



NEWS RELEASE

For Immediate Release:
March 17, 2003

Contact: Tom "Smitty" Smith (512) 477-1155
Nimish Desai (512) 477-1155
Dan Lambe (512) 381-1111
Reggie James (512) 477-4431

Capping Awards for Pain and Suffering Would Not Halt Increases in Malpractice Payouts, Texas Study Shows

Rise in Medical Malpractice Awards Largely Due to Increase in Health Care Costs, Damages Awarded for Lost Wages – Not Pain-and-Suffering or Punitive Damage Awards

AUSTIN – Capping the damages awarded to victims of medical malpractice for pain and suffering, a measure being considered by the Texas legislature, would do little, if anything, to stop the rise in the amount of overall malpractice payouts, according to an analysis of state data conducted by Public Citizen.

By separating malpractice payouts into their components – economic damages (for lost income and medical care), non-economic damages (for pain and suffering) and exemplary damages (punitive) – and charting the rise and fall of each, it is clear that the rising value of payouts has been caused by an increase in economic damages, not awards for pain and suffering. The data came from the Texas Department of Insurance's closed claims reports of all physicians and surgeons malpractice claims that led to a payment, either by settlement, jury verdict or arbitration.

"This clearly shows that limiting the compensation to malpractice victims for their pain and suffering wouldn't significantly affect malpractice premiums and therefore would not resolve the liability crisis," said Reggie James, director of Consumers Union's Southwest Regional Office. "Capping non-economic damages, as the legislature is considering, would disproportionately harm children and elderly victims of malpractice. The most vulnerable – those with little or no income – receive the least in economic damages."

The data shows that:

- Economic damage awards have risen, from about \$88 million in 1988 to \$315 million in 1999. In 2000, they totaled \$298 million. (figure 1)
- The total amount of non-economic damages awarded to malpractice victims has remained between \$55 million and \$85 million over the past 13 years. (figure 1)

- In 2000, the latest year for which data are available, the total amount of non-economic damages dropped below the 1988 level, to \$40 million. The data shows that non-economic damages were 40 percent of total payouts in 1988 but only 10 percent in 2000. (figure 2)
- Punitive (or exemplary) damages have remained constant at about \$1 million annually. They now represent less than one-third of 1 percent of total awards, the lowest level since 1988. (figure 2)
- Ninety-five percent of all cases are settled before a jury reaches a verdict. (figure 3).

A second Public Citizen analysis of data provided by the state Insurance Commissioner shows investment earnings for insurance companies that offer medical malpractice coverage in Texas plummeted by \$800 million between 1997 and 2000 (figure 4). The total yield on their invested assets decreased from almost \$2 billion to \$1.17 billion during that period. In 1997, earnings on investments were 1.4 percent; in 2000 insurers lost 5.1 percent on their investments, for a total drop of 6.5 percent. These earnings rebounded slightly in 2001, to \$1.2 billion, but not nearly enough to recoup the investment losses.

“This bolsters the argument that insurance companies are charging doctors more for malpractice premiums to help make up for rising health care costs and investment losses, not because of jury awards in malpractice cases,” said Tom “Smitty” Smith, director of Public Citizen’s Texas office.

Two ways to address malpractice premiums are to discipline those “repeat offender” doctors who commit the bulk of malpractice and reform the rate-setting process for malpractice insurance, Smith said. Between September 1990 and September 2002, just 6.5 percent of Texas doctors were responsible for 51.3 percent of the medical malpractice payouts. Those doctors each made two or more malpractice payouts worth a total of more than \$1 billion. Just 2.2 percent of the doctors were responsible for 25 percent of the payouts, according to information obtained from the federal government’s National Practitioner Data Bank. (To read Public Citizen’s report on the malpractice spikes in Texas, go to www.citizen.org.)

