

# 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

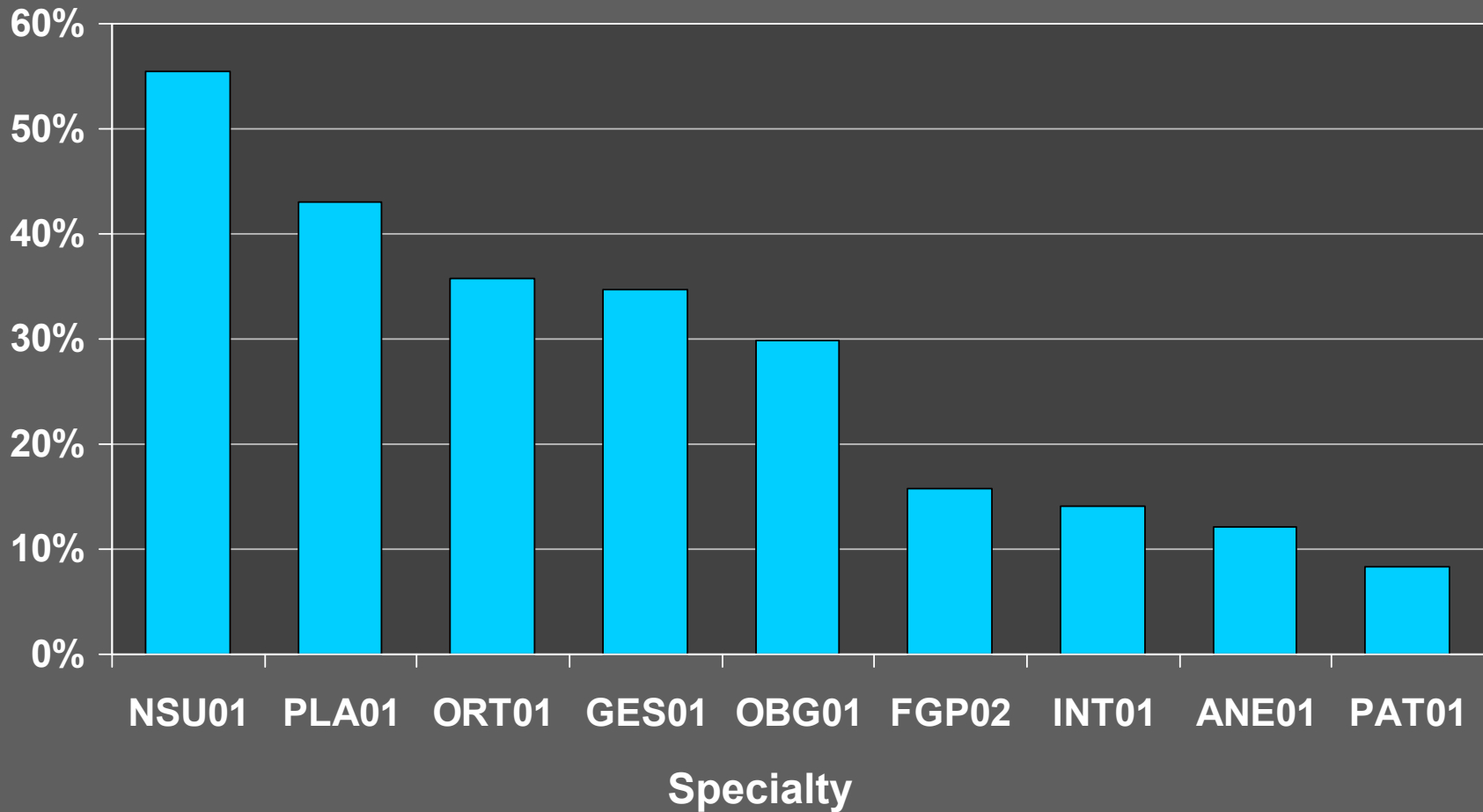


13. MIIX – Ceased operations, placed in runoff
14. MMI – Financial distress merger
15. PHICO – Insolvent
16. PIE Mutual – Insolvent
17. Princeton – Withdrew from medmal in PA
18. Professional Medical – Insolvent
19. Reliance – Insolvent
20. Safeco – Withdrew from physician business
21. SCOR Re – Withdrew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

