

**SPEECH OUTLINE TO ATTORNEYS AT  
NORTHERN TRUST ROUNDTABLE**

**SEGMENT # 3 OF 3**

**MEDICAL MALPRACTICE TRENDS AND UPDATE:**

**National:**

- Congress has blocked a national policy on tort reform for medical malpractice caps. There is a battle between legislators and their constituents, insurance companies, and the trial attorneys.
- Some States have enacted their own legislation; however, most have passed or enacted no legislation.
- As everyone has seen, there continues to be a national undercurrent of anger on all sides- it is my opinion that it will be many, many years, if ever, before we see national medical tort reform enacted.
- Reinsurers- the insurance companies that purchase and assume the risks of the primary insurance companies in any given class of risk, such as medical, have been hammered, and lost tremendous sums in this class over the years. Actuarially, the numbers have not worked and the reinsurers have lost vast sums on this class. The effect is that Primary insurers have often either abandoned this cover or moved their exposures to the less state rate regulated surplus lines divisions.

**Florida:**

**Insurers:**

- There are only a handful of “admitted” insurers left in the State of Florida: 1. Medical Protective 2. ProAssurance 3. Doctors Company
- Most of the new medical malpractice insurance is being written by Surplus Lines insurers such as : 1. Evanston 2. Landmark American 3. GenStar – all “A” Rated Insurers- they are not subject to the pricing regulations that the State of Florida imposes on the “admitted” insurers, nor are they backed by the State Guaranty association in the event of their insolvency- that is why the rating is so important.
- Lastly, there are a group of risk retention Groups and Self Insurer funds ok'd by the State of Florida to operate. Some of them have adequate reserves, but a number of them do not have reinsurance.

Claims activity in excess of premium growth could quickly eliminate both those insurers and the protection they were supposed to afford their doctors.

## **2003 MEDICAL LIABILITY STATE BILL 2D-ENACTED** **AUGUST 13, 2003:**

### **KEY COMPONENTS:**

- Cap on “routine” medical malpractice cases; \$500,000 non-economic damage per claimant against physicians, \$750,000 cap for non-physicians.
- Cap can be pierced in cases involving wrongful death or permanent vegetative state.
- Caps in emergency room situations- \$150,000 per claimant against the physician and \$750,000 for the hospital or other facility.
- Physician financial responsibility- if a physician fails to pay at least \$100,000, or \$250,000 if the physician has hospital staff privileges, of a medical malpractice award (be it a settlement, judgment, or arbitration award) within 30 days of the award, than the department of Health HAS TO SUSPEND that physician’s license until the payment is made to the awarded party.
- Rate Reductions- carriers are supposed to give actuarial information to the State to reduce the premiums going forward- this has actually served to have most “admitted” insurers leave the State of Florida for medical malpractice insurance.

## **END OF TOPIC AND END OF SPEECH**

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