WISCONSIN STATE LEGISLATURE
COMMITTEE HEARING RECORDS

2005-06
(session year)

Senate
(Assembly, Senate or Joint)

Committee on Agriculture and Insurance (SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

COMMITTEE NOTICES ...

- *Committee Hearings ... CH* (Public Hearing Announcements)
- **

- *Committee Reports ... CR*
- **

- *Executive Sessions ... ES*
- **

- *Record of Comm. Proceedings ... RCP*
- **

INFORMATION COLLECTED BY COMMITTEE CLERK FOR AND AGAINST PROPOSAL

- *Appointments ... Appt*
- **

Name:

- *Clearinghouse Rules ... CRule*
- **

- *Hearing Records ... HR* (bills and resolutions)
- **05hr_ab0766_SC-AI_pt02**

- *Miscellaneous ... Misc*
- **

TO: Members of the Senate Agriculture and Insurance Committee

FROM: Janice Schreiber

DATE: October 27, 2005

RE: Testimony against caps on noneconomic damages

In June 25, 1988, my daughter Kimberly Schreiber was born in Rhinelander, Wisconsin. During the course of my delivery my uterus ruptured depriving Kimberly of oxygen. Kimberly was born a spastic quadriplegic and she cannot move below her neck or speak.

Our case involved the issue of informed consent. Kimberly was my third child and the two previous births were done by cesarean section. I had agreed to have either a vaginal delivery or cesarean section during the course of my labor. After my labor started, I requested a cesarean section several times during the course of my delivery because of the intense pain I was in. The doctor who delivered Kimberly refused my request even though the cesarean section was medically indicated and I had had two previous cesarean sections. However, by the time a cesarean was done my uterus had ruptured. It took eleven years to resolve our case going all the way to the Wisconsin Supreme Court. During that time, our family cared for Kimberly continuously.

Kimberly requires 24-hour care every day all year long. She can't be left alone. We must do everything for her — feed, dress, diaper and bathe. She cannot eat through her mouth and must be fed through a G feeding tube. She is confined to a wheelchair or bed and suffers a seizure disorder. She requires physical therapy and breathing treatments on a regular basis.

While she doesn't speak, she can communicate in her own way with her own language. She can understand things and listens well. She has her favorite books, movies and loves to go places. But we always must have someone to help her. Sometimes two people are required to help her with her activities.

For our experience going through a lawsuit was very challenging. As I stated, Kimberly was 11 year old when we settled our case. The money received in the lawsuit has helped improve Kimberly's quality of life. We have been able to provide care that was otherwise unavailable to her. Up until that time, this burden fell primarily on family members. This is a difficult burden because it physically and mentally can burn you out. However, money for medical expenses and lost wages usually are paid to someone else — nurses, doctors, therapists — it doesn't go to the injured person.

It is only the award above the out-of-pocket loss that is available to compensate in some way for the pain, suffering, physical impairment or disfigurement that Kimberly must endure for the remainder of her life. It also assures Kimberly of some quality of life. That she may do things she enjoys. These damages are very important and go to compensate Kimberly and our family for the very real losses we have suffered. The loss

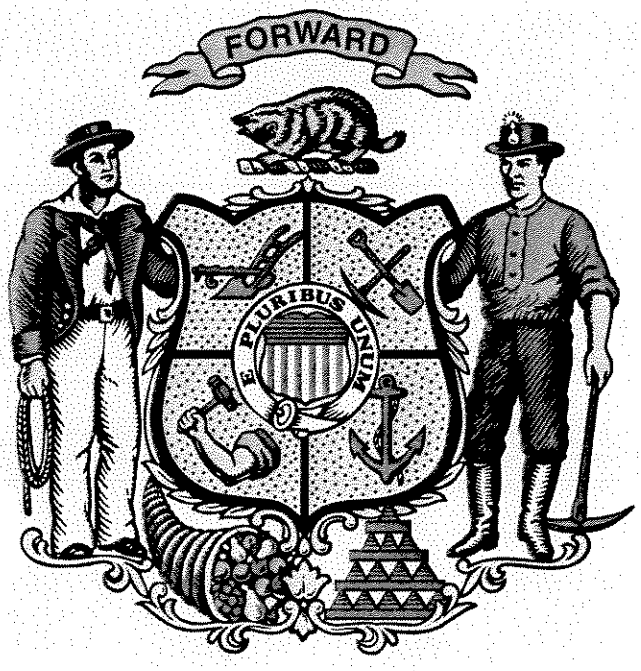
of noneconomic damages in any amount is significant because they are essential to Kimberly.

I have two older children, so I understand how different Kimberly's life is from other children. She has a great memory and understands many things, but because of her condition she will never experience all the simple things we take for granted — walking, talking and touching things. She just turned 17, but will never drive a car. This year she would be a senior in high school, but she will never graduate and become an independent citizen.

In many ways we are very lucky to have Kimberly with us today. When we were going through our court case, some of the defense experts said she wouldn't live this long. Kimberly has proven them wrong, but we want to make sure the money she has received can continue to pay for her needs as she ages.

I urge this Committee not to adopt a new cap on noneconomic damages. Caps seek to "fix" the civil justice system at the sole expense of those most seriously injured. That is neither fair nor equitable. A person whose noneconomic damages are below a cap recovers 100 percent of his or her noneconomic loss, while a person whose noneconomic are above the cap, receive only a fraction of the amount necessary to compensate them. The Supreme Court held that there is nothing rationale for treating the most seriously injured patients of medical malpractice less favorably than those less seriously injured. I must agree. People who are permanently injured like Kimberly should not be deprived of full compensation for all their injuries.

Thank you.


FORWARD
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WISCONSIN LAWYERS
STATE BAR of WISCONSIN® | EXPERT ADVISERS. SERVING YOU.

MEMORANDUM

To: Members, Senate Committee on Agriculture and Insurance

From: State Bar of Wisconsin

Date: October 27, 2005

Re: Opposition to AB 764 (Collateral Source) and AB 766/SB 393 (Caps)

The State Bar of Wisconsin opposes AB 766/SB 393, recovery of noneconomic damages in medical malpractice cases and AB 764, awards to persons suffering damages as the result of medical malpractice and evidence of compensation for those damages.

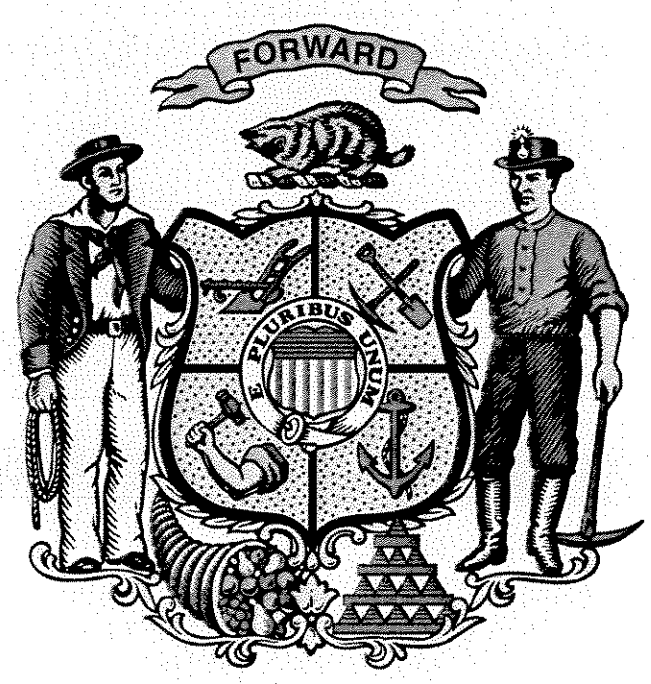
AB 766: (Caps on Non-economic Damages) The State Bar of Wisconsin opposes legislatively set limits on non-economic damages. Caps on non-economic damages run counter to the right of obtaining justice "completely and without denial." Such caps set in place an arbitrary pretrial limit when those decisions are best decided by a jury and a court of law. In addition, caps on non-economic damages place an unnecessary hardship on the most seriously injured. Statutory caps are inconsistent with the nature of non-economic damages which are more difficult to quantify.

