Americans for Insurance Reform
"PROTECTING RIGHTS, NOT WRONGS"

MEASURED COSTS

July 2005

Analyzing insurance pure premium[1] or loss costs,[2] is the most accurate way to determine the specific impact of the legal system on insurance rates. It is the one component of the rate that should be affected by verdicts, settlements, payouts, or so-called "tort reform," which limits these.

The most comprehensive and reliable database for determining insurance pure premium or loss costs, is that used by the Insurance Services Office (ISO). ISO makes filings with state insurance departments on behalf of the insurance companies using their services. ISO develops pure premiums for the insurers by taking the historic loss and loss adjustment expense information, including both actual payments and estimates of future payouts, and trending that information into the future using trend factors to reflect anticipated inflation and other changes. The results are changes in the levels of pure premium charges approved by the state insurance departments, which then are used by many insurance companies in their pricing models. The ISO publishes the percentage changes in loss costs in circulars sent to chief executive officers of the insurance companies that subscribe to their services.

A review of the changes in loss cost levels reveals that over the last five years, while doctors' malpractice insurance premiums skyrocketed, insurance companies' claims-related costs ("loss costs" and "loss adjustment expenses"[3]) rose only 4 percent per year – a slightly s*lower* rise than during the mid- to late-90s when premiums rose slowly if at all.

Despite the rhetoric and lobbying by the insurance industry in their push for "tort reform," they have been raising doctors' premiums even though expenses related to claims have

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[1] "Pure premium" is a term used interchangeably with "loss costs." It is the part of the premium used to pay claims and the cost of adjusting and settling claims, including adjuster and legal expenses. See footnote 2 for a full definition of this term.

[2] "Loss cost" is the term for the portion of each premium dollar taken in, that insurance companies use to pay for claims and for the adjustment of claims. Insurers use other parts of the premium dollar to pay for: their profit, commissions, other acquisition expenses, general expenses and taxes. Loss costs represent the largest part of the premium dollar for most lines of insurance. Loss costs include both paid and outstanding claims (reserves are included through an actuarial process known as "loss development") but also include trends into the future since rates based on ISO loss costs are for a future period. Thus, loss costs include ISO's adjustments to make sure that everything is included in the price, even such factors as future inflation.

[3] "Loss adjustment expenses" are the cost of adjusting and settling claims, including adjuster and legal expenses and overhead costs associated with these expenses.

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remained quite consistent and risen slowly, near medical inflation. The reasons for the dramatic premium increases of the recent hard market must be found elsewhere, and therefore so-called "tort reforms" that limit injured individuals' rights to seek compensation from negligent doctors or hospitals will not lead to lower premiums.

Americans for Insurance Reform, (AIR), a coalition of over 100 consumer groups around the country, has produced an extensive review of insurance rate activity nationwide since the start of the medical malpractice insurance crisis and several years prior. The purpose of this study is to determine whether insurance industry paid and reserved claims, or "incurred losses," as the industry terms them, were really the driving force behind skyrocketing rates for doctors.

We obtained data on medical malpractice insurance loss cost movement in states from 1995 through 2004.[4] The hypothesis we tested was simple: if a jump in jury awards or payouts were really behind recent increases in insurance rates for doctors, that should be evident in the trends of insurance loss costs filed by ISO.

We found that during the past 10 years, and even during the past 5 years of the hard insurance market (when rates jumped), the trends in loss costs do not support the hypothesis that the legal system was responsible for creating this "crisis" for doctors. In fact, we found that the 10-year average increase in medical malpractice loss costs was only 4.8 percent, and the 5-year average increase dropped slightly, to ***only 4.3 percent.*** **That means that the sudden increase in insurance rates for doctors has nothing at all to do with the legal system, jury verdicts, payouts, or tort costs in general. The causes for this "crisis" lie elsewhere.**

Had the industry increased rates based on ISO's projected losses, rates for doctors should have increased only on average 4.3 percent annually over the last five years, instead of 100 percent or more for some doctors.

After recent large rate increases, the insurance cycle is now turning again and prices are beginning to fall. Doctors nationwide are expected to enjoy a relatively "soft" insurance market very shortly in every state, whether or not so-called "tort reforms" or "caps" were enacted – with rates of liability insurance not only stable but down. For example, in 2005,

> **Washington (no cap):** "Physicians Insurance, which is owned by doctors, has proposed a 7.7 percent cut in medical malpractice rates."[5]
>
> **Texas (hard cap since 2003):** "JUA now joins the host of insurers that are part of this turnaround in the last year and half, either through reducing rates or re-entering the medical liability market."[6]

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[4] Data not available for Hawaii, New York, or Texas, or for California until 2000. Data not available for physicians or surgeons for Massachusetts, or for Washington in 1998.

