

Medical Malpractice and Tort Reform: Crisis or Rhetoric?

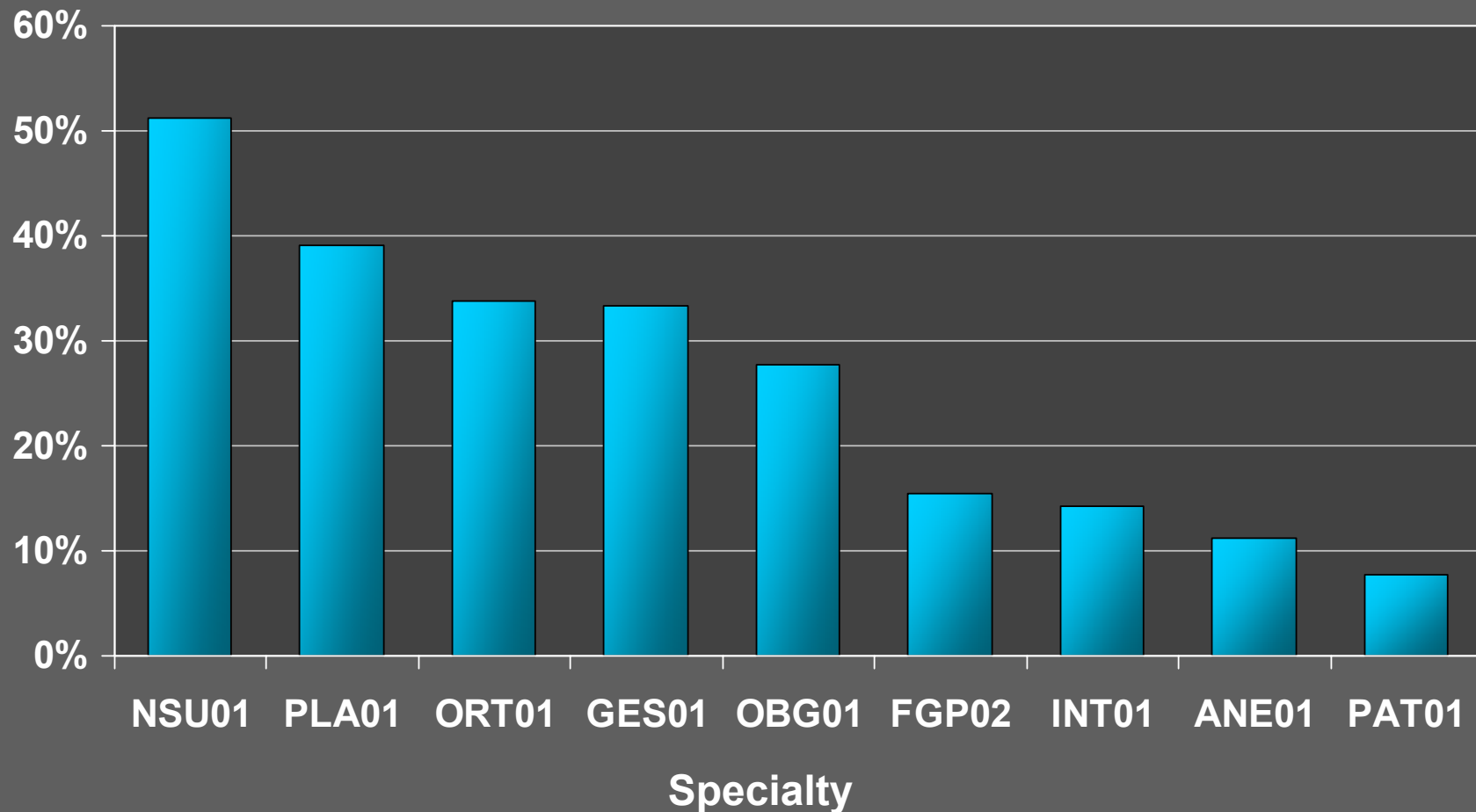
- Richard E. Anderson, M.D., F.A.C.P.
- Chairman/CEO, The Doctors Company
- April 13, 2005

