

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

**Task Force on
Medical
Malpractice
(ATF-MM)**

Sample:

Record of Comm. Proceedings ... RCP

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

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ **05hr_ATF-MM_Misc_pt12b**

➤ Record of Comm. Proceedings ... RCP

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Questions and Answers Regarding Medical Malpractice Claims Closed With an Indemnity Payment

The estimated¹ awards and settlements related to claims closed in 1984 varied by the type of error and the severity of the resultant injury. Anesthesia errors had the lowest median payment, however, these errors resulted in the largest payment, the greatest range of payments, and the highest percentage of claims paid. Obstetrics errors had the highest median and average payments. Further, although only 10 percent of the paid claims were for obstetrics errors, they accounted for 27 percent of the total payments.

By severity of injury, except for claims involving "emotional" injuries and "death," the average payment increased as the injury became more severe. Generally, the variances in awards and settlements were also larger for the more severe injuries. Errors that resulted in "permanent total disabilities" accounted for about half of the total payments made for claims closed in 1984.

Insurers did not know the full extent of patients' economic losses for a large percentage of the claims; however, based on estimates for 54 percent² of the 73,472 claims closed in 1984, patients' economic losses totaled \$4.5 billion. Eighty-eight percent of this was for future economic losses, such as medical expenses, wage loss, and rehabilitation services.

For the 31,786 claims closed with payment, insurers often did not know the portion of the claims that related to economic losses, noneconomic losses, and plaintiff attorney's fees; however,

- for 18,279 claims for which economic losses could be estimated, injured patients recovered equal to or more than their economic losses in 70 percent of these claims,
- for 14,995 claims for which the expected value of noneconomic losses could be estimated, (1) about 62 percent of the total compensation for noneconomic losses was for amounts more than \$200,000, but this money went to only about 2 percent of these claims and (2) compensation for noneconomic losses was between \$1 and \$50,000 for 67 percent of these claims that included compensation for such losses, and

¹Unless otherwise indicated, all data presented in this chapter are estimated. Key estimated values used in this chapter are presented with their related sampling errors in tables VI.7 through VI.12.

²As stated in the Objective, Scope, and Methodology section, we do not know anything about the other 46 percent of the claims, and the reader is cautioned that those claims may or may not exhibit the same characteristics as the 54 percent.

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- for 16,348 claims for which plaintiff attorney's fees could be estimated, such fees equaled from 31 to 40 percent of the expected value of the indemnity in about 52 percent of these claims.¹

How Much Were Patients Compensated for the Errors?

The indemnity payments (awards/settlements) in 1984 totaled \$2.6 billion. Table 3.1 shows the distribution of the total indemnity payments by type of error. As shown, although only about 10 percent of the total paid claims were for obstetrics errors, they accounted for the second largest amount (about 27 percent) of the total indemnity paid. Diagnostic errors, which accounted for about 24 percent of the paid claims, accounted for about 28 percent of the indemnity. Surgical errors accounted for about 22 percent of the total.

Table 3.1: Distribution of Total Indemnity Payments by Principal Allegations of Negligence

Dollars in millions

Type of error	Claims			Indemnity payments	
	Total ^a	Number ^a	Percent	Total ^a	Percent
Surgery	18,697	7,235	22.8	\$551.7	21.5
Diagnosis	17,372	7,647	24.1	732.1	28.5
Treatment	14,635	5,291	16.6	223.9	8.7
Obstetrics	5,517	3,186	10.0	689.6	26.9
Medication	3,019	1,448	4.6	74.2	2.9
Medication administration	2,735	1,231	3.9	41.1	1.6
Anesthesia	2,720	1,699	5.3	143.5	5.6
Physiology/behavior monitoring, biomedical equipment, intravenous, blood products, and other	8,774	4,046	12.7	109.7	4.3
Total	73,468	31,782	100.0	\$2,565.9	100.0

^aDetail does not add to total due to rounding.

Note: The total number of claims is based on the number of claims for which the relevant data were provided.

Indemnity payments varied by allegation of negligence. Median payments ranged from \$1,500 to \$65,000. As shown in table 3.2, the highest median and average payments were made for obstetrics-related errors. These payments were higher than those for diagnostic errors, which had

¹As stated in the Objective, Scope, and Methodology section, we do not know anything about the 13,507, 16,791, and 15,438 claims where economic losses, noneconomic losses, and plaintiff attorney's fees, respectively, could not be estimated. The reader is cautioned that those claims may or may not exhibit the same characteristics as those for which data were estimated.

Chapter 3
 Questions and Answers Regarding Medical
 Malpractice Claims Closed With an
 Indemnity Payment

the next highest median and average. The lowest median was for anesthesia errors, however, these errors also received the largest payment of about \$2.5 million, had the greatest range of payments, and had the highest percentage of paid claims.

Table 3.2: Number of Paid Claims and Indemnity Payments by Principal Allegations of Negligence

Type of error	Paid claims		Indemnity payments			
	Number	Percent of total ^a	Median	Average	Range	
					Lowest	Highest
All claims ^b	31,786	43.3	\$18,000	\$80,741	\$1	\$2,472,020
Surgery	7,235	38.7	25,000	76,255	108	1,616,185
Diagnosis	7,647	44.0	30,000	95,747	28	1,315,996
Treatment	5,291	36.2	12,500	42,316	1	1,000,000
Obstetrics	3,186	57.8	65,000	216,464	187	2,000,000
Medication	1,448	47.9	13,500	51,263	100	709,000
Medication administration	1,231	45.0	6,000	33,379	18	1,000,000
Anesthesia	1,699	62.5	1,500	84,451	20	2,472,020
Physiology/behavior monitoring, biomedical equipment, intravenous, blood products, and other	4,046	46.1	8,000	27,122	9	800,000

^aShows paid claims as a percentage of total claims within each of the types of error. For example, an estimated 2,720 claims involved anesthesia errors. Of these, 1,699 (about 62.5 percent) were closed with payment.

^bDetail does not add to total because some paid claims were not classified by their allegation of negligence.

How Much Were Patients Compensated by Severity of Injury Categories?

Patients received the highest compensation for the more severe injuries and lower amounts for the less severe injuries. As shown in table 3.3, awards/settlements for "permanent total disabilities (major and grave)" and "insignificant" injuries had the highest and lowest median and average payments, respectively. Median payments ranged from \$3,000 to \$398,362, whereas averages went from \$12,024 to \$488,375. The median and average awards/settlements for the claims involving "death" (\$35,000 and \$75,242) were lower than those involving "major and grave permanent total disabilities."

Questions and Answers Regarding Medical
Malpractice Claims Closed With an
Indemnity Payment

Table 3.3: Number of Paid Claims and Indemnity Payments by Severity of Injury Categories

Type of error	Paid claims		Indemnity payments			
	Number	Percent of total ^a	Median	Average	Range	
					Lowest	Highest
All claims ^b	31,786	43.3	\$18,000	\$80,741	\$1	\$2,472,020
Emotional	1,200	25.8	7,500	21,694	18	560,000
Insignificant	3,396	49.8	3,000	12,024	25	163,000
Temporary disability—minor	8,021	36.5	5,800	13,978	1	589,300
Temporary disability—major	2,989	36.9	15,000	34,670	200	638,097
Permanent partial disability—minor	6,288	54.4	25,000	52,356	325	900,000
Permanent partial disability—major	1,678	39.7	95,000	144,049	750	1,315,996
Permanent total disability—major	1,928	69.2	398,362	364,384	2,500	1,000,000
Permanent total disability—grave	1,302	72.6	250,000	488,375	10,000	2,472,020
Death	4,976	44.5	35,000	75,242	600	1,109,937

^aShows paid claims as a percentage of total claims within each of the severity of injury categories. For example, an estimated 6,823 claims involved "insignificant" injuries. Of these, 3,396 (about 49.8 percent) were closed with payment.

^bDetail does not add to total because some paid claims could not be classified by any of the severity of injury categories.

As shown in table 3.4, about 52 percent of the total indemnity payments made in 1984 were for "major and grave permanent total disabilities," which accounted for about 10 percent of all the paid claims. Only about 4 percent of the total was for "minor temporary disabilities" even though they made up about a quarter of the paid claims.

Chapter J
 Questions and Answers Regarding Medical
 Malpractice Claims Closed With an
 Indemnity Payment

Table 3.4. Distribution of Total Indemnity Payments by Severity of Injury Categories

Dollars in millions

Severity of injury	Total	Claims		Indemnity payments	
		Number ^a	Percent	Total ^a	Percent
Emotional	4 660	1 200	3.8	\$26.0	1.0
Insignificant	6 823	3 396	10.7	40.8	1.6
Temporary disability—minor	21 969	8 021	25.2	112.1	4.4
Temporary disability—major	8 101	2 989	9.4	103.6	4.0
Permanent partial disability—minor	11 551	6 288	19.8	329.2	12.8
Permanent partial disability—major	4 225	1 678	5.3	241.7	9.4
Permanent total disability—major	2 788	1 928	6.1	702.4	27.4
Permanent total disability—grave	1 794	1 302	4.1	636.0	24.8
Death	11 179	4 976	15.6	374.4	14.6
Total	73,090	31,786	100.0	\$2,566.4	100.0

^aDetail does not add to total because some paid claims could not be classified by any of the severity of injury categories.

Note: The total number of claims is based on the number of claims for which the relevant data were provided.

How Much Were Patients Compensated for Injuries of the Same Severity?

Medical malpractice awards/settlements varied for injuries of the same severity. As shown in table 3.3, the smallest variance occurred for “insignificant” injuries, for which payments ranged from \$25 to \$163,000 and the largest was for “grave permanent total disabilities” (\$10,000 to \$2,472,020). Generally, the payment ranges were larger for the more severe injuries.

