

Malpractice Crisis of 2002-2003

AANS

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Context

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

Cost of coverage

Trail lawyer disinformation

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

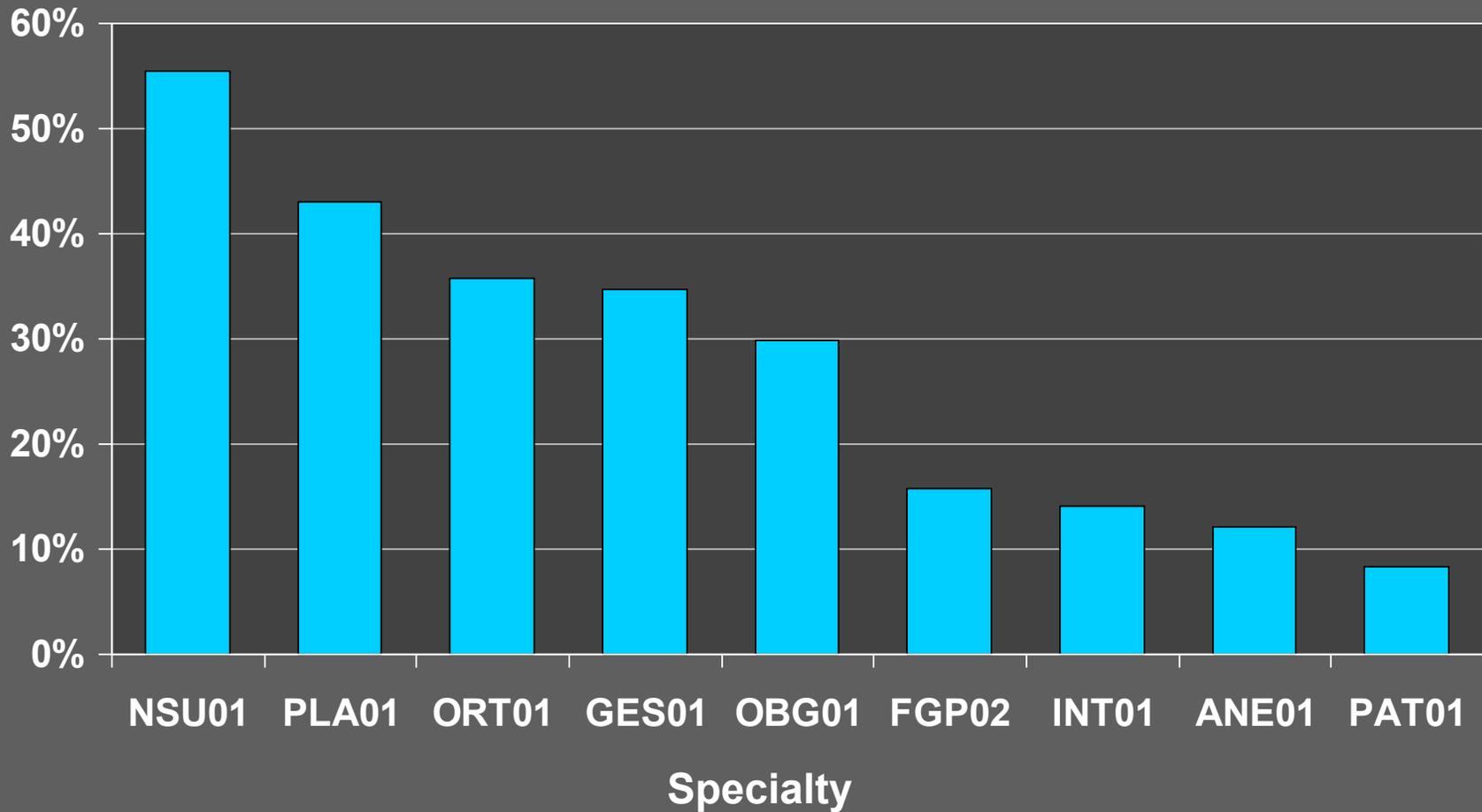


13. MIIX – Ceased operations, placed in runoff
14. MMI – Financial distress merger
15. PHICO – Insolvent
16. PIE Mutual – Insolvent
17. Princeton – Withdrew from medmal in PA
18. Professional Medical – Insolvent
19. Reliance – Insolvent
20. Safeco – Withdrew from physician business
21. SCOR Re – Withdrew 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