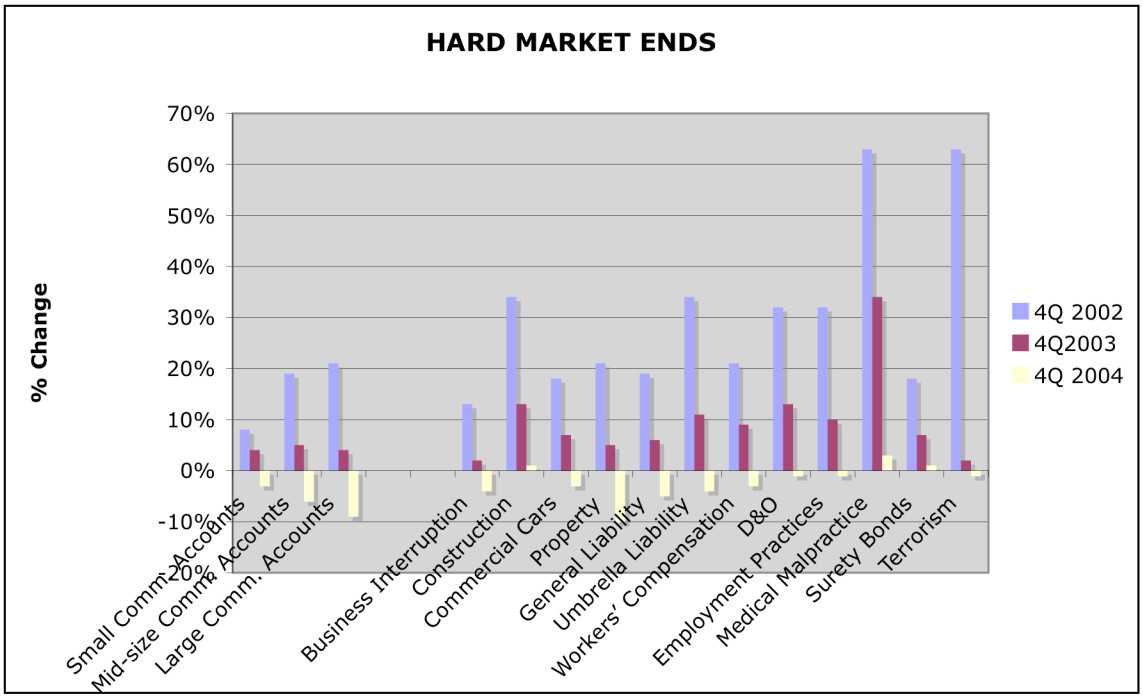
[5] Rebecca Cook, "How Sick is Malpractice Mess?" *Associated Press*, Jan. 17, 2005.

[6] Texas Insurance Commissioner Jose Montemayor, as reported in "TDI Applauds JUA's Medical Liability Rate Reduction," *Insurance Journal*, March 16, 2005.

Massachusetts (cap with exceptions): "[T]he state's largest malpractice insurer said it will not raise doctors' premiums…"[7]

Illinois (no cap): "ISMIE Mutual Insurance Company said that for the first time since 1999, rates won't increase for the policy year beginning July 1."[8]

The following chart shows the soft market's arrival across all lines of commercial insurance:



This soft market will continue for about a decade (historically the soft market lasts between eight and 14 years) if the usual cycle time period occurs.

As in the past, the liability insurance crisis has been driven by the insurance underwriting cycle and not a tort cost explosion as many insurance companies and others claim. The "tort reform" remedy pushed by these advocates is failing to do anything to help doctors. As the findings of this report confirm, legal system restrictions are based upon a false predicate. "Tort reforms" do not produce lower insurance costs or rates.

And indeed, this is precisely what insurers have always known. In a 2004 filing to the Texas Department of Insurance, GE Medical Protective revealed that the state's new non-economic damages cap would be responsible for no more than a 1 percent drop in losses.[9] The following quotes from insurance industry insiders also confirm this fact:

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[7] Liz Kowalczyk, "Malpractice insurer says it won't raise rates," *Boston Globe*, April 5, 2005.
[8] Jim Ritter, "Insurer holds line on malpractice policy rates," *Chicago Sun-Times*, April 7, 2005.
[9] The GE Medical Protective filing can be found at: http://www.consumerwatchdog.org/insurance/rp/rp004689.pdf.

American Insurance Association:
"[T]he insurance industry never promised that tort reform would achieve specific premium savings." (American Insurance Association Press Release, March 13, 2002).