- *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.*

Frequency by Specialty 1995-2003



Frequency



Frequency

Meaning

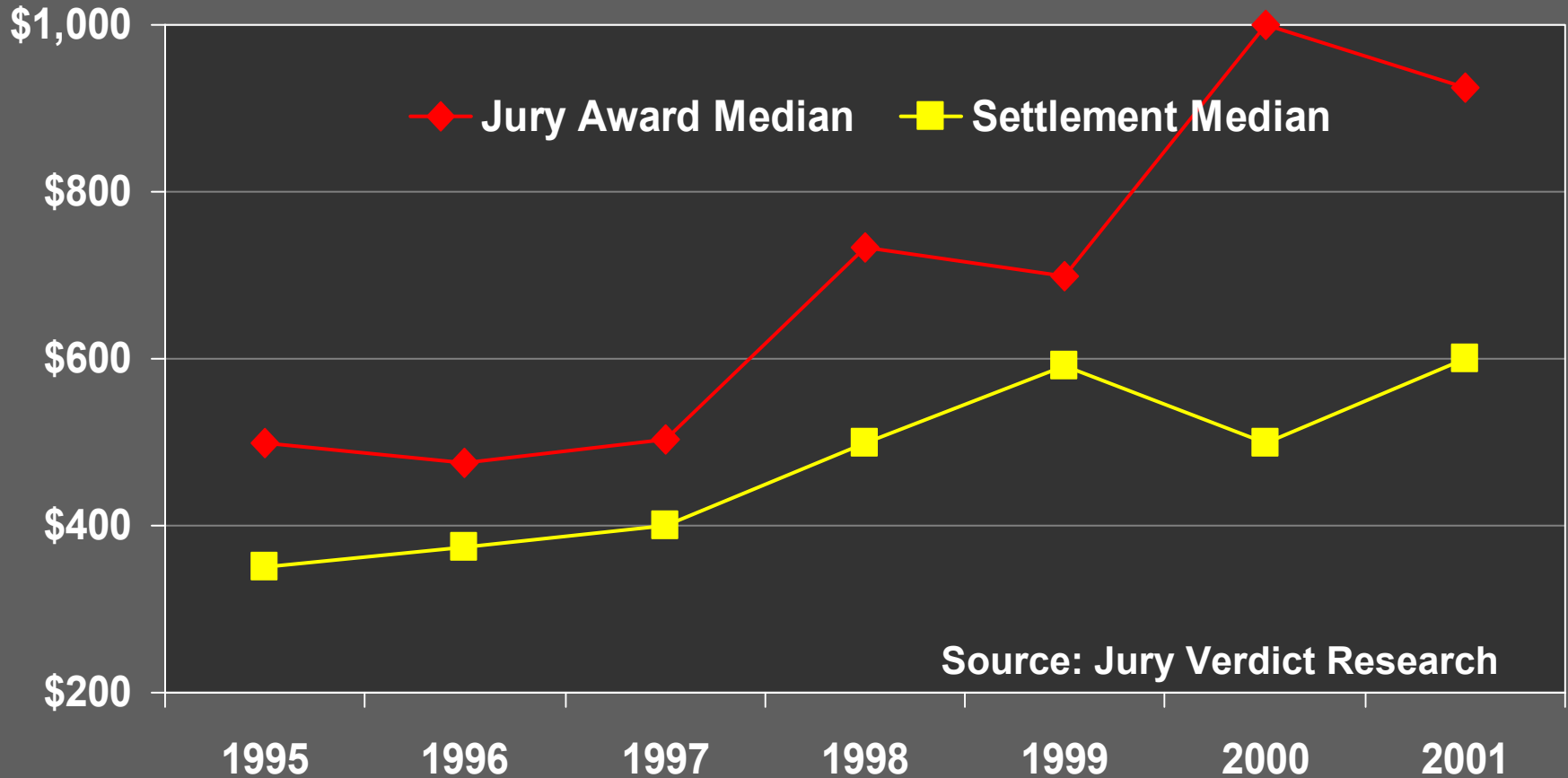
- On any given day, there are more than **125,000** malpractice suits in progress against America's 700,000 doctors.

Severity: National Medians



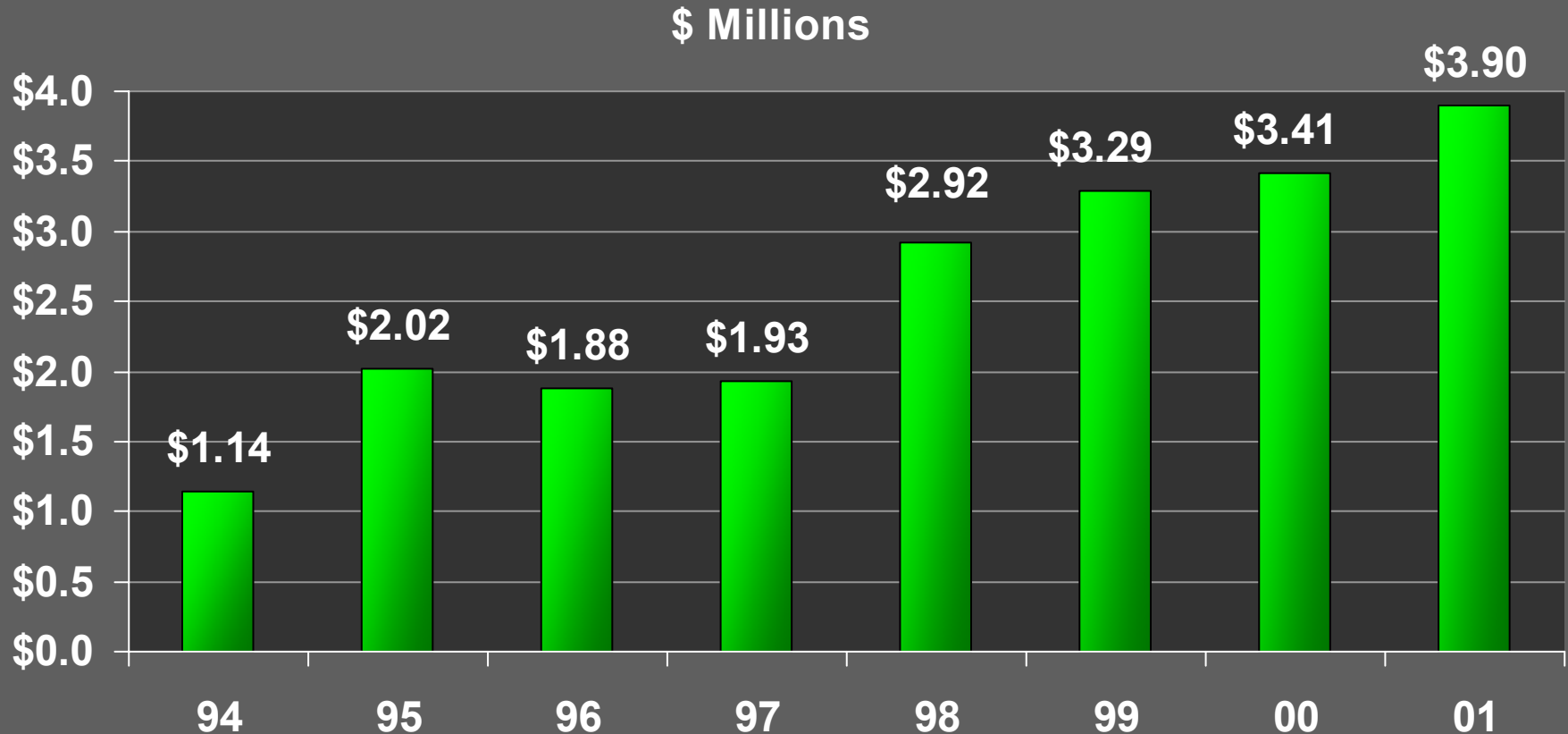
National Jury Award and Settlement Medians for Medical Malpractice Cases

