Medical Malpractice:

Status of the Marketplace and The Solution to the Problem

Devin O'Brien

July 28, 2003

THE DOCTORS COMPANY

The Doctors Company Profile

- First national physician-owned medical liability insurer
- More than 26,000 physicians in solo practice, medical groups, clinics and hospitals
- 307 physicians in Wyoming
- Policyholders in all 50 states and the District of Columbia

The Doctors Company Profile

- "A" rating by A.M. Best Company for 18 consecutive years
- Wards' Top 50 three consecutive years (1994-present)
- More than $1 billion in assets

MICRA

1. ***$250,000 cap*** **on noneconomic damages**
2. ***Collateral source*** **rule**
3. ***Periodic payments*** **of future damages**
4. **Sliding scale limit on attorneys'** ***contingency fees***

MICRA

5. Statute of limitations reform
6. *90-day "Notice* of Intent to Sue"
7. Allows *arbitration*

MICRA Helps Reduce California Medical Liability Premium Rates by 40%

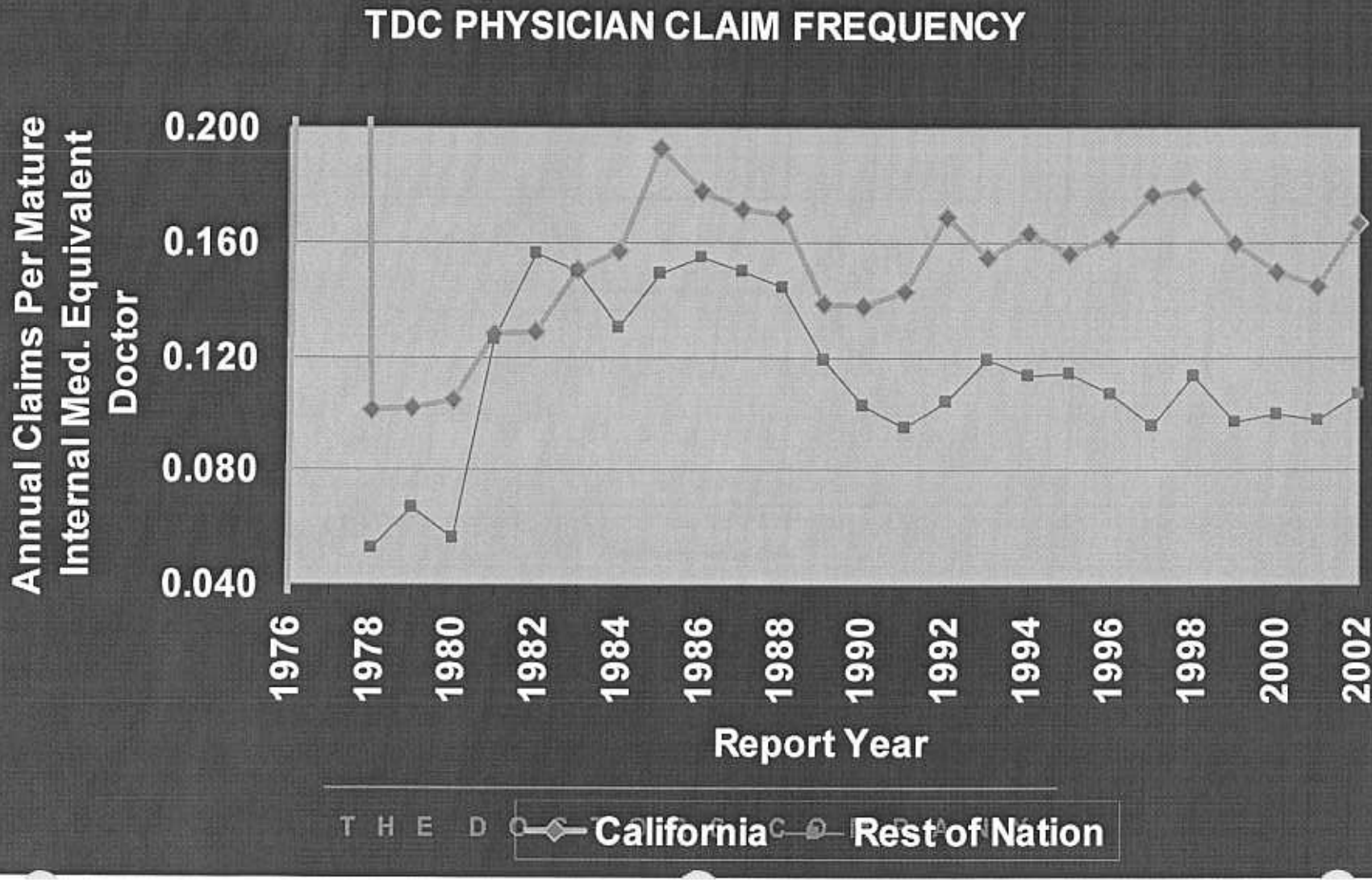
The Doctors' Company, 1976-2001



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

THE DOCTORS COMPANY

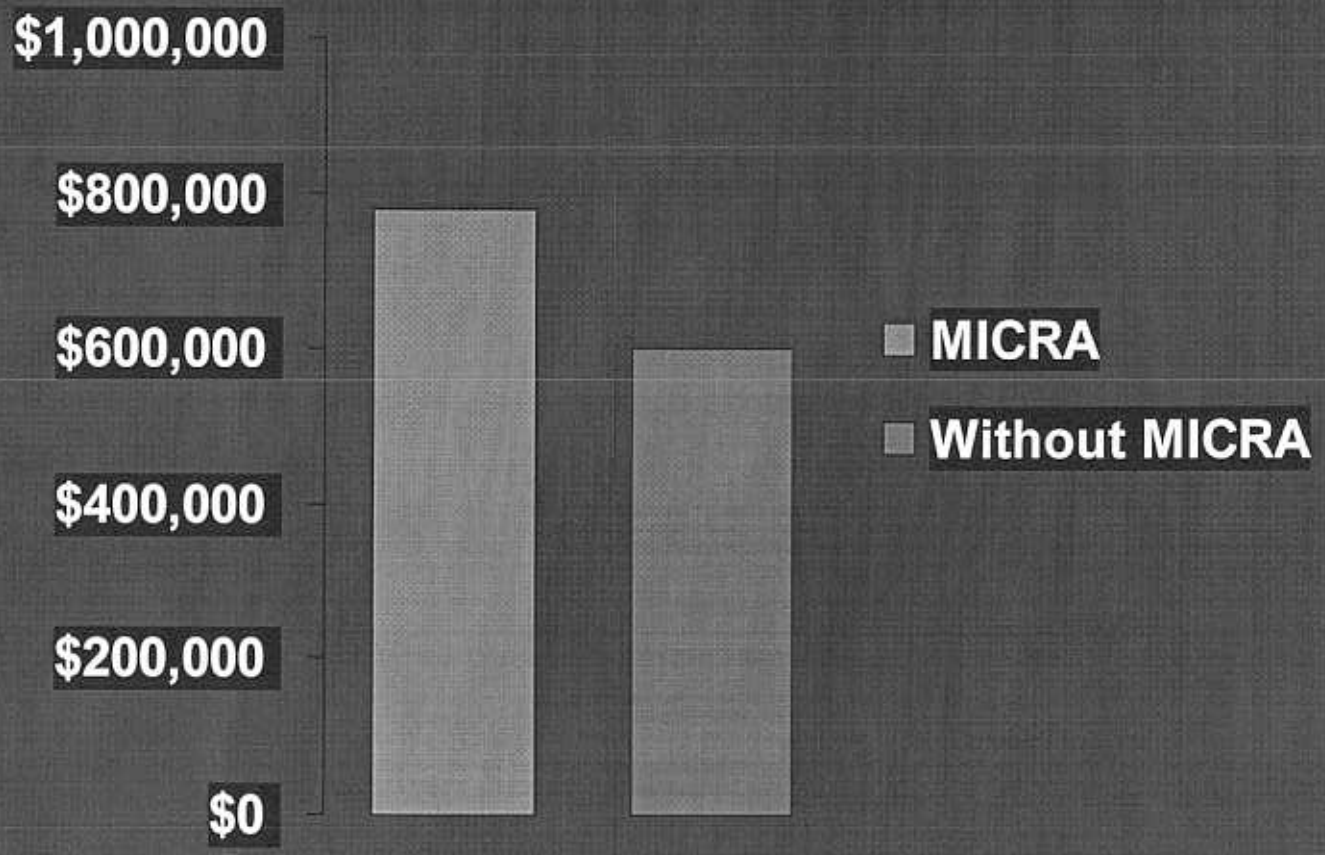
MICRA Does Not Limit Access to Courts



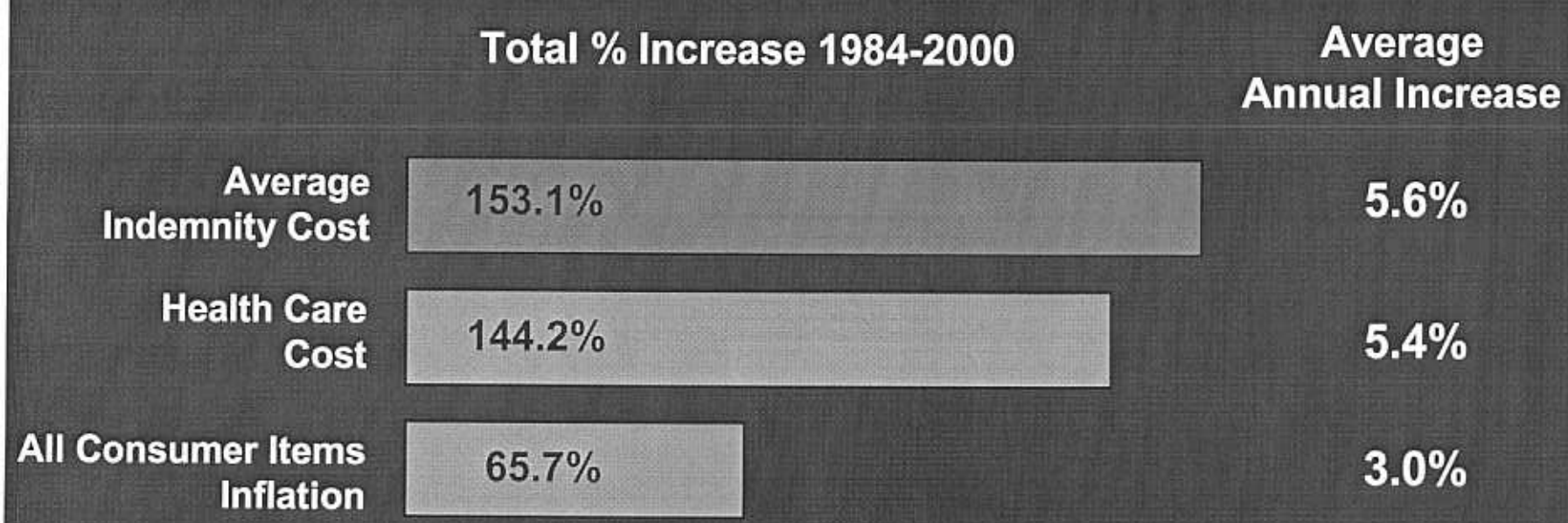
MICRA Reduces Average Time to Settlement