Sherman Joyce, President, American Tort Reform Association:
"We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates." (*Liability Week*, July 19, 1999)

Victor Schwartz, General Counsel, American Tort Reform Association:
"[M]any tort reform advocates do not contend that restricting litigation will lower insurance rates, and 'I've never said that in 30 years.'" (*Business Insurance*, July 19, 1999)

BACKGROUND

The nation's medical lobbies and insurance companies are advancing an agenda to limit liability for doctors, hospitals, HMOs, drug companies and others that cause injury. The public is being told by insurance and medical industry lobbyists that doctors' insurance rates are rising due to increasing claims by patients, rising jury verdicts and exploding tort system costs in general.

The insurance industry argues and, worse, convinces doctors to believe that patients who file medical malpractice lawsuits are being awarded more and more money, leading to unbearably high losses for insurers. Insurers state that to recoup money paid to patients, medical malpractice insurers are being forced to raise insurance rates or, in some cases, pull out of the market altogether.

Since insurers say that jury verdicts are the cause for the current "crisis" in affordable malpractice insurance for doctors, the insurance industry insists that the only way to bring down insurance rates is to limit an injured consumer's ability to sue in court. This is despite overwhelming evidence to the contrary.

METHODOLOGY

The Insurance Services Office (ISO) – a private, national company – is the country's leading supplier of statistical, actuarial, and underwriting information for and about the property/casualty insurance industry, providing advisory pure premiums (also known as "loss costs") to insurance companies and filing them with the state regulators. Its database covers the large majority of property-casualty insurers in the United States, including companies of all sizes. ISO is known for reliable ratemaking practices, on the conservative (high) side of the actuarial range of reasonableness. This is because ISO makes loss costs for many insurers and they want to be sure their pricing suggestions are sufficient even for the less successful insurer that is an ISO member or subscriber. States themselves do not maintain the kinds of aggregated data records that ISO maintains.

ISO has the largest database of audited, unit transaction data of any entity in the United States. "Unit transaction" means that the data are generated each time a transaction occurs (such as a policy being bought or a claim filed or paid). This allows for a paper trail back to actual records if ISO audits determine that an insurer is filing "bad" data. ISO audits these data and requests corrections as necessary based upon that review. ISO data therefore represent the most reliable and largest database for determining trends in insurance costs.

This study was done under the direction of actuary J. Robert Hunter (Director of Insurance for the Consumer Federation of America, and former Federal Insurance Administrator and Texas Insurance Commissioner). Mr. Hunter purchased from ISO the Chief Executive Circular Letters showing the state-by-state advisory loss cost level activity for the years 1995 through 2004. The ISO Chief Executive Circular Letters show, for each line of insurance for which ISO performs statistical and actuarial analysis, the premium changes recommended by ISO to its insurance company members, subscribers and other customers, after filing and action by the state insurance regulators.

"Loss costs" and "loss adjustment expenses" calculated by the ISO are an accurate database that can be used to examine when the impact on insurance rates of all insurance company payouts and reserves, including jury verdicts "Loss cost" is the amount that insurance companies use to pay for claims and for the adjustment of claims. "Loss adjustment expenses," include such things as claims adjuster expenses, defense attorneys' fees and other legal costs. Insurers use other parts of the premium dollar to pay for their profit, commissions, other acquisition expenses, general expenses and taxes. Loss costs represent the largest part of the premium dollar for most lines of insurance. Analyzing loss costs and loss adjustment expenses is the most accurate way to determine the specific impact of claims, payouts, jury verdicts and the legal system on insurance rates. Investment income is not a factor in these calculations. "Loss costs" or "loss adjustment expenses" include the only components of the rate that should be affected by payouts, tort costs or "tort reform."

From these ISO Circular Letters, a 10-year (1995 through 2004) database was constructed for the Physicians', Surgeons' and Dentists' (PS&D) Professional Liability line of insurance. The database shows the year-by-year change ISO filed with each state. For example, the data for a state might show that loss costs went up by 5.4 percent in a specific year. We recorded this change for each year from 1995 to 2004 for each state. Ultimately we combined the changes to obtain the total change for the entire period 1995 to 2004, and for 2000 to 2004.[10]

In order to measure the impact on insurance costs of tort law limits, we placed the states into two Categories, based on the following criteria:

We evaluated the major medical malpractice-related tort law limits enacted by state legislatures or by ballot initiative in medical malpractice cases. Decisions as to what constituted a "major tort law limit" were based on materials compiled by the American Tort Reform

[10] We did this by adding the change for each year to unity (e.g. 5.4 percent added to unity create a factor of 1.054 for that year. We multiplied the changes together to get a factor for the entire 1995 to 2004 period and subtracted unity to obtain the 10-year percentage change.

Association (ATRA) and the Association of Trial Lawyers of America (ATLA), additional legal research and consultation with lawyers or lobbyists in every state.

