cost and Frequency



\$1 Million+ Verdicts Per 1,000 Doctors



NY

NJ

OH

FL

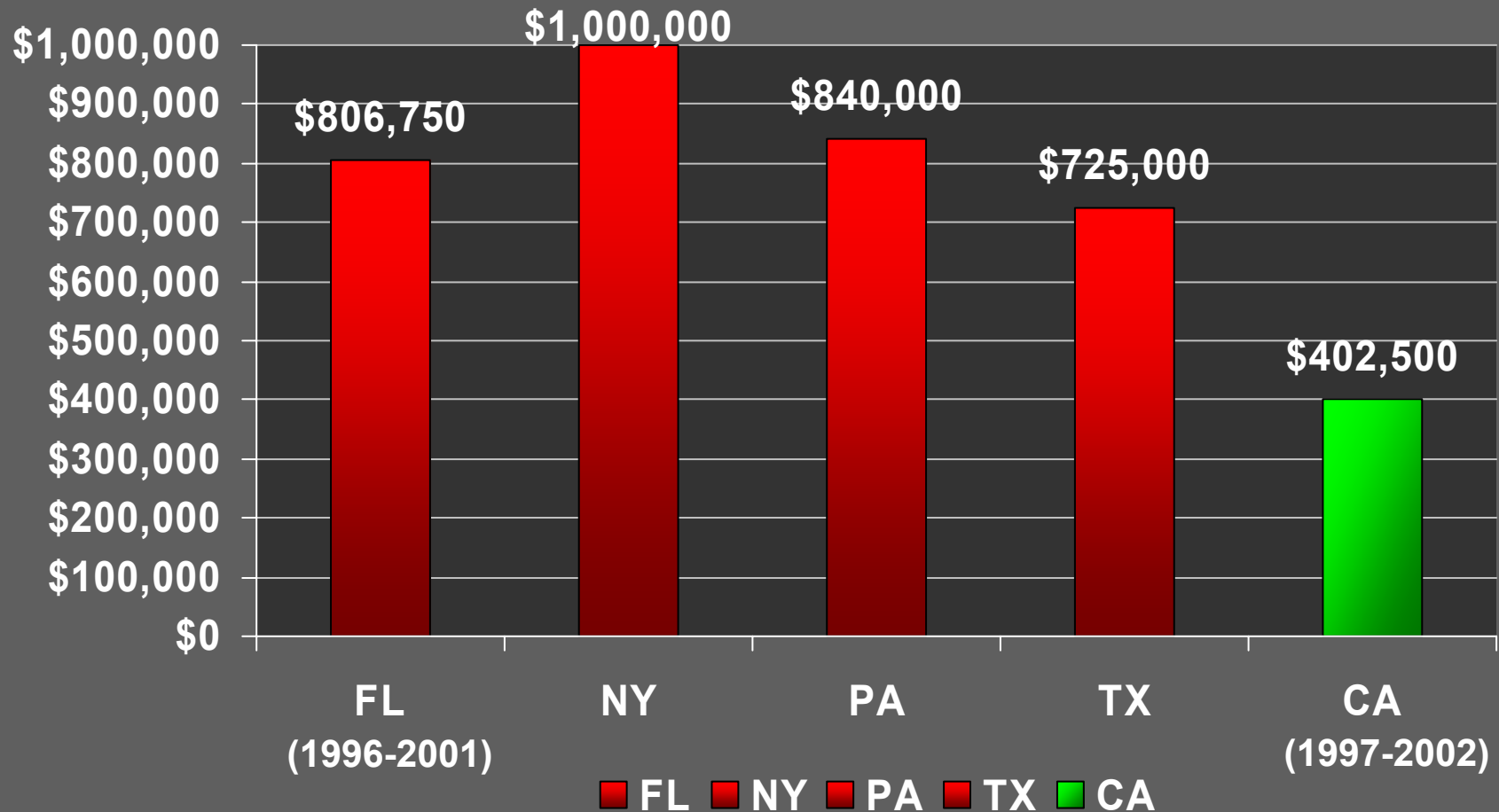
Nat'l

CA

Avg
ex CA

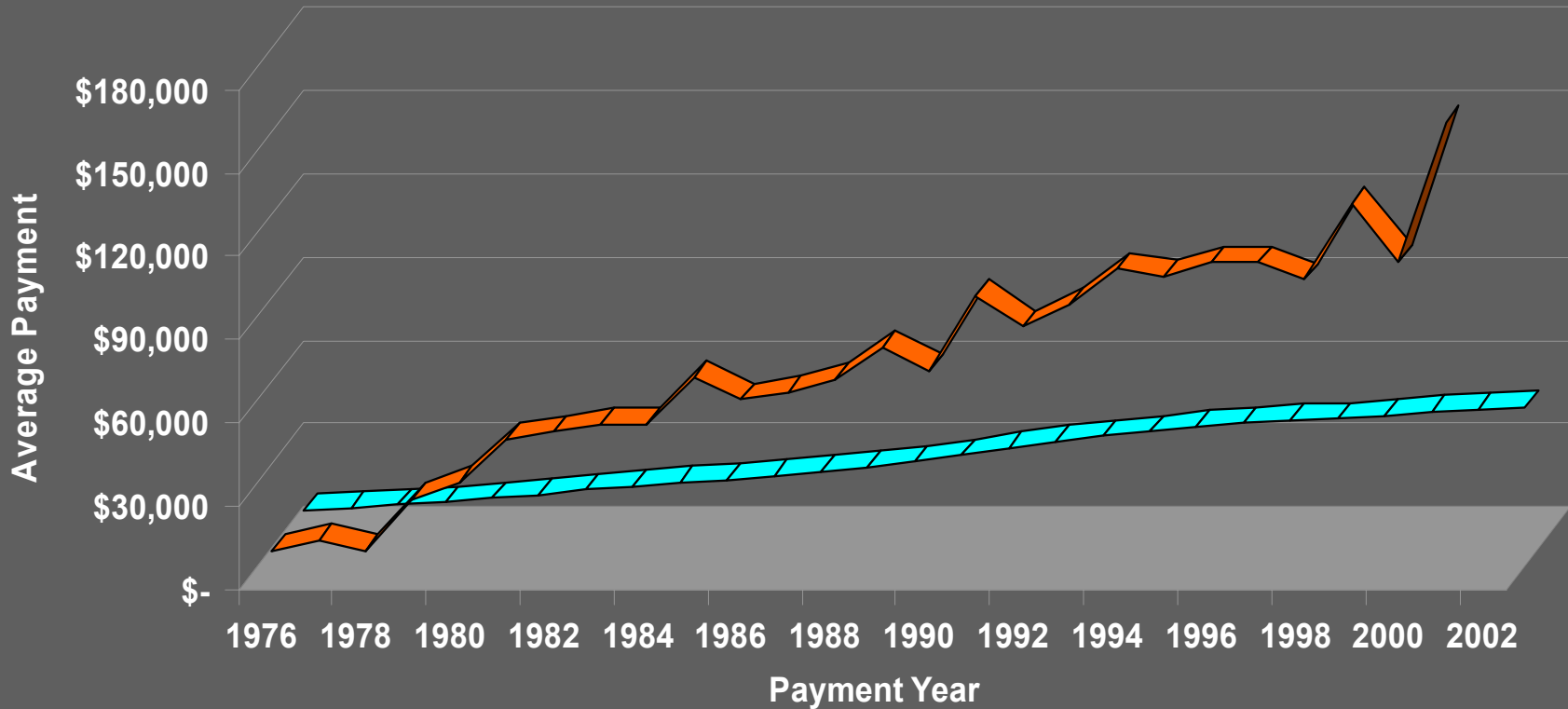
