

DAMAGES CAPS, INSURABILITY, AND THE PERFORMANCE OF MEDICAL MALPRACTICE INSURANCE

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First published: 18 February 2005

<https://doi.org/10.1111/j.0022-4367.2005.00114.x>

An anonymous referee made valuable suggestions. Professor Viscusi's research was supported by the Olin Center for Law, Business, and Economics and the Samuel Dennis III Fund.



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ABSTRACT

This article uses the complete property-casualty insurance files of the National Association of Insurance Commissioners from 1984 to 1991 to assess the effect of medical malpractice reforms pertaining to damages levels and the degree to which these damages are insurable. Limits on noneconomic damages were most influential in affecting insurance market outcomes. Several punitive damages variables specifically affected the medical malpractice insurance market, including limits on punitive damage levels, prohibitions of the insurability of punitive damages, and prohibition of punitive damages awards. Estimates for insurance losses, premiums, and loss ratios indicate effects of reform in the expected directions, where the greatest constraining effects were for losses. The quantile regression analysis of losses indicates that punitive damages reforms and limits were most consequential for firms at the high end of the loss spectrum. Tort reforms also enhanced insurer profitability during this time period.

REFERENCES

Alliance of American Insurers, *Civil Justice Legislation Enacted, Internal Reports 1985-1987* (Schaumburg , IL : Alliance of American Insurers).

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Born, P. H., 2001, Insurer Profitability in Different Regulatory and Legal Environments, *Journal of Regulatory Economics*, 19: 211-237.

[Web of Science®](#)[Google Scholar](#)

Born, P. H., and W. K. Viscusi, 1998, The Distribution of the Insurance Market Effects of Tort Liability Reforms, *Brookings Papers on Economic Activity: Microeconomics*, pp. 55-100.

[Web of Science®](#)[Google Scholar](#)

Browne, M. J., and R. Puelz, 1999, The Effect of Legal Rules on the Value of Economic and Non-Economic Damages and the Decision to File, *Journal of Risk and Uncertainty*, 18(2): 189-213.

[Web of Science®](#)[Google Scholar](#)

Danzon, P. M., 1985, *Medical Malpractice* (Cambridge , MA : Harvard University Press).

[Google Scholar](#)

Danzon, P. M., M. V. Pauly, and R. S. Kington, 1990, The Effects of Malpractice Litigation on Physicians' Fees and Incomes, *American Economic Review*, 80: 122-127.

[CAS](#)[PubMed](#)[Web of Science®](#)[Google Scholar](#)

Ghiardi, J. D., and J. J. Kircher, 1988, *Punitive Damages: Law and Practice*, vol. 1 (Deerfield , IL : West Group Callaghan and Co.), updated through 1999 by cumulative supplements.

[Google Scholar](#)

Hersch, J., and W. K. Viscusi, 2002, Punitive Damages: How Judges and Juries Perform, John M. Olin Center for Law, Economics, and Business Working Paper.

[Google Scholar](#)

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Kessler, D., and M. McClellan, 1996, Do Doctors Practice Defensive Medicine? *Quarterly Journal of Economics*, 111: 353-390.

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Koenker, R., and G. Bassett, Jr., 1978, Regression Quantiles, *Econometrica*, 46: 33-50.

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Koenker, R., and G. Bassett, Jr., 1982, Robust Tests for Heteroskedasticity Based on Regression Quantiles, *Econometrica*, 50: 43-61.

[Web of Science®](#)  | [Google Scholar](#) 

Launie, J. J., and W. P. Jennings, 1997, Insurability and Shifting of Punitive Damages, *Mealey's Insurance Law Weekly*, November 10: 19-27.

[Google Scholar](#) 

Schmit, J. T., M. J. Browne, and H. D. Lee, 1997, The Effect of State Tort Reforms on Claim Filings, *Risk Management and Insurance Review*, 11(Summer): 1-17.

[Google Scholar](#) 

Schmit, J. T., S. T. Pritchett, and P. Fields, 1988, Punitive Damages: Punishment or Further Compensation? *Journal of Risk and Insurance*, 55(3): 453-466.

[Web of Science®](#)  | [Google Scholar](#) 

Viscusi, W. K., 1988, Pain and Suffering in Product Liability Cases: Systematic Compensation or Capricious Awards? *International Review of Law and Economics*, 8: 203-220.DOI: [10.1016/0144-8188\(88\)90006-3](https://doi.org/10.1016/0144-8188(88)90006-3)

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Viscusi, W. K., 1998, The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts, *The Georgetown Law Review*, 87: 285-345.

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Viscusi, W. K., and P. Born, 1995, Medical Malpractice Insurance in the Wake of Liability Reform, *Journal of Legal Studies*, 24: 463-490.

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Viscusi, W. K., R. Zeckhauser, P. Born, and G. Blackmon, 1993, The Effect of 1980s Tort Reform Legislation on General Liability and Medical Malpractice Insurance, *Journal of Risk and Uncertainty*, 6: 165-186. DOI: 10.1007/BF01065357

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Ward, J. O., 1988, Origins of the Tort Reform Movement, *Contemporary Policy Issues*, 6: 97-107.

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Weiler, P. C., 1991, *Medical Malpractice on Trial* (Cambridge , MA : Harvard University Press).

[Google Scholar](#)

Weiler, P. C., et al., 1993, *A Measure of Malpractice: Medical Injury, Malpractice Litigation and Patient Compensation* (Cambridge , MA : Harvard University Press).

[Google Scholar](#)

Zuckerman, S., R. Bovbjerg, and F. Sloan, 1990, Effects of Tort Reforms and Other Factors on Medical Malpractice Insurance Premiums, *Inquiry*, 27: 167-182.

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