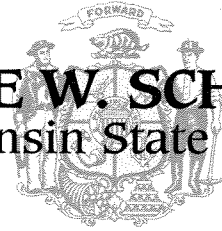


DALE W. SCHULTZ
Wisconsin State Senator



Date: September 9, 2003

To: Senate Committee on Agriculture, Financial Institutions and Insurance
Assembly Committee on Insurance

From: Senator Dale Schultz

Subject: Senate Bill 238 and Assembly Bill 487

Wisconsin's medical liability system is considered a model, especially in the 44 states that term their medical malpractice situation "a crisis". What those other states envy is the Wisconsin Patients Compensation Fund.

Many of you have learned a lot about the Fund since Governor Doyle's budget proposal to take \$200 million from the Fund. To him, a raid of the Fund was justified to help close the \$3.2 billion budget deficit.

Representative Ladwig and I did not agree with him. We worked hard to ensure that the money would stay in the Fund in order to provide enough compensation to those wrongfully harmed by a health care provider. And we are continuing to do so by introducing SB 238 and AB 487.

The way the statutes are currently written, fees paid under Wis. Stat. 655.27(3)(a), which are the assessments that health care providers pay into the Fund, are to be "held in trust for the purposes of this chapter." While discussing Doyle's proposed raid on the Fund earlier this year, there was much debate over what the actual "purposes" of Ch. 655 were.

These two bills will clarify the original intent of the Fund. The bills state that the purposes of the Fund are to curb rising health care costs by financing part of the liability incurred by health care providers from medical malpractice claims. It is to be used exclusively for the benefit of health care providers and claimants and explicitly states that the Fund may not be spent for any other purpose of the state. This legislation also changes the name of the Fund to the "Injured Patients and Families Compensation Fund" to more accurately reflect its real purpose.

The main issue at stake is the protection of patients that are injured. We must ensure that funds are available to adequately compensate those that have been harmed. The money is for victims of medical negligence. It is not a cookie jar of one-time revenue. To view it as a source for quick cash is irresponsible.

In most states, malpractice insurance costs are sky high, because they have no fund like Wisconsin's in place to compensate patients. As a result, all health care consumers pay a price when doctors pass insurance costs on, stop providing services like delivering babies, or leave for a state with reasonable insurance costs. I believe this legislation is one step that we can take to help try to keep the health care system in Wisconsin reliable and affordable.

Thank you.

Committee Meeting Attendance Sheet

Committee on Agriculture, Financial Institutions and Insurance

Date: Sept. 9, 2003

Meeting Type: Public Hearing

Location: Room 417 North GAR

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Senator Dale Schultz, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Julie Lassa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: _____

John O'Brien
Committee Clerk

Committee Meeting Attendance Sheet

Committee on Agriculture, Financial Institutions and Insurance

Date: Sept. 9, 2003

Meeting Type: Public Hearing

Location: Room 417 North GAR

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Senator Dale Schultz, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Julie Lassa	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: _____

John O'Brien
Committee Clerk

Vote Record

Committee on Agriculture, Financial Institutions and Insurance

Date: Sept. 09, 2003

Moved by: _____ Seconded by: _____

AB _____ **SB 238** Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
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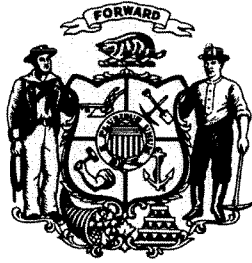
Be recommended for:

- Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Dale Schultz, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Julie Lassa	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	_____	_____	_____	_____

Motion Carried

Motion Failed



**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman

With the hour of (state hour) having arrived, I call the Senate Committee on Agriculture, Financial Institutions & Finance to order.

I WOULD ASK THAT ALL CELL PHONES AND PAGERS BE TURNED OFF DURING THIS HEARING.

The Clerk will call the roll.

*If all members are not present, say;
As a courtesy to other members of the committee who are delayed or have other hearings they must attend, the Committee will keep the roll open so those members can have their vote recorded.*

This is a public meeting, which has been duly noticed according to Senate rules. Copies of the agenda are available at the entrance or from the Senate Sergeant at Arms staff.

I am Senator Dale Schultz the Chairman of the Committee, to my left is the Legislative Council Staff (Indicate Name) and to my right is my Committee Clerk (Indicate Name).

This is a public hearing, which affords the Committee members the opportunity to take testimony from the public, state agencies, and others interested in matters before the committee. If you wish to testify or be recorded on a matter before the committee today, please complete one of the Senate Hearing Slips available at the table at the back of this room. The slip allows a number of options for having your position recorded. If you wish to speak or be recorded on an issue, please make certain that you check the appropriate box on the slip.

Please fill out the slip completely and legibly including your full name and address. Give the completed form to the Sergeant at Arms staff, who will deliver it to the committee clerk. If you have documents or materials you wish to have distributed to the committee, those also should be given to the Sergeants staff that will make certain the committee members receive copies.

The first item on the agenda is:

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STAFFING
ROUNDTABLE

Physicians are increasingly picking up roots and heading for the calmer malpractice liability insurance climate of Wisconsin. But just how long can the state remain a haven from the storm? BY MICHELLE ROGERS

Seeking Shelter

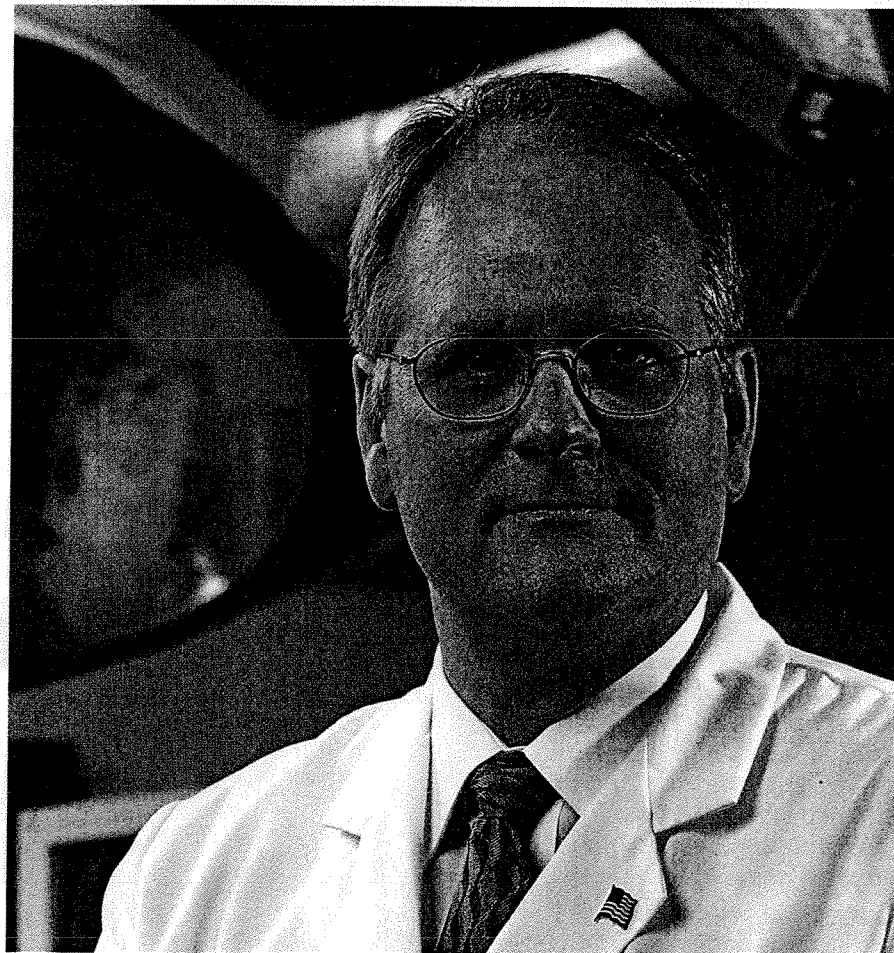
CHRIS MAGIERA'S ENLIGHTENED moment came, no surprise, when his malpractice insurance was up for renewal, in July 2002. The Cleveland gastroenterologist learned then that he and his wife, a general surgeon, were about to be torpedoed by tripling malpractice premiums.

"The overall trend was going to be absolutely disastrous," says Magiera, who was already paying \$26,000 a year for liability coverage. "My wife's was going to be renewed at \$33,000, but her agent told her within a year or two, even with her sterling record, she would be victimized like everyone else." And it wasn't just hearsay—he knew. Some general surgeons in the state were already forking over \$100,000 a year for liability coverage.

Unwilling to take such a huge knock, Magiera says the two decided it was time to "get off the *Titanic*" before it "hit the iceberg." In February the couple left Ohio for good and moved to Wisconsin, which the American Medical Association has designated as one of six "safe states" for malpractice insurance.

The Magieras appear to be part of a growing trend—physicians bailing out on their home states due to crushing malpractice insurance premiums and heading for the calmer liability climate of Wisconsin. With states such as Pennsylvania, Ohio and Nevada, to name a few, reeling from the malpractice crisis, anecdotal evidence suggests that Wisconsin is enjoying a higher influx of physicians including specialists that it might not normally see.

What makes Wisconsin so desirable to physicians? For one, the Wisconsin



Patients Compensation Fund, established in 1975, which providers pay into for catastrophic coverage beyond their primary insurance—and tort reforms. In 1995, the state passed a law that today puts a \$410,000 cap on noneconomic damages. Both have served to stabilize the medical liability insurance market and keep premiums down, observers say.