AB 764: (Collateral Source) The State Bar of Wisconsin opposes changes to the collateral source rule which would allow for the reduction of awards by payments from collateral sources that do not have subrogation rights. This bill does not appear to draw a distinction between payments from differing kinds of collateral sources.

The fact that payments are received from a collateral source is irrelevant in the determination of negligence or the amount of damages. The responsibility of a tort-feasor to pay damages caused should not be lessened by the victim's prudence in planning for contingencies.

If you have any questions, please do not hesitate to contact our lobbyist on these issues, Lisa Roys at 608.250.6128 or lroys@wisbar.org.

State Bar of Wisconsin
5302 Eastpark Blvd. ▫ P.O. Box 7158 ▫ Madison, WI 53707-7158
(800) 728-7788 ▫ (608) 257-3838 ▫ Fax (608) 257-5502 ▫ Internet: www.wisbar.org ▫ Email: service@wisbar.org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Wisconsin Coalition for Civil Justice

TO: Members, Senate Committee on Insurance

FROM: Jim Hough, Legislative Director &
Bill Smith, President

DATE; October 27, 2005

RE: Support for SB393/AB 766

Three recent Wisconsin Supreme Court cases and the fact that Wisconsin law is out of sync with most of the country on expert opinion evidence and the standard for determining strict/product liability, have seen our national ranking for "litigation atmosphere" plummet, creating a true liability crisis in our state. We need a comprehensive response to this crisis to restore a favorable legal environment that impacts on business and personal expansion and location decisions.

Senate Bill 393 and Assembly Bill 766 respond to the *Ferdon* decision issued by the Court in July of this year and which struck down the caps on noneceonomic damages in medical malpractice cases which were adopted by the Wisconsin Legislature in 1995. As one who was involved in the 1995 legislation, I can assure you that the Wisconsin Legislature adopted the caps in direct response to legitimate concerns regarding the cost of medical malpractice insurance, availability of medical services, defensive medicine and overall health care costs.

In our opinion, the Supreme Court, in the majority opinion in *Ferdon*, demonstrated a blatant desire to legislate and/or a fundamental lack of understanding of how the legislative process operates in establishing public policy.

Senate bill 393 and Assembly Bill 766 are reasonable and rational and we respectfully urge your support.

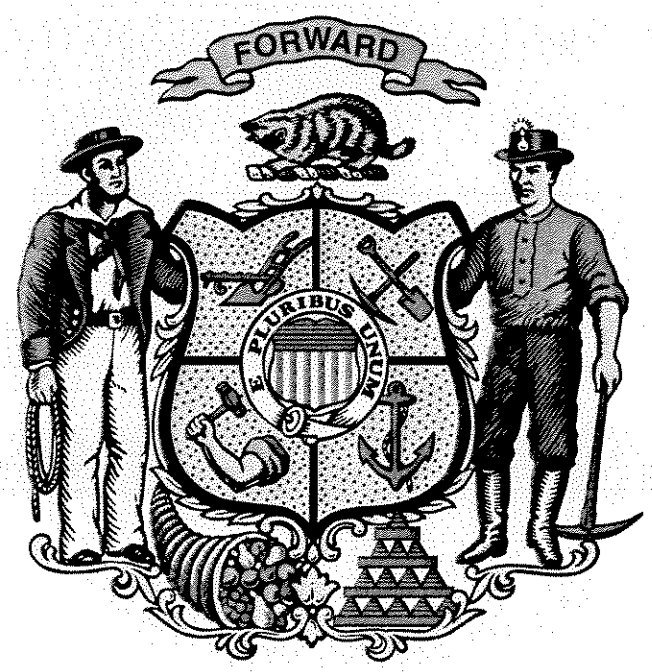
[WCCJ is a statewide coalition of organizations dedicated to fairness and equity in our civil justice system. A list of members is attached.]

Wisconsin Coalition for Civil Justice

WCCJ Members

October 18, 2005

American Council of Engineering
American Insurance Association
Associated Builders & Contractors of Wisconsin
Associated General Contractors of Wisconsin
Building Industry Council
Civil Trial Counsel of Wisconsin
Community Bankers of Wisconsin
National Federation of Independent Business
Petroleum Marketers of Association of Wisconsin
Professional Insurance Agents of Wisconsin
Tavern League of Wisconsin
Wisconsin Asbestos Alliance
Wisconsin Association of Consulting Engineers
Wisconsin Association of Health Underwriters
Wisconsin Auto & Truck Dealers Association
Wisconsin Builders Association
Wisconsin Economic Development Association
Wisconsin Federation of Cooperatives
Wisconsin Grocers Association
Wisconsin Health Care Association
Wisconsin Health & Hospital Association
Wisconsin Institute of CPA's
Wisconsin Insurance Alliance
Wisconsin Manufacturers & Commerce
Wisconsin Medical Society
Wisconsin Merchants Federation
Wisconsin Mortgage Bankers Association
Wisconsin Motor Carriers Association
Wisconsin Paper Council
Wisconsin Petroleum Council
Wisconsin Realtors Association
Wisconsin Restaurant Association
Wisconsin Society of Architects
Wisconsin Society of Land Surveyors
Wisconsin Transportation Builders Association
Wisconsin Utilities Association
Wisconsin Utility Investors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WISCONSIN ASSOCIATION OF HEALTH UNDERWRITERS

Wisconsin's Benefit Specialists

Senate Committee on Agriculture and Insurance
October 27, 2005

Assembly Bill 766

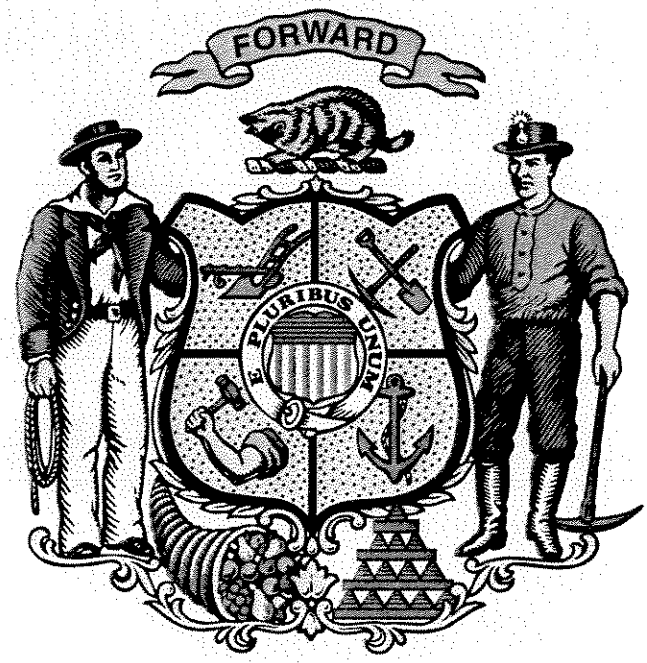
The members of the Wisconsin Association of Health Underwriters (WAHU) and National Association of Health Underwriters (NAHU) are comprised of insurance professionals involved in the sale and service of health benefits, long-term care benefits, and other related products, serving the insurance needs of over 100 million Americans. We have almost 18,000 members around the country and nearly 600 members here in Wisconsin. Our membership is primarily made up of insurance agents that work directly for and with the consumers of health care. Since our number one concern is our customers, we consider ourselves to be consumer advocates and look at how any legislation or regulation will affect these customers