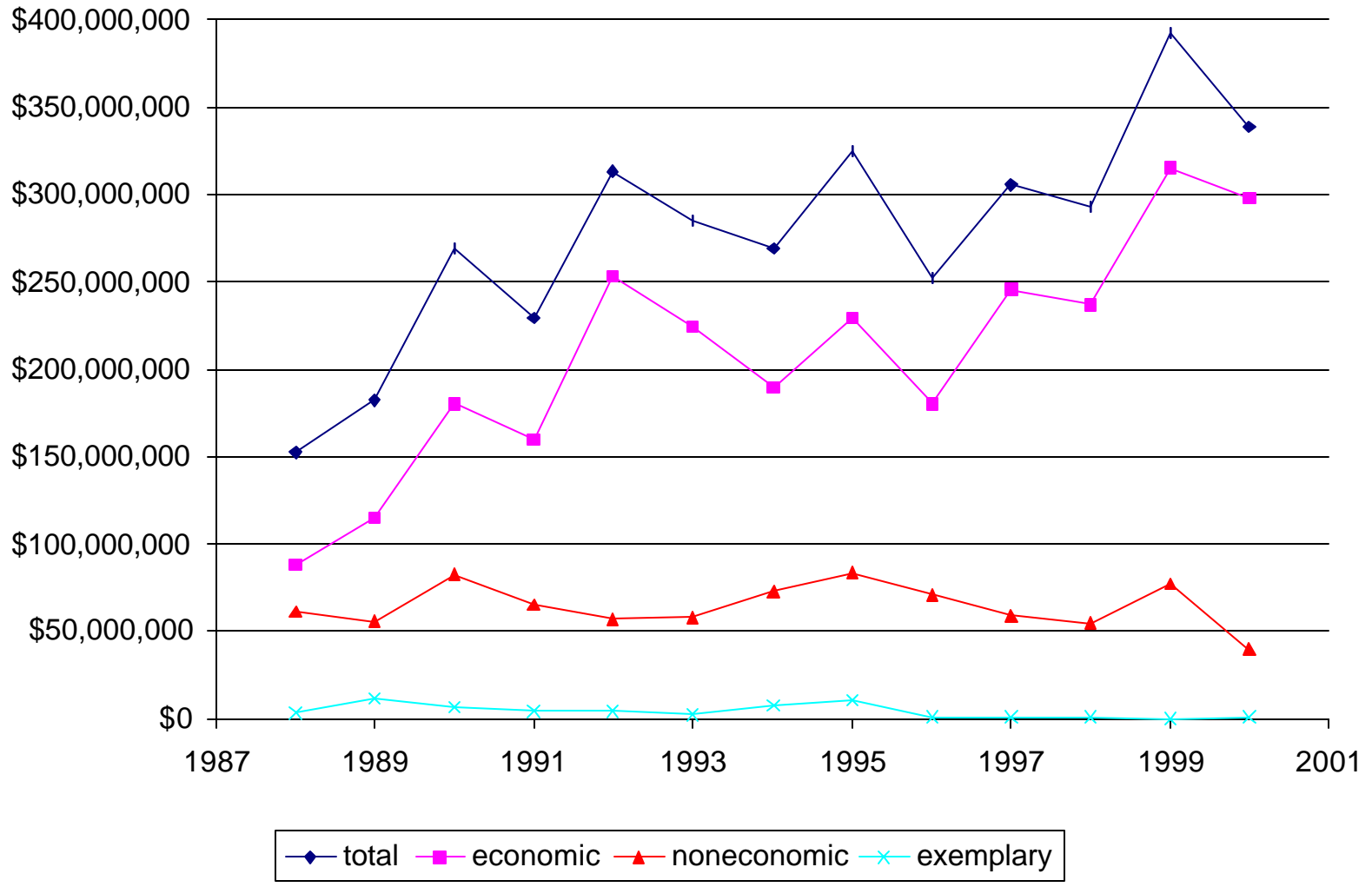
The Texas Senate took some good first steps to toughen discipline for the worst doctors in Texas by increasing disclosure of information about doctor errors. The Senate also required the state medical board to review doctors who have been the subject of three or more medical malpractice expert reports in a five-year period; these reports indicate that the doctor has given substandard care. The House should adopt these amendments and go further by establishing a patient advocates’ office, Smith said.

“The only cure for rising medical liability insurance premiums is meaningful insurance reform,” said Dan Lambe, executive director of Texas Watch. “We should not allow the insurance and medical industries to point the finger of blame at innocent Texas patients.”