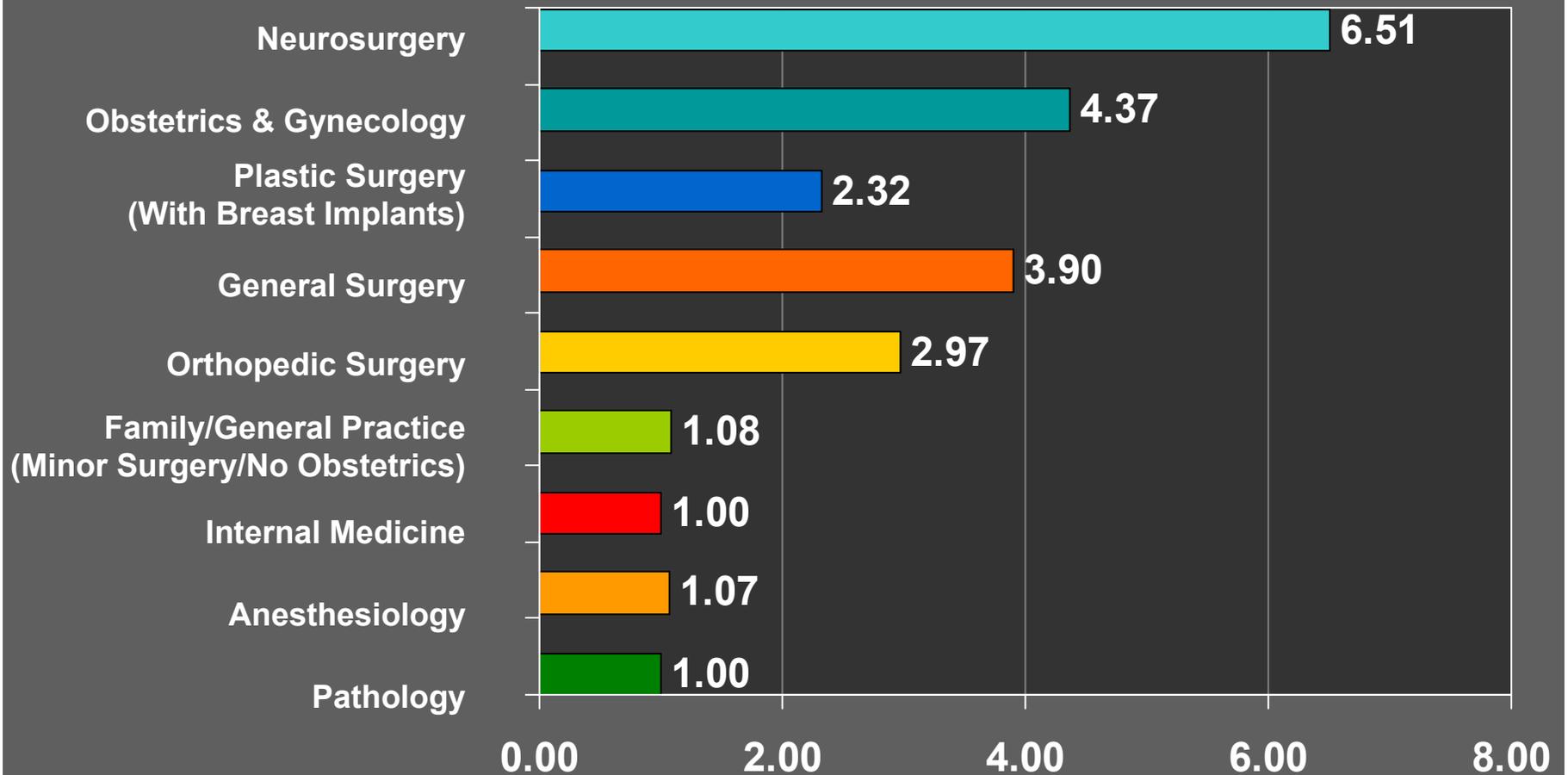
Frequency by Specialty 1995-2001



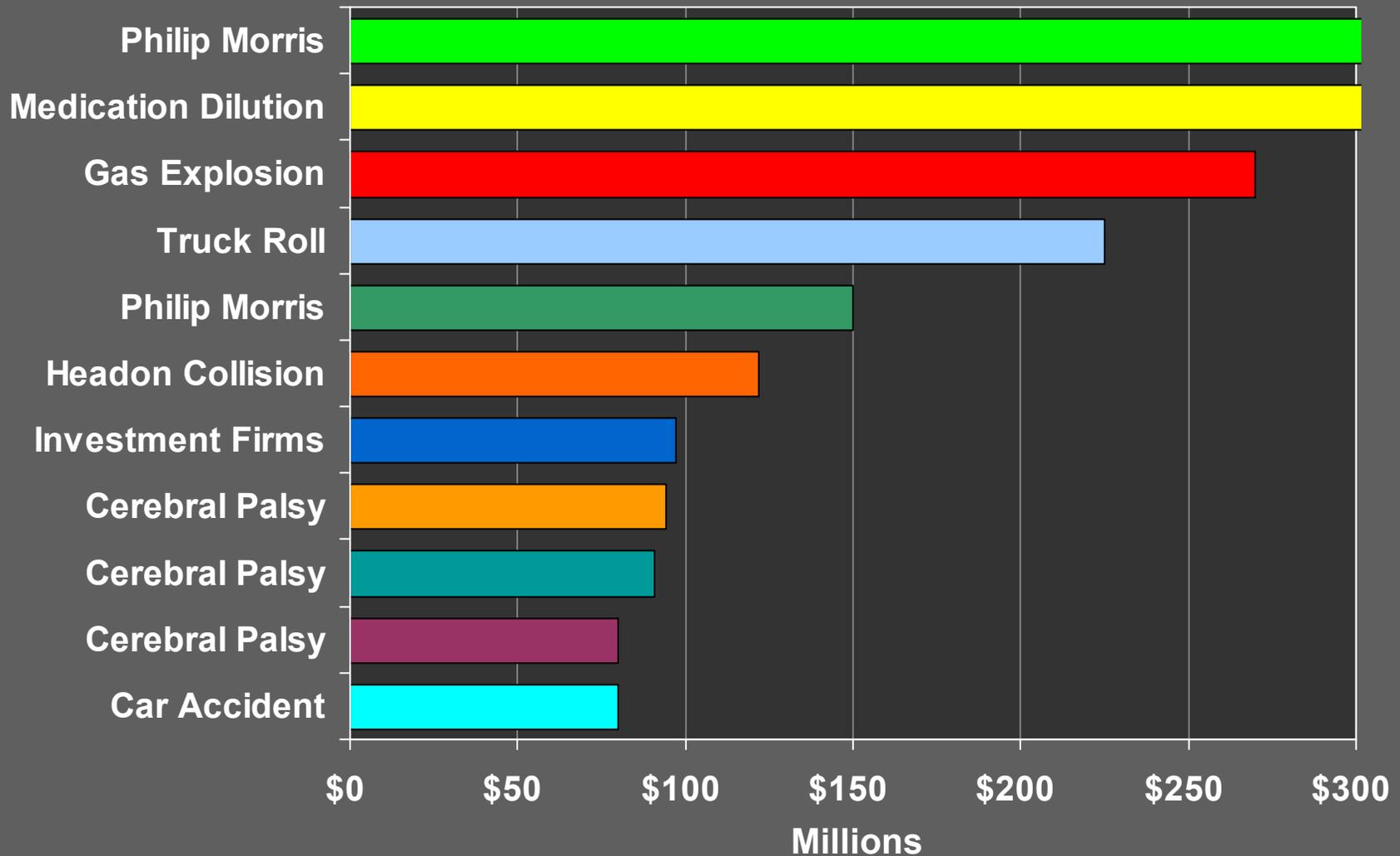
Frequency



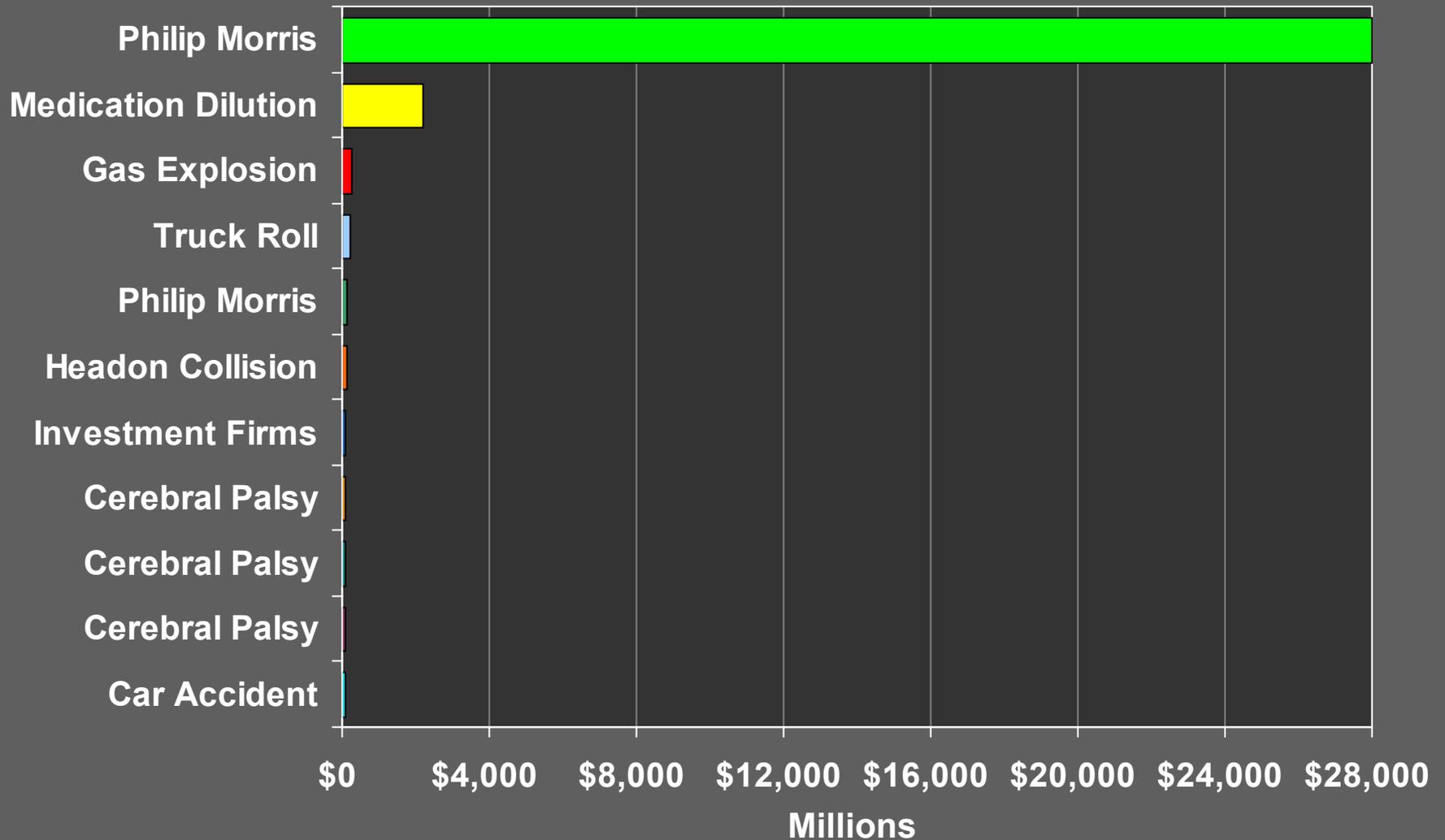
Specialty Relativity Nationwide



Top Jury Awards of 2002



Top Jury Awards of 2002

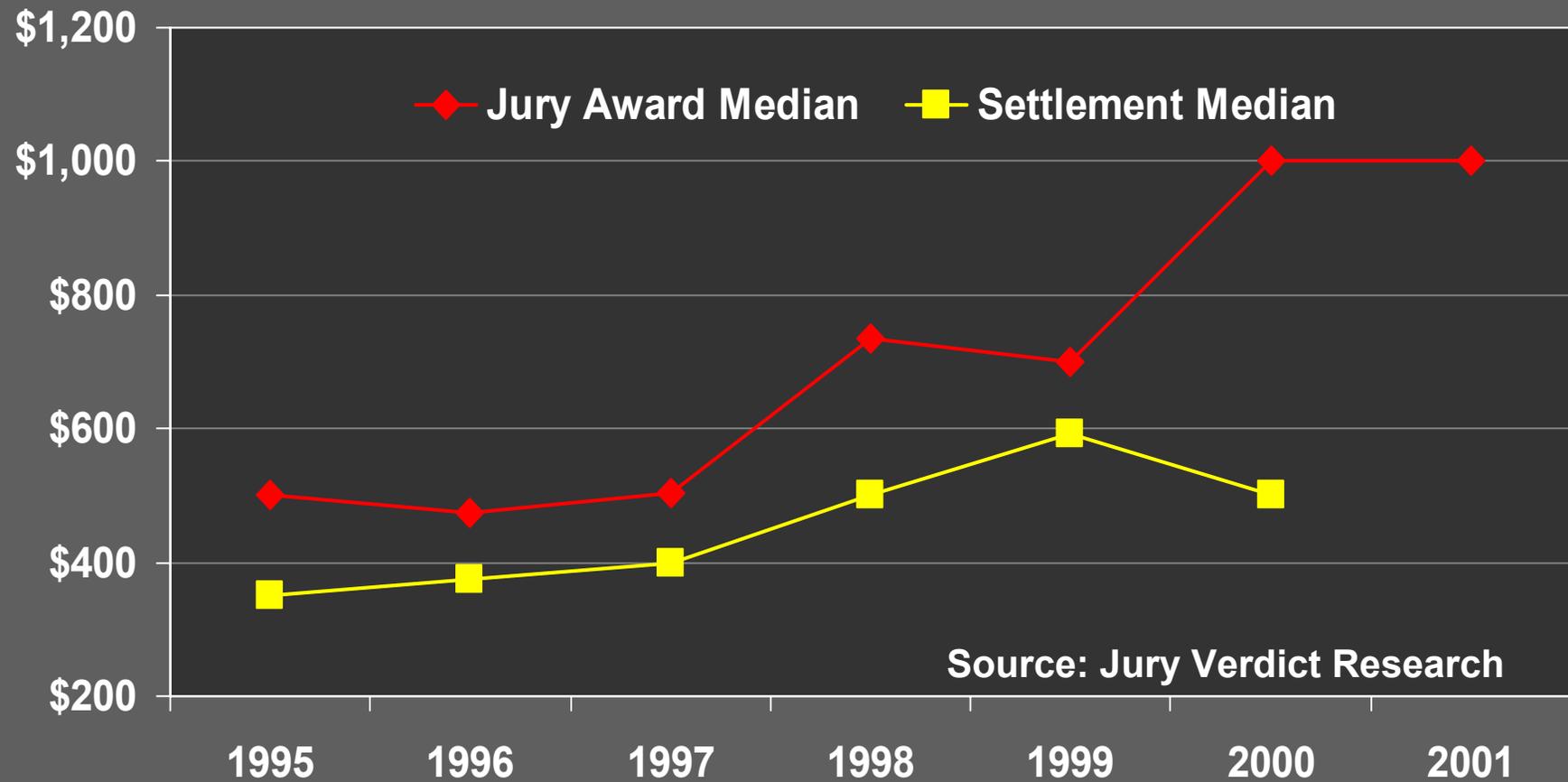


Severity: National Medians



National Jury Award and Settlement Medians for Medical Malpractice Cases

(000's)

