

# The Crisis of 2002-2003: Causes and Solutions

PLUS Medical Professional Liability Symposium  
Chicago, March 12, 2003

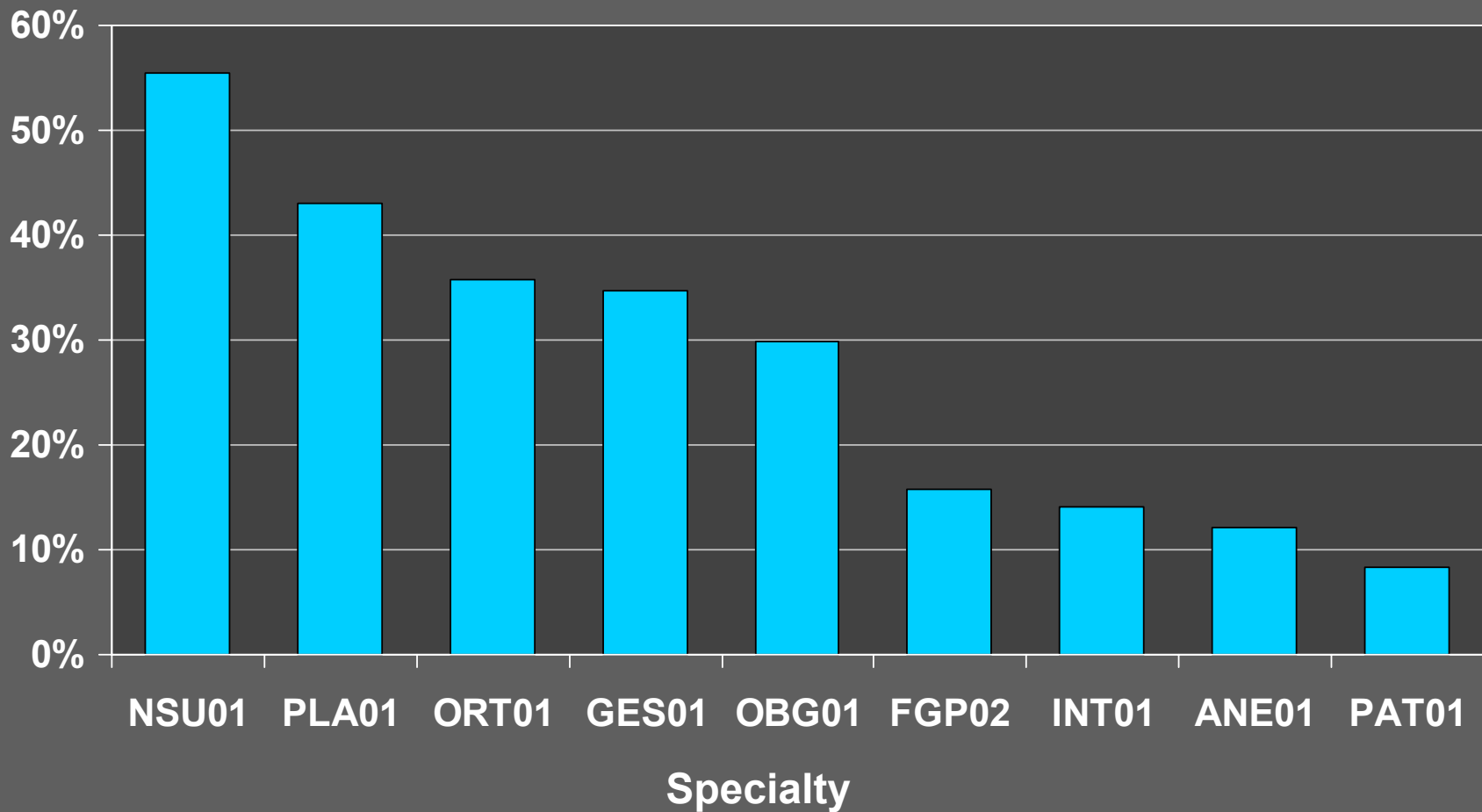
**Richard E. Anderson, M.D.**  
Chairman  
The Doctors Company