The data did not yield reliable estimates in all cases of the payments made in each severity category by type of error. Estimates could not be presented where the related sampling errors were unreasonably high. However, where available, the estimates show that indemnity payments varied within severity of injury categories by type of error. For example, the payments made for “insignificant” injuries ranged from \$25 to \$163,000. Anesthesia-related errors had the smallest payment and range of payments (\$25 to \$2,000), with an average of \$815 and a median of \$750. Surgical errors had the highest payment and range of payments (\$300 to \$163,000). The average and median payments for surgery-related “insignificant” injuries were \$41,983 and \$20,000, higher than anesthesia errors.

Paid claims with "minor temporary disabilities" accounted for the largest number of the claims with indemnity. Payments for these claims ranged from \$1 to \$589,300 with an overall median of \$5,800 and a \$13,978 average. The highest payment (\$589,300) was made for a diagnostic error while the lowest (\$1) was for a treatment-related error. The median payments for surgical, diagnostic, and treatment-related errors resulting in "minor temporary disabilities" were relatively similar at \$5,750, \$7,500, and \$6,000, respectively. The average payments were \$18,242, \$13,763, and \$16,806.

"Grave permanent total disabilities" accounted for the widest range of payments. Indemnity payments for "grave permanent total disabilities" ranged from \$10,000 for a diagnostic error to \$2,472,020 for an anesthesia error. The median payment for all the claims in this severity category was \$250,000, and the average was \$488,375. Obstetrics-related errors, which accounted for almost half of the "grave permanent total disabilities," resulted in a median payment of \$350,000. These payments ranged from \$15,000 to \$2,000,000 and averaged \$425,413. The range of payments was the greatest for anesthesia-related errors—from \$25,000 to \$2,472,020. These errors had the lowest median (\$85,000) and averaged \$516,410.

What Economic Losses Were Incurred by Injured Patients?

Economic loss amounts were not always known by insurance companies. Some reports included only past medical expenses and wage loss without allowance for future costs. We analyzed patients' economic losses only for those claims for which all of the information was provided. For 40,020 of the 73,472 claims (about 54 percent), the total incurred and future anticipated patient economic losses were about \$4.5 billion. This includes 3,230 claims for which the total economic losses were \$0.⁴

Table 3.5 shows how the total was distributed among six economic loss categories. About 88 percent of this was for anticipated future economic losses.

⁴Because data were not available for about half of the claims, the estimates provided are for about half of the universe of claims. We are unable to provide estimates for the balance of the claims.

Chapter 3
Questions and Answers Regarding Medical
Malpractice Claims Closed With an
Indemnity Payment

Table 3.5: Total and Average Amount of Patient Economic Losses by Categories

Categories	Economic losses ^a			
	Amount	Percent	Average	Highest
All claims	\$4,531.3	100.0	\$113,227	\$10,463,000
Medical expenses				
Incurred as of claim closing	282.3	6.2	7,055	560,000
Anticipated future	919.2	20.3	22,968	4,000,000
Wage loss				
Incurred as of claim closing	163.6	3.6	4,087	1,000,000
Anticipated future	1,526.2	33.7	38,137	3,000,000
Other ^b				
Incurred as of claim closing	87.4	1.9	2,184	1,400,000
Anticipated future	1,552.6	34.3	38,796	9,999,999

^aOnly represents claims for which data were provided and, therefore, are representative of about half of the universe of claims.

^bOther expenses include such items as housekeeping services, vocational rehabilitation, travel, and home renovation.

To What Extent Were Patients' Economic Losses Resulting From Malpractice Injuries Compensated?

Of the 40,020 claims for which patient economic losses could be estimated, 18,279⁵—about 46 percent, were closed with an indemnity payment. Patients' economic losses associated with the 18,279 paid claims totaled about \$4.0 billion and averaged \$219,370. The median indemnity payment for these claims was \$15,000, and the average was \$71,530. The remaining 54 percent (21,741 claims) were closed without indemnity, and for these claims, patients had expenses of about \$0.5 billion, with an average of about \$24,000. As shown in table 3.6, the median payments for patients with economic losses of \$100,000 or more were less than the economic losses. The median payments for patients with economic losses that ranged from \$0 to \$49,999 were larger than the economic losses.

⁵Because data were not available for about half of the paid claims, the estimates provided are for about half of the universe of paid claims. We are unable to provide estimates for the balance of the paid claims.

Chapter 3
 Questions and Answers Regarding Medical
 Malpractice Claims Closed With an
 Indemnity Payment

Table 3.6 Number of Paid Claims and Indemnity Payments by Size of Patients' Economic Losses

Patients' economic loss ranges	Paid claims		Indemnity payments			
	Number ^a	Percent of total ^b	Median	Average	Range	
					Lowest	Highest
All claims	18,279 ^c	45.7	\$15,000	\$71,530	\$1	\$1,616,185
\$0	1,392	43.1	1,500	16,025 ^d	100	560,000
\$1 to \$999	3,538	51.4	1,500	3,881	9	507,447
\$1,000 to \$4,999	4,164	35.4	7,500	17,809	108	225,000
\$5,000 to \$9,999	1,936	37.0	15,000	33,755	500	550,000
\$10,000 to \$24,999	2,463	43.8	25,000	42,327	1	358,000
\$25,000 to \$49,999	906	48.8	50,000	65,052	1,500	357,500
\$50,000 to \$99,999	949	67.5	68,750	80,642	2,500	638,097
\$100,000 to \$249,999	682	50.4	29,999	138,835	5,000	1,000,000
\$250,000 to \$999,999	1,037	71.6	200,000	255,234	5,000	1,616,185
\$1 million or more	1,213	99.5	398,362	439,397	25,000	1,315,996

^aDetail does not add to total due to rounding

^bShows paid claims as a percentage of total claims within each of the loss ranges. For example, an estimated 11,778 claims involved patients' economic losses ranging from \$1,000 to \$4,999. Of these 4,164 (about 35.4 percent) were closed with payment.

^cOnly represents paid claims for which data were provided and, therefore, are representative of about half of all paid claims.

^dEstimate subject to a large sampling error and should be used with caution.

As shown in table 3.7, about 73 percent of the patients experiencing "major permanent total disabilities" received payments for their injuries. These patients had the highest percentage of paid claims, however, they also sustained the highest average economic losses—about \$1.8 million per incident.

Chapter 3
 Questions and Answers Regarding Medical
 Malpractice Claims Closed With an
 Indemnity Payment

Table 3.7: Number of Paid Claims and Patients' Economic Losses by Severity of Injury Categories

Severity of injury	Paid claims		Patients' economic losses			
	Number	Percent of total ^a	Median	Average	Range	
					Lowest	Highest
All claims	18,279 ^b	45.7	\$5,000	\$219,370	\$0	\$10,462,999
Emotional	881	24.1	457	6,599 ^c	0	117,636
Insignificant	2,352	56.1	379	2,373	0	42,451
Temporary disability—minor	5,404	38.6	2,500	12,012	0	885,781
Temporary disability—major	1,758	50.4	9,191	29,916	0	300,000
Permanent partial disability—minor	3,744	61.7	5,000	64,380	0	1,360,000
Permanent partial disability—major	861	47.0	74,200	196,447 ^c	0	2,005,000
Permanent total disability—major	1,325	73.2	1,644,244	1,814,942 ^c	1,000	10,462,999
Permanent total disability—grave	495	68.6	1,113,485	1,688,029	5,000	4,840,000
Death	1,459	37.5	11,500	158,173	0	1,675,100

^aShows paid claims as a percentage of total claims within each of the severity of injury categories. For example, an estimated 1,810 claims involved "major permanent total disabilities." Of these 1,325 (about 73.2 percent) were closed with payment.

^bOnly represents paid claims for which data were provided and therefore are representative of about half of all paid claims.

^cEstimate subject to a large sampling error and should be used with caution.

Although almost three quarters of the claims where patients experienced "major permanent total disabilities" were paid, table 3.8 shows that the median and average compensation (\$398,362 and \$373,602) were lower than the median and average economic losses (\$1.6 million and \$1.8 million). It appears that the median indemnity payments for injuries ranging from "emotional" through "minor permanent partial disabilities" and for "death" were greater than the median economic losses.

Chapter 3
 Questions and Answers Regarding Medical
 Malpractice Claims Closed With an
 Indemnity Payment

Table 3.8: Number of Paid Claims and Indemnity Payments by Severity of Injury Categories

Severity of injury	Paid claims		Indemnity payments			
	Number	Percent of total ^a	Median	Average	Range	
					Lowest	Highest
All claims	18,279 ^b	45.7	\$15,000	\$71,530	\$1	\$1,616,185
Emotional	881	24.1	7,500	24,783	18	560,000
Insignificant	2,352	56.1	3,000	8,162	25	75,000
Temporary disability—minor	5,404	38.6	6,000	13,753	1	212,500
Temporary disability—major	1,758	50.4	20,000	33,253	250	638,097
Permanent partial disability—minor	3,744	61.7	25,000	43,306	500	900,000
Permanent partial disability—major	861	47.0	68,750	130,420	750	1,315,996
Permanent total disability—major	1,325	73.2	398,362	373,602	2,500	996,000
Permanent total disability—grave	495	68.6	350,000	417,513	25,000	1,616,185
Death	1,459	37.5	30,000	108,021	1,000	1,109,937

^aShows paid claims as a percentage of total claims within each of the severity of injury categories. For example, an estimated 1,810 claims involved major permanent total disabilities. Of these 1,325 (about 73.2 percent) were closed with payment.

^bOnly represents paid claims for which data were provided and, therefore, are representative of about half of all paid claims.