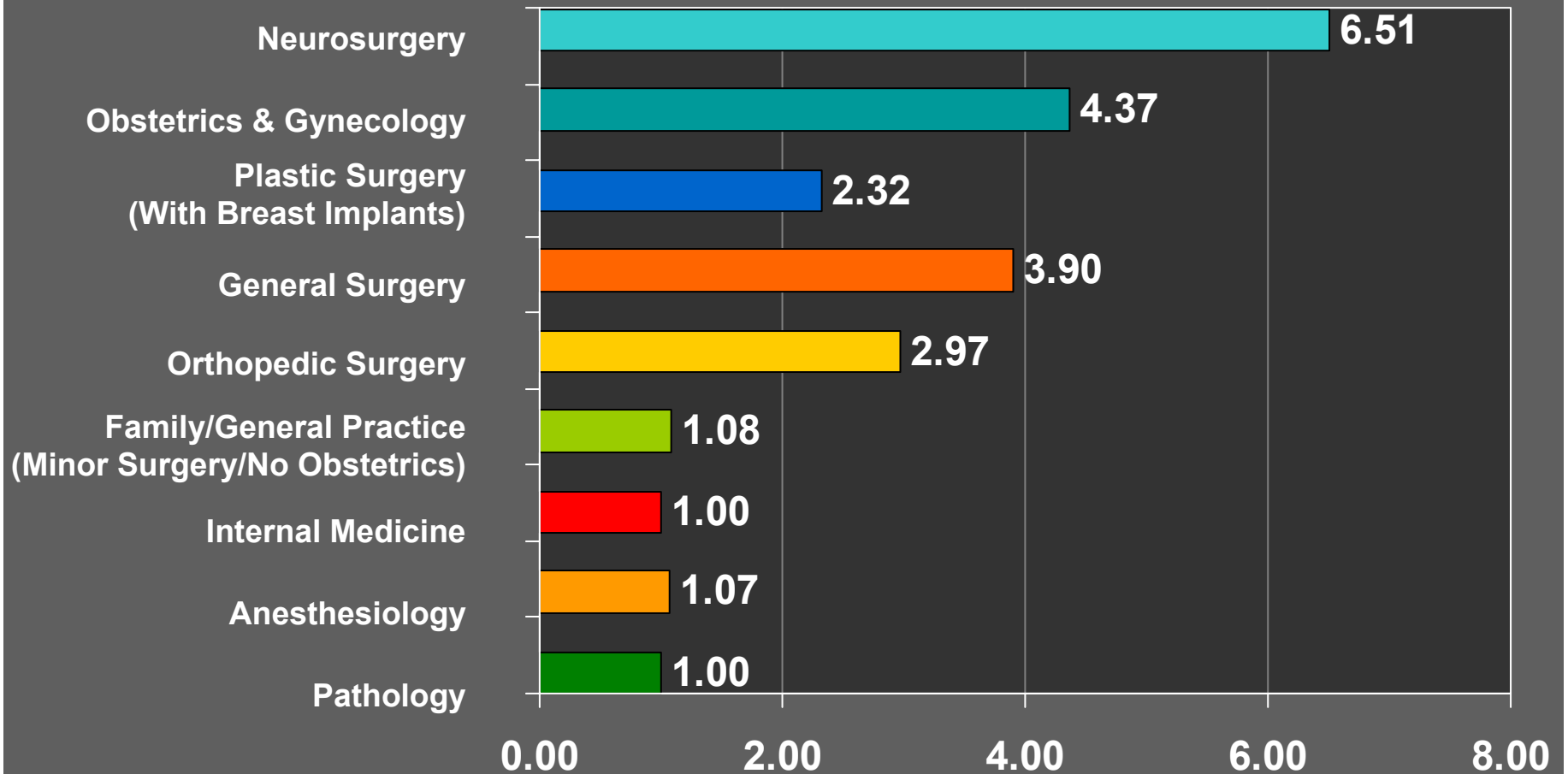
# Frequency by Specialty 1995-2001



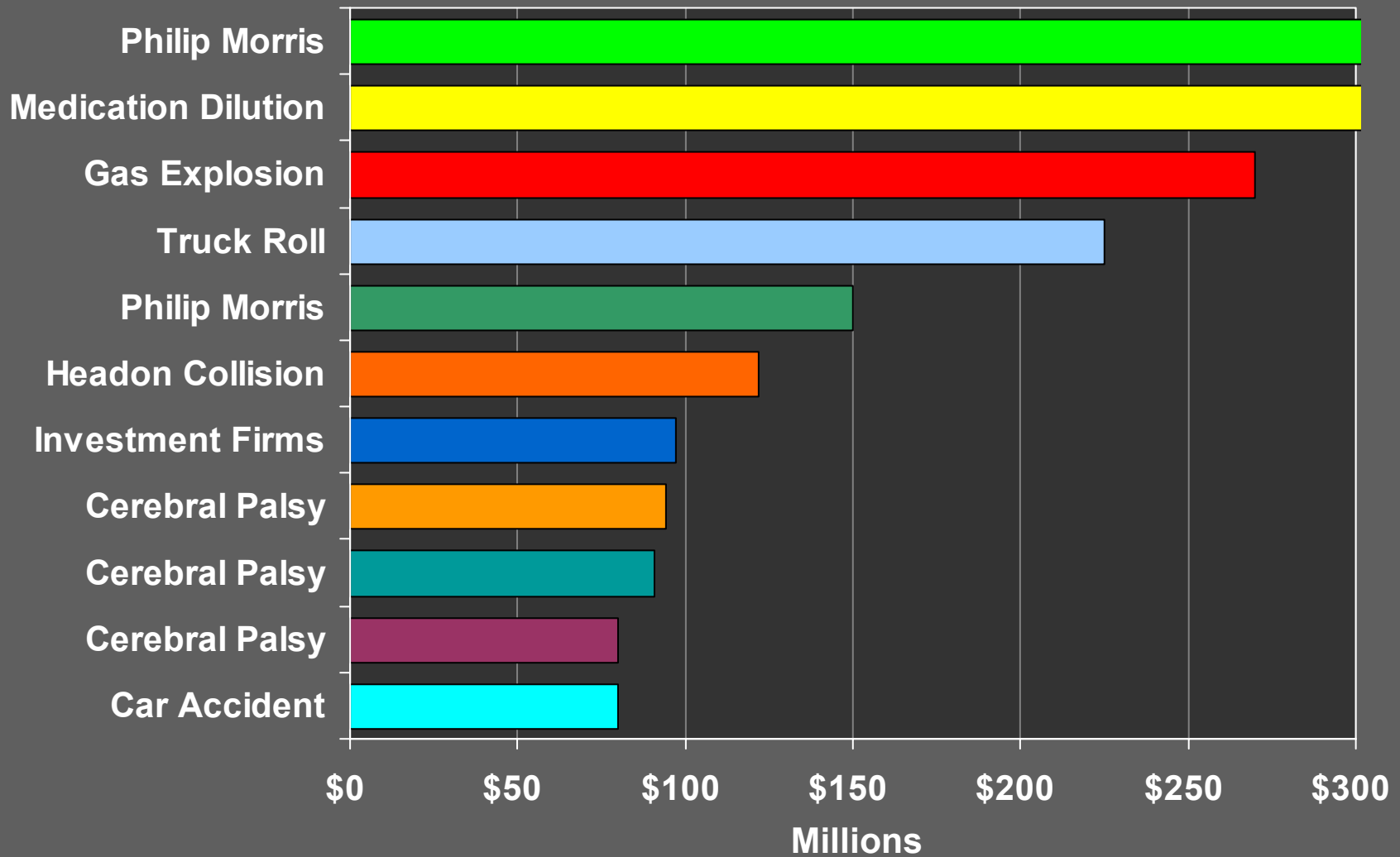
Frequency



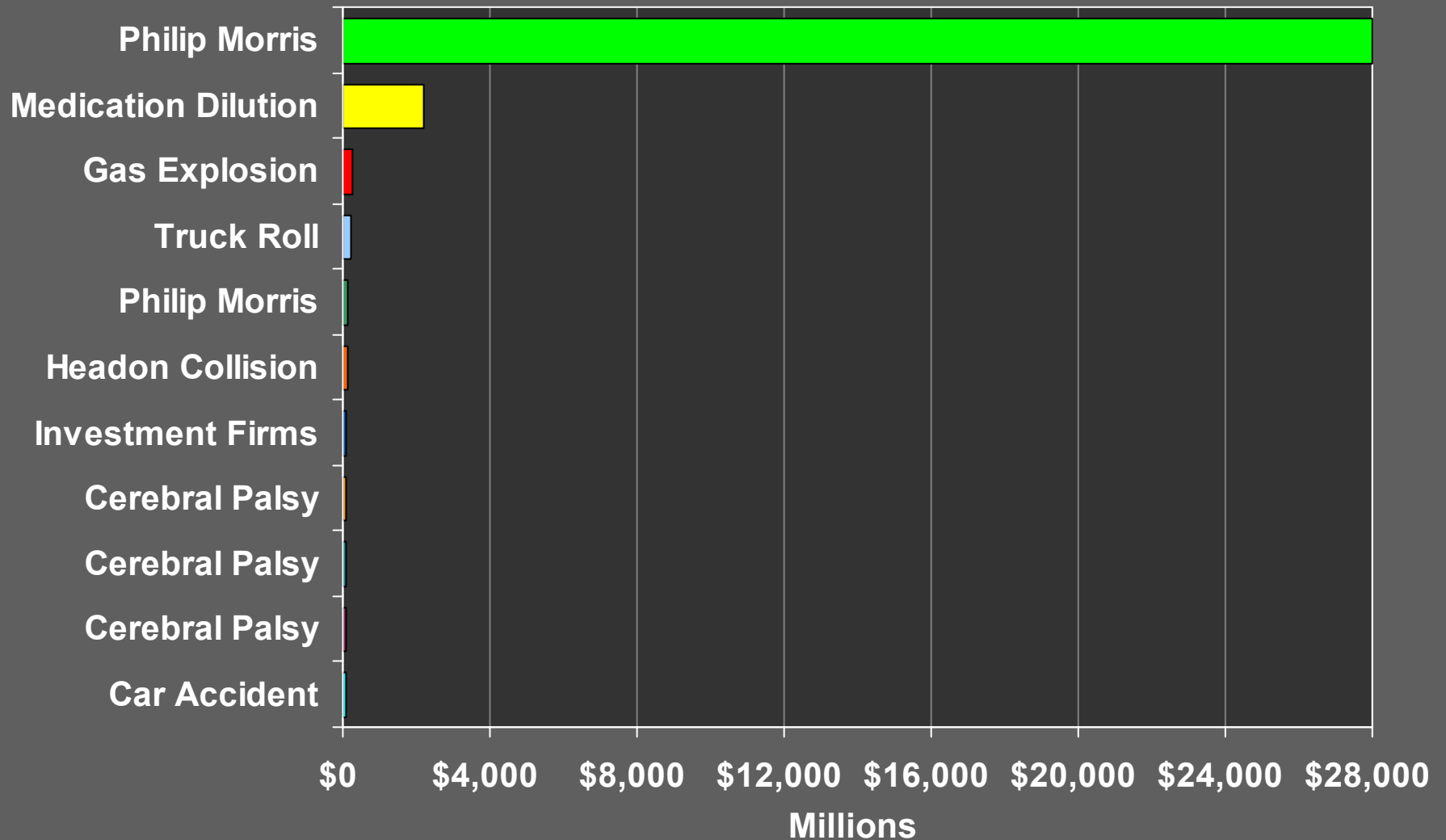
# Specialty Relativity Nationwide



# Top Jury Awards of 