

# LEGISLATIVE BATTLES IN MISSISSIPPI: Tort Reform

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# State Capitol




# MISSISSIPPI TORT REFORM

- THE DARK AGES 1992-2002
  - National median awards in medical malpractice cases rose 42% between 1998 and 2002
  - Prior to 1995 no jury in Mississippi had returned a verdict over \$9 million in actual or punitive damages.

- Between 1995 and 2004 at least 21 verdicts of \$9 million or more were handed down, including seven that equaled or exceeded \$100 million each.
- This does not include the \$4.1 billion tobacco suit or the \$245 million software suit brought by the State's Tax Commission.

- Mississippi was rated America's "Number One Judicial Hellhole".
- Out of state lawyers rushed to the state to advertise and do business. 45% of the lawyers sworn in after the February 2003 bar exam listed out of state law firms as their address.

- The *National Law Journal* survey of the 50 “Winningest Firms in the United States” included 7 Mississippi firms.
- Only Texas, with nearly 10 times the population of Mississippi, had more firms on the list. Ironically, at least one of the Texas firms owed its place on the list to a judgment obtained in a Mississippi court.

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- The *Journal* also reported that Mississippi had the second highest percentage of jury verdicts over \$1 million in all of the 50 states.
  - It was the worst of times.

# Medical Liability Coverage Crisis

- By 2002 at least 44 insurance companies had left Mississippi or stopped selling medical liability insurance.
- Only one admitted carrier was still doing business at the end of that year and it would not write a policy for a physician located in any county that bordered the river or the coast which was where most of the judicial abuses occurred.

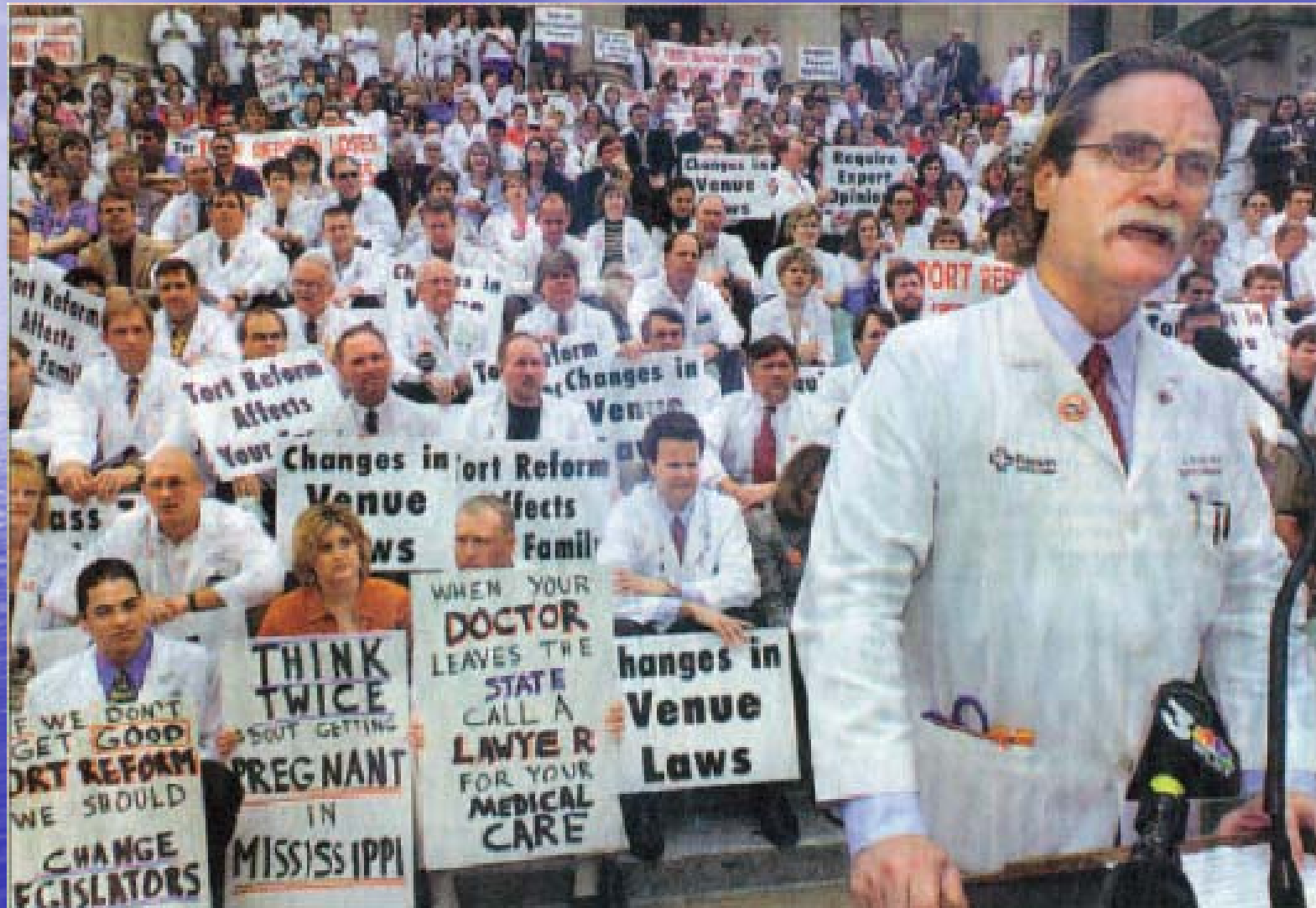
- Medical Assurance Company of Mississippi, the physician owned mutual carrier was forced by its reinsurers to restrict underwriting and impose a moratorium on new policies.
- Physicians were leaving the state in large numbers because they could not purchase malpractice coverage at any price.