(000's)



Source: Jury Verdict Research

Average Jury Award in Medical Malpractice Cases

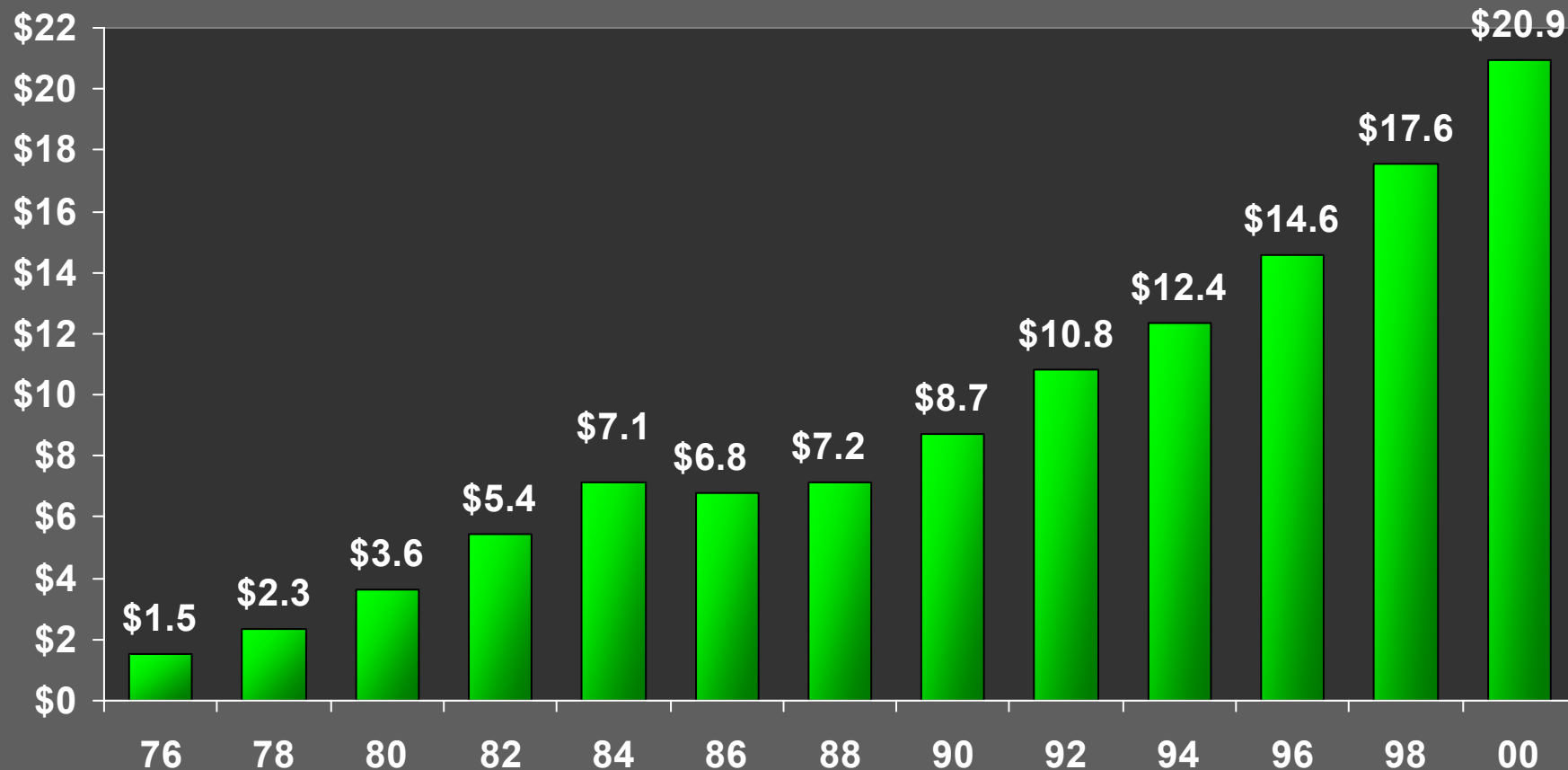


Source: Jury Verdict Research; Insurance Information Institute.

