

2013 Report on the Effects of Changes to Tort Laws



South Carolina Department of Insurance
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

December 31, 2013



South Carolina Department of Insurance

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NIKKI HALEY
Governor

RAYMOND G. FARMER
Director of Insurance

December 31, 2013

The Honorable Nikki Haley, Governor
State of South Carolina
Office of the Governor
1205 Pendleton Street
Columbia, SC 29201

The Honorable John E. Courson
President *Pro Tempore*
South Carolina Senate
412 Gressette Building
Columbia, South Carolina 29201

The Honorable Robert W. Harrell, Jr.
Speaker
South Carolina House of Representatives
506 Blatt Building
Columbia, South Carolina 29201

RE: 2013 Report on the Effects of Changes to Tort Laws

Dear Governor Haley, President *Pro Tempore* Courson and Speaker Harrell:

Section 15 of South Carolina 2005 Act No. 32, the South Carolina Noneconomic Damage Awards Act of 2005, requires the South Carolina Department of Insurance to report annually to the Governor and the General Assembly as to whether this Act and other related enactments ("tort reform") have resulted in reductions in premiums and any other trends of significance that might impact medical malpractice liability premium costs. Section 15 reads as follows:

As a majority of the health care community is insured through the South Carolina Medical Malpractice Joint Underwriting Association and the Patients' Compensation Fund and as it is essential for the General Assembly to understand the effects of changes to tort laws, the South Carolina Department of Insurance is given authority to request data regarding changes in claims practices from the South Carolina Medical Malpractice Joint Underwriting Association (JUA) and the Patients' Compensation Fund (PCF). Such data may include paid claims, paid loss adjustment expense, case reserves, bulk reserves, and claim counts by quarter

for the previous five years. The department may make such a request of the South Carolina Medical Malpractice Joint Underwriting Association and the Patients' Compensation Fund and such information must be provided within thirty days.

The Department of Insurance shall report annually to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor as to whether this and other related enactments have resulted in reductions in premiums and as to any other trends of significance which might impact premium cost.

Pursuant to the above, the Department submitted requests to the South Carolina Medical Malpractice Joint Underwriting Association (JUA) and the South Carolina Medical Malpractice Patients' Compensation Fund (PCF) in December requesting any information relevant to the effects of tort reform. The responses from both entities are enclosed for your review.

Report Limitations

As is noted in the responses from both the JUA and the PCF, it is difficult to assess the effects of tort reform for a variety of factors, which are highlighted below.

1. Claims Tail

The tort reform enacted in 2005 applies prospectively only, meaning that any claims that occurred prior to the effective date of July 1, 2005 are not affected by the reform. On average, claims with occurrence dates in a given year take over three years to be reported and over five years to settle. Thus, it takes some time before the effects of tort reform may be reasonably assessed and during that time other factors may evolve that make the assessment more difficult.

As we have previously reported, the consulting actuary for the PCF has indicated that more years of post-reform experience will need to be available to confirm the presence or absence of any trends in PCF's loss experience. The consulting actuary previously provided preliminary estimates for the first year of claims subject to tort reform (Fiscal Year 2006) indicating that the vast majority (over 95%) of claims had been reported, with most (80%) having been settled. We have not received an update to this information or any additional analysis as of the time of this report.

2. Various Factors Impacting the Marketplace

Even when more years of post-reform experience are available, measuring a given reform's impact is complicated by the difficulty in separating the effect of tort reform from variables such as inflation and other changes in the legal and social climate. For example, the consulting actuary for the PCF previously noted an industry wide decrease in medical malpractice loss trend, including in states that have not been subject to tort reform. While they did expect this trend to impact the PCF, it would not be the result of tort reform. Further, the PCF has experienced recent and significant drops in exposure related to the elimination of unlimited coverage limits and decreases in membership. Finally, there may be a lag in implementation of

reform related to uncertainty about whether the reform will be ultimately found to violate a state's laws and the length of time to resolve this uncertainty.

Tort Reform's Impact on Rates

As of the writing of this report, the Department is not aware of any revisions by the consulting actuaries for the JUA and the PCF to their initial expectation that the long-term result of tort reform will be a steep drop in loss costs in the area of 5% to 10% and a small decrease in long-term loss trend. They expected no significant change in claim frequency or severity in the JUA primary layer of loss, and that all of the savings related to reform will be attributable to the PCF's layer of coverage. The actuaries estimated a 5.1% savings in the calculation of PCF rates at the 1M/3M limit attributable to tort reform.