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

# Frequency by Specialty 1995-2001



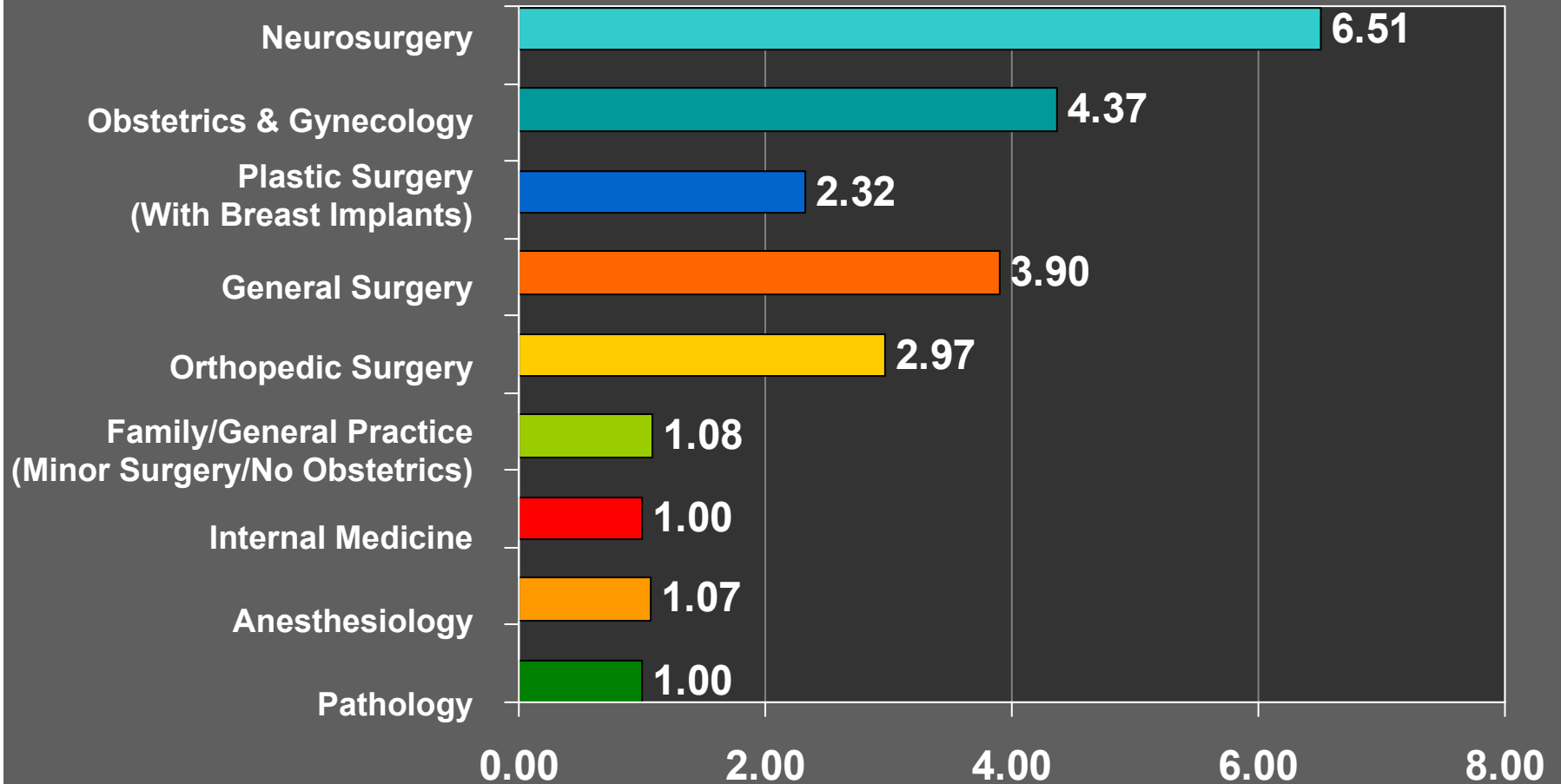
Frequency



## 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

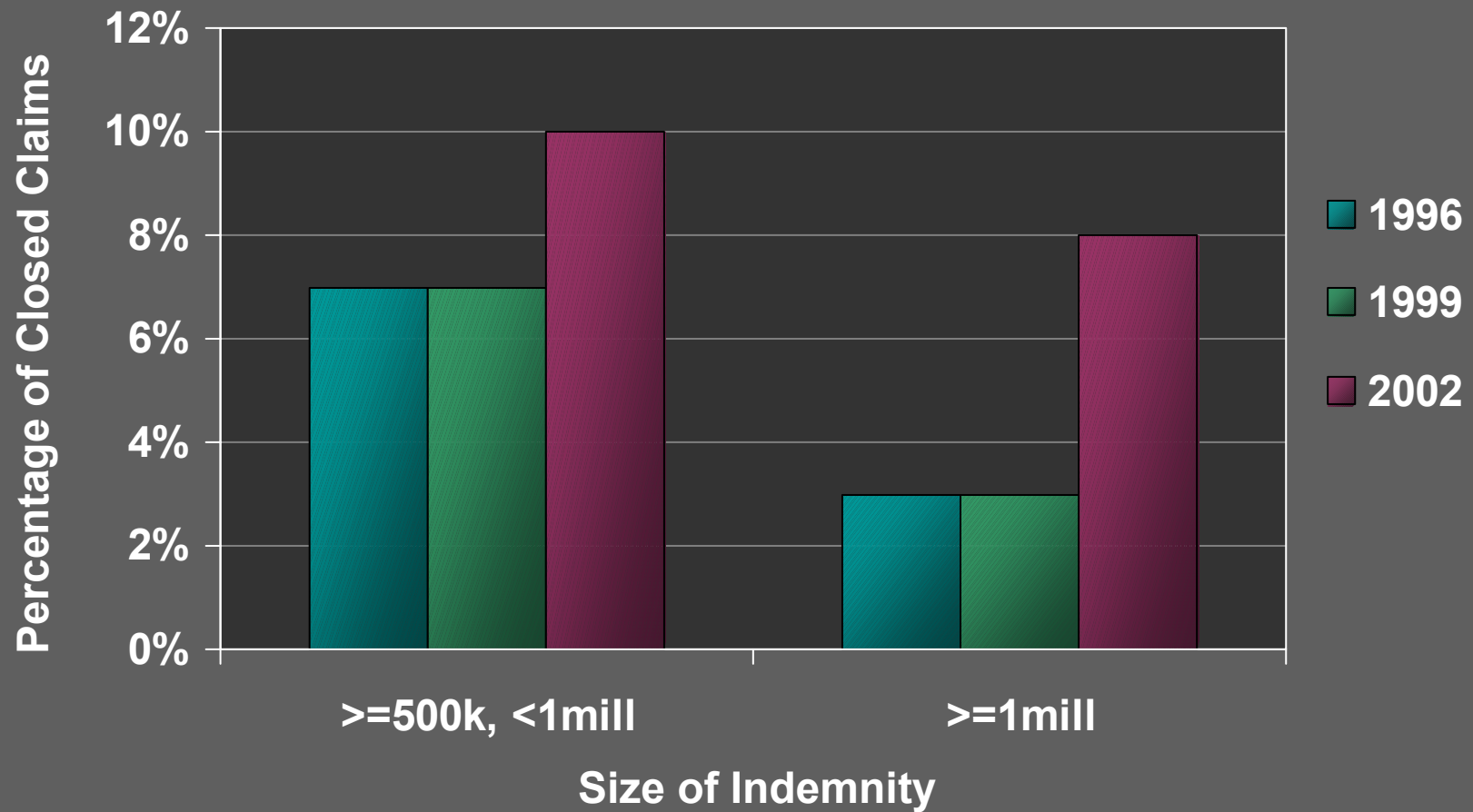
Risk-free society

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

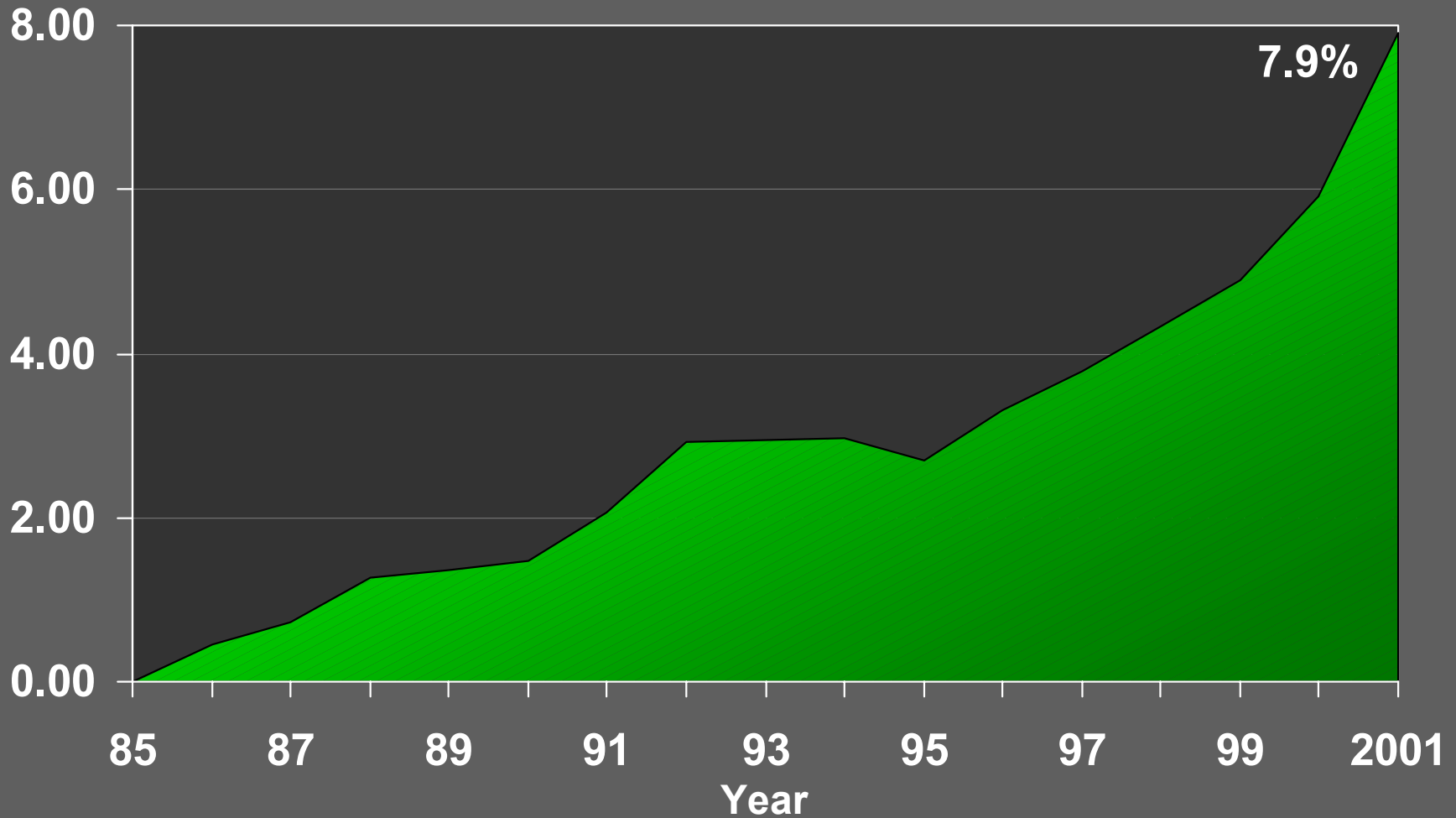


# PIAA Data Sharing Project

Claim Payments =>\$1 Million



% of Paid Claims