Medical Malpractice: Tort Cost Growth is Skyrocketing



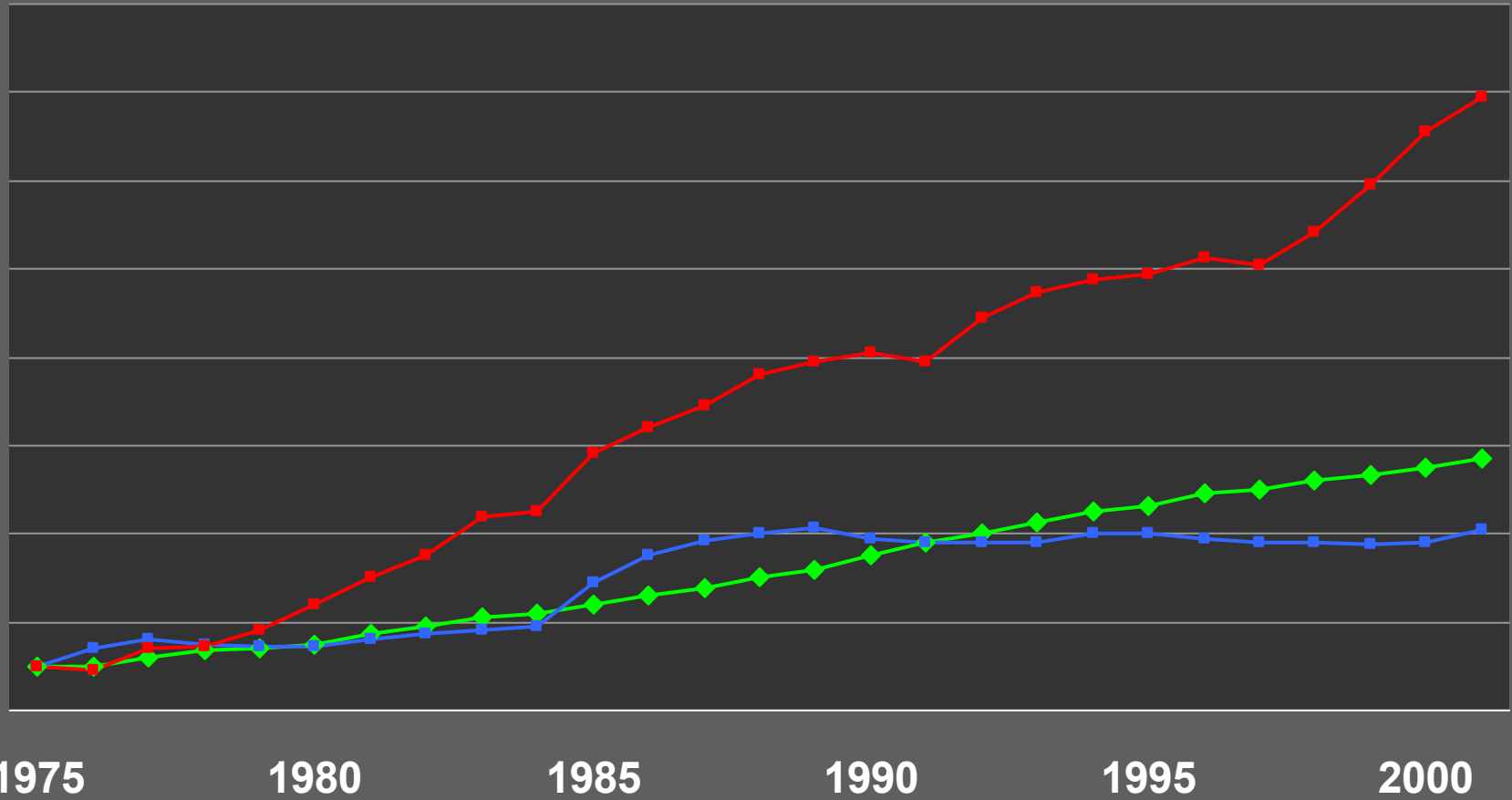
\$ Billions



Inflation and Per Doctor Premiums and Losses

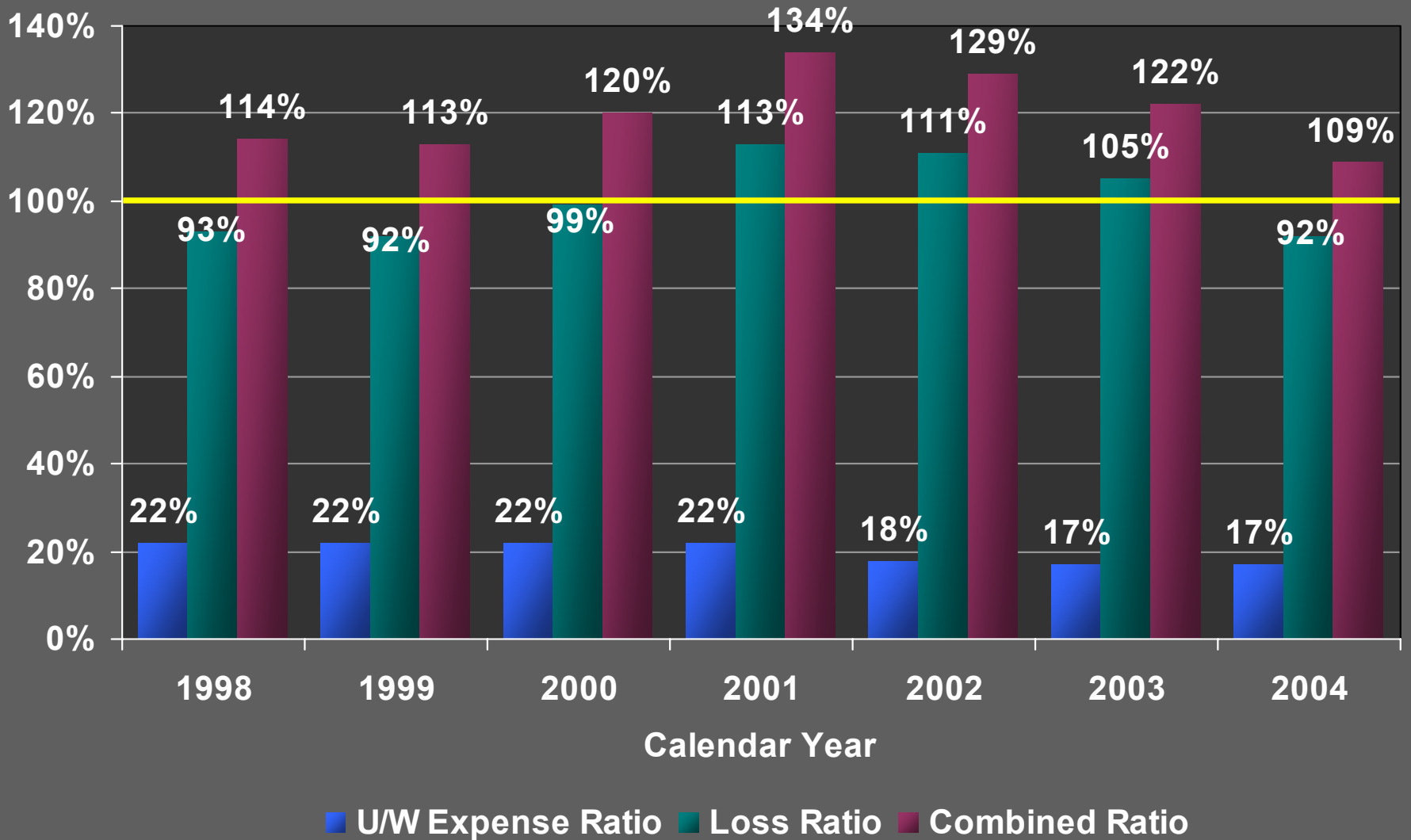


◆ Consumer Price Index ■ Premium/Doctor ◆ Paid Losses/Doctor



Source: Brown Brothers Harriman

Industry Results



Harvard, IOM, and Patient Safety

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: The Actual Claims



- 51 claims
- 8 involved “negligent adverse event”
- *26 involved no medical injury at all*

Harvard Study

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

- Harvard Medical Practice Study (1996):
No correlation whatever between the presence or absence of medical negligence and outcome of malpractice litigation

