

Medical Professional Liability Crisis: Why and What Now

Seattle
June 9, 2004

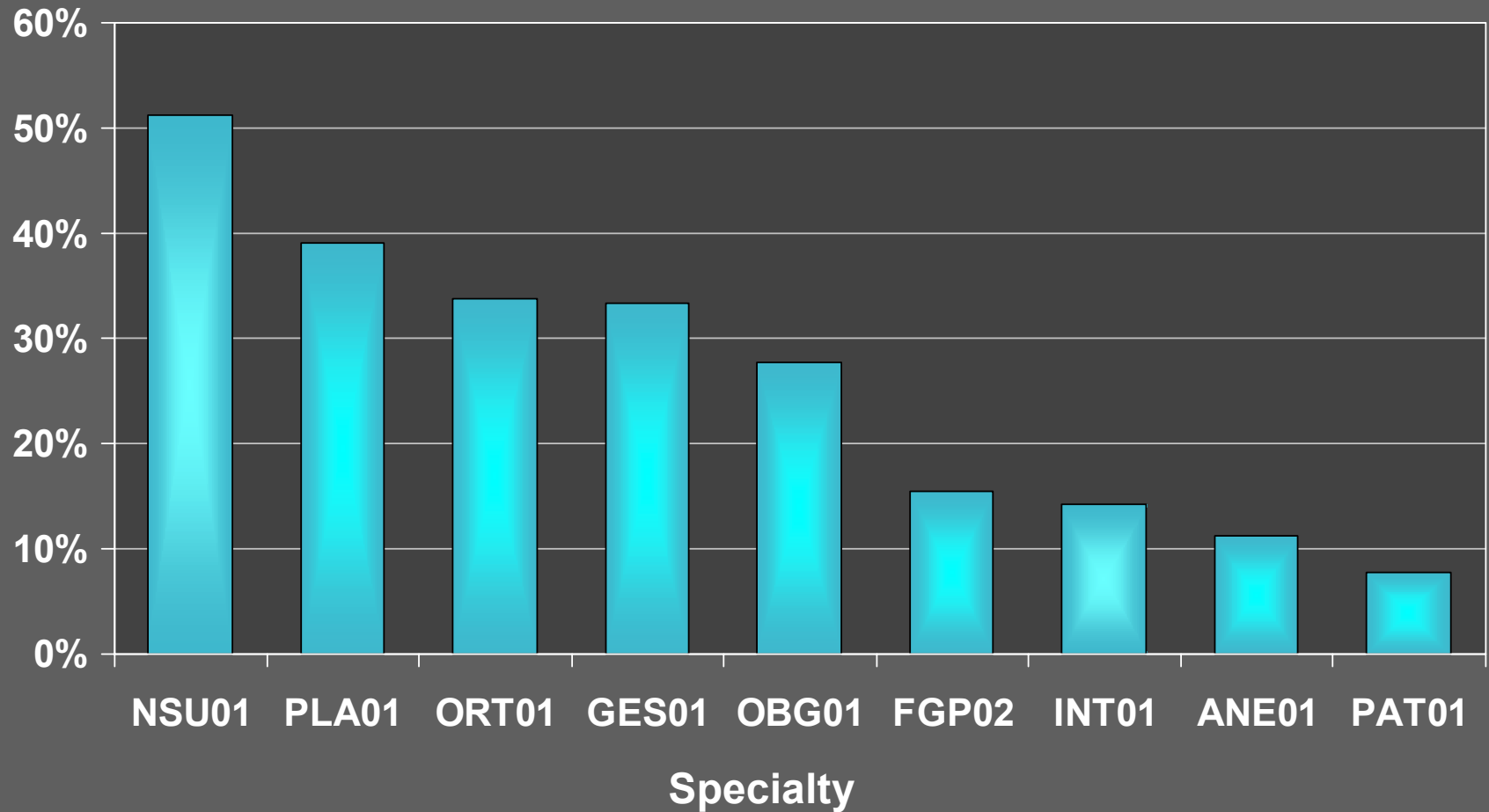
Richard E. Anderson, M.D.
Chairman and CEO
The Doctors Company

- Origin of the problem
 - Frequency
 - Severity
 - Costs
- Randomness
 - Fallacy of the bad doctor
- Tort reform: Theory and practice
 - *Defining effective reforms*
 - *Defining ineffective reforms*
 - California vs. Washington

Frequency by Specialty 1995-2003



Frequency



Meaning

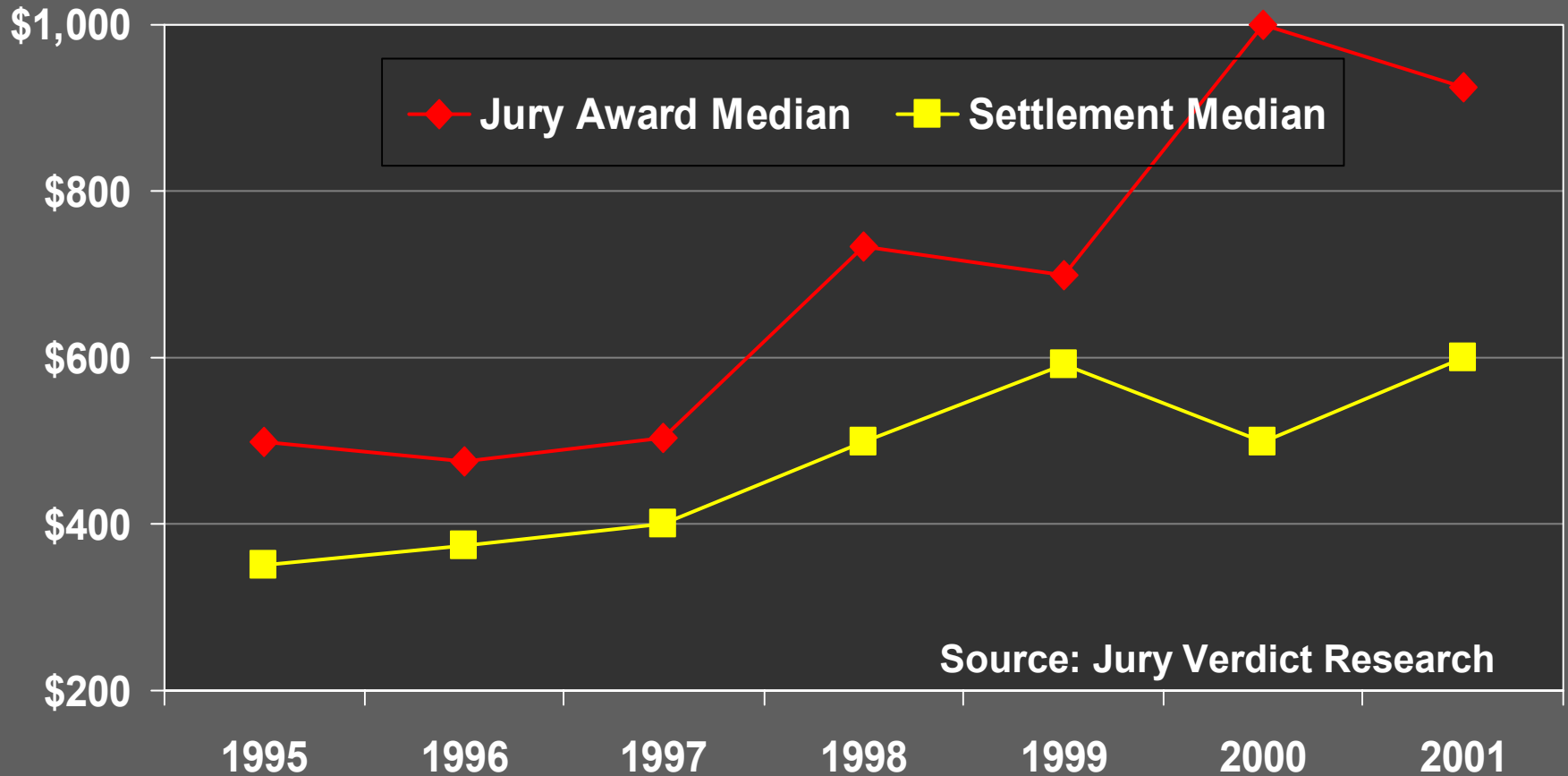
- On any given day, there are more than 125,000 malpractice suits in progress against America's doctors.

Severity: National Medians



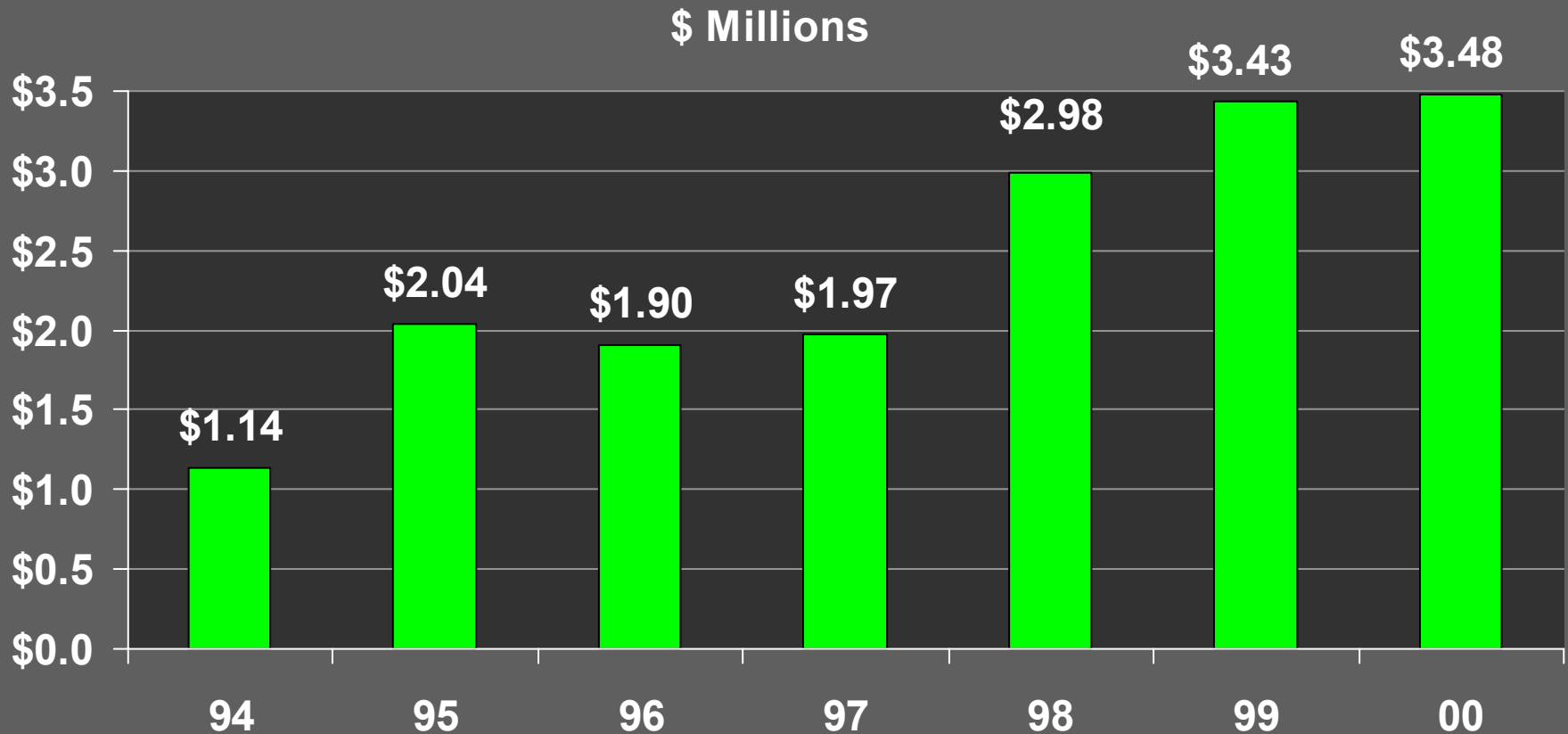
National Jury Award and Settlement Medians for Medical Malpractice Cases