Magiera, who joined a five-physician practice in Wausau in March, says

● **SAFE HAVEN.** In February, Chris Magiera and his wife, both physicians, uprooted their life in Cleveland and began practicing in Wisconsin to escape skyrocketing malpractice insurance premiums in Ohio.

premiums for him and his wife now top out at around \$12,000 and \$20,000 a year, respectively.

Had the couple waited even a year to leave Ohio, along with their premiums most likely doubling, Magiera says their

tail coverage—insurance that covers future lawsuits against the two—would have shot up as well. Tail coverage in Ohio runs two-and-a-half times a provider's annual insurance premiums, says Magiera. As it was, he and his wife paid \$45,000 and \$75,000 respectively to leave the state, much less than some of their colleagues. "Some poor obstetrician with a \$250,000 annual premium would have to cough up \$750,000 just to leave Ohio," quips Magiera.

Many others appear to be joining the Midwest journey. "We have had a number of specialty physicians seek out Wisconsin specifically for the malpractice climate," says Paul Summerside, M.D., chief medical officer of Green Bay-based BayCare Health Systems LLC, an 85-specialty physician group. In the last year alone, he says, the practice has brought on four

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May 2003
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April 2003
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based Aurora Health Care—will pay around \$20,000 a year for insurance in Wisconsin. He leaves behind a partnership in a 10-physician practice and the home he has known most of his life. "People are leaving behind 20 years of a practice. They are pulling their kids out of high school to go to another state," laments Hennigan, who himself is a father of four.

"WE HAVE HAD A NUMBER OF SPECIALTY PHYSICIANS SEEK OUT WISCONSIN SPECIFICALLY FOR THE MALPRACTICE CLIMATE."

anesthesiologists, an orthopedist and two emergency medicine physicians, all from states in crisis. "And we are just one clinic," he exclaims.

Timothy Flaherty, M.D., immediate past board chairman of the American Medical Association and a practicing radiologist in Neenah, Wis., agrees that the state is seeing more physicians move in due to the liability crisis. "We have had some cross-border migration from Illinois because Wisconsin is much friendlier as far as liability," he says. In addition, says Flaherty, recruiting efforts are happening at the academic level.

"Recruiters can actually get doctors who have lived their entire lives in Pennsylvania to move to places like Utah, South Dakota and Wisconsin, that is how bad it is," says 34-year-old Shawn Hennigan, M.D., an orthopedist from Scranton, Pa. Hennigan, who in July joined Green Bay-based Aurora BayCare Medical Center—a partnership between BayCare Health Systems and Milwaukee-

Only three years into his practice, Hennigan was paying nearly \$80,000 a year in malpractice premiums when he left Pennsylvania. While Hennigan couldn't say for sure that his insurance premiums were going to go up, he saw a very rough climate ahead of him had he stayed. He says that before he left, his former group's insurance carrier, GE Medical Protective, recently had dropped 40 nonsurgical specialists at a nearby hospital, had applied for a 30 to 40 percent increase in rates with the state and was rumored to be for sale.

"So is the writing on the wall? Most of the insurance companies in the state left because they aren't profitable," says Hennigan. "The statistics are staggering."

With so much upheaval in states like Pennsylvania, the climate is ripe for recruiters. Allen Bilbray, senior director of recruiting for Irving, Texas-based Merritt, Hawkins & Associates, a physician-recruiting firm, says the company is actively drafting physicians from mal-

practice crisis states to favorable ones such as Wisconsin. "When we have a new client in Wisconsin, we will target physicians who have ties to Wisconsin," says Bilbray. "We send a personal letter to physicians who were born, trained or licensed in Wisconsin who may be living in a high malpractice state."

In Ohio, which is considered a crisis state by the AMA, Magiera says he was not swayed to remain although a "fairly good" tort reform bill was passed in fall 2002 that limits noneconomic damages to \$350,000. He estimates that even with its passage, it would take five to 10 years before his rates went down.

"The lawyer for my malpractice company told me that he could not foresee a time in the future when rates would go down in the state because they would have to process all the lawsuits that occurred up until this past April," Magiera says. The situation has gotten so bad, he says, that only four carriers are left in the state out of a high of 10 to 12. "In California, they passed their landmark tort reform in 1975 and it took them 10 years before rates went down. I don't have 10 years left to waste on this."

While five other states are also considered safe liability climates by the AMA—including California, Colorado, Indiana, Louisiana and New Mexico—both Hennigan and Magiera say geography and past ties to the Midwest played into their decisions to move to Wisconsin.

AVERAGE MALPRACTICE RATES IN WISCONSIN 2002

- » Internists: \$5,205
- » General surgeons: \$17,433
- » OB/GYNs: \$25,133

Source: Medical Liability Monitor

But the two physicians, and the many other providers who moved to the state to escape malpractice burdens and thought their worries finally had come to an end, went through a fretful time this past spring. Wisconsin Gov. Jim Doyle laid out a new budget that proposed tapping \$200 million from the state's

Patient Compensation Fund to cover a \$3.2 billion state budget deficit. The proposal, which triggered a heated debate, was eventually killed in June by the legislature's Joint Finance Committee.

"Right now there is \$600 million sitting in the patients' compensation fund but when actuaries looked at that money and money pending for awards

shortfall, notes Andrew, who is also immediate past president of the Wisconsin Medical Society.

Moreover, say observers, it would have set up a negative climate for retaining and recruiting physicians.

While the move to poach from the Patients Compensation Fund, which provides reinsurance for individual

"WE HAVE HAD SOME CROSS-BORDER MIGRATION FROM ILLINOIS BECAUSE WISCONSIN IS MUCH FRIENDLIER AS FAR AS LIABILITY."

paid out over time, they figured right now the fund is in a zero-balance situation," says Mark Andrew, M.D., a general surgeon at 49-bed Vernon Memorial Healthcare in Viroqua. Had the governor's proposal passed, physicians' and hospitals' premiums would have been raised 57 percent for the next 25 years to cover the

malpractice cases and kicks in with no ceiling after the first \$1 million is paid by a provider's primary coverage, was eventually shot down, physician insecurities are up. "With the patient compensation issue, some of that insulation has been torn off," says Flaherty, who also chairs Physicians Insurance Company of Wisconsin, which

WHERE PHYSICIANS PAY THE MOST

2002 Yearly Malpractice Insurance Rates

» Internists

Chicago: \$31,722
Cleveland: \$22,592
Detroit: \$45,761
Las Vegas: \$23,628
Miami: \$56,153
New York
(Nassau/Suffolk Counties): \$21,648
Valley, Texas: \$26,334

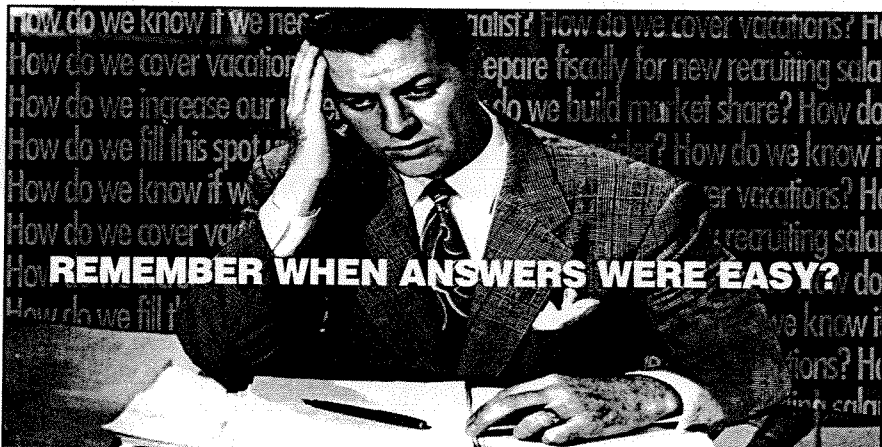
» General Surgeons

Chicago: \$75,630
Cleveland: \$74,554
Detroit: \$107,139
Las Vegas: \$85,056
Miami: \$174,268
New York
(Nassau/Suffolk Counties): \$65,870
Valley, Texas: \$71,200

» OB/GYNs

Chicago: \$110,091
Cleveland: \$152,496
Detroit: \$140,917
Las Vegas: \$141,760
Miami: \$210,576
New York
(Nassau/Suffolk Counties): \$115,431
Valley, Texas: \$97,830

SOURCE: Medical Liability Monitor



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sells insurance to physicians in the state and six others. "We also have the same concerns that are manifested in other states."

Steve Busalacchi, spokesman for the Wisconsin Medical Society, agrees. "I don't think there is a question that this is a wake-up call for physicians who were comfortable and thinking everything was okay here." However, he says, the fund is safe for now. "The Republicans completely lined it out of the budget."

But Hennigan, who for now is enjoying low rates and a fresh start, isn't planning out his retirement in Wisconsin just yet. "Here is my whole take on this. It can change or I am going to get out of medicine," he says. "The vast majority of my day-to-day is fantastic, but this stuff starts chipping away at you and it becomes very much not worth it." ■

Michelle Rogers is senior writer with HealthLeaders. She can be reached at: michelle.rogers@healthleaders.com.



September 9, 2003

The Honorable Representative Bonnie Ladwig
Room 113 West
P.O. Box 8952
Madison, WI 53708

The Honorable Senator Dale Schultz
Room 8 South
P.O. Box 7882
Madison, WI 53707-7882

Dear Representative Ladwig and Senator Schultz:

As the co-chairpersons of the Dean/St. Marys Hospital Medical Center Governmental Affairs Committee, we are writing to thank you for introducing Assembly Bill 487 and Senate Bill 238, companion legislation relating to preserving the Patients Compensation Fund (PCF) and changing the name to the Injured Patients and Families Compensation Fund.

