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"PROTECTING RIGHTS, NOT WRONGS"

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# ELIMINATING JURIES MEANS FEW CASES WILL SETTLE

Informal pre-trial settlements, where both parties voluntarily agree to take a case out of the civil justice system, currently resolve the vast majority of legitimate medical malpractice claims today. However, removing the possibility of a jury trial will infect this bargaining/settlement process and create far more adjudicated claims.

## THE RIGHT TO JURY TRIAL ENCOURAGES MOST LEGITIMATE CASES TO SETTLE.

- According to Duke University Professor Neil Vidmar who has extensively studied malpractice cases, "Without question the threat of a jury trial is what forces parties to settle cases. The presence of the jury as an ultimate arbiter provides the incentive to settle but the effects are more subtle than just negotiating around a figure. The threat causes defense lawyers and the liability insurers to focus on the acts that led to the claims of negligence. Testimony of Neil Vidmar, Russell M. Robinson, II Professor of Law, Duke Law School before The Senate Committee on Health, Education, Labor and Pensions, "Hearing on Medical Liability: New Ideas for Making the System Work Better for Patients," June 22, 2006

- In the recent Harvard study of medical malpractice cases, researchers found that only 15 percent of claims were decided by trial verdict. Other research shows that 90 percent of cases are settled without jury trial, with some estimates indicating that the figure is as high as 97 percent. David M. Studdert, Michelle Mello, et al., "Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," *New England Journal of Medicine,* May 11, 2006.

## "FRIVOLOUS CASES" DO NOT SETTLE.

- Vidmar testified, "In interviews with liability insurers that I undertook in North Carolina and other states, the most consistent theme from them was: 'We do not settle frivolous cases!' The insurers indicated that there are minor exceptions, but their policy on frivolous cases was based on the belief that if they ever begin to settle cases just to make them go away, their credibility will be destroyed and this will encourage more litigation." Vidmar testimony.

- According to Vidmar, "Research on why insurers actually settle cases indicates that the driving force in most instances is whether the insurance company and their lawyers conclude, on the basis of their own internal review, that the medical provider was negligent….. An earlier study by Rosenblatt and Hurst examined 54 obstetric malpractice claims for negligence. For cases in which settlement payments were made there was general consensus among insurance company staff, medical experts and defense attorneys that some lapse in the standard of care had occurred. No payments were made in the cases in which these various reviewers decided there was no lapse in the standard of care." Vidmar testimony.