(000's)



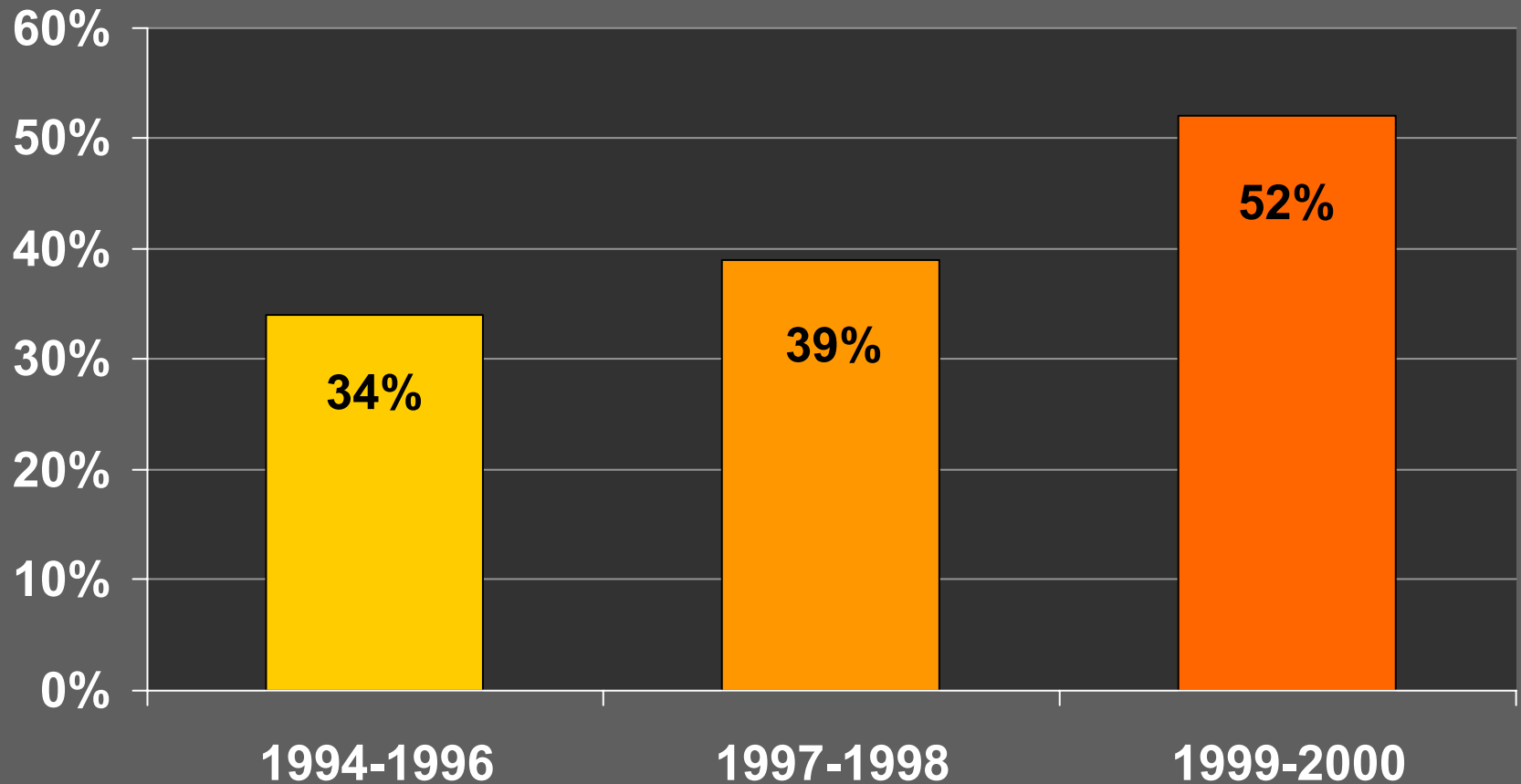
Source: Jury Verdict Research

Average Jury Award in Medical Malpractice Cases



Source: Jury Verdict Research; Insurance Information Institute.