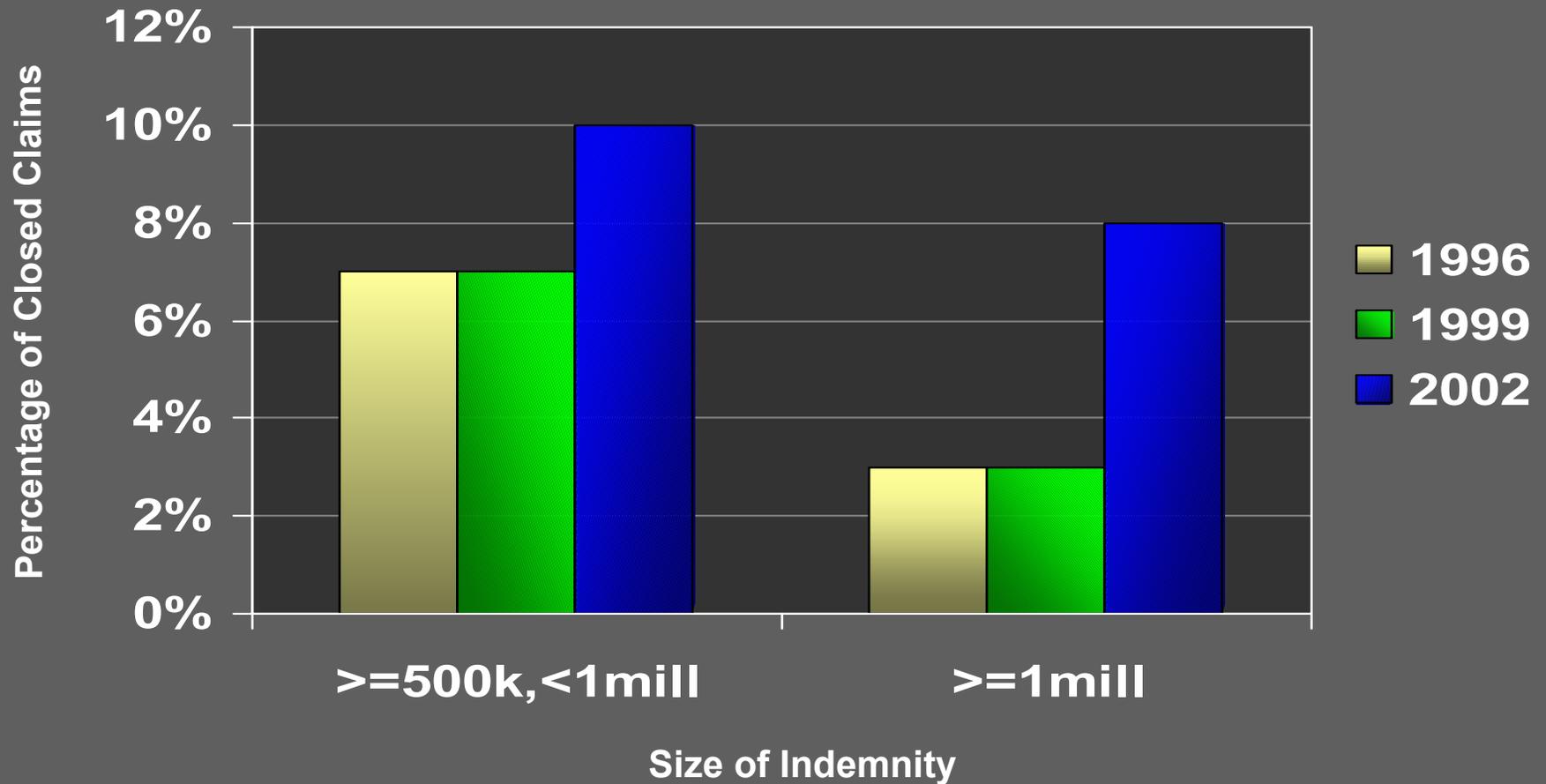


Source: Jury Verdict Research

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

Specialty Comparison



Specialties with Highest Percentage Cases >\$1 Million

1989 – 1991

Neurology	4.8%
Anesthesiology	4.0%
Ob/Gyn	3.9%
Pediatrics	2.6%
Emergency Med	2.4%

1999 – 2001

Neurology	14.8%
Neurosurgery	12.4%
Ob/Gyn	11.9%
Pediatrics	9.3%
Anesthesiology	9.0%

An Equitable System?



*Fewer than 100 claims per year
account for more than half the total
indemnity paid on behalf of our
28,000 physicians.*

