



# south carolina tort reform

## f a c t s   a n d   d a t a

### TORT REFORM IS NOT JUST A DOCTOR ISSUE!

South Carolina has been identified as a “pre-crisis” medical liability state by the American Medical Association (AMA). Rising medical professional liability premiums threaten access to quality medical care for all citizens, increase the cost of Accident & Health insurance for all employers and employees and discourage businesses from locating here.

#### Tort System Taxes Everyone

Tillinghast-Towers Perrin, a leading actuarial firm reports that in 2002 the tort system cost each man, woman and child \$809 annually; in 1950, the U.S. judicial tort system annual cost was \$12 per citizen.

#### Defensive Medicine Drives Up Healthcare Costs

“Defensive medicine” is when physicians order extra tests or procedures to protect themselves from lawsuits rather than for medical reasons. The U.S. Department of Health and Human Services (March 3, 2003) and the Employment Policy Foundation (June 19, 2003) each report that “defensive medicine” adds up to \$97.5 billion annually to the cost of the nation’s hospital and physician services.

#### Malpractice Litigation Increases Employers’ and Employees’ Costs

The Employment Policy Foundation report (June 19, 2003) on Accident & Health insurance costs concludes that uncapped medical malpractice litigation increased the annual cost to employers of providing health insurance to workers by up to \$353 per covered employee; and increased employees contribution to their employer-provided health insurance by up to \$109 per employee.

#### Uncapped Malpractice Litigation Increases the Number of Uninsured

The Employment Policy Foundation (June 19, 2003) found that uncapped medical malpractice litigation decreased by 2.7 million workers—and their families—from being protected by employer-provided accident and health insurance.

### BENEFITS OF TORT REFORM

**Moderation** of losses will help **keep products and services affordable**

**Access** to affordable quality healthcare **will be preserved**

**Lower** liability and health insurance **premiums**

Increased **competition** among insurers **will benefit purchasers**

Personal injury lawyers argue that poor management at insurance companies is the cause of the crisis; that sky-high premiums are due to investment losses rather than excessive jury awards and settlements.

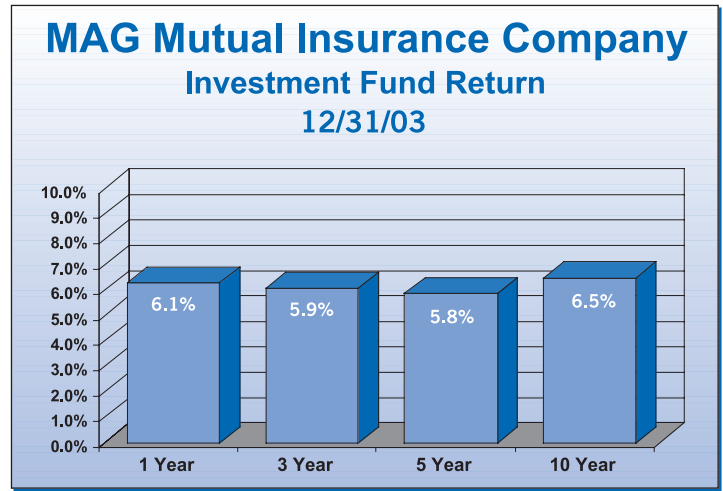
- Malpractice insurers' investment portfolios consistently make money
- Regulators prohibit investment losses from being used in rate making

**NEXT, THEY CLAIM:**

- Repeat offender "bad doctors" cause everyone else to pay more.

**THIS IS NOT TRUE:**

**MAG MUTUAL DATA INDICATES THAT FROM 1994-2003, 93 PERCENT OF MAG MUTUAL'S PAID LOSSES INVOLVED PHYSICIANS WHO HAD ONLY ONE OR TWO PAID CLAIMS DURING THE ENTIRE DECADE. LESS THAN 1.5% OF OUR INSURED PHYSICIANS HAD EVEN ONE CLAIM PAID.**



**MAG Mutual Insurance Company  
Total Claims Paid  
1994-2003**

**Allegation: Bad doctors are repeatedly practicing bad medicine and nothing is done about them.**

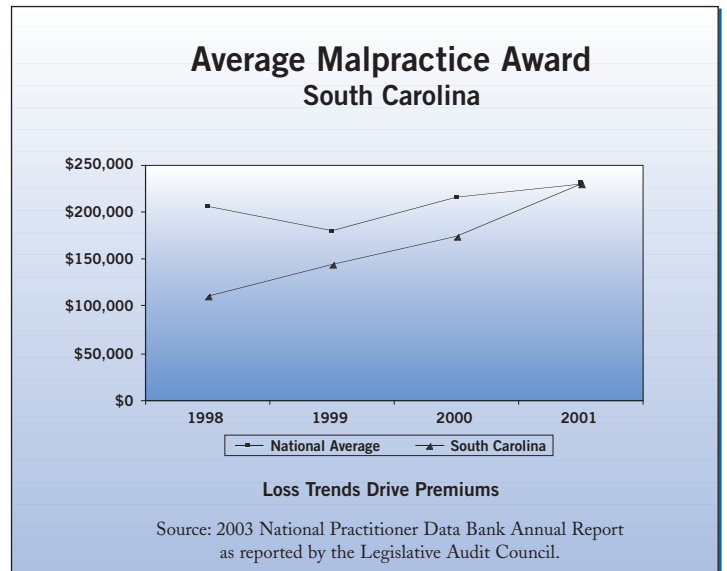
Total Number of Physician Exposures: 87,402