We defined as a "major tort law limit" any provision enacted by a state legislature or by initiative that ATRA and ATLA define as a "tort reform," with certain exceptions explained below. Included are: caps on damages (economic, non-economic and/or punitive damages), modifications to joint and several liability, modifications to the collateral source rule, structured settlements (except if optional for plaintiffs), limits on prejudgment interest, limits on contingency fees for plaintiffs' attorneys, and statutes of repose. (See Appendix B for descriptions of these terms.) Certain unique state statutes are also included, such as Virginia's Birth-Related Neurological Injury Compensation Act, an injury compensation fund for catastrophically injured newborns that precludes non-economic and punitive damages.

Not included either because they varied widely for different causes of action, were part of the common law or were court imposed (this study is only evaluating the impact of legislative or voter responses), were limited to narrow causes of action, or varied so widely from state to state as to make them impossible to compare, were: statutes of limitations, punitive damages standards (many are court imposed), review boards, arbitration rules, or wrongful death statutes.

Sometimes, as with joint and several liability, the legislature decided to modify the law in some respect. Other times, it decided to abolish the doctrine altogether. Also, caps on damages vary in size. No subjective weight was attached to any of these decisions, or to the reforms themselves. The assumption was that whatever was enacted was what the legislature was convinced was necessary to bring down insurance rates, among other things, in that state at that time. The longer a tort limit has been in effect, the more weight has been attached to its expected impact on costs over time. If a law was struck down as unconstitutional, appropriate weight is given depending on how many years the law was in effect.

States were then divided into two categories plus the District of Columbia. Category 1 represents the states with the most tort limits passed over time, Category 2 the fewest.

The state law breakdowns are listed in Appendix A.

FINDINGS

Nationally, both the 10-year average increase in medical malpractice loss costs, and the 5-year average increase, which reflects virtually the entire length of the hard market of skyrocketing rates, are ***only 4.8 percent and 4.3 percent, respectively.*** **That means loss costs have generally moved up slowly; if rates suddenly jumped, there is a cause for this other than the legal system or loss costs generally.**

Notably, this five-year hard market average change was the same for California – 4.4 percent - a state that has had a $250,000 cap on noneconomic damages since 1975.

"Tort reforms" have not affected loss costs. Over the last five years, while insurance companies dramatically raised doctors' premiums during the "hard market," those insurers' loss costs rose slowly across the country. Between 2000 and 2004, states with fewer limits on tort law saw an average annual increase in medical malpractice loss costs of 3.8 percent, while those with more limits saw a slightly larger average increase of 4.8 percent.

Looking back over a decade shows the same trend: "tort reforms" did not make a difference. Loss costs rose slowly. States with fewer tort limits saw a 10-year average increase in medical malpractice loss costs of 5.0 percent and states with more limits saw a similar 10-year average increase in medical malpractice loss costs of 4.5 percent.