On behalf of WAHU, we would like to thank the Speaker's Task Force on Medical Malpractice, chaired by Representative Gielow, for the work they did in providing recommendations our Wisconsin's medical malpractice environment.

Assembly Bill 766 responds to the *Ferdon* decision issued by the Court in July of this year and which struck down the caps on noneceonomic damages in medical malpractice cases which were adopted by the Wisconsin Legislature in 1995. The Wisconsin Legislature adopted the caps in direct response to legitimate concerns regarding the cost of medical malpractice insurance, availability of medical services, defensive medicine and overall health care costs.

As a member of the Wisconsin Coalition for Civil Justice (WCCJ), WAHU supports the efforts and rationale of WCCJ in restoring these caps. Wisconsin already faces a health care cost crisis and we must work to find ways to reduce or stabilize costs, not sit by why the high court makes decisions that will further increase costs. We urge you to support Assembly Bill 766 and ask that you vote in favor of this much needed legislation.

www.eWAHU.org • 608-268-0200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October 27, 2005

Testimony before the Committee on Agriculture and Insurance
Re: AB 766

My name is Scott Hansfield and I have been practicing obstetrics and gynecology for over 20 years. Two years ago, I relocated to Wisconsin where I have been in practice at Waupun Memorial Hospital. Only months before my move, I envisioned practicing in the state of Illinois for my entire career. I was born and raised in the Chicago area. I graduated from medical school at Northwestern University in 1981 and I did my residency at Rush-Presbyterian-St. Luke's Medical Center in Chicago where I was the chief resident. I went into private practice in Highland Park, a northern suburb of Chicago. I was the managing partner of my practice, and we were the largest and busiest obstetrical group at the hospital. I was chairman of the department of obstetrics and gynecology at Highland Park Hospital where I was on staff for 18 years, and I was vice chairman of the department of obstetrics and gynecology at Evanston Northwestern Healthcare which had over 100 members and spanned 3 campuses.

I lived with my wife and four children in our dream house that we had built a few years earlier. My wife was also born and raised in the area. After serving as president of the PTO and volunteering in the schools while the kids were young, she had returned to work as an R.N. We had a daughter in college, a son in high school, and a daughter and son in middle school. Our entire family was visible and involved, and, as corny as it sounds, we were considered fixtures in the community.

There was one significant problem, though. I was practicing medicine in an environment where both hospitals and physicians feared for their economic survival. In a climate of falling reimbursements and rising costs, everybody was unhappy and the most unpredictable cost, the wild card so to speak, was malpractice insurance. The hospital system I was associated with could not get insurance in the U.S. and went overseas for a policy that covered them only for excessive losses. My colleagues would complain about the cost of liability insurance each spring when they got their bills for their July policy renewals. Every year, there would be a physician march on the state capital. Every year, there would be anger and discontentment, and every year, my colleagues paid their bills on July 1st and were quietly disgruntled until the following spring.

Medical malpractice lawsuits were not a stigma in Illinois, they were the norm. Physicians mistrusted patients, and always advised second opinions. Patients mistrusted doctors, and frequently sought third opinions. A bad outcome meant litigation. I remember one instance where an attorney was snooping around labor and delivery less than 2 hours after an unexpected obstetrical outcome. Keep in mind that physicians are taught to be honest with their patients when the unexpected happens. They're told to take the time to talk to their patients, but most people didn't want to talk to their doctors. When there's money on the line, injured parties would much rather talk to their lawyers.

My most memorable story is that of a colleague who was being sued for a post-operative complication. In the midst of the litigation, the patient suing him called his office to make an appointment for evaluation of an unrelated problem. The receptionist was surprised and asked why the patient would want to be treated by a doctor she was suing. She replied that she had the highest regard for the doctor and thought he was very skilled. The lawsuit was an unrelated issue. You see, when she first immigrated to this country, she was told that the quickest way to financial success in the U.S was to sue a doctor.

Please don't misunderstand me. I think that people should be compensated for losses that result from medical malpractice. When there is negligence, no injured party should go bankrupt due to medical expenses. No injured party should go hungry because they can no longer work. No child should be deprived of specialty care. However, what mystifies physicians is how one person's pain and suffering can be worth more than someone else's. What terrifies physicians is the unknown cost of that pain and suffering.

This was the atmosphere in Illinois when the doctors started to disappear. The first of my colleagues to leave were part of the brain trust, those senior physicians who truly practiced the art of medicine. They had reached a point in their careers where they were working more for pleasure than for the income. For them, the threat of a lawsuit with a limitless award that could wipe out their assets was enough to coax them into retirement. We lost our most senior internists and surgeons as they chose to escape an environment of practice they no longer recognized. I never dreamed that I would be close behind them.

In mid December 2002, my insurance agent called to give me the "heads up" that his January malpractice renewals were going up 40-60% and he expected the same for his clients who renewed in July. At the time, our group was paying over $400,000 a year for insurance. Based on the average reimbursement for delivering babies, every cent we earned on deliveries from January 1st to early June went to pay our insurance premiums. With this new increase, we'd be paying more than $150,000 per physician. After some quick math, I determined that the cost of my insurance would exceed my income.

That evening, I tested the bonds of my marriage. I told my wife that if I remained in my present practice, we would be unable to afford to live in the same neighborhood as my patients. As an alternative, we could uproot our children, leave our families, and move away. When I went to work the next day, I announced that I would not be practicing medicine in the state of Illinois as of July 1st. I had absolutely no idea what I would be doing after that time.

As I look back on that day, I cannot imagine what I was thinking. I remember a great sense of defiance, and also a great sense of resentment. I never envisioned myself as the one to take a stand. I kept thinking "This can't be happening to me." I immediately started looking for a job. On the AMA website, there was a chart indicating those states in a medical liability crisis, those state showing problems, and those states that were OK. In zeroing in on the latter, there were only six states to choose from. I narrowed down the opportunities, and in mid-January, I interviewed in Waupun where the only OB/Gyn

at the hospital had retired several years earlier. The doctors were knowledgeable and happy and the hospital was well-equipped and financially sound, but it was mighty cold outside. The next day, my wife and I interviewed at a hospital in the foothills of the Sierra Nevadas outside of Sacramento. We sat on a bench in the 60 degree breeze beside a stream running gently through the picturesque town. We were horrified to come to the realization that we were Midwesterners through and through. We got out of there as quickly as possible and in July 2003 we moved to Waupun.