###

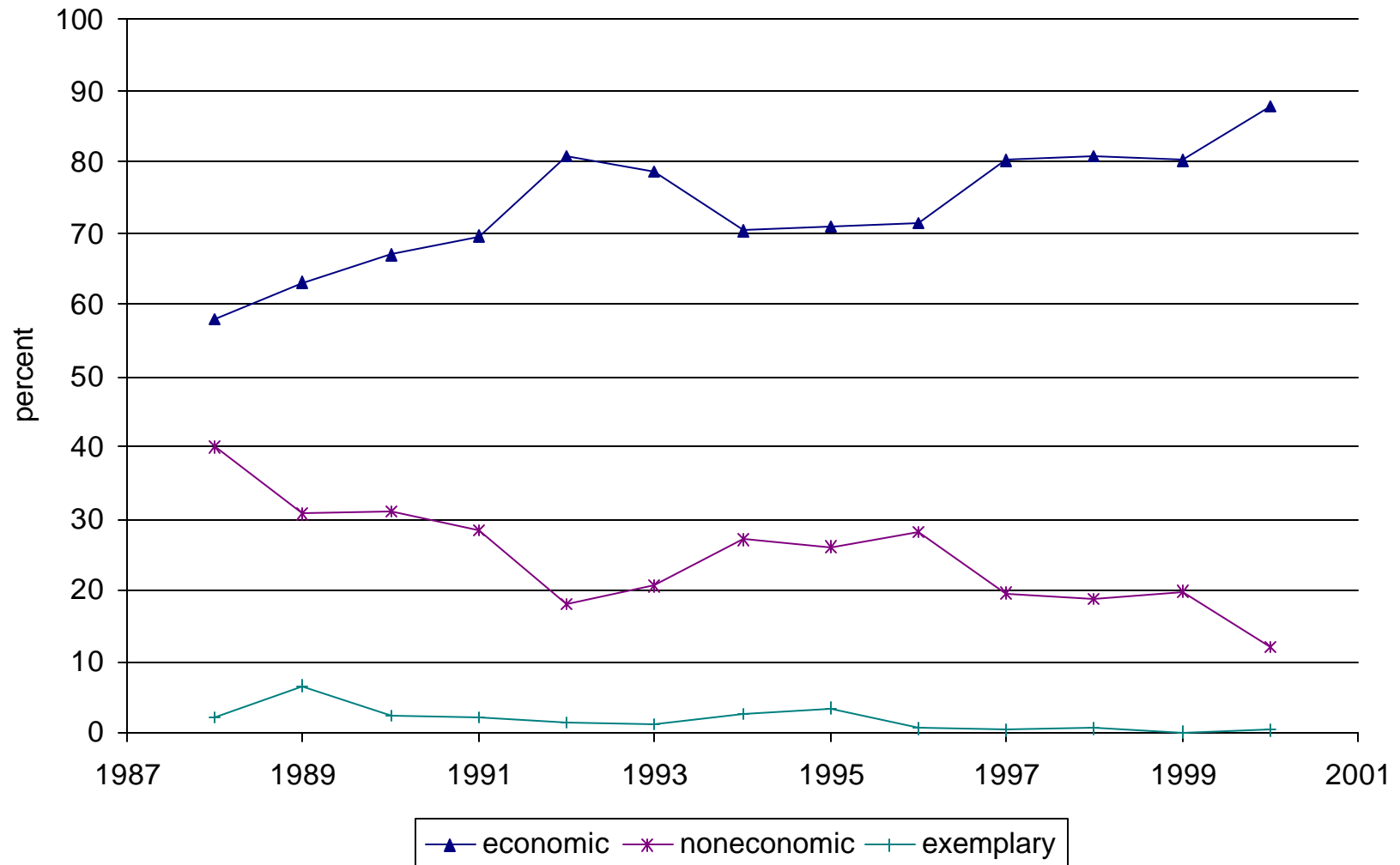
Payouts by Category

Source: Texas Department of Insurance Closed Claims Data (1988-2000)