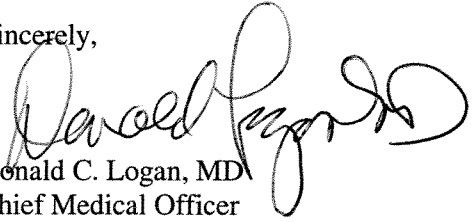
As you are both aware, the PCF is one of the main components of our state's sound medical malpractice liability system. We have all read about crises in other states, as doctors close their offices because they are unable to obtain malpractice insurance at an affordable level. Horror stories in Pennsylvania, Nevada and other areas are too real, particularly if you are facing a high risk pregnancy or require a specialist in many complicated medical situations.


Wisconsin should be proud to be one of only six states without such a crisis. There is no reason to risk creating such a problem in our state, even in extraordinary fiscal times. It is our hope your bill will help prevent future proposals to raid this fund by clarifying the intent of the fund and highlighting its importance to patient protection. The proposed new name illustrates for whom this fund was established and is maintained: injured patients and their families.

The physicians and other professionals at Dean Health System look forward to continuing to work with you to provide the best health care for all of our patients.

Thank you again for advancing your PCF preservation legislation. We look forward to continuing to work with you and your respective committees.

Sincerely,


Donald C. Logan, MD
Chief Medical Officer
Co-chair, Governmental Affairs Committee


Robert A. McDonald, MD
Co-chair, Governmental Affairs Committee

CC: Members, Assembly Insurance Committee
Members, Senate Committee on Agriculture, Financial Institutions and Insurance

Testimony of
David R. Riemer, State Budget Director
before the
Assembly Insurance Committee &
Senate Agriculture, Financial Institutions and Insurance Committee
September 9, 2003

I appreciate the opportunity to testify at today's joint hearing of the Legislature's two Committees with jurisdiction over insurance.

Thank you for giving me the chance to express my views on AB 487 and SB 238.

I believe that it would be serious mistake to enact this legislation.

Over its 28-year history, the Patients Compensation Fund has built up a balance of nearly \$600 million. According to the "Historical Cash Flow Analysis" prepared for the year 2001-2002 by the Fund's actuary, Milliman USA, the Fund's balance last year stood at \$591 million. (A copy of the this analysis is attached.) I don't have 2002-2003 data. But I assume that since the Fund balance has grown by approximately \$30 million every year for at least the last 10 years, the Fund balance for 2002-2003 is likely to exceed \$600 million. If historical trends continue, the balance will surpass \$700 million in a few years.

This remarkable growth in the Patient Compensation Fund balance has occurred despite the large, dramatic annual *reductions* in assessments imposed on providers. There has been much talk about these assessments in the last few months—about how big they are, and about how they would go up if anything were to be transferred from the fund. But I suspect that few members of the two Committees meeting today are aware that, beginning in 1996-97, the Patient Compensation Fund Board concluded that the Fund was in such good shape that provider assessments should be *reduced*—reduced by large amounts, and reduced almost every year.

In 1996-97, assessments generated at approximately \$58 million. The next year, 1997-98, the Board cut them by about \$8 million, to roughly \$50 million. The next year, assessments rose by less than a million, but the following year, 1999-2000, they were cut again, by nearly \$2 million, to \$48 million. The next year, 2000-2001, assessments were reduced by over \$10 million, down to \$37 million. And the next year, 2001-2002, they were again cut, by over \$7.5 million, to \$29.5 million. In short, the Board cut provider assessments from \$58 million to \$29 million—nearly a 50% reduction, because the Fund was doing so well. Not since 1984, when assessments were around \$17 million, had the Board imposed assessments as low as the amount assessed in 2001-2002, because the Fund was doing so well.

The Patients Compensation Fund Board lowered its assessments *despite* the recommendation of the Fund's actuary to raise them. In July of 1993, and each following July until 2000, the actuary made a specific recommendation for how much assessments should be increased. But the Board refused to accept the actuary's recommendation, choosing instead to either raise the assessments

by a lower amount—often much lower—or, in four cases, to actually lower the assessments, often by dramatic amounts. In July 1995, for example, the actuary recommended a 4.9% increase, but the Board lowered fees by 11.2%. Two years later, in 1997, the actuary recommended a 10.8% increase, but the Board cut fees by 17.7%. Most dramatically, in 2000, the actuary recommended a 3.7% increase, but the Board cut fees by 25%. (A brief account of this history is attached.)

Yet even as provider assessments dropped precipitously over the last several years, despite the recommendations of the Fund's actuary, the Fund balance continued to grow by roughly \$30 million a year. Both positive investment experience and positive claims experience—over the last 10 years, paid losses averaged only \$30 million, while the last 5 years paid losses averaged only \$26 million—explain why the Fund balance grew from \$212 million in 1992 to \$456 million in 1997 to nearly \$600 million today.

Precisely because Wisconsin still faces significant fiscal risks in future biennia (we're not out of the woods yet), and has a very successful Patients Compensation Fund that has developed (despite declining assessments in recent years) a very large and growing balance, it would be a serious mistake to *permanently* prohibit future Legislatures from even considering the option of helping to solve the state's fiscal problems by using a portion of the Fund balance.

AB 487 and SB 238 are not temporary measures. These bills would permanently forbid the Patients Compensation Fund from ever being a tool that the Legislature can use to help preserve essential state programs and avoid a state tax increase—regardless of how severe the state's fiscal crisis might be, regardless of how large its fund balance has grown, and even regardless of how strong and secure the Fund would remain in its capacity to pay for patient claims.

What if, instead of facing a \$3.2 billion biennial deficit, the national economy tanked and a future Legislature had to deal with a \$5 billion deficit? What if, at the same time, the Patients Compensation Fund balance was doing so well that the fund's actuary and Board concluded that its balance was \$100 or \$150 or \$200 million more than needed to protect all projected patient claims.

These bills tell the Legislature: Even if Wisconsin is facing a fiscal crisis far worse than the \$3.2 billion deficit we addressed in Act 33, and even if the Patients Compensation Fund balance exceeded what the actuary thought was necessary to meet the fund's future liabilities, the Legislature can't even *think* about transferring a single dollar from the fund to balance the budget, save vital programs, and prevent taxes from going up...even if such a transfer entirely safeguards Wisconsin patients.

Reasonable people can debate whether the particular proposal made by the Administration in the budget was the right one. But it is a far different matter to cut off debate, forever, about the use of the large and growing fund balances of the Patient Compensation Fund. I urge you not to make such a serious, irrevocable mistake.

Thank you for allowing me this opportunity to speak with you this morning. I would be glad to answer any questions you may have.