# The Most Expensive Claims



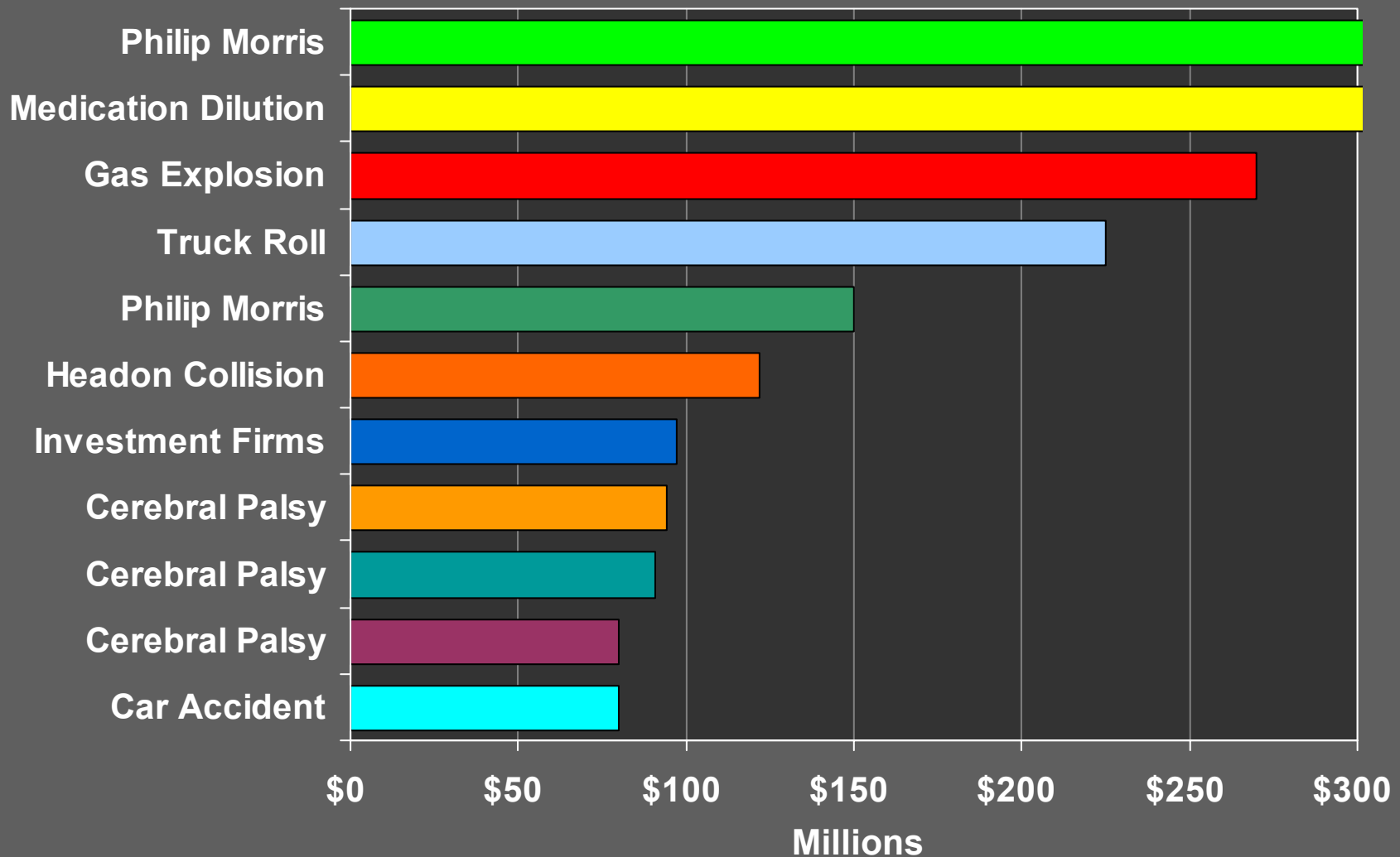
- Texas: \$268,000,000
- Many states: \$100,000,000
- Philadelphia: Jury verdicts exceed the entire state of CA over past 3 years.
- *Verdicts drive settlement value.*

# Implications of Unlimited Verdicts

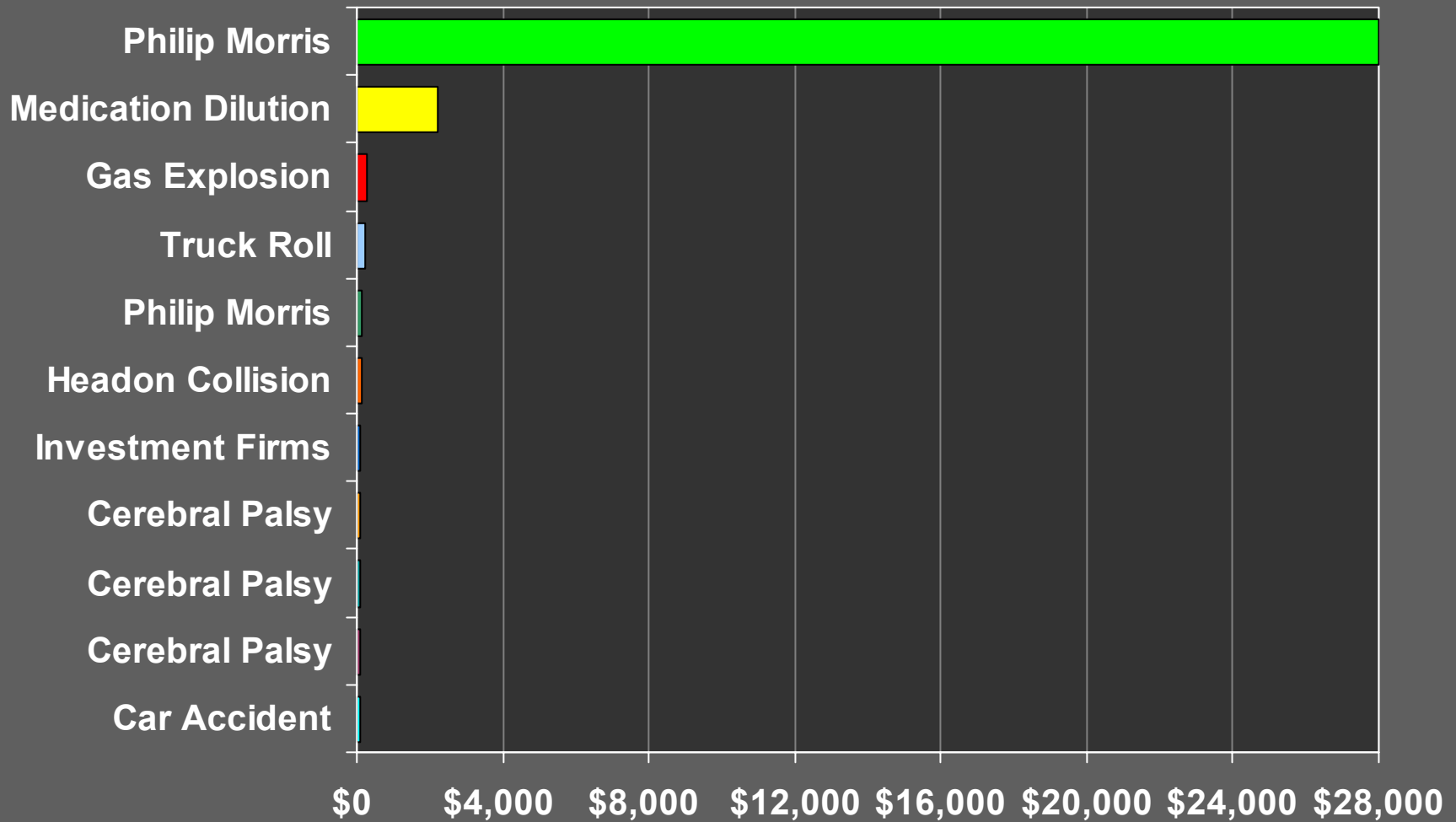


You cannot afford to go to court  
Cost of settlement rises dramatically  
Unlimited judgments require unlimited premiums...  
System of indemnification unsustainable