											AVERAGES	
STATE	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	**10 Years**	**5 Years**
Category 1 States (more tort limits):												
Alaska	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0.0%	0.0%
Calif.	na	na	na	na	na	-1%	3%	17%	2%	1%	na	4.4%
Colo.	8%	16%	0%	0%	12%	3%	0%	-3%	-1%	-2%	3.3%	-0.6%
Conn.	-15%	0%	10%	14%	8%	6%	9%	12%	12%	8%	6.4%	9.4%
Florida	0%	0%	0%	19%	-19%	12%	8%	7%	7%	0%	3.4%	6.8%
Idaho	0%	0%	7%	0%	0%	7%	6%	12%	23%	25%	8.0%	14.6%
Illinois	15%	22%	-3%	0%	-16%	0%	-10%	27%	5%	25%	6.5%	9.4%
Indiana	15%	50%	0%	30%	-15%	-1%	-14%	-4%	-12%	0%	4.9%	-6.2%
Iowa	0%	0%	0%	14%	0%	7%	12%	7%	10%	11%	6.1%	9.4%
Louisiana	0%	29%	0%	0%	0%	16%	0%	-1%	8%	11%	6.3%	6.8%
Maine	0%	0%	0%	9%	0%	8%	0%	2%	0%	0%	1.9%	2.0%
Mich.	-11%	-10%	0%	18%	16%	0%	7%	-6%	-5%	5%	1.4%	0.2%
Mo.	56%	20%	-12%	-13%	-6%	0%	-17%	-9%	13%	25%	5.7%	2.4%
Mt.	-10%	0%	0%	20%	10%	13%	14%	19%	12%	24%	10.2%	16.4%
Neb.	0%	10%	10%	6%	0%	0%	-8%	0%	12%	13%	4.3%	3.4%
Nevada	0%	0%	25%	0%	23%	25%	20%	20%	25%	0%	13.8%	18.0%
N.J.	0%	15%	0%	0%	0%	-11%	-11%	-10%	5%	9%	-0.3%	-3.6%
N.Y.	na	na	na	na	na	na	na	na	na	na	na	na
N.D.	0%	0%	-1%	0%	2%	0%	0%	0%	2%	0%	0.3%	0.4%
Ohio	14%	15%	-24%	0%	0%	-3%	0%	16%	3%	12%	3.3%	5.6%
Oregon	0%	-15%	0%	0%	0%	25%	29%	0%	2%	0%	4.1%	11.2%
S.D.	0%	0%	1%	9%	0%	7%	-4%	-1%	-2%	0%	1.0%	0.0%
Texas	na	na	na	na	na	na	na	na	na	na	na	na
Utah	0%	0%	0%	48%	19%	16%	8%	0%	4%	0%	9.5%	5.6%
Wash.	0%	0%	0%	4%	0%	12%	0%	4%	3%	11%	3.4%	6.0%
Wisc.	0%	30%	0%	0%	0%	-5%	-12%	-5%	-1%	-3%	0.4%	-5.3%
Category 2 States (fewer tort limits):												
Ala.	15%	0%	0%	0%	0%	0%	0%	12%	-1%	0%	2.6%	2.2%
Arizona	0%	0%	16%	28%	13%	12%	14%	0%	3%	9%	9.5%	7.6%
Ark.	19%	10%	0%	17%	0%	15%	-7%	2%	7%	6%	6.9%	4.6%
D.C.	0%	-10%	25%	10%	0%	19%	0%	0%	10%	0%	5.4%	5.8%
Dela.	14%	0%	0%	0%	-4%	-7%	-10%	-6%	7%	6%	0.0%	-2.0%
Ga.	0%	0%	9%	19%	0%	1%	1%	0%	0%	10%	4.0%	2.4%
Hawaii	na	na	na	na	na	na	na	na	na	na	na	na
Kansas	0%	0%	25%	25%	23%	-15%	-19%	-10%	3%	7%	3.9%	-6.8%
Ky.	61%	0%	7%	0%	-4%	0%	-22%	-3%	-7%	4%	3.6%	-5.6%
Md.	0%	30%	0%	17%	-11%	-9%	-12%	0%	8%	12%	3.5%	-0.2%
Mass.	na	na	na	na	na	na	na	na	na	na	na	na
Minn.	0%	11%	-9%	0%	0%	3%	0%	-7%	-6%	6%	-0.2%	-0.8%
Miss.	25%	0%	0%	23%	9%	8%	0%	13%	18%	22%	11.8%	12.2%
N.H.	-10%	-10%	0%	41%	15%	15%	24%	14%	20%	13%	12.2%	17.2%

STATE	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	**10 Years**	**5 Years**
N.M.	0%	25%	5%	0%	0%	18%	-11%	-17%	-4%	-3%	1.3%	-3.4%
N.C.	0%	31%	9%	0%	0%	-1%	3%	10%	-2%	22%	7.2%	6.4%
Okla.	0%	0%	20%	0%	-4%	-1%	-2%	3%	-3%	7%	2.0%	0.8%
Penn.	0%	0%	15%	-3%	-13%	2%	-8%	14%	8%	25%	4.0%	8.2%
R.I.	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0.0%	0.0%
S.C.	0%	25%	0%	0%	0%	0%	16%	0%	25%	22%	8.8%	12.6%
Tenn.	0%	0%	0%	19%	0%	11%	5%	9%	0%	15%	5.9%	8.0%
Vt.	10%	0%	0%	15%	11%	9%	5%	0%	6%	11%	6.7%	6.2%
Virginia	12%	0%	21%	29%	0%	-8%	8%	0%	2%	18%	8.2%	4.0%
W.V.	25%	22%	-9%	-6%	0%	0%	12%	10%	10%	0%	6.4%	6.4%
Wyo.	10%	0%	0%	0%	4%	6%	0%	0%	0%	0%	2.0%	1.2%
Category 1 Average	**3.1%**	**7.9%**	**0.6%**	**7.9%**	**1.5%**	**5.7%**	**1.7%**	**4.3%**	**5.3%**	**7.3%**	**4.5%**	**4.8%**
Category 2 Average	**7.5%**	**5.6%**	**5.8%**	**10.2%**	**1.7%**	**3.4%**	**-0.1%**	**1.9%**	**4.5%**	**9.2%**	**5.0%**	**3.8%**
National Average	**5.4%**	**6.7%**	**3.2%**	**9.1%**	**1.6%**	**4.6%**	**0.8%**	**3.1%**	**4.9%**	**8.2%**	**4.8%**	**4.3%**

IMPLICATIONS OF FINDINGS

If the insurance industry assertions are correct – that a sudden increase or "explosion" in jury awards or payouts in medical malpractice cases over the past five years has been the driving force behind increased insurance rates for doctors – then states should be experiencing high insurance loss cost increases.