Sources: Jury Verdict Research,
AMA



MICRA: Median Med Mal Jury Awards 1996-2002



Source: Jury Verdict Research

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

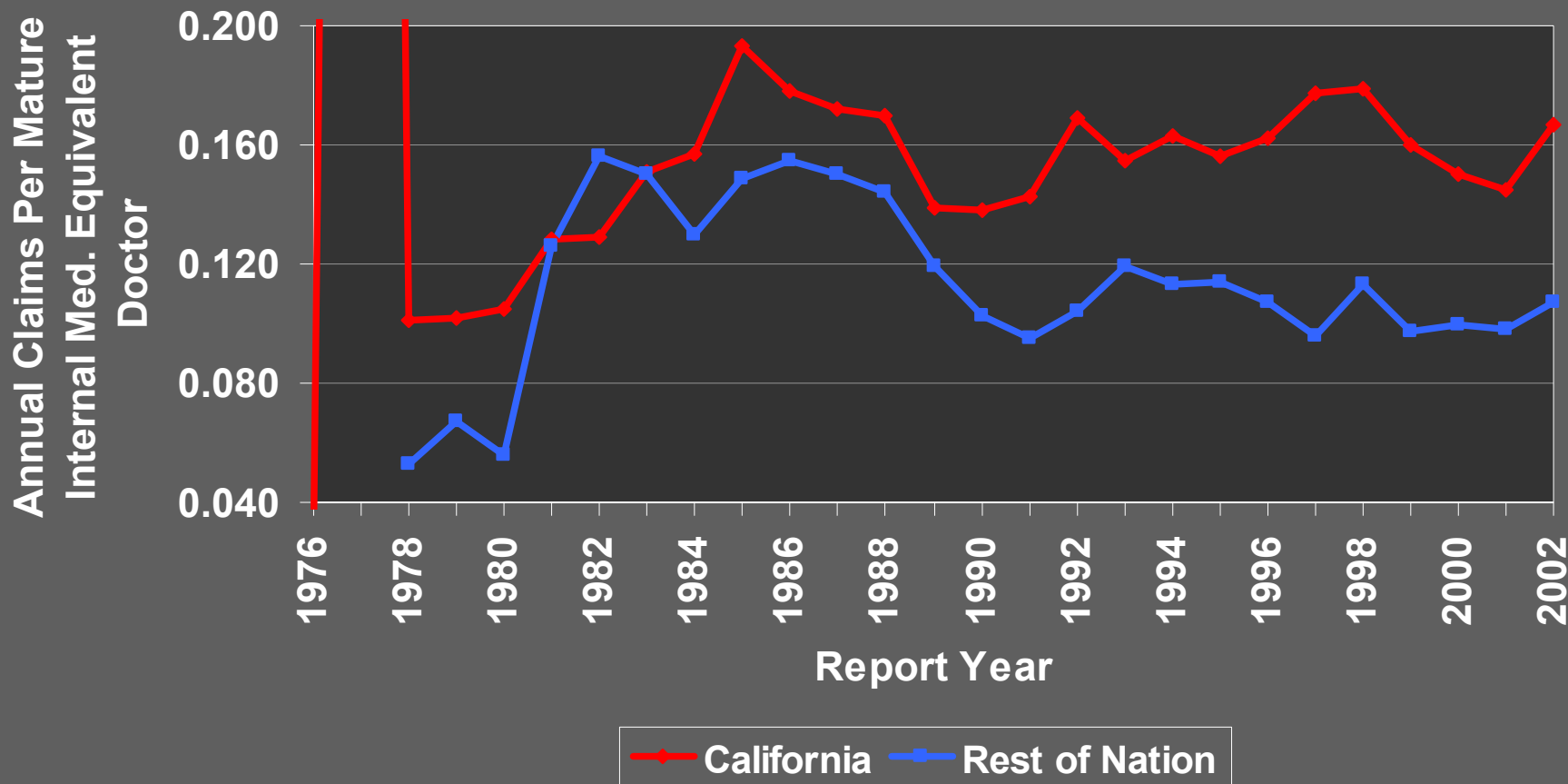


-  Actual average physician medical liability claim paid in CA 1976-2001.
-  Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.