To analyze the extent to which economic losses were covered by the awards/settlements, we compared each patient's total economic loss to the indemnity payment. As shown in table 3.9, the patients' economic losses exceeded the indemnity payment in about 30 percent of these claims.

Table 3.9: Comparison of Patients' Economic Losses to Indemnity Payments

Comparison	Paid claims		
	Number ^a	Percent	Cumulative percent
Loss less than payment	11,299	61.8	61.8
Loss equal to payment ^b	1,495	8.2	70.0
Loss greater than payment	5,486	30.0	100.0
Total	18,279^c	100.0	

^aDetail does not add to total due to rounding.

^bFor purposes of this comparison, we considered loss to equal payment if loss was within 10 percent (less or greater) of the payment.

^cOnly represents paid claims for which data were provided and, therefore, are representative of about half of all paid claims.

As shown in table 3.9, economic losses for 11,299 patients were less than their indemnity payments. For about 5 percent of these claims, economic losses were from 75 to 89 percent of the payment, while for about

Chapter 3
Questions and Answers Regarding Medical
Malpractice Claims Closed With an
Indemnity Payment

55 percent, the losses were less than 25 percent of the payment (See table V.15.) "Minor temporary disabilities" (about 32 percent) and "minor permanent partial disabilities" (about 25 percent) were most often associated with these 11,299 claims (See table V.17.)

Of the 5,486 claims where the patients' economic losses were greater than the payment, about 8 percent had losses exceeding the payment by 11 to 25 percent. However, for 68 percent, the losses exceeded the payment by more than 100 percent (See table V.16.) For the claims where the patients' loss was greater than the payment, about 22 percent involved "minor temporary disabilities." About 18 percent involved "major permanent total disabilities," and 17 percent were "minor permanent partial disabilities" (See table V.17.)

**What Percent of
Indemnity Payments
Are Plaintiff
Attorney's Fees?**

Our analysis of plaintiff attorney's fees shows the fees as a percentage of the expected values of the indemnity payments to the patients.⁶ We initially analyzed 20,671 paid claims where the total indemnity payment was made by one of the companies participating in the study (about 65 percent of all paid claims). The expected values of the indemnity payments for these 20,671 claims accounted for a total of about \$3.5 billion. However, for 4,323 of these claims, the amount of the attorney's fees was unknown. Of the remaining 16,348 claims, 5,257 claims had reported fees of \$0 and the balance had fees totaling \$307.4 million.⁷

As shown in table 3.10, for about 52 percent of the claims, the plaintiff attorney's fees represented from 31 to 40 percent of the expected value of the indemnity payments. The fees represented 40 percent or less of the indemnity payment in about 96 percent of the claims.

⁶Because some of the claims closed in 1984 involve structured payments that will be made over time, the payments received by patients for the 31,786 paid claims may total about \$5.4 billion.

⁷Because data were not available for about half of the paid claims, the estimates provided are for about half of the universe of paid claims. We are unable to provide estimates for the balance of the paid claims.

Chapter 3
 Questions and Answers Regarding Medical
 Malpractice Claims Closed With an
 Indemnity Payment

**Table 3.10. Analysis of Plaintiff
 Attorney's Fees as a Percent of
 Indemnity Payments**

Attorney's fees as a percent of indemnity payments	Paid claims		Cumulative percent
	Number	Percent ^a	
0	5,257	32.2	32.2
1 to 10	554	3.4	35.6
11 to 20	538	3.3	38.9
21 to 30	871	5.3	44.2
31 to 40	8,518	52.1	96.3
41 to 50	503	3.1	99.4
51 to 100	107	0.7	100.1
Total	16,348^b	100.0	

^aDetail does not add to total due to rounding.

^bOnly represents paid claims for which data were provided and therefore, are representative of about half of all paid claims.

How Did Compensation for Noneconomic Losses Relate to Indemnity Payments?

To determine this relationship, we compared patients' compensation for noneconomic losses to the expected value of the indemnity payments.⁸ Of the 20,671 paid claims where the total indemnity payment was made by one of the companies participating in the study, compensation for noneconomic losses for 5,676 of these claims was unknown. Of the remaining 14,995 claims, 3,603 had noneconomic losses of \$0, and the balance of the claims included \$555.3 million as compensation for noneconomic losses.⁹ For 759 of these 14,995 paid claims (about 5 percent), compensation for noneconomic losses was for amounts greater than \$100,000 and totaled \$403.8 million. This compensation represented about 42 percent of the total expected value of the indemnity payments made for these 759 claims. As shown in table 3.11, about \$342.4 million (about 62 percent) of the compensation was included in the claims where losses were greater than \$200,000.

⁸Because some of the claims closed in 1984 involve structured payments that will be made over time, the payments received by patients for the 31,786 paid claims may total about \$5.4 billion.

⁹Because data were not available for about half of the paid claims, the estimates provided are for about half of the universe of paid claims. We are unable to provide estimates for the balance of the paid claims.

Chapter 3
 Questions and Answers Regarding Medical
 Malpractice Claims Closed With an
 Indemnity Payment

Table 3.11: Number of Claims and Compensation for Noneconomic Losses by Size of Noneconomic Losses

Noneconomic loss compensation ranges	Paid claims ^a		Aggregate compensation for noneconomic loss ^a
	Number	Percent	
\$0	3,603	24.0	\$0.0
\$1 to \$50,000	10,023	66.8	105.4
\$50,001 to \$200,000	1,049	7.0	167.6
More than \$200,000	321	2.1	342.4
Total	14,995	100.0	\$555.3

^aDetail does not add to total due to rounding

Note: Claims classified by noneconomic loss compensation ranges only represent paid claims for which data were provided and, therefore, are representative of about half of all paid claims

As shown in table 3.12, compensation for noneconomic losses represented from 51 to 60 percent of the expected value of the indemnity payments in about 18 percent of the claims. However, noneconomic losses accounted for 0 percent of the indemnity payments in 24 percent of the claims.

Table 3.12: Analysis of Compensation for Noneconomic Losses as a Percent of Indemnity Payments

Noneconomic losses as a percent of indemnity payments	Claims		Cumulative percent
	Number	Percent	
0	3,603	24.0	24.0
1 to 10	875	5.8	29.8
11 to 20	590	3.9	33.7
21 to 30	520	3.5	37.2
31 to 40	1,352	9.0	46.2
41 to 50	1,613	10.8	57.0
51 to 60	2,692	18.0	75.0
61 to 70	1,712	11.4	86.4
71 to 80	369	2.5	88.9
81 to 90	597	4.0	92.9
91 to 100	1,072	7.1	100.0
Total	14,995^a	100.0	

^aOnly represents paid claims for which data were provided and, therefore, are representative of about half of all paid claims

How Much Were Medicare/Medicaid Patients Compensated for Their Injuries Compared to Others?

Table 3.13 shows that when payment was made, the median and average indemnity for Medicare and Medicaid patients were lower than those for patients with other sources of payment for their health care costs.

Table 3.13: Number of Paid Claims and Indemnity Payments by Source of Payment for Health Care Costs

Source of health care payments	Paid claims		Indemnity payments			
	Number	Percent of total ^a	Median	Average	Range	
					Lowest	Highest
Self	2,741	47.1	\$16,000	\$61,394	\$9	\$589,300
Private/commercial insurance	15,188	50.5	23,500	105,250	1	1,800,000
Medicare	3,129	42.9	11,667	28,352	25	1,000,000
Medicaid	1,467	51.9	7,500	43,267	222	825,604
Workers compensation	766	35.7	30,000	69,503 ^b	108	800,000

^aShows paid claims as a percentage of total claims for each of the sources of payment for health care costs. For example, an estimated 7,293 claims involved Medicare patients. Of these, 3,129 (about 42.9 percent) were closed with payment.

^bEstimate subject to a large sampling error and should be used with caution.

Medicare and Medicaid beneficiaries experienced all types and severities of injuries; however, Medicare beneficiaries most often suffered "minor temporary disabilities" (about 28 percent) or they died (about 26 percent) as a result of malpractice incidents. Medicaid recipients experienced "insignificant" injuries (24 percent) and "minor temporary disabilities" (about 23 percent) most often. Injuries most frequently resulted from "other" and diagnostic errors for Medicare beneficiaries and from surgical and treatment errors for Medicaid beneficiaries.

Questions and Answers Regarding Health Care Providers Involved in Medical Malpractice Claims

The claims closed in 1984 involved an estimated¹ 101,890 health care providers. Of these, about 71 percent were physicians and about 21 percent were hospitals. The physician specialties most frequently involved in claims were obstetrics/gynecology and general surgery. Insurers often were not able to provide data related to the training, board certification, and malpractice claims history of the physicians involved in the claims closed in 1984. However, the limited data for which estimates could be made suggest that at least 51 percent were board certified in the specialty in which the injury occurred and at least 52 percent may have been in practice from 11 to 30 years (estimated based on graduation from medical school between 1950 and 1969 followed by 4 years of post-graduate training). Despite this, at least 42 percent had previous malpractice claims filed against them.

Against Whom Were Claims Filed and Payments Made?

A variety of health care providers, including individual practitioners and facilities, were named in medical malpractice claims. However, as shown in figure 4.1, the providers most frequently named in claims were physicians and hospitals, physicians accounted for about 71 percent and hospitals for about 21 percent. The remaining 8 percent included nurses, dentists, technicians, and other facilities, such as HMOs and nursing homes.

¹Unless otherwise indicated, all data presented in this chapter are estimated. The estimates are based on the number of providers for which the companies provided data. There were additional providers involved for which the companies provided no information, which accounts for the difference between the 101,890 used in this chapter and the 103,255 providers estimated and discussed in chapter 2. Sampling errors were not computed for the health care provider data estimates since the providers were not randomly selected, thus, the precision of these data is unknown.