The data show the opposite. Loss costs for these medical injuries have moved up slowly – roughly by medical inflation, as one might anticipate given the fact that medical malpractice results in injuries requiring medical treatment. Moreover, some states with severe and longstanding caps on damages have seen loss costs rise faster than some states without caps, although in no state have loss costs jumped significantly over this time period.

Therefore, there are other reasons why rates suddenly spiked over the last five years, namely, excessive competition (price cuts) during the soft market, dropping investment income in recent years and the resultant hard market which followed as insurers played "catch up" by excessively raising the rates of doctors.

CONCLUSION

To our knowledge, this study is the most comprehensive review of nationwide medical malpractice loss costs over the past 10 years. The key finding is: the data do not support any conclusion that the legal system, jury verdicts or payouts drove large insurance rate hikes for doctors. Had the industry hiked rates in a consistent fashion over time, based on its losses, rates for doctors would have increased only on average 4.3 percent annually over the last five years, instead of 100 percent or more for some doctors.

APPENDIX A

MEDICAL MALPRACTICE TORT RESTRICTIONS ENACTED THROUGH 2004

Alabama
87: med mal cap, noneconomic (but declared unconstitutional in 91)
87: med mal cap, total damages (but declared unconstitutional in 95)
87: punitive cap (but declared unconstitutional in 93)
87: collateral source (declared unconstitutional in part in 96, but then overruled in 2000)
99: punitive cap

Alaska
86: cap, noneconomic
86: joint and several liability
86: collateral source rule
88: joint and several liability (ballot initiative)
97: cap, noneconomic
97: punitive cap
97: prejudgment interest

Arizona
Pre-1985: med mal collateral source
87: joint and several
89: med mal structured settlements (but declared unconstitutional in 94)

Arkansas
Pre-1985: medical malpractice structured settlements
03: punitive cap
03: joint and several liability

California
Pre-1985: med mal cap, noneconomic; med mal collateral source; med mal contingency fees; med mal structured settlements
86: joint and several liability (ballot initiative)

Colorado
86: cap, noneconomic
86: joint and several liability
86: punitive cap
86: collateral source
88: med mal cap, non economic and all damages
88: med mal statute of repose
88: med mal structured settlements
92: med mal collateral source

03: med mal cap, noneconomic

Connecticut
Pre-1985: punitive cap, products
85: med mal collateral source
86: joint and several (i.e. proportional) liability
86: contingency fees
86: structured settlements

Delaware
Pre-1985: collateral source; med mal contingency fees; med mal structured settlements

District of Columbia
Pre-1985: collateral source

Florida
86: cap, noneconomic (but declared unconstitutional in 1987)
86: joint and several liability
86: collateral source
86: med mal structured settlements
86: contingency fees
86: punitive cap
88: med mal cap, noneconomic (depending on arbitration)
99: punitive cap
03: med mal cap, noneconomic

Georgia
87: punitive cap
87: joint and several liability
87: collateral source (but declared unconstitutional in 91)
03: prejudgment interest

Hawaii
86: cap, noneconomic
86: joint and several liability (except medical products)
86: collateral source (liens)

Idaho
87: cap, noneconomic
87: joint and several liability (except medical products)
87: structured settlements
90: collateral source
03: cap, noneconomic
03: punitive cap
03: joint and several liability, medical products

Illinois
Pre-1985: med mal collateral source
85: medical malpractice structured settlements
85: med mal contingency fees
95: cap, noneconomic (but declared unconstitutional in 97)
95: joint and several liability (but declared unconstitutional in 97)
95: punitive cap (but declared unconstitutional in 97)

Indiana
Pre-1985: joint and several liability
86: collateral source
93: med mal cap, all damages
93: med mal contingency fee
95: punitive cap

Iowa
Pre-1985: joint and several liability; med mal collateral source
86: structured settlements
87: collateral source
87: prejudgment interest
87: structured settlements
97: joint and several liability
97: prejudgment interest

Kansas
85: med mal punitive cap (but expired in 88)
86: med mal cap (but declared unconstitutional in 88)
86: med mal structured settlements (but declared unconstitutional in 88)
87: cap, noneconomic
87: punitive cap
88: cap, noneconomic
88: collateral source (but declared unconstitutional in 93)

Kentucky
88: joint and several liability (but codified common law rule)
88: collateral source (but declared unconstitutional in 95)

Louisiana
Pre-1985: med mal cap; med mal structured settlements (Patients Comp. fund); joint and several liability
87: joint and several liability
87: prejudgment interest
96: joint and several liability
03: med mal cap, noneconomic, for cases against nursing homes