- Mississippi medical association (MSMA) assisted the legislature in creating the Mississippi Malpractice Availability Plan (MMAP) within the Tort Claims Board to sell policies to those that otherwise would not be able to purchase insurance.
- The plan was expanded to include hospitals that could not find liability insurance.

# Desperate times call for desperate measures.

- MSMA created and implemented a massive strategic plan.
  - Gubernatorial, legislative and supreme court races were targeted.
  - Tort reform legislation was prepared and filed.
  - A public relations campaign was created.
  - Physicians talked to their patients about the crisis.
  - White coat rallies were held at the capitol.

# White Coat Day at Capitol



# THE REFORMATION

## 2002-2003

- Efforts to change the Supreme Court were successful and the justice who voted 98% of the time with plaintiffs, was defeated.
- Haley Barbour, a conservative Republican who favored tort reform was elected.
- Key members of the state's House and Senate who did not favor tort reform were defeated.

# Hope is on the horizon

- Tort reform legislation is passed and signed into law. The most important aspects of the new law, which took effect January 1, 2003, were:
  - 60 day notice requirement
  - Certificate of merit required
  - Venue of suit must be where treatment took place; venue shopping was eliminated

- Medical liability for non-economic damages is based on percentage of fault. This effectively eliminates joint and several liability from medical malpractice actions.
- Non-economic damages (pain, suffering, loss of consortium and other intangible losses) are capped at \$500,000

# THE RENAISSANCE

## 2003 - Present

- Frequency of medical malpractice claims and lawsuits falls for the first time in history of benchmark analysis.
- Total claims and suits by date filed against MACM insured dropped from
- **2,474** in 2002 to **196** in 2008.

- Premium rates for MACM insured, which increased 12.5% in 2000, 11.1% in 2001, 10% in 2002 and 54% in 2003, began to drop.
- In 2004 rates were increased only 19.4%.
- There was no increase at all for 2005 and at the end of the year the company refunded 15% of premium paid.

- In 2006 there was a 5% premium decrease with 20% of all premium paid refunded at the end of the year.
- In 2007 there was a 10% premium decrease and in 2008 there was a 15.5% premium decrease.
- Another admitted carrier, Advocate MD, entered the state in 2008 and is writing new policies.

# Business is Booming

- The old legal climate kept out new businesses for years. Since tort reform has taken place
  - Federal Express has invested \$1 billion in a new facility in the state.
  - Toyota chose Mississippi over a dozen other states for a new \$1.2 billion auto plant that will employ 2000 workers.

- 60,000 new jobs have arrived in the last four years, which is a significant number for a workforce of about 1.3 million and a sharp improvement over the 30,000 jobs lost in the four years prior to tort reform.

# Proof is in the numbers

- Overall the median number of medical malpractice lawsuits has fallen by nearly 90% which in turn has cut medical malpractice insurance costs 30-50%.
- In addition to the frequency of claims falling, the severity of claims has also gone down.

- Mississippi's unemployment rate is down to about 6% from nearly 9%.
- Last year Mississippi's per capital income growth was 6.7%, third highest of the 50 states and well above the national average of 5.2%

# Challenges Continue

- All aspects of these tort reforms are being challenged in the courts.
- To date, the Supreme Court has upheld the certificate of merit and the notice requirements.
- Cases challenging the \$500,000 cap on non-economic damages have not yet been heard.



Thank You!