Fund Year	Assessment Income **	Investment Income **	Other Income **	Total Income **	Paid Losses **	Other Expenses **	Total Expenditures **	Investment as % of Assessment Expenditures	Income > Expenditures	Expenditures as % of Income	Fund Balance
1975	3,036,224	116,141		3,152,365		51,578	51,578	4%	3,100,787	2%	3,100,787
1976	3,055,015	350,565		3,405,580		64,534	64,534	11%	3,341,046	2%	6,441,833
1977	1,351,034	483,494		1,834,528	700,000	84,437	784,437	36%	1,050,091	43%	7,491,924
1978	1,416,068	809,022		2,225,090	252,257	76,573	328,830	57%	1,896,260	15%	9,388,184
1979	2,395,653	1,172,517		3,568,170	3,815,529	106,619	3,922,148	49%	(353,978)	110%	9,034,206
1980	4,412,548	1,590,222		6,002,770	2,121,336	139,212	2,260,548	36%	3,742,222	38%	12,776,428
1981	4,652,749	2,042,597		6,695,346	3,404,012	215,427	3,619,439	44%	3,075,907	54%	15,852,335
1982	7,344,322	1,980,622		9,324,944	7,481,388	180,549	7,661,937	27%	1,663,007	92%	17,515,342
1983	10,276,181	1,989,091		12,265,272	13,656,700	498,968	14,155,668	19%	(1,890,396)	115%	15,624,946
1984	17,417,321	2,909,192		20,326,513	13,167,510	731,713	13,899,223	17%	6,427,290	68%	22,052,236
1985	32,324,660	3,300,086	954,561	36,579,307	9,413,727	489,240	9,902,967	10%	26,676,340	27%	48,728,576
1986	30,559,953	4,357,233	439,982	35,357,168	16,778,242	794,568	17,572,810	14%	17,784,358	50%	66,512,934
1987	33,642,751	6,011,415	484,460	40,138,626	25,259,786	832,984	26,092,770	18%	14,045,856	65%	80,558,790
1988	37,969,575	9,113,668	590,662	47,673,905	15,579,910	771,249	16,351,159	24%	31,322,746	34%	111,981,536
1989	43,161,220	12,111,614	800,279	56,073,113	23,945,717	1,644,446	25,590,163	28%	30,482,950	46%	142,364,486
1990	43,936,723	14,704,891	892,831	59,534,445	24,383,757	2,363,346	26,747,103	33%	32,787,342	45%	175,151,828
1991	42,350,118	18,283,925	755,436	61,389,479	41,733,144	3,095,242	44,828,386	43%	16,561,093	73%	191,712,921
1992	45,063,934	22,473,887	481,751	68,019,572	44,337,486	2,674,465	47,011,951	50%	21,007,621	69%	212,720,542
1993	51,213,220	17,486,006	276,276	68,975,502	23,792,782	3,036,693	26,829,475	34%	42,148,027	39%	254,868,569
1994	55,505,730	21,795,320	44,527	77,345,577	24,988,517	3,083,705	27,582,222	39%	49,763,355	36%	304,631,924
1995	51,048,981	26,019,634	51,658	77,120,173	46,616,334	6,588,627	53,204,961	51%	23,915,212	69%	328,547,136
1996	58,270,650	25,533,314	477,926	84,281,890	2,966,044	2,966,044	37,397,286	44%	46,884,604	44%	375,431,740
1997	49,892,420	54,708,158	384,336	104,984,914	20,027,672	4,812,697	24,840,369	110%	80,144,545	24%	455,576,285
1998	50,621,706	13,928,389	499,187	64,949,282	19,832,282	3,711,979	23,544,261	27%	41,405,021	36%	496,981,306
1999	47,879,282	15,948,231	449,083	64,276,596	19,650,226	4,225,449	23,875,675	33%	40,400,921	37%	537,382,227
2000	37,052,434	33,663,458	408,273	71,124,165	37,322,931	3,791,878	41,114,809	91%	30,008,356	58%	567,391,593
2001	29,534,338	33,141,169	682,989	63,358,506	34,375,725	5,104,274	39,479,999	112%	23,878,507	62%	591,270,090
10-Yr. Av	795,384,710	345,923,861	8,676,227	1,149,984,798	506,578,212	52,136,496	558,714,708	43%	591,270,090	49%	
5-Yr. Av	47,608,260	26,459,757	375,802	74,443,818	30,488,520	3,999,581	34,488,101	56%	39,955,717	46%	
	42,996,036	30,257,881	484,776	73,738,693	26,241,767	4,329,255	30,571,023	70%	43,167,670	41%	
2002	29,534,338	13,694,453	44,527	43,273,318	46,616,334	6,588,627	53,204,961	46%	(9,931,643)	123%	381,338,447
2003	29,534,338	13,346,846	44,527	42,925,711	46,616,334	6,588,627	53,204,961	45%	(10,279,250)	124%	371,059,197
2004	29,534,338	12,987,072	44,527	42,565,937	46,616,334	6,588,627	53,204,961	44%	(10,639,024)	125%	360,420,173
2005	29,534,338	12,614,706	44,527	42,193,571	46,616,334	6,588,627	53,204,961	43%	(11,011,390)	126%	349,408,783
2006	29,534,338	12,229,307	44,527	41,808,172	46,616,334	6,588,627	53,204,961	41%	(11,396,789)	127%	338,011,994
2007	29,534,338	11,830,420	44,527	41,409,285	46,616,334	6,588,627	53,204,961	40%	(11,795,676)	128%	326,216,318
2008	29,534,338	11,417,571	44,527	40,996,436	46,616,334	6,588,627	53,204,961	39%	(12,208,525)	130%	314,007,793
2009	29,534,338	10,990,273	44,527	40,569,138	46,616,334	6,588,627	53,204,961	37%	(12,635,823)	131%	301,371,970
2010	29,534,338	10,548,019	44,527	40,126,884	46,616,334	6,588,627	53,204,961	36%	(13,078,077)	133%	288,293,893
2011	29,534,338	10,090,286	44,527	39,669,151	46,616,334	6,588,627	53,204,961	34%	(13,535,810)	134%	274,758,083
2012	29,534,338	9,616,533	44,527	39,195,398	46,616,334	6,588,627	53,204,961	33%	(14,009,563)	136%	260,748,520

* Year denotes 1st year in Fund Year. E.g., 1975 = Fund Year 1975-76.

** Milliman USA, "Historical Cash Flow Analysis," Exhibit F1, Wisconsin Patients Compensation Fund Actuarial Analysis As of September 30, 2002, Report to the Actuarial Committee, January 23, 2003. Beginning in 1997, an accounting change was introduced where investment income reflects the impact of unrealized capital gains.

**Worst Case Scenario* Estimate: Lowest Income, Highest Costs (Investment Income Balance Grows at 3.5% per Year)

Fiscal Year Beginning Date	Break-Even Point	Actual Fees Change	Actuarial Recommendation
	% Change	% Change	% Change
07/01/2003	117.4	5.0	
07/01/2002	100.5	(5.0)	
07/01/2001	59.6	(20.0)	
07/01/2000	15.0	(25.0)	3.7
07/01/1999	2.7	(7.0)	2.7
07/01/1998	3.6	0.0	5.9
07/01/1997	6.2	(17.7)	10.8
07/01/1996	11.7	10.0	17.3
07/01/1995	1.0	(11.2)	4.9
07/01/1994	10.8	7.1	10.8
07/01/1993	16.8	1.0	16.8



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 Jorge Gomez, Commissioner

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September 8, 2003

Honorable Dale Schultz
 State Senator
 18 South Capitol
 Madison WI 53702

Honorable Bonnie Ladwig
 State Representative
 113 West Capitol
 Madison WI 53702

Dear Senator Schultz and Representative Ladwig:

Thank you for the opportunity to comment on SB 328 and AB 487, proposing changes to the Patients Compensation Fund (PCF). We received the hearing invitation on September 5, and I have previous commitments for the hearing time on September 9. I am sorry that I will not be available to testify on the bills, but I am offering the written comments enclosed in this letter.

The Wisconsin Patients Compensation Fund has helped to create a stable medical malpractice insurance market in Wisconsin. Fortunately, we have been able to avoid many of the problems seen in other states, where high malpractice premiums have had an impact on access to medical care including the closing of emergency rooms and lack of access to obstetrical care.

Wisconsin is one of 6 states that are not identified as in "crisis" by the American Medical Association. The fund has been well managed by OCI and the PCF Board of Governors to the benefit of health care providers and residents of the state. We intend to continue to ensure a stable fund exists.

Over the past 6 months, OCI has been available and testified to several Legislative committees about the impact of asset transfers from PCF. As you will recall, working with the Governor's Office and the Department of Administration, my office proposed changes to the initial language from the 2003-05 budget bill. The changes would accomplish the stated purposed of SB 328 and AB 487 in that transfers of assets from the PCF would not be allowed. I have attached another copy of that proposal for your information. I continue in my support of that proposal.

Again, I am sorry I am unable to attend the hearing. However, I would be happy to meet with either of you to discuss this issue in greater detail.

Sincerely,

Jorge Gomez
 Commissioner

attach

Post-It® Fax Note	7671	Date	9/9/03	# of pages	5
To	Rep. B. Ladwig	From	Comm. Gomez		
Co./Dept.		Co.			
Phone #		Phone #	267-1233		
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Proposed PCF Transfer Changes

- \$200 million transferred to the new appropriation and available to match federal Medicaid funds
- Effective with date of transfer create separate accounting for liabilities and assets pre- and post-transfer (PCF I and PCF II)
- PCF I retains all assets and liabilities of the fund as of the date of transfer and runs off claims occurring prior to date of transfer
- PCF II operates on a going forward basis
- Creates language to more clearly define sum-sufficient obligation for state without creating a liability on state's books
- New statutory language makes clear that claimants and participating providers have a constitutionally protected property interest in the fund
- Provider assessments will be determined in the same manner as in the past; the PCF Board determines annual assessments in consultation with the Fund's Actuary.

Advantages

- PCF I has assets to cover any liabilities for the foreseeable future
- Ensures that participating providers will not have to pay additional fees for claims occurring prior to transfer date
- Ensures that participating providers will not be charged a second time for coverage they have previously purchased
- Reduces the likelihood of a successful legal challenge should a transfer occur because provider and patient interests are protected by the sum-sufficient
- Makes any future transfers more difficult to accomplish by creating a property interest for participating providers
- Makes any transfer greater than currently proposed \$200 mn likely to create a liability that must be reported on the state's financial statements.
- Patients with claims against health care providers will be protected with the sum-sufficient guarantee created in statute
- Proposal has greater actuarial support and should mitigate any issues with underlying malpractice market coverage
- PCF Board Legal Committee has endorsed this over the current proposal, but remains opposed to the transfer

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**Testimony of Paul E. Sicula
on behalf of the
Wisconsin Academy of Trial Lawyers
before the
Assembly Insurance,
Rep. Bonnie Lagwig, Chair
Senate Agriculture, Financial Institutions and Insurance
Senator Dale Schultz, Chair
on
2003 Assembly Bill 487 and Senate Bill 238
September 9, 2003**

Good morning, Senator Schultz, Representative Ladwig and members of the Committee. My name is Paul E. Sicula, the legislative representative of the Wisconsin Academy of Trial Lawyers (WATL). On behalf of WATL, I thank you for the opportunity to appear today to testify for information on Assembly Bill 487 and Senate Bill 238.

WATL, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of WATL are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

First, the Wisconsin Academy of Trial Lawyers (WATL) strongly supports the continuation of the Patient Compensation Fund (PCF). Wisconsin's medical malpractice insurance structure was set up in 1975 to deal with a serious problem in availability of medical malpractice insurance. The Legislature guaranteed the availability of insurance by creating the Wisconsin Health Care Liability Insurance Plan (WHCLIP) as a risk-

sharing plan to provide primary insurance coverage and by creating the PCF to pay claims in excess of primary coverage. The same Board of Governors governs both. WATL has a member of its association sit on the PCF Board and WATL staff regularly attends PCF Board meetings to monitor Board activities.

We strongly believe both the PCF and WHCLIP have served an important function in this state by stabilizing the insurance climate and preventing difficulties other states now face in the medical malpractice insurance arena.