Trends in Million Dollar Verdicts - Medical Malpractice



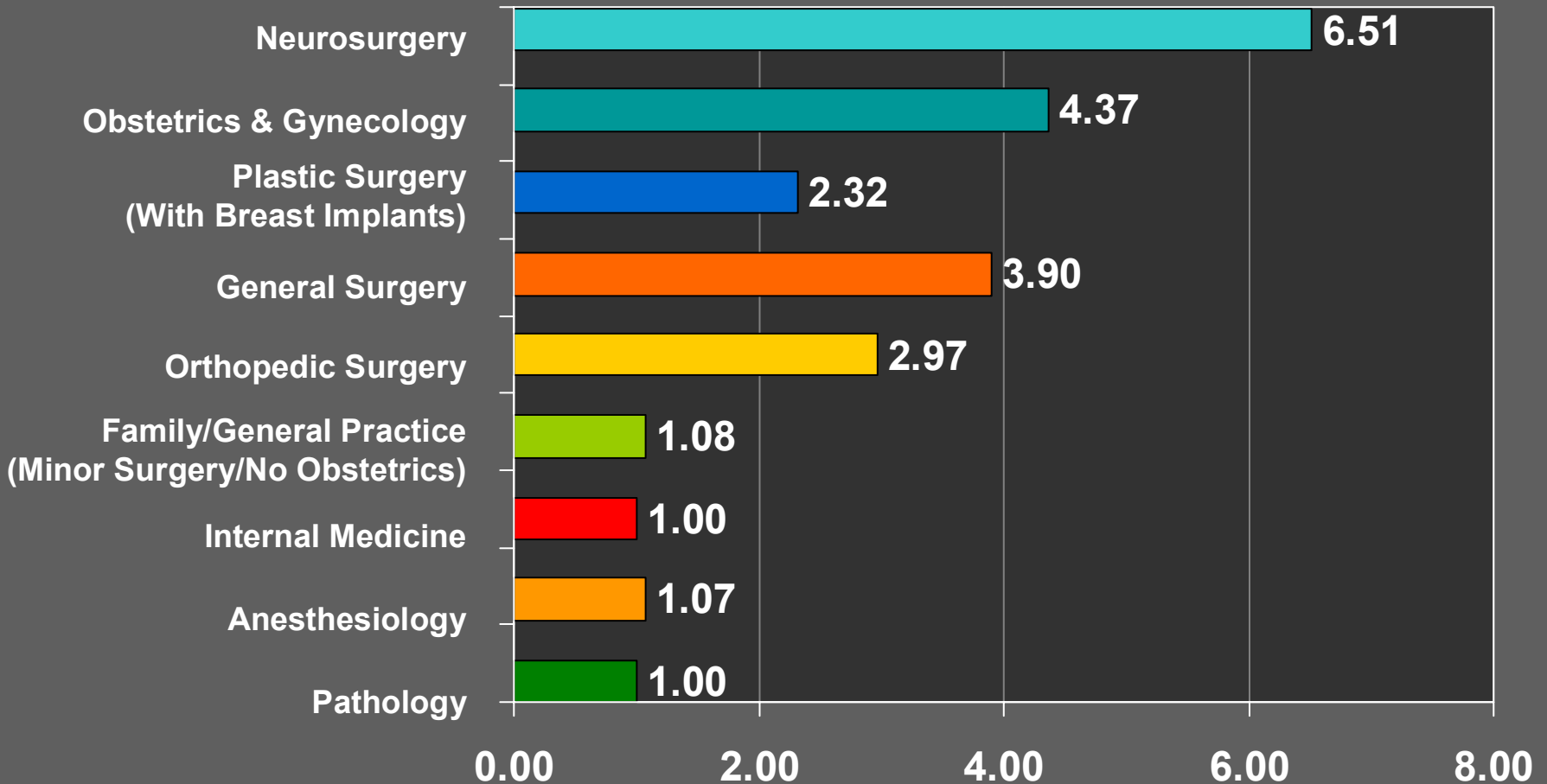
Verdicts of \$1 million or more

The Most Expensive Claims

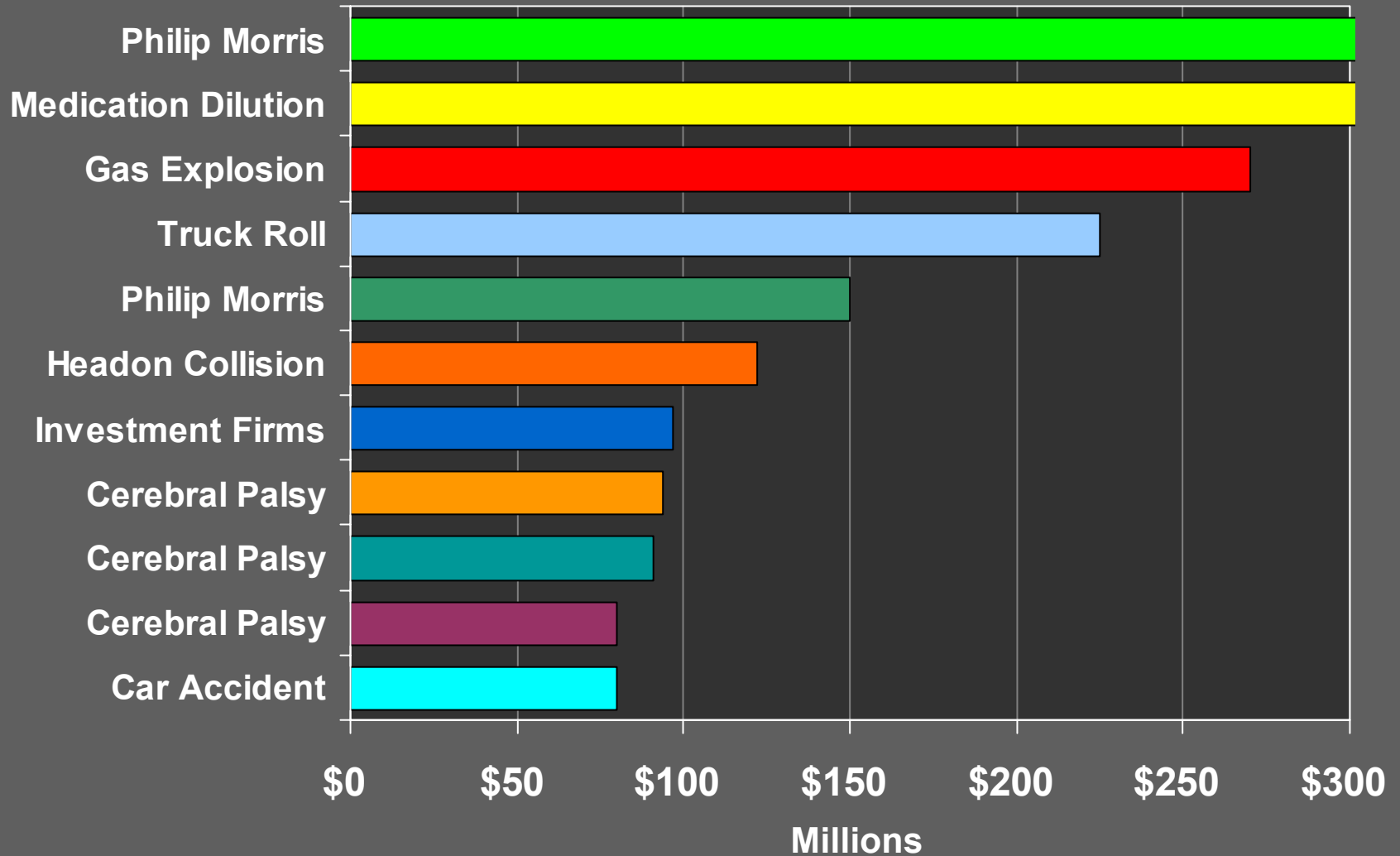


- Texas: \$268,000,000
- Many states: \$100,000,000
- Philadelphia: Jury verdicts exceed the entire state of CA over past 3 years.
- *Verdicts drive settlement value.*

