



IMPACT

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...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE
& DEMOCRACY
NEWS

IN THIS ISSUE: FOCUS ON INSURANCE

Is an End to Insurance Price-Gouging in Sight?

Dear Friend,

At the Center for Justice & Democracy, we have never seen a year like this one! The civil justice system is and continues to be under its greatest attack since we began our organization five years ago. These threats, precipitated by a liability insurance crisis for doctors, have created a tremendous challenge for us.

With the generous help of many supporters around the country, we have more than met this challenge. In 2003, we launched a grassroots educational bus tour, developed a growing network of injury victims, expanded our coalition Americans for Insurance Reform, became a prominent national media spokesperson, issued numerous studies and reports and raised sufficient funds to hire a fifth staffperson to help us expand our outreach around the country.

Enhancing our outreach capability is one of our principal goals for the next year. Let us know how we can help. And don't forget to join CJ&D! We need your support now more than ever. (See information on page 3.)

Thank you!

Sincerely,

Joanne Doroshov
Executive Director

2003 is shaping up as a tremendous money-making year for property-casualty insurers and premiums are starting to reflect that fact, although you'd never know that from the rhetoric of insurers. In fact, there have recently been a series of indications that insurance companies are making tremendous profits and that premium growth is slowing down. This should give pause to any lawmaker feeling pressure from the medical and insurance lobbies to limit compensation to injured consumers.

In the first half of 2003, 14 property-casualty insurers saw a 35.9 percent increase in

net income, to \$7.5 billion. Only Hartford booked an \$888 million first-half loss, reflecting a \$3.91 billion pre-tax charge for asbestos reserves in the first quarter.

By far the largest insurer reporting was American International Group, a major medical malpractice writer. AIG's net income increased by 30.3 percent in the first half of 2003, and it had a shockingly low combined ratio of 92.7 percent. That means it is making a lot of money even before adding in investment income.

Americans for Insurance Reform spokesperson J.

Robert Hunter, Director of Insurance for the Consumer Federation of America, said, "As in previous insurance cycles, the insurers are raking in the dollars, belittling their results as 'inadequate,' hiding much of their spoils in massive reserve hikes and, quietly, starting to compete again, setting the stage for the soft market, and lower prices, ahead."

Standard & Poor's similarly noted that "the rate of increase is going to slow down," and a Conning Research report also predicted that 2003 and 2004 rate

(continued on page 3)

Lies and Consequences

A funny thing happened in Florida this summer: many of the characters pushing for limits on malpractice awards were put under oath and, what do you know, their stories changed - dramatically.

The State Senate Judiciary Committee heard from insurance companies in Florida that they are making plenty of money, thank you very much. They heard from the medical association that, actually, frivolous lawsuits are not a problem. They heard from state regulators that availability of doctors is increasing.

Although the Florida legislature eventually caved to extreme political pressure and enacted a cap on compensation for injured patients, what happened here should be instructive for any legislature seeking to discover the truth about the causes of and solutions to malpractice insurance problems.

The following are a few Q&A quotations from the transcript of the Senate Judiciary Committee hearing:

"Q: Has your department done any investigation as to frivo-

lous lawsuits in the State of Florida, medical malpractice?

A [Steve Roddenberry, Deputy Director, Office of Insurance Regulation]: No, sir, we have not.

Q: Have you found any evidence that there is a huge increase of frivolous lawsuits in the State of Florida?

A: No, sir.

Q: Have you found any evidence that there's been excessive jury awards in the State of

(continued on page 2)



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The Truth Comes Out

The question of why malpractice premiums skyrocket for some doctors, and how to address the problem, has been on the minds of many lawmakers over the last year.

While the medical and insurance lobbies have been spending millions trying to manipulate public opinion to support their “tort reform” agenda, blaming lawsuits and juries for insurance problems, some reputable agencies have been independently trying to ferret out the truth.

In the past few months, three independent institutions have released new findings casting

severe doubt on the arguments of those who support solving doctors’ insurance problems on the backs of injured patients. Brief summaries of these reports follow:

June 2003: Weiss Ratings

In June, the well-respected financial rating firm, Weiss Ratings, released a study on the impact of medical malpractice caps titled, *Medical Malpractice Caps: The Impact of Non-Economic Damage Caps on Physician Premiums, Claims Payout Levels, and Availability of Coverage*. Weiss found that between 1991 and 2002, states with caps on non-economic damage awards

saw median doctors’ malpractice insurance premiums rise 48 percent -- a greater increase than in states without caps. In states without caps, median premiums increased only 36 percent.