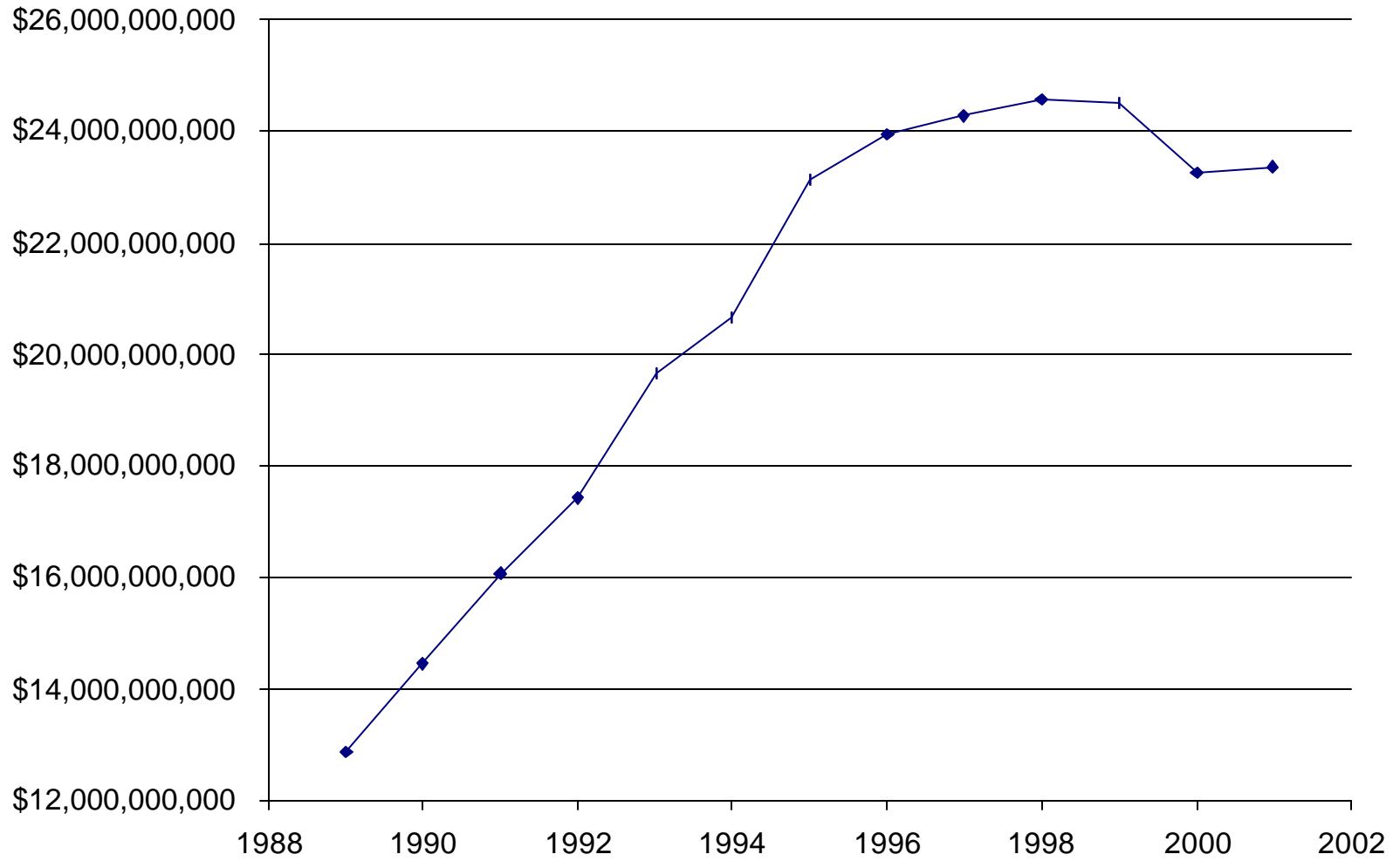
Percent of Payouts by Category

Source: Texas Department of Insurance Closed Claims Data (1988-2000)