- 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*



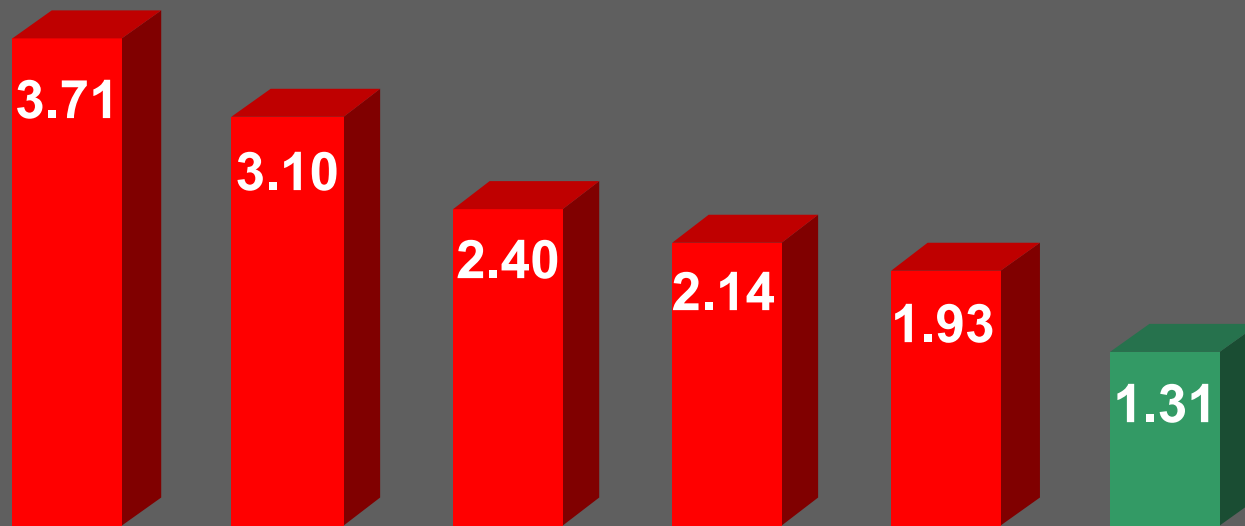
Average Premium 2004

* \$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

MICRA Reduces Verdict Cost and Frequency



\$1 Million+ Verdicts Per 1,000 Doctors



NY

NJ

OH

FL

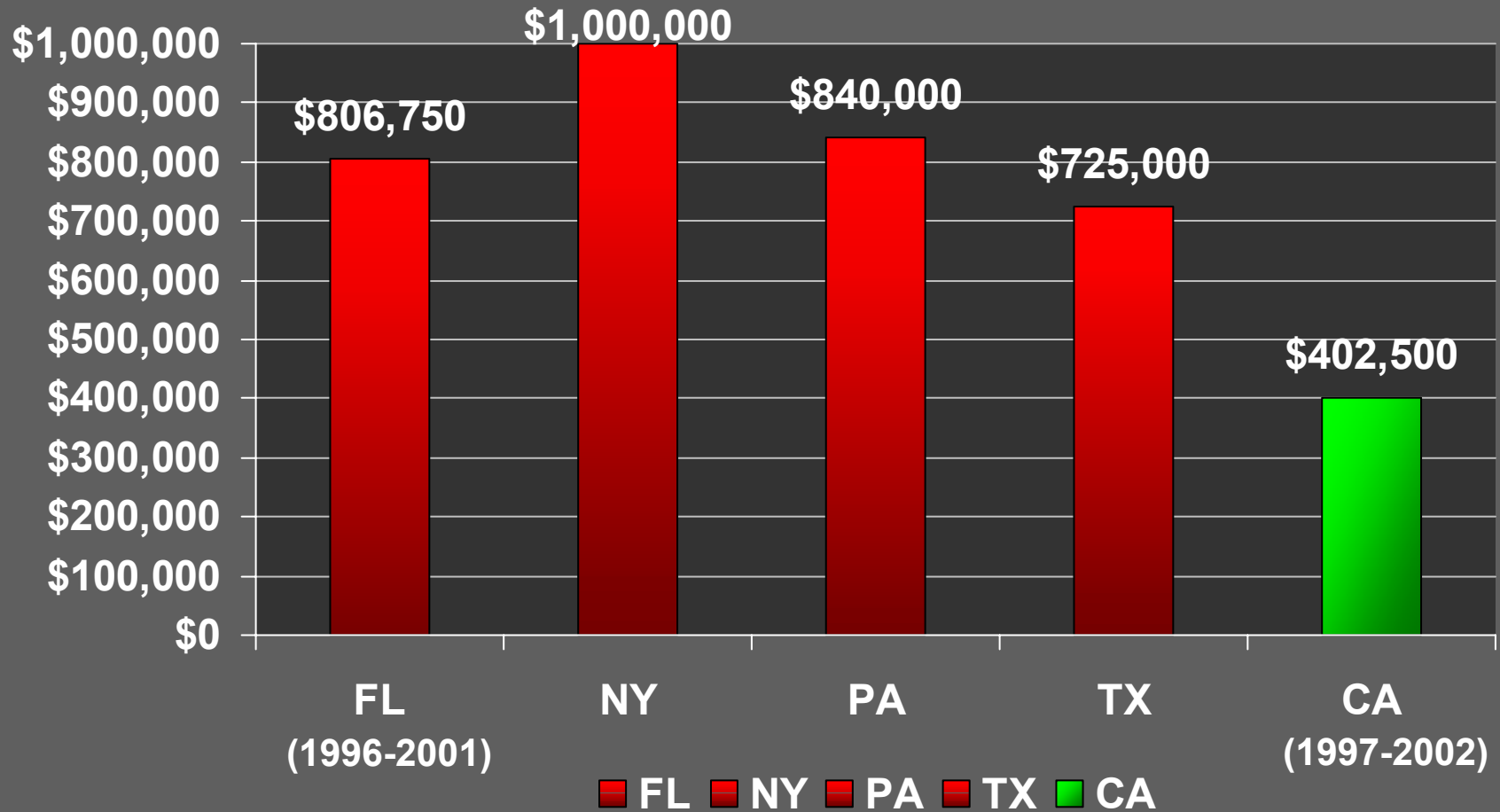
Nat'l

CA

Avg
ex CA

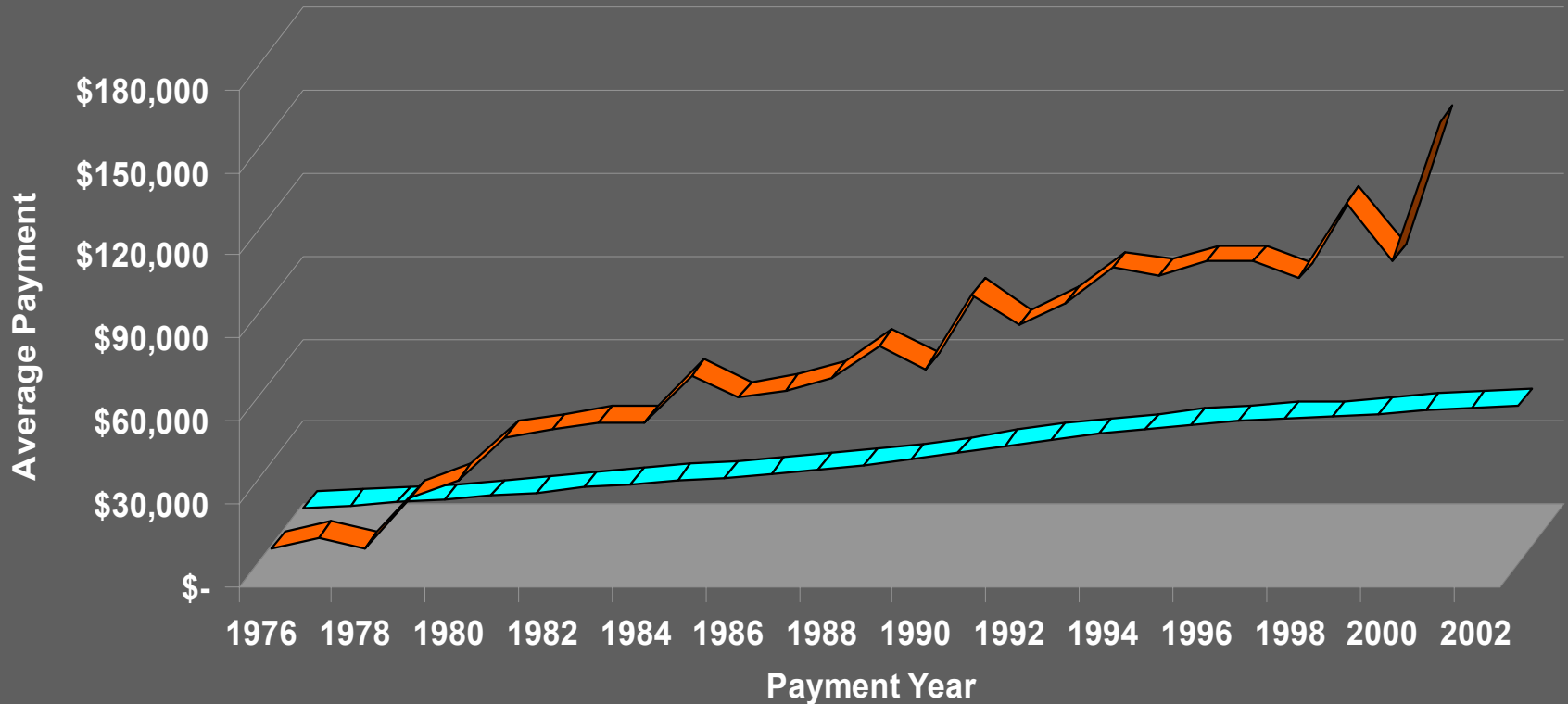