There are no doubts that injured patients and doctors have benefited from the establishment of the PCF and we strongly support its continued existence. We do have grave doubts about the wisdom of enacting AB 487 and SB 238. Our main problem is the language giving health care providers "contractual rights" in the assets of the PCF. What contractual rights are these? Where is the contract defining these rights? Does it mean that a physician or hospital has a right to PCF assets if bankruptcy is declared? Does it mean third parties owed money by a physician or hospital can put a lien on the assets of the PCF? Will a physician or hospital have the right to object to payment of the PCF if they disagree with a settlement? If the PCF Board overestimates the amount needed to pay claims, will a physician have a right to ask for a return of a portion of the fees overpaid plus interest?

The language "contractual rights" is very broad and has every possible meaning imaginable without a definable stopping point. How can the Legislature endow health care providers with "contractual rights" without defining them?

Even including "claimants" in the category of having "contractual rights" may be a bit broad. In the statute, "claimant" means "the person filing a request for mediation under s. 655.44 or 655.445." Does this merely confirm that a claimant has the right to sue the PCF and receive money if damages exceeded \$1 million per claim? Or does it mean the claimant can put a lien on the PCF assets until the malpractice claim is resolved? Again the Legislature has not defined what it means by using the term "contractual rights" when dealing with claimants.

There is no doubt the PCF has been very effective in making malpractice accessible and affordable to Wisconsin health care providers. In fact, we believe the real purpose of the PCF was to provide doctors with accessible and affordable medical malpractice coverage and to provide injured patients with a secure source of payment if a negligent health care provider hurt them.

In terms of curbing rising health care costs as a result of medical malpractice premiums, the Center for Justice & Democracy has determined medical malpractice costs, as a percentage of national health care expenditures, are at an all time low, 0.55 percent. In fact, the PCF Board lowered fees for doctors from 1999-2003 by over 40%. At the same time, health care premiums have risen dramatically over the same period of time. Recent reports found health care costs in southeast Wisconsin 55% higher than the Midwest average. If there were a correlation between health care costs and medical malpractice fees, Wisconsin consumers should be seeing declining health care costs not rising health care costs.

WATL has been highly critical of actuarial projections made by the PCF actuaries. We believe that health care providers have been overpaying Fund fees for many years. The PCF actuarial committee has begun to seriously question actuarial projections and as I previously noted has lowered fees for doctors over the last 4 years.

This year the PCF actuaries estimated the "break-even" funding level for the July 1, 2003 fiscal year as an increase of 117.4% from current fees." The PCF Board raised fees 5%. This means there is already an actuarial deficit for fiscal year 2003-04 of over \$40 million. How realistic is that number? One need only look back at previous years to determine that.

The projected actuarial surplus or deficit is very different from the cash position of the Fund. The Fund has always maintained a positive cash flow. On June 30, 1980, for instance, with a published actuarial deficit of \$1.9 million, the Fund had cash on hand of \$9 million. The actuarial deficit reflects the amount of money the Fund would need to pay off all its claims, if the Fund were to stop its operations, collect investment income but no more fees and pay its future claims at the level projected by the actuaries.

In the early 1980's, the Fund fees were not sufficient to pay expected future claims and the Fund reported increases every year in its published actuarial deficit. The actuaries for the Fund, like many actuaries around the country, were caught off guard in the early 1980s by the increase in medical malpractice claims.

After a 1993 legislative audit called attention to the Fund's actuarial deficit, the Fund's Board created a Special Subcommittee to address the actuarial deficit. As part of its work, the Special Subcommittee performed a historical review of the Fund's experience, providing an accounting of the contribution to the deficit by fiscal year. (This was later called the "hindsight restatement of the Fund surplus/deficit.") The 1994 historical analysis showed the Fund's deficit peaked on June 30, 1986, at \$122.6 million.

The deficit figures were very different from the figures that had been published at the time. According to the historical analysis, during the eight years after 1986, the actuarial deficit declined in all but two years, down to \$69.8 million at June 30, 1994.

What has had the biggest impact on the Fund's actuarial deficit was the annual actuarial estimate of the ultimate loss costs, that is, the amount the Fund would eventually have to pay out in losses for claims that arose in past years. As noted earlier, the potential surplus or deficit relies heavily on the projected value of claims reserves and IBNR (incurred but not reported) claims. Since the late 1980s, the Fund's actuaries have significantly lowered their estimates for claims reserves and IBNR claims, resulting in lower estimates of ultimate loss costs for most of the Fund's fiscal years.

The Fund's published actuarial deficit decreased eleven years out of the last thirteen years. At June 30, 1999, the Fund published, for the first time in twenty years, an *actuarial surplus*. The surplus was published as \$8.6 million. Again, the projected actuarial surplus is unrelated to the Fund's cash position; the Fund's assets at that time were \$501.1 million.

Because of the projected surplus, the Fund board *decreased Fund fees by 25%* for the 2000-2001 fiscal year. That saved the health care providers of the state about \$12 million. The actuaries projected that, after the fee decrease, the Fund would still have a surplus of about \$1.5 million.

In early 2001 that projection proved to be too conservative by \$25.7 million! At June 30, 2000 the actuarial surplus was estimated to be \$27.2 million. By January 2001 the estimate was revised again, this time up to \$32 million. In response to this figure, the Fund Board *decreased Fund fees by another 20%* for the 2001-2002 fiscal year. That saved the health care providers of the state another \$7.2 million. *Once again the actuarial surplus proved too conservative by another \$30 million!* In 2002-2003 the Fund board decreased Fund fees another 5%. Saving doctors another \$1.5 million. This year, the actuaries reduced their ultimate loss by \$32 million. But given declining investments, the Fund Board voted to increase fees 5% for the current fiscal year.¹ Fund fees still remain lower than fees in 1986-87.

The Fund's actuaries have provided a "hindsight restatement of the Fund surplus/deficit" in each of the last four years. Each year involved updating the review

¹ During fiscal year 2002-2003, the Fund's invested assets decreased by nearly \$24 million due to the WorldCom bankruptcy and a declining equity market.

first provided in 1994, analyzing the contribution of each fiscal year to the surplus/deficit. The most recent restatement, reflecting Fund activity through June 30, 2003, shows:

- The Fund deficit peaked at \$87.697 million (not \$122.7 million) as of June 30, 1984.
- Within four years of that time, at June 30, 1990, the Fund moved out of a deficit and into a surplus position.
- The surplus continued to increase throughout the 1990s without major fee increases and would be substantially higher if it had not been for fee *decreases* in six of the last twelve years.
- Instead of a \$71.6 million projected actuarial deficit at June 30, 1993, there was a *\$60.9 million hindsight actuarial surplus. That is a difference of \$132.5 million!!*
- The most the Fund has paid out in a calendar year is \$56.6 in 1985-86. The average calendar year payout is close to \$30 million.

What happened can, in retrospect, be seen as a classic pendulum swing in policy: The inadequate fees and under-reserving of estimated claims in the early 1980s were replaced with excessive fees and over-reserving of claims in the late 1980s and early 1990s. Without admitting they had recommended fees that were excessive in the late 1980s and early 1990s, the actuaries have decreased their projections of ultimate loss costs in eleven out of the last thirteen years.

The effect has been a dramatic transformation of the Fund since 1986: The Fund has more than a half billion dollars in cash reserves, the deficit has disappeared, and the fees for the 2003-04 fiscal year are lower than the fees for 1986-87.

To summarize, WATL strongly supports the PCF but believes AB 487 and SB 238 are lacking in specificity and raise numerous issues on the interpretation of "contractual rights." In addition, WATL has continually raised concerns about the Fund's projected actuarial deficits, which we believe are not based on Wisconsin's experience with malpractice claims.

We urge careful consideration of AB 487 and SB 238.

List of attachment and charts

1. Comparison of Published Surplus / (Deficit) to Hindsight Deficit by Milliman USA. Since 1994 Milliman has reviewed the published deficit and then done a hindsight review.
2. Using Milliman's numbers, the following charts were made. One is a comparison of the published surplus / (deficit) and comparing it to from years 1998-2002. The second shows the difference between the published deficit and the 2002 hindsight review. Milliman has been off by as much as \$132 million in 1993. It is pretty clear, as we have noted before, the actuarial deficit arose in the early part of the Fund's history and since then Milliman has "grossly" overestimated Fund payments.
3. Summary of Revenue and Expenses Inception through June 30, 2002 by Milliman USA. The bottom number is the surplus / (deficit) by year.
4. Hindsight review of the actuarial projections by year and how much Milliman has revised the projections since 1994. There is a difference of \$182 million in the last eight years.
5. Chart on total paid losses versus the ultimate loss projections of Milliman by year and calculation of the amount Milliman believes remains to be paid.
6. Undiscounted loss and LAE expenses and indicates how much remains to be paid. For example, for the years 1980-81 thru 1984-85, Milliman believes \$11 million is needed to pay incurred but not reported claims for those years. Similarly, \$52 million is needed to pay incurred but not reported claims for 1985-86 thru 1989-90 claims. \$209 million remains to be paid on claims from 1990-91 and 1994-95.