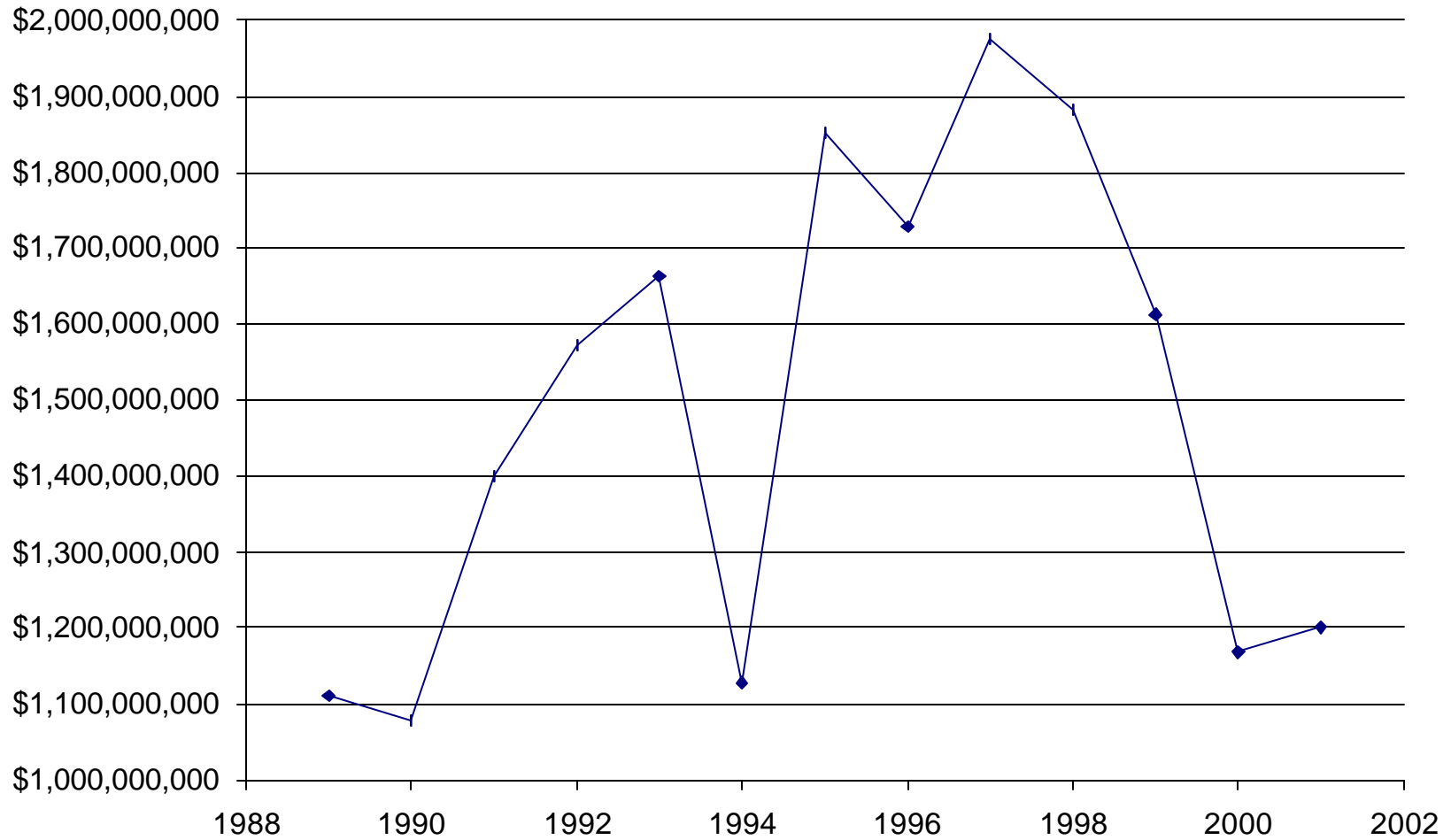
Total Invested Assets

Source: Texas Department of Insurance Report to House Civil Practices Committee, 2/12/03