Injured Patients Benefit Directly

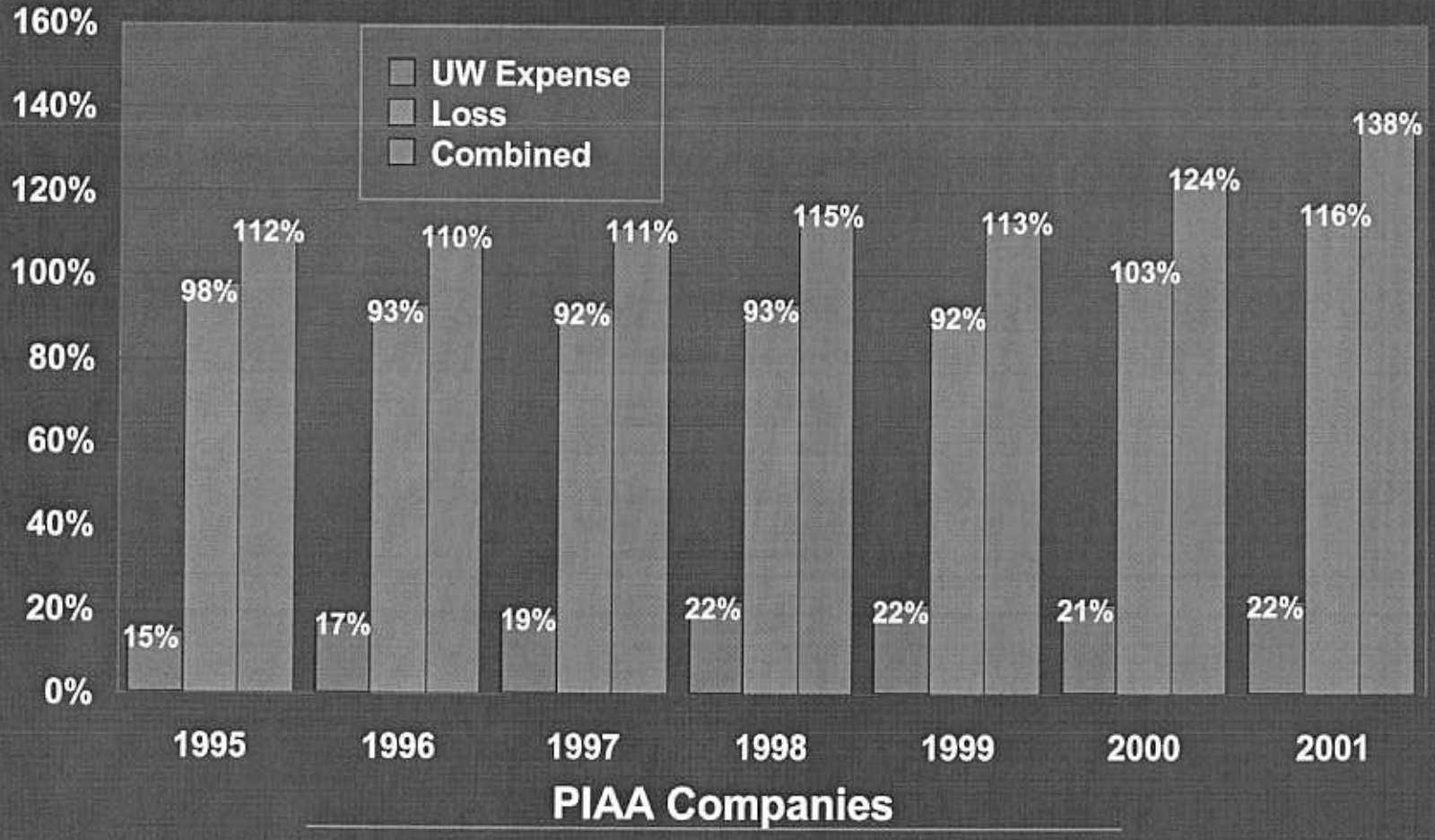


Increasing Cost of Malpractice Claims Despite MICRA