The trials and tribulations of a suburban family from Chicago that moves to the country and lives in a 38 foot travel trailer along with their cat, bird and 100# dog while building a house is right out of the movies. I went from being on call every 4 nights to being available 24 hours a day, 7 days a week. There was no other doctor to cover my patients, so for the first 3 months of my new job, I never strayed more than 30 miles from Waupun. I loved it!

Currently, I provide care to women from a vast array of backgrounds who are trusting and appreciative. My patients don't want referrals and they don't want second opinions, so I am able to practice to my full abilities. The physicians I work with came from different areas of the country because they wanted to practice here. They are well-trained, compassionate people who like practicing medicine. Quite frankly, I was never happier in my professional life until July.

In a country moving toward medical malpractice reform state by state, Illinois included, I found myself in the only state moving in the opposite direction. The Supreme Court ruling overturning caps for non-economic damages instantly made Wisconsin the most undesirable state in the country for physicians looking to establish a medical practice. At least with states in crisis, you know where you stand, and there's movement toward malpractice reform. What do you make of a state that was a model for sensible malpractice legislation one day and the next day, overturns the legislation that stabilized the medical malpractice climate?

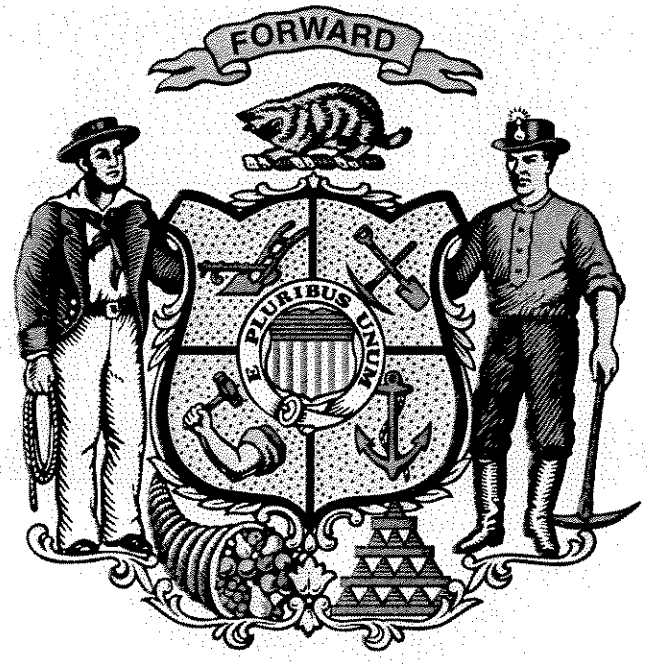
It is amazing how quickly the medical environment can change. It's as if someone turned the lights on at a party. Suddenly, senior physicians who had showed no signs of slowing down earlier in the year started talking about retirement. My colleagues in Waupun did not choose to practice in Wisconsin because of its safe malpractice climate, but they sure sound ready to leave now that things may change. I used to tell people that I enjoyed my new practice so much that I could envision practicing another 20 years. Now, I find myself thinking that being on call 24/7 might get tiring after about 10 years, and if any of my Illinois colleagues asked me about relocating to Wisconsin, I'd have to tell them to stay put for now.

Although most physicians would tell you that placing a cap on non-economic damages is the key to solving the medical malpractice crisis, I cannot prove to you that this would lead to lower healthcare costs and attract physicians. What I can tell you with 100% confidence is that, in today's medical malpractice climate, the loss of a cap on non-

economic damages sends a strong, clear message to doctors. If you don't want caps, you must not want us.

I am here today to tell you that, in no uncertain terms, I would never have moved to this state to practice medicine if I knew that the cap would disappear. I was attracted to Wisconsin because it had the distinction of being one of only six states in the country to have a favorable atmosphere with regard to medical malpractice. Why would a physician be attracted to a state that is heading opposite the direction of the other 49 with regards to solving the medical malpractice crisis? Wisconsin was known as a leader in malpractice reform when establishing the Injured Patients and Families Compensation Fund along with the cap on non-economic damages. It would be tragic for Wisconsin to also be known as the state where a loss of caps lead to instability in the medical malpractice insurance industry and to physician shortages. Do we really want the phrase "Look what happened in Wisconsin" to be the rallying cry for medical malpractice reform across the country?

The people of Wisconsin want good doctors and accessible health care. The death knell is sounding for the days when awards for medical malpractice litigation rival lottery winnings. Here in Wisconsin, we have it easy. We are not trying to pass radical, untested legislation. We're not breaking any new ground. We are simply maintaining the status quo that has made Wisconsin one of the most desirable places in the United States to practice medicine.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Hospital Sisters
Health System

Belleville, IL
St. Elizabeth's Hospital

Breese, IL
St. Joseph's Hospital

Decatur, IL
St. Mary's Hospital

Effingham, IL
St. Anthony's Memorial Hospital

Highland, IL
St. Joseph's Hospital

Litchfield, IL
St. Francis Hospital

Springfield, IL
St. John's Hospital

Streator, IL
St. Mary's Hospital

Chippewa Falls, WI
St. Joseph's Hospital

Eau Claire, WI
Sacred Heart Hospital

Green Bay, WI
St. Mary's Hospital Medical Center
St. Vincent Hospital

Sheboygan, WI
St. Nicholas Hospital

My name is Sister Jomary Trstensky and I am President of Hospital Sisters Health System, a multi-hospital system located in Springfield, Illinois with eight hospitals in Illinois and five hospitals inWisconsin. Our organization has been involved in active health ministry in Illinois and Wisconsin since 1875. We constitute a tightly managed regional system of acute care hospitals. (Slide 1)

In Wisconsin we operate the following hospitals: Sacred Heart Hospital- Eau Claire, St. Joseph's Hospital – Chippewa Falls; St. Vincent Hospital – Green Bay; St. Mary's Hospital Medical Center – Green Bay; and St. Nicholas Hospital – Sheboygan. As a demonstration of our collective presence in Wisconsin, I offer some statistics from our recent audited financial statements showing evidence of the work we do with the people of this fine state.(Slide 2) On an annual basis we treat 34,000 people in our hospitals and another 456,277 as outpatients. We believe that we are, not only essential providers of state of the art health care to citizens in these communities, but also significant economic contributors because of the dollars flowing into the four communities by virtue of our hospital payrolls which came to $213,000,000 last year. (Also Slide2) We take pride in being good citizens as well as good healthcare providers.

What I have to share today is a tale of two states: Illinois and Wisconsin.(Slide 3). Our two-state location gives us a unique opportunity to compare things, in this case, medical malpractice expense for the hospitals. I present myself, not as the accounting wizard or an insurance professional, but as a steward of important resources put at our disposal for the care of people who come to us.

Because Wisconsin has had a limit on pain-and-suffering damages and Illinois has not, the two states have been a case study on controlled versus uncontrolled liability costs.