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*

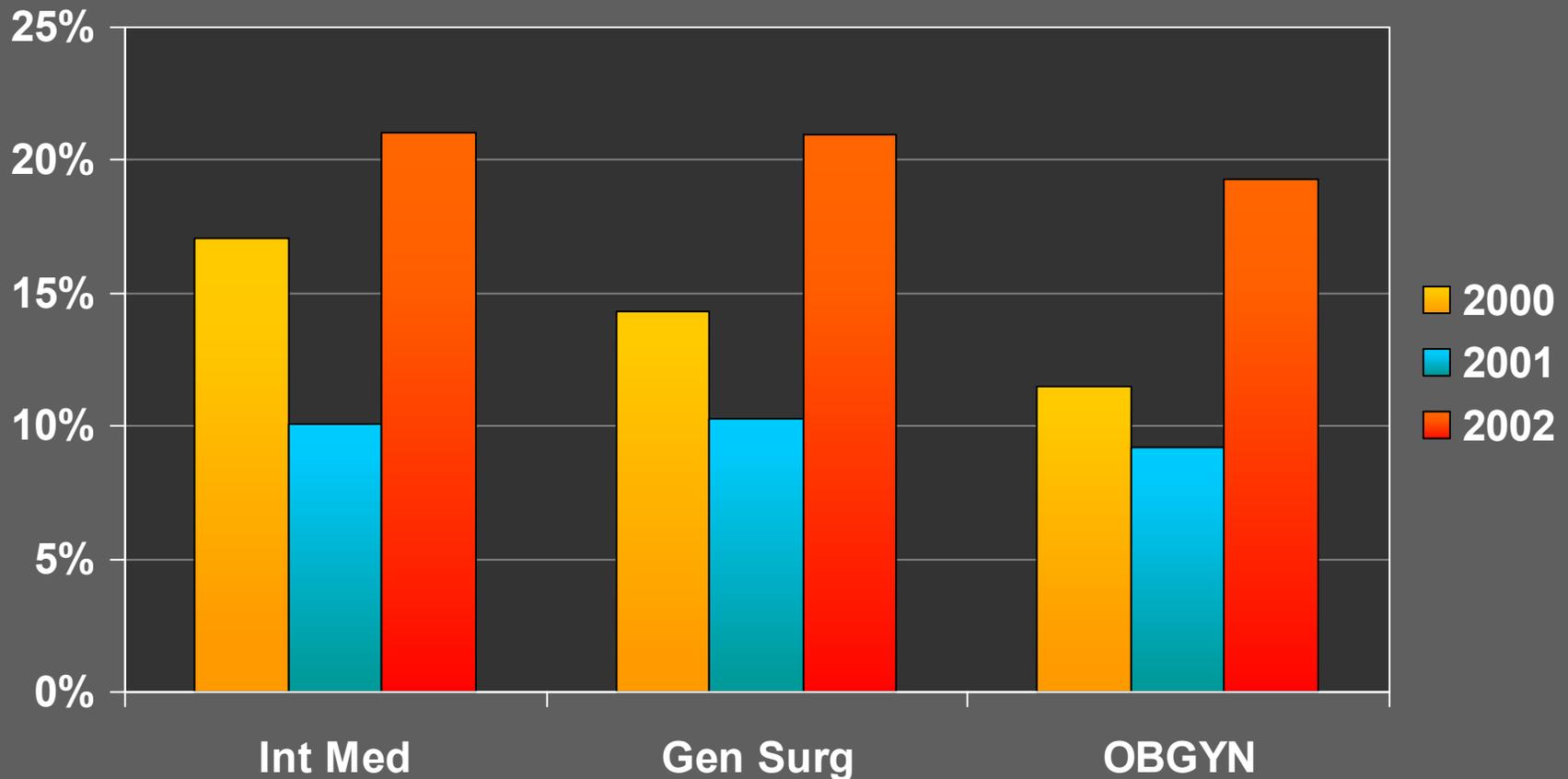
Costs of Coverage

Reinsurance

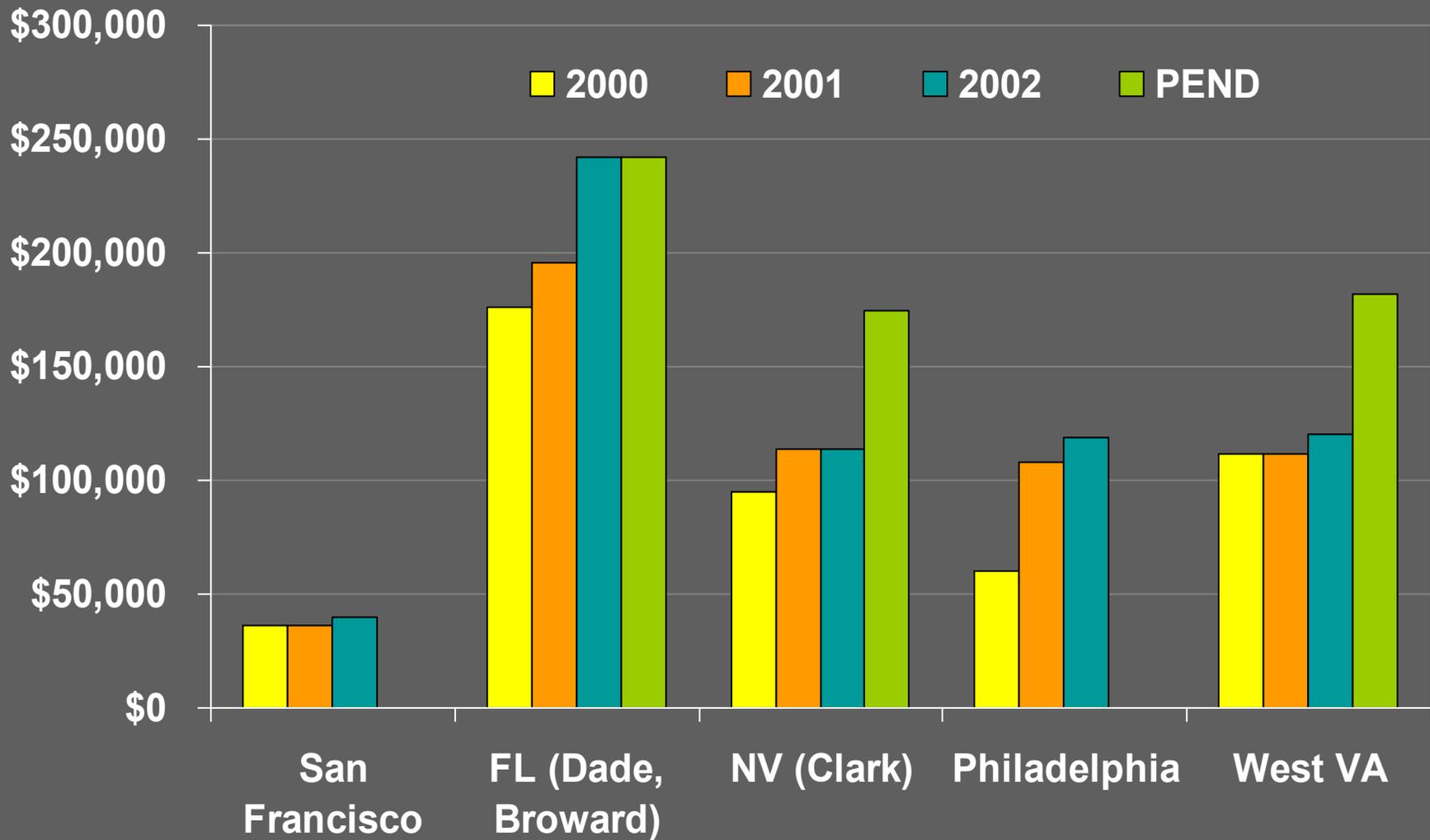
September 11

Effect is inversely proportional to the size
of the insurance company

Average Rate Increases



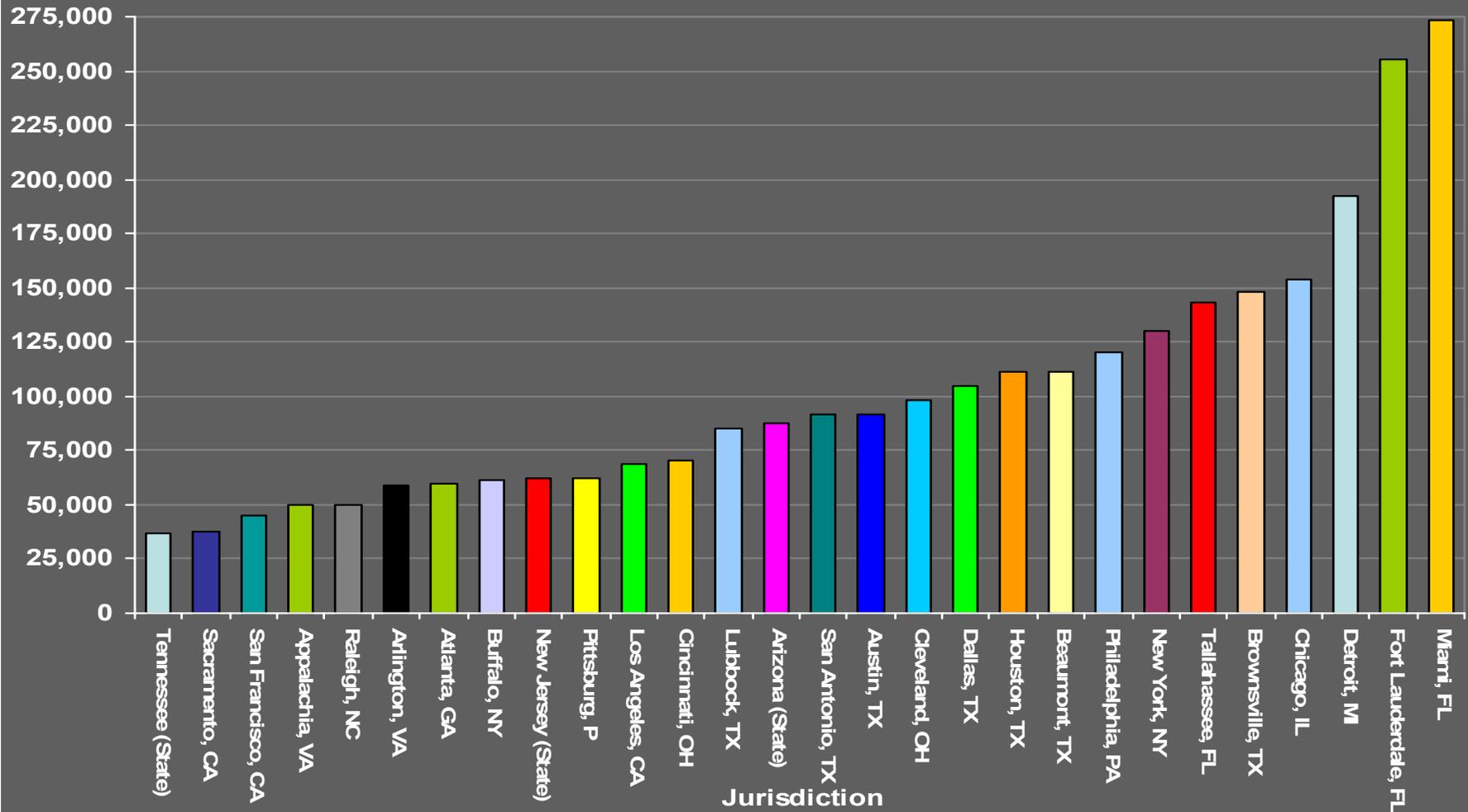
Recent Neurosurgery Rates



Neurosurgical Rates Across the Country (TDI)



