



**MELCHIORRE GIOIA  
MEDICO-LEGAL SCIENTIFIC SOCIETY**

**Giovanni Cannavò  
Enrico Pizzorno**

**MEDICAL MALPRACTICE:  
A WORLDWIDE PROBLEM.  
THE ITALIAN EXPERIENCE**



“If a physician makes a large

**IS IT A  
NEW  
PROBLEM?**

ng  
s a  
fe,  
nds

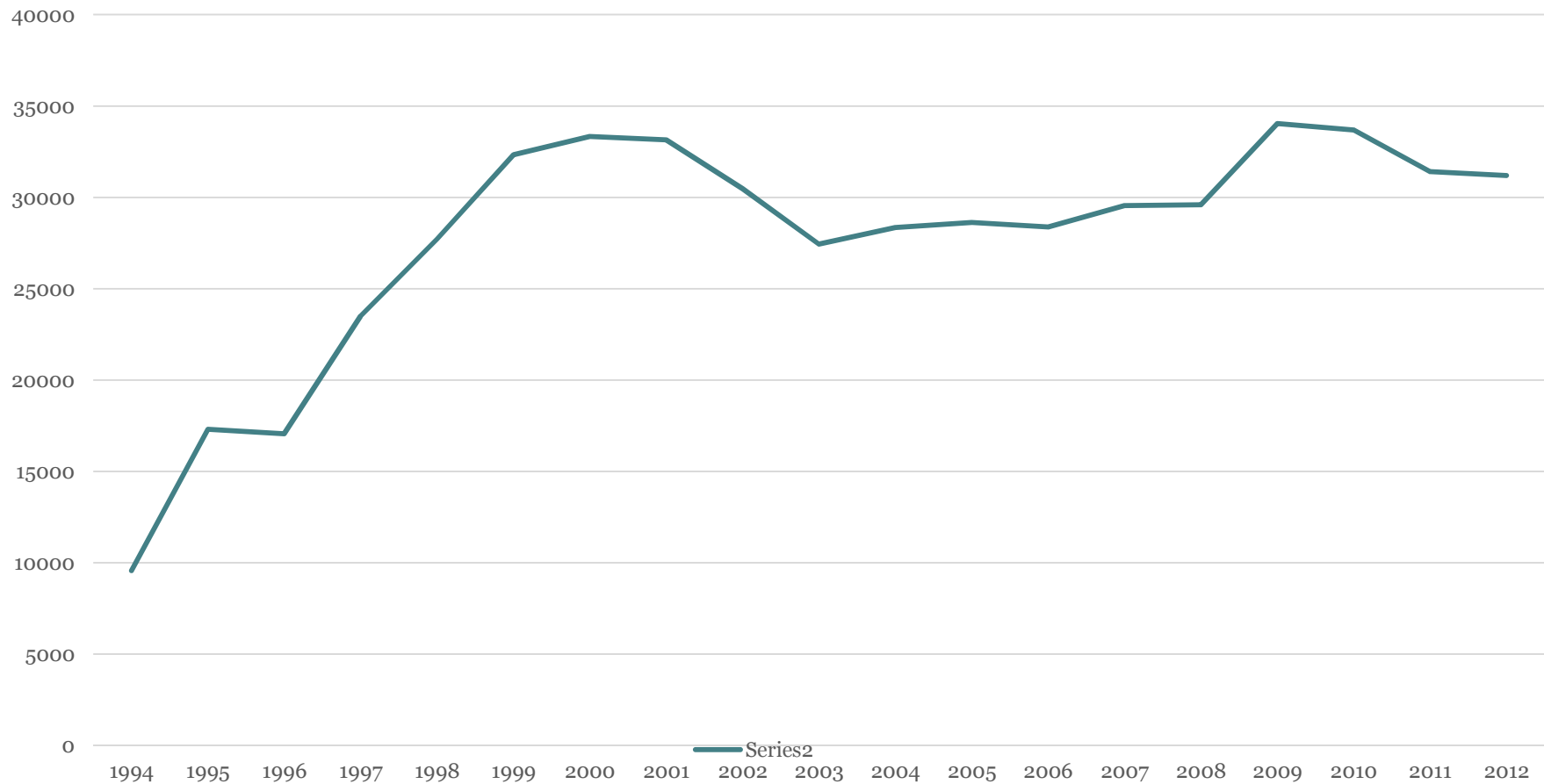
50



# Statistics on medical malpractice



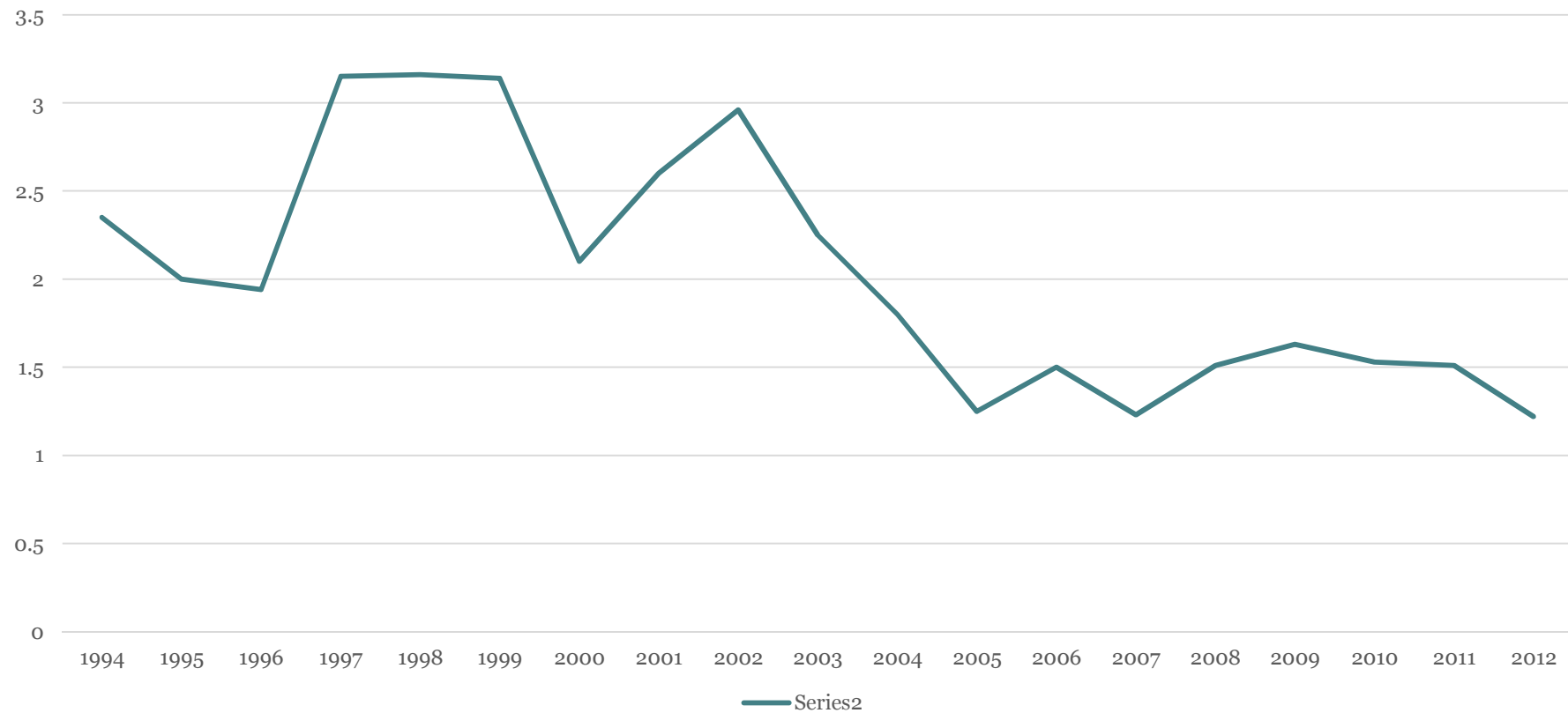
## Number of accidents reported to insurance companies as of 2012



