Focusing on premiums paid by OB/GYN physicians, the evidence is the same. Data from the Medical Liability Monitor shows that the average liability premium for OB/GYNs in 2003 was actually slightly higher in States with caps of damages—$63,278—than in States without caps—$59,224. It also showed that the rate of increase last year was higher in States with caps—17.1 percent—than it was in States without caps—16.6 percent.

This evidence clearly demonstrates that capping malpractice damages does not benefit the doctors it purports to help. Their rates remain virtually the same. It only helps the insurance companies earn even bigger profits. As Business Week Magazine concluded after reviewing the data, ''the statistical case for caps is flimsy.'' That was in the March 3, 2003 issue.

If a Federal cap on non-economic compensatory damages were to pass, it would sacrifice fair compensation for injured patients in a vain attempt to reduce medical malpractice premiums. Doctors will not get the relief they are seeking. Only the insurance companies, which created the recent market instability, will benefit.

Insurance industry practices are responsible for the sudden dramatic premium increases which have occurred in some States in the past 2 years. The explanation for these premium spikes can be found not in legislative halls or in courtrooms, but in the boardrooms of the insurance companies themselves.

Insurers make much of their money from investment income. Interest earned on premium dollars is particularly important in medical malpractice insurance because there is a much longer period of time between receipt of the premium and payment of the claim than in most lines of casualty insurance. The industry creates a ''malpractice crisis'' whenever its investments do poorly. The combination of a sharp decline in the equity markets and record low interest rates in recent years is the reason for the sharp increase in medical malpractice insurance premiums. What we are witnessing is not new. The industry has engaged in this pattern of behavior repeatedly over the last 30 years.

Last year, Weiss Ratings, Inc., a nationally recognized financial analyst conducted an in-depth examination of the impact of capping damages in medical malpractice cases. Their conclusions sharply contradict the assumptions on which this legislation is based. Weiss found that capping damages does reduce the amount of money that malpractice insurance companies pay out to injured patients. However, those savings are not passed on to doctors in lower premiums.

Between 1991 and 2002, the Weiss analysis shows that premiums rose by substantially more in the States with damage caps than in the States without caps. The 12-year increase in the annual malpractice premium was 48.2 percent in the States that had caps, and only 35.9 percent in the States that had no caps. In the words of the report:

> On average, doctors in States with caps actually suffered a significantly larger increase than doctors in States without caps . . . . In short, the results clearly invalidate the expectations of cap proponents.

Doctors, especially those in high-risk specialties, whose malpractice premiums have increased dramatically over the past few years, do deserve premium relief. That relief will only come as the result of tougher regulation of the insurance industry. When insurance companies lose money on their investments, they should not be able to recover those losses from the doctors they insure. Unfortunately, that is what is happening now.

Doctors and patients are both victims of the insurance industry. Excess profits from the boom years should be used to keep premiums stable when investment earnings drop. However, the insurance industry will never do that voluntarily. Only by recognizing the real problem can we begin to structure an effective solution that will bring an end to unreasonably high medical malpractice premiums.

There are specific changes in the law which should be made to address the abusive manner in which medical malpractice insurers operate. The first and most important would be to subject the insurance industry to the Nation's anti-trust laws. It is the only major industry in America where corporations are free to conspire to fix prices, withhold and restrict coverage, and engage in a myriad of other anticompetitive actions. A medical malpractice ''crisis'' does not just happen. It is the result of insurance industry schemes to raise premiums and to increase profits by forcing anti-patient changes in the tort law. I have introduced with Senator LEAHY, legislation which will at long last require the insurance industry to abide by the same rules of fair competition as other businesses. Secondly, we need stronger insurance regulations which will require malpractice insurers to set aside a portion of the windfall profits they earn from their investment of premium dollars in the boom years to cover part of the cost of paying claims in lean years. This would smooth out the extremes in the insurance cycle which have been so brutal for doctors. Thirdly, to address the immediate crisis that some doctors in high risk specialties are currently facing, we should provide temporary premium relief. This is particularly important for doctors who are providing care to underserved populations in rural and inner city areas.

Unlike the harsh and ineffective proposals in S. 2061, these are real solutions which will help physicians without further harming seriously injured patients. Unfortunately, the Republican leadership continues to protect their allies in the insurance industry and refuses to consider real solutions to the malpractice premium crisis.

This legislation—S. 2061—is not a serious attempt to address a significant problem being faced by physicians in some States. It is the product of a party caucus rather than the bipartisan deliberations of a Senate committee. It was designed to score political points, not to achieve the bipartisan consensus which is needed to enact major legislation. For that reason, it does not deserve to be taken seriously by the Senate.

I withhold whatever time I have and suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold on suggesting the absence of a quorum?

Mr. KENNEDY. I withhold suggesting the absence of the quorum.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT OF 2003—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, what is the state of business?

The PRESIDING OFFICER. The time until 4:50 is evenly divided.

Mr. HATCH. Thank you, Mr. President.

I rise to speak in support of S. 2061, the Healthy Mothers and Healthy Babies Access to Care Act.

This bill addresses the medical liability and litigation crisis in our country, a crisis that is preventing patients from receiving high quality health care—or, in some cases, any care at all because doctors are being driven out of practice. This crisis is limiting or denying access to vital medical care and needlessly increasing the cost of care for every American.

As you will recall, we have previously tried to remedy this crisis in access to care. Most recently, we debated S. 11 which failed to receive the 60 votes necessary to invoke cloture last July. You have to have a supermajority now on these types of issues because of the opponents of this bill—and some others.

The time to act is now. The health care crisis is jeopardizing access to health care for many Americans. The medical liability crisis is also inhibiting efforts to improve patient safety and is stifling medical innovation. Excessive litigation is adding billions of dollars in increased costs and reduced access to high quality health care.

Defensive medicine is way out of whack. We are spending billions of dollars on unnecessary defensive medicine because doctors are terrified they are going to be sued in these frivolous lawsuits—called medical liability suits—by personal injury lawyers.