1. South Carolina Medical Malpractice Joint Underwriting Association

As noted in their December 13, 2013 response to the Department, tort reform has not directly impacted the JUA's premium rates as their policy limits are below the statutory cap for medical malpractice claims. The JUA's premiums remained unchanged in 2013 as compared to the 2011 rates.

2. South Carolina Medical Malpractice Patients' Compensation Fund

In March 2013, the PCF Board of Governors approved an overall decrease of 2.6%; however, the basis for this decrease was not directly impacted by the tort reform legislation. Instead, the PCF indicates that the decrease was primarily based on the elimination of unlimited coverage limits.

Overall Trends in the Marketplace

While it is not possible to determine the specific effects of tort reform on the medical malpractice market as a whole, what follows is a brief overview to provide you with a general impression of the state of the marketplace. It should be noted that the medical malpractice market tends to be somewhat volatile, which can be expected in a smaller market with a line of business that is susceptible to high severities. Overall, however, there do not appear to be serious availability concerns and prices have remained stable.

Both the JUA and the PCF reported a more competitive market as likely being attributable, at least in part, to the passage of tort reform legislation. The Department concurs with this assessment.

The Department licensed three new medical malpractice insurers in 2013. The Department also has anecdotal evidence that insurers (both pre-tort reform insurers and new entrants) have an increased appetite to write coverage since the enactment of tort reform. The JUA's volume continues to decline due, we believe, at least in part to the aforementioned increased appetite in the voluntary market.

Again, it is important to stress that it is difficult to determine a direct causal relationship between changes in the marketplace and the 2005 law, but it is reasonable to conclude that these reforms have at least partially contributed to the increase in competition in the marketplace.

Please do not hesitate to contact me if you have any questions or if my staff or I may provide you with any additional information. My staff and I are available to discuss any of the issues raised in this report with you at your convenience and to provide technical assistance to you and members of your staff as necessary.

Sincerely,



Raymond G. Farmer
Director of Insurance

Enclosures

Cc: The Honorable Robert W. Hayes, Jr., Chairman
Senate Banking and Insurance Committee

The Honorable William E. Sandifer III, Chairman
House Labor, Commerce and Industry Committee

South Carolina Joint Underwriting Association
550 South Main Street, Suite 600 Greenville, SC 29601 *corporate office*
Lock Box 932523, Atlanta, GA 31193-2523 *payment remittance address*
Local 864-240-5449 Toll Free 866-893-6270 Fax 864-240-2750

THE SOUTH CAROLINA JUA is a not-for-profit association established to insure, support and defend South Carolina medical professionals. The association is managed by [MARSH](#)

December 13, 2013

Greg Delleney
South Carolina Department of Insurance
1201 Main Street
Suite 10000
Columbia, SC 29201

Re: 2013 Medical Malpractice Premiums for JUA

Dear Greg:

We are responding to your request for information regarding the premiums set by the Joint Underwriting Association ("JUA") in 2013, and the effect of the Non-Economic Damages Awards Act on those premium rates. On behalf of the JUA, we provide the following information:

In 2013, the JUA's premiums were unchanged compared to the 2011 rates. Tort reform legislation has not directly impacted JUA premium rates, as the JUA policy limits are below the statutory cap for medical malpractice claims.

While the impact to the rates of the JUA are not directly impacted, due to our low policy limits, there have been more writers entering the medical malpractice market in South Carolina since the reforms were enacted in 2005. It is a reasonable assumption that the tort reforms passed in 2005 have been a factor

Please let us know if we can be of further assistance.

Sincerely,

Timothy J Ward
Senior Vice President
Marsh & McLennan Companies

James E. Mercer, DDS
Chairman of the Board



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South Carolina Medical Malpractice Patients' Compensation Fund

December 20, 2013

Greg Delleney
South Carolina Department of Insurance
1201 Main Street
Suite 10000
Columbia, SC 29201

Re: South Carolina Patients' Compensation Fund
Effect of 2005 Tort Reform on Membership Fees

Dear Greg:

We are responding to your request for information regarding membership fees of the SC Patients' Compensation Fund ("PCF"), and the effect of the Non-Economic Damages Awards Act on those rates for our members (2005 Tort Reform).

In 2013, PCF Board of Governors approved an overall 2.6% decrease of membership fees for the five limits of coverage that the PCF offers. The basis for this decrease was not directly impacted by the Tort reform legislation. This is primarily based on the elimination of unlimited coverage and the election by our members to have lower limits of coverage. As a result our overall exposure has been reduced.

With the increase of malpractice writers in the state of South Carolina and the changes that it has brought it would be difficult of isolate tort reform as a factor in the reduction of the PCF membership fees.

Please let me know if you need any further information.

Very truly yours,

Terry A. Coston, SCLA, CPM
Executive Director