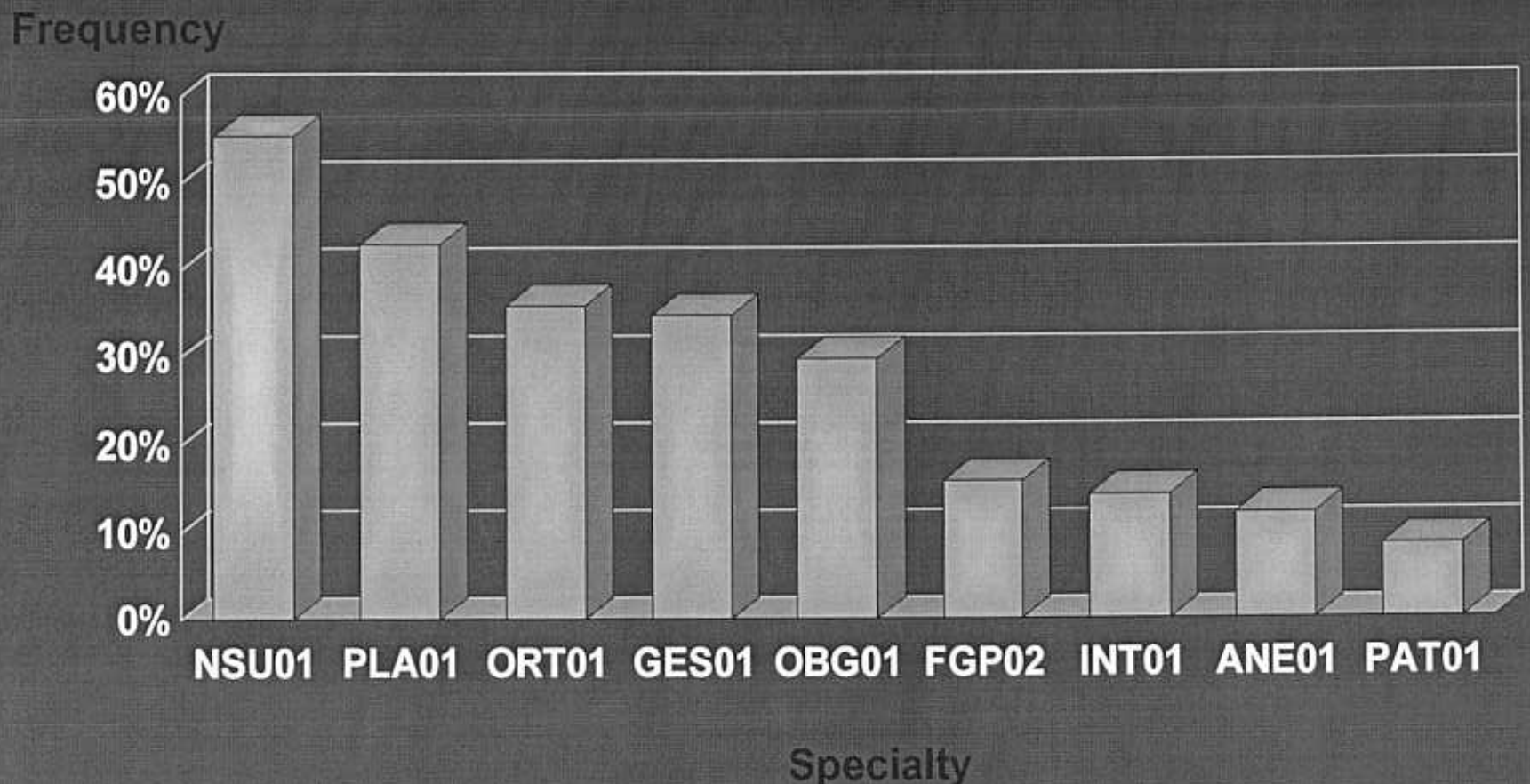
US Cities CPI vs. TDC California Allocated Claims Closed with Indemnity 70

