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INSURANCE INDUSTRY'S INVESTMENT PRACTICES – NOT THE LEGAL SYSTEM – CAUSE HIGH MALPRACTICE INSURANCE COSTS

Limiting or eliminating medical malpractice litigation will not solve doctors' medical malpractice insurance problems. That is because these problems are not caused by legal system excesses but by the economic cycle of the insurance industry.

THE INSURANCE CYCLE, NOT THE LEGAL SYSTEM, DRIVES UP RATES

- **Typical Soft Market:** Insurers make most of their money from investment income. During years of high interest rates and/or excellent insurer profits, insurance companies engage in fierce competition for premium dollars to invest for maximum return. Insurers severely underprice their policies and insure poor risks (where there likely will be claims to pay) just to get premium dollars to invest. This is known as the “soft” insurance market. Americans for Insurance Reform, *Stable Losses/Unstable Rates* 2007.
- **Typical Hard Market:** When investment income decreases because interest rates drop or the stock market plummets, or price cuts during the soft market make unbearably low profits, the industry responds by sharply increasing premiums and reducing coverage, creating a “hard” insurance market usually degenerating into a “liability insurance crisis.” Americans for Insurance Reform, *Stable Losses/Unstable Rates* 2007.
- **Periodic Cycles:** Such “liability insurance crises” associated with “hard markets,” have occurred three times in the last 30 years – in the mid 1970s, in the mid-1980s, and between 2002 and 2006. Eventually, rates stabilized and availability improved everywhere as the “soft market” took hold. Americans for Insurance Reform, *Stable Losses/Unstable Rates* 2007.
- **With each new hard market, insurers have tried to cover up their investment losses by blaming lawyers and the legal system.** To buy this position, one would have to accept the notion that juries engineered large jury awards in the mid-1970s, then stopped for a decade, then started again in the mid-1980s, stopped 17 years and the started again from 2002-2006. This is ludicrous, and not true. At no time did claims or payouts spike during these period and since 1975, medical malpractice payouts have risen almost precisely in sync with medical inflation. Americans for Insurance Reform, *Stable Losses/Unstable Rates* 2007.
- **Today.** Investment losses throughout the industry now threaten to cause another hard market. Kathy Chu and Sandra Block, “Insurance premiums rise on sour profits,” *USA Today*, April 20, 2009.

INDUSTRY INSIDERS HAVE REPEATEDLY ADMITTED THAT THE INVESTMENT CYCLE IS TO BLAME FOR PERIODIC INSURANCE LIABILITY “CRISES”

- **Victor Schwartz, General Counsel, American Tort Reform Association:** “Insurance was cheaper in the 1990s because insurance companies knew that they could take a doctor's premium and invest it, and \$50,000 would be worth \$200,000 five years later when the claim came in ... An insurance company today can't do that.” *Honolulu Star Bulletin*, April 20, 2003.
- **National Underwriter:** Standard & Poor’s Rating Service in London, recognizing problems created by “historic highs and lows of cyclical underwriting,” is calling for the industry to change its underwriting practices. S&P’s Christian Dinesen says, “A less cyclical insurance market would be revolutionary for the industry, with such fundamental change promising a more stable underwriting environment.” *National Underwriter Online*, October 29, 2002.
- **Wall Street Journal:** “[A] price war that began in the early 1990s led insurers to sell malpractice coverage to obstetrician-gynecologists at rates that proved inadequate to cover claims.... Some of these carriers had rushed into malpractice coverage because an accounting practice widely used in the industry made the area seem more profitable in the early 1990s than it really was. A decade of short-sighted price slashing led to industry losses of nearly \$3 billion last year.” *Wall Street Journal*, June 24, 2002.
- **Donald J. Zuk, chief executive of Scpie Holdings Inc.:** “I don’t like to hear insurance-company executives say it’s the tort system – it’s self-inflicted.” *Wall Street Journal*, June 24, 2002.
- **Charles Kolodkin, Gallagher Healthcare Insurance Services:** “The [medical malpractice insurance] market is in chaos...Throughout the 1990s...insurers were...driven by a desire to accumulate large amounts of capital with which to turn into investment income. Regardless of the level of...tort reform, the fact remains that if insurance policies are consistently underpriced, the insurer will lose money.” “Medical Malpractice Trends?”, September 2001.
- **National Association of Attorneys General:** “The facts do not bear out the allegations of an ‘explosion’ in litigation or in claim size, nor do they bear out the allegations of a financial disaster suffered by property/casualty insurers today. They finally do not support any correlations between the current crisis in availability and affordability of insurance and such a litigation ‘explosion.’ Instead, the available data indicate that the causes of, and therefore solutions to, the current crisis lie with the insurance industry itself.” *Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance*, Ad Hoc Insurance Committee of the National Association of Attorneys General, May 1986.
- **Maurice R. Greenberg, then President and CEO of American International Group, Inc.:** “The industry’s problems were due to price cuts taken ‘to the point of absurdity’ in the early 1980s. Had it not been for these cuts, Greenberg said, there would not be ‘all this hullabaloo’ about the tort system.” *Business Week*, March 31, 1986.