Chapter 4
 Questions and Answers Regarding Health
 Care Providers Involved in Medical
 Malpractice Claims

Figure 4 1: Distribution of Providers
 Against Whom Claims Were Filed

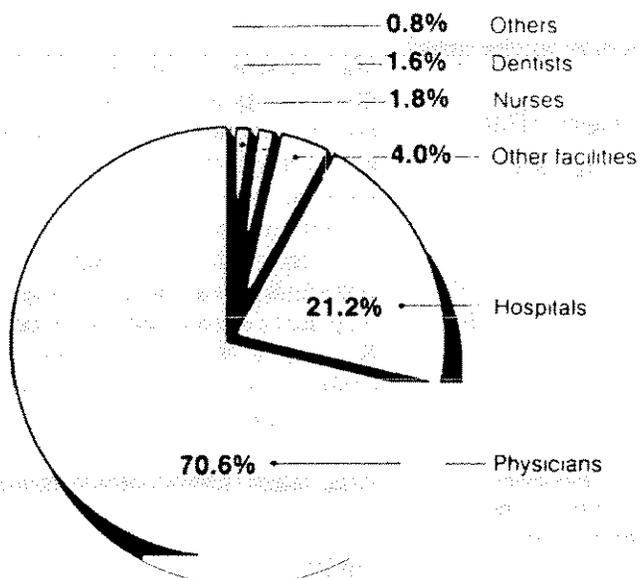


Table 4.1 shows that for all the providers involved in malpractice claims, payment was made for about 34 percent. Claims filed against hospitals had a higher payment percentage (about 39 percent) than those filed against physicians (about 32 percent). Over half of the claims filed against dentists resulted in payments.

Table 4.1: Number of Providers Involved
 in Claims and Their Payment Status by
 Type of Provider

Provider type	Total ^a	Providers			
		With payment		Without payment	
		Number ^a	Percent	Number ^a	Percent
All providers	101,890	34,979	34.3	66,470	65.2
Physicians	71,930	22,864	31.8	48,705	67.7
Hospitals	21,558	8,473	39.3	13,023	60.4
Facilities (other than hospitals)	4,032	1,483	36.8	2,544	63.1
Nurses	1,851	646	34.9	1,205	65.1
Dentists	1,650	911	55.2	739	44.8
Other	871	603	69.2	255	29.3

^aDetail does not add to total due to rounding

Note: Detail by payment status does not add to total or 100 percent because payment action was unknown for some providers

Chapter 4
 Questions and Answers Regarding Health
 Care Providers Involved in Medical
 Malpractice Claims

**What Were the
 Physician Specialties
 Most Often Named in
 Claims?**

Malpractice claims were filed against physicians practicing in more than 43 specialty areas. However, about half of the physicians named in claims practiced in six areas, and about 86 percent practiced in 17. For all the physicians in the United States, about 40 percent practiced in these six areas, and about 68 percent practiced in the 17 specialties. As shown in table 4.2, obstetricians/gynecologists and general surgeons were most often named in malpractice claims. About 24 percent of the physicians practiced in these two specialties. Orthopedic surgeons and internists accounted for about 16 percent of physicians named in claims. Nationally, about 12 percent of all practicing physicians were internists. General surgeons and obstetricians/gynecologists accounted for about 6 percent and 5 percent, respectively.

Table 4.2: Number of Physicians Involved in Claims Compared to All Physicians by Physician Specialty

Specialty	Physicians			
	All ^a		Involved in claims ^b	
	Number	Percent ^c	Number	Percent
Obstetrics/gynecology	25,234	5.2	8,927	12.4
General surgery	31,308	6.4	8,733	12.1
Orthopedic surgery	14,572	3.0	6,064	8.4
Internal medicine	60,118	12.4	5,397	7.5
General practice	29,399	6.1	4,555	6.3
Family practice	31,195	6.4	4,505	6.3
Radiology ^d	19,893	4.1	3,973	5.5
Emergency medicine	7,811	1.6	3,325	4.6
Anesthesiology	16,845	3.5	3,073	4.3
Plastic surgery	3,193	0.6	2,307	3.2
Urology	7,889	1.6	2,156	3.0
Pediatrics	28,027	5.8	2,147	3.0
Ophthalmology	13,281	2.7	2,027	2.8
Neurosurgery	3,498	0.7	1,850	2.6
Otolaryngology	^e	^e	1,304	1.8
Psychiatry	27,303	5.6	1,298	1.8
Pathology	12,502	2.6	426	0.6
Other	153,055	31.5	9,862	13.7
Total	485,123	100.0	71,930	100.0

^aData are as of December 31, 1981, the year most patient injuries occurred for the malpractice claims closed in 1984 and are from *Physician Characteristics and Distribution in the U.S., 1982 Edition*. Department of Data Release Services, Division of Survey and Data Resources, American Medical Association 1983, pp. 37 and 38.

^bDetail does not add to total due to rounding.

^cIncludes radiology, diagnostic radiology, and therapeutic radiology.

^dData not provided for this specialty.

Although obstetricians/gynecologists and general surgeons each made up about 12 percent of the physicians named in malpractice claims, payments were made on behalf of about 46 percent of the obstetricians/gynecologists, while 26 percent of the general surgeons had payments made against them, as shown in table 4.3. Payments were made for about 21 percent of the radiologists and internists.

Table 4.3: Payment Status for Physicians Involved in Claims by Physician Specialty

Specialty	With payment		Without payment	
	Number ^a	Percent	Number ^a	Percent
Obstetrics/gynecology	4,070	45.6	4,857	54.4
General surgery	2,267	26.0	6,466	74.0
Orthopedic surgery	2,058	33.9	4,006	66.1
Internal medicine ^b	1,148	21.3	4,206	77.9
General practice	1,724	37.9	2,831	62.1
Family practice ^b	1,169	25.9	3,330	73.9
Radiology ^c	824	20.7	3,148	79.2
Emergency medicine	814	24.5	2,511	75.5
Anesthesiology ^b	1,273	41.4	1,794	58.4
Plastic surgery	689	29.9	1,618	70.1
Urology	1,179	54.7	977	45.3
Pediatrics	713	33.2	1,434	66.8
Ophthalmology	670	33.1	1,357	66.9
Neurosurgery	440	23.8	1,410	76.2
Otolaryngology	710	54.5	594	45.5
Psychiatry	655	50.5	643	49.5
Pathology	324	76.0	102	24.0
Other ^b	2,139	21.7	7,418	75.2
Total^b	22,864	31.8	48,705	67.7

^aDetail does not add to total due to rounding.

^bDetail does not add to number of physicians involved in claims as shown in table 4.2 because payment action was unknown for some physicians.

^cIncludes radiology, diagnostic radiology, and therapeutic radiology. Also, detail does not add to number of radiologists involved in claims as shown in table 4.2 because of rounding.

How Did Companies' Indemnity Payments Differ by Physician Specialty?

We analyzed this question for 14,749 paid malpractice claims in which only one provider was named and that provider was a physician. For these cases, as shown in table 4.4, companies' indemnity payments ranged from \$20 for an anesthesiologist to \$1,616,185 for a general surgeon. The median payment for physicians was \$25,000 and the average was \$85,179.

Chapter 4
 Questions and Answers Regarding Health
 Care Providers Involved in Medical
 Malpractice Claims

Table 4.4: Number of Paid Claims Involving Only One Physician Provider and Indemnity Payments by Physician Specialty

Physician specialty	Claims with one physician ^a		Indemnity payments			
	Total	Paid	Median	Average	Range	
					Lowest	Highest
All claims	33,068	14,749	\$25,000	\$85,179	\$20	\$1,616,185
Obstetrics/gynecology	5,165	2,711	75,000	177,509	90	1,000,000
General surgery	3,952	1,173	49,000	120,889	250	1,616,185
Orthopedic surgery	3,283	1,493	25,000	80,059	108	750,000
Internal medicine	1,288	629	10,000	42,757	40	592,000
General practice	2,076	1,071	45,000	50,264	40	800,000
Family practice	2,400	717	15,000	40,339	442	700,000
Radiology ^b	520	231	19,500	53,101	100	1,000,000
Emergency medicine	826	364	7,000	22,640	250	197,500
Anesthesiology	1,851	884	3,000	42,680	20	632,043
Plastic surgery	1,998	618	22,500	70,172	200	850,000
Urology	912	771	625	14,896	116	137,500
Pediatrics	1,640	492	195,000	198,644	120	521,902
Ophthalmology	1,260	578	10,000	55,593	28	290,000
Neurosurgery	828	247	10,000	65,226	2,500	1,000,000
Otolaryngology	632	419	23,500	23,264	424	543,000
Psychiatry	957	637	25,000	34,914	600	560,000
Pathology	195	195	250,000	197,652	2,500	250,000

^aTotal and paid claims data are provided for 17 specialties and, therefore, do not add to totals for all claims.

^bIncludes radiology, diagnostic radiology, and therapeutic radiology.

Did the Physicians Have Previous Claims Made Against Them?

As shown in table 4.5, about 42 percent of the physicians had previous claims made against them; however, the information was unknown for about 28 percent.

Table 4.5: Number of Physicians Who Had Previous Claims Filed Against Them

Previous claims	Physicians	
	Number ^a	Percent
Yes	30,156	41.9
No	21,298	29.6
Unknown	20,477	28.5
Total	71,930	100.0

^aDetail does not add to total due to rounding.

When Did the Physicians Graduate From Medical School?

As shown in table 4.6, the largest percentage of physicians involved in claims—about 34 percent—graduated from medical school during the years 1960-69. Nationally, about 24 percent of all physicians graduated during that time. For all the physicians practicing in the United States, about 37 percent graduated from medical school in more recent years (1970-81) compared to those named in medical malpractice claims (about 17 percent). However, the year of medical school graduation was unknown for about 20 percent of the physicians against whom claims were made.