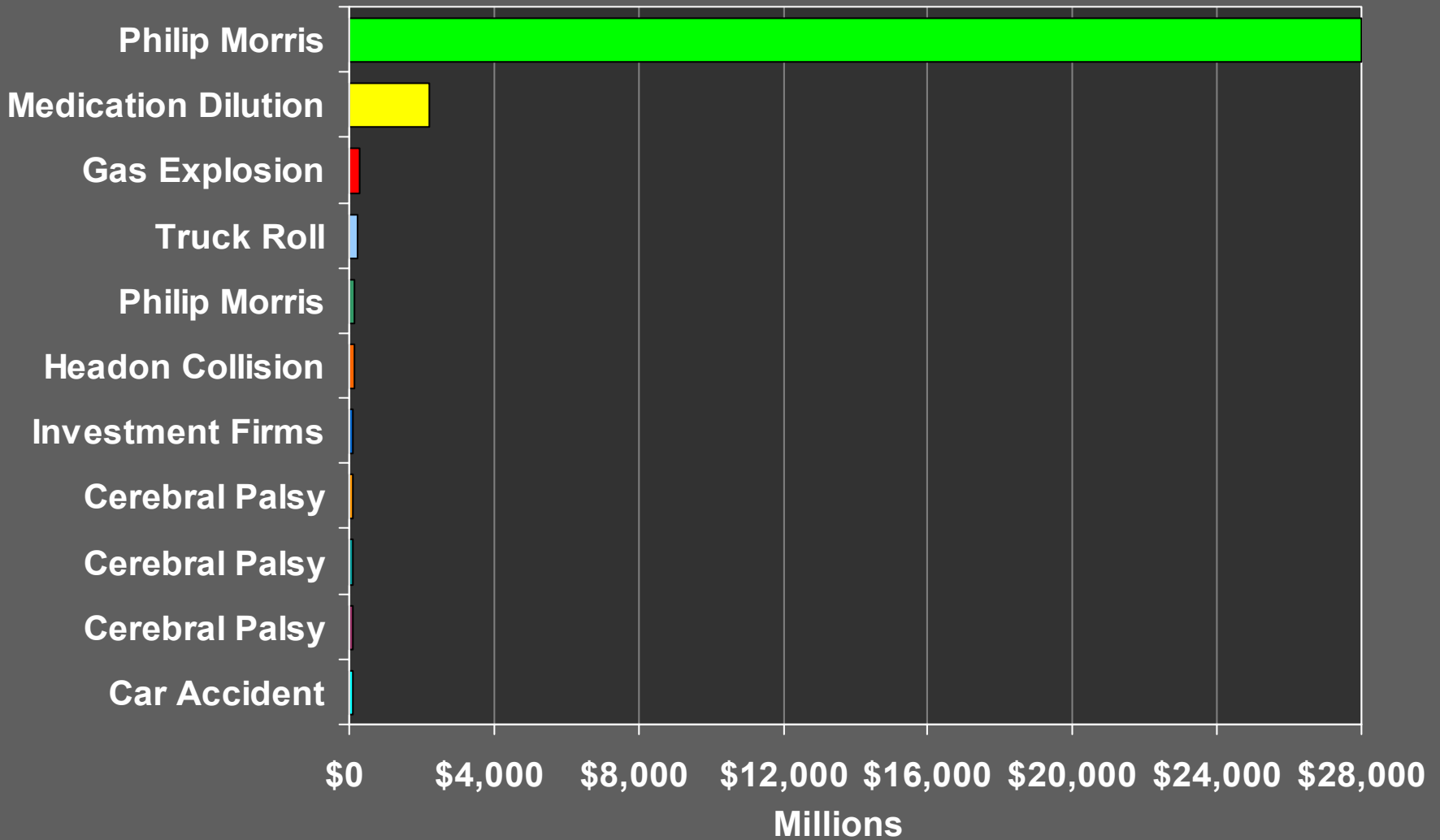
Specialty Relativity Nationwide



Top Jury Awards of 2002



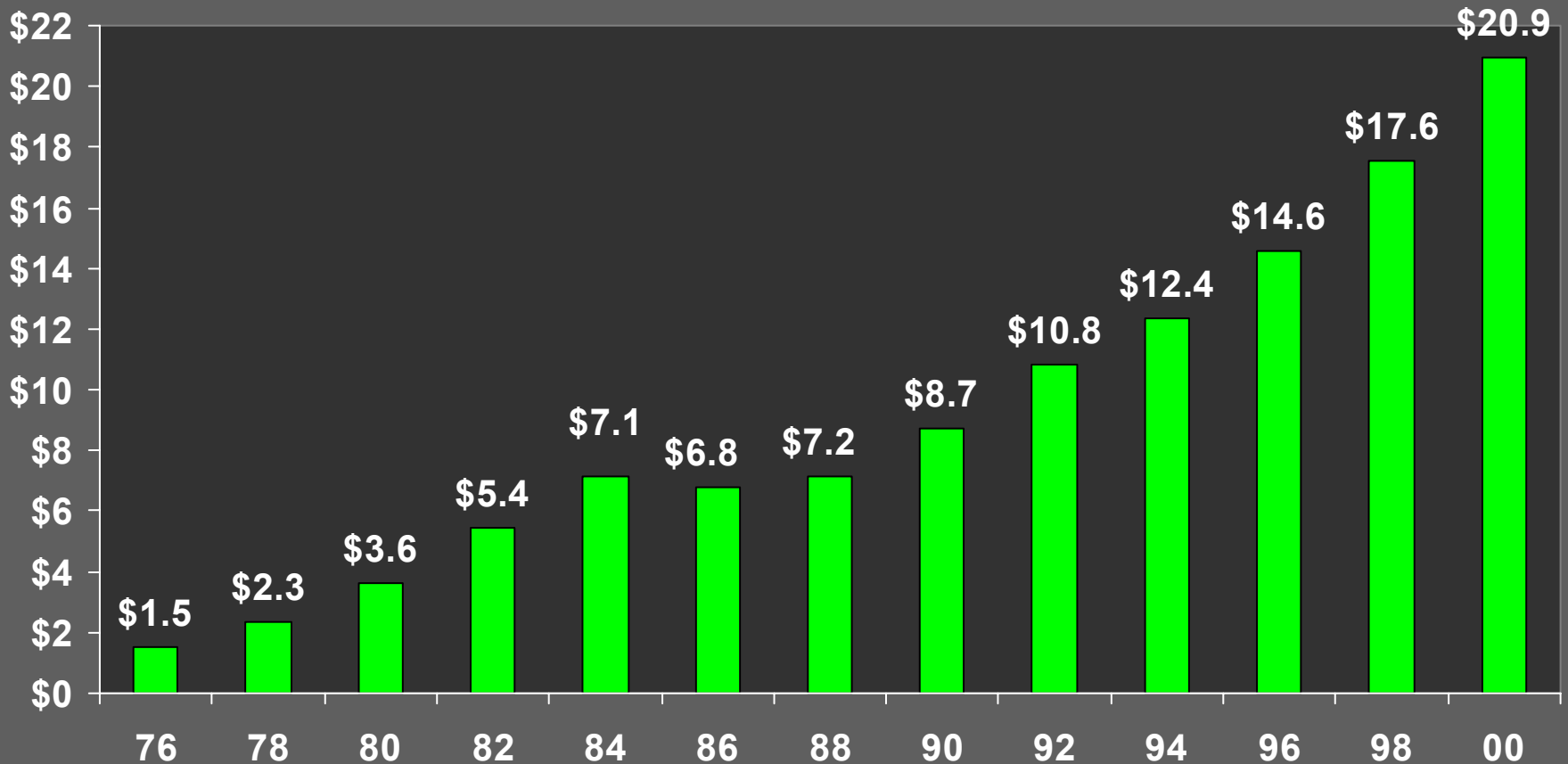
Top Jury Awards of 2002



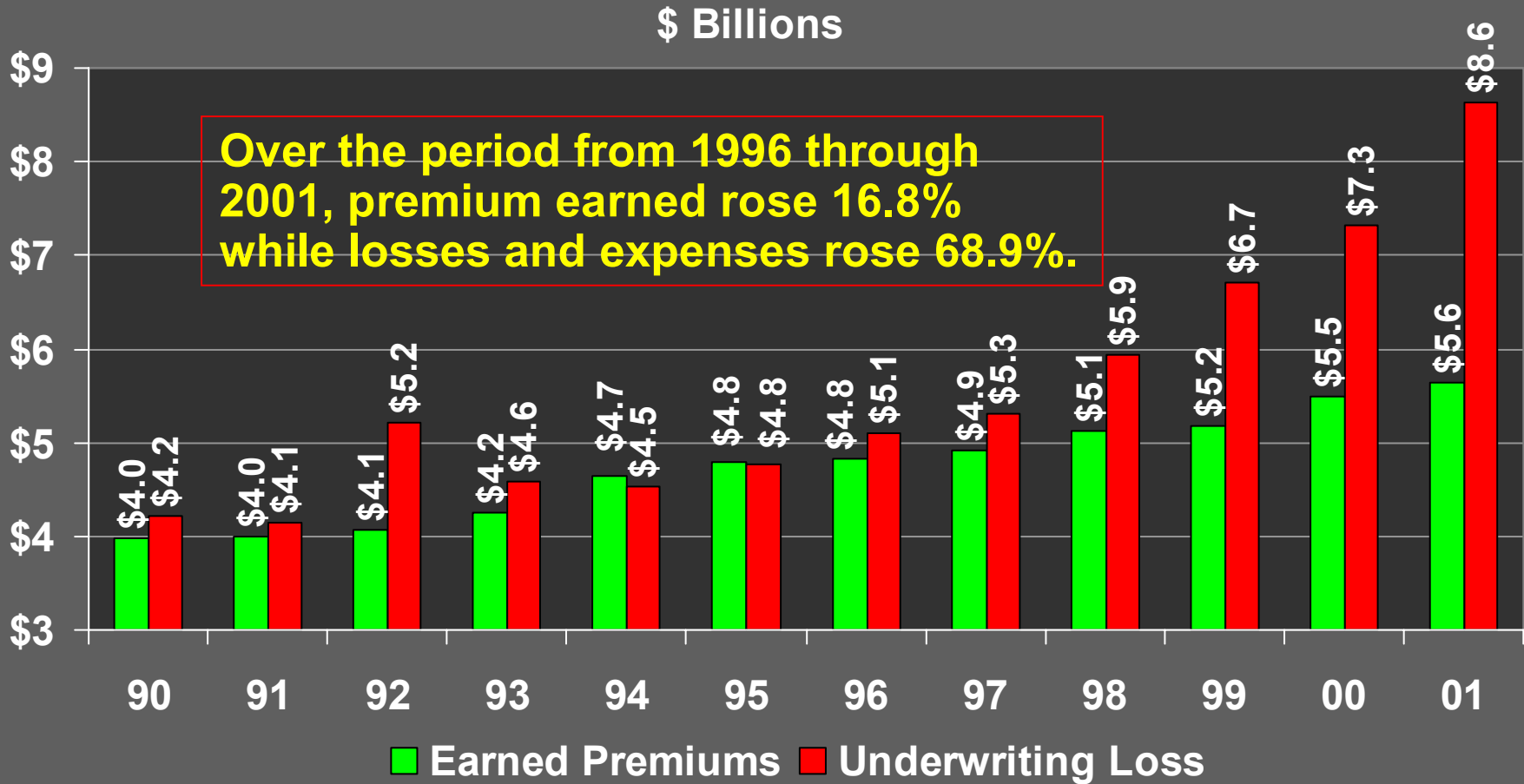
Medical Malpractice: Tort Cost Growth is Skyrocketing



\$ Billions



Medical Malpractice: Losses & Expenses Paid vs. Premiums Earned



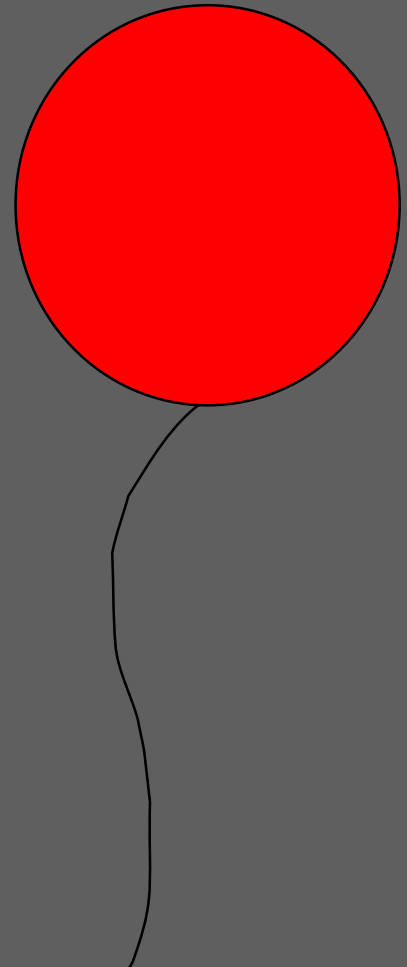
Randomness and the Fallacy of the Bad Doctor



- 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.

Plaintiffs' Bar Trial Balloons and Myths

What is not causing the crisis



Trial Lawyer Trial Balloons



- 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



- The med mal insurers were specifically **exempted** from rate rollbacks.
- TDC dividends were higher in the 5 years before 103 than in the 5 years after.
- There has **not** been a single med mal rate increase denied under 103 until 2003, when one company's rate increase was reduced from 16% to 10%.
- *N.B.:* Washington already requires DOI approval of rates.

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.

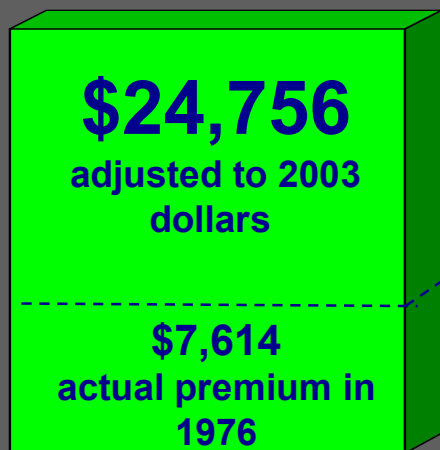
- California's Litigation Fairness (U.S. Chamber 2004): 46th among the 50 states.
 - Bottom 5 in:
 - Jury predictability
 - Punitive damages
 - Class action lawsuits

- 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.

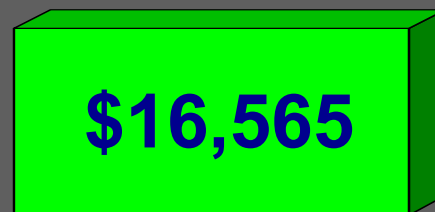
MICRA Helps Reduce California Medical Liability Premium Rates by 33%