2002



# Top Jury Awards of 2002

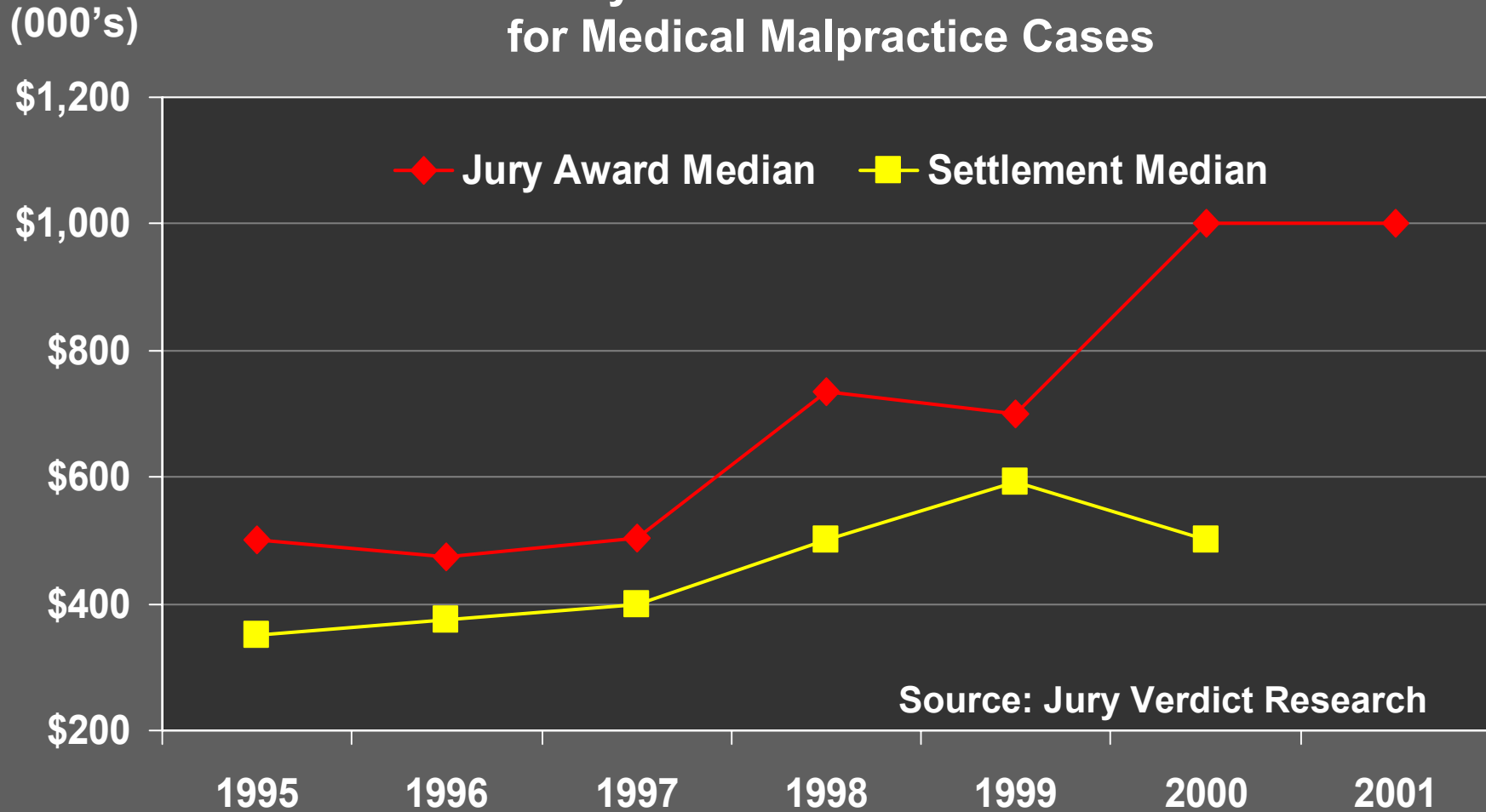




# Severity: National Medians



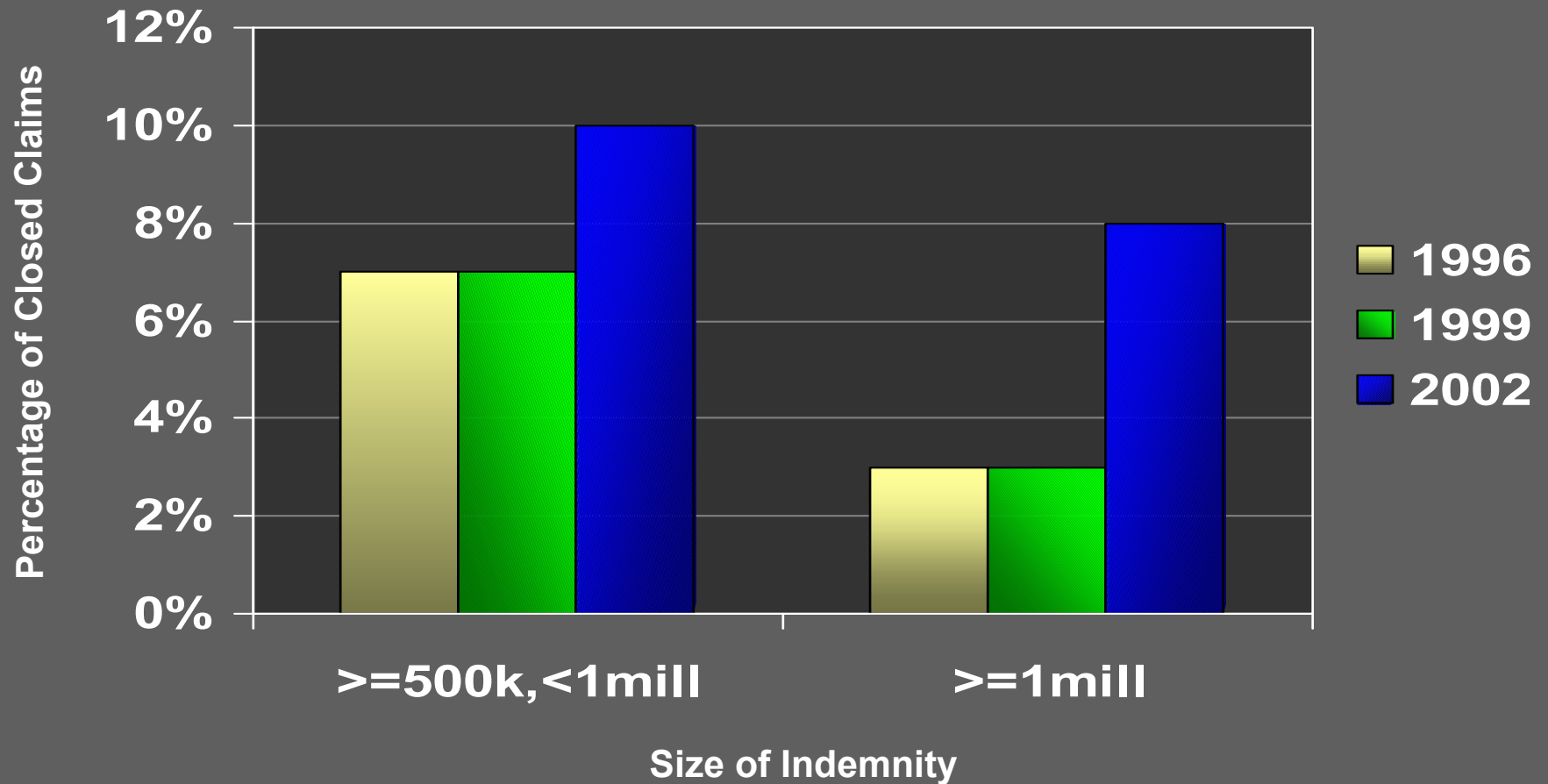
## National Jury Award and Settlement Medians for Medical Malpractice Cases