Data from: ANIA, National association among insurance companies



## Rapport between cost of accidents and premiums written

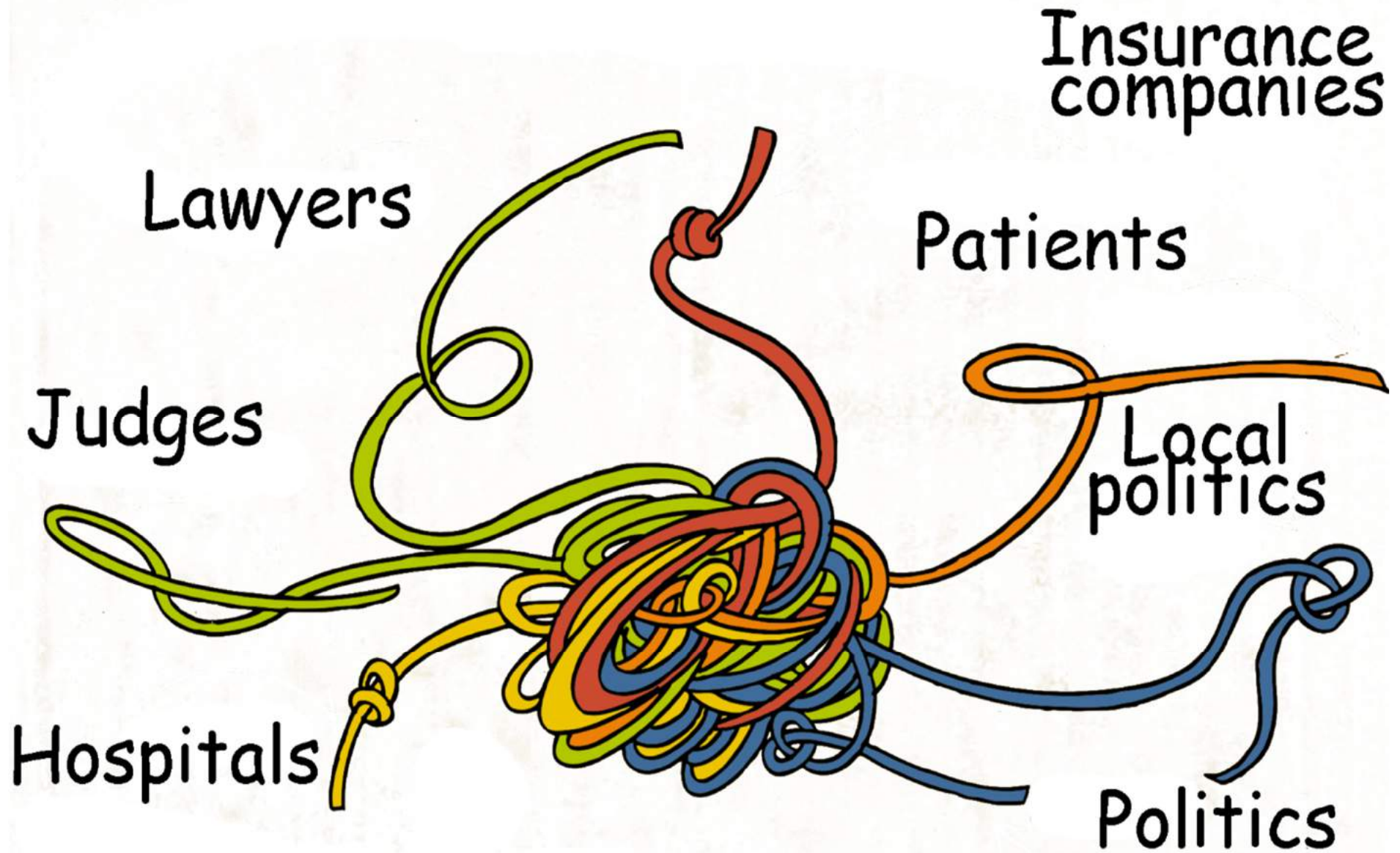




**Insurance companies almost completely deserted this area of the insurance market**











## «The error of a doctor is a God's error»

In the past the doctor-patient relationship was characterized by complete trust and mistakes as well as negligence of clinicians were deemed as misfortunes or fate.



A long standing principle in general civil liability, established by the Romans, is that he who determined an unjust damage had to compensate it





Hence, until twenty years ago, it was the patient's obligation to prove both his damage and the causal link between the doctor's actions and his damage





Being Medicine far from an exact science this made really difficult for patients to prove the medical responsibility in all cases where there was no plain evidence



Jurisprudence began qualifying the doctor patient rapport as a contract



However, if a contract stands between two individuals, Italian laws state that it is the one who is in debt of a certain performance who must prove to have done it correctly



Hence, the patient had just to prove his damage while the doctor had to prove that everything had been correctly done



In case of scientific uncertainties the doctor could not prove this and he was then succumbent





This determined a skyrocketing of civil proceedings against doctors, the escape of insurance companies as well as the rising phenomenon of defensive medicine



In order to stop the continuous expansion of medical liability from courts, in 2012 the Parliament passed a law in order to restrict medical responsibility as well as to lower insurance costs for doctors.





