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## Letter from the Chairman

As I write this letter, the West Virginia Supreme Court of Appeals is considering a challenge to our hard-fought and hard-won civil justice reforms. The pending case questions the constitutionality of our state's cap on non-economic damages. Trial lawyers from Washington, D.C., are arguing the case on behalf of the plaintiff, just as they have argued similar cases across the U. S. Most states have upheld the civil justice reforms contained in their statute, but a few (the states of Washington, Illinois and Georgia) have had their reforms overturned by ill-advised

judicial activism. This is not the first challenge to our tort reforms since the Mutual began operations, and it certainly will not be the last. It is imperative we in the healthcare community stand together as these challenges work their way through our state's court system. Once again, we must engage our patients and others in an effort to protect the healthcare delivery system in West Virginia and our citizen's access to care.

Included in this newsletter is an article by John H. Schmidt III, M.D., WV State Medical Association President, which outlines the value and success our reforms have achieved in protecting health care for West Virginians. While your Mutual has not had any of its own medical liability cases come before the West Virginia Supreme Court (largely because of our excellent claims management philosophy and practices), we have filed several amicus briefs in support of physicians and these reforms during the past year. We continue to be at the forefront of efforts to protect the interests of West Virginia physicians and our patients.

In addition, I want to assure you that your West Virginia State Medical Association works diligently every day on matters important to West Virginia physicians. The benefits of belonging to the Association many times go unnoticed. Our WVSMA supports all physicians both legislatively and judicially, and it has also filed a number of amicus briefs supporting us during these uncertain times. We have many challenges today due to changes on the federal and state level, so it is reassuring to know that our Association is watching out for us and advocating on our behalf.

As Chairman of your Board of Directors, I assure you that your Mutual will continue to work zealously on your behalf. By working together and remaining focused on the goal of protecting the interests of West Virginia physicians and patients, we will continue the great success we have enjoyed since the start of our company. The Mutual is here to provide our physician owners with outstanding insurance protection, cutting edge risk management programs and excellent claim services. We welcome the opportunity to serve the West Virginia physician community as your advocate and work tirelessly to protect you, your reputation and your livelihood.

We are Physicians Insuring Physicians.

Sincerely,

R. Austin Wallace, M.D.

# Legislative Reform Preserves Access to Care

by John H. Schmidt III, M.D., Guest Columnist

In the next few weeks, West Virginia's State Supreme Court will issue its ruling in *MacDonald v. City Hospital*, a case challenging the constitutionality of our state's caps on non-economic damages. The caps were put in place by the West Virginia Legislature in 2003 as part of a broad package of reforms designed to preserve access to quality health care, which had been put in jeopardy because of an out-of-balance civil justice system. With more and more lawsuits being filed and insurance premiums climbing to some of the highest rates in the nation, many physicians were driven out of the state or into early retirement.

The West Virginia State Medical Association, West Virginia Mutual Insurance Company and other pro-health care advocates are letting their voices be heard by filing 'Amicus' briefs with the Court setting forth the strong legal precedent and public policy basis for why the caps must be upheld. We face, however, a formidable foe...the personal injury trial lawyers who vowed that what they could not defeat legislatively, they would beat in the courts. Soon we will know if our State Supreme Court will allow the trial lawyers to make good on their threat.

The heart of our argument to preserve the caps is that the legislature acted well within constitutional limits by adopting the reforms to address a critical access to care crisis. No better proof of their success can be seen in the following data:

**Lower Claim Filings:** Liability insurance rates are heavily impacted by three factors — claim frequency (number of suits filed); severity (average size of settlements and jury awards) and "shock losses" (judgments exceeding \$1 million). Prior to 2001, medical liability insurance companies conducting business in multiple states, including West Virginia, reported that while severity and "shock losses" were on par here, they did see a significantly higher frequency of suits filed per physician in West Virginia compared to other states. Since the reforms were enacted, the number of suits filed has been cut in half!

**Lower Insurance Rates:** Double-digit premium rate hikes, year after year before the legislature acted, caused many physicians to leave the state or retire earlier than planned. For example, some OB/GYNs and neurosurgeons saw their premium rates increase to well over \$150,000 per year. The positive impact of the reforms has caused premium rates to turn around and actually drop for most physicians by more than 30 percent in just the last

few years. Lower premium rates not only improve health care access but also help curb rising health care costs.

**Improved Access to Care:** The more stable liability system and lower premium rates have brought a renewed sense of optimism about the attractiveness of practicing medicine in West Virginia. Data from the West Virginia Board of Medicine clearly demonstrates a turnaround in the number of physicians seeking licensure to practice medicine in West Virginia. A steady decline in new licensure activity bottomed out in 2001 after the passage of reform and we are now seeing record numbers of newly licensed physicians actively practicing in West Virginia.