The Doctors' Company 1976-2004



Average Premium 1976*



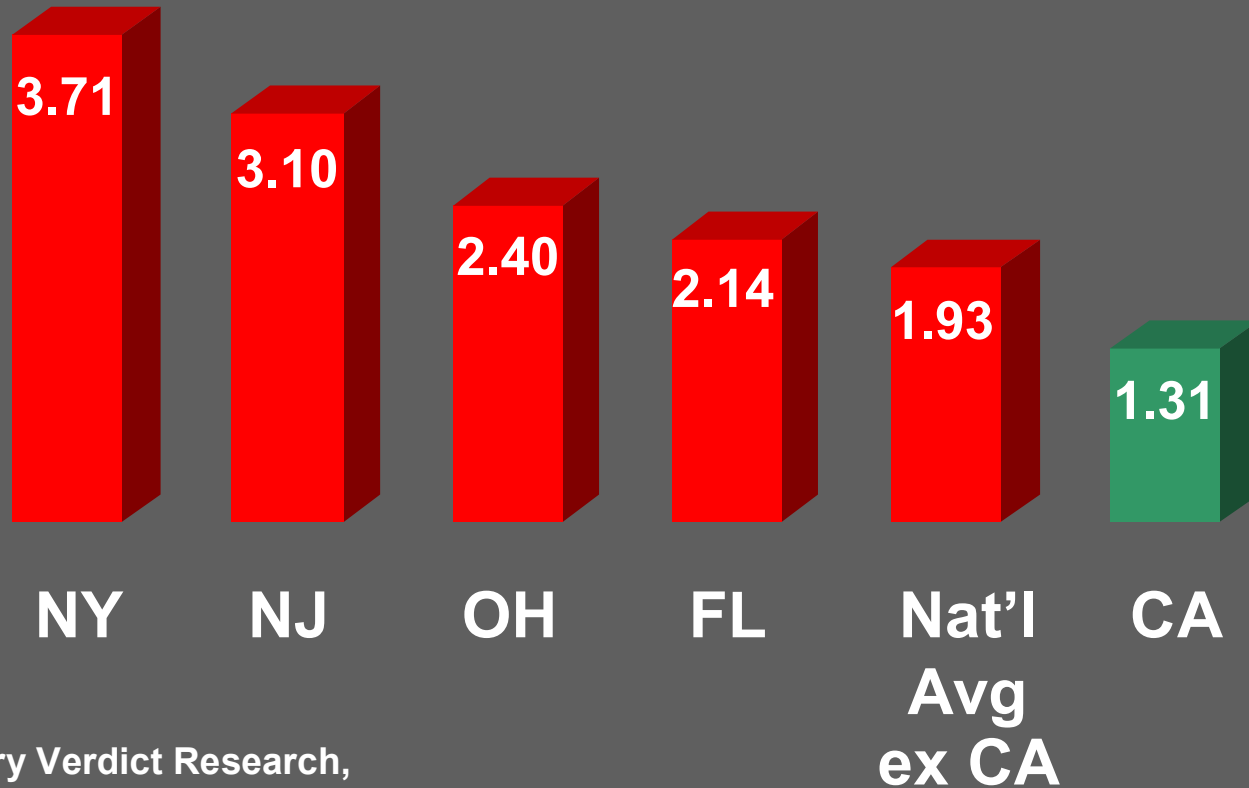
Average Premium 2004

* \$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

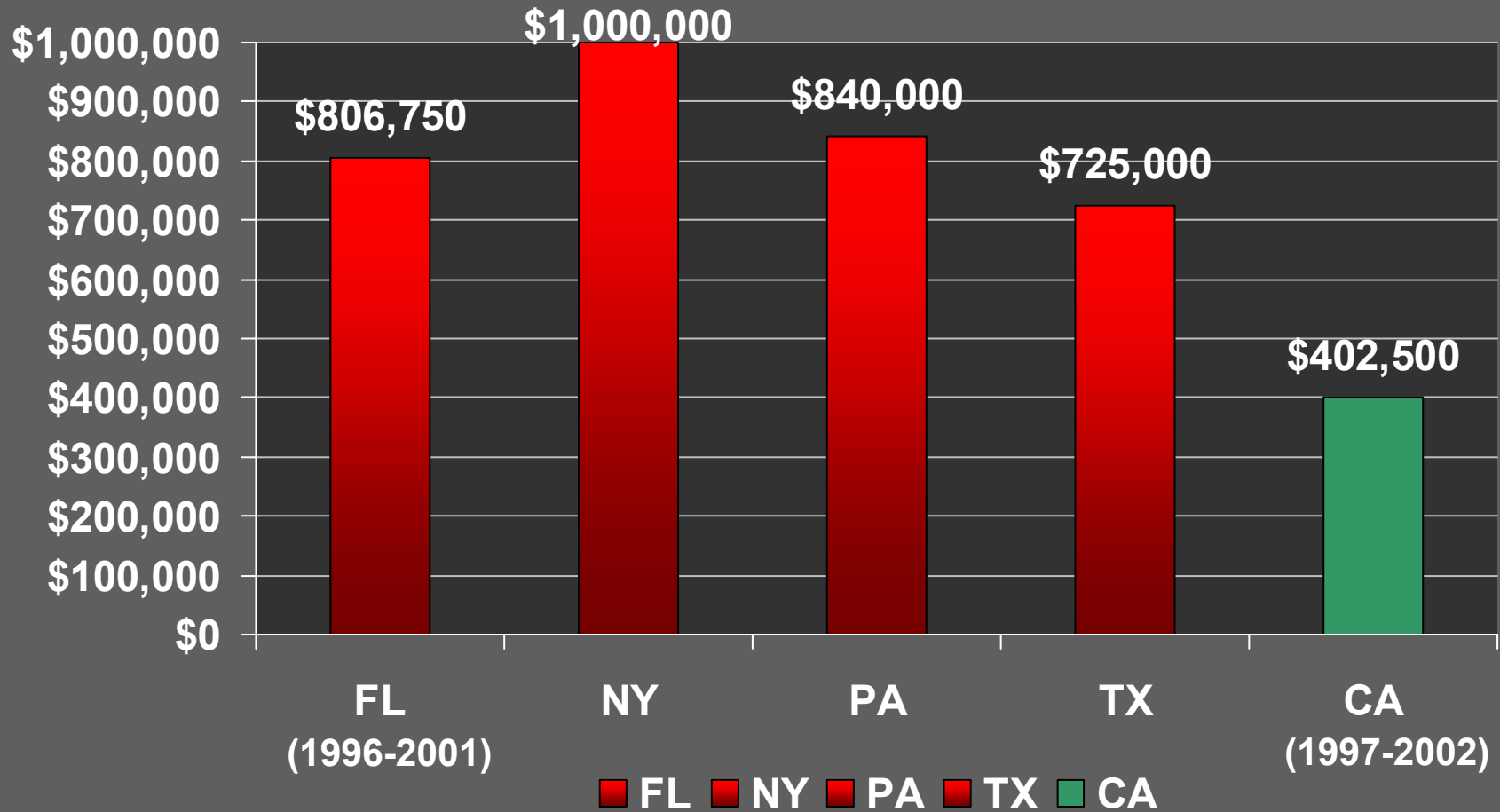


\$1 Million+ Verdicts Per 1,000 Doctors



Sources: Jury Verdict Research,
AMA

MICRA: Median Med Mal Jury Awards 1996-2002



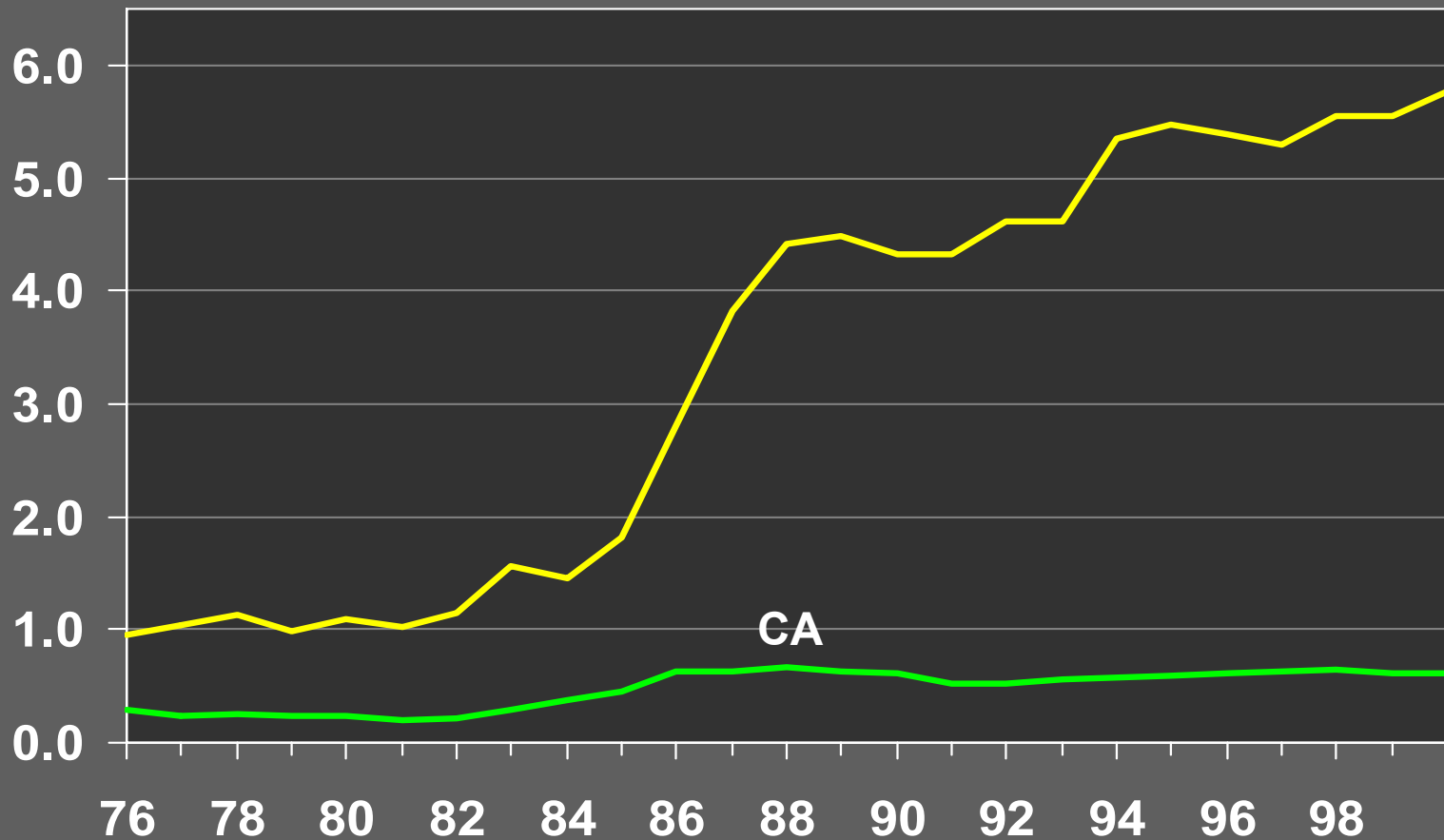
Source: Jury Verdict Research

Savings from MICRA Reforms



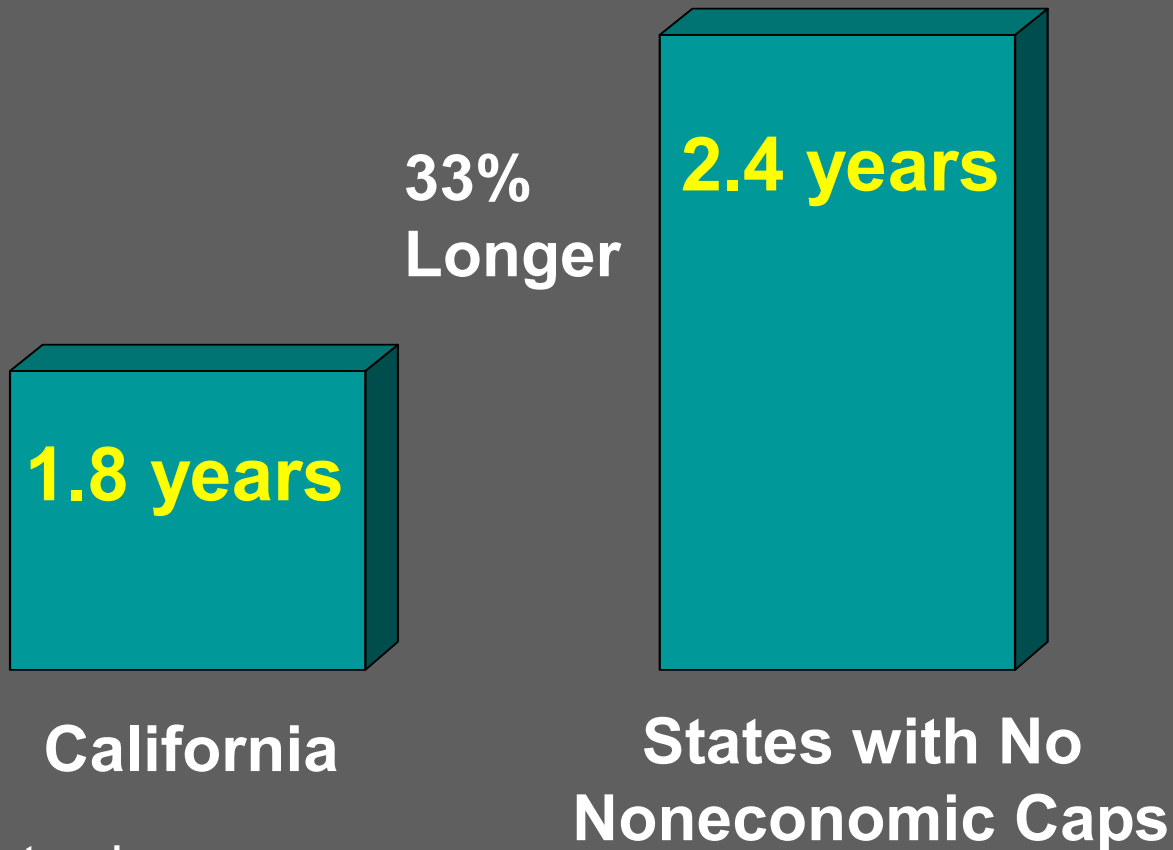
California vs. U.S. Premiums 1976 -2000

\$ Billions