Sources: Jury Verdict Research,
AMA



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

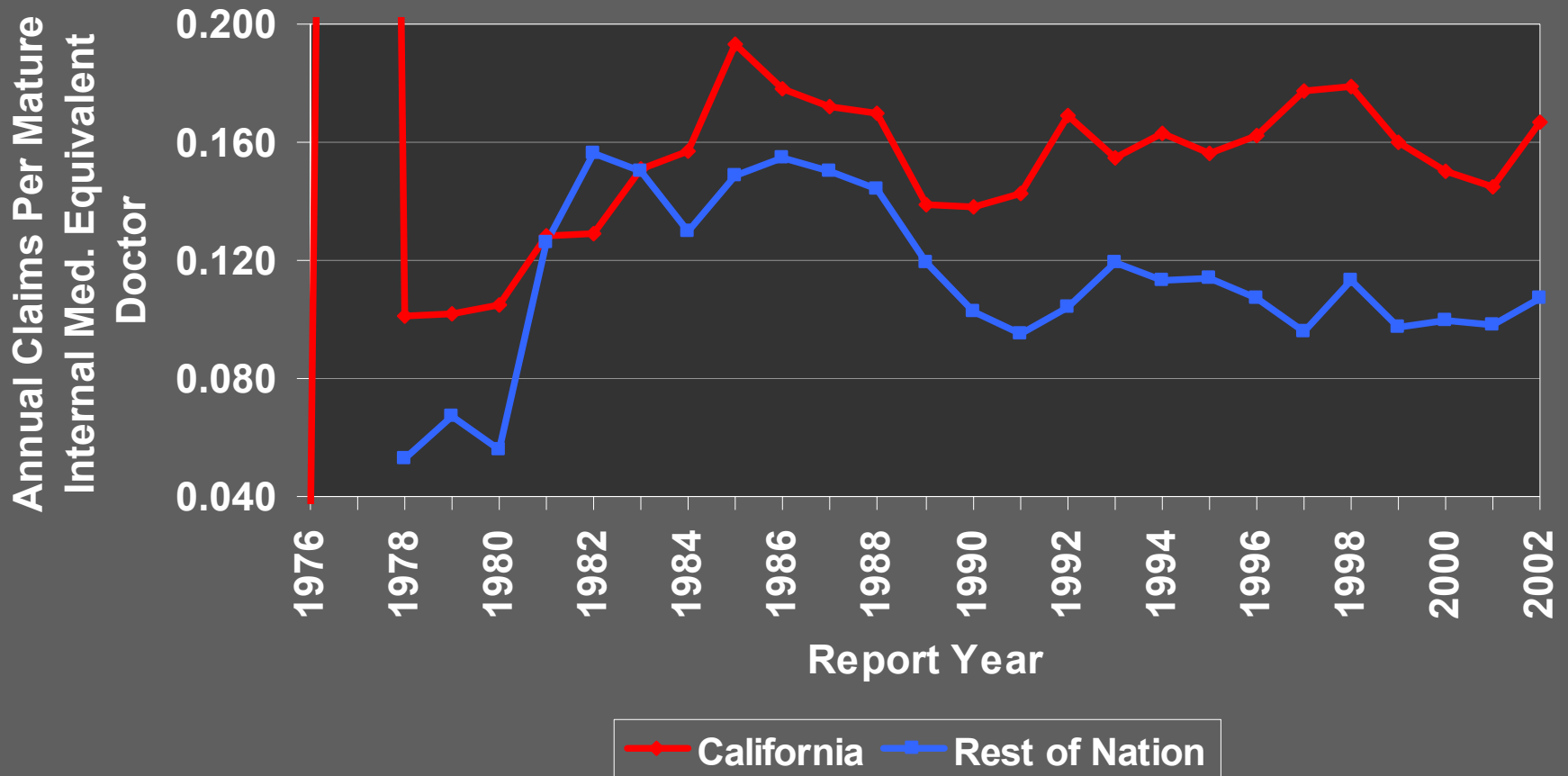


-  Actual average physician medical liability claim paid in CA 1976-2001.
-  Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.

MICRA Does Not Limit Access to Courts



TDC PHYSICIAN CLAIM FREQUENCY



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