Combined Ratios Have Become Unsustainable

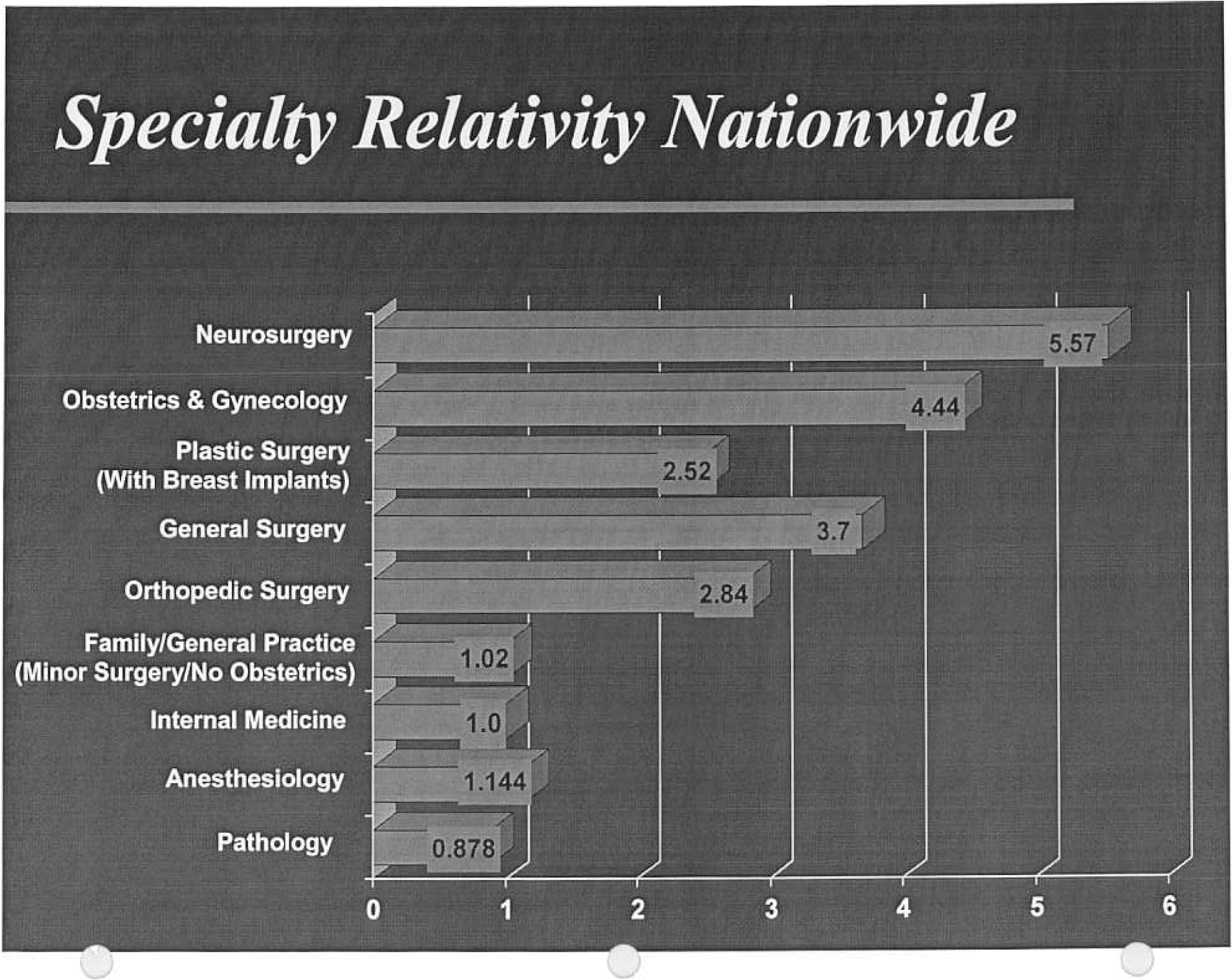


THE DOCTORS COMPANY

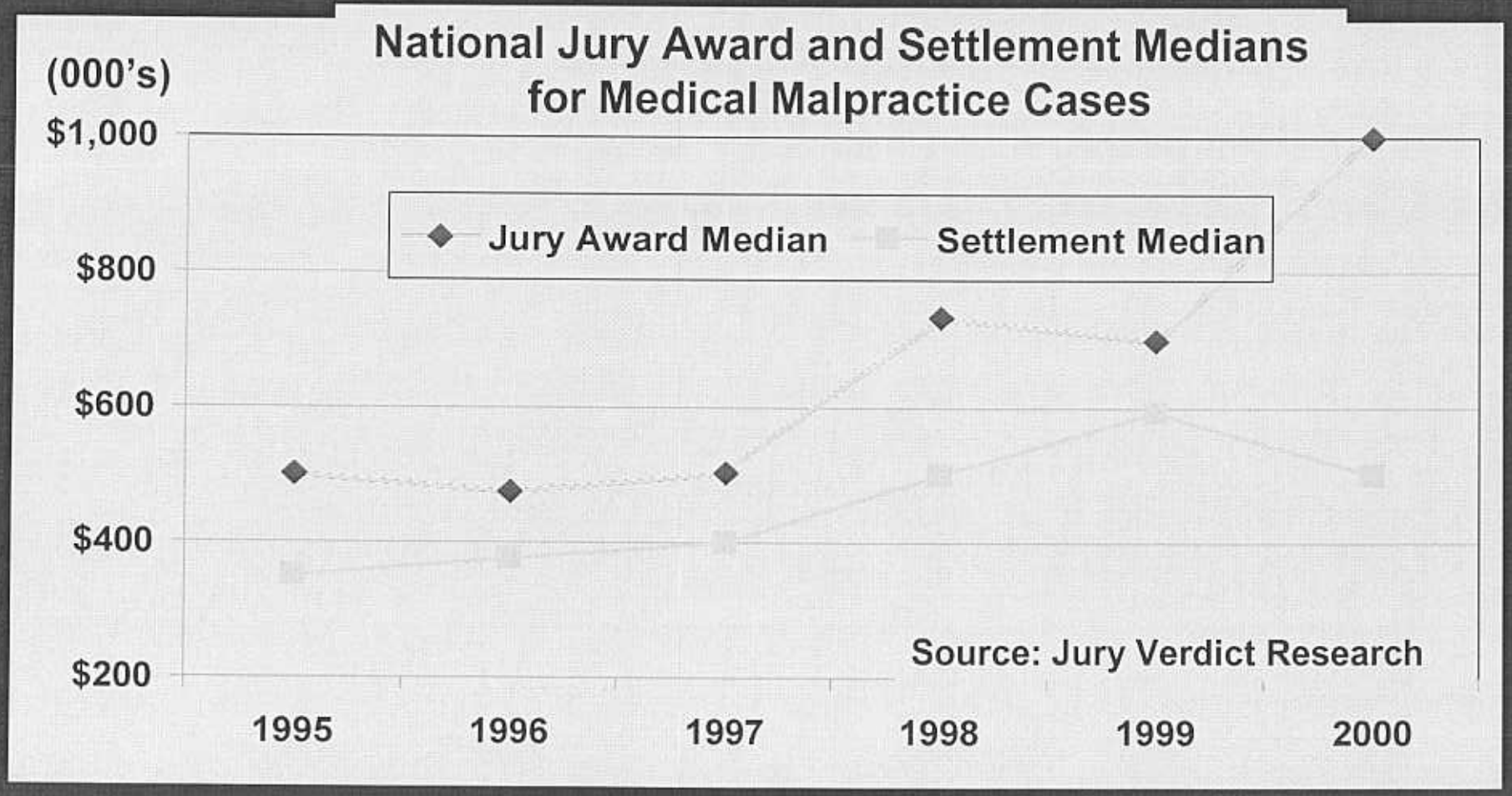
Frequency by Specialty 1995-2001



Specialty Relativity Nationwide



Severity: National Medians



Market Capacity

Primary medmal companies struggling

- **Companies that have been downgraded by A.M. Best:**
  - MIIX
  - SCPIE
  - Legion
  - TIG
  - Washington Casualty
  - Northwest Physicians Mutual
  - TVIR
  - St. Paul

Market Capacity

Primary medmal companies struggling

- **Companies that have gone out of business:**
  - PHICO
  - PIE
  - Frontier