Maine
85: med mal structured settlements

85: med mal contingency fees
88: prejudgment interest
89: med mal collateral source

Maryland
Pre-1985: collateral source
86: cap, noneconomic
86: structured settlements

Massachusetts
86: med mal cap, noneconomic
86: med mal collateral source
86: med mal contingency fees

Michigan
86: med mal cap, noneconomic
86: collateral source
86: structured settlements
86: prejudgment interest
87: joint and several liability
93: med mal cap, noneconomic
95: joint and several liability

Minnesota
86: cap, noneconomic (but repealed in 90)
86: collateral source
86: prejudgment interest
88: joint and several liability

Mississippi
89: joint and several liability
98: med mal statute of repose
02: med mal cap, noneconomic
02: joint and several liability, med mal
04: med mal cap, noneconomic
04: cap, noneconomic
04: punitive cap
04: joint and several liability

Missouri
86: med mal cap, noneconomic
86: med mal structured settlements
87: joint and several liability
87: collateral source

Montana:
87: joint and several liability (but declared unconstitutional in 94)

87: collateral source
95: med mal cap, noneconomic
95: med mal structured settlements
97: joint and several liability
03: punitive cap

Nebraska
Pre-1985: collateral source
Pre-1985: med mal cap, all damages (cap increased in 92, 03)
86: prejudgment interest (but improved prior standard)
92: joint and several liability (but improved prior standard)

Nevada
Pre-1985: med mal collateral source
87: joint and several liability
89: punitive cap
02: med mal cap, noneconomic
02: joint and several liability
04: med mal cap, noneconomic (initiative)
04: joint and several liability (initiative)
04: structured settlements (initiative)

New Hampshire
86: cap, noneconomic (but declared unconstitutional in 91)
86: punitive damages abolished
89: joint and several liability
95: prejudgment interest
01: prejudgment interest

New Jersey
Pre-1985: contingency fees
87: joint and several liability
87: collateral source
95: punitive cap
95: joint and several liability

New Mexico
87: joint and several liability (but codified common law)
92: med mal structured settlement
92: med mal cap (except punitive damages)

New York
86: joint and several liability
86: collateral source
86: structured settlements
86: med mal contingency fees
03: structured settlements

North Carolina
95: punitive cap

North Dakota
87: joint and several liability
87: collateral source
87: structured settlements
93: punitive cap
95: med mal cap, noneconomic

Ohio
87: joint and several liability
87: structured settlements
96: cap, noneconomic (but declared unconstitutional in 99)
96: joint and several liability (but declared unconstitutional in 99)
96: punitive cap (but declared unconstitutional in 99)
96: collateral source (but declared unconstitutional in 99)
96: prejudgment interest
03: med mal cap, noneconomic
03: joint and several liability
03: collateral source, med mal
04: cap, noneconomic
04: punitive cap
04: collateral source
04: prejudgment interest

Oklahoma:
86: prejudgment interest
95: punitive cap
03: med mal cap, noneconomic
03: collateral source
03: prejudgment interest, med mal
04: med mal cap, noneconomic
04: joint and several liability
04: prejudgment interest

Oregon
87: cap, noneconomic (but declared unconstitutional in 99)
87: joint and several liability
87: med mal punitive damages abolished against doctors
87: collateral source
95: joint and several liability

Pennsylvania
Pre-1985: med mal collateral source
96: med mal punitive cap

02: joint and several liability
02: collateral source
02: structured settlements

Rhode Island
86: med mal collateral source
87: prejudgment interest

South Carolina
Pre-1985: med mal structured settlements (Patient Comp. Fund with annual cap)

South Dakota
Pre-1985: med mal collateral source
Pre-1985: med mal cap, noneconomic
86: med mal cap, economic (but declared unconstitutional 96)
86: med mal structured settlements
87: joint and several liability

Tennessee
Pre-1985: med mal collateral source

Texas
87: med mal cap (but declared unconstitutional in 88, although allowed for wrongful death in 90)
87: joint and several liability
87: punitive cap
87: prejudgment interest
95: joint and several liability
95: punitive cap
03: med mal cap, noneconomic
03: joint and several liability
03: prejudgment interest

Utah
85: med mal collateral source
86: med mal cap, noneconomic
86: joint and several liability
86: med mal structured settlements
99: joint and several liability

Vermont:
Pre-85: joint and several liability

Virginia
Pre-1985: med mal cap (although cap raised in 83 and 99)
87: med mal (children injured at birth, no right to sue, no noneconomic or punitive damages)
87: punitive cap

Washington
Pre-1985: punitive cap; med mal collateral source
86: cap, noneconomic damages (but declared unconstitutional in 89)
86: joint and several liability
86: structured settlements
04: prejudgment interest

West Virginia
86: med mal cap, noneconomic
86: med mal joint and several liability
03: med mal cap, noneconomic
03: joint and several liability

Wisconsin
Pre-1985: med mal (Patient Compensation Fund)
86: med mal cap, noneconomic (but expired 90)
86: med mal contingency fees
95: med mal cap, noneconomic
95: joint and several liability
95: med mal structured settlements
95: med mal collateral source

Wyoming
86: joint and several liability.