Number of Claims Paid over the Period	Number of Physicians	Percent of Insureds	Paid Indemnity	Percent of Paid Indemnity
1	1,002	1.146%	\$308,926,801	76.3%
2	133	0.152%	\$68,574,678	16.9%
3	20	0.023%	\$21,085,921	5.2%
4	4	0.005%	\$3,174,998	0.8%
5	1	0.001%	\$1,220,000	0.3%
10	1	0.001%	\$624,498	0.2%
18	1	0.001%	\$1,368,300	0.3%
--	1,162	1.329%	\$404,975,196	100.0%

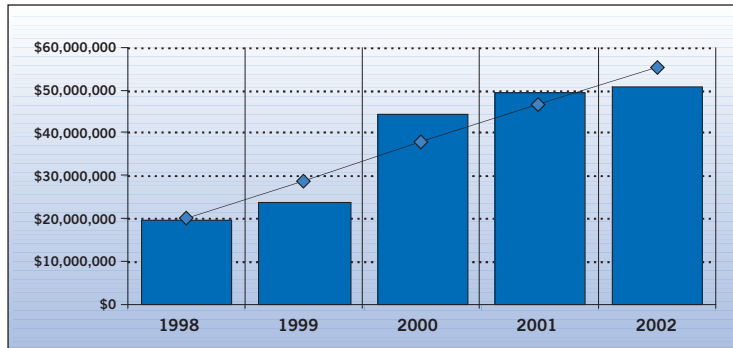
*MMIC Countrywide Experience*

**LOSS TRENDS DRIVE PREMIUMS.** According to officials with South Carolina's Patient Compensation Fund (PCF) and the Department of Insurance, an increase in the size of malpractice awards (severity) and an increase in the total number of claims (frequency) have been the major contributing factors in the increase in medical malpractice premiums.

**IN ORDER TO CHANGE THE DIRECTION OF PREMIUMS, YOU MUST CHANGE THE TREND LINE OF LOSSES.**



## South Carolina Total Claim Payments for JUA and PCF 1998 Through 2002



### Loss Trends Drive Premiums

Does not include expenses associated with defending claims.

2002 figure includes \$10,289,759 in deferred payments.

Source: JUA/PCF as reported by the Legislative Audit Council, , January 2004.

## South Carolina JUA and PCF Claims by Settlement Amount 1998 Through 12/22/03

Settlement Amount	Number of Closed Claims	Percent of All Claims*	Amount Paid*	Percent of Amount Paid*
\$0 - \$100,000	555	47%	\$20,758,353	8%
\$100,000 - \$250,000	361	31%	\$52,737,063	20%
\$250,001 - \$500,000	162	14%	\$57,458,275	22%
\$500,001 - \$750,000	43	4%	\$25,879,893	10%
\$750,001 - \$1,000,000	15	1%	\$12,997,390	5%
Over \$1,000,000	43	4%	\$95,149,248	36%
<b>Total</b>	<b>1,179</b>	<b>-</b>	<b>\$264,980,223**</b>	<b>-</b>

\* Figures may not add due to rounding      \*\* Total does not include \$10,289,759 in deferred payments.

### Severity is an Issue.

Claims over \$1 million account for 36% of the total amount paid in the last six years.

Source: JUA/PCF as reported by the Legislative Audit Council, , January 2004.

## South Carolina Combined JUA and PCF Premiums for Three Selected Medical Specialties

Year	Family Practice	Percent Increase	OB-GYN	Percent Increase	Emergency Medicine	Percent Increase
1999	\$1,924		\$9,975		\$3,180	
2000*	\$2,696	40%	\$19,982	40%	\$4,454	40%
2001	\$4,116	53%	\$20,631	48%	\$6,698	50%
2002	\$5,745	40%	\$28,883	40%	\$9,795	46%
2003	\$7,162	25%	\$37,597	30%	\$14,930	52%

\* 2000 Does not include special assessment of 100% of annual premium.

### Premium Growth Reflects Increase in Claims Payments

Source: JUA/PCF as reported by the Legislative Audit Council, , January 2004.

## TORT REFORM WORKS

**Tort reform is not for the insurance companies.** To cover increasing losses, the companies must raise rates or withdraw from unprofitable lines of business. Tort reform is about restoring fairness, balancing the rights of a few patients injured annually with the right of everyone to access affordable, quality healthcare.

### KEY INGREDIENTS TO CIVIL JUSTICE REFORM

#### **CAP ON NON-ECONOMIC DAMAGES**

- No limit on medical expenses, lost wages, etc.; limit pain and suffering damages to \$250,000.

#### **COLLATERAL SOURCES**

- Requires the jury to consider other sources of compensation received by plaintiff when determining the amount of any award to the plaintiff.

#### **ELIMINATE JOINT AND SEVERAL LIABILITY**

- Make each defendant liable only for his/her share of negligence.

#### **LIMIT VENUE**

- Requires that cases be tried in a county where at least one defendant resides when there are multiple-state resident defendants.

#### **CAP ON PUNITIVE DAMAGES**

- Establishes a \$250,000 cap or three times the compensatory damages – whichever is less.

#### **FRIVOLOUS LAWSUITS**

- Creates additional sanctions that may be imposed on parties and their attorneys for filing a frivolous lawsuit, pleading or motion.

#### **REDUCE POST JUDGMENT INTEREST**

- Change the current rate of 12% to 6%.

### EFFECTS OF TORT REFORM ON ALL SOUTH CAROLINIANS

- Access to quality healthcare will be preserved.
- Moderation of rate increases will help keep healthcare affordable.
- Increased competition among insurers will benefit purchasers of both medical liability and accident and health insurance.
- Medical liability insurance will be available to compensate an injured person.

### WHAT CAN YOU DO?

- Discuss the issue in your community whenever possible.
- Talk to your legislators, state and federal.