  - MIIX
  - Reliance
  - Legion
  - MMI

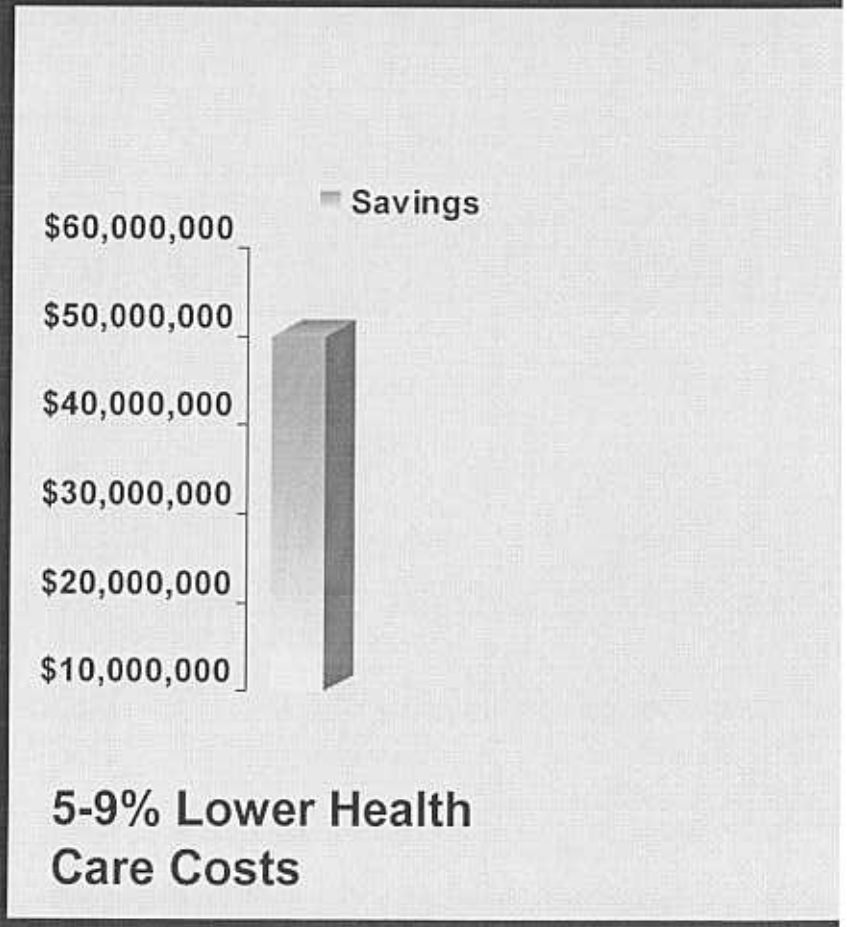
Market Capacity

Primary medmal companies struggling

- **Companies fleeing the business:**
  - St Paul getting out of medical malpractice business
    - — Expects to non-renew 80% of its $600 million book by mid-year
    - — Interstate has stopped offering new policies
  - General Electric spinning off insurance operations
    - — Employers Reinsurance and Medical Protective
  - Citigroup spinning off Travelers and Gulf

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 the savings to be as high as $100 billion.