WISCONSIN PATIENTS COMPENSATION FUND

Summary of Revenue and Expenses
Inception Through June 30, 2002

	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
Revenue:															
Assessment Income	3,036,224	3,053,015	1,351,034	1,416,068	2,395,653	4,412,548	4,652,749	7,944,322	10,276,181	17,417,321	32,324,660	30,559,953	33,642,751	37,969,575	43,161,220
Investment Income	5,329,790	1,008,183	254,056	632,543	856,817	1,883,709	1,071,977	2,358,979	2,497,638	15,319,775	13,173,041	26,953,463	18,350,698	27,253,026	34,069,480
Other Income	0	0	0	0	0	0	0	0	0	4,628	820,051	439,982	484,460	590,662	800,279
Funds Contributed to by Primary Insurers	0	214,129	200,000	34,934	0	0	0	200,000	0	200,000	1,409,075	200,000	0	0	0
Total Revenue	8,366,014	4,277,327	1,805,090	2,103,565	3,252,540	6,298,257	5,724,726	9,903,301	12,773,819	32,041,724	47,226,827	58,153,398	52,477,909	65,813,263	78,030,979
Expenses:															
(1) Ultimate Loss & LAE	6,002,936	5,175,586	9,609,512	11,505,507	22,192,521	19,053,832	25,082,106	21,276,165	21,574,513	16,312,543	61,212,301	27,016,709	49,573,322	41,856,327	51,099,199
(2) Total Paid Loss & LAE	6,002,936	5,175,586	9,609,512	11,505,507	22,192,521	16,675,109	23,712,827	18,936,153	20,763,706	12,186,129	56,601,365	24,452,690	43,241,673	27,058,631	29,039,003
(3) Funds Held on Behalf of Primary Insurers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
(4) Net Paid Loss & LAE	6,002,936	5,175,586	9,609,512	11,505,507	22,192,521	16,675,109	23,712,827	18,936,153	20,763,706	12,186,129	56,601,365	24,452,690	43,241,673	27,058,631	29,039,003
(5) Undiscounted Ultimate Loss & LAE Reserves	(0)	(0)	(0)	(0)	(0)	2,378,723	1,369,279	2,340,012	810,827	4,126,414	4,610,936	2,564,019	6,331,649	14,797,696	24,060,196
(6) Offset for Investment Income	(0)	(0)	(0)	0	0	0	0	0	0	970,985	0	721,203	1,897,293	4,539,800	7,463,896
(7) Discounted Unpaid Claim Liabilities	57,878	58,236	53,485	75,622	75,949	2,378,723	1,369,279	2,340,012	810,827	3,155,429	4,610,936	1,842,817	4,434,356	10,257,896	16,596,300
(8) Administrative Costs	6,060,814	5,233,822	9,662,997	11,581,129	22,268,470	19,148,431	25,181,808	21,380,969	21,683,214	15,518,890	61,438,961	26,588,121	47,984,914	37,654,880	46,038,448
Total Expenses	12,063,620	10,567,226	19,332,009	23,156,136	44,466,940	38,296,262	54,157,641	41,317,284	43,447,746	34,744,442	133,050,553	56,235,513	112,697,910	110,452,994	139,236,291
Fund Year Surplus / (Deficit)	3,692,394	3,210,101	(1,526,919)	(1,102,571)	(11,214,394)	(21,998,005)	(48,432,915)	(31,413,983)	(30,673,927)	(2,692,718)	(85,823,726)	(2,082,115)	(60,219,999)	(44,639,731)	(61,205,312)

	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	TOTAL
Revenue:													
Assessment Income	43,936,723	42,350,118	45,003,934	51,213,220	55,505,730	51,048,881	58,239,200	49,892,420	50,621,706	47,879,282	37,032,434	29,334,338	795,373,260
Investment Income	31,253,365	23,424,739	21,665,318	18,508,835	21,200,709	20,634,087	18,810,165	12,494,892	6,772,517	5,939,319	3,369,671	828,243	338,937,124
Other Income	892,831	755,436	481,751	278,276	333,110	390,203	477,927	384,336	499,187	449,083	408,273	682,999	9,173,474
Funds Contributed to by Primary Insurers	0	3,784	0	400,000	0	0	0	0	0	0	0	0	2,861,942
Total Revenue	76,082,919	66,534,097	68,211,003	70,400,331	79,039,549	72,073,171	77,547,292	62,771,648	57,893,410	54,267,684	40,830,378	31,045,580	1,146,345,800
Expenses:													
(1) Ultimate Loss & LAE	52,417,020	64,830,177	69,876,645	85,397,162	88,047,243	80,759,492	92,735,798	76,416,257	81,767,156	88,010,512	95,935,838	103,061,970	1,369,798,389
(2) Total Paid Loss & LAE	29,464,067	33,205,285	31,427,874	47,341,063	33,520,821	14,224,972	12,990,096	8,282,060	11,275,227	2,861,840	16,596	1,579	551,794,826
(3) Funds Held on Behalf of Primary Insurers	0	0	0	400,000	0	225,000	0	0	0	0	0	0	635,000
(4) Net Paid Loss & LAE	29,464,067	33,205,285	31,427,874	46,941,063	33,520,821	13,999,972	12,990,096	8,282,060	11,275,227	2,861,840	16,596	1,579	551,159,826
(5) Undiscounted Ultimate Loss & LAE Reserves	22,952,953	31,624,892	38,448,771	38,056,099	34,526,422	66,594,520	79,745,702	68,194,197	70,491,929	85,148,672	95,919,262	103,060,591	818,033,563
(6) Offset for Investment Income	6,886,300	9,515,285	11,231,829	8,239,311	15,899,729	19,528,906	23,433,415	21,421,252	23,385,064	29,335,324	28,304,217	25,744,190	338,517,998
(7) Discounted Unpaid Claim Liabilities	16,066,653	22,109,606	27,216,943	29,816,788	38,626,693	47,005,614	56,312,287	46,712,945	47,106,866	55,813,349	67,615,045	77,316,201	579,515,565
(8) Administrative Costs	660,796	1,039,468	947,608	939,696	945,906	938,996	749,784	891,773	879,818	922,339	777,715	831,411	13,041,256
Total Expenses	106,480,532	129,744,342	137,790,799	149,839,036	138,946,781	174,828,526	177,021,167	170,231,167	170,561,910	174,997,527	180,309,356	186,916,191	1,144,946,647
Fund Year Surplus / (Deficit)	3,692,394	3,210,101	(1,526,919)	(1,102,571)	(11,214,394)	(21,998,005)	(48,432,915)	(31,413,983)	(30,673,927)	(2,692,718)	(85,823,726)	(2,082,115)	(60,219,999)

Comparison of Published Deficit to Hindsight Surplus/Deficit						
Statement Date	Pub. Surplus/(Deficit)	Hin. Surplus/(Deficit)02	Hin. Surplus/(Deficit) 01	Hin. Surplus/(Deficit) 00	Hin. Surplus/(Deficit) 99	Hin. Surplus/(Deficit) 98
30-Jun-02	\$ 4,888,065	\$ 4,888,065				
30-Jun-01	\$ 28,724,959	\$ 48,502,765	\$ 28,724,959			
30-Jun-00	\$ 27,210,974	\$ 76,081,743	\$ 62,536,465	\$ 27,210,974		
30-Jun-99	\$ 8,579,767	\$ 81,411,586	\$ 75,081,211	\$ 33,018,596	\$ 8,579,767	
30-Jun-98	\$ (19,383,934)	\$ 82,780,086	\$ 74,807,603	\$ 32,688,823	\$ 11,894,360	\$ (19,383,934)
30-Jun-97	\$ (44,094,214)	\$ 75,895,216	\$ 69,234,677	\$ 27,318,409	\$ 10,985,620	\$ (21,415,721)
30-Jun-96	\$ (41,795,496)	\$ 68,400,091	\$ 61,050,343	\$ 20,026,807	\$ 9,052,386	\$ (16,241,435)
30-Jun-95	\$ (57,722,772)	\$ 58,741,503	\$ 49,919,336	\$ 13,019,056	\$ 5,197,614	\$ (15,011,212)
30-Jun-94	\$ (67,903,761)	\$ 52,795,373	\$ 43,035,234	\$ 10,735,989	\$ 3,961,009	\$ (14,035,627)
30-Jun-93	\$ (71,613,641)	\$ 60,912,589	\$ 51,242,916	\$ 18,048,855	\$ 11,834,162	\$ (1,452,517)
30-Jun-92	\$ (78,982,681)	\$ 52,294,010	\$ 45,102,983	\$ 16,794,177	\$ 11,399,948	\$ (1,384,584)
30-Jun-91	\$ (71,679,588)	\$ 42,114,273	\$ 34,983,506	\$ 8,913,562	\$ 4,767,986	\$ (6,643,657)
30-Jun-90	\$ (73,597,992)	\$ 12,222,870	\$ 5,909,895	\$ (16,294,847)	\$ (20,021,300)	\$ (29,276,010)
30-Jun-89	\$ (108,256,349)	\$ (19,769,661)	\$ (26,400,781)	\$ (44,453,576)	\$ (45,916,882)	\$ (52,921,321)
30-Jun-88	\$ (122,722,600)	\$ (47,928,045)	\$ (53,459,177)	\$ (65,537,543)	\$ (65,370,121)	\$ (70,733,854)
30-Jun-87	\$ (112,101,947)	\$ (52,421,039)	\$ (57,378,693)	\$ (69,150,775)	\$ (71,039,337)	\$ (75,291,226)
30-Jun-86	\$ (100,555,257)	\$ (83,986,316)	\$ (88,144,703)	\$ (96,480,219)	\$ (97,316,758)	\$ (100,177,582)
30-Jun-85	\$ (79,624,322)	\$ (70,274,182)	\$ (74,571,540)	\$ (81,048,219)	\$ (81,885,379)	\$ (84,900,212)
30-Jun-84	\$ (49,623,089)	\$ (87,697,016)	\$ (90,250,330)	\$ (94,150,446)	\$ (94,222,945)	\$ (95,167,819)
30-Jun-83	\$ (19,826,057)	\$ (78,787,620)	\$ (80,762,834)	\$ (83,658,733)	\$ (83,731,231)	\$ (84,562,337)
30-Jun-82	\$ (8,954,431)	\$ (67,309,953)	\$ (69,327,369)	\$ (71,229,348)	\$ (71,301,846)	\$ (72,046,288)
30-Jun-81	\$ 492,000	\$ (47,852,871)	\$ (49,930,880)	\$ (51,453,490)	\$ (51,525,988)	\$ (52,051,011)
30-Jun-80	\$ (1,919,872)	\$ (35,002,697)	\$ (37,005,537)	\$ (38,479,995)	\$ (38,552,493)	\$ (39,049,925)
30-Jun-79	\$ (728,759)	\$ (15,986,767)	\$ (16,541,668)	\$ (17,891,216)	\$ (17,963,715)	\$ (18,377,558)
30-Jun-78	NA	NA	NA	NA	NA	NA
30-Jun-77	NA	NA	NA	NA	NA	NA
30-Jun-76	NA	NA	NA	NA	NA	NA