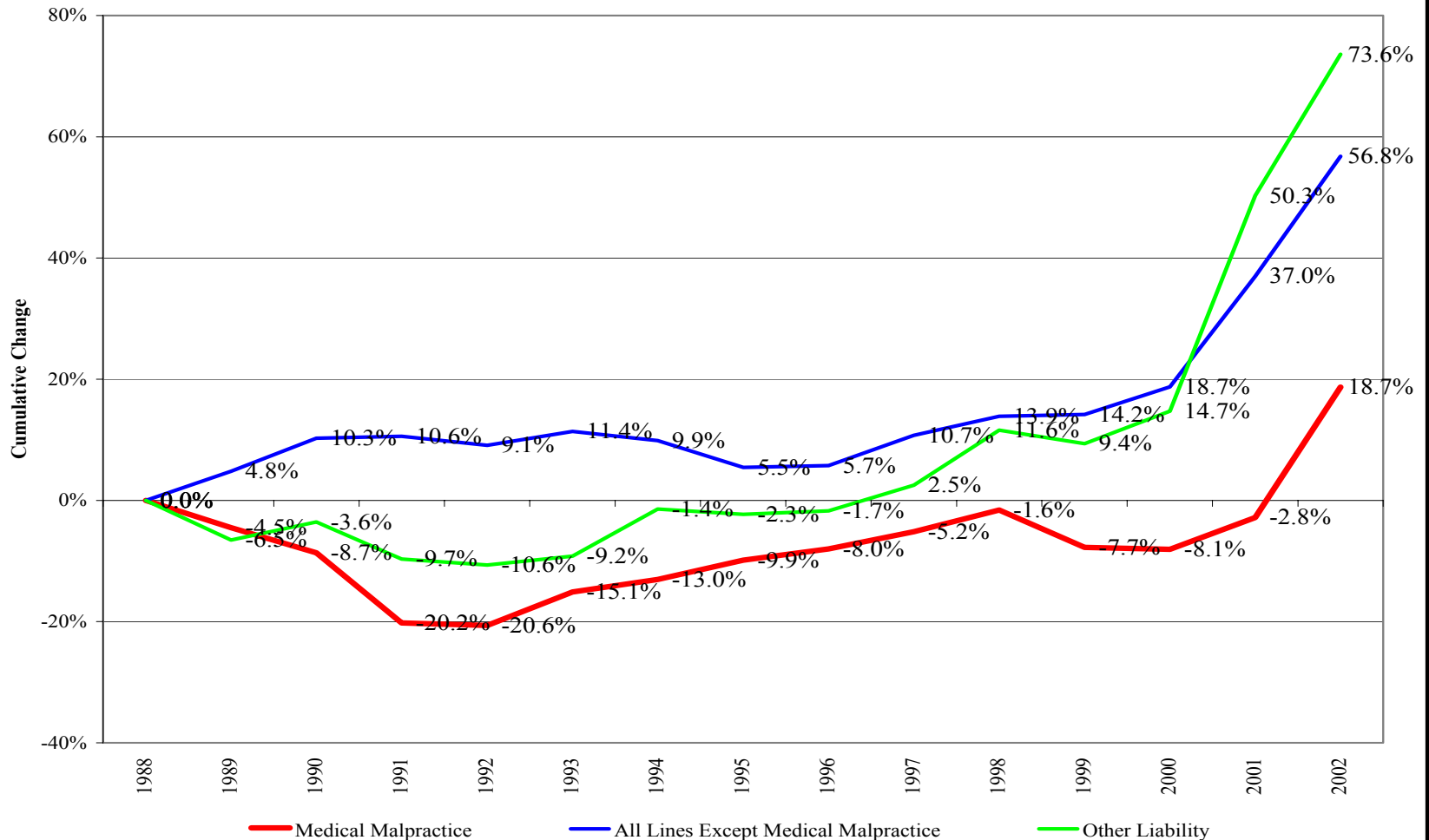


- After 30 years of legal assault on the medical profession, what have we to show for it?
- Would we tolerate a policeman who made false arrests 80% of the time, or a prosecutor who went after the innocent 80% of the time?

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.*

Prop 103 and Medical Malpractice Rates



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.