# 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*

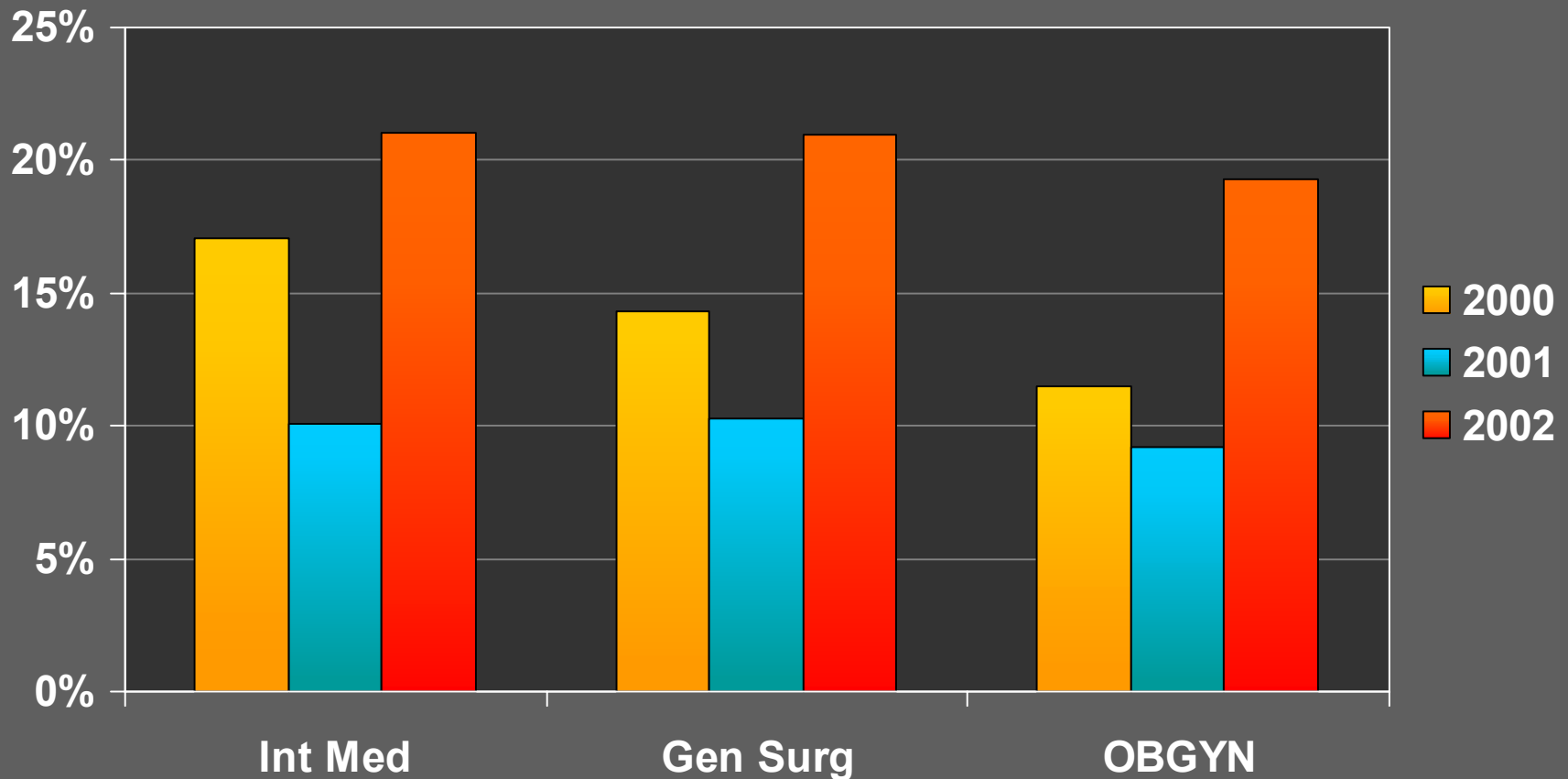
# Costs of Coverage

# Reinsurance

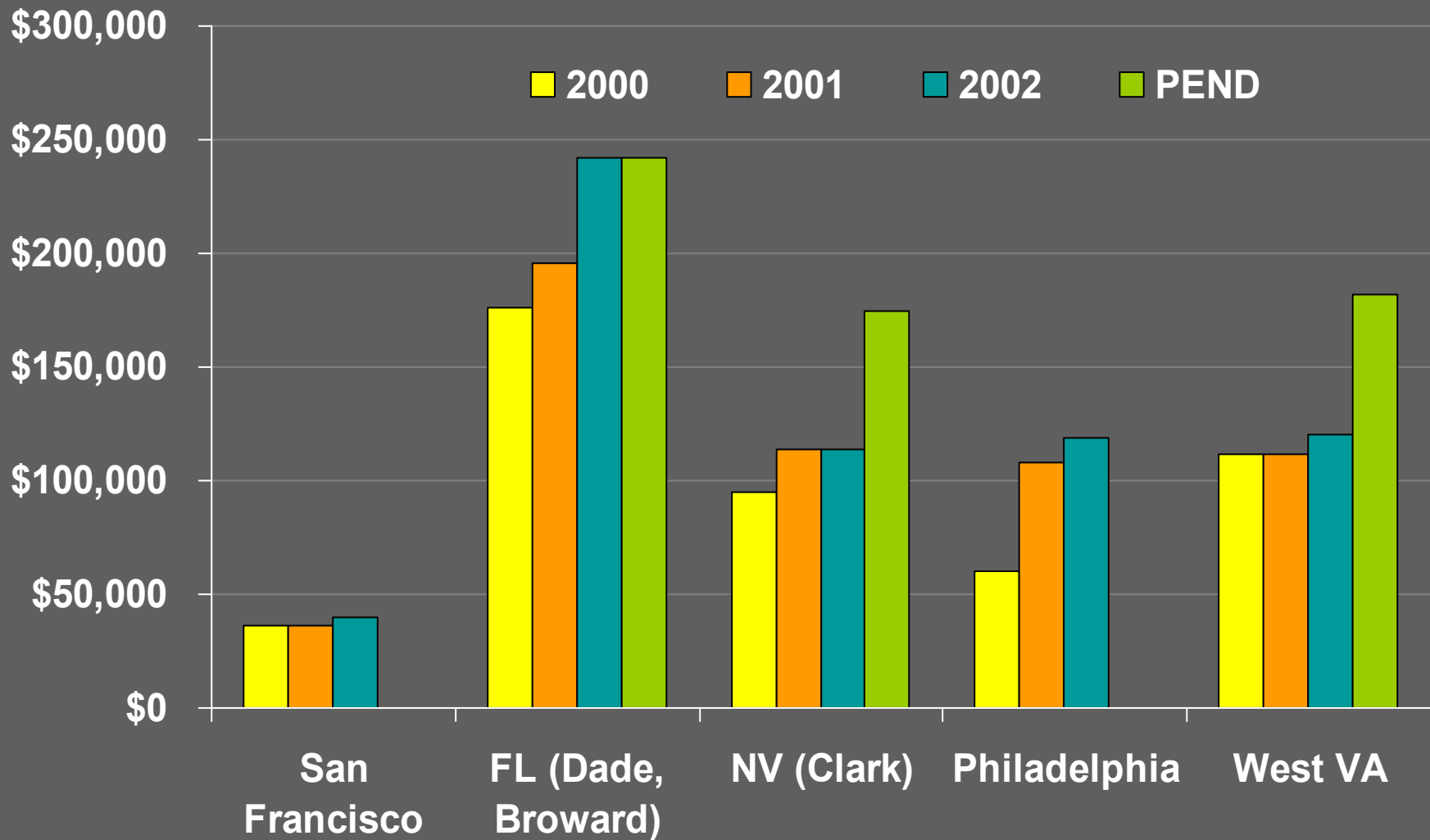
September 11

Effect is inversely proportional to the size  
of the insurance company

# Average Rate Increases



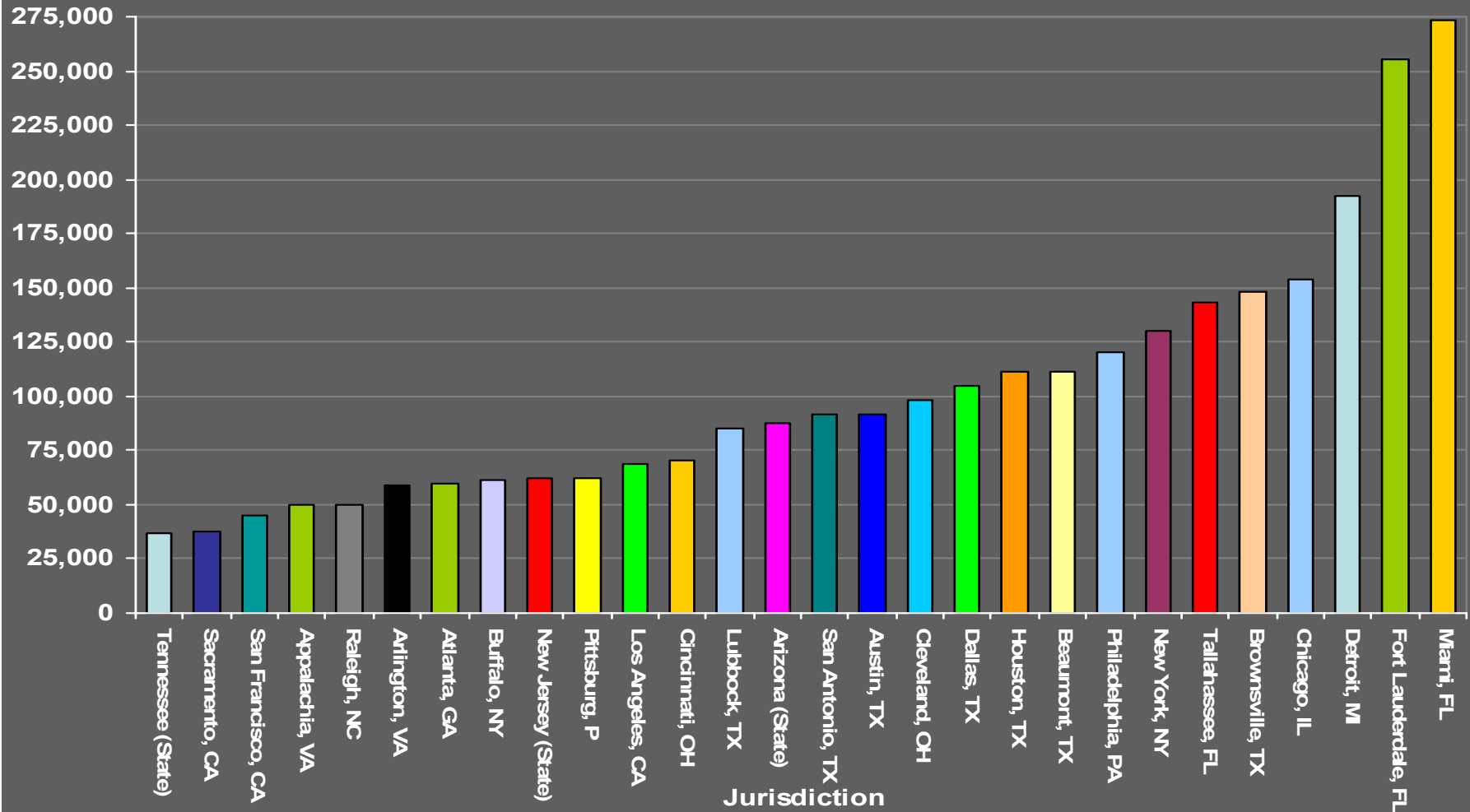
# Recent Neurosurgery Rates



# Neurosurgical Rates Across the Country (TDI)



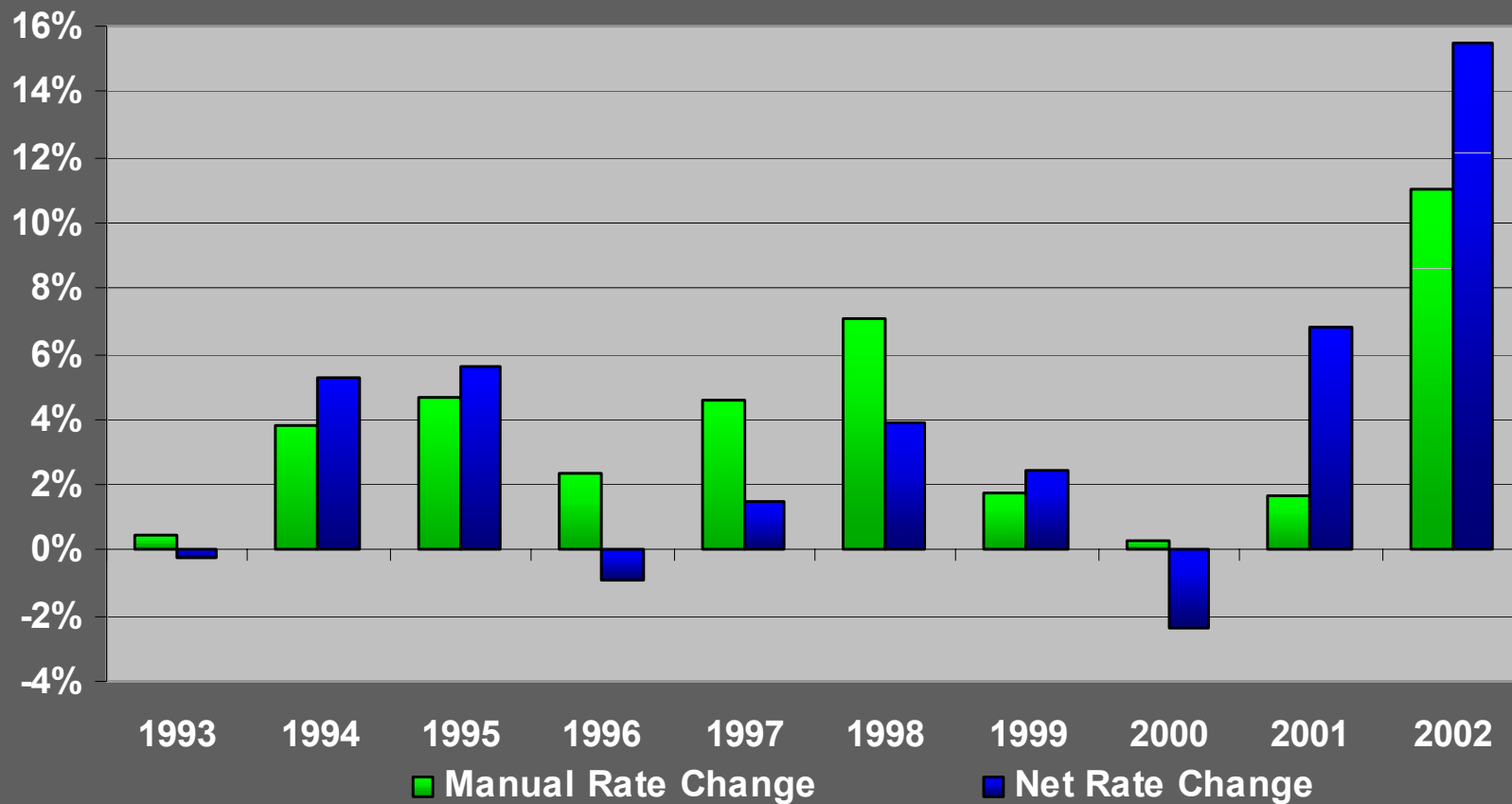