Statement Date	Pub. Surplus/(Deficit)	Hin. Surplus/(Deficit)02	Difference
30-Jun-02	\$ 4,888,065	\$ 4,888,065	
30-Jun-01	\$ 28,724,959	\$ 48,502,765	\$ 19,777,806
30-Jun-00	\$ 27,210,974	\$ 76,081,743	\$ 48,870,769
30-Jun-99	\$ 8,579,767	\$ 81,411,586	\$ 72,831,819
30-Jun-98	\$ (19,383,934)	\$ 82,780,086	\$ 102,164,020
30-Jun-97	\$ (44,094,214)	\$ 75,895,216	\$ 119,989,430
30-Jun-96	\$ (41,795,496)	\$ 68,400,091	\$ 110,195,587
30-Jun-95	\$ (57,722,772)	\$ 58,741,503	\$ 116,464,275
30-Jun-94	\$ (67,903,761)	\$ 52,795,373	\$ 120,699,134
30-Jun-93	\$ (71,613,641)	\$ 60,912,589	\$ 132,526,230
30-Jun-92	\$ (78,982,681)	\$ 52,294,010	\$ 131,276,691
30-Jun-91	\$ (71,679,588)	\$ 42,114,273	\$ 113,793,861
30-Jun-90	\$ (73,597,992)	\$ 12,222,870	\$ 85,820,862
30-Jun-89	\$ (108,256,349)	\$ (19,769,661)	\$ 88,486,688
30-Jun-88	\$ (122,722,600)	\$ (47,928,045)	\$ 74,794,555
30-Jun-87	\$ (112,101,947)	\$ (52,421,039)	\$ 59,680,908
30-Jun-86	\$ (100,555,257)	\$ (83,986,316)	\$ 16,568,941
30-Jun-85	\$ (79,624,322)	\$ (70,274,182)	\$ 9,350,140
30-Jun-84	\$ (49,623,089)	\$ (87,697,016)	\$ (38,073,927)
30-Jun-83	\$ (19,826,057)	\$ (78,787,620)	\$ (58,961,563)
30-Jun-82	\$ (8,954,431)	\$ (67,309,953)	\$ (58,355,522)
30-Jun-81	\$ 492,000	\$ (47,852,871)	\$ (48,344,871)
30-Jun-80	\$ (1,919,872)	\$ (35,002,697)	\$ (33,082,825)
30-Jun-79	\$ (728,759)	\$ (15,986,767)	\$ (15,258,008)
30-Jun-78	NA	NA	
30-Jun-77	NA	NA	
30-Jun-76	NA	NA	

WISCONSIN PATIENTS COMPENSATION FUND

COMPARISON OF PUBLISHED SURPLUS / (DEFICIT)
TO HINDSIGHT DEFICIT

Financial Statement Date	Published Surplus/(Deficit)	Hindsight Surplus/(Deficit)
June 30, 2002	\$4,888,065	4,888,063 *
June 30, 2001	\$28,724,959	48,502,765
June 30, 2000	\$27,210,974	76,081,743
June 30, 1999	\$8,579,767	81,411,586
June 30, 1998	(\$19,383,934)	82,780,086
June 30, 1997	(\$44,094,214)	75,895,216
June 30, 1996	(\$41,795,496)	68,400,091
June 30, 1995	(\$57,722,772)	58,741,503
June 30, 1994	(\$67,903,761)	52,795,373
June 30, 1993	(\$71,613,641)	60,912,589
June 30, 1992	(\$78,982,681)	52,294,010
June 30, 1991	(\$71,679,588)	42,114,273
June 30, 1990	(\$73,597,992)	12,222,870
June 30, 1989	(\$108,256,349)	(19,769,661)
June 30, 1988	(\$122,722,600)	(47,928,045)
June 30, 1987	(\$112,101,947)	(52,421,039)
June 30, 1986	(\$100,555,257)	(83,986,316)
June 30, 1985	(\$79,624,322)	(70,274,182)
June 30, 1984	(\$49,623,089)	(87,697,016)
June 30, 1983	(\$19,826,057)	(78,787,620)
June 30, 1982	(\$8,954,431)	(67,309,953)
June 30, 1981	\$492,000	(47,852,871)
June 30, 1980	(\$1,919,872)	(35,002,697)
June 30, 1979	(\$728,759)	(15,986,767)
June 30, 1978	NA	NA
June 30, 1977	NA	NA
June 30, 1976	NA	NA

* Estimated

Total Paid Losses and LAE

Fund Year	Total Paid Losses & LAE	Ultimate Losses & LAE	Undiscounted Ultimate Losses & LAE Remaining
1975-76	\$ 6,002,936	\$ 6,002,936	\$0
1976-77	\$ 5,175,586	\$ 5,175,586	\$0
1977-78	\$ 9,609,512	\$ 9,609,512	\$0
1978-79	\$ 11,505,507	\$ 11,505,507	\$0
1979-80	\$ 22,192,521	\$ 22,192,521	\$0
1980-81	\$ 16,675,109	\$ 19,053,832	\$2,378,723
1981-82	\$ 23,712,827	\$ 25,082,106	\$1,369,279
1982-83	\$ 18,936,153	\$ 21,276,165	\$2,340,012
1983-84	\$ 20,763,706	\$ 21,574,533	\$810,827
1984-85	\$ 12,186,129	\$ 16,312,543	\$4,126,414
1985-86	\$ 56,601,365	\$ 61,212,301	\$4,610,936
1986-87	\$ 24,452,690	\$ 27,016,709	\$2,564,019
1987-88	\$ 43,241,673	\$ 49,573,322	\$6,331,649
1988-89	\$ 27,058,631	\$ 41,856,327	\$14,797,696
1989-90	\$ 29,039,003	\$ 53,099,199	\$24,060,196
1990-91	\$ 29,464,067	\$ 52,417,020	\$22,952,953
1991-92	\$ 33,205,285	\$ 64,830,177	\$31,624,892
1992-93	\$ 31,427,874	\$ 69,876,645	\$38,448,771
1993-94	\$ 47,341,063	\$ 85,397,162	\$38,056,099
1994-95	\$ 33,520,821	\$ 88,047,243	\$54,526,422
1995-96	\$ 14,224,972	\$ 80,759,492	\$66,534,520
1996-97	\$ 12,990,096	\$ 92,735,798	\$79,745,702
1997-98	\$ 8,282,060	\$ 76,416,257	\$68,134,197
1998-99	\$ 11,275,227	\$ 81,767,156	\$70,491,929
1999-00	\$ 2,861,840	\$ 88,010,512	\$85,148,672
2000-01	\$ 16,596	\$ 95,935,858	\$95,919,262
2001-02	\$ 1,579	\$ 103,061,970	\$103,060,391
Total	\$ 551,764,828	\$ 1,369,798,389	\$818,033,561
Average	\$ 20,435,734	\$ 50,733,274	

Patients Compensation Fund
Unrealistic Projections of Remaining Liabilities

Summary of Revenue and Expenses

Inception Through June 30, 2002

Undiscounted Ultimate Loss & LAE Reserves

1977-78	\$	-		
1978-79	\$	-		
1979-80	\$	-		
1980-81	\$	2,378,723		
1981-82	\$	1,369,279		
1982-83	\$	2,340,012		
1983-84	\$	810,827		
1984-85	\$	4,126,414	\$ 11,025,255	Total for 1980-81 thru 1984-85
1985-86	\$	4,610,936		
1986-87	\$	2,564,019		
1987-88	\$	6,331,649		
1988-89	\$	14,797,696		
1989-90	\$	24,060,196	\$ 52,364,496	Total for 1985-86 thru 1989-90
1990-91	\$	22,952,953		
1991-92	\$	31,624,892		
1992-93	\$	38,448,771		
1993-94	\$	38,056,099		
1994-95	\$	54,526,422	\$ 209,669,333	Total for 1990-91 thru 1994-95
1995-96	\$	66,534,520		
1996-97	\$	79,745,702		
1997-98	\$	68,134,197		
1998-99	\$	70,491,929		
1999-00	\$	85,148,672	\$ 370,055,020	Total for 1995-96 thru 1999-2000
2000-01	\$	95,919,262		
2001-02	\$	103,060,391	\$ 198,979,653	Total for 2000-01 thru 2001-02
	\$	818,033,561		



What AB 487 and SB 238 Change

The Patients Compensation Fund has been at the forefront of debate in recent months. Assembly Bill 487 and Senate Bill 238 solidify the purposes of the fund. This includes:

- To curb rising health care costs by financing part of the liability incurred by health care providers from medical malpractice claims and to ensure that medical malpractice claims are satisfied.
- So that the health care providers and claimants have contractual rights in all assets of the fund for those purposes.
- And, that, instead of being held in trust for the purposes of the chapter; the fund is held in trust exclusively for the benefit of health care providers and claimants and may not be spend for any other purpose of the state.