Source: NAIC Profitability By Line By State

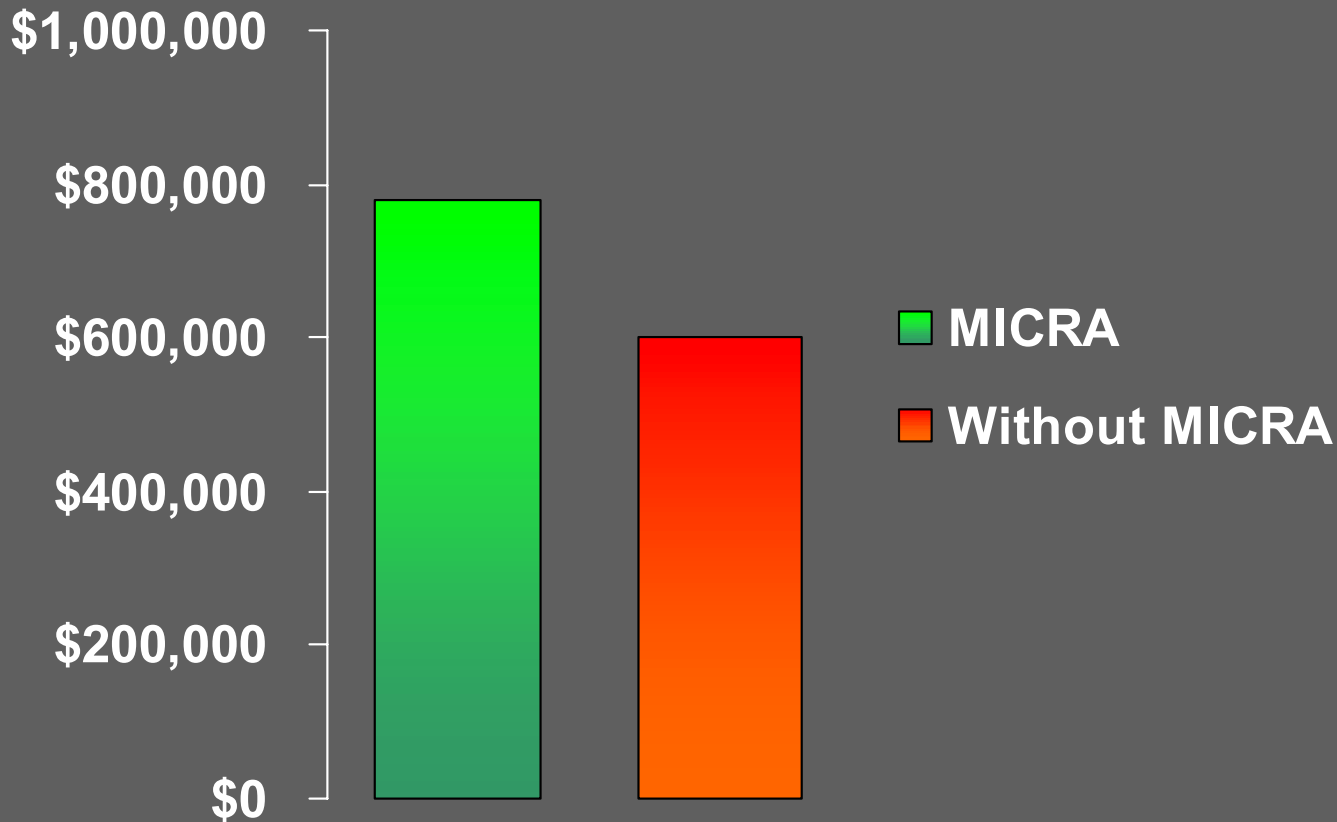
MICRA Reduces Average Time to Settlement



*Indemnity payments only

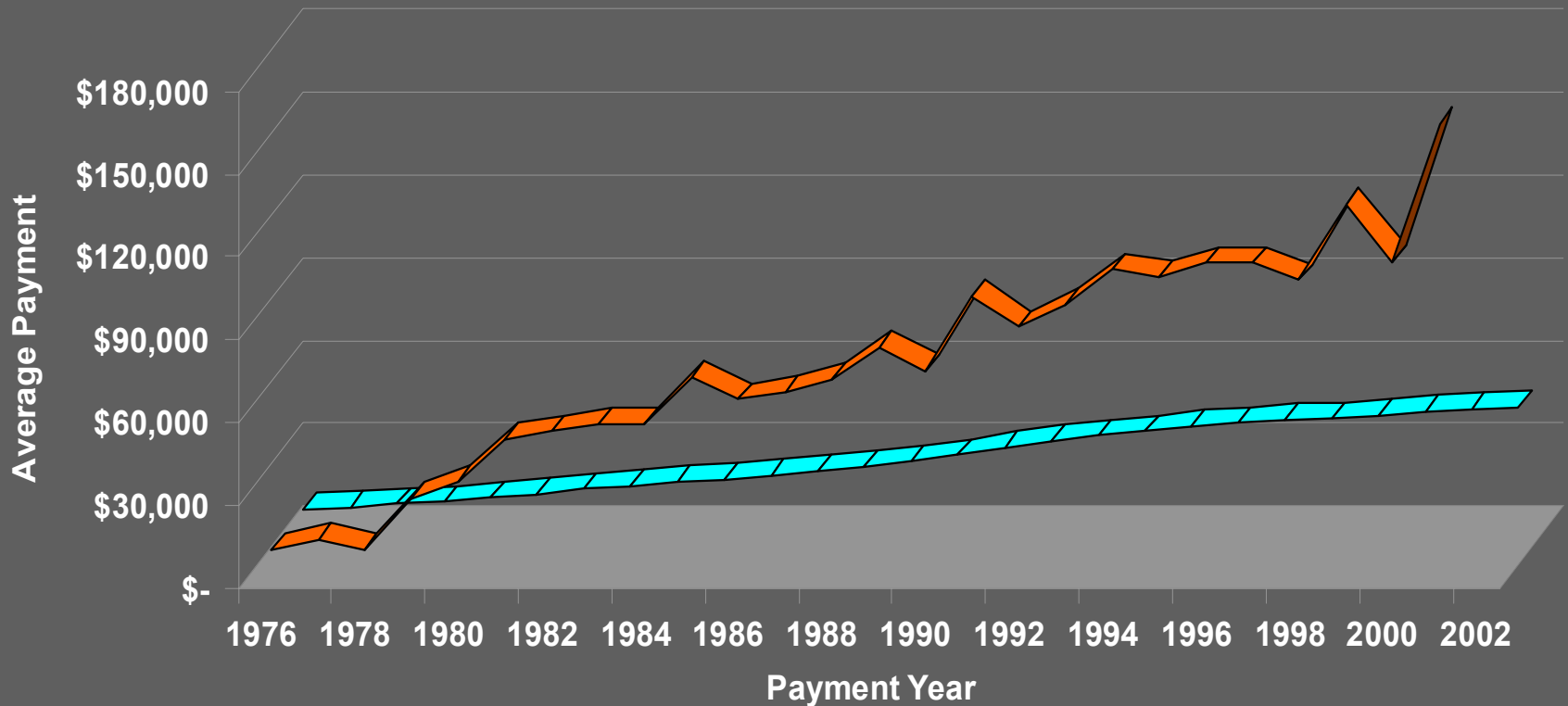
The Doctors' Company, 1997-2001



Injured Patients Benefit Directly



Proceeds of a \$1 Million Judgment

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

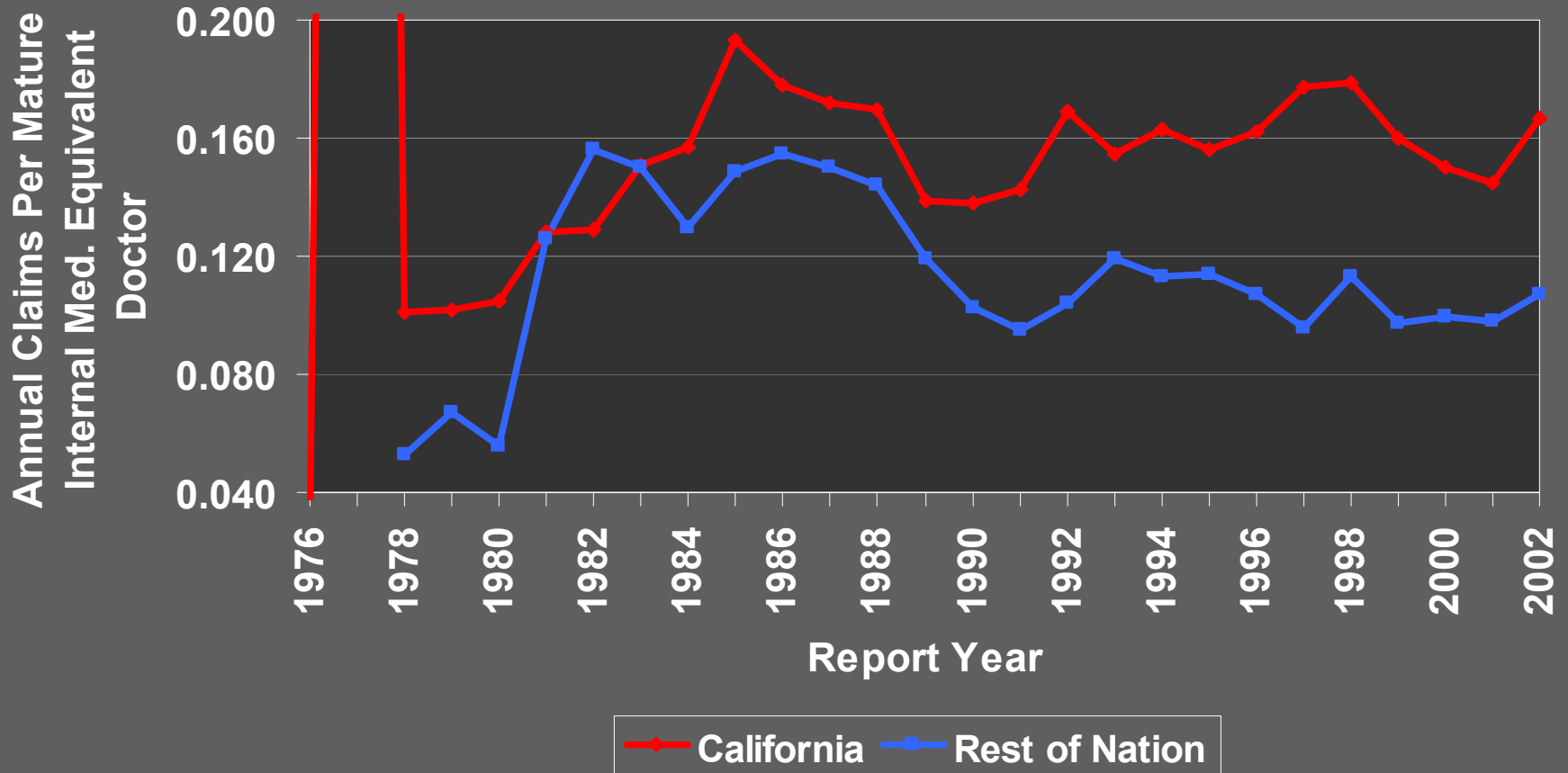


-  Actual average physician medical liability claim paid in CA 1976-2001.
-  Average medical liability claim in CA beginning 1976, adjusted for rate of inflation (CPI) 1976-2001.