Premium Dollars



# Pricing Trends

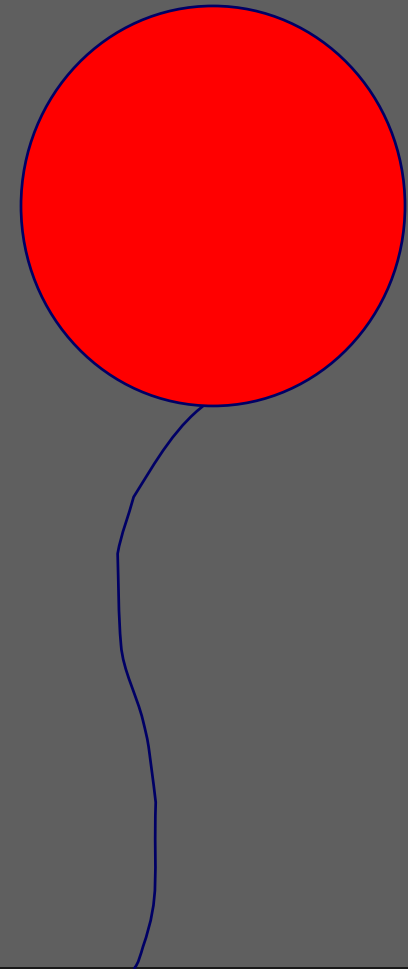


## TDC Calendar Year Nationwide Average Rate Changes





# 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

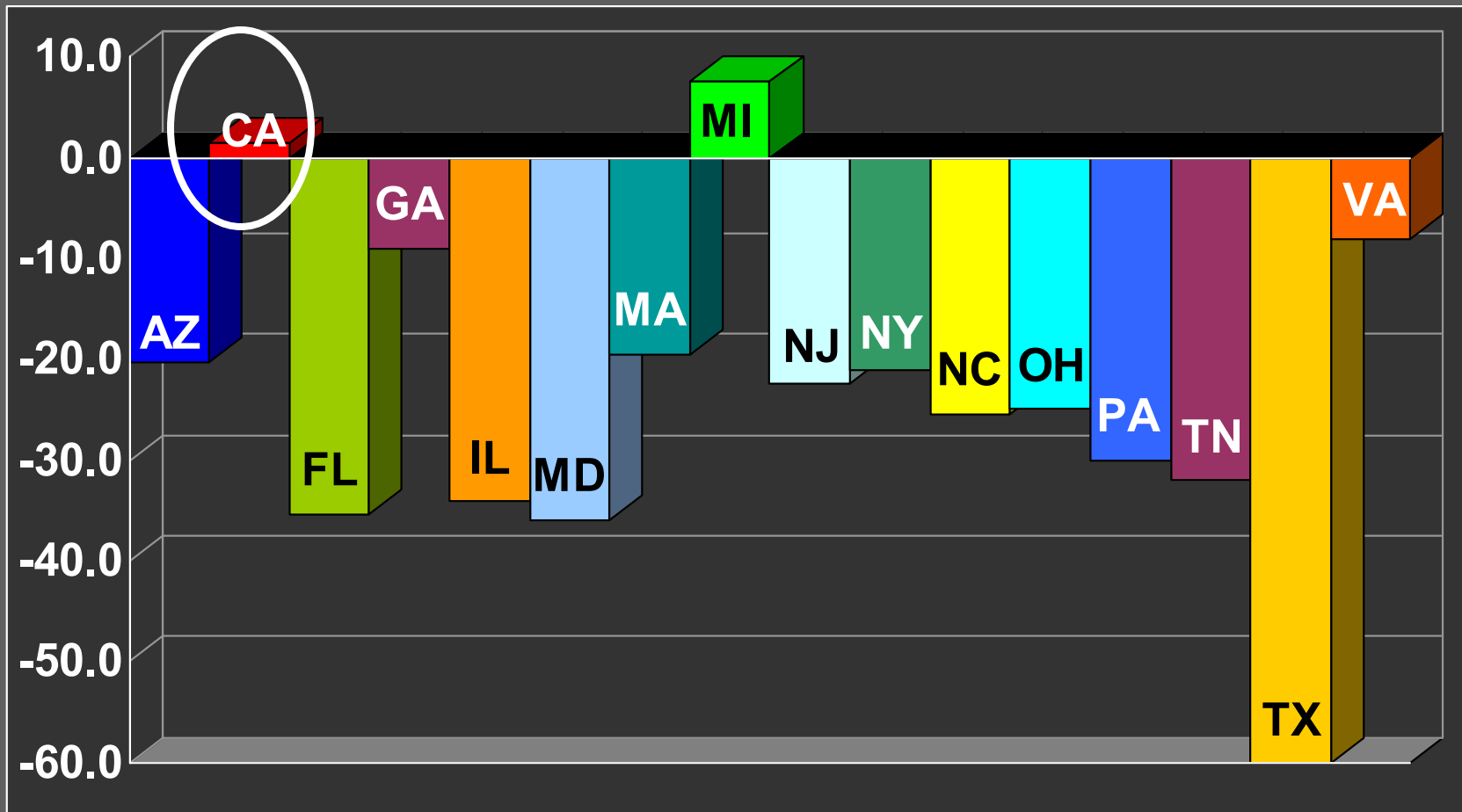
- Med mal hearings 1991
- TDC had been paying dividends for **11 years** prior to its 103 dividend.
- TDC dividends were **higher in the 5 years prior** to 103 than they were in the 5 years after.