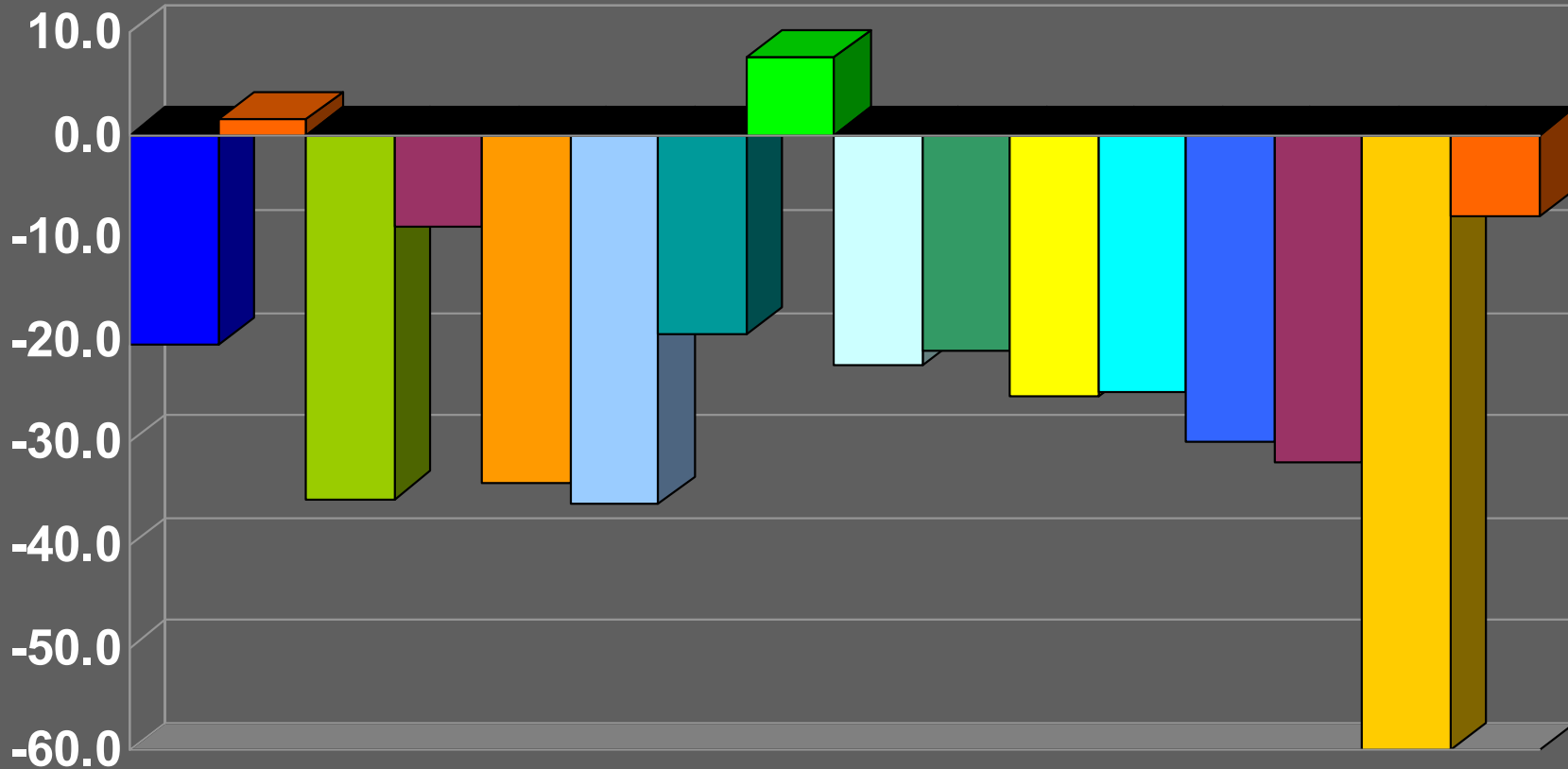
# Top Jury Awards of 2002



# 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



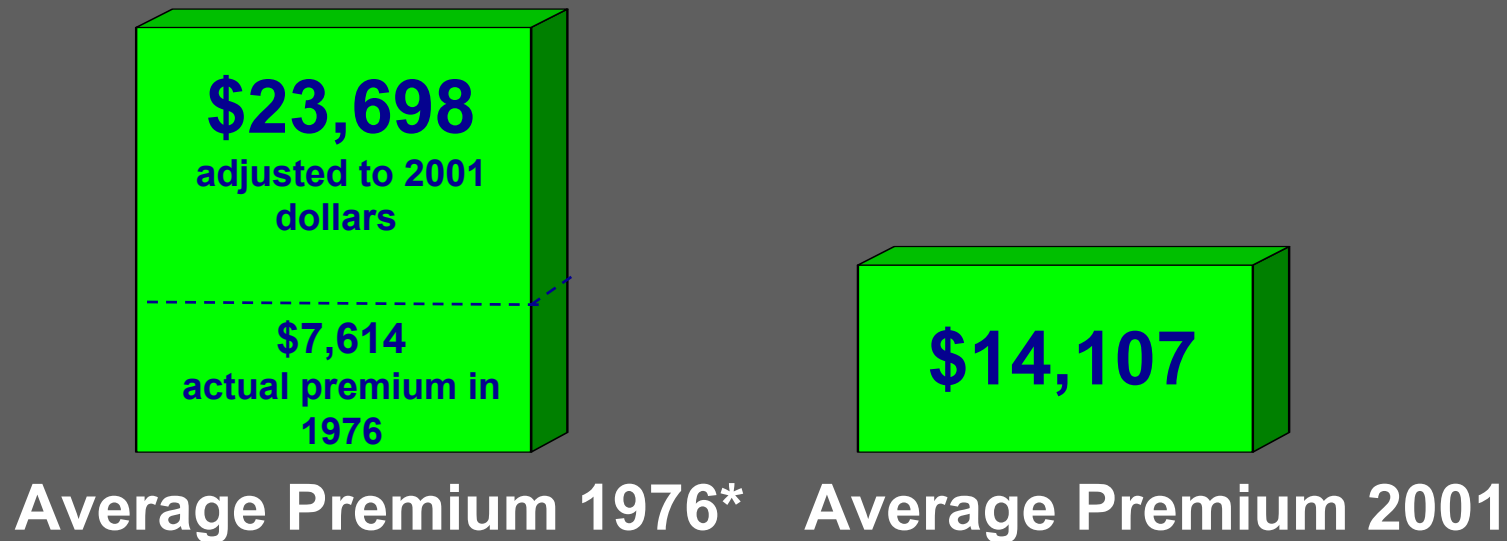
1. Mandates a \$250,000 cap on noneconomic damages ONLY.
2. Allows introduction into evidence of collateral sources of payment.
3. Allows periodic payments of future damages.
4. Provides for a sliding scale limit on attorneys' contingency fees.

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**

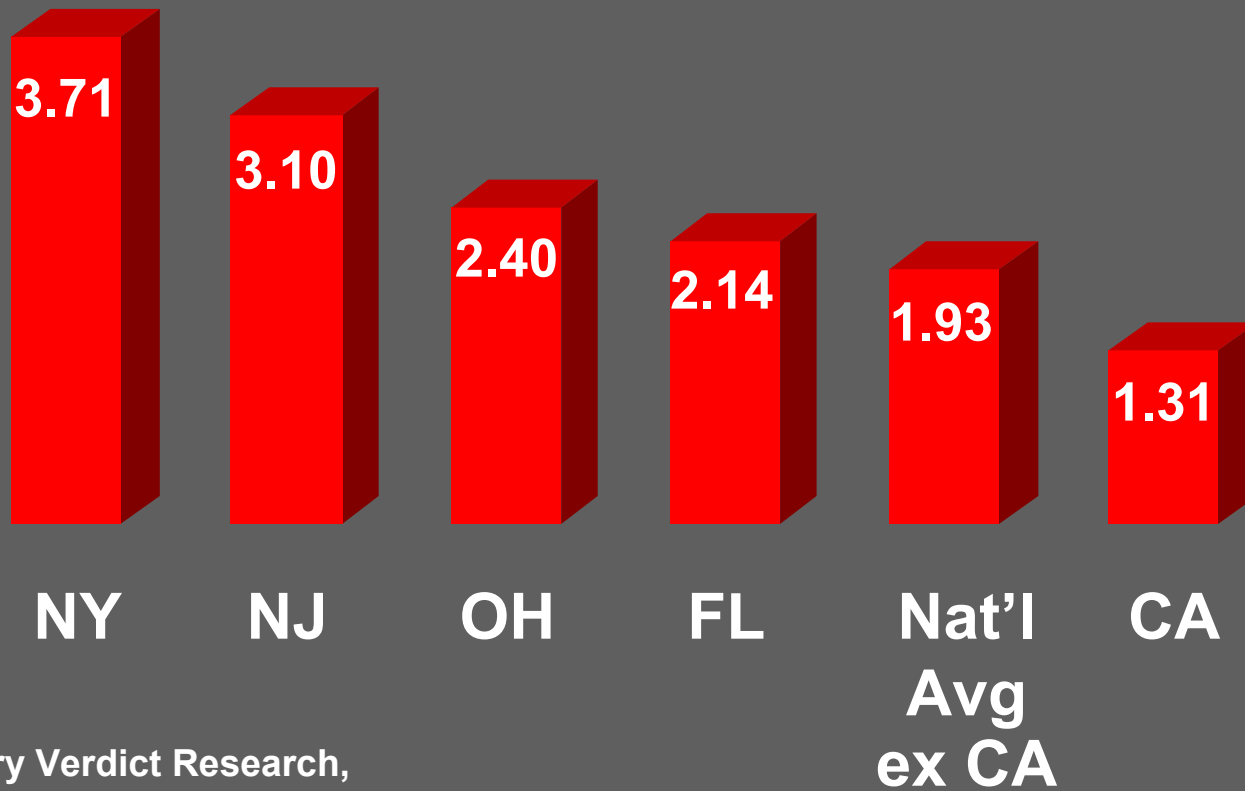
\*The Doctors Company's average of all specialties including dividends for a \$1 Million/\$3 Million Mature Claims-Made Policy.