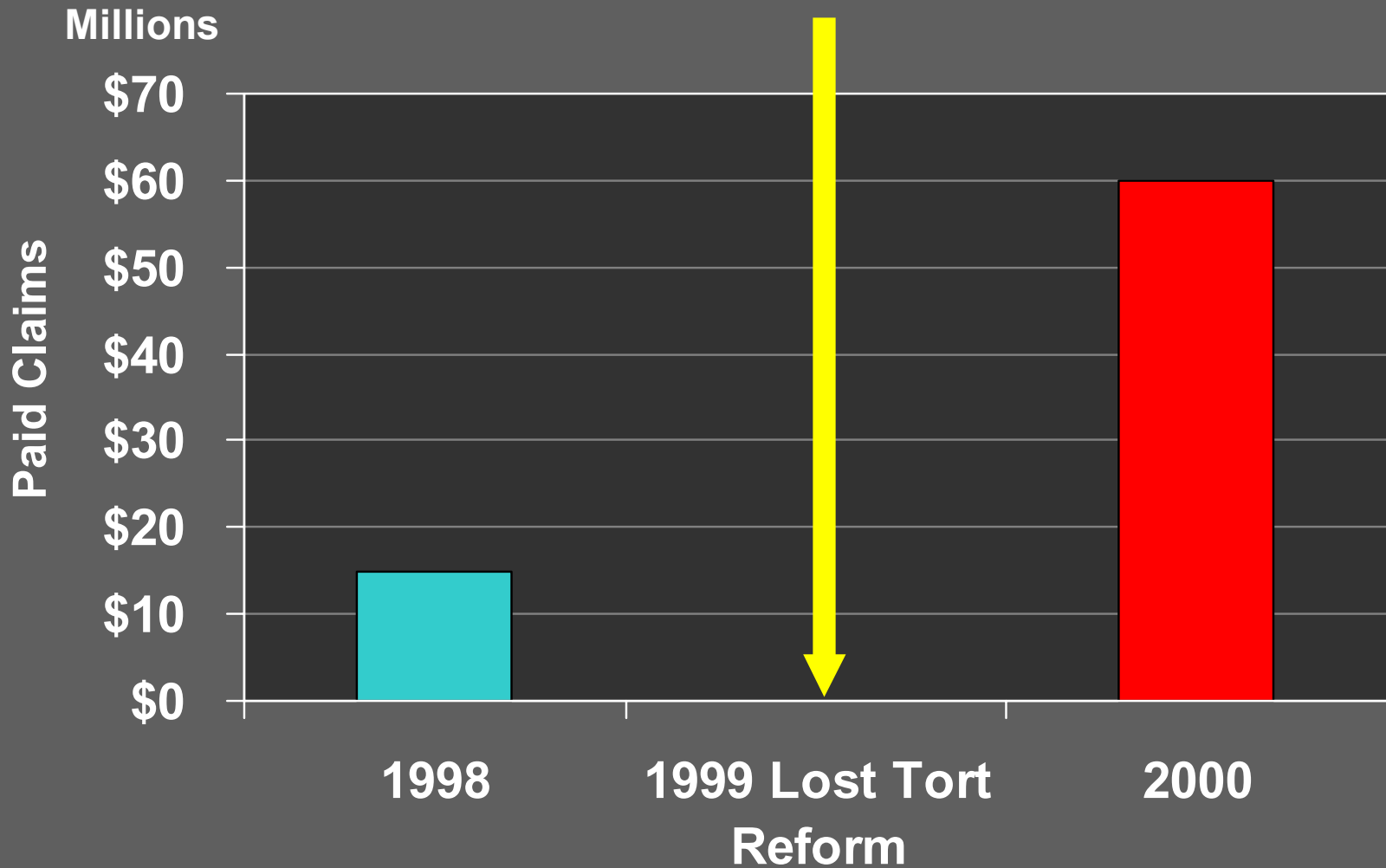
MICRA Does Not Limit Access to Courts



TDC PHYSICIAN CLAIM FREQUENCY



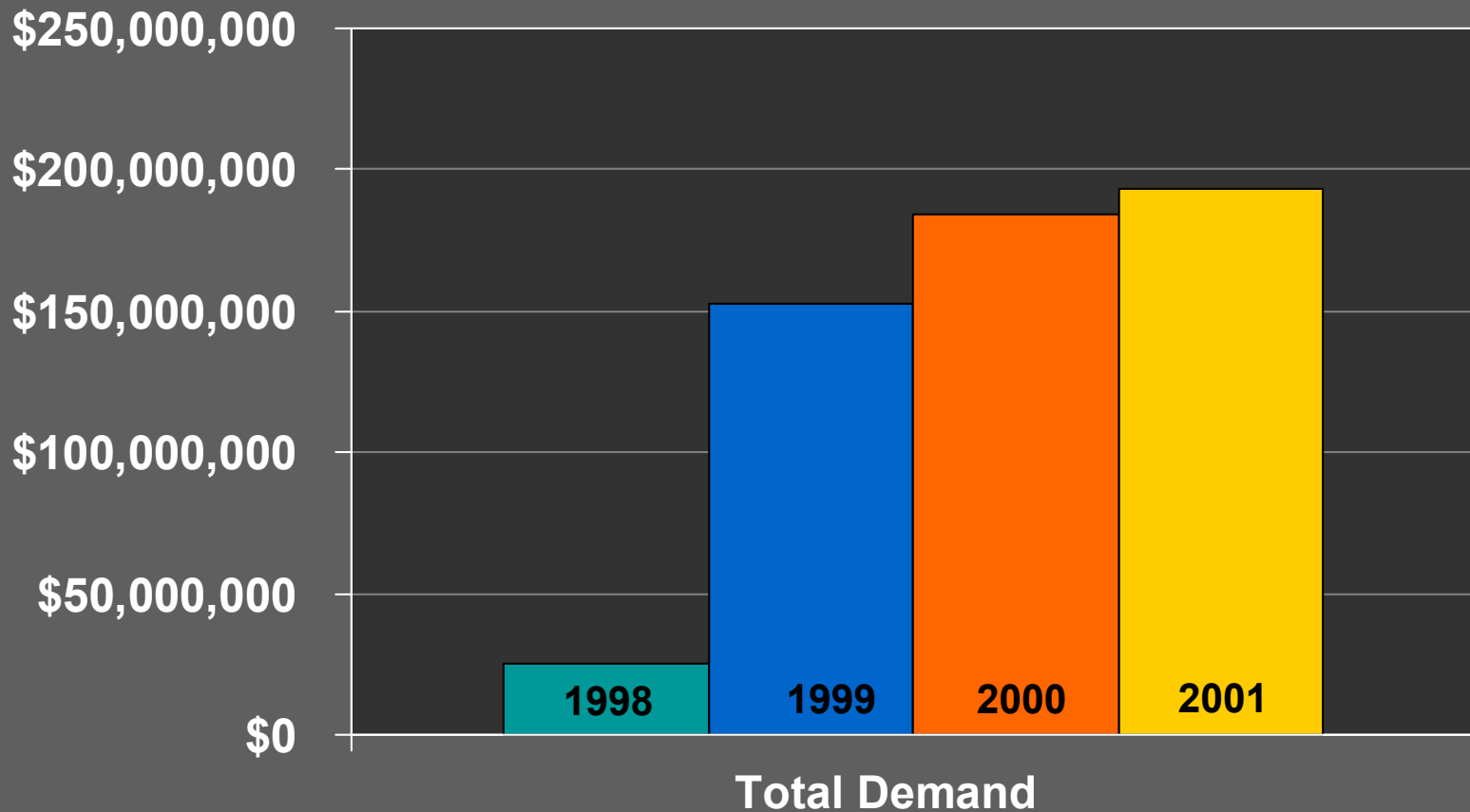
Oregon: Loss of Tort Reform



Oregon: Loss of Tort Reform



Total Plaintiff's Demand in Settled Cases



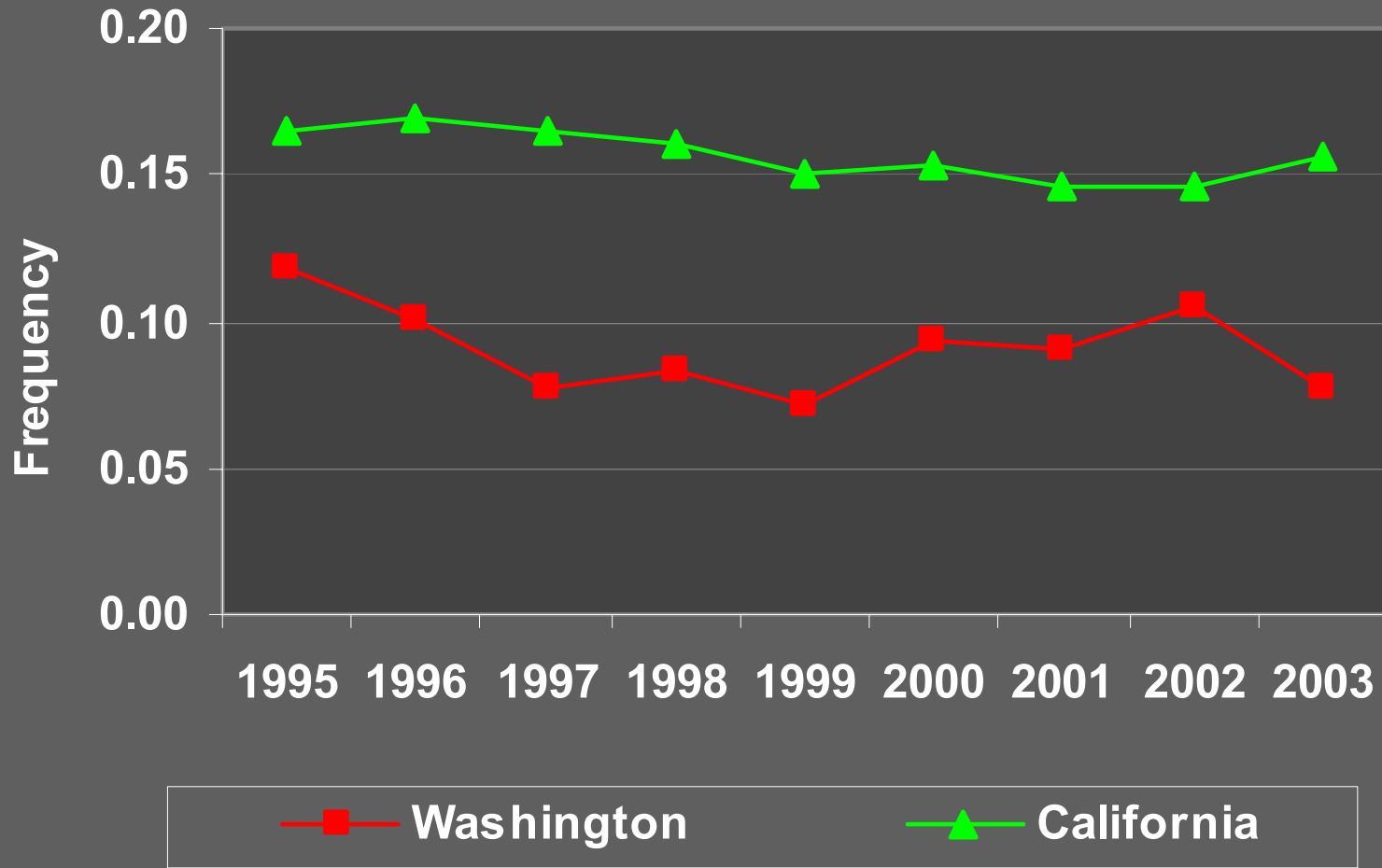
- U.S. Chamber of Commerce Litigation Fairness (State Liability Ranking Study 2004):
 - *Washington is 24th*