By these and other objective measures, the legislative reforms have clearly achieved their goal of preserving access to care. The question remains, however, will the State Supreme Court uphold the caps and allow our state's improved health care environment continue or will the Court in one key decision dismantle our reforms and force our state back into an access to care crisis?

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*Dr. John H. Schmidt III, MD is the President of the West Virginia State Medical Association and a practicing physician with Neurological Associates in Charleston, WV.*

## Mutual Website Tip

To receive your Online CME Username and Password:

- Go to [www.wvmic.com](http://www.wvmic.com)
- Click the Physicians tab
- Click Take an Online CME
- Click the "Forgot Your Username or Password?" link under the Login button
- Submit your information and your Username and Password will be emailed to you



# Don't Let History Repeat Itself

The history of medical professional liability insurance carriers in West Virginia is littered with companies who built their business in our state with low rates and then pulled out after failing — leaving hundreds of physicians in a crisis.

## Why take the risk?

	Enter	Exit
St. Paul / MMI	1980	2002
CNA	1981	1995
ICA	1984	1993
PIE	1986	1997
Medical Assurance	1995	Still Active
PHICO	1998	2001

Today, the health care community faces uncertain times as Civil Justice Reforms are being challenged and overturned throughout the country and Federal Health Care Reforms are looming on the horizon.

In the past, many out-of-state insurance companies found they did not have a true understanding of the West Virginia market. These companies collected inadequate premiums to cover losses they experienced in the very fragile medical professional liability market of West Virginia.

Because of this fact, throughout their careers, many physicians have faced the problem of finding new carriers, paying for expensive tail coverage from their old carriers, relocating or retiring early.

The physician-led Board of Directors of the Mutual has worked diligently to ensure the financial integrity of the Mutual while reducing premiums significantly since the Company began.

## Mutual Milestones

5% rate reduction	2006
15% rate reduction	2007
5% renewal credit	2008
5% renewal credit	2009
12% renewal credit	2010
12% renewal credit	2011

The mission and core values of the Company keep West Virginia physicians' interests at the forefront to ensure your Mutual is here, in West Virginia, to protect you, your livelihood and your reputation.

## Attacks on Civil Justice Reforms Continue

The past twenty-four months have seen several State Supreme Courts throughout the country decide on challenges to the constitutionality of Civil Justice Reforms, particularly the non-economic damage cap.

The State Supreme Courts of Illinois, Washington and Georgia have all struck down a portion of their Reforms within the past two years. The Plaintiff's Bar continuously seeks ways to remove the protections contained in these important Reforms.

Missouri and Maryland recently upheld the cap on non-economic damages when challenged in their Supreme Courts. However, challenges like these will always be present and physicians must remain united and be involved in finding advocates for the interests of themselves and their patients at all levels of state and local government.

Data shows these reforms have contributed to reducing frivolous lawsuits and providing much needed medical professional liability insurance premium relief for physicians. West Virginia is an excellent example of how both the availability and affordability of medical professional liability insurance improved dramatically once reforms became law.

Currently, West Virginia is awaiting an opinion from the State Supreme Court of Appeals regarding a challenge to the non-economic damage cap. Only time will tell how these hard-fought reforms will fare in West Virginia and how challenges like these will affect the health care system in our State.



## Mutual Website Tip

To locate practical and informative Risk Management tools:

- Go to [www.wvmic.com](http://www.wvmic.com)
- Click the Risk Management tab
- Click Tools on the Menu

## Mutual Website Tip

To see the most up-to-date Risk Management seminar schedules:

- Go to [www.wvmic.com](http://www.wvmic.com)
- Click the Risk Management tab
- Click CME Programs on the Menu



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## Meet Tamara Lively-Huffman, CPCU



Tamara Lively-Huffman

Tamara Lively-Huffman has served on the Mutual Board of Directors since 2004. Ms. Lively-Huffman has many years of experience in medical professional liability in West Virginia having managed that division for McDonough Caperton Insurance Agency and its successor, Wells Fargo Insurance Services.

She has been the prime officer for the West Virginia medical professional liability pool in West Virginia. Ms. Lively-Huffman was one of the principal proponents of the West Virginia Legislative efforts to enact civil justice reforms and establish the Mutual as a sustainable source of medical professional liability insurance for West Virginia physicians.

Ms. Lively-Huffman holds the Chartered Property Casualty Underwriter (CPCU) designation, and she has lived all her adult life in West Virginia. She serves as the Executive Vice President and Chief Operating Officer of the Mutual and has ultimate responsibility for Underwriting, Claims, Risk Management and Marketing, as well as the general administration of the Company.