Table 4.6. Number of Physicians Involved in Claims Compared to All Physicians by Years of Graduation

Years of graduation	Physicians			
	All ^a		Involved in claims	
	Number	Percent ^b	Number	Percent ^b
1920-29	13,768 ^c	2.8 ^c	214	0.3
1930-39	34,530	7.1	1,543	2.1
1940-49	57,852	11.9	6,445	9.0
1950-59	83,484	17.2	13,225	18.4
1960-69	115,239	23.8	24,073	33.5
1970-79	148,923	30.7	11,373	15.8
1980-81	31,327	6.4	729	1.0
Unknown	.	.	14,168	19.7
Total	485,123	100.0	71,770^d	100.0

^aData are as of December 31, 1981, and are from *Physician Characteristics and Distribution in the U.S.*, 1982 Edition, Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, 1983, p. 44. (The figures shown on the source document have been discussed with the American Medical Association and have been corrected.)

^bDetail does not add to total due to rounding.

^cBefore 1930.

^dDoes not include 160 physicians who graduated in 1982 and 1983.

To What Extent Were Foreign-Trained Physicians Involved in Malpractice Claims?

Nationally, in 1981, 110,542² (about 23 percent) of the physicians practicing in the United States were educated in foreign medical schools.¹ Figure 4.2 shows that, of the 71,930 physicians in our closed claim universe, about 23 percent (16,780)⁴ were foreign trained.

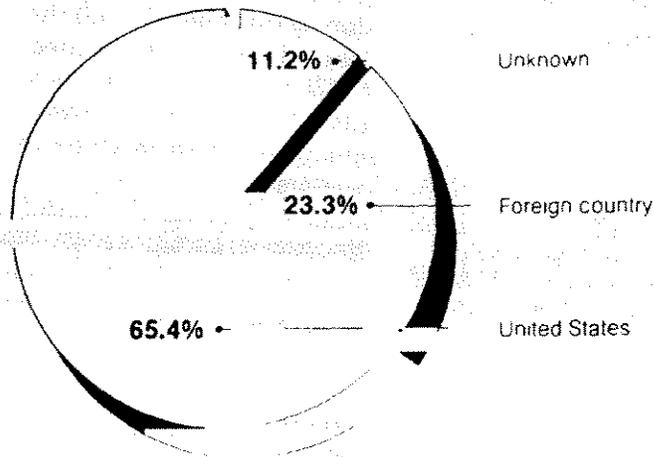
²Includes 7,780 physicians educated in Canadian schools.

³*Physician Characteristics and Distribution in the U.S.*, 1982 Edition, Department of Data Release Services, Division of Survey and Data Resources, American Medical Association, 1983, pp. 44 and 46.

⁴Includes 885 physicians educated in Canadian schools.

Chapter 4
Questions and Answers Regarding Health
Care Providers Involved in Medical
Malpractice Claims

Figure 4.2: Distribution of Physicians by Location of Medical Education



Note: Detail does not add to total due to rounding

To What Extent Were Board Certified Physicians Involved in Patient Injuries?

About 52 percent of all physicians practicing in this country in 1981 were board certified.⁵ As shown in table 4.7, about 51 percent of the physicians involved in claims closed in 1984 were board certified in the medical specialty in which the liability injury occurred. However, this information was unknown for about 35 percent.

Table 4.7: Board Certification Status for Physicians Involved in Claims Closed in 1984

Board certification	Physicians	
	Number	Percent ^a
Yes	36,495	50.7
No	10,537	14.6
Unknown	24,898	34.6
Total	71,930	100.0

^aDetail does not add to total due to rounding

In What Type of Practice Were the Physicians?

Table 4.8 provides the frequency of insured physicians' involvement in the closed claims by type of practice. As the table shows, about 70 percent were in either individual or group practice.

⁵Physician Characteristics and Distribution in the U.S., 1982 Edition, p. 41

Chapter 4
 Questions and Answers Regarding Health
 Care Providers Involved in Medical
 Malpractice Claims

Table 4.8: Number of Physicians by Type of Practice

Type of practice	Physicians	
	Number	Percent ^a
Physician in individual practice	27,192	37.8
Physician in group practice	23,210	32.3
Hospital-based salaried physician	6,427	8.9
HMO-based salaried physician	817	1.1
Emergency care center salaried physician	966	1.3
Other	912	1.3
Unknown	12,406	17.2
Total	71,930	100.0

^aDetail does not add to total due to rounding

Previous Closed Claims Studies

Closed claim studies have been undertaken to collect data for such purposes as developing programs aimed at preventing medical injuries, evaluating legislation already enacted, providing a basis for enacting legislation, and reviewing aspects of insurance rating and classification. Among previous closed claims studies are the following.

- The Secretary of Health, Education, and Welfare (now Health and Human Services) established a commission on medical malpractice. The commission issued a report in 1973 based on about 3,000 claims closed in 1970 by 26 insurance companies. These companies were among the largest insurers of medical malpractice. Analysis of the data focused on the characteristics of claims and the relationship between legal procedures concerning medical malpractice and the occurrence of claims.
- The Department of Health, Education, and Welfare sponsored another study, issued in 1978, based on all claims closed between July 1, 1976, and October 31, 1976, by nine of the largest malpractice insurers. The study developed a file of closed claims data for use in analyzing injuries and compensation.
- A report issued in 1976 by the Insurance Services Office for the American Insurance Association was based on a sample of claims closed in 1974 by 11 companies. The report provided quantitative information about the closed claims in its sample.
- The National Association of Insurance Commissioners published four books entitled NAIC Malpractice Claims, which were issued between December 1975 and May 1977. These publications were based on 25,000 claims closed between July 1, 1975, and June 30, 1976, by 54 insurers writing \$1 million or more of malpractice business in any single year between 1970 and 1975. The analysis focused on (1) developing programs aimed at preventing medical injuries, (2) evaluating legislation already enacted and providing a basis for legislation to be enacted, and (3) reviewing aspects of pricing methodology. In October 1977 the National Association of Insurance Commissioners resumed data collection on all claims closed since July 1, 1976. At that time, the data collection instrument was modified to provide more detail for professional and hospital loss prevention programs. Cooperation was received from the many new limited purpose companies formed since 1975 (i.e., physician-owned and hospital-owned companies). A final compilation of data encompassed 71,782 closed claims and was issued in September 1980.

Appendix II
Closed Claims Data Collection Instrument

4. What caused your company to open this claim file? (CHECK ONE.) (14)

- 1. Patient complained to insured _____
- 2. Patient's relative, guardian or friend complained to insured
- 3. Patient's attorney requested records from insured _____ (GO TO QUESTION 6.)
- 4. Patient's attorney notified insured of a claim _____
- 5. Suit papers served on insured _____
- 6. Practitioner or hospital notified company of malpractice incident _____ (GO TO QUESTION 5.)
- 7. Other (PLEASE SPECIFY.) _____

- 8. Unknown _____

5. Did the company initiate contact with the patient or the patient's representative? (CHECK ONE.) (15)

- 1. Yes
- 2. No
- 3. Unknown

6. During what month and year did the patient or patient's representative make a claim? / / - / / /
mo. yr.
(16-19)

7. In what state was the claim filed? / / /
(20-21)

8. How many medical providers were involved when this claim was first made? / / /
(22-23)

9. How many medical providers were insured by this company? / / /
(24-25)

Appendix II
Closed Claims Data Collection Instrument

III. INJURY DATA

21. What was the principal allegation(s) of negligence/error leading to injury or complication for which the claim was made? (ENTER UP TO 2 CODES FROM THE LIST ON PAGES 17-18 OF THE INSTRUCTION BOOKLET. IF UNABLE TO FIND THE APPROPRIATE CODE, DESCRIBE THE ALLEGATION(S) OF NEGLIGENCE.)

/ / /
*02 (8-9)

/ / /
(10-11)

22. How severe was the injury? (CHECK SEVERITY OF ULTIMATE INJURY ON SCALE PROVIDED BELOW.) (12-13)

01. Emotional only. For example, fright, pain and suffering; no physical damage.

02. Insignificant. For example, lacerations, contusions, minor scars, rash. No delay in recovery.

TEMPORARY DISABILITY

03. Minor. For example, infections, misset fracture, fall in hospital. Recovery delayed.

04. Major. For example, burns, surgical material left, drug side-effect, brain dysfunction. Recovery delayed.

PERMANENT PARTIAL DISABILITY

05. Minor. For example, loss of fingers, loss or damage to organs. Include non-disabling injuries.

06. Major. For example, deafness, loss of limb, loss of eye, loss of one kidney or lung.

PERMANENT TOTAL DISABILITY

07. Major. For example, paraplegia, blindness, loss of two limbs, brain damage.

08. Grave. For example, quadriplegia, severe brain damage, life long care or fatal prognosis.

09. Death.

OTHER

10. Other (PLEASE SPECIFY.) _____

A-5

Appendix II
Closed Claims Data Collection Instrument

IV. COST DATA

23. Was payment made? (CHECK ONE.) (14)
1. Yes (GO TO QUESTION 24.)
 2. No (GO TO QUESTION 31.)
24. What was the form of the payment? (CHECK ALL THAT APPLY.) (15-18)
1. Lump sum
 2. Structured settlement (periodic payments)
 3. Free services
 4. Unknown
25. During what month and year was any payment first made to the claimant? /___/___/ - /___/___/ /
mo. yr. (19-22)
26. What was the total value (the expected yield) of the indemnity settlement or award to the claimant on behalf of all defendants by all sources? (I.e., what is the total the claimant would get over time including structured payments and the value of free services, if any.) (IF UNKNOWN, INDICATE WITH "--" AND GO TO QUESTION 27.)
- \$/___/___/ /___/___/ /___/___/ /
(23-30)
27. What was the total value (the expected yield) of the indemnity settlement or award to the claimant by this company? \$/___/___/ /___/___/ /___/___/ /
(31-38)
28. What was the total cost to this company for settlement to the claimant? (This includes the amount of any lump-sum payment and/or the cost of any annuity purchased for future structured payments. Include indemnity only; do not include expenses.) \$/___/___/ /___/___/ /___/___/ /
(39-46)