APPENDIX B

GLOSSARY OF COMMON "TORT REFORMS"

Collateral Source Rule – The collateral source rule prevents a wrongdoer from reducing its financial responsibility for the injuries it causes by the amount an injured party receives (or could later receive) from outside sources. Payments from outside sources means those unrelated to the wrongdoer, like health or disability insurance, for which the injured party has already paid premiums or taxes. The rule also prevents juries from learning about such collateral payments, so as not to unfairly influence the verdict. States that have modified this rule have either completely repealed it, mandating that payments received from health insurance, social security or other sources be used to reduce the wrongdoer's liability; or, they allow juries to hear during trial about collateral payments.

Caps (on Damages) – A damages cap is an arbitrary ceiling on the amount an injured party can receive in compensation by a judge or jury, irrespective of what the evidence presented at a trial proves compensation should be. A cap is usually defined in a statute by a dollar figure ($250,000, $500,000, etc.). Caps usurp the authority of juries and judges, who listen to the evidence in a case to decide compensation based on each specific fact situation. Several states have declared caps unconstitutional.

Contingency Fees -- Under a contingency fee arrangement, a lawyer agrees to take a case on behalf of an injured client without obtaining any money up front from the client. This is a risk, because if the case is lost, the lawyer is paid nothing. In return, the lawyer is entitled to a percentage of the amount of money collected – usually one-third – if the case is successful. This system provides injured consumers who could not otherwise afford legal representation with access to the courts. Typically, states limit contingency fees by capping them: sometimes well below one-third, sometimes along a sliding scale so fee percentages decrease as judgments increases. The principal impact of contingency fee limits is to make it less likely attorneys can afford to risk bringing many cases, particularly the more costly and complex ones, providing practical immunity for many wrongdoers.

Joint and Several Liability – The doctrine of joint and several liability is a fairness rule, developed over centuries to protect injured consumers. It applies when more than one defendant is found *fully responsible* for causing an injury (not 1 percent or 10 percent responsible, as is commonly misstated). If one wrongdoer is insolvent or cannot pay their share, the other fully-responsible wrongdoers must pick up the tab, to make sure the innocent victim is fully compensated.

Non-economic Damages – Non-economic damages compensate injured consumers for intangible but real injuries, like infertility, permanent disability, disfigurement, pain and suffering, loss of a limb or other physical impairment. Limits on non-economic damages can have a disproportionate

effect on plaintiffs who do not have high wages – like women who work inside the home, children, seniors or the poor, who are thus more likely to receive a greater percentage of their compensation in the form of non-economic damages if they are injured.

Prejudgment Interest – Prejudgment interest is the amount of interest that accrues on the value of an injured consumer's claim between the time he or she files a case, and the final judgment. Some states penalize victims by prohibiting pre-judgment interest or by imposing very low limits on pre-judgment interest rates. Laws that limit prejudgment interest can delay timely settlements or judgments in civil cases by reducing the monetary incentive that defendants have to resolve cases expeditiously.

Punitive Damages – Punitive damages, also known as "exemplary damages," are assessed against defendants by juries or judges to punish particularly outrageous, deliberate or harmful misconduct, and to deter the defendant and others from engaging in similar misconduct in the future. It is well recognized that the prospect of having to pay punitive damages in a lawsuit by an injured consumer causes wrongdoers to operate more safely.

Statute of Repose – A statute of repose for products completely cuts off liability after an arbitrarily-established number of years, such as 10 years or 15 years. A few states have adopted statutes of repose to cut off doctors' and hospitals' liability for medical malpractice. Statutes of repose apply no matter how serious the injuries, how many injuries have been caused over the years by these products or services, or how reckless the actions of the wrongdoer were.

Structured Settlements – Also called "periodic payments," structured settlement laws either mandate, allow defendants to request, or allow courts to require that some or all payments awarded by a judge or jury be made to the injured consumer over a long period of time. In other words, the injured consumer is prohibited from receiving payments in a lump sum. These provisions increase the hardships of the most seriously injured consumers who are hit soon after an injury with large medical costs and must make adjustments in transportation and housing. Often, the law allows insurance companies to pocket the money upon the plaintiff's death, instead of paying it to a dependent spouse or child.