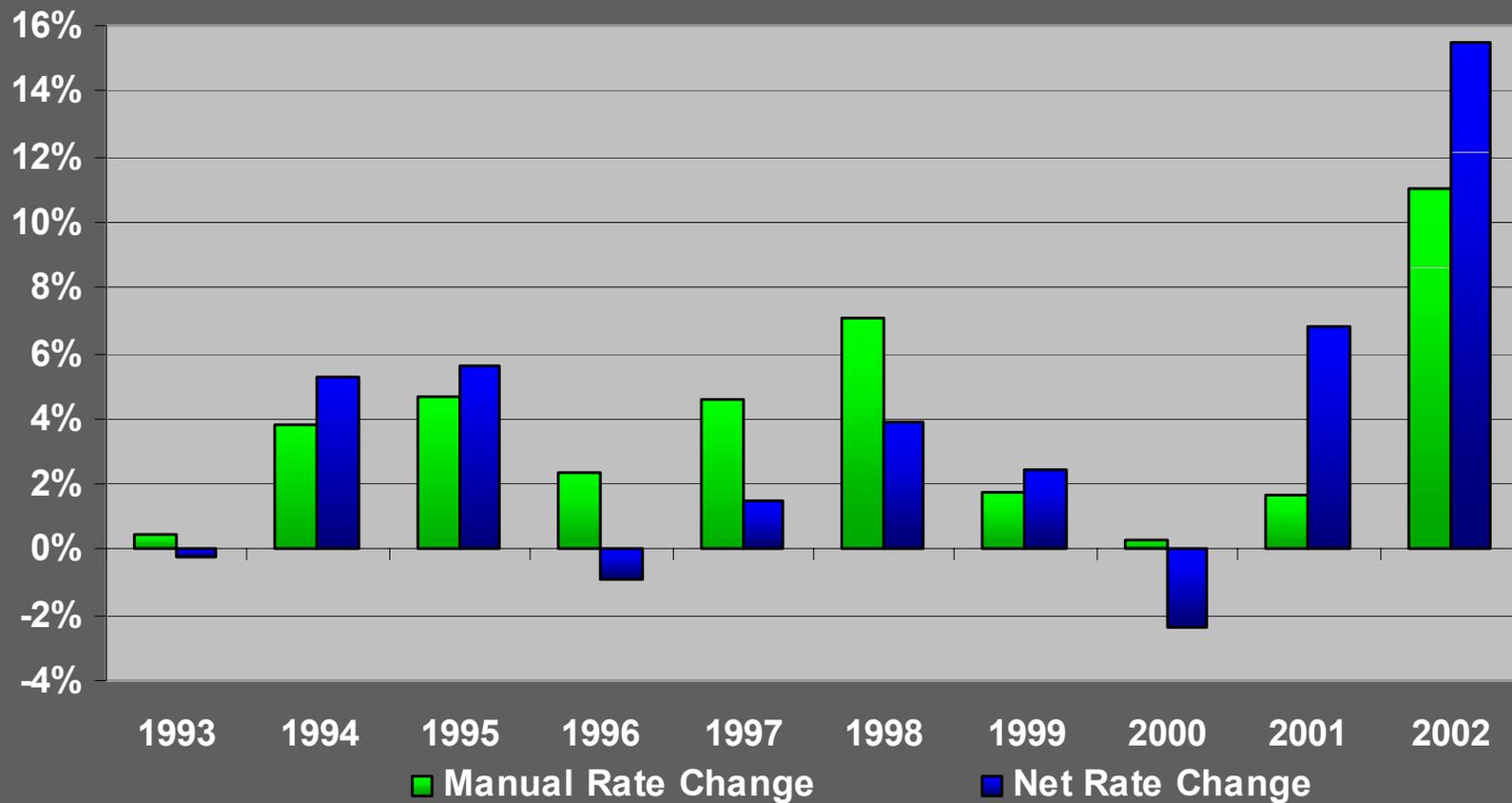
Premium Dollars



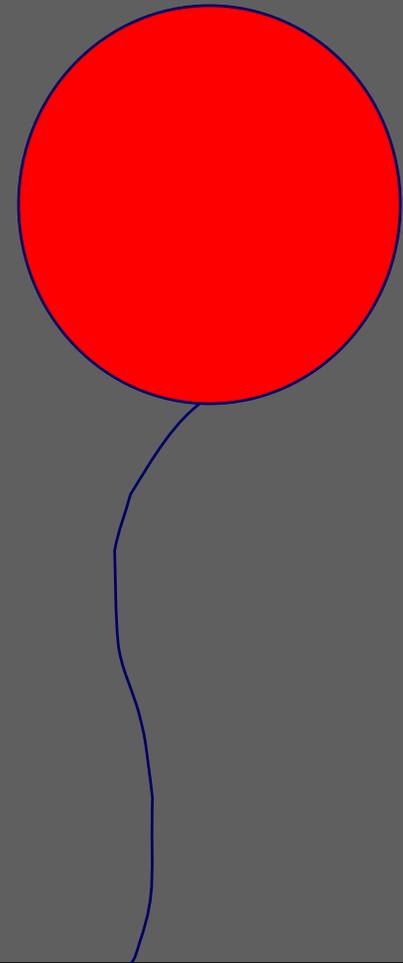
Pricing Trends



TDC Calendar Year Nationwide Average Rate Changes



Plaintiff Bar Trial Balloons and Myths



Trial Lawyer Ministry of Information



- 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

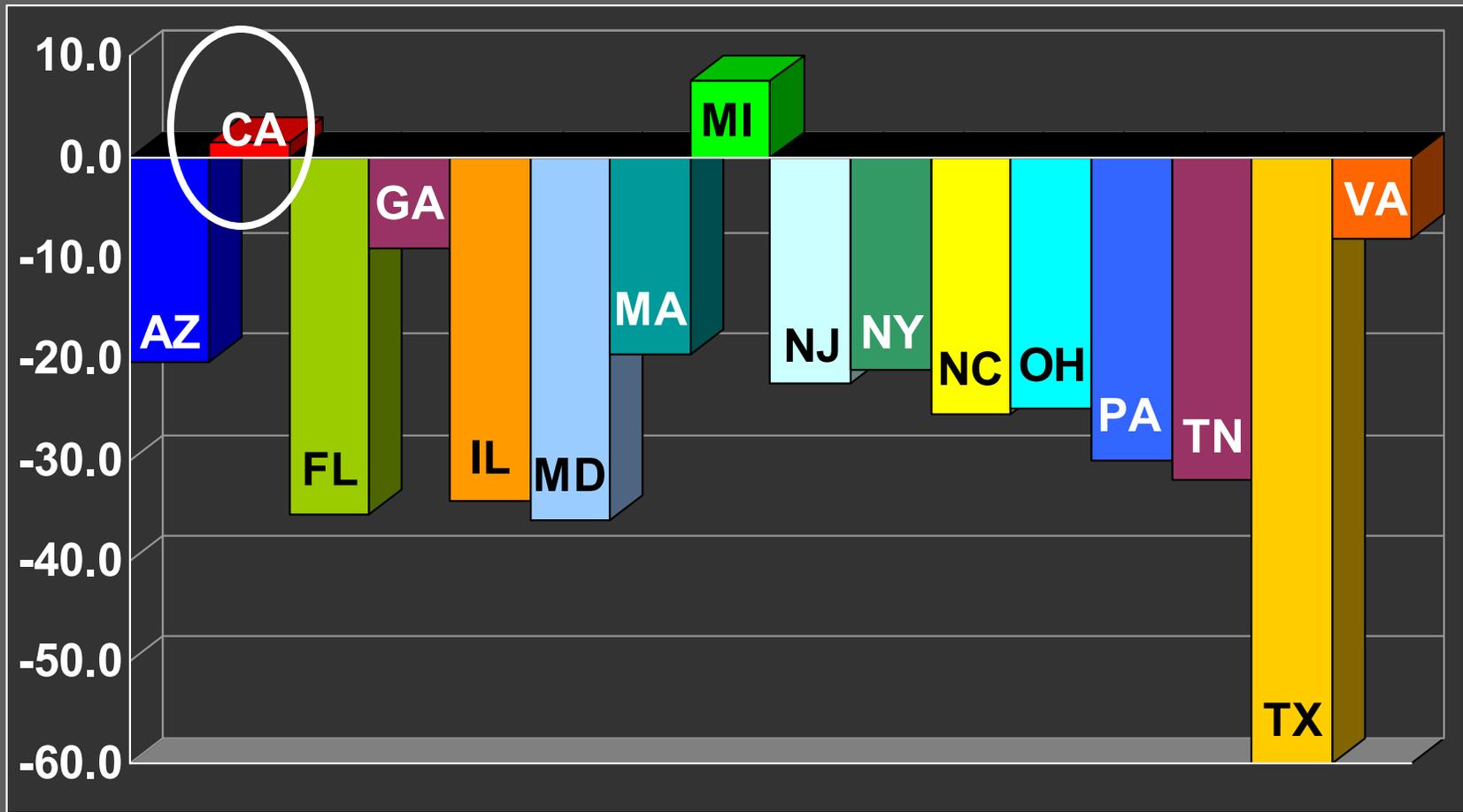
- Med mal hearings 1991
- TDC had been paying dividends for **11 years** prior to its 103 dividend.
- TDC dividends were **higher in the 5 years prior** to 103 than they were in the 5 years after.

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.