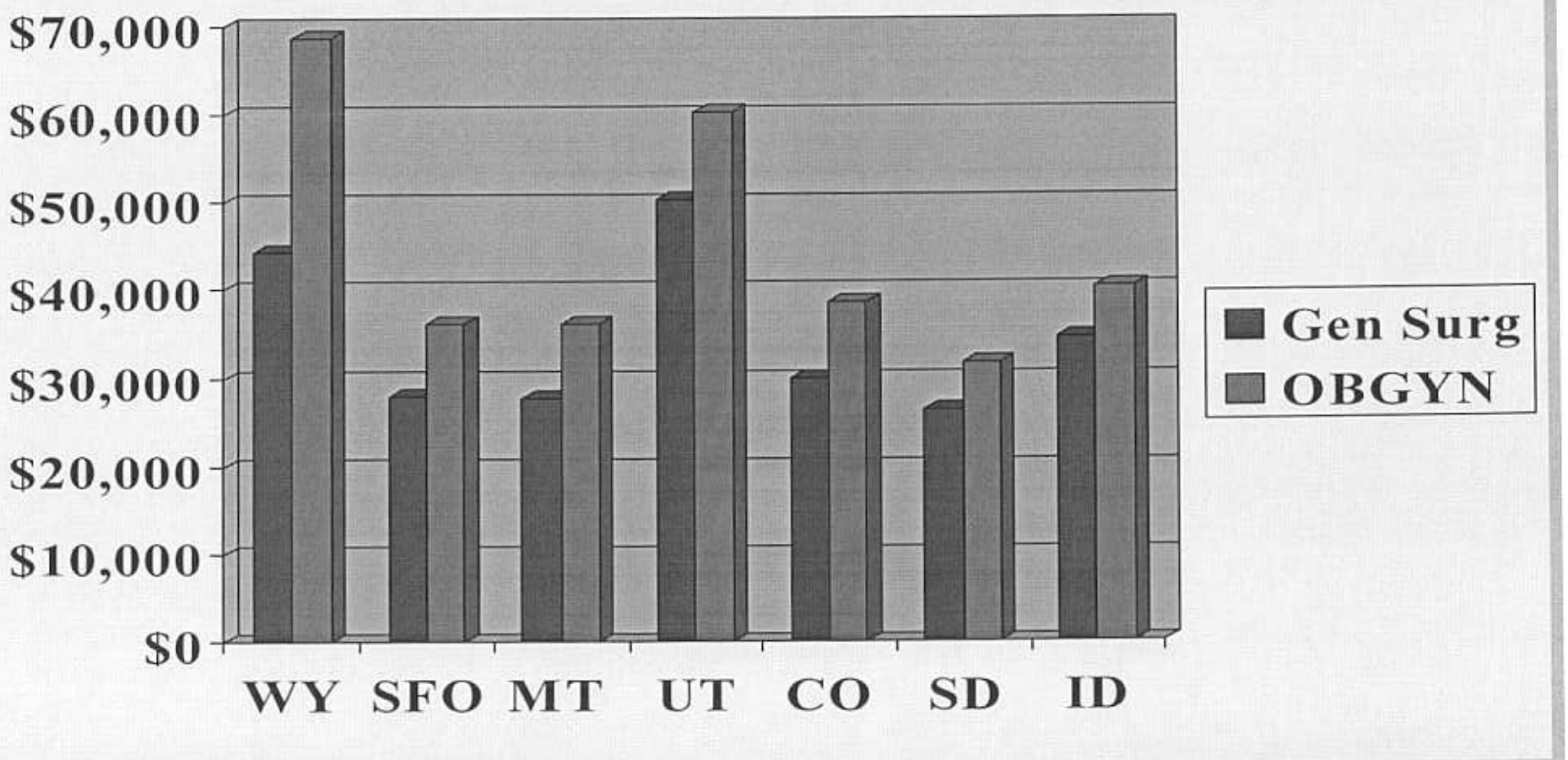


Premium Savings with Tort Reform

- **Congressional Budget Office 9-02:**

  H.R. 4600 would lower malpractice premiums by 25-30%.