It particularly stated that if a medical professional had followed what guidelines dictated he could not be responsible of what happened in criminal proceedings





It then tried to bring medical responsibility back to the general principle of civil responsibility, excluding that the doctor-patient relationship was a contract





This, however, was not clearly stated, thus most courts did not take this rule into account continuing to consider the doctor-patient relationship as a contract with the usual consequences on liability





Furthermore, in order to prevent the rising of costs of the damage, the same law stated that the cost of damages to the patient had to be evaluated as in motor responsibility, thus lowering the amount of compensations





The 2012 law did not suffice to prevent rising costs of damage and defensive medicine, hence, after five years a new law has been approved





The new law explicitly stated that the doctor-patient relationship is not a contractual one, while the hospital-patient relationship is contractual





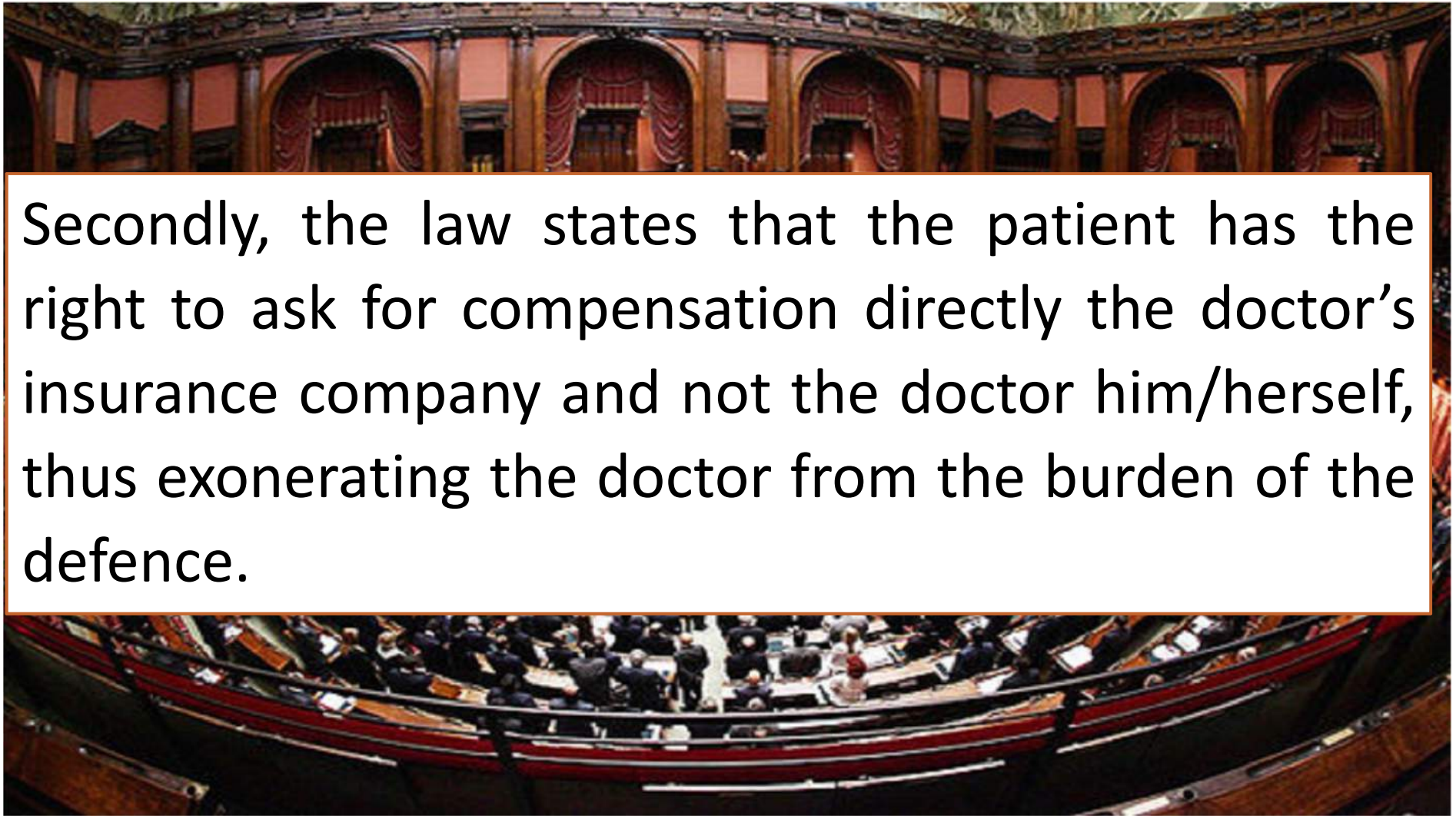


This should make it easy for doctors to insure themselves as well as defend themselves in court





Secondly, the law states that the patient has the right to ask for compensation directly the doctor's insurance company and not the doctor him/herself, thus exonerating the doctor from the burden of the defence.