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

# MICRA Reduces Verdict Cost and Frequency

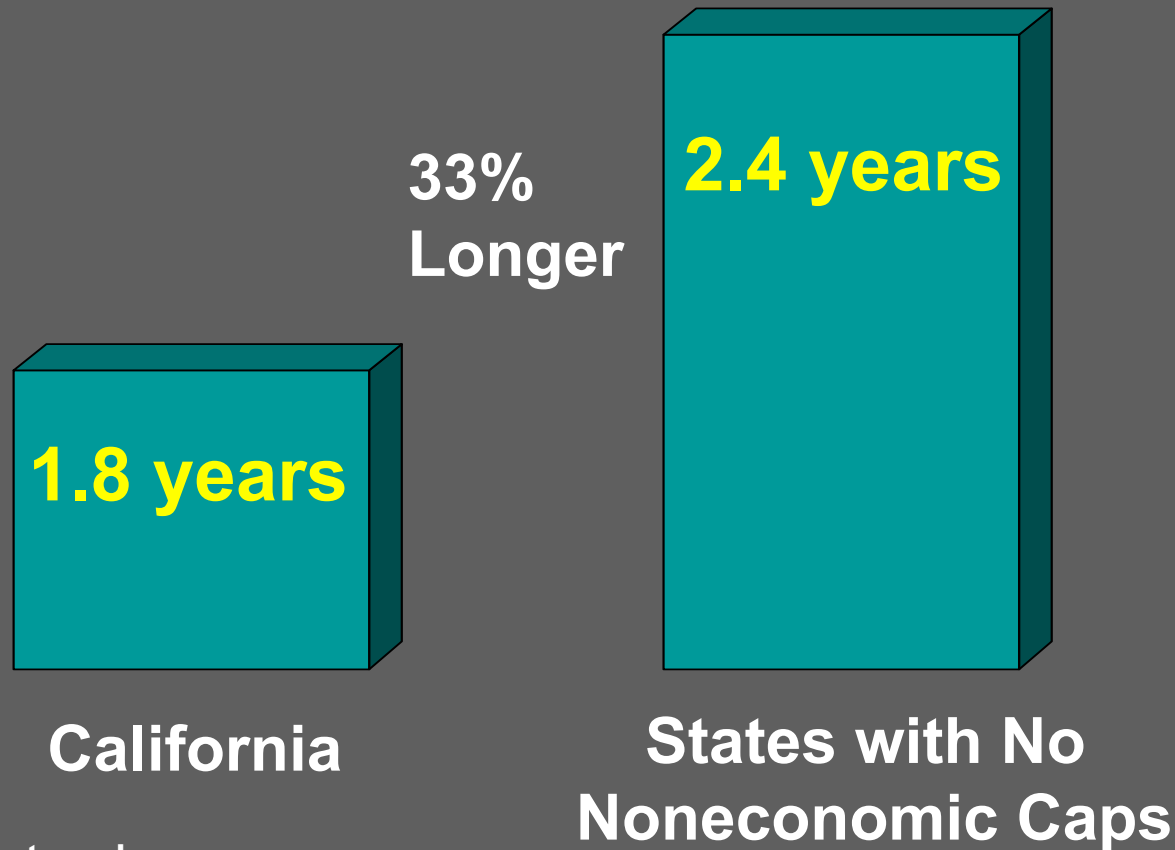


\$1 Million+ Verdicts Per 1,000 Doctors



Sources: Jury Verdict Research,  
AMA

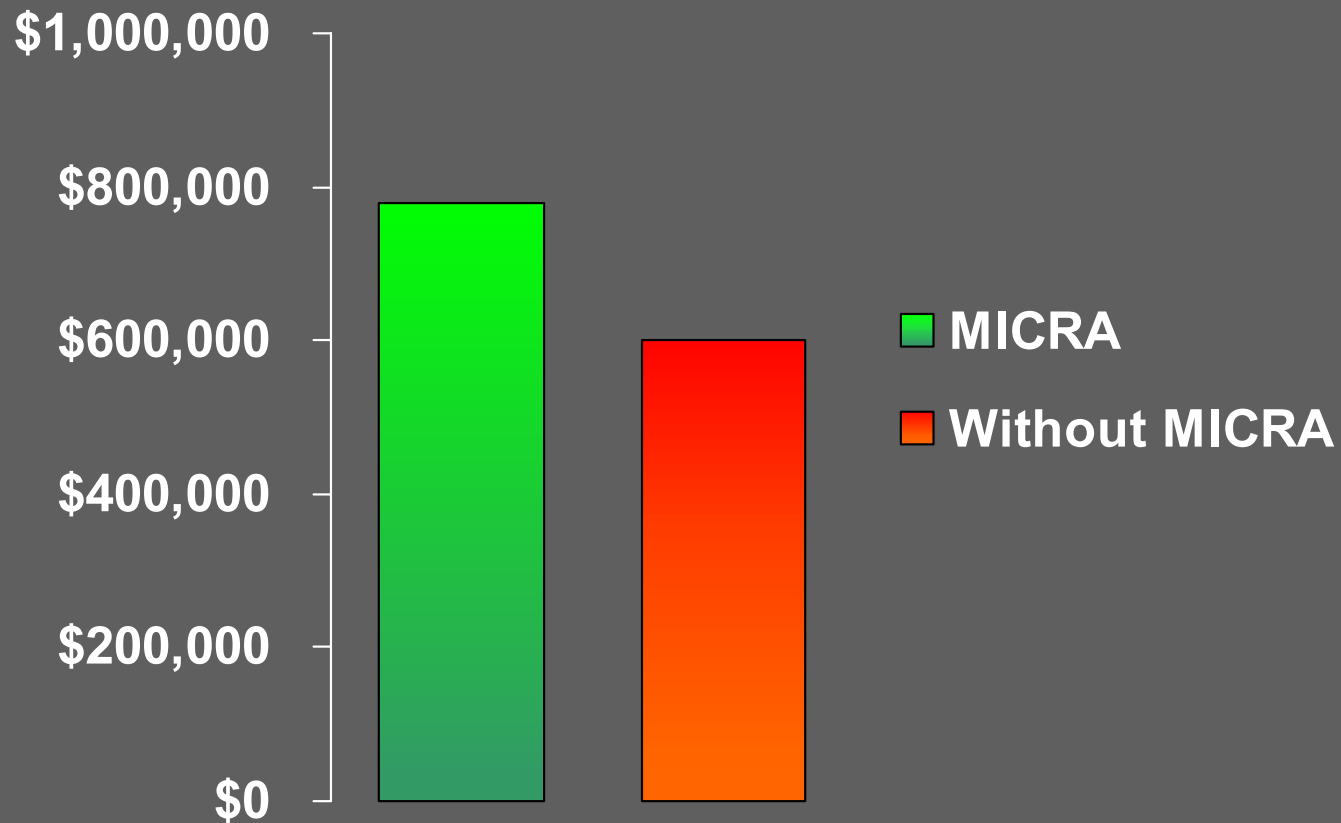
# MICRA Reduces Average Time to Settlement