Underwriting Results 1991-2000



Texas State Senate Prompt Payment Committee, August 15, 2002

Bond markets

- Falling interest rates decrease investment income

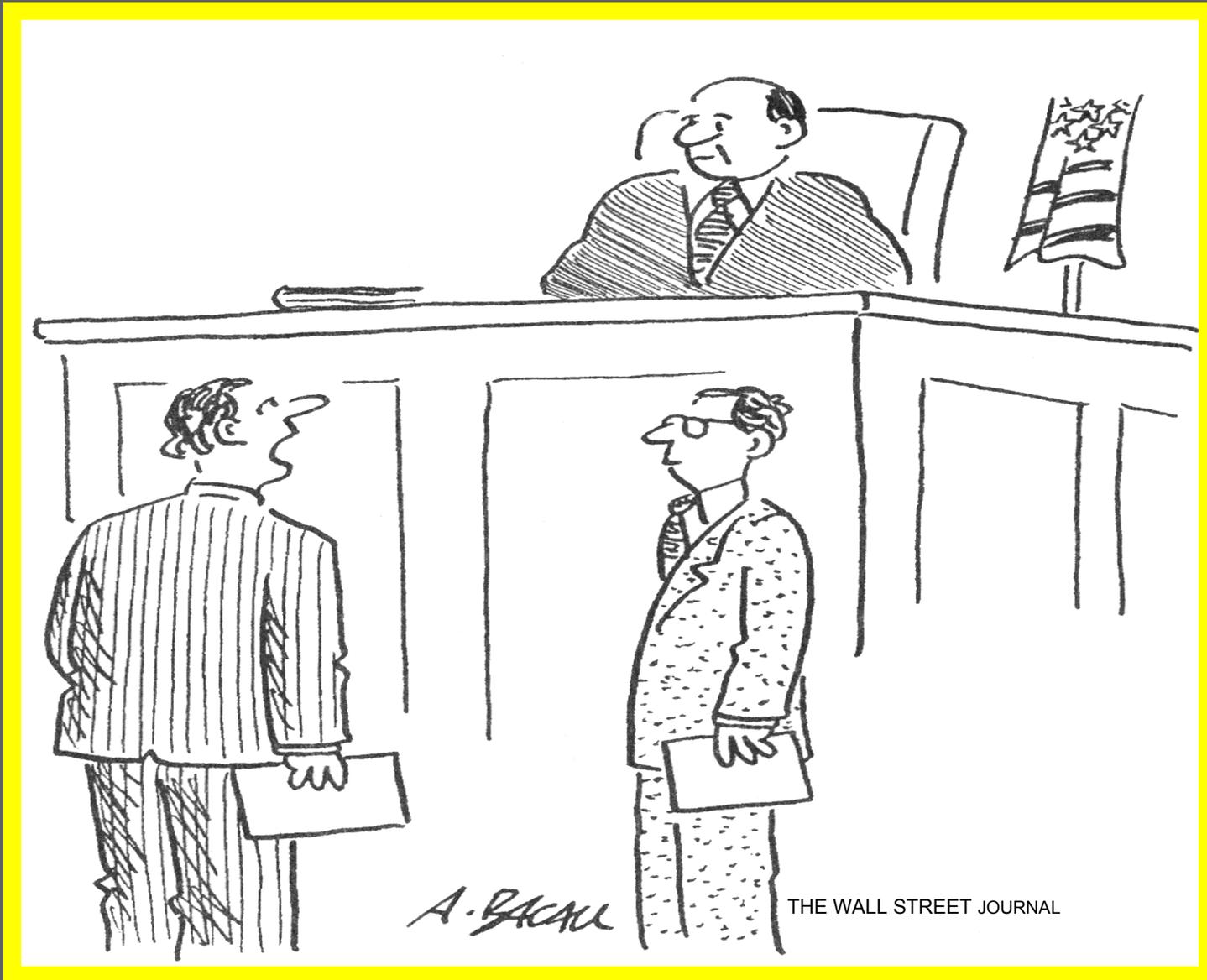
Stock market

- Less than 10% of assets

Era of subsidies is over

- Alternative: insolvency

Tort Reform

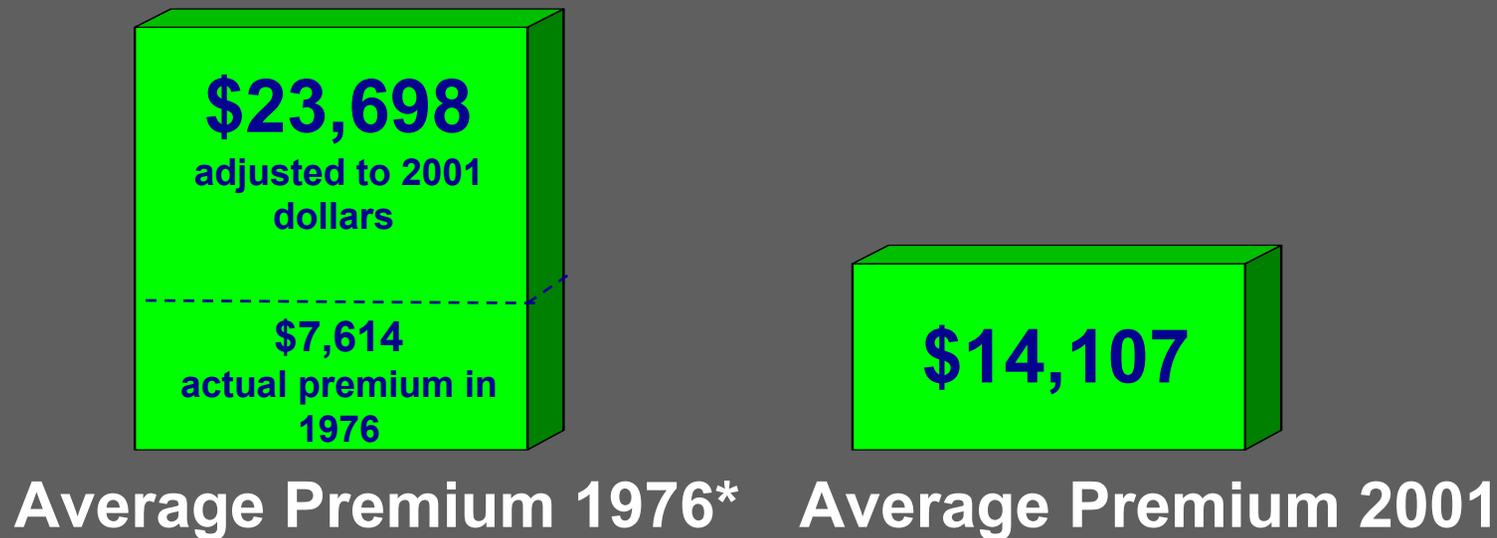


“Your Honor, we need more time to prepare to make a mockery of the law.”

MICRA Helps Reduce California Medical Liability Premium Rates by 40%



The Doctors' Company 1976-2001

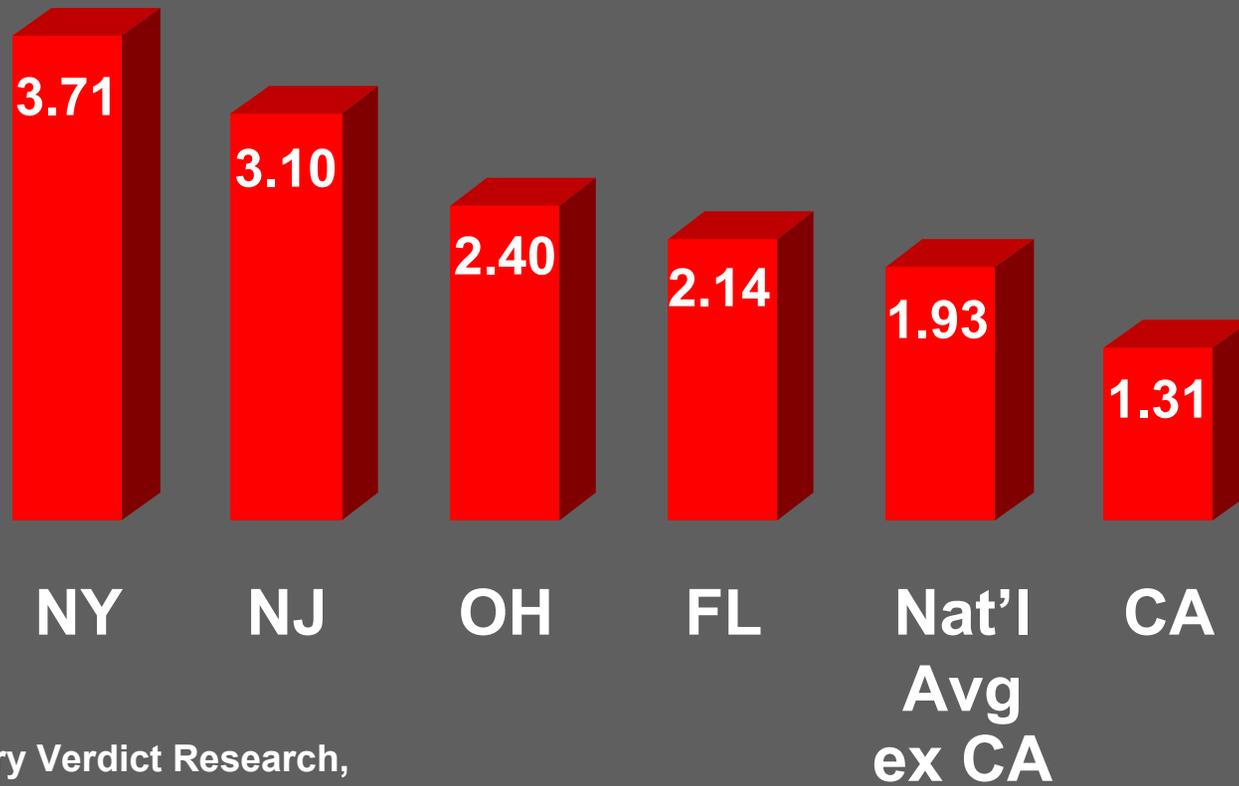


* \$7,614 average premium adjusted to 2001 dollars on the Annual Urban CPI Index for a \$1 Million/ \$3 Million Claims-Made Policy Premium