Rate Comparison, Wyoming vs. California



Wyoming Doctor Count

Year	Count
1996	539
1997	422
1998	374
1999	348
2000	301
2001	314
2002	307

THE DOCTORS COMPANY

Wyoming Rate Changes

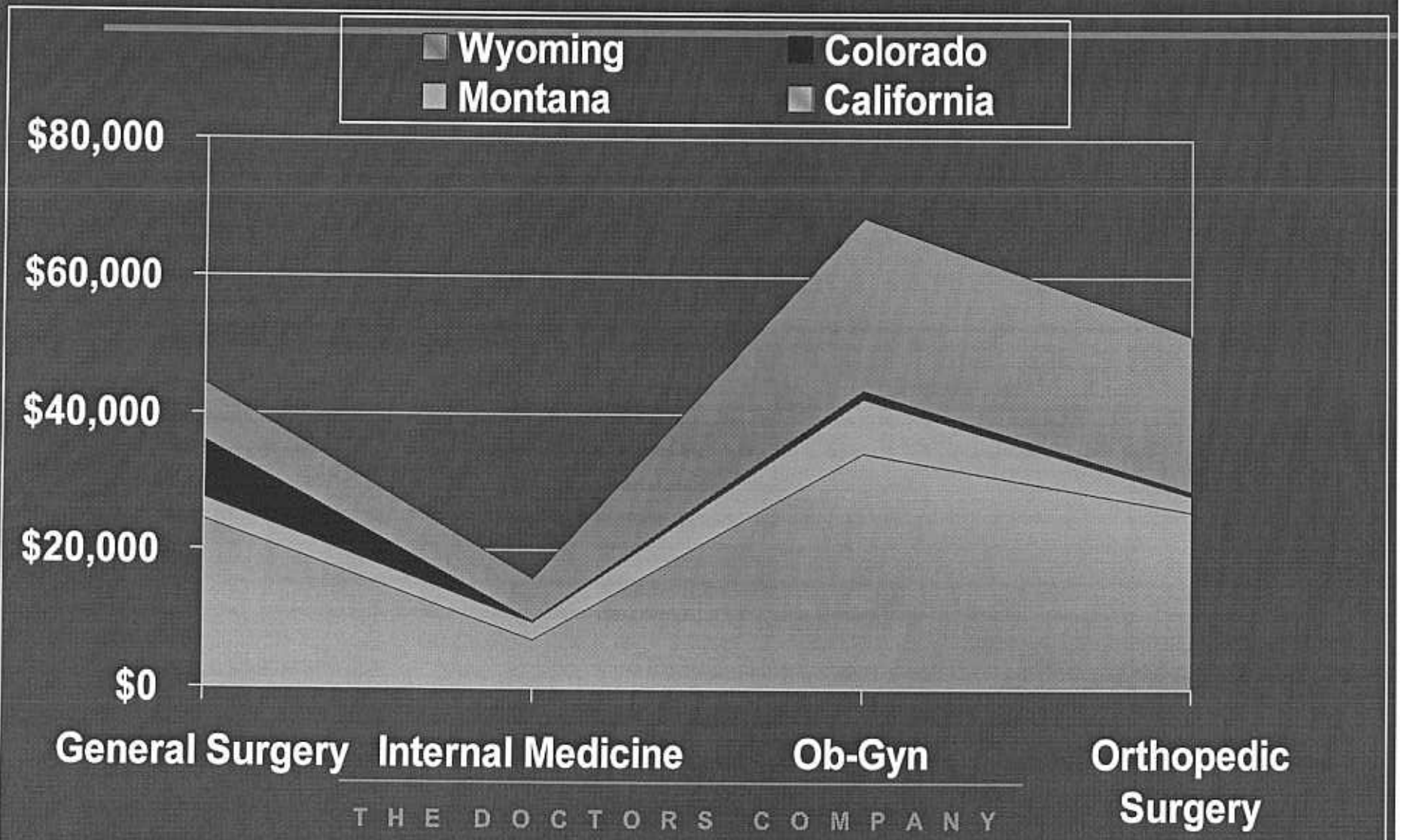
Effective Date	Change
3/1/98	+ 0.2%
8/1/98	+ 4.3%
7/1/99	+ 0.3%
4/1/00	– 5.3%
5/1/01	+ 10.0%
4/1/02	+ 28.8%
6/1/02	+ 1.8%

Wyoming Loss Ratios

Year	Reported Claims	Earned Premium	Ultimate Loss	Ultimate Loss Ratio
1992	71	$5,140,314	$4,039,926	79%
1993	80	$5,397,676	$5,460,877	110%
1994	85	$5,883,318	$9,141,973	155%
1995	72	$6,710,724	$1,959,009	29%
1996	77	$6,755,289	$8,423,097	125%
1997	72	$5,878,066	$6,469,894	111%
1998	44	$4,794,186	$8,035,250	168%
1999	38	$4,095,268	$5,060,825	125%
2000	42	$3,620,994	$5,064,930	144%
2001	22	$3,786,060	$4,249,525	119%
2002	8	$913,768	$1,065,113	128%

Note: Ultimate Loss Ratio = (Ultimate Loss +IBNR) / Earned Premium

California, Montana, Colorado, Wyoming Current Rates by Specialty (2002)



Financial Markets and Reinsurance

- **Bond markets**
  - — Falling interest rates decrease investment income
  - — Value to maturity is unchanged: zero sum game
- **Stock market – red herring but the era of subsidies is over**

Implications of Unlimited Verdicts

- Doctors and their inurers cannot afford to go to court
- Cost of settlement rises dramatically
- Unlimited judgments require unlimited premiums
- System of indemnification unsustainable

Harvard Study: Additional Conclusions

- **Caps on non-economic damages are necessary (and effective)**

  Collateral source reform is appropriate.

- **Claims Analysis and Malpractice Trial Outcomes: what most trial lawyers know- there is no correlation the presence or absence of medical negligence and the outcome of malpractice litigation**

Trial Lawyer Canards

- **Old**
  - — It's just a few bad doctors…
- **New**
  - — It's not the doctors, it's the insurance companies…
  - — The insurers are just recovering stock market losses

Effective Tort Reform

THE DOCTORS COMPANY