Appendix II
Closed Claims Data Collection Instrument

4. Does this insured carry any other excess/umbrella policies? (CHECK ONE.) (37)

- 1. Yes
- 2. No
- 3. Unknown

5. Was payment made on behalf of this insured? (CHECK ONE.) (38)

- 1. Yes
- 2. No
- 3. Unknown

6. What was the month and year of the final disposition of this claim for this insured? (Date claim file was closed for indemnity purposes; all appeals were final.) / / - / /
mo. yr. (39-42)

7. At what stage of this claim proceeding was the claim closed for this insured? (CHECK ONE.) (43-44)

- 01. Claim filed, but before suit
- 02. Suit, but before trial
- 03. Suit, but before arbitration
- 04. During trial but before verdict
- 05. During binding arbitration, but before decision
- 06. After trial verdict by jury
- 07. After trial verdict without jury
- 08. After appeal
- 09. After binding arbitration
- 10. Other (PLEASE SPECIFY.) _____

Appendix II
Closed Claims Data Collection Instrument

8. During its pendency, did this claim undergo a review by a pre-trial screening panel? (CHECK ONE.) (45)

1. Yes (GO TO QUESTION 9.)
2. No (GO TO QUESTION 10.)
3. Unknown (GO TO QUESTION 10.)

9. Was the recommendation of the pre-trial review panel for the claimant or the insured? (CHECK ONE.) (46)

1. Claimant
2. Insured
3. No finding
4. Unknown

10. During its pendency, did the claim undergo arbitration? (CHECK ONE.) (47)

1. Yes (GO TO QUESTION 11.)
2. No (GO TO SECTION II.)
3. Unknown (GO TO SECTION II.)

11. Was the arbitration finding for the claimant or the insured? (CHECK ONE.) (48)

1. Claimant (GO TO QUESTION 12.)
2. Insured (GO TO QUESTION 12.)
3. No finding (GO TO SECTION II.)
4. Unknown (GO TO SECTION II.)

12. Was the arbitration binding or non-binding? (CHECK ONE.) (49)

1. Binding
2. Non-binding
3. Unknown

B-3

Appendix II
Closed Claims Data Collection Instrument

II. PRACTITIONER DATA

ANSWER THIS SECTION ONLY IF THE TYPE OF INSURED INDICATED IN QUESTION 2 WAS A PHYSICIAN. IF NOT A PHYSICIAN, FORM B IS COMPLETE.

13. At the time of the liability injury how was the insured physician practicing? (CHECK ONE.) (50)

1. Physician in individual practice
2. Physician in group practice
3. Hospital based salaried physician
4. HMO based salaried physician
5. Emergency-care center, salaried physician
6. Other (PLEASE SPECIFY.) _____

7. Unknown

14. What was the insured's status at the time of the liability injury? (CHECK ONE.) (51)

1. Medical student
2. Resident
3. Fellow
4. Physician
5. Unknown
6. Other (PLEASE SPECIFY.) _____

15. Was the insured physician board certified in the medical speciality area in which the liability injury occurred? (CHECK ONE.) (52)

1. Yes
2. No
3. Unknown

B-4

Appendix II
Closed Claims Data Collection Instrument

16. In what country did the insured physician receive primary medical education?

(COUNTRY)

1-1-1
(53-54)

Unknown

17. In what year did the insured graduate from medical school?

1-1-1
(55-56)

18. Have previous claims been made against the insured? (CHECK ONE.)

(57)

1. Yes

2. No

3. Unknown

B-5

Principal Allegations of Negligence¹ That Led to Injury or Complication for Which Claim Was Made

Diagnosis Related

- Delay in diagnosis
- Failure to diagnose (no diagnosis made)
- Misdiagnosis (original diagnosis incorrect)
- Failure to obtain consent for diagnostic procedure
- Unnecessary diagnostic test
- Improper performance of diagnostic test
- Other diagnosis-related error

Anesthesia Related

- Failure to complete patient assessment
- Failure to monitor
- Failure to test equipment
- Improper choice of anesthesia
- Improper administration of anesthesia
- Improper use of equipment
- Improper intubation
- Improper positioning
- Other anesthesia-related error

Surgery Related

- Failure to obtain consent for surgery
- Improper performance
- Improper positioning
- Retained foreign bodies
- Unnecessary surgery
- Wrong body part
- Other surgery-related error

Medication Related

- Wrong medication ordered
- Wrong dosage ordered
- Other drug-related error

Medication Administration Related

- Wrong drug given
- Wrong dosage given
- Wrong patient
- Improper route of administration
- Improper method of administration
- Other medication administration-related error

¹The allegations of negligence were developed by the Risk Management Foundation of the Harvard Medical Institutions and are used with their permission

Appendix III
Principal Allegations of Negligence That Led
to Injury or Complication for Which Claim
Was Made

Intravenous Related

Failure to monitor
Improper performance
Other intravenous-related error

Obstetrics Related

Failure to obtain consent
Improper management of pregnancy
Failure to properly manage labor
Improper choice of delivery method
Improperly performed vaginal delivery
Delay in C-section
Improperly performed C-section
Failure to identify fetal distress
Failure to treat fetal distress
Delay in treating fetal distress
Wrongful life/birth
Abandonment
Other obstetrics-related error

Treatment Related

Failure to obtain consent for treatment
Delay in treatment
Failure to render treatment
Improper choice of treatment
Improper performance
Premature end of treatment
Failure to instruct
Other treatment-related error

**Physiology/Behavior
Monitoring Related**

Failure to monitor
Failure to report
Failure to respond
Other monitoring-related error

**Biomedical Equipment
Related**

Failure to inspect
Inadequate maintenance/repair
Improper use
Malfunction/failure
Failure to respond to product warnings
Other equipment-related error

Appendix III
Principal Allegations of Negligence That Led
to Injury or Complication for Which Claim
Was Made

Blood Products Related

- Contamination from blood product
- Wrong type of blood product
- Other blood products-related error

Other

- Failure to follow consent policies
- Failure to follow policy/procedure
- Failure to review provider performance
- Failure to insure patient safety
- Transportation
- Failure to protect third parties
- Falls
- Other

Categories Used to Classify Injuries by Severity

Emotional. For example, fright, pain and suffering, no physical damage

Insignificant For example, lacerations, contusions, minor scars, rash. No delay in recovery

Temporary Disability

- Minor For example, infections, musset fracture, fall in hospital. Recovery delayed.
- Major For example, burns, surgical material left, drug side-effect, brain dysfunction. Recovery delayed.

Permanent Partial Disability:

- Minor For example, loss of fingers, loss or damage to organs. Include nondisabling injuries
- Major. For example, deafness, loss of limb, loss of eye, loss of one kidney or lung.

Permanent Total Disability.

- Major. For example, paraplegia, blindness, loss of two limbs, brain damage.
- Grave. For example, quadriplegia, severe brain damage, life long care or fatal prognosis.

Death

Other

Supplemental Estimated Closed Claims Data

Table V.1: Number of Claims for Surgical Errors by Specific Allegations

Allegations	Surgical error claims	
	Number	Percent
All claims	18 697	100.0
Improper performance	13 966	74.7
Other surgery-related error	1 690	9.1
Retained foreign bodies	1 051	5.6
Unnecessary surgery	811	4.3
Failure to obtain consent for surgery	780	4.2
Improper positioning		
Wrong body part		

^aLimited occurrence in sample precludes calculation of reliable estimate

Table V.2: Number of Claims for Diagnostic Errors by Specific Allegations

Allegations	Diagnostic error claims	
	Number	Percent
All claims	17 372	100.0
Failure to diagnose (no diagnosis made)	6 495	37.4
Misdiagnosis (original diagnosis incorrect)	5 794	33.4
Delay in diagnosis	3 891	22.4
Improper performance of diagnostic test	871	5.0
Failure to obtain consent for diagnostic procedure	186	1.1
Unnecessary diagnostic test		
Other diagnosis-related error		

^aLimited occurrence in sample precludes calculation of reliable estimate

Table V.3: Number of Claims for Treatment Errors by Specific Allegations

Allegations	Treatment error claims	
	Number	Percent
All claims	14 635	100.0
Improper performance	6 602	45.1
Improper choice of treatment	3 179	21.7
Failure to render treatment	2 073	14.2
Other treatment-related error	1 192	8.1
Delay in treatment	1 047	7.2
Failure to obtain consent for treatment		
Premature end of treatment		
Failure to instruct		

^aLimited occurrence in sample precludes calculation of reliable estimate

Appendix v
Supplemental Estimated Closed Claims Data

Table V.4: Number of Claims According to Payment Status by Type of Facility Where Injury Occurred

Type of facility	With payment		Without payment	
	Number	Percent	Number ^a	Percent
All claims	31,786	43.3	41,686	56.7
Community hospital—nonteaching	16,269	38.1	26,397	61.9
Community hospital—teaching	5,797	43.8	7,432	56.2
Other hospital	1,928	59.5	1,312	40.5
Physician's office	5,106	55.1	4,169	44.9
Nursing home, emergency care center, HMO, patient's home, other, and unknown	2,686	53.1	2,377	46.9

^aDetail does not add to total due to rounding

Table V.5: Number of Paid Claims and Indemnity Payments by Type of Facility Where Injury Occurred

Type of facility	Paid claims		Indemnity payments			
	Number	Percent of total ^a	Median	Average	Lowest	Highest
All claims	31,786	43.3	\$18,000	\$80,741	\$1	\$2,472,020
Community hospital—nonteaching	16,269	38.1	17,500	92,375	9	2,472,020
Community hospital—teaching	5,797	43.8	25,000	113,083	1	1,800,000
Other hospital	1,928	59.5	25,000	72,172	20	1,616,185
Physician's office	5,106	55.1	15,000	30,559	28	500,000
Nursing home, emergency care center, HMO, patient's home, other, and unknown	2,686	53.1	18,000	42,009	93	1,109,937

^aShows paid claims as a percentage of total claims for each of the types of facilities. For example, an estimated 13,229 claims involved injuries that occurred in teaching hospitals. Of these, 5,797 (about 43.8 percent) were closed with payment.