# 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

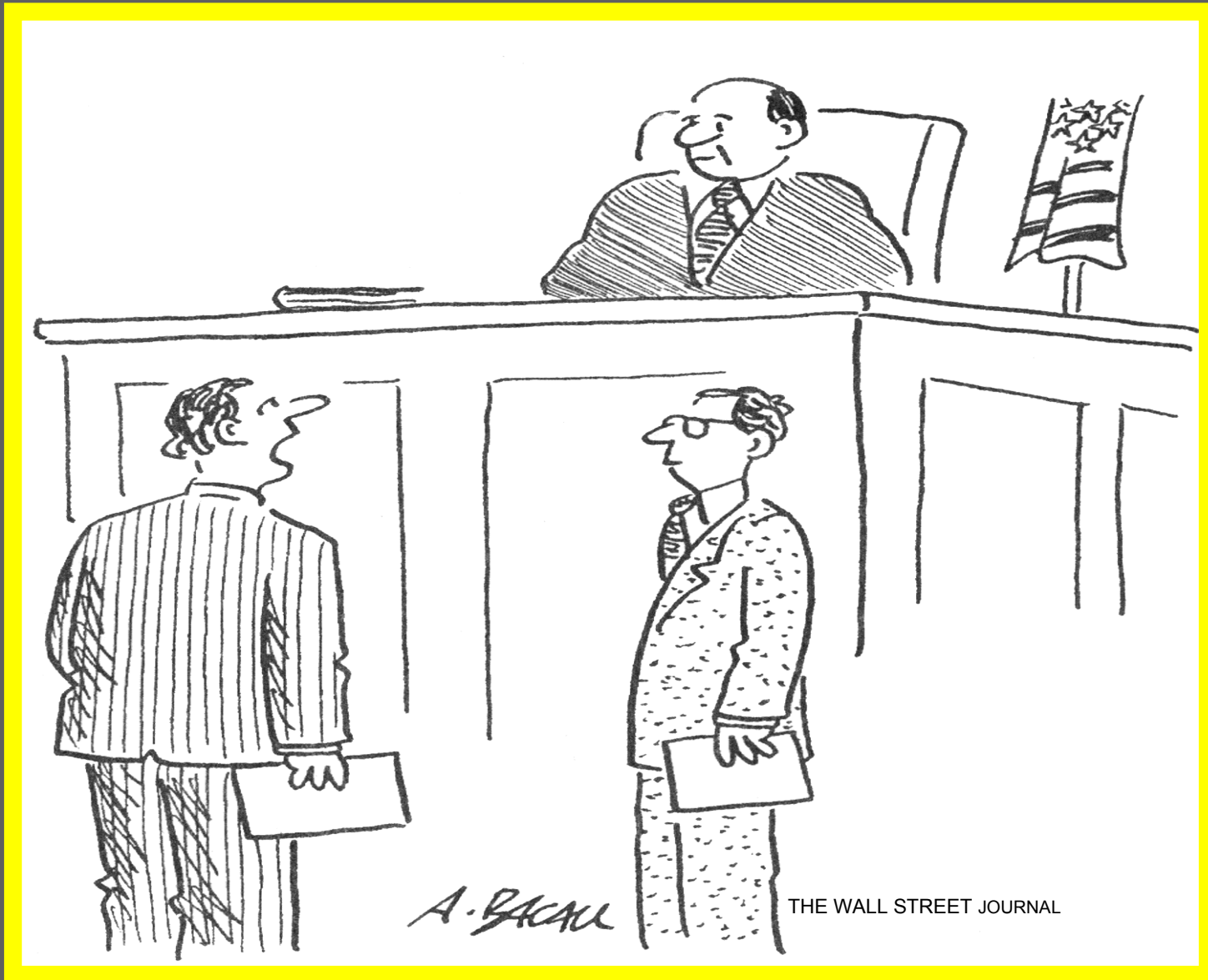
- Less than 10% of assets

## Era of subsidies is over

- Alternative: insolvency

# Tort Reform



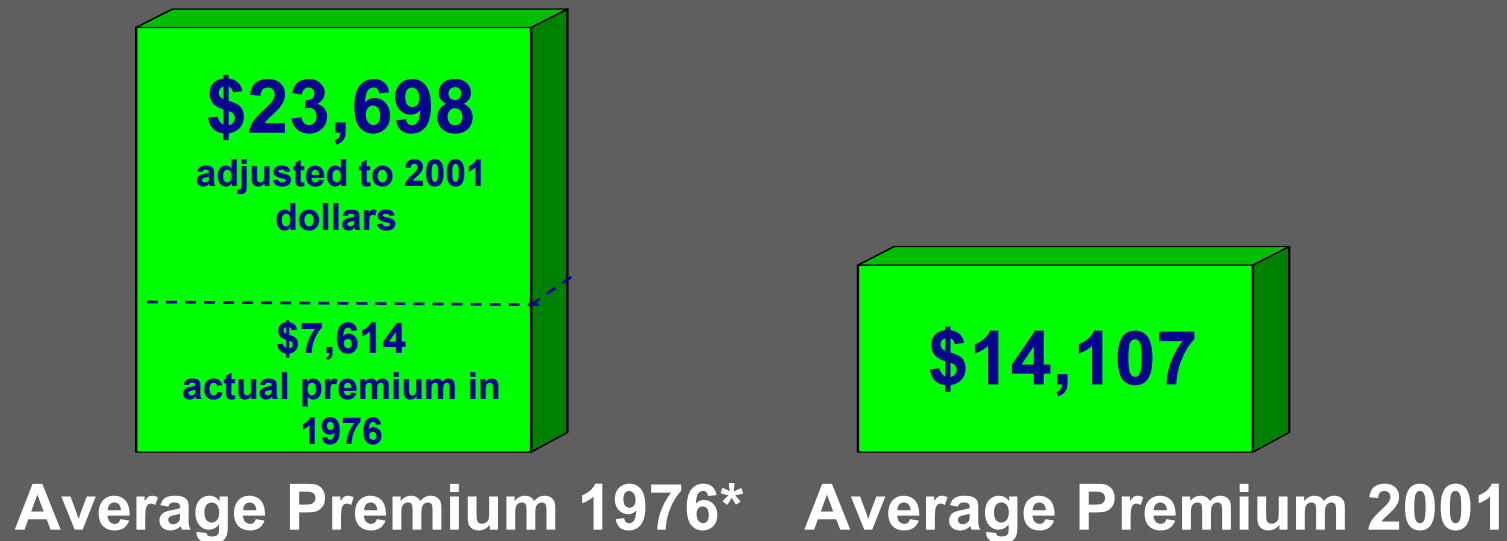


*“Your Honor, we need more time to prepare to make a mockery of the law.”*

# MICRA Helps Reduce California Medical Liability Premium Rates by 40%



## The Doctors' Company 1976-2001

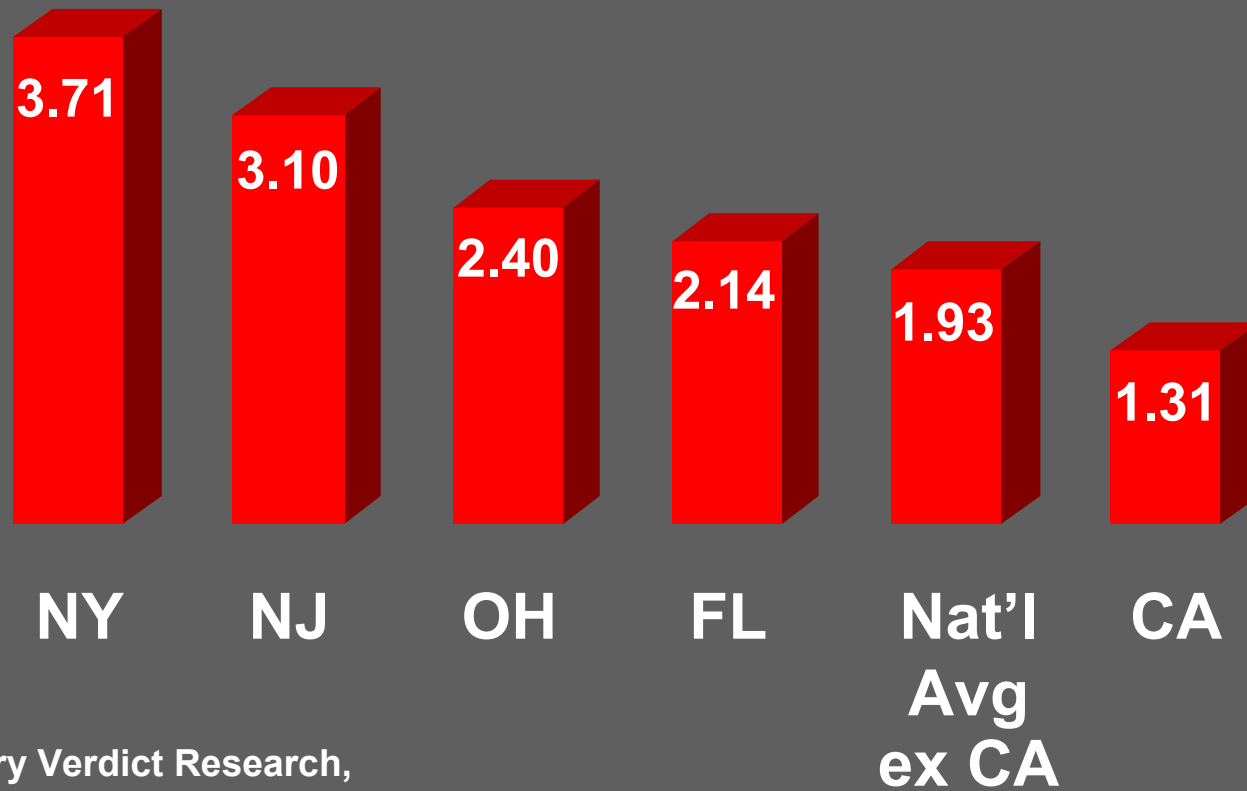


\* \$7,614 average premium adjusted to 2001 dollars on the Annual Urban CPI Index for a \$1 Million/ \$3 Million Claims-Made Policy Premium