\*Indemnity payments only

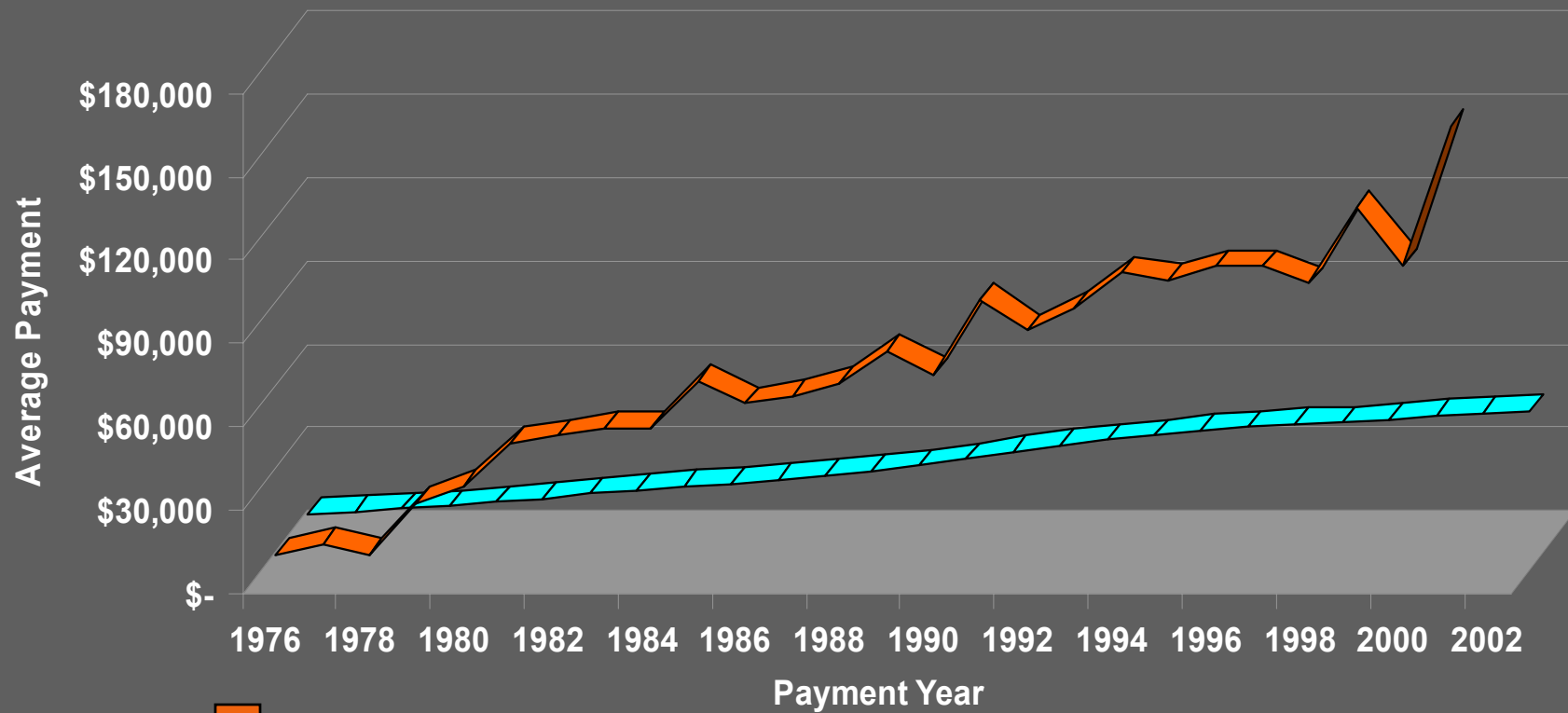
The Doctors' Company, 1997-2001

# Injured Patients Benefit Directly



Proceeds of a \$1 Million Judgment

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

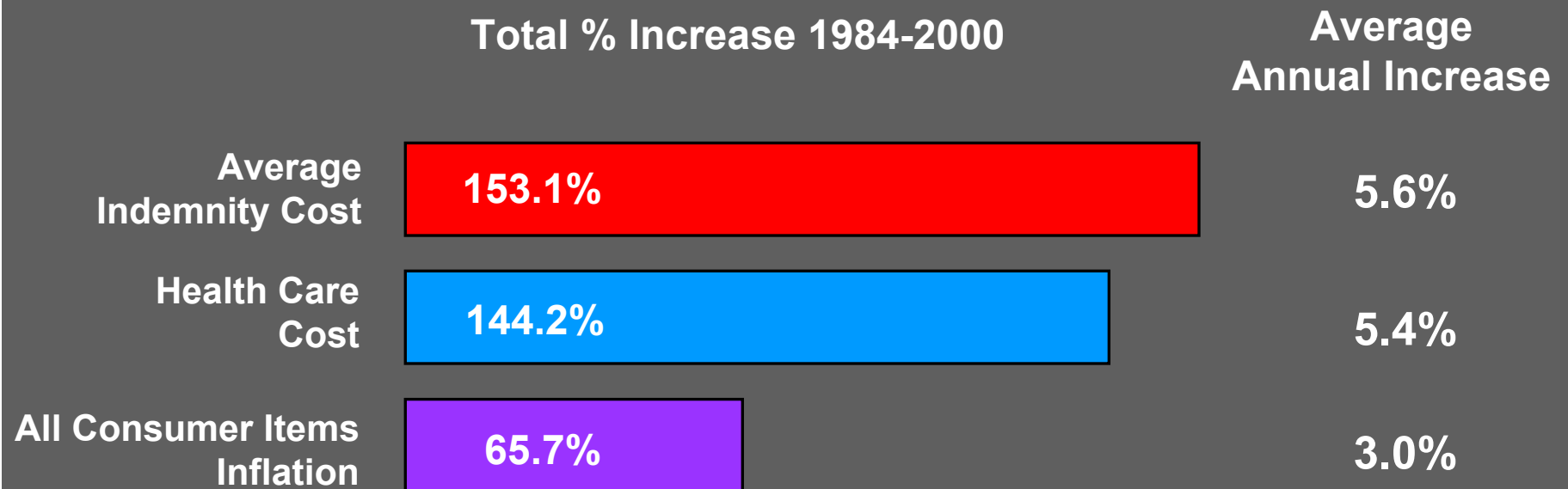


- Actual average physician medical liability claim paid in CA 1976-2001.
- Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.