Table V.6: Number of Claims According to Payment Status by Patients' Age Ranges

Age ranges (years)	With payment		Without payment	
	Number	Percent	Number	Percent
All claims	30,911	43.8	39,730	56.2
At birth	3,049	49.1	3,160	50.9
Less than 1	^a	^a	^a	^a
1 to 17	3,482	59.2	2,398	40.8
18 to 29	5,441	37.3	9,165	62.7
30 to 39	5,023	45.6	5,990	54.4
40 to 49	3,950	39.1	6,148	60.9
50 to 59	3,512	39.5	5,375	60.5
60 to 64	1,771	52.1	1,630	47.9
65 and over	4,099	42.6	5,517	57.4

^aLimited occurrence in sample precludes calculation of reliable estimate

Note: The total number of claims is based on the number of claims for which the relevant data were provided.

**Appendix V
Supplemental Estimated Closed Claims Data**

Table V.7: Number of Paid Claims and Indemnity Payments by Patients' Age Ranges

Age ranges (years)	Paid claims		Indemnity payments			
	Number	Percent of total ^a	Median	Average	Range	
					Lowest	Highest
All claims	30,911	43.8	\$20,000	\$81,895	\$1	\$2,472,020
At birth	3,049	49.1	200,000	300,500	480	2,000,000
Less than 1	^b	^b	^b	^b		
1 to 17	3,482	59.2	15,000	40,071	9	700,000
18 to 29	5,441	37.3	13,750	60,389	93	2,059,388
30 to 39	5,023	45.6	15,000	64,078	90	1,616,185
40 to 49	3,950	39.1	35,000	83,858	18	2,472,020
50 to 59	3,512	39.5	20,000	75,222	1	850,000
60 to 64	1,771	52.1	15,000	37,639	25	1,000,000
65 and over	4,099	42.6	7,500	31,627	38	632,043

^aShows paid claims as a percentage of total claims within each of the age ranges. For example, an estimated 6,209 claims involved injuries occurring at birth. Of these, 3,049 (about 49.1 percent) were closed with payment.

^bLimited occurrence in sample precludes calculation of reliable estimate.

Note: The total number of claims is based on the number of claims for which the relevant data were provided.

Table V.8: Number of Claims According to Payment Status by Patients' Sex

Sex	With payment		Without payment	
	Number	Percent	Number	Percent
All claims	31,786	43.3	41,591	56.7
Male	14,131	44.7	17,499	55.3
Female	17,655	42.3	24,092	57.7

Note: The total number of claims is based on the number of claims for which the relevant data were provided.

Table V.9: Number of Paid Claims and Indemnity Payments by Patients' Sex

Sex	Paid claims		Indemnity payments			
	Number	Percent of total ^a	Median	Average	Range	
					Lowest	Highest
All claims	31,786	43.3	\$18,000	\$80,741	\$1	\$2,472,020
Male	14,131	44.7	18,000	86,420	18	2,000,000
Female	17,655	42.3	18,000	76,196	1	2,472,020

^aShows paid claims as a percentage of total claims for each sex. For example, an estimated 31,630 claims involved males. Of these, 14,131 (about 44.7 percent) were closed with payment.

Appendix V
Supplemental Estimated Closed Claims Data

Table V.10: Number of Claims According to Payment Status by Patients' Occupational Status

Patients' occupational status	With payment		Without payment	
	Number	Percent	Number	Percent
All claims	31,786	43.3	41,686	56.7
Employed	9,847	41.2	14,074	58.8
Self-employed	1,723	49.8	1,739	50.2
Homemaker	3,921	42.1	5,389	57.9
Retired	3,111	36.6	5,380	63.4
Unemployed	2,952	44.0	3,761	56.0
Dependent child/student	6,972	55.6	5,560	44.4
Independent student, other, and unknown	3,260	36.1	5,783	63.9

Table V.11: Number of Paid Claims and Indemnity Payments by Patients' Occupational Status

Patients' occupational status	Paid claims		Indemnity payments			
	Number	Percent of total ^a	Median	Average	Range	
					Lowest	Highest
All claims	31,786	43.3	\$18,000	\$80,741	\$1	\$2,472,020
Employed	9,847	41.2	25,000	69,659	18	1,800,000
Self-employed	1,723	49.8	15,000	81,598	41	1,616,185
Homemaker	3,921	42.1	19,500	57,310	1	2,059,388
Retired	3,111	36.6	8,500	31,979	25	1,000,000
Unemployed	2,952	44.0	9,300	55,703	187	949,991
Dependent child/student	6,972	55.6	30,000	156,089	9	2,000,000
Independent student, other, and unknown	3,260	36.1	7,500	50,019	20	2,472,020

^aShows paid claims as a percentage of total claims within each of the occupational status categories. For example, an estimated 23,921 claims involved employed patients. Of these 9,847 (about 41.2 percent) were closed with payment.

Table V.12: Number of Claims According to Payment Status by Claim Resolution Period

Time (months)	With payment		Without payment	
	Number	Percent	Number	Percent
All claims	31,642	43.2	41,562	56.8
0 (less than 1)	158	62.7	94	37.3
1 to 12	8,899	35.2	16,367	64.8
13 to 24	8,062	44.6	10,006	55.4
25 to 36	5,300	43.4	6,914	56.6
37 to 48	3,988	61.4	2,503	38.6
49 to 72	3,731	44.8	4,591	55.2
73 to 132	1,504	58.1	1,087	41.9

Note: The total number of claims is based on the number of claims for which the relevant data were provided.

Appendix V
Supplemental Estimated Closed Claims Data

Table V.13: Number of Claims and Disposition Time by Severity of Injury Categories

Severity of injury	Number of claims	Disposition time			
		Median	Average	Range	
				Lowest	Highest
All claims ^a	73,058	19.0	25.0	0.0 ^b	132.0
Emotional	4,654	11.0	12.2	0.0	55.0
Insignificant	6,685	14.0	20.8	0.0	110.0
Temporary disability—minor	21,887	20.0	24.4	0.0	108.0
Temporary disability—major	8,028	16.0	22.5	0.0	82.0
Permanent partial disability—minor	11,551	18.0	26.8	0.0	114.0
Permanent partial disability—major	4,130	33.0	34.5	0.0	132.0
Permanent total disability—major	2,788	32.0	33.7	2.0	90.0
Permanent total disability—grave	1,794	23.0	31.4	1.0	115.0
Death	11,159	23.0	27.7	1.0	109.0

^aDetail does not add to total because not all claims were classified by the severity of injury categories.

^bA 0.0 in this column indicates that the claim was filed and resolved within the same month.

Note: The total number of claims is based on the number of claims for which the relevant data were provided.

Table V.14: Number of Claims Involving One Provider According to Payment Status by Stage of Settlement

Settlement stage	With payment		Without payment	
	Number	Percent	Number ^a	Percent
All claims	24,630	43.7	31,726	56.3
Claim filed, before suit	7,562	35.8	13,544	64.2
Suit, before trial	15,252	53.4	13,288	46.6
During trial, before verdict	585	69.8	253	30.2
After verdict by jury and without jury	331	18.8	1,425	81.2
After appeal	277	27.4	733	72.6
Suit, before arbitration and after arbitration	370	20.3	1,456	79.7
Other	253	19.8	1,025	80.2

^aDetail does not add to total due to rounding.

Note: The total number of claims is based on the number of claims for which the relevant data were provided.