(Slide 4) Wisconsin hospitals have purchased primary coverage from WHKLIP or form commercial companies for the past 20 years. Excess coverage comes from the Patient Compensation Fund. Illinois, because of unfavorable insurance markets, has been self-insured for primary coverage and then protected by a purchased excess policy. (Slide 5)
Using audited data for calendar year 2005 we are able to show that Illinois costs exceed Wisconsin's costs by a factor of 3.5 to 1 on an adjusted patient day basis. If we adjust this to add the WHCLIP Rebates, the picture is even more dramatic, 4.2 – 1. It costs Illinois $35.63 per adjusted occupied bed per day to obtain medical liability coverage. The cost to Wisconsin is $8.41 per adjusted bed per day. These expenses do not include physician insurance policies, since our hospitals do not own or employ physicians. There is no plausible reason for this disparity other than the rational control in Wisconsin and the absence of that control in Illinois. The money saved in Wisconsin has been used for the development of new programs and services as well as new technology for our five Wisconsin hospitals. On the other hand, the extra expense in Illinois has been passed on to those who pay for health care, creating an extra burden.

My remarks are limited to hospital medical liability expense, but physicians have been

impacted by this phenomenon, so much so that Illinois has experienced an exodus of physicians from communities where their services are needed. For the sake of credibility, I limit my comments to the experiences of my own hospitals.

Because of the large expense associated with medical liability coverage for physicians, insurance companies have refused to write policies for doctors or have increased premiums beyond the doctors' ability to pay. (Slide 6) Doctors have left Illinois, moving to friendly markets.

A single hospital near the Missouri border in downstate Illinois, as of December, 2004, lost 30 physicians (average age 46) to this crisis. The hospital, very similar in size to St. Vincent Hospital in Green Bay, lost 1700 inpatient admissions, 12,000 outpatient admissions, 4000 surgical procedures, and $18 million dollars in revenue because of the defection of these 30 physicians. These doctors crossed the boundaries of primary care and all specialty services. Their stated reasons for leaving were: excessive premium increases or cessation of coverage entirely, coupled with the added threat of escalating tail coverage when they found an insurance company to cover them. This may sound like a problem of the insurance industry, but the root cause is excessive awards, excessive numbers of settlements which give rise to anxiety among insurers and among practitioners.

To clarify, I have said that our Illinois hospitals self-fund medical liability insurance. Because of the large awards given in court, organizations like ours have to make a calculated guess as to the merit of settling out of court versus trying the case. In many cases we opt for settlement in order to limit litigation costs. Therefore, one has to consider settlement costs as well as award costs in calculating the liability expense.

This tale of two States has direct bearing on AB 766 that recently received the support of the Assembly. I am here today to ask that you do your part to restore Wisconsin to a stable

medical liability environment. I believe that if providers make a mistake, we should be held accountable. People who feel victimized should have an avenue of recourse. But it must be reasonable. Unless a cap is reinstated on noneconomic damages, Wisconsin will experience what Illinois has endured. We used this same information in Illinois to help convince legislators there that some kind of control is necessary. We used Wisconsin's experience as a great success story! Unless action is taken to restore caps, there will be an increase in the cost of conducting business in Wisconsin, there will be a loss of needed physicians, access to care will suffer, employee compensation will be negatively affected, and funds will be diverted from new investments into paying for insurance.

Thank you for giving me the opportunity to share our story.

1

Wisconsin Legislative Hearing

October 27, 2005

Sr. Jomary Trstensky, President
Hospital Sisters Health System

2

HSHS Statistics

- Wisconsin – FYE 6/30/2005

- Salaries	$213,000,000
- Benefits	$ 63,000,000
- Hospital admissions	34,201
- Outpatient visits	456,277

3

Hospital Sisters Health System

- Two-state System
  - Wisconsin – 5 Hospitals
  - Illinois – 8 Hospitals

Provides an opportunity to compare medical malpractice cost and administration between two states.

4

General & Professional Liability Insurance

- Wisconsin hospitals have purchased primary coverage from WHCLIP or from commercial insurance company for the past 20 years. Excess malpractice coverage comes from Patient Compensation Fund.
- In Illinois, unfavorable insurance markets led us to self-insure the primary coverage and then purchase excess coverage for medical malpractice.

5

HSHS Results

- Cost per adjusted occupied bed
  - Illinois $35.63
  - Wisconsin $10.18
    (3.5 to 1)
- Cost adjusted for 2005 WHCLIP Rebates
  - Illinois $35.63
  - Wisconsin $ 8.41
    (4.2 to 1)

Costs are for calendar year 2005. In each state costs include general liability and professional malpractice insurance costs. General liability is a small portion of the total cost.

6

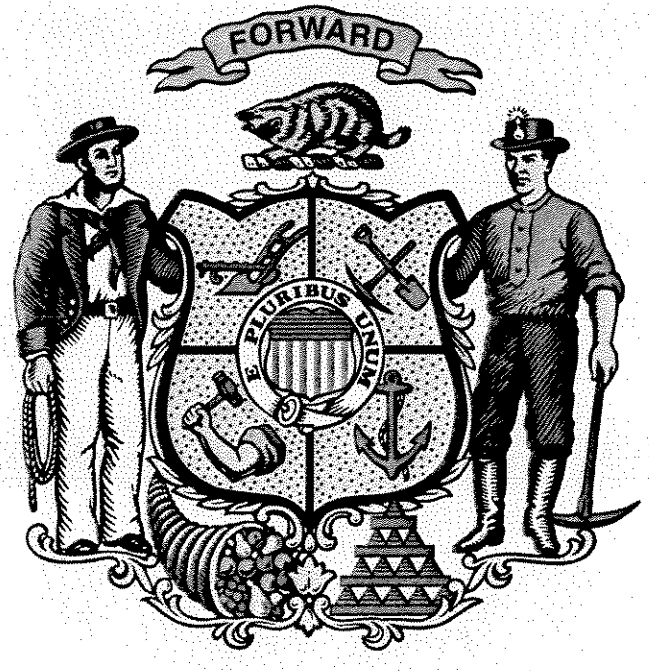
Doctors Have Left Illinois

Belleville – December 2004

Loss of 30 physicians

1700 inpatient admissions
12,000 outpatient admissions
4000 surgical procedures
$18 million in revenue

Decreased access to critical services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Tap the Power SEP 01 2005 Knowledge is Power

These publications are available from the Wisconsin Legislature's Theobald Legislative Library

Medical Malpractice

Compiled by Arden Rice, Updated September 2005

http://www.legis.state.wi.us/lrb/pubs/tapthepower.htm

The Wisconsin Supreme Court recently struck down the constitutionality of Wisconsin's cap on noneconomic damages. This bibliography focuses on nationwide reforms and research findings on medical liability published since the December 2003 *Tap the Power* bibliography was released.

***Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care* / U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, March 3, 2003. (614.230/X4)** Examines the impact of increasing premiums on physicians' ability to practice medicine and explores various mechanisms for medical personnel to report errors without fear of litigation. http://aspe.hhs.gov/daltcp/reports-a.shtml#DALTCP31

***An Audit, Injured Patients and Families Compensation Fund, Office of the Commissioner of Insurance* / Wisconsin Legislative Audit Bureau, 2004. (614.230/W7b1)** This mandated report investigates the financial solvency of the fund. Previous audits from 2001 and 1998 are available under the former name "Patients Compensation Fund."
www.legis.state.wi.us/lab/reports/04-12Highlights.htm

***Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs By Fixing Our Medical Liability System* / U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, July 25, 2002. (614.230/X3)** Argues that medical malpractice insurance rates threaten access to care in many areas of the country and that inflated health costs are a result of "defensive medicine" practices by physicians intimidated by the threat of malpractice suits. http://aspe.hhs.gov/daltcp/reports-c.shtml#DALTCP25

***Containing Medical Malpractice Costs: Recent State Actions* / National Governors' Association Center for Best Practices, 2005. (614.230/N21a)** Updates a 2002 NGA brief on tactics used by states to mitigate the effects of rising malpractice insurance rates.
www.nga.org/Files/pdf/0507MALPRACTICECOSTS.PDF

***Ferdon v. Wisconsin Patients Compensation Fund (Medical Malpractice Liability Cap)* / Wisconsin Legislative Council , July 2005. (Information Memorandum 05-1). (LegisCl/2005-2007/i/05-1) (noncirculating)** Summarizes the recent Wisconsin Supreme Court case challenging the noneconomic damage caps imposed by the fund.
www.legis.state.wi.us/lc/2_PUBLICATIONS/Other%20Publications/Reports%20By%20Subject/Health/IM05_01.pdf

***Final Report on the Feasibility of an Ohio Patient Compensation Fund* / Pinnacle Actuarial Resources, Inc., May 2003. (614.230/Oh3)** Compares and contrasts the administrative and fiscal organization of PCFs in a dozen states including Wisconsin.
www.ohioinsurance.gov/Documents/05-01-03FinalReport.pdf

***Justice Capped: Tilting the Scales of Justice Against Injured Patients and Their Families: A 10-Year Review of Wisconsin's Cap On Pain and Suffering* / Wisconsin Citizen Action & Wisconsin Academy of Trial Lawyers, 2005. (614.230/W751a)** Argues that the cap discriminates against those gravely harmed by medical malpractice and does not reduce health care costs or affect the number physicians practicing in Wisconsin.
www.watl.org/watl__main_frame.htm

"Medical Liability: Beyond Caps" / *Health Affairs*, July/August 2004. (614.23/P94/2004/v.23/no.4) Contains six feature articles on medical malpractice, including "Are Damages Caps Regressive? A Study of Malpractice Jury Verdicts in California".

***Medical Liability Reform – Now! A Compendium of Facts Supporting Medical Liability Reform and Debunking Arguments Against Reform* / American Medical Association, 2005. (614.230/Am3b)** Detailed report demonstrating the impact of medical malpractice lawsuits on health care delivery.
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"Medical Malpractice 'Crisis': Recent Trends and the Impact of State Tort Reforms" / *Health Affairs* (Web Exclusives), 2004. (614.23/P94a/2004/Jan-June) Investigates the extent to which rising premiums are associated with increases in claims and considers whether tort reform is more than a stop-gap solution to a flawed medical liability insurance system.
www.healthaffairs.org/WebExclusives.php

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Medical Malpractice
Continued

***Medical Malpractice: Implications of Rising Premiums on Access to Health Care* / U.S. General Accounting Office, August 2003. (614.230/X7/pt.1)** Investigates whether "defensive medical practices" are inflating the cost of health care and how tort reform in certain states has impacted insurance premiums.
www.gao.gov/new.items/d03836.pdf

***Medical Malpractice Insurance Report: A Study of Market Conditions and Potential Solutions to the Recent Crisis* / National Association of Insurance Commissioners, 2004. (614.230/N213)**
www.naic.org/models_papers/papers/MMP-OP-04-EL.pdf

***Medical Malpractice Liability Reform: Legal Issues and Fifty-State Survey of Caps on Punitive Damages and Noneconomic Damages* / Congressional Research Service, updated April 11, 2005. (CRS Reports). (614.230/X8)** Outlines pro and con arguments for the provisions included in 2003 H.R. 5 and H.R. 4280 relating to caps on damages, the collateral source rule, joint liability, and lawyer's contingency fees. The report also contains a table showing the caps on punitive and noneconomic damages for all fifty states.
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***Public Medical Malpractice Insurance* / Frank A. Sloan, Pew Project on Medical Liability in Pennsylvania, 2004. (614.230/P46)** Examines the pros and cons of implementing various government interventions adopted to alleviate the malpractice insurance crisis.
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***Report on the Impact of Act 10* / Wisconsin Office of the Commissioner of Insurance, 1997-2005. (614.230/W7c4)** This biennial report examines the number of health care providers practicing in Wisconsin, the fees that health care providers pay under s. 655.27 (3), and the premiums that health care providers pay for health care liability insurance.

***Resolving the Medical Malpractice Crisis: Fairness Considerations* / Maxwell J. Mehlman, Pew Project on Medical Liability in Pennsylvania, 2003. (614.230/P94b)** Considers the desired outcome of malpractice trials and insurance programs in terms of fair and consistent treatment of victims, medical professionals, and the public's overall access to health care.
http://medliabilitypa.org/research/mehlman0603/MehlmanReport.pdf

Related Web Sites:

www.abanews.org/issues/medmal.html – American Bar Association

www.ama-assn.org/ama/pub/category/7861.html – American Medical Association – Medical Liability Reform

www.hcla.org – Health Coalition on Liability and Access

www.ncsl.org/standcomm/sclaw/medmaloverview.htm – NCSL's Medical Malpractice Tort Reform Committee

www.rwjf.org/reports/npreports/impacs.htm – Robert Wood Johnson Foundation: Improving Malpractice Prevention and Compensation Programs

http://medliabilitypa.org/ – Project on Medical Liability in Pennsylvania funded by the Pew Charitable Trusts

State Patients Compensation Funds:

www.in.gov/idoi/medmal – Indiana

www.hcsf.org – Kansas Health Care Stabilization Fund

www.lapcf.state.la.us – Louisiana

www.doi.ne.gov/medmal/index.htm – Nebraska

Reform Efforts and Studies From Other States:

www.cga.ct.gov/olr/medicalmalpracticeER.asp – Connecticut – Lists over 50 reports on medical malpractice written by the Office of Legislative Research since 2002.

www.unf.edu/thefloridacenter/Files/Medical%20Malpractice%20Update.pdf – Florida

http://insurance.mo.gov/aboutMDI/issues/medmal – Missouri

www.leg.state.nv.us/lcb/research/library/BackBurner.cfm – Nevada

www.state.nj.us/dobi/drcorner.htm – New Jersey

http://jsg.legis.state.pa.us/Med%20Mal.HTML – Pennsylvania – Report of the Advisory Committee on Medical Professional Liability

Clippings: (Noncirculating; available for use in the library; clippings prior to 1981 are on microfiche)