Moreover, according to Weiss, median 2002 premiums were about the same whether or not a state capped damage awards. In other words, caps on malpractice damage awards have not resulted in lower malpractice insurance premiums. According to a June 9, 2003 *Time Magazine* story, “Weiss speculates that regulation of

(continued on page 4)

Lies and Consequences continued...

Florida in the last three years?

A: No, sir.



Q: Is it . . . a slew of frivolous lawsuits, which has been alleged . . . causing physicians to leave and practices to close down, of which the department of Health and the Agency for Health Care Administration have said that hospitals are not closing down, and the physicians are actually coming into the state, and applications are up? . . . Or is it because you guys are making a lot of money? I mean, which one is it?

A: [Robert White, President, First Professional Insurance Company]: Well, first, let me be clear. I don’t feel you can have a frivolous lawsuit in the State of Florida. I think Florida fixed its frivolous lawsuit problem in 1988.



Q: Your sworn testimony is that there are more doctors today than there were five years ago in the State of Florida?

A [Diane Orcutt, Deputy Director of Medical Quality Assurance, Department of Health]: Given the general trend and the number of new applications that we are approving and licensing, I would say if you look at – for five years ago, yes, there would be an increase.

Q: My question is: If somebody, according to your records, were to come before the Senate and say there are less doctors today than there were five years ago, is that accurate, yes or no? That’s it, yes or no?

A: I would say according to our annual reports, our published information, yes, there are more.



Q: So, again, when somebody tells us that, you know, you can’t get whatever done you need done at the hospital, that’s not accurate?

A [Elizabeth Dudek, Deputy Secretary for Health Quality Assurance, Agency of Health Care Administration]: Again, I am only aware of the information they provided us, which would have to do with the emergency services or services in general.

Q: But the information that you have doesn’t substantiate that claim; does it?

A: No.

Q: And in your capacity, because of having reviewed these closures over the period of time, have you had sufficient alarm about this, that you have noticed anybody in your chain of command, if you will, that you think the closure rate is unacceptable in Florida?

A: No, nothing to that extent where I would have to raise the alarm.

Q: Nothing had been that alarming to you?

A: No.”

As Republican Senator Mike Bennett told a local Chamber of Commerce: “Everything changed when we put the people under oath. . . . We had the legal authority for the Florida Medical Association, under oath, say that frivolous lawsuits aren’t any problem. . . . They admitted under oath that the number of lawsuits are down and down substantially. They admitted under oath that the claims paid out are down substantially.”



Is an End to Insurance Price-Gouging in Sight? continued...

increases will shift to a “more moderate pace.” In late July, the Council of Insurance Agents & Brokers found that its quarterly survey of commercial property-casualty insurance “showed the market is leveling and beginning to creep downwards in some areas.”

Indeed, the Consumer Federation of American (CFA) predicted this trend last April in its release, “Good News for Commercial Insurance Buyers: Plummeting Insurer Losses and Slowing Rate Hikes Signal Lower Prices in Near Future.” CFA data found commercial insurance loss ratios “dropping sharply” in the last year, with rate increases slowing as well. “Most businesses should see their insurance costs level off and then start to drop in the next few months,” said CFA’s Hunter.

Helping to slow rate increases in some states, particularly in the medical malpractice lines, has been strong insurance rate regulation. Nowhere has this been more evident than in California,

a state that in 1988 passed the strongest insurance reform law in the country.

In September 2003, the California Insurance Commissioner ordered the state’s second largest medical malpractice insurer, SCPIE Indemnity, to slash its proposed rate increase for doctors by 37 percent after an eight-month regulatory investigation of the firm’s rate request. The investigation was conducted pursuant to California’s 1988 insurance reform law, Proposition 103, which created a “prior approval” regulatory system that requires insurers to justify rates hikes and allows the public to challenge excessive rate requests. The ruling was in response to the first-ever consumer group challenge to a medical malpractice insurance rate hike request, brought by the Foundation for Taxpayer and Consumer Rights (FTCR), a California nonprofit organization.

SCIPIE requested a 15.6 percent hike but the Commissioner

only allowed a 9.9 percent increase. According to the FTCR, “the net impact is a \$16 million savings for the insurer’s 9,000 physicians in 2003 and an additional \$7.2 million of savings in next year’s premiums.”

In other states with strong insurance regulatory laws, malpractice insurers are now withdrawing requests for dramatic increases, or seeing those requests denied. For example, under a new Kentucky directive that requires insurers to seek prior approval if they hope to raise premiums more than 25 percent, ProNational Insurance Co. withdrew its request for a 57 percent increase after a hearing by the state Insurance Commissioner and her subsequent request that ProNational reconsider its request.

