

MYTHBUSTER

THE LIABILITY INSURANCE CRISIS — DÉJÀ VU ALL OVER AGAIN

In the mid-1980s, during this country's last liability insurance "crisis," great pressure was brought to bear on state legislatures to restrict the rights of innocent Americans to be compensated for their injuries and to hold wrongdoers accountable in court. Lawmakers in some 46 states succumbed to this pressure and passed "tort reforms" after being told by insurance companies and others that this was the only way to reduce skyrocketing insurance rates.

They were responding to news reports like these, virtually identical to reports of today:

- "An American Medical Association official says escalating costs of medical malpractice insurance are increasing health-care costs for the public and forcing doctors to curtail some services." *Baton Rouge Morning Advocate*, **May 31, 1986.**
- "Doctors are threatening to quit practicing some specialties or move out of the state while South Florida hospitals and trauma centers have threatened to shut down or have curtailed services." *St. Petersburg Times*, **May 7, 1987.**
- "Busloads of physicians from around [New York] state will travel to Albany on Wednesday, May 21, to rally for legislative reform of the state's medical liability system." *PR Newswire*, **May 19, 1986.**
- "Doctors and hospitals in [West Virginia] have been saying for weeks that they would have to close their doors at the end of this month when three major insurance companies planned to cancel malpractice insurance coverage for most of the state's medical providers." *Washington Post*, **May 24, 1986.**
- "Hundreds of doctors, especially those in high-risk specialties like obstetrics and orthopedics, refused to accept new patients last February when a state Insurance Division decision opened them up to massive retroactive premium increases." *The Record (New Jersey)*, **July 24, 1986.**

Eventually, a few years after the mid-1980s insurance crisis, the insurance cycle flattened out, rates stabilized and availability improved everywhere – until now, over a decade later. The flattening of rates had nothing to do with tort law restrictions enacted in particular states, but

rather to modulations in the insurance cycle everywhere. In 1991, for example, Washington's insurance commissioner Dick Marquardt concluded in a report that it was "impossible to attribute stable insurance rates to tort-law changes or the damages cap," since rates also improved in states that did not pass tort reform.

Have we learned nothing from the past? The "liability insurance crisis" of the mid-1980s was ultimately found to be caused not by legal system excesses but by the economic cycle of the insurance industry.

Just as the liability insurance crisis was found to be driven by this cycle and not a tort law cost explosion as many insurance companies and others had claimed, the "tort reform" remedy pushed by these advocates failed.

It will fail again.

Only effective insurance reforms will stop these cyclical insurance crises.

- **Volcanic eruptions in insurance premiums for doctors have occurred three times in the last 30 years – in the mid 1970s, again in the mid-1980s, and now today.** The cause is always the same: a severe drop in investment income for insurers compounded by pricing errors in prior years.
- **Each time, insurers have tried to cover up their mismanaged underwriting by blaming lawyers and the legal system.** To buy this position, one would have to accept the notion that trial lawyers or juries were particularly aggressive in the mid-1970s, then non-aggressive for a decade, then aggressive in the mid-1980s, non-aggressive for 17 years and are now aggressive again. This is ludicrous.
- **Reinsurers historically have targeted medical malpractice lines for rate hikes,** dictating premium increases even for doctor-owned mutual insurance companies that should be independent of the profit considerations that motivate pricing decisions by the rest of the industry.
- **The insurance industry has not cut, and has no plans to cut, insurance premiums as a consequence of tort restrictions.** The American Insurance Association (AIA) and the American Tort Reform Association (ATRA) have already gone on record admitting this, with the AIA stating on March 13, 2002, "[T]he insurance industry never promised that tort reform would achieve specific premium savings."
- **The Center for Justice & Democracy's 1999 study, *Premium Deceit —the Failure of "Tort Reform" to Cut Insurance Prices*, found that tort law limits enacted since the mid-1980s have not lowered insurance rates in the ensuing years.** Some states that resisted enacting any "tort reform" experienced low increases in insurance rates or loss costs relative to the national trends, and some states that enacted major "tort reform" packages, like New York, saw very high rate or loss cost increases relative to the national trends. In other words, there was no correlation between "tort reform" and insurance rates.