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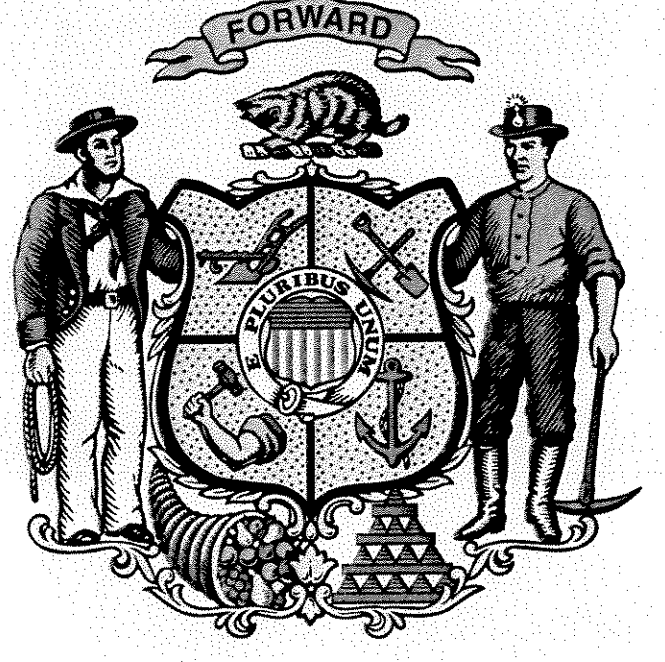
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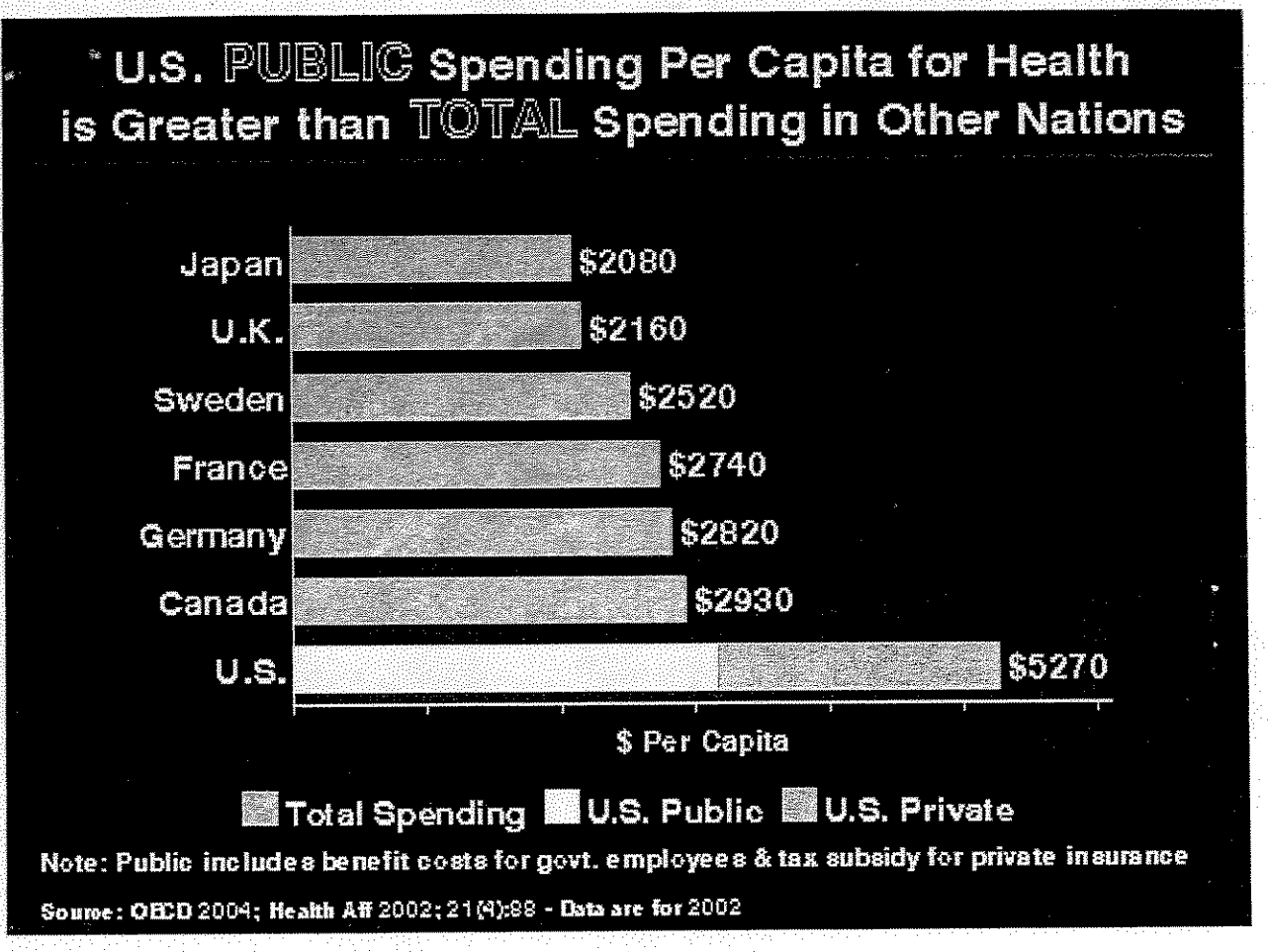