MICRA Reduces Verdict Cost and Frequency

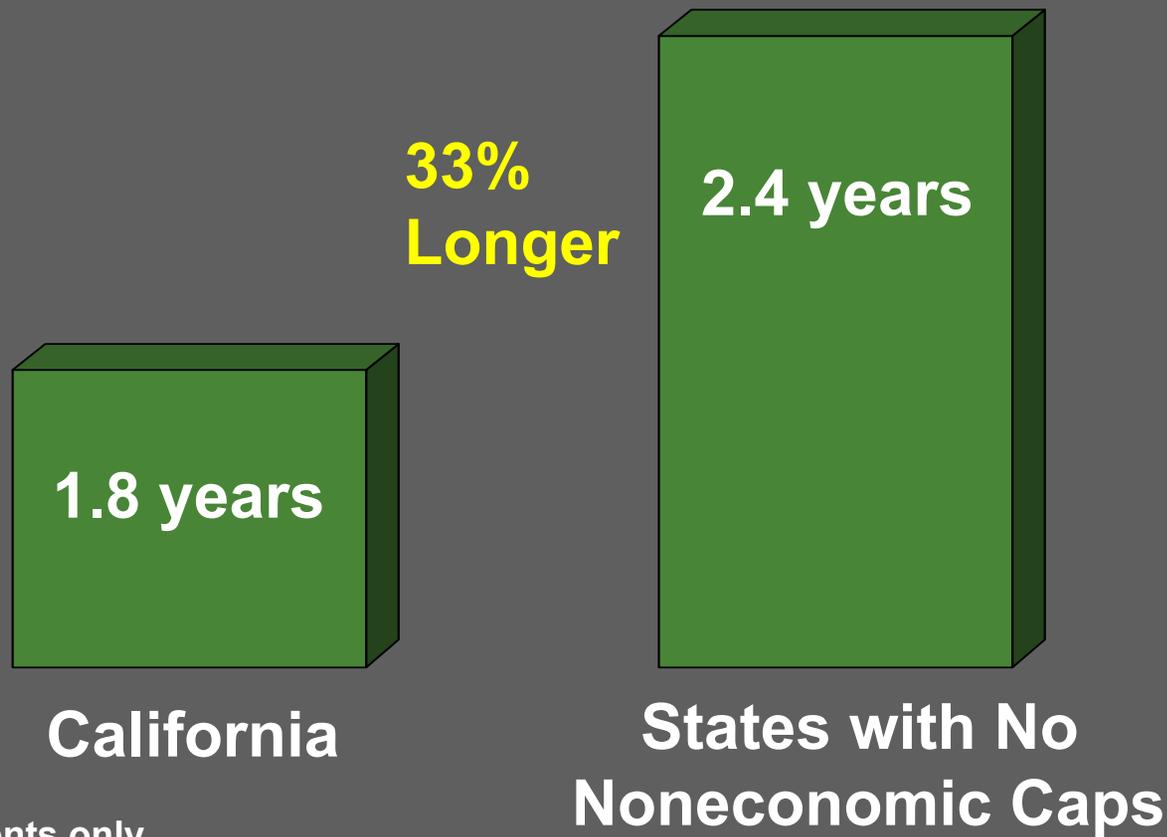


\$1 Million+ Verdicts Per 1,000 Doctors



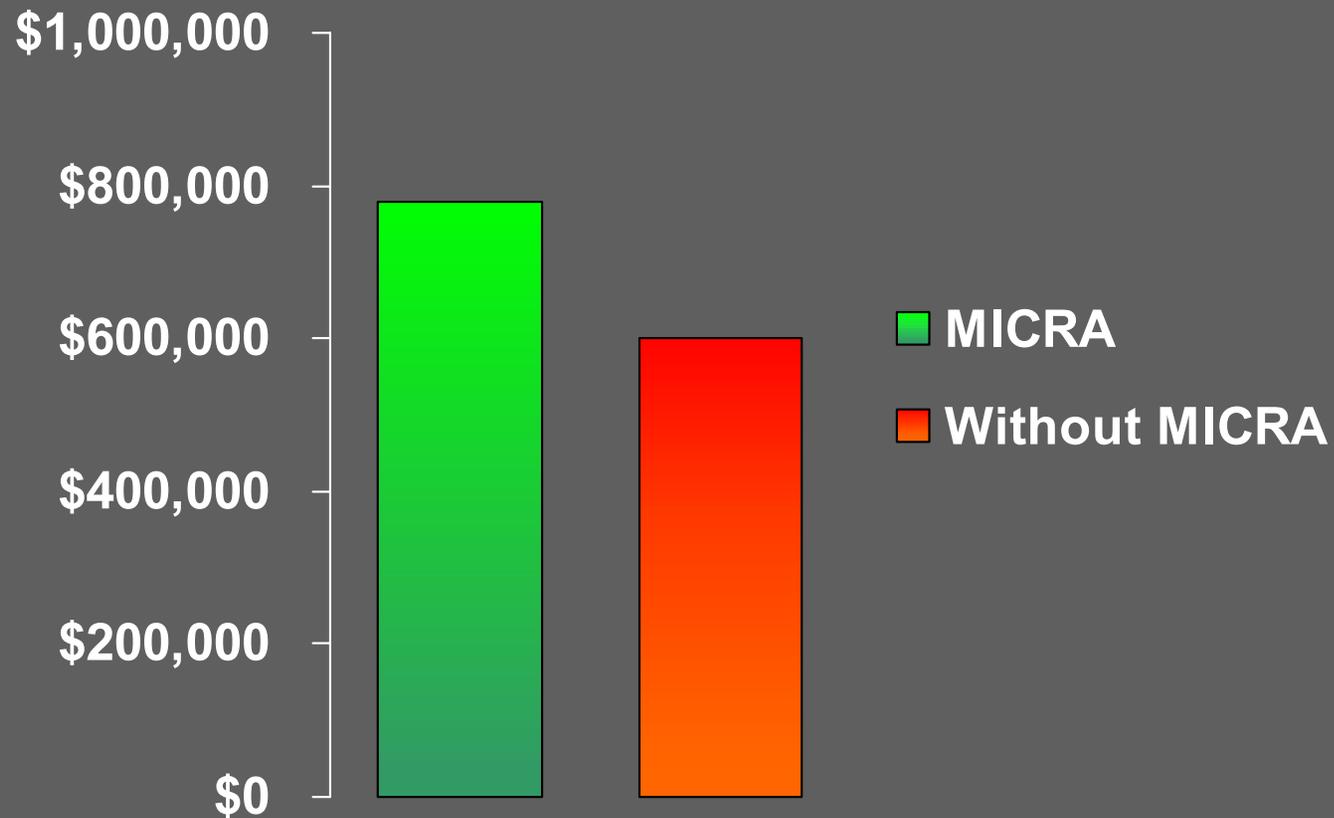
Sources: Jury Verdict Research,
AMA

MICRA Reduces Average Time to Settlement



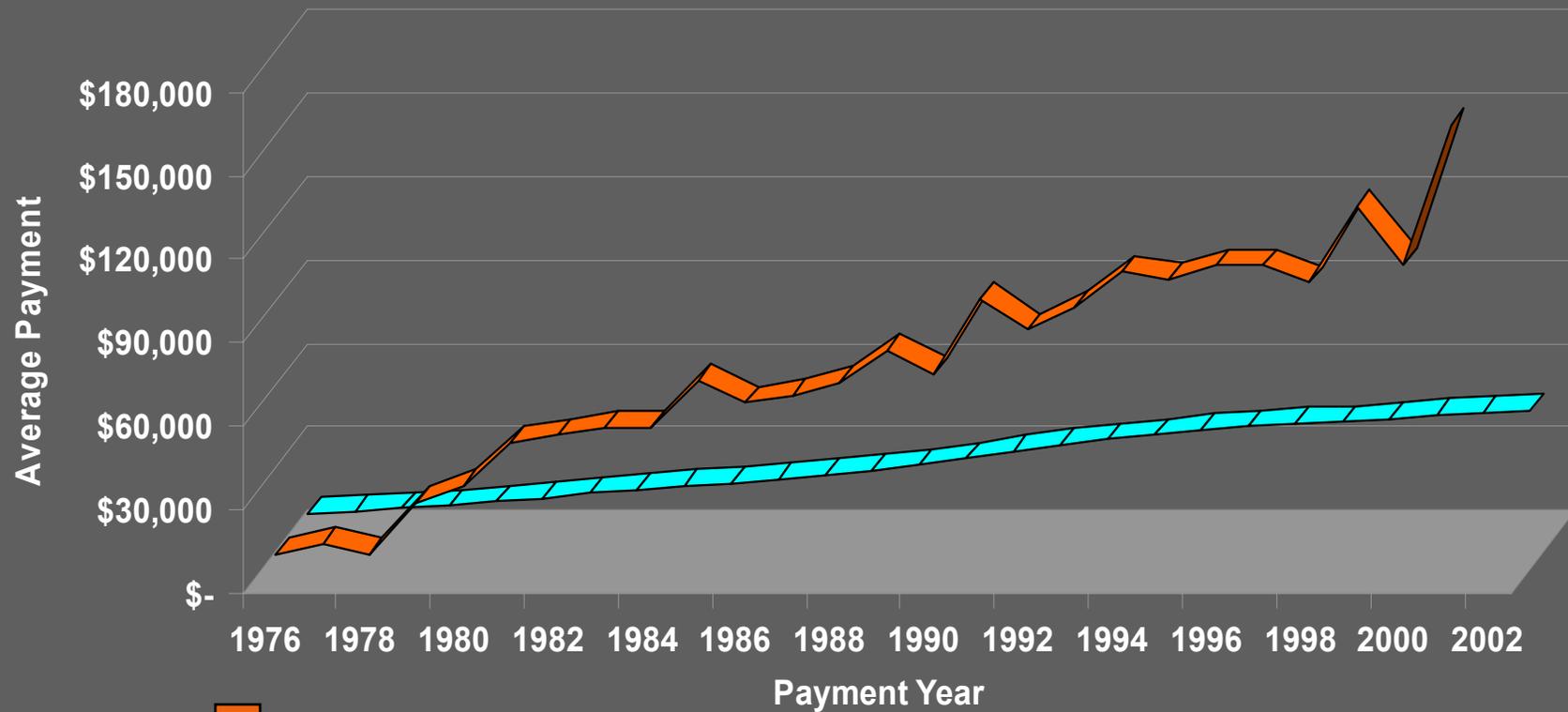
*Indemnity payments only

Injured Patients Benefit Directly



Proceeds of a \$1 Million Judgment

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



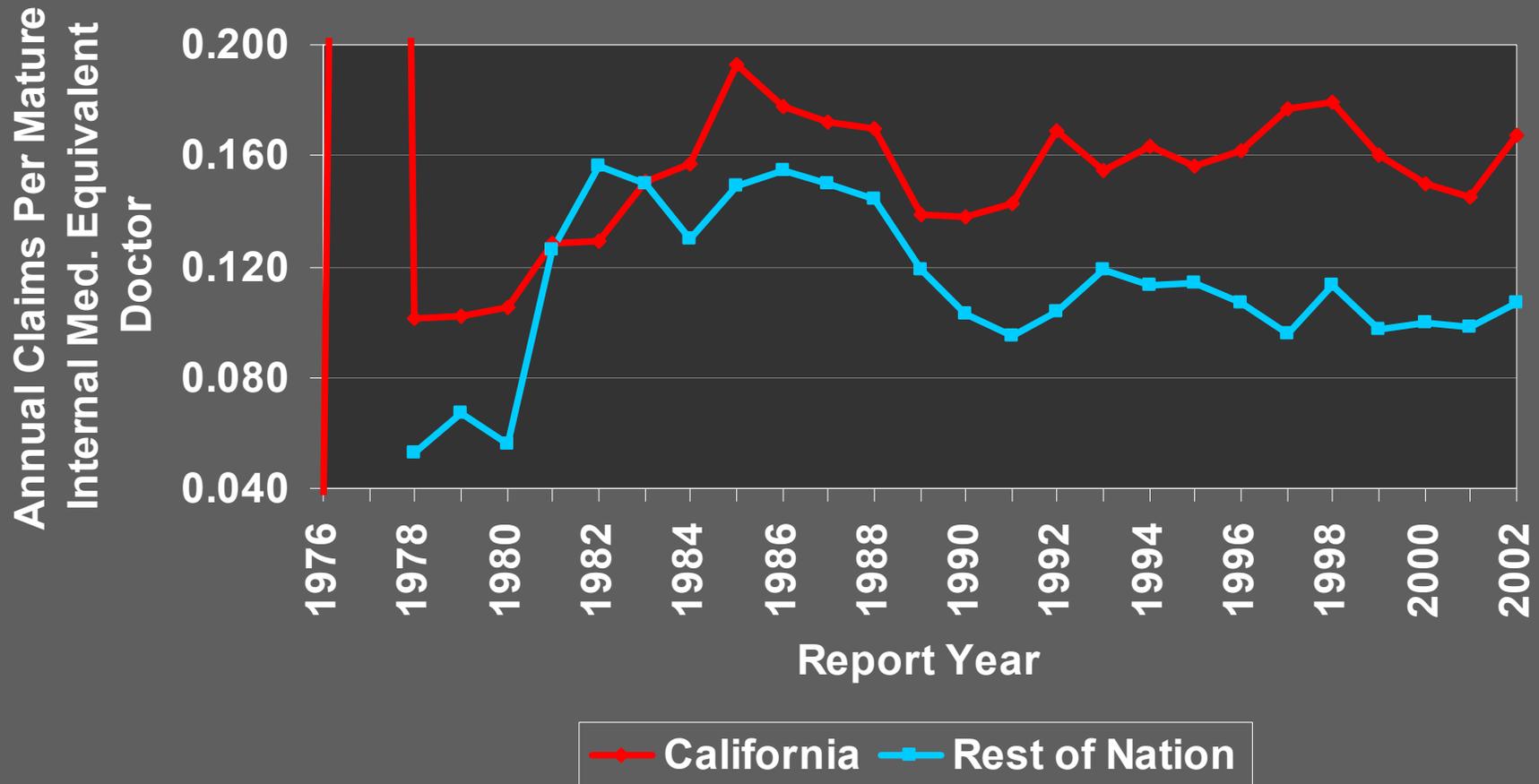
- Actual average physician medical liability claim paid in CA 1976-2001.
- Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.



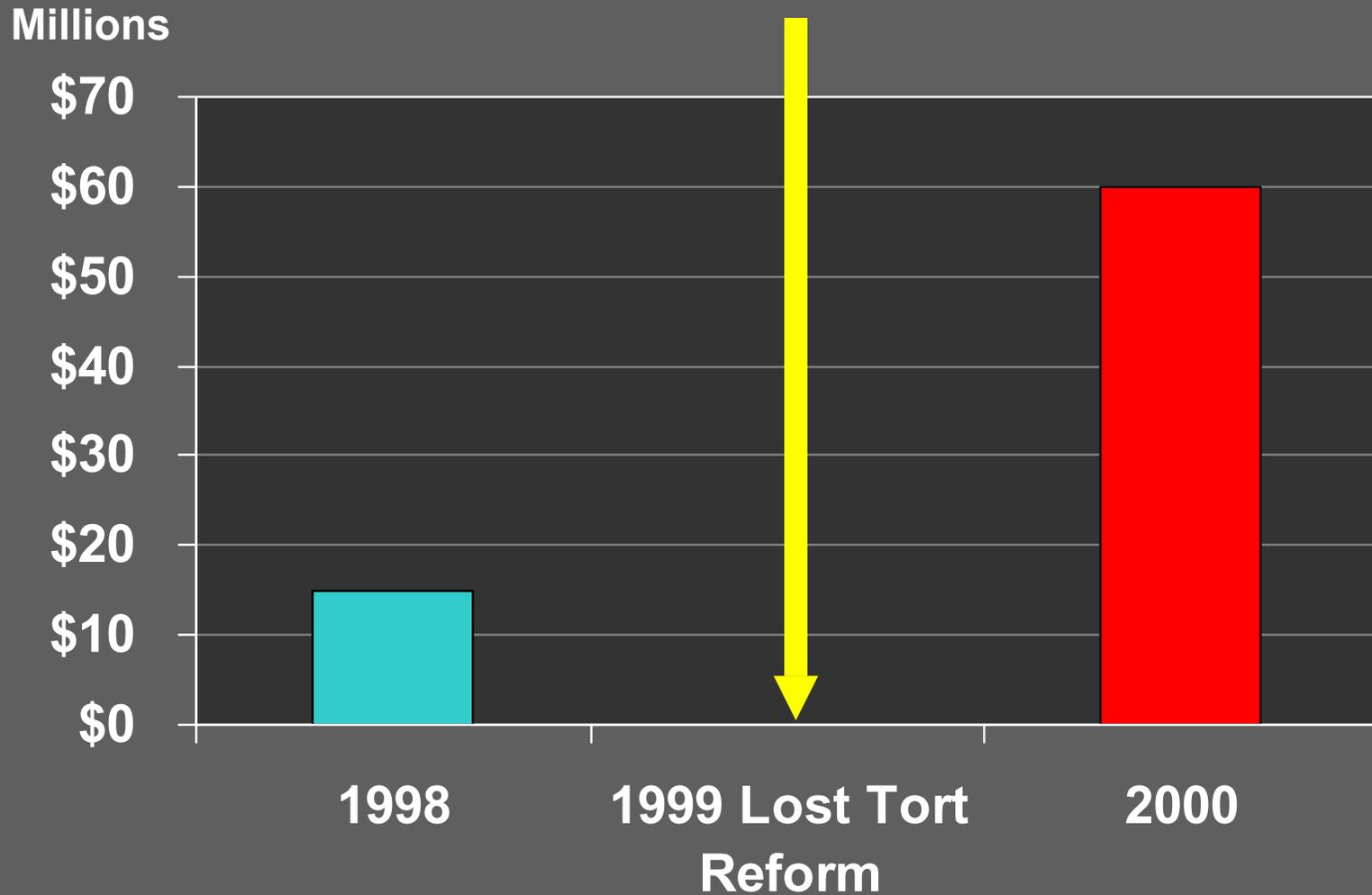
MICRA Does Not Limit Access to Courts



TDC PHYSICIAN CLAIM FREQUENCY



Oregon: Loss of Tort Reform



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.



- 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.”

California Issues Despite MICRA



Frequency remains extraordinarily high.

- Risk of a suit against even a claims free doctor remains high.
- Cost of defending average non-meritorious claim: \$25,000
- Cost of defense verdict: \$80-100,000
- Investment subsidies significantly lower
- For past 27 years, the plaintiff's bar has attempted to nullify MICRA by amendment in the legislature or through new case law.

Summary

- Exposure is greater.
- Financial market subsidies have ended.
- Capacity is shrinking and reinsurance is more expensive.
- Every practicing physician is a potential target.
- 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.