# MICRA Reduces Verdict Cost and Frequency

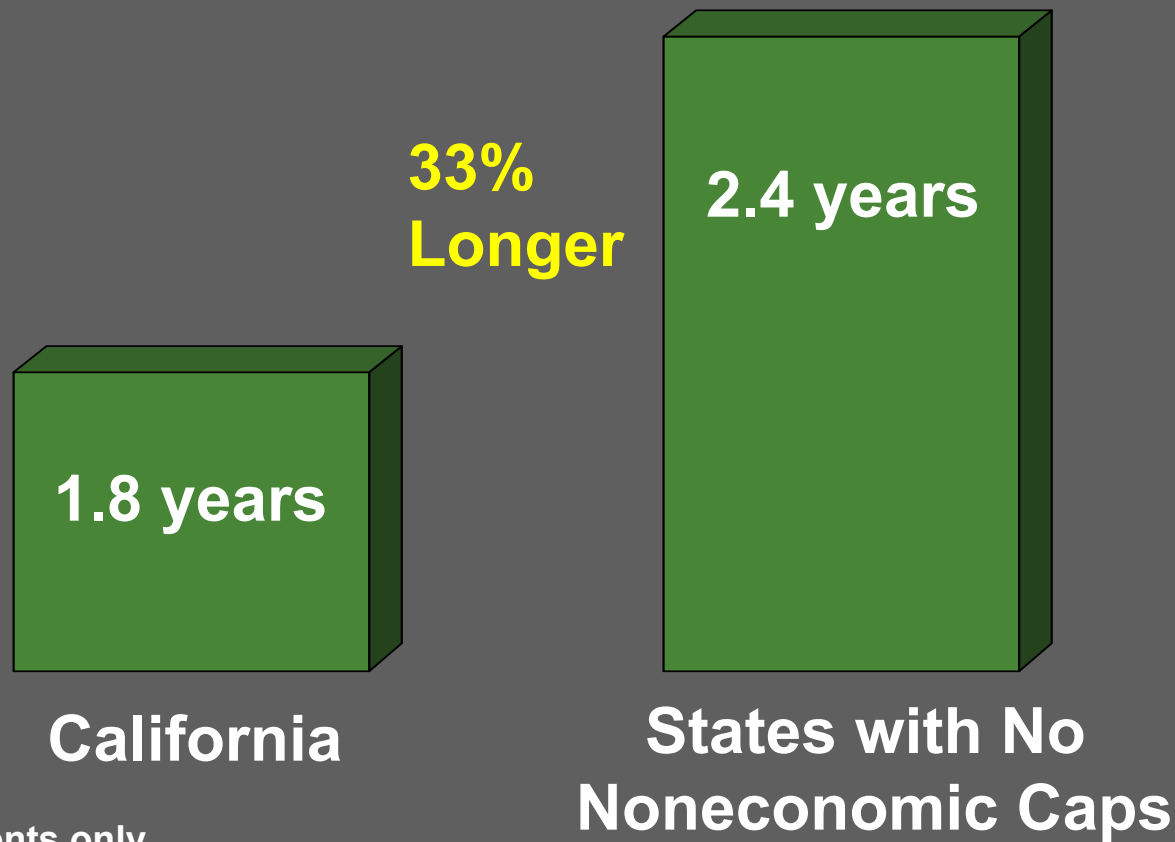


\$1 Million+ Verdicts Per 1,000 Doctors



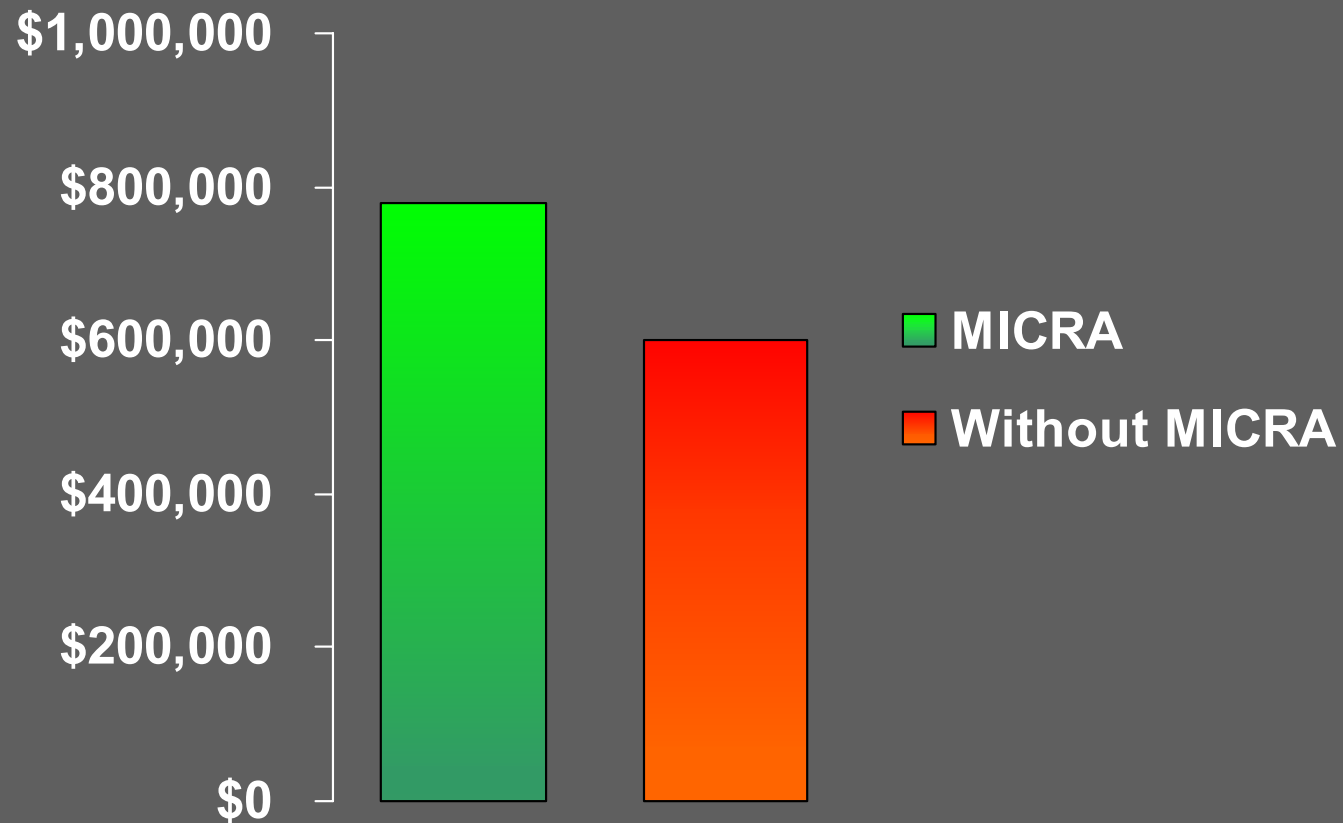
Sources: Jury Verdict Research,  
AMA

# MICRA Reduces Average Time to Settlement



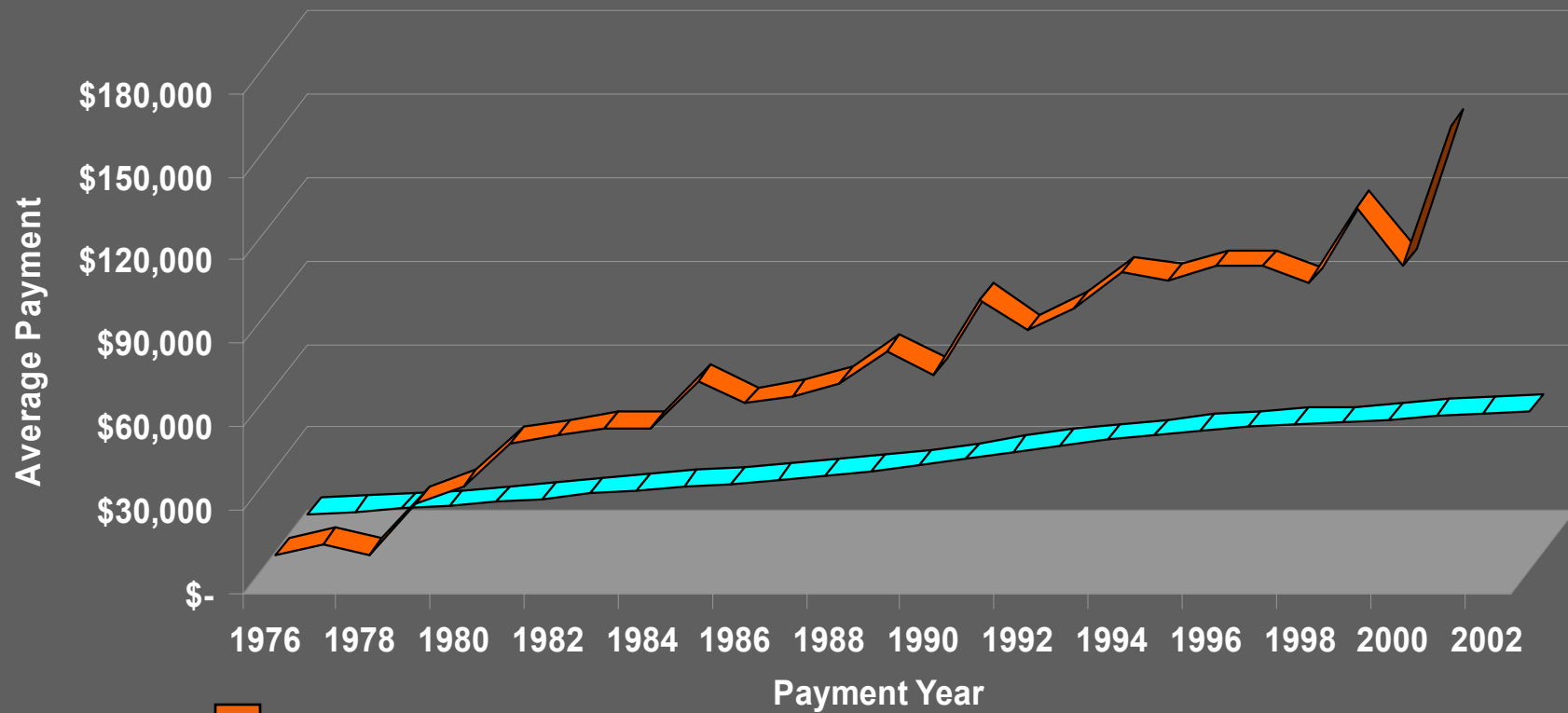
\*Indemnity payments only

# Injured Patients Benefit Directly



Proceeds of a \$1 Million Judgment

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