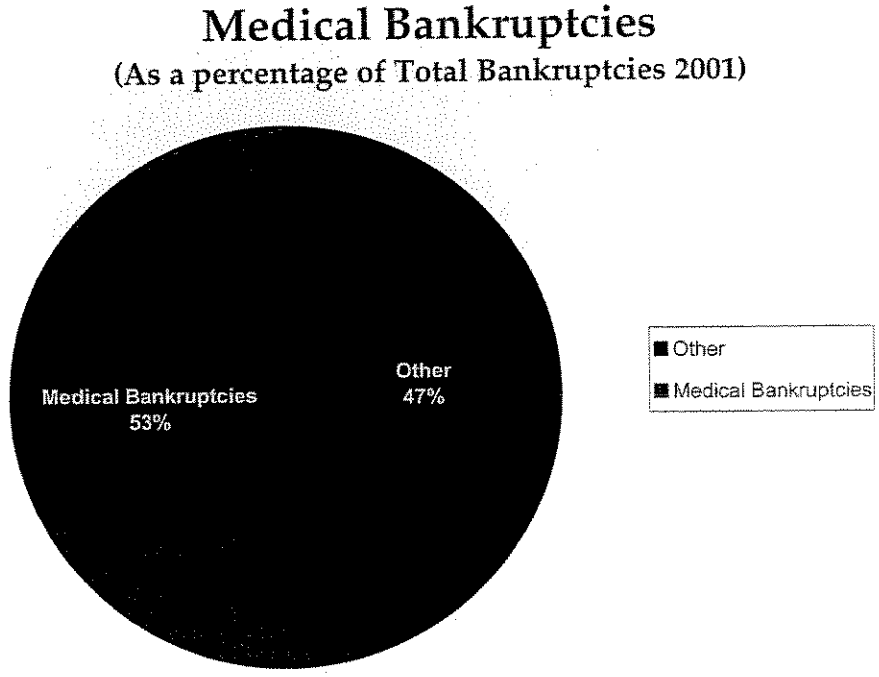

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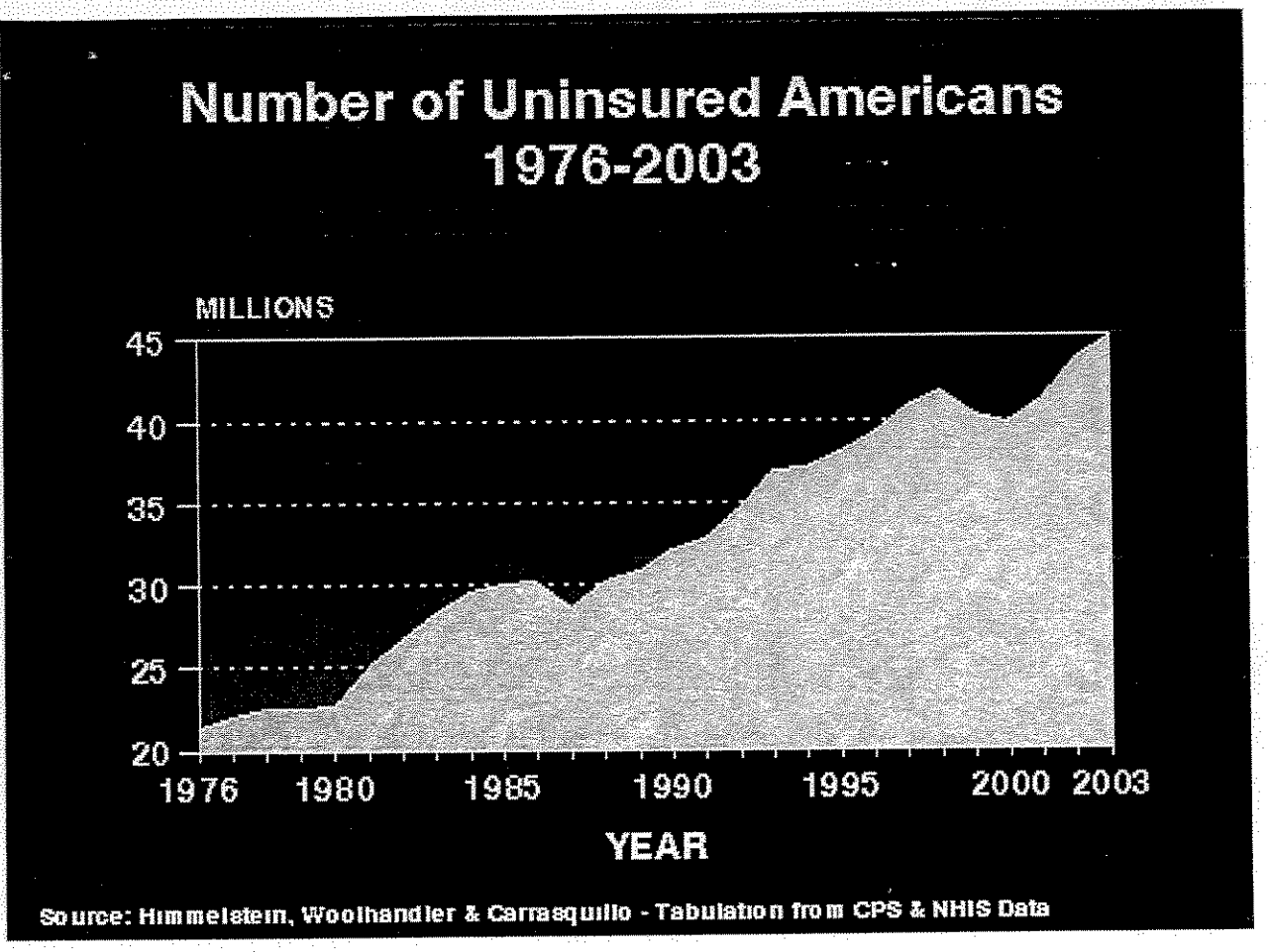
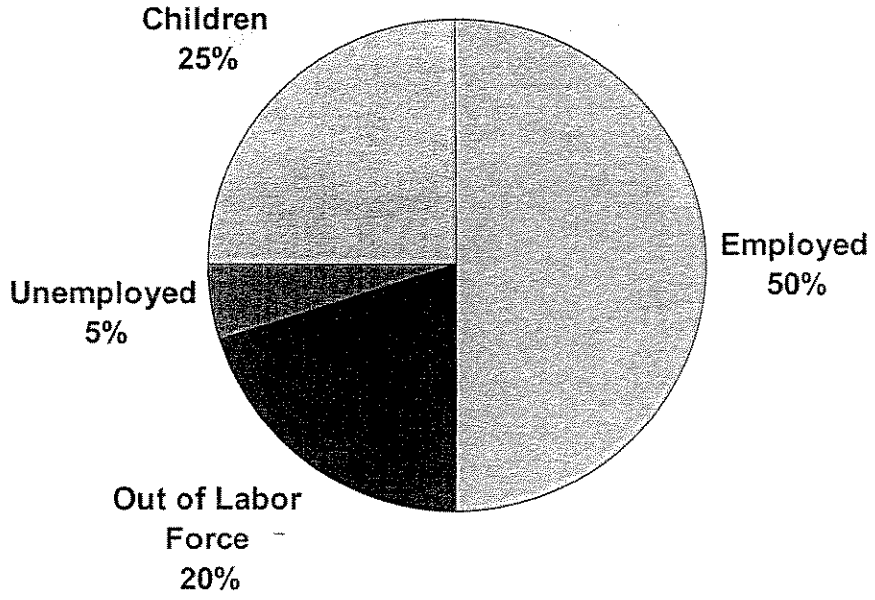
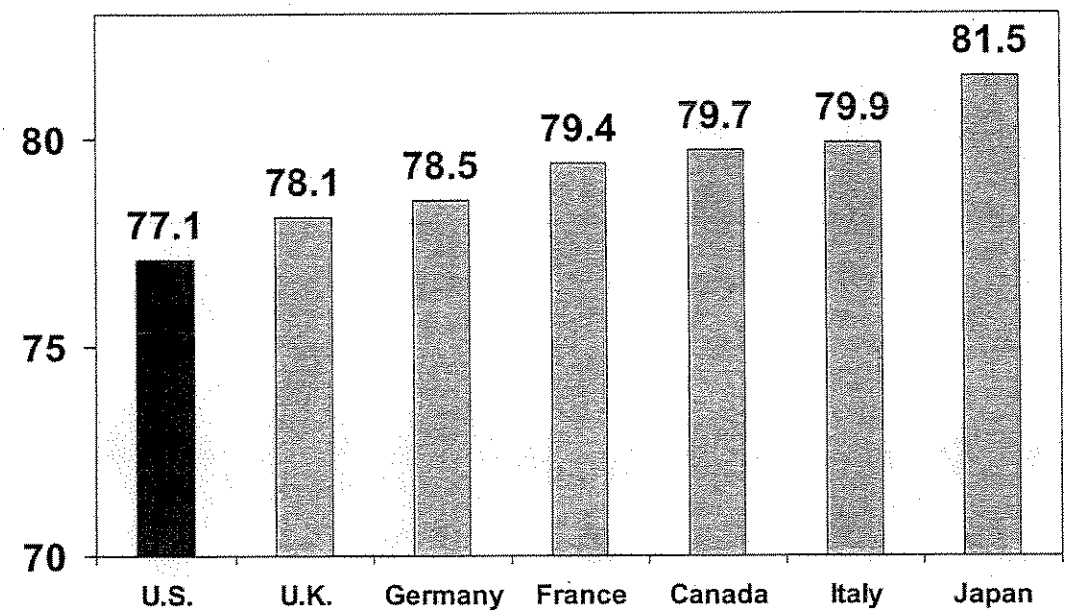


Who are the Uninsured?



Current Population Statistics, 1999

Life Expectancy



OECD, 2004, (2001 Data)

Infant Deaths by Income