- Overturned non-economic damage caps in 1988.
- Damage Caps: none
- Collateral Source: most excluded
- Periodic Payments: yes
- Contingency Fee Limits: none
- Joint and Several Liability Reform: only if plaintiff is at fault.

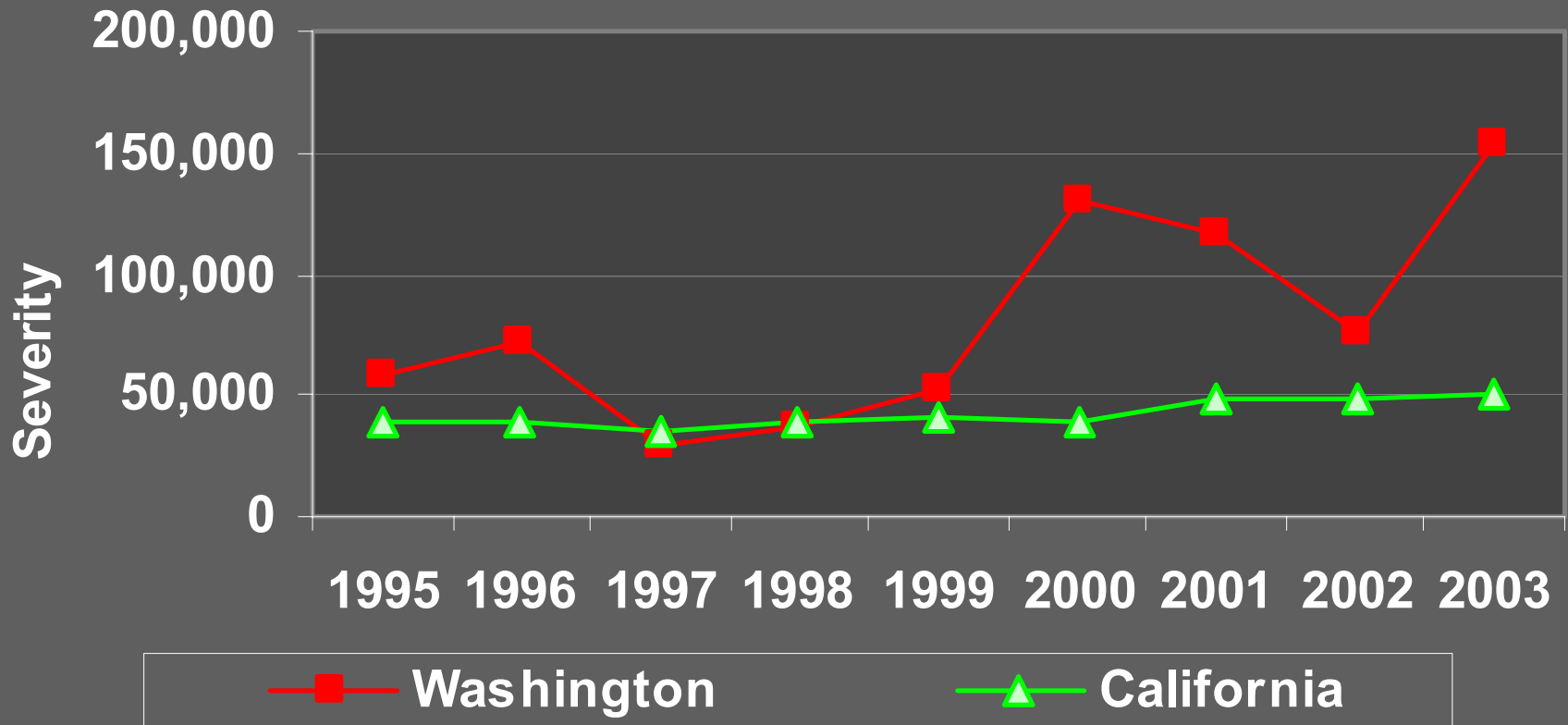
- 47 recorded verdicts or settlements 2002 through first half of 2003.
 - Total value \$80.1M
 - **76.3% non-economic damages (\$61.1M)**
 - **Savings from a \$250,000 cap: \$53.5M**

-Washington State Medical Association and Jury Verdicts Northwest

Washington - Frequency



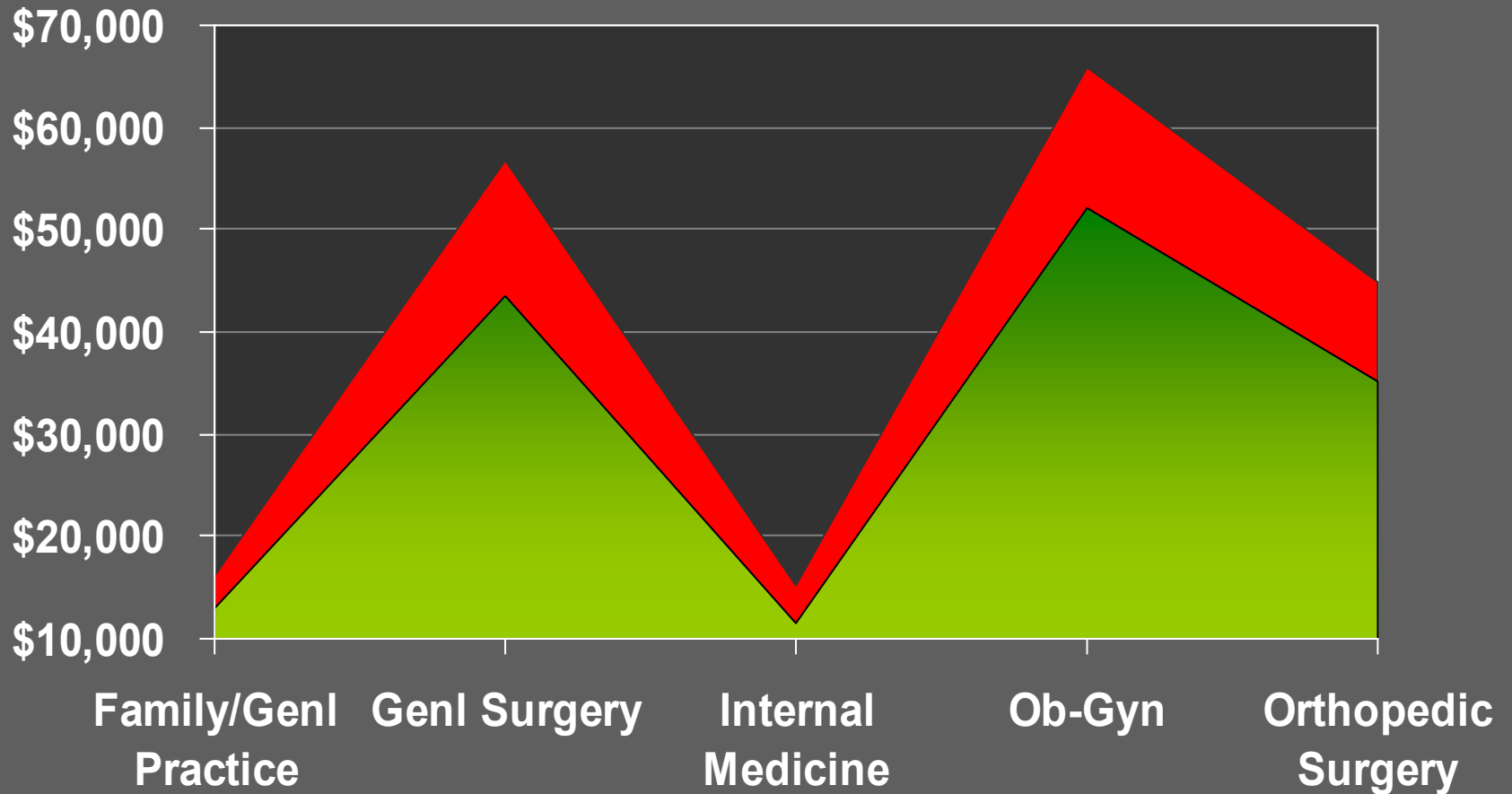
Washington - Severity



California vs. Washington: The Tort Tax



2004 Average Rate by Specialty



MICRA Works

- CA: 27-year experience (1975-2003)
- Congressional Budget Office (2002)
- HHS (2002, 2003)
- American Academy of Actuaries
- Standard and Poor's (2003)
- Milliman Report (2003)
- Medical Liability Monitor (2002, 2003)
- Florida Select Commission (2003)
- NAIC (2004)

- 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”

- “...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.
- The high-risk specialties are most heavily impacted.
- Effective tort reforms are effective and a non-economic damages cap of \$250,000 is the cornerstone of effective tort reform.
- Ineffective reforms are worse than none.
- Washington is a crisis state. The situation will continue to worsen until definitive reforms are undertaken.