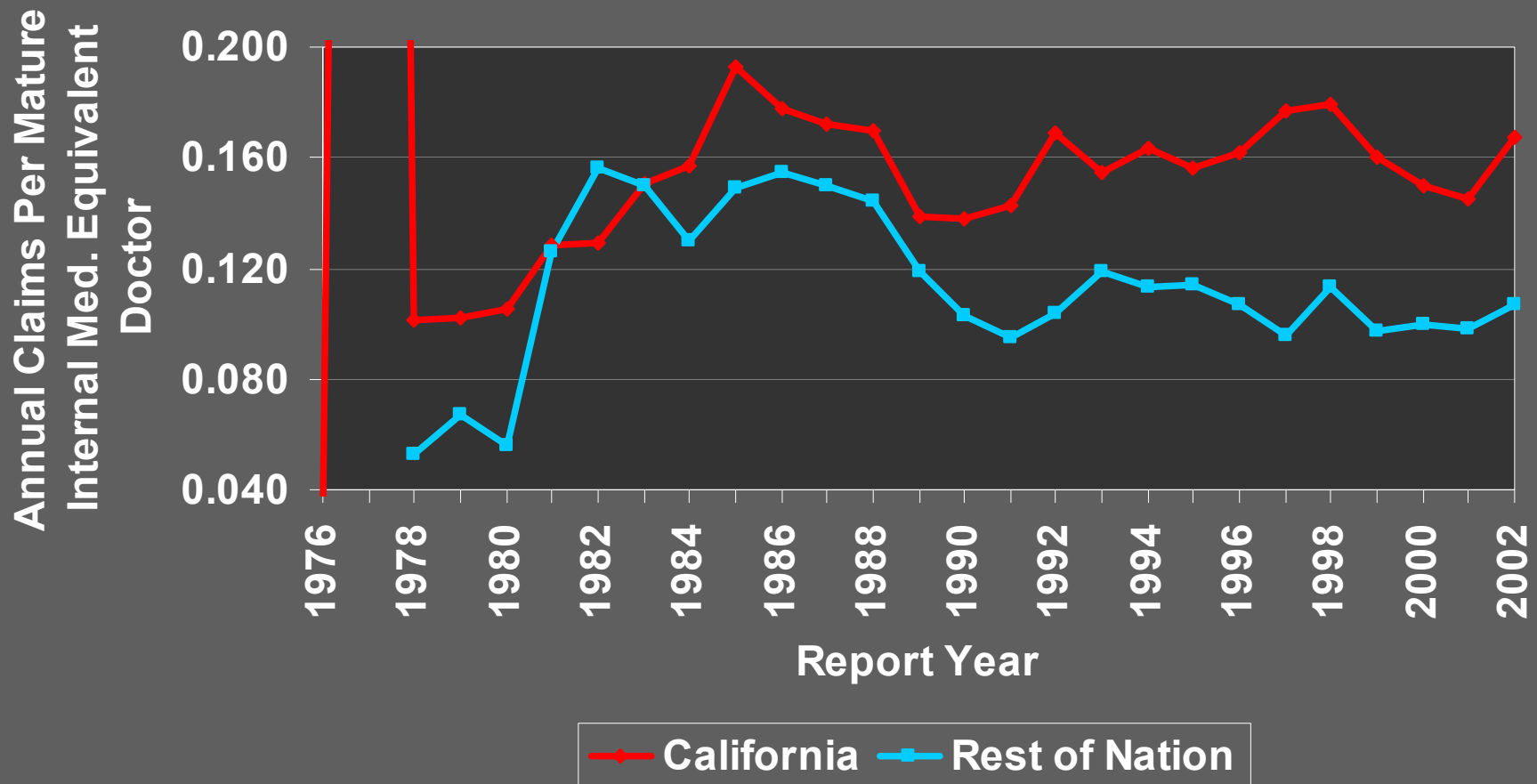
- Actual average physician medical liability claim paid in CA 1976-2001.
- Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.



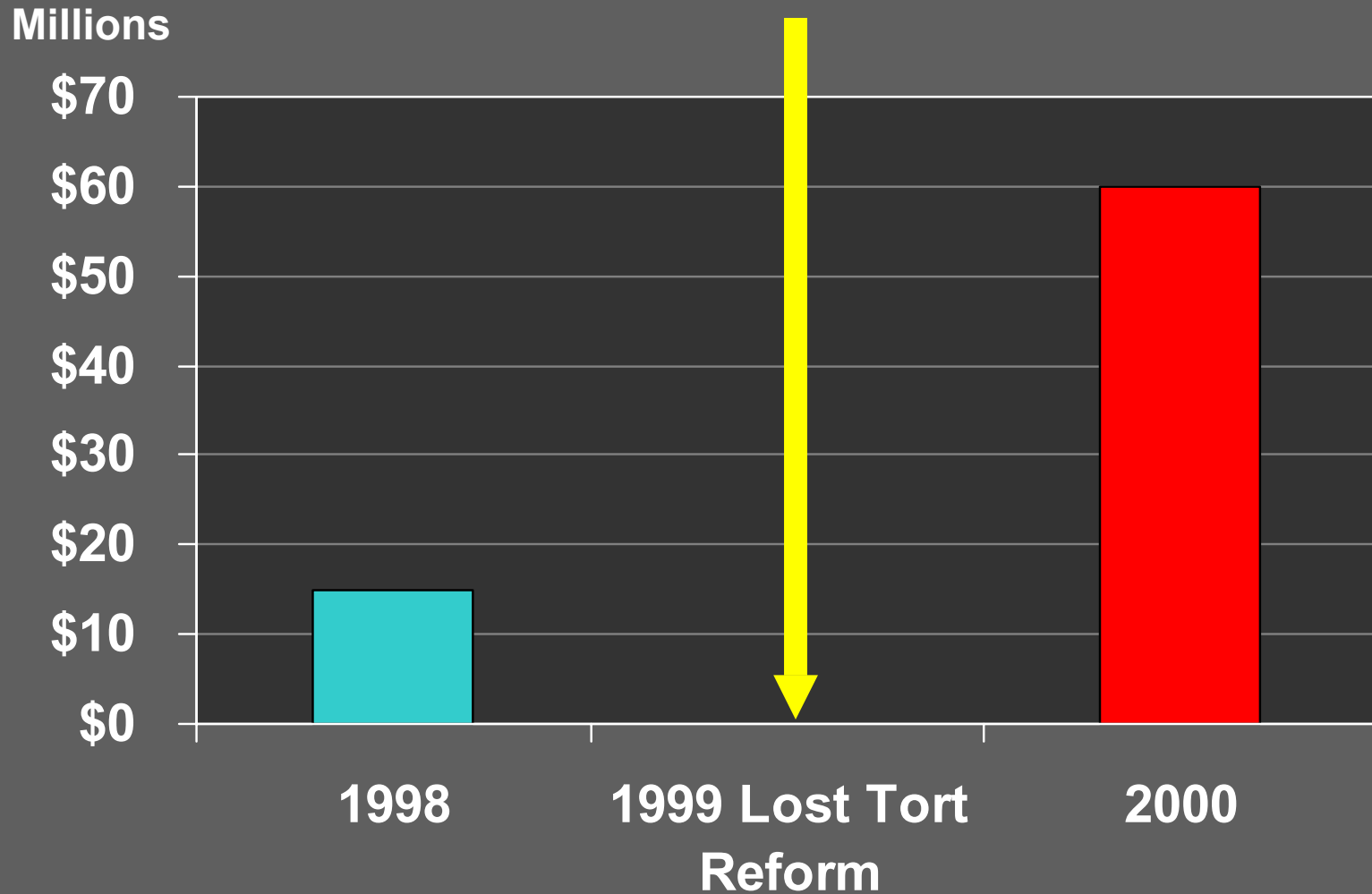
# MICRA Does Not Limit Access to Courts



## 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.



# 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”
    - “...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.

