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Industry Insiders Admit – And History Shows: Tort Reform Will Not Lower Insurance Rates

Representative of the Ohio Health Insurance Company testifying before the Wyoming Legislature:

Tort reform will not lower rates. (*Casper Star Tribune*, May 4, 2003)

Medical Assurance Co. of Mississippi:

“[T]ort reform does not provide a magical ‘silver-bullet’ that will immediately affect medical malpractice insurance rates.” (Medical Assurance Co. of Mississippi, September 2002)

Patricia Costante, chairman and CEO of the MIIX Group of Insurance Companies:

When asked by New Jersey Assemblyman Paul D’Amato whether, if caps are enacted in New Jersey, her insurance company will not raise premiums and will, in fact, reduce them, she said, “No, we’re not telling you that.” (Meeting of the New Jersey Assembly Joint Committee of Banking & Insurance and Health & Human Services on Medical Malpractice, June 3, 2002)

American Insurance Association:

“[T]he insurance industry never promised that tort reform would achieve specific premium savings.” (American Insurance Association Press Release, March 13, 2002)

Sherman Joyce, President, American Tort Reform Association:

“We wouldn’t tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.” (*Liability Week*, July 19, 1999)

Victor Schwartz, General Counsel, American Tort Reform Association:

“[M]any tort reform advocates do not contend that restricting litigation will lower insurance rates, and ‘I’ve never said that in 30 years.’” (*Business Insurance*, July 19, 1999)

Dick Marquardt, Washington Insurance Commissioner:

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. (*The Seattle Times*, May 16, 1991)

Chairman of Great American West Insurance Company:

"[T]ort reform 'will not eliminate the market dynamics that lead to insurance cycles.' and 'we must not over-promise—or even imply—that insurance cycles will end when civil justice reform begins.' (*Liability Week*, Jan. 19, 1988.)

Connecticut State Lawmaker:

"[T]he insurance industry now says [tort reform] measures will have no effect on insurance rates. We have been disappointed by the response of the insurance industry. The reforms we passed should have led to rate reductions because we made it more difficult to recover, or set limits on recovery. But this hasn't happened." (*UPI*, March 9, 1987)

State Farm Insurance Company (Kansas):

"[W]e believe the effect of tort reform on our book of business would be small. ... [T]he loss savings resulting from the non-economic cap will not exceed 1% of our total indemnity losses.... [I]n our sample of liability claims, no claim was found that would have been affected by the joint and several restriction." And any savings due to alternative payment methods would be "negligible." (Letter from Robert J. Nagel, Assistant Vice President, State Filings Division, to Ray Rather, Kansas Insurance Department, Oct. 21, 1986, at 1-2.)

Aetna Casualty and Surety Co. (Florida):

After Florida enacted what Aetna Casualty and Surety Co. characterized as "full-fledged tort reform," including a \$450,000 cap on non-economic damages, Aetna did a study of cases it had recently closed and concluded that Florida's tort reforms would not effect Aetna's rates. Aetna explained that "the review of the actual data submitted on these cases indicated no reduction of cost." (Aetna Casualty & Sur. Co., Commercial Ins. Div., Bodily Injury Claim Cost Impact of Florida Tort Law Change, at 2 (Aug. 8, 1986))

St. Paul (Florida):

St. Paul's found "a total effect of about 1% savings" from Florida's 1986 tort reforms, but that even this 1% might be inflated. St. Paul concluded that "the noneconomic cap of \$450,000, joint and several liability on the noneconomic damages, and mandatory structured settlements on losses above \$250,000 will produce little or no savings to the tort system as it pertains to medical malpractice." (St. Paul Fire & Marine Ins. Co., Medical Professional Liability, State of Florida—Addendum at 1 (1986))

General Accident Insurance Company (Washington State):

"Given that liability losses constitute such a low proportion of business owners' losses, GA feels it is prudent to continue with its original proposal of a 10 percent increase in base rates." (*The Seattle Times*, July 1, 1986. The *Times* wrote that "the highly touted tort-reform legislation enacted by the Legislature early this year is not lowering liability-insurance rates as promised, according to preliminary filings made with the state insurance commissioner.")

Allstate Insurance Company (Washington State)

In asking for a 22% rate increase following passage of tort reform in Washington State, including a cap on all damage awards, the company said, "our proposed rate would not be measurably affected by the tort reform legislation." (*The Seattle Times*, July 1, 1986)

St. Paul (Washington State):

After enactment of the 1986 Washington tort reforms, St. Paul said that the limit on plaintiffs' lawyers fees "probably will have no effect on loss costs," and that "a 'cap' can become a target in smaller dollar cases, thus actually working to increase costs. We do not have the data that would allow us to project the actual probable effect in either direction." (Letter from Richard W. Tongen, Executive Vice President, St. Paul Fire and Marine Ins. Co., to Richard G. Marquardt, Washington Insurance Commissioner, June 12, 1986, Attachment at 1.

Great American West Insurance Company (Washington State)

After the 1986 Washington tort reforms, the Great American West Insurance Company said that on the basis of its own study, "it does not appear that the 'tort reform' law will serve to decrease our losses, but instead it potentially could increase our liability. We elect at this point, however, not to make an upward adjustment in the indications to reflect the impact of the 'tort reform' law." (Letter from Kevin J. Kelley, Director of Actuarial, to Norman Figon, Rate Analyst, Washington Insurance Department, April 23, 1986, at 1)

Basil Badley, chief Washington State lobbyist for the insurance industry:

"Legislators and consumers were mistaken from the beginning if they thought tort reform was going to lessen personal liability insurance costs." (*Seattle Times*, July 1, 1986)

Iowa Municipalities:

In 1983, Iowa limited joint and several liability in order to limit the liability of cities and counties. Yet in 1985, 41 Iowa counties had their liability insurance cancelled within a 30-day period, leading former Iowa Senate Majority Leader Lowell Junkins, who had led the fight for tort reform, to change his position, and to urge other legislators not to make the same mistake. (Interview with Lowell Junkins in Orlando, Fla., Jan. 20, 1986)

Pennsylvania Municipalities:

A blue-ribbon Pennsylvania commission found that the cost of municipal liability insurance rose sharply in the mid-1980's even in those states which had capped damages against municipalities after the mid-1970's insurance crisis. (Report, Recommendations, and Summary of Testimony: Hearing on Municipal Liability Insurance, Sept. 24, 1985, before Pennsylvania Local Gov't Comm'n 3-4, Nov. 1985)

New Mexico Municipalities

In 1976 New Mexico capped municipal liability at \$500,000 per person, and in 1982 it eliminated joint and several liability. Yet premiums rose sharply for New Mexico municipalities during the mid-1980's insurance crisis just as they did in states without caps on municipal liability. (*Roswell Daily Record*, May 15, 1986)

Vanderbilt University:

A regression analysis conducted by Vanderbilt University economics professor Frank Sloan found that caps on economic damages enacted after the mid 1970's insurance crisis had no effect on insurance premiums. (Sloan, "State Responses to Malpractice Insurance Crisis of the 1970's: An Empirical Assessment," 9 *Journal of Health Politics, Policy & Law* 629-46 (1985))