# Increasing Cost of Malpractice Claims Despite MICRA

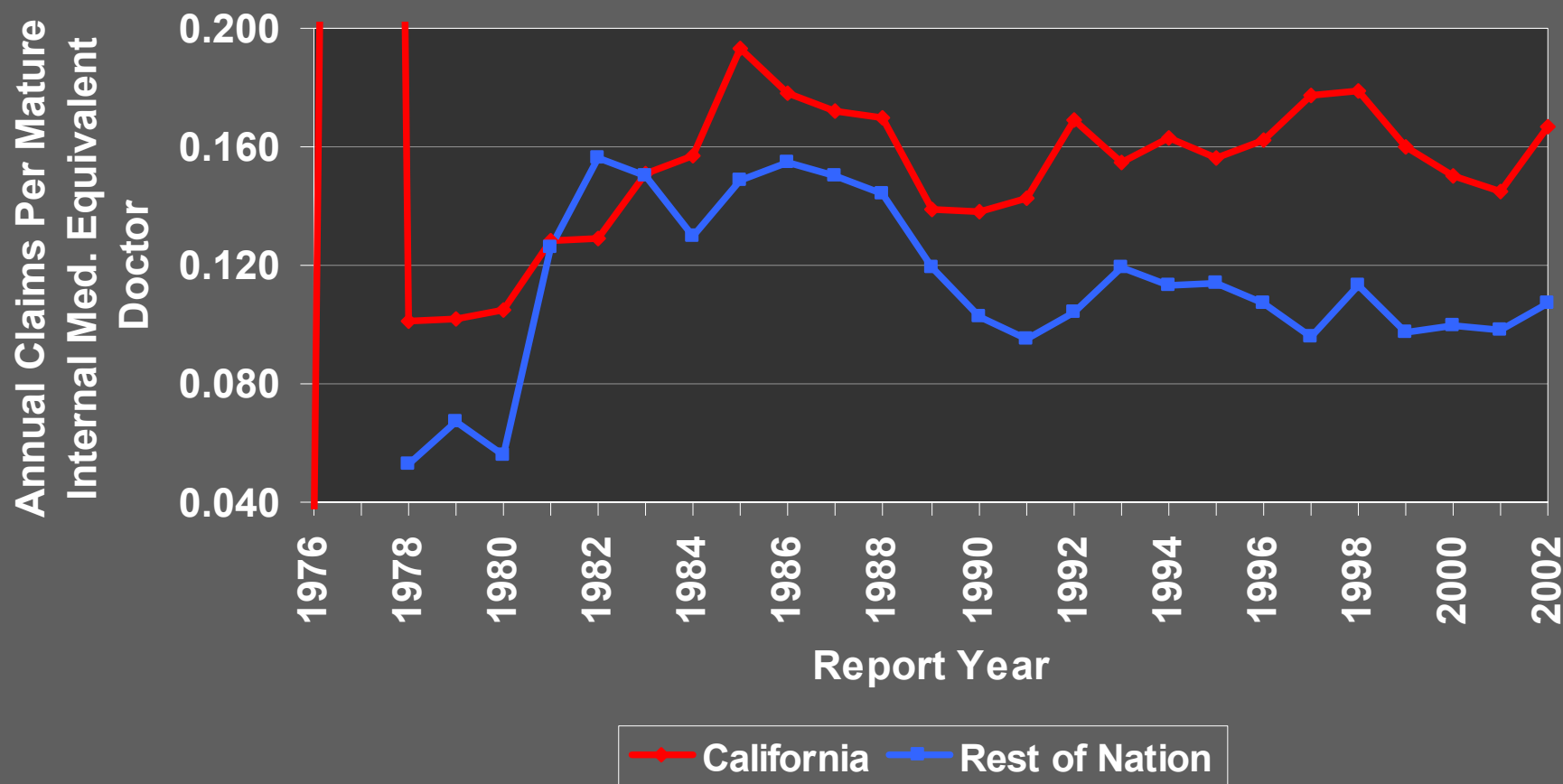


US Cities CPI vs. TDC California Allocated Claims Closed with Indemnity 70

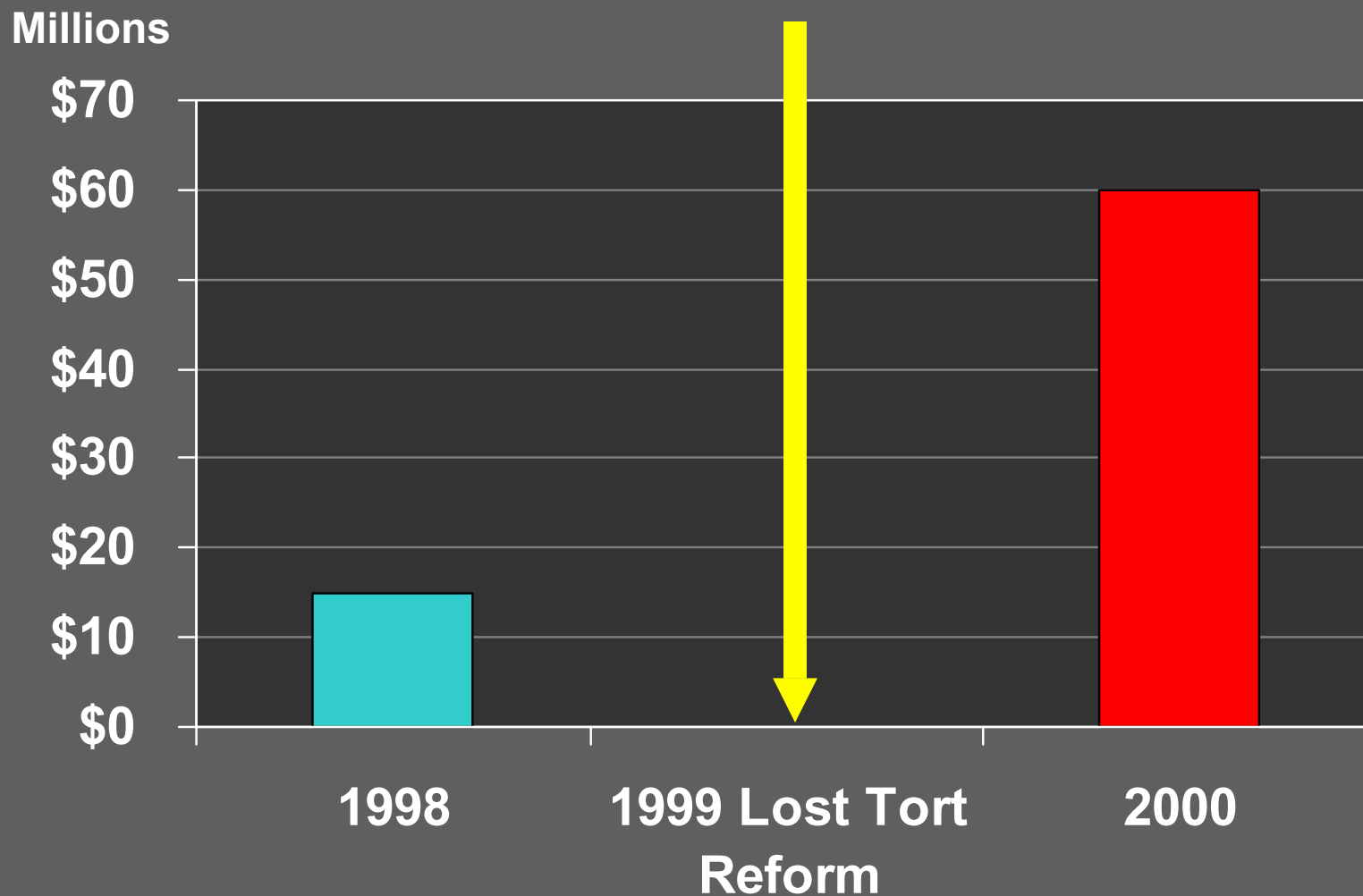
# MICRA Does Not Limit Access to Courts



### TDC PHYSICIAN CLAIM FREQUENCY



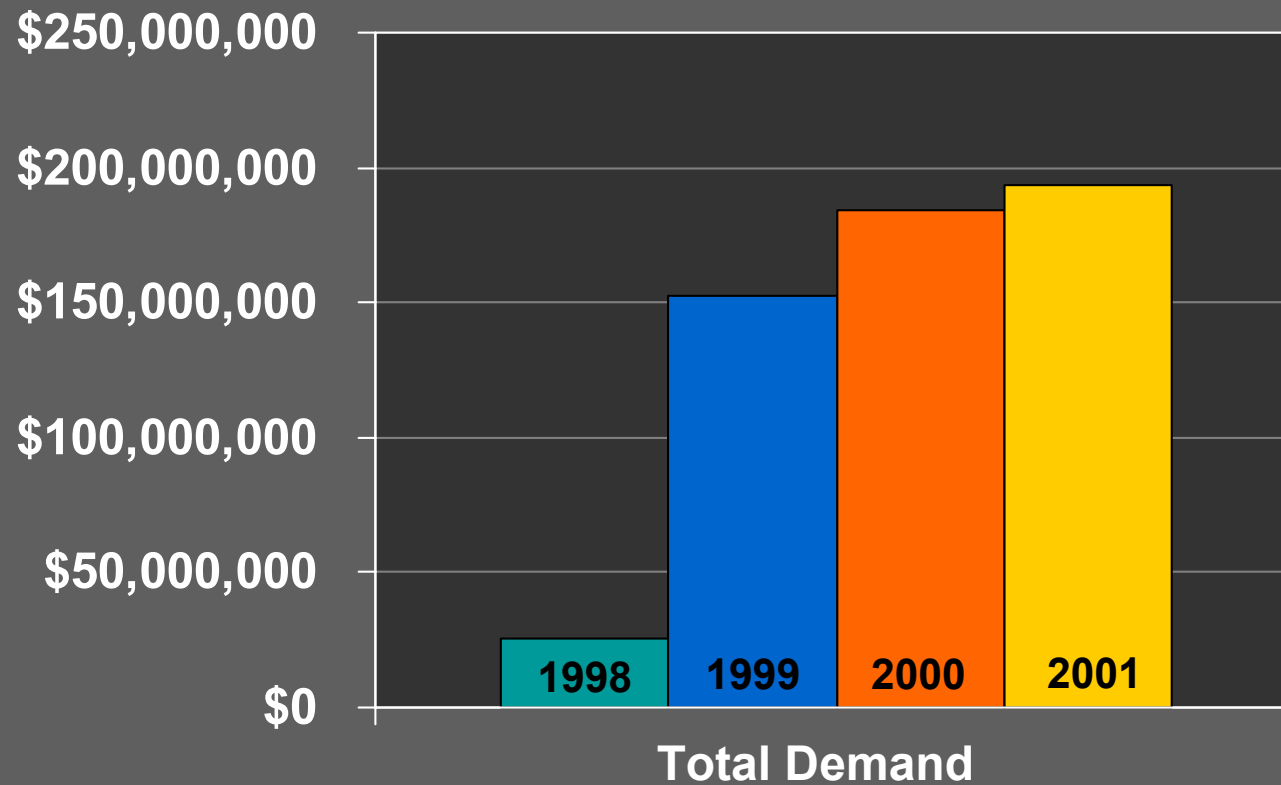
