

## MEMORANDUM

**TO:** Medical Malpractice Interim Legislative Committee

**FROM:** David Bounk, President & CEO  
Libby Lincoln, Vice President & General Counsel

**DATE:** November 28, 2005

**RE:** **Follow-up to MMIC November 7, 2005 Testimony**

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After our presentation at the November 7 committee meeting, we offered to do further research on several questions raised by committee members. The following information is in response to those questions.

**1) Number of physicians with multiple paid claims in Iowa versus Minnesota**

Since January 1, 1995, only 22 Iowa physicians and 15 Minnesota physicians insured by MMIC have had three or more claims or lawsuits closed with indemnity payments during their coverage by MMIC. (Note that MMIC insures approximately three times more physicians in Minnesota than in Iowa.) Many of the physicians with multiple claims are no longer insured by MMIC.

**2) Difference in length of time it takes to resolve cases in Iowa versus Minnesota**

Between 1994 and 2005, the overall average length of time from report of cases to resolution has been approximately the same in Iowa as it has been in Minnesota (about 19 months). However, it must be noted that this period includes time during which MMIC has been made aware of potential claims ("potentially compensable events" or PCEs) before they evolve into actual claims or lawsuits. We believe that more cases are reported as PCEs in Minnesota than in Iowa, suggesting that the 19 month average turnaround time would be lower in Minnesota if our system allowed us to calculate time only from the date PCEs turn into claims or lawsuits to resolution.

As an aside, another recent analysis showed that, when cases are not reported until they reach the actual claim or lawsuit stage, significantly more cases in Minnesota are first reported as claims (62%) versus Iowa (35%).

**3) Reason why underwriting expenses are higher in Iowa than in Minnesota**

The primary reason it is more expensive to write business in Iowa is that more Iowa business is driven by agents, resulting in increased commission expenses.

**4) Reasons why total underwriting expenses in Iowa increased significantly between 2003 and 2004**

The increase in total underwriting expenses was due to the fact that total premium was significantly higher in 2004, resulting in increased total premium taxes. In addition, a higher percentage of the business was driven by agents in 2004 versus 2003 so commission expenses also increased.

Please note that underwriting expenses also increased in other MMIC states due to increased premium and policyholder counts and the need to add staff to handle business added after the St. Paul Company left the market.

**5) Differences in legal and claim-handling processes that contribute to increased expenses in Iowa versus Minnesota**

<b>Issue</b>	<b>Iowa</b>	<b>Minnesota</b>
Statute of limitations for adults	2 years from date of discovery of the injury; suit may be brought up to 6 years from the date of the alleged negligence.	4 years from accrual of the cause of action
Filing of lawsuit	For statute of limitations purposes, the date of filing the Petition with the court determines whether the statute has been met. Suits "go public" right away, in some cases even before the defendant has been served.	Allows "pocket filings;" the date of service of the Summons and Complaint on the defendant determines whether the statute of limitations has been met. The suit doesn't need to be filed with the court unless/until it goes into active litigation and an Answer is filed. This allows the insurance company to request (and usually obtain) an extension to submit an Answer. During the period of the extension, the investigation can proceed without incurring legal expenses.
Certification of expert review	No requirement that lawsuits be certified by an expert prior to filing of the Petition.	Requires, at the initiation of a lawsuit, an affidavit certifying that the facts of the case have been reviewed by a competent expert who

		will opine that the defendant deviated from the standard of care and caused injury. This cuts down on unmeritorious claims.
Disclosure of expert opinions.	Experts must be designated within 180 days from the filing of the Answer, but meaningful disclosure of their opinions is rare.	Requires detailed disclosure of expert opinions in writing within 180 days after commencement of the suit.
Depositions of experts	Depositions of experts are permitted by the Iowa Rules of Civil Procedure and experts in medical negligence cases are routinely deposed. This creates scheduling delays and increased expenses.	The Minnesota Rules of Civil Procedure do not automatically provide for depositions of experts and in practice (because of the detailed disclosure of expert opinions noted above), depositions of experts are rarely taken.
Res ipsa loquitor	Courts are liberal in allowing res ipsa loquitor claims to be submitted to a jury. Some judges have even allowed both general negligence and res ipsa to be submitted. Others have allowed both theories to remain in the case during trial (raising the costs of defense), before either requiring the plaintiff to elect which to pursue or making a ruling on which will be submitted.	Conservative approach to res ipsa loquitor claims.
Loss of chance	Allows for loss of chance claims, even in cases where the plaintiff is unable to establish a breach of the standard of practice "more likely than not" caused death or a poor outcome. Even a 1% loss of chance is recoverable.	Does not allow loss of chance claims.
Punitive damages	Allows claims for punitive damages to be pleaded in the initial Petition. Awards	Requires plaintiff to bring a motion seeking leave to assert a claim for punitive

	for punitive damages are recoverable under the policy of insurance.	damages.
Access to medical records	It is often difficult for the insurance company to obtain plaintiffs' medical records.	Authorizations for the release of medical records are freely given to the insurance company at initiation of claims and lawsuits.