Appendix V
Supplemental Estimated Closed Claims Data

Table V.15: Economic Losses Compared to Indemnity Payments for Claims Where Losses Were Less Than Payment

Loss as a percent of payment	Paid claims		Cumulative percent
	Number ^a	Percent	
1 to 24	6,253	55.3	55.3
25 to 49	2,629	23.3	78.6
50 to 74	1,813	16.0	94.6
75 to 89	605	5.4	100.0
Total	11,299	100.0	

^aDetail does not add to total due to rounding

Table V.16: Economic Losses Compared to Indemnity Payments for Claims Where Losses Were Greater Than Payment

Percent by which loss exceeds payment	Paid claims		Cumulative percent
	Number	Percent ^a	
11 to 25	432	7.9	7.9
26 to 50	556	10.1	18.0
51 to 75	326	5.9	23.9
76 to 100	462	8.4	32.3
Over 100	3,710	67.6	99.9
Total	5,486	100.0	

^aDetail does not add to total due to rounding

Table V.17: Number of Claims With Economic Losses Less or Greater Than Indemnity Payments by Severity of Injury Categories

Severity of injury	Economic losses			
	Less than		Greater than	
	Number	Percent	Number	Percent
All claims	11,299	100.0	5,486	100.0
Emotional	684	6.1	^a	
Insignificant	1,538	13.6	355	6.5
Temporary disability—minor	3,572	31.6	1,191	21.7
Temporary disability—major	1,022	9.0	646	11.8
Permanent partial disability—minor	2,789	24.7	932	17.0
Permanent partial disability—major	455	4.0	315	5.7
Permanent total disability—major	338	3.0	979	17.8
Permanent total disability—grave	^a	^a	437	8.0
Death	847	7.5	543	9.9

^aLimited occurrence in sample precludes calculation of reliable estimate

Key Estimated Closed Claims Data and Related Sampling Errors

Table VI.1: Total Indemnity Payments and Related Sampling Error by Indemnity Payment Ranges

Payment ranges	Indemnity payments in millions	
	Estimate	Sampling error ^a
All claims	\$2,566.4	\$17.3
\$1 to \$999	1.4	0.2
\$1,000 to \$4,999	13.1	1.5
\$5,000 to \$9,999	26.7	3.8
\$10,000 to \$24,999	67.6	7.5
\$25,000 to \$49,999	161.5	13.8
\$50,000 to \$99,999	264.2	23.5
\$100,000 to \$249,999	474.1	37.4
\$250,000 to \$999,999	1,229.4	92.1
\$1 million or more ^b	328.4	272.6

^aSampling errors are stated at the 95-percent confidence level

^bEstimate subject to a large sampling error and should be used with caution

Note: The universe of claims was 31,786

Table VI.2: Number of Claims and Related Sampling Error by Principal Allegations of Negligence Leading to the Injuries Involved

Type of error	Number		Percent	
	Estimate	Sampling error ^a	Estimate	Sampling error ^a
Surgery	18,697	130	25.4	0.2
Diagnosis	17,372	351	23.6	0.5
Treatment	14,635	1,215	19.9	1.7
Obstetrics	5,517	1,320	7.5	1.8
Medication	3,019	289	4.1	0.4
Medication administration	2,735	291	3.7	0.4
Anesthesia	2,720	306	3.7	0.4
Physiology/behavior monitoring, biomedical equipment, intravenous, blood products, and other	8,774	1,116	11.9	1.5

^aSampling errors are stated at the 95-percent confidence level

Note: The universe of claims was 73,468

Appendix VI
Key Estimated Closed Claims Data and
Related Sampling Errors

**Table VI.3: Number of Claims and
Related Sampling Error by Severity of
Injury Categories**

Severity of injury	Number		Percent	
	Estimate	Sampling error ^a	Estimate	Sampling error ^a
Emotional	4,660	579	6.4	0.8
Insignificant	6,823	603	9.3	0.8
Temporary disability—minor	21,969	802	30.0	1.1
Temporary disability—major	8,101	865	11.1	1.2
Permanent partial disability—minor	11,551	464	15.8	0.6
Permanent partial disability—major	4,225	341	5.8	0.5
Permanent total disability—major	2,788	219	3.8	0.3
Permanent total disability—grave	1,794	97	2.4	0.1
Death	11,179	168	15.3	0.2

^aSampling errors are stated at the 95-percent confidence level.

Note: The universe of claims was 73,090.

**Table VI.4: Average Disposition Time
and Related Sampling Error by Severity
of Injury Categories**

Severity of injury	Disposition time in months	
	Estimate	Sampling error ^a
All claims	28.0	0.1
Emotional	14.9	2.6
Insignificant	21.8	2.0
Temporary disability—minor	25.7	1.1
Temporary disability—major	22.4	1.8
Permanent partial disability—minor	28.9	1.3
Permanent partial disability—major	31.7	3.2
Permanent total disability—major	37.2	7.1
Permanent total disability—grave	38.8	7.2
Death	33.2	1.2

^aSampling errors are stated at the 95-percent confidence level.

Note: The universe of claims was 31,642.

Appendix VI
Key Estimated Closed Claims Data and
Related Sampling Errors

Table VI.5: Average Disposition Time and Related Sampling Error by Indemnity Payment Ranges

Disposition time in months	Disposition time	
	Estimate	Sampling error ^a
Payment ranges		
All claims	25.1	0.1
\$0	22.9	1.0
\$1 to \$999	11.9	1.5
\$1,000 to \$4,999	22.4	2.2
\$5,000 to \$9,999	28.7	4.7
\$10,000 to \$24,999	22.7	2.2
\$25,000 to \$49,999	32.0	2.3
\$50,000 to \$99,999	31.6	2.7
\$100,000 to \$249,999	33.0	2.9
\$250,000 to \$999,999	41.8	3.4
\$1 million or more ^b	64.9	64.2

^aSampling errors are stated at the 95-percent confidence level.

^bEstimate subject to a large sampling error and should be used with caution.

Note: The universe of claims was 73,204.

Table VI.6: Average Indemnity Payments and Related Sampling Error by Disposition Time

Time (months)	Average payments	
	Estimate	Sampling error ^a
All claims	\$81,105	\$549
0 (less than 1) ^b	16,814	21,878
1 to 12	31,411	813
13 to 24	69,793	3,092
25 to 36	73,125	2,593
37 to 48	134,354	15,475
49 to 72	109,212	7,310
73 to 132 ^b	259,656	110,575

^aSampling errors are stated at the 95-percent confidence level.

^bEstimate subject to a large sampling error and should be used with caution.

Note: The universe of claims was 31,642.

Appendix VI
Key Estimated Closed Claims Data and
Related Sampling Errors

Table VI.7: Average Indemnity Payments and Related Sampling Error by Principal Allegations of Negligence

Type of error	Average payments	
	Estimate	Sampling error ^a
All claims	\$80 741	\$545
Surgery	76 255	2 052
Diagnosis	95 747	4 400
Treatment	42 316	2 431
Obstetrics	216 464	21 008
Medication	51 263	13 123
Medication administration	33 379	9 338
Anesthesia	84 451	10 662
Physiology/behavior monitoring, biomedical equipment, intravenous, blood products, and other	27 122	2 815

^aSampling errors are stated at the 95-percent confidence level

Note: The universe of claims was 31 786

Table VI.8: Average Indemnity Payments and Related Sampling Error by Severity of Injury Categories

Severity of injury	Average payments	
	Estimate	Sampling error ^a
All claims	\$80 741	\$545
Emotional	21 694	4 894
Insignificant	12 024	1 411
Temporary disability—minor	13 978	533
Temporary disability—major	34 670	3 214
Permanent partial disability—minor	52 356	2 337
Permanent partial disability—major	144 049	19 089
Permanent total disability—major	364 384	72 836
Permanent total disability—grave	488 375	103 496
Death	75 242	2 329

^aSampling errors are stated at the 95-percent confidence level

Note: The universe of claims was 31 786

Appendix VI
Key Estimated Closed Claims Data and
Related Sampling Errors

Table VI.9: Average Indemnity Payments and Related Sampling Error by Size of Patients' Economic Losses

Patients' economic loss ranges	Average payments	
	Estimate	Sampling error ^a
All claims	\$71,530	\$1,056
\$0 ^b	16,025	7,060
\$1 to \$999	3,881	396
\$1,000 to \$4,999	17,809	1,474
\$5,000 to \$9,999	33,755	5,215
\$10,000 to \$24,999	42,327	4,850
\$25,000 to \$49,999	65,052	16,166
\$50,000 to \$99,999	80,642	29,078
\$100,000 to \$249,999	138,835	45,815
\$250,000 to \$999,999	255,234	47,125
\$1 million or more ^b	439,397	184,546

^aSampling errors are stated at the 95-percent confidence level

^bEstimate subject to a large sampling error and should be used with caution

Note: The universe of claims was 18,279

Table VI.10: Average Patient Economic Losses and Related Sampling Error by Severity of Injury Categories

Severity of injury	Average economic losses	
	Estimate	Sampling error ^a
All claims	\$219,370	\$5,588
Emotional ^b	6,599	5,636
Insignificant	2,373	428
Temporary disability—minor	12,012	1,327
Temporary disability—major	29,916	6,290
Permanent partial disability—minor	64,380	11,639
Permanent partial disability—major ^b	196,447	129,220
Permanent total disability—major ^b	1,814,942	761,866
Permanent total disability—grave	1,688,029	621,577
Death	158,173	22,417

^aSampling errors are stated at the 95-percent confidence level

^bEstimate subject to a large sampling error and should be used with caution

Note: The universe of claims was 18,279

Appendix VI
Key Estimated Closed Claims Data and
Related Sampling Errors

Table VI.11: Compensation for Noneconomic Losses and Related Sampling Error by Size of Noneconomic Losses

Noneconomic loss compensation ranges	Compensation	
	Estimate	Sampling error ^a
All claims	\$555.3	\$11.0
\$0	0.0	0.0
\$1 to \$50,000	105.4	3.7
\$50,001 to \$200,000	107.6	27.6
More than \$200,000	342.4	122.0

^aSampling errors are stated at the 95-percent confidence level.

Note: The universe of claims was 14,995.

Table VI.12: Average Indemnity Payments and Related Sampling Error by Source of Payment for Health Care Costs

Source of health care cost payments	Average payments	
	Estimate	Sampling error ^a
All claims	\$80,741	\$545
Self	61,394	6,397
Private/commercial insurance	105,250	1,639
Medicare	28,352	3,307
Medicaid	43,267	11,252
Workers compensation ^b	69,503	50,147

^aSampling errors are stated at the 95-percent confidence level.

^bEstimate subject to a large sampling error and should be used with caution.

Note: The universe of claims was 31,786.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY

RESEARCH REPORT

BY [Name]

ADVISOR: [Name]

DATE: [Date]

ABSTRACT

INTRODUCTION

EXPERIMENTAL

DISCUSSION

CONCLUSIONS

REFERENCES

APPENDIX

ACKNOWLEDGMENTS