# Oregon: Loss of Tort Reform



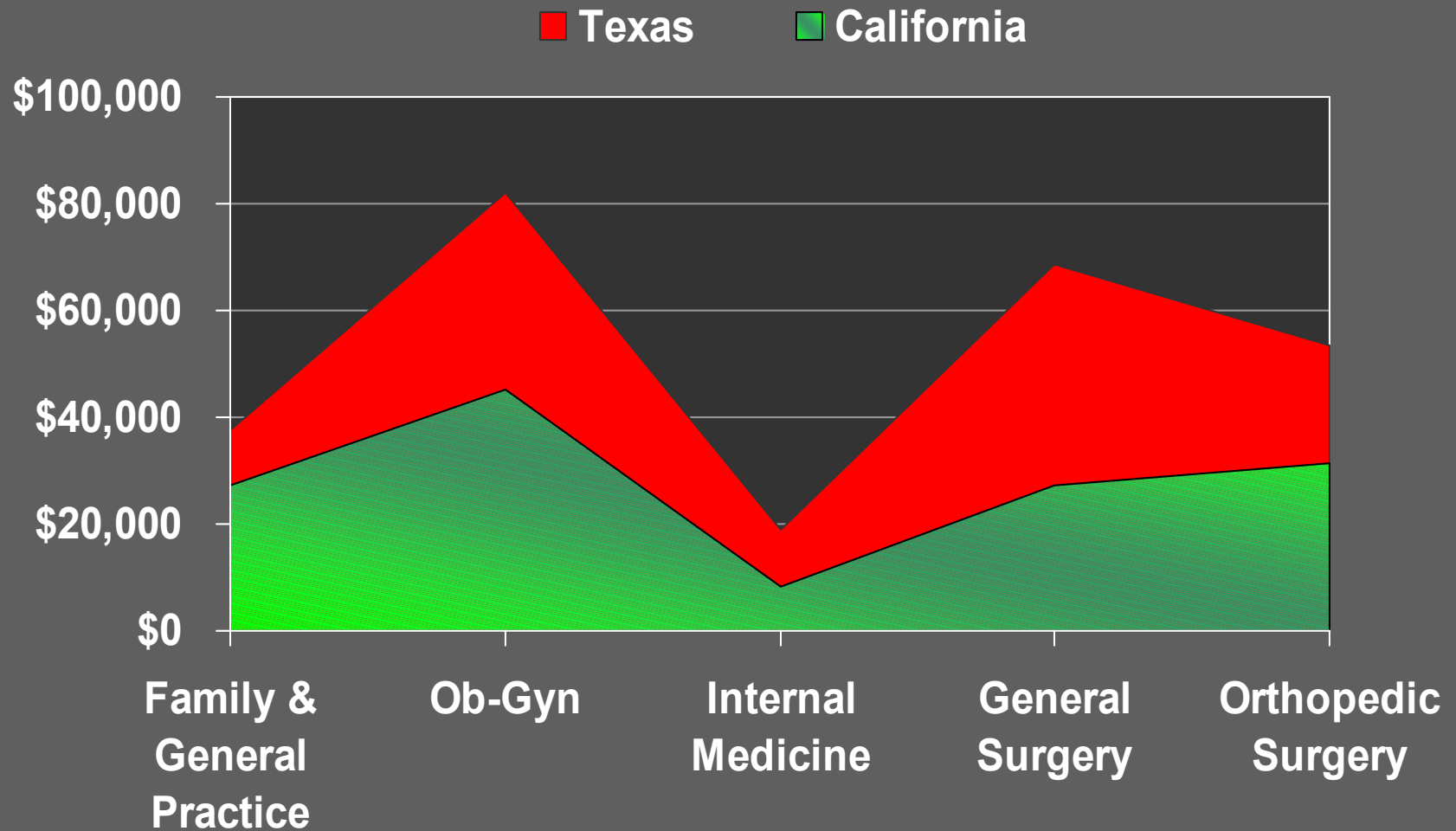
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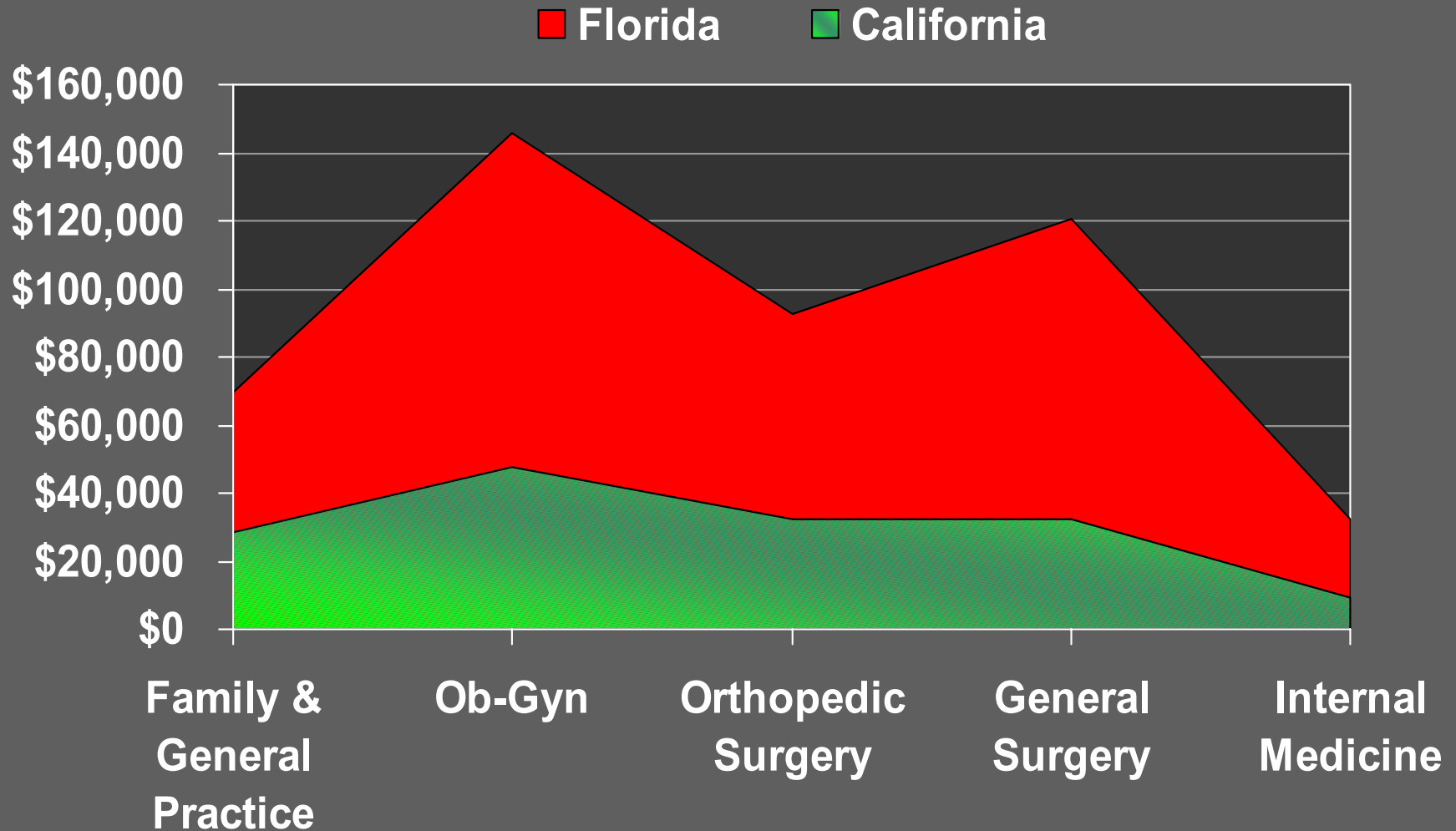
## Total Plaintiff's Demand in Settled Cases



# 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.