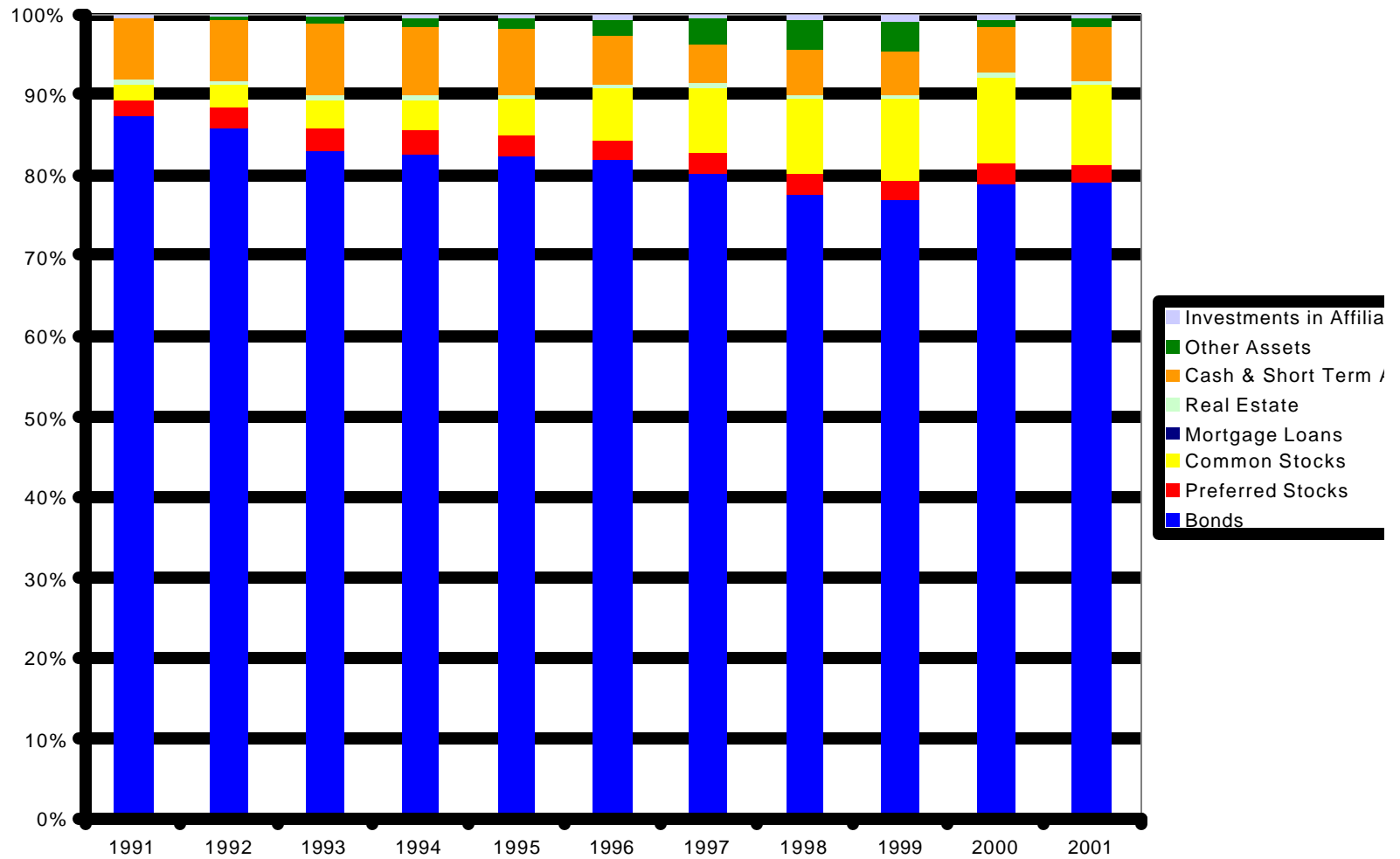
Total Yield on Invested Assets

Source: Texas Department of Insurance Report to House Civil Practices Committee, 2/12/03



Summary of Investable Assets Distribution: Medical Malpractice Predominating Companies in Texas

Source: Texas Department of Insurance Report to House Civil Practices Committee, 2/12/03



Number of Payouts Reached by Verdict

Source: Texas Department of Insurance Closed Claims Data (1988-2000)