In addition, to further define that the fund is for these purposes, the legislation changes the name of the fund from the Patients Compensation Fund to the Injured Patients and Families Compensation Fund.

What a Raid on PCF Does

During the budget debate, many groups came forward with concerns about the raid of the Patients Compensation Fund. A sampling of their concerns include:

- From the Legislative Audit Bureau, "A transfer of \$200 million will again place the Fund in a significant accounting deficit position."
- From Milliman USA, "We attribute Wisconsin's non-crisis status in large part to the stability brought to the state by the WI PCF. Having viewed the disruptions and problems in other states, we do not want to see the current system destabilized. We believe that removing any funds from the WI PCF could cause the system in Wisconsin to destabilize and feel it is prudent to leave the system as is."
- From James Tierney, Cardiology Consultants of Racine, "I am asking that you do everything in your power to keep our unique PCF intact and strong so that the medical liability insurance environment remains health."
- From Thomas Vravick, Franksville, WI, "... Please don't try to solve one crisis by creating another – that does nothing to move Wisconsin forward."

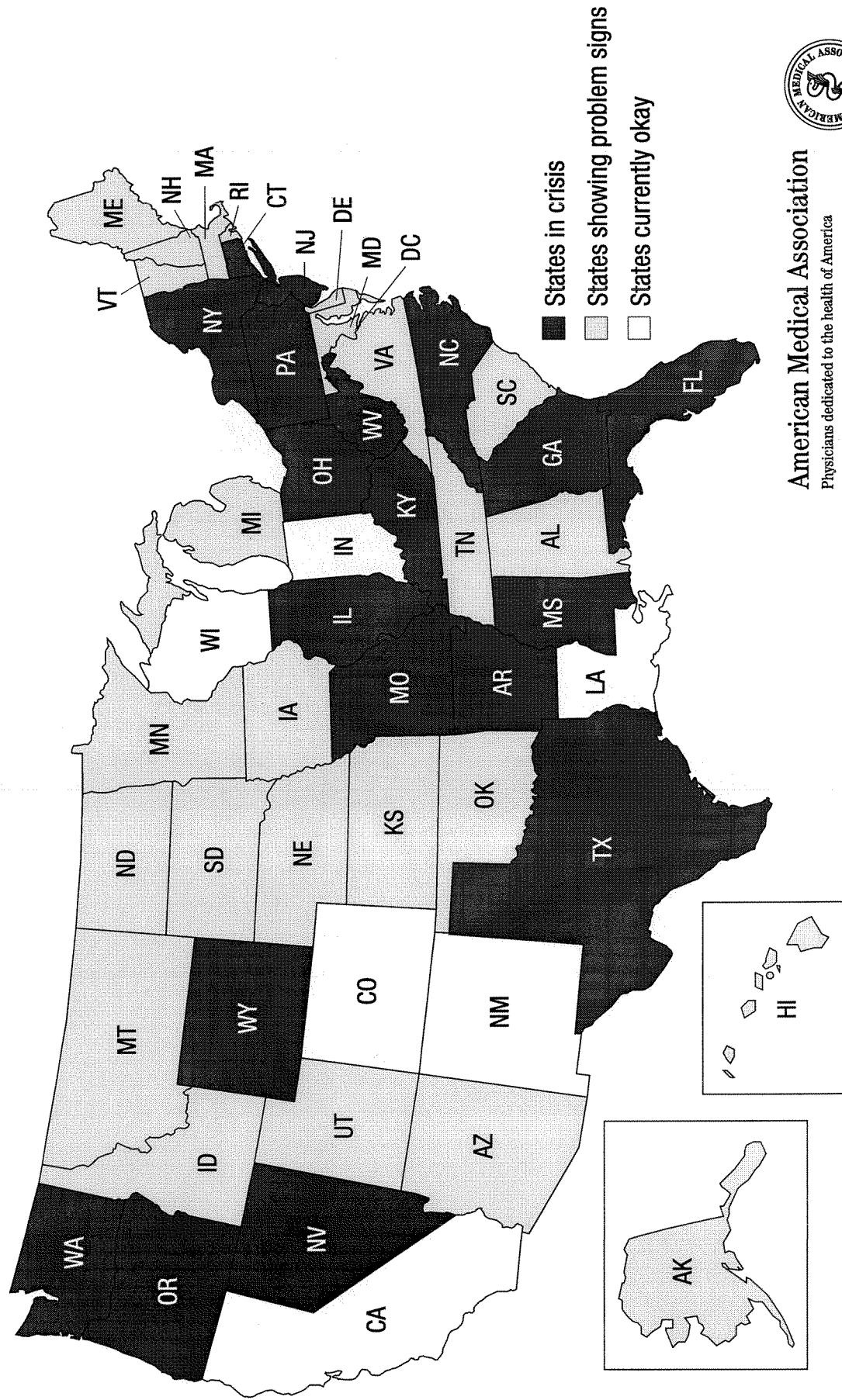
Why AB 487 and SB 238 are Needed

For 28 years there has been no need for this legislation. The intent in 1975 was quite clear, but overtime knowledge of the intent has faded. The intent, to control liability-related costs, is even more pressing as the nation faces a medical liability crisis. (See attached map).

Even after the budget was signed, Governor Doyle continues to consider the Patients Compensation Fund a viable option for funding policy.

- From Governor James Doyle, press release August 12, 2003, on proposed targeted tax relief, "I believe there is as much as \$200 million in the Patients Compensation Fund that can be used for this proposal."

America's Medical Liability Crisis: A National View



American Medical Association
Physicians dedicated to the health of America



R. S. Pirllet - WI Manufacturer &
Commerce
No Quota

Tom Honson - WI Anesthesiologists
History
Tom was a doctor

Paul Sicula.

Loyalty or Contractual Right
Can - Creditor File or Lien, ^{with} Patients file a
~~lien~~ lien? -

Rep Huber - - on Contractual Rights

Rep Sicula Take out Contractual Loyalty

Define more specifically what the Contractual
Right " only for purposes of Lytle
claim for liability

Dole named - Kathy Serul

Dear Hon. Don & the Commission View his
Position IS IT OK TO TAKE \$ FROM JUD
if yes How much. ?
Dole will write letter to get a
definitive word. on when CCI STANDS

9-9-03

PFC Hearing

Question:

How - Currency does not state the purpose?
what the need for the bill?

Rep Phoeff - money ~~was~~ moved for many reasons -
Trade dollar Public Benefit dollar were
moved. Why just this fund?

Rep Buelow what is the actual level of funding
V.S amount in fund?

Sen Redzie - Comment on prop. 6 July 50 met
in crisis

Bonnie

Rep Wicht - WI has a model program

Now it is operating were there efforts
to de stabilize

Some programs are incremented this program.
insure that med service stay in WI
because of stability

Bonnie only provide pay in

(D)

Test
ATTY Mark Adams - WI Medical Soc.

Q Wedge Founder w/ Jy'ishun
First attempt to rule

House. Why the name change

Adams - better define purpose

House → Imperium of Caps?
Don't seem change Cap is 20% after -

To
Bill - ADAMS
Capex related to RIF

Don't Rime - Against
music

Dr. McGinn -

Sen. House - what did O'Hio do wrong

Mr Reply - O'Hio had no test reform, too little
too late - rates will not go down -

Rep Weichert

Will this Bill help to Control
Leakage Care Cost

Dr. Reson - WI, situation is the best you
can get better than any other
state

2



Wisconsin Medical Society

Your Doctor. Your Health.

For Immediate release

For Information Contact:

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(608) 442-3746/800-762-8977

Cell (608) 576-2274

Steveb@wismed.org

Society Supports Bill to Protect Injured Patients

Bill goes before Joint Insurance Committees on Tuesday, September 9

(Madison) September 8, 2003 –If a new bill passes (SB 238/AB 487), patients who are justifiably entitled to financial compensation resulting from medical injury will have greater assurance of receiving the money. (It goes before a Joint Hearing of the Senate and Assembly Insurance Committees on Tuesday, September 9 at 10 a.m. in room 417 North, State Capitol).

“The Patients Compensation Fund was created in 1975 specifically for injured patients and their families, but some have wanted to use it for other wholly unrelated reasons,” said Paul Wertsch, MD, Society President.

“That’s why it is appropriate to rename the fund the ‘Injured Patients and Families Compensation Fund’ and more specifically define how the money may be used,” added Dr. Wertsch.

The bills, by co-authors Senator Dale Schultz (R-Richland Center), Senator Carol Roessler (R-Oshkosh) and Representative Bonnie Ladwig (R-Racine) would: 1. Define that the purposes of the fund are to curb rising health care costs caused in part by expanding liability claims and making sure those claims are paid; 2. establish contractual rights for health professionals and patients with respect to all fund assets; 3. The fund is held in trust specifically for the benefit of providers and patients and may not be used for any other purpose.

The PCF assures payment to injured patients and their families, and holds the line on spiraling medical liability insurance costs. It pays medical liability claims greater than \$1 million per occurrence and more than \$3 million per year, covering most physicians, hospitals and certain other health care professionals.

The Wisconsin Medical Society is the largest association of medical doctors in the state with more than 10,000 members dedicated to the best interests of their patients. With that in mind, Wisconsinmedicalsociety.org offers patients a unique source for reliable, physician-reviewed medical information. The Wisconsin Medical Society, a trusted source for health policy leadership since 1841. Your Doctor. Your Health.

Odele

Mention that Senator
Brown has been excused
He notified ~~us~~ us of A previous
Commitment.

Jesse & Mrs. Currier
have other hearings