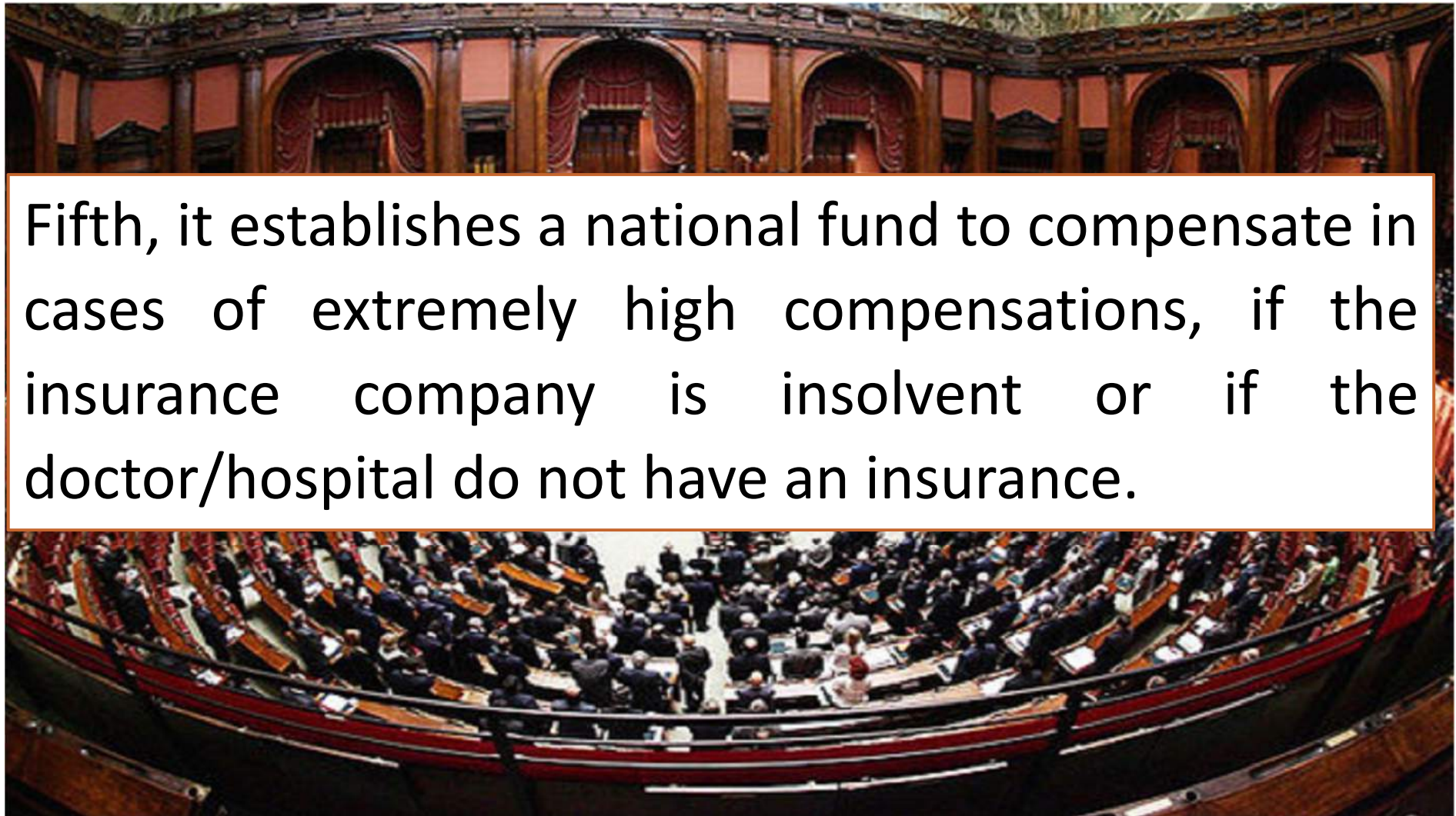
Third, it forces every hospital to be insured, in order to secure the patient's rights to compensation





Fourth, it prolonges the duration of insurance contracts to ten years before the time it was signed and to ten years after the doctor retired





Fifth, it establishes a national fund to compensate in cases of extremely high compensations, if the insurance company is insolvent or if the doctor/hospital do not have an insurance.



Sixth, there is a mandatory conciliation attempt before starting civil litigation





Seventh, only medico-legal experts can be chosen as the judge's advisers together with one or more experts in the case specific medical field