In New York, insurers asked for a 19 percent increase in malpractice premiums, but the state Insurance Department approved an increase of less than half that size, averaging 8.5 percent. A spokesperson for the department explained:

“Basically, we didn’t see any justification for that big of an increase.”



One thing is clear: rates should start to stabilize soon. As CFA’s Hunter put it in its April 2003 report: “This classic turn after two years of skyrocketing premiums is good news for the hard-pressed buyers of commercial insurance. While there may be some increases yet ahead for some specific commercial buyers, the end of the hard market is clearly at hand for most business consumers.”

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The Truth Comes Out *continued...*

premium increases made the difference.”

Weiss recommends that “legislators must immediately put on hold all proposals involving non-economic damage caps,” “the medical profession must assume more responsibility for policing itself, while states must be more pro-active in reviewing the licenses of individual practitioners who have a significantly higher-than-average number of claims against them,” and “consumers must not relinquish their right to sue for non-economic damages until the medical profession and/or state and federal governments provide more adequate supervision and regulation of doctors, hospitals, and other health care providers.”

July 2003: National Center for State Courts

In July, the National Center for State Courts released a study that found medical malpractice filings have been decreasing over the last decade. The data is contained in *Examining the Work of State Courts, 2002: A National Perspective from the Court Statistics Project*, a joint project of the Conference of State Court Administrators, the Bureau of Justice Statistics and the National Center for State Courts. It contains the country’s most accurate and comprehensive overview of state court litigation statistics.



The study finds that “the 1992 to 2001 trend in medical malpractice filings per 100,000 population has only fluctuated minimally, with an overall 1 percent decrease in per capita filings.” Also, there is no sign that caps on damages for injured victims reduce the number of filings: of the seven states (out of seventeen studied by NCSC) that saw the greatest decrease in filings, only one has a cap. What’s more, despite decreasing medical malpractice claims, five of those seven states have been described by the American Medical Association (AMA) as “in full blown crisis.” The AMA has used this arbitrary classification to push for caps on damages in those states, even though court filings are down.

NCSC also found that in 30 states it examined, overall tort filings were down 9 percent between 1992 and 2001. Population-adjusted tort filings declined in 22 of 30 states examined and “the largest declines occurred in Texas and Massachusetts, where tort filings fell by 41 percent.”

Moreover, while medical malpractice cases are the subject of intense legislative and media focus, they comprise only five percent of total tort case dispositions in the country. Further, contract cases, usually involving businesses litigating against other businesses which are never affected by so-called “tort reform” laws, continue to “outpace tort filings.”

**July & August 2003:
General Accounting Office**

On August 29, 2003, the congressional General Accounting Office (GAO) released *Medical*

Malpractice: Implications of Rising Premiums on Access to Health Care. The study, requested by three U.S. House Committee Chairs – all Republicans – found that medical societies and doctors’ groups have misled, fabricated evidence, or, at the very least, wildly overstated their case about how these medical malpractice insurance problems have limited access to health care. Moreover, GAO found that doctors who purposely walked out on their patients, have themselves manufactured a health care access problem as part of their political campaign to pressure lawmakers into severely limiting injured patients’ rights.



Weiss recommends that “legislators must immediately put on hold all proposals involving non-economic damage caps” and “the medical profession must assume more responsibility for policing itself.”

Further, GAO determined that physician “surveys” upon which doctors’ groups base their claims that physicians are limiting their practices, are unreliable due to a low response rate that “precludes the ability to reliably generalize the survey results to all physicians.” GAO also harshly criticized evidence continuously cited by medical lobbies that the tort system encourages unnecessary defensive medicine, finding this evidence unreliable.

The health care access problems that GAO could confirm were isolated and these pockets of problems “were limited to scattered, often rural, locations and in most cases providers identified longstanding factors in addition to malpractice pressures that affected the availability of services.”

GAO reiterated its earlier finding, first reported in its July 2003 report, *Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates*, that multiple factors having nothing to do with litigation are responsible for insurance rate variations. In both reports, GAO concludes, “We could not determine the extent to which differences in premium rates and claims payments across states were attributed only to damage caps or also to these additional factors.”

GAO’s only recommendation from the July 2003 study is a request for more data. According to the GAO, the analysis contained in that report “does not provide answers to . . . important questions about the market for medical malpractice insurance, including an explanation of the causes of rising losses over time. The data currently collected do not permit many of the analyses that would provide answers to these questions.”