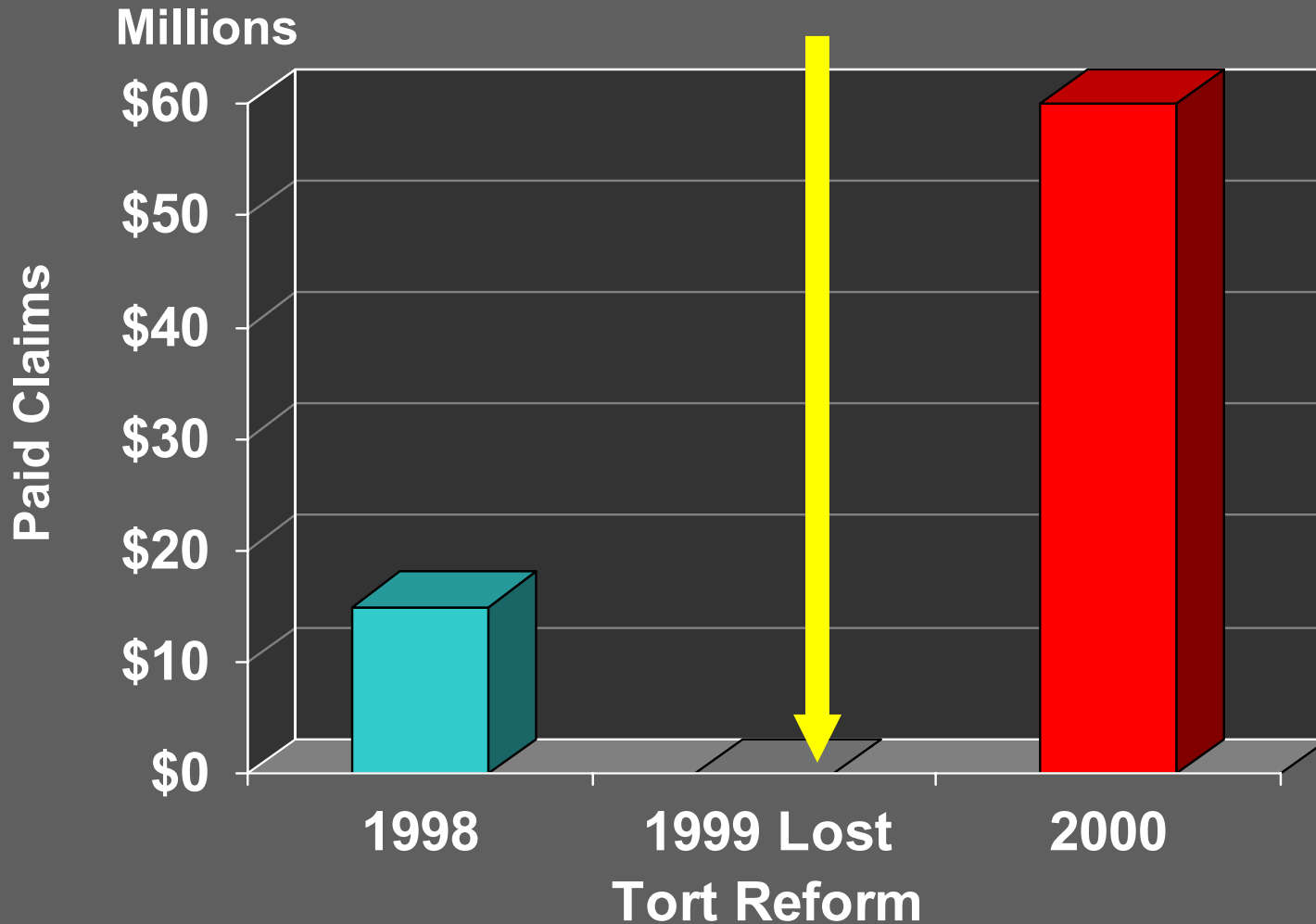
MICRA Does Not Limit Access to Courts



TDC PHYSICIAN CLAIM FREQUENCY



Oregon and the Loss of Tort Reform



Isn't the Tort System Helpful in Improving Medical Quality?



- After 30 years of legal assault on the medical profession, what have we to show for it?
- Would we tolerate a policeman who made false arrests 80% of the time, or a prosecutor who went after the innocent 80% of the time?

Summary

- *The cause of the crisis in medical malpractice insurance is too many non-meritorious claims coupled with a dramatic increase in the cost of the relatively few successful claims.*
 - *Unlimited liabilities must be paid by unlimited premiums*
 - *It is not possible to insure infinity*
- *Real legal reforms are proven effective*