

Does Proactive Disclosure of Medical Error Prompt or Prevent Medical Malpractice Suits?

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Presentation Outline

- ❑ Proactive Disclosure of Medical Error at the University of Illinois Hospital
 - ❑ Bargaining under Asymmetric Information: Screening versus Signaling
 - ❑ Preliminary Empirical Findings
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Patient Safety:

Too Little Compensation, Too Little Deterrence

- ❑ Medical errors are costly – mostly for patients
 - ❑ Preventing medical errors is costly – mostly for providers
 - ❑ To receive compensation, patients must prove:
 - (1) they suffered an injury
 - (2) that was caused by the provider's
 - (3) substandard care (negligence).
 - ❑ Results in:
 - long time to reach trial verdict
 - uncertainty about trial verdict
 - very high overhead: "For every dollar spent on compensation, 54 cents went to administrative expenses (lawyers, experts, and courts)." (Studdert et al 2006)
- too few lawsuits, most cases settle
- too little compensation (especially for small cases)
- too little deterrence: providers do not bear full cost of error
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University of Illinois Medical Center at Chicago

- large, urban, tertiary-care academic medical center
 - ~ 20,000 patients discharged per year
 - > 40% admitted via Emergency Department
 - about half either uninsured or on Public Aid
 - quarter of patients seek care related to pregnancy, childbirth, and neonatal care
 - ca. 100 kidney transplants annually

 - self-insured against professional liability
 - located in “judicial hellhole”
 - old risk management strategy: “deny and defend”
 - catalyst for change: missed leukemia diagnosis
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Error disclosure at UIMCC

- 2001 Personnel changes in legal counsel office & in hospital leadership – biggest naysayer left UIMCC.
 - 2003 Beginning of medical malpractice insurance crisis in Cook County, Illinois
 - Approval to craft a “full disclosure” process for presentation to the University’s Board of Trustees
 - April 2006 The *Comprehensive Process for Responding to Patient Safety Incidents* at UIMCC goes live
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What do patients want after event?

Five "R"s of Apology (Woods 2007)

Remain Engaged

honest, frequent, consistent communication

Recognition

that an unexpected adverse outcome has arisen

Regret

express empathy for the patient's loss and harm

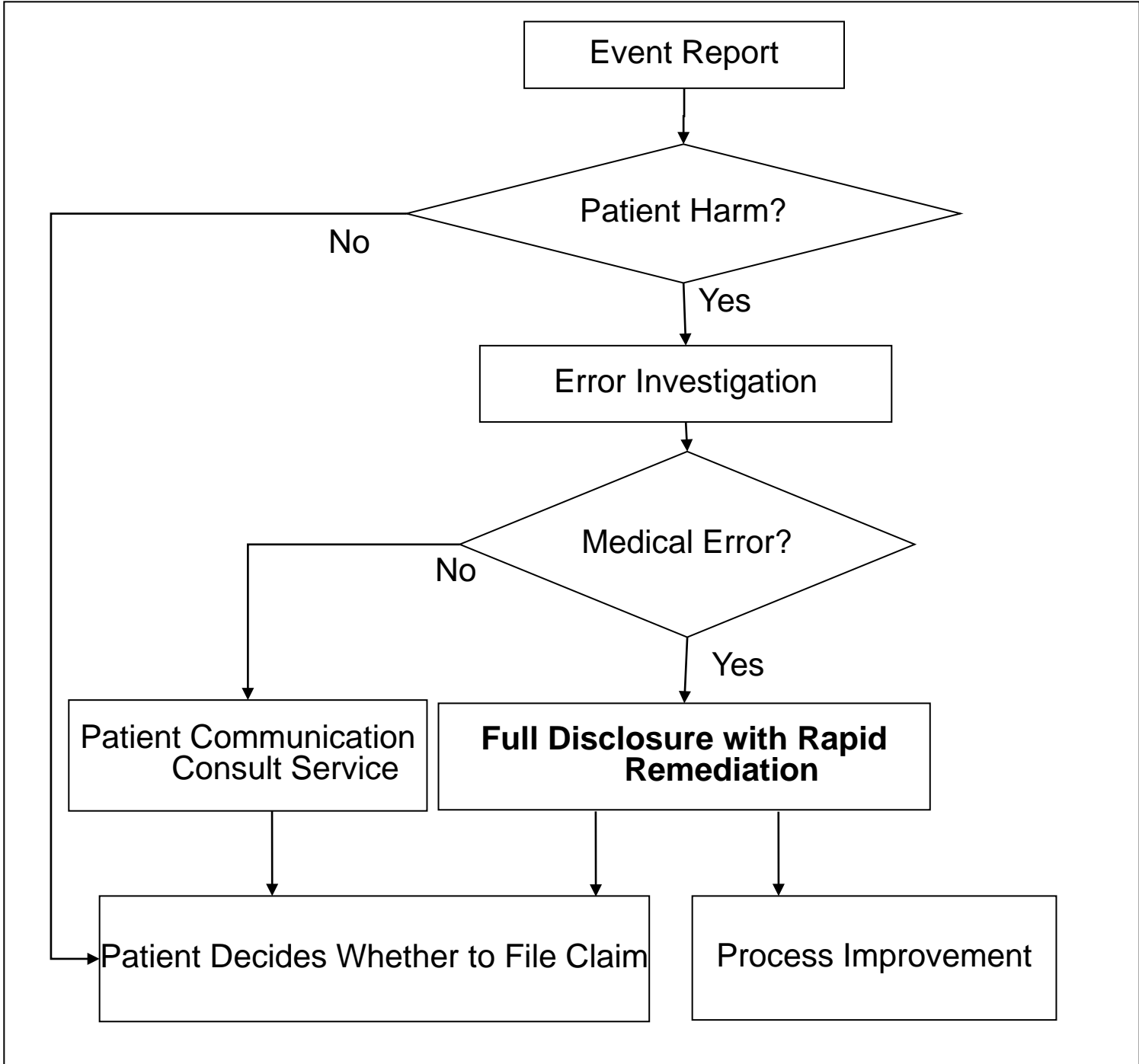
Responsibility

accept fact that provider's action caused harm
admit negligence (if harm indeed due to negligence)
apologize

Remediation

medical
financial

learn from incident to prevent recurrence



Bargaining with Private Information

- both sides observe severity of injury W
 - asymmetric information:
 - defendant knows degree of liability q
 - plaintiff only knows distribution of $q \sim U_{[0,1]}$
 - settlement: defendant pays S to plaintiff
 - plaintiff drops case:
 - defendant pays 0
 - plaintiff receives 0
 - trial:
 - defendant pays plaintiff qW
 - each party incurs litigation costs C_d and C_p
 - assume case has merit:
$$E[q]W - C_p = W/2 - C_p > 0$$
-

Baseline Case: Symmetric Information

- Both parties predict q equally well
- No trial, parties always settle
- Nash bargaining: split total litigation cost
- Plaintiff's expected compensation:
$$W/2 - C_p + (C_d + C_p)/2$$
- Defendant's expected payment:
$$W/2 + C_d - (C_d + C_p)/2$$
- Party with lower litigation cost captures more than half of joint litigation costs
→ payoff better than expected verdict
- 2 possible sources of accuracy loss:
 - inequality in litigation costs
 - imperfect information about degree of liability

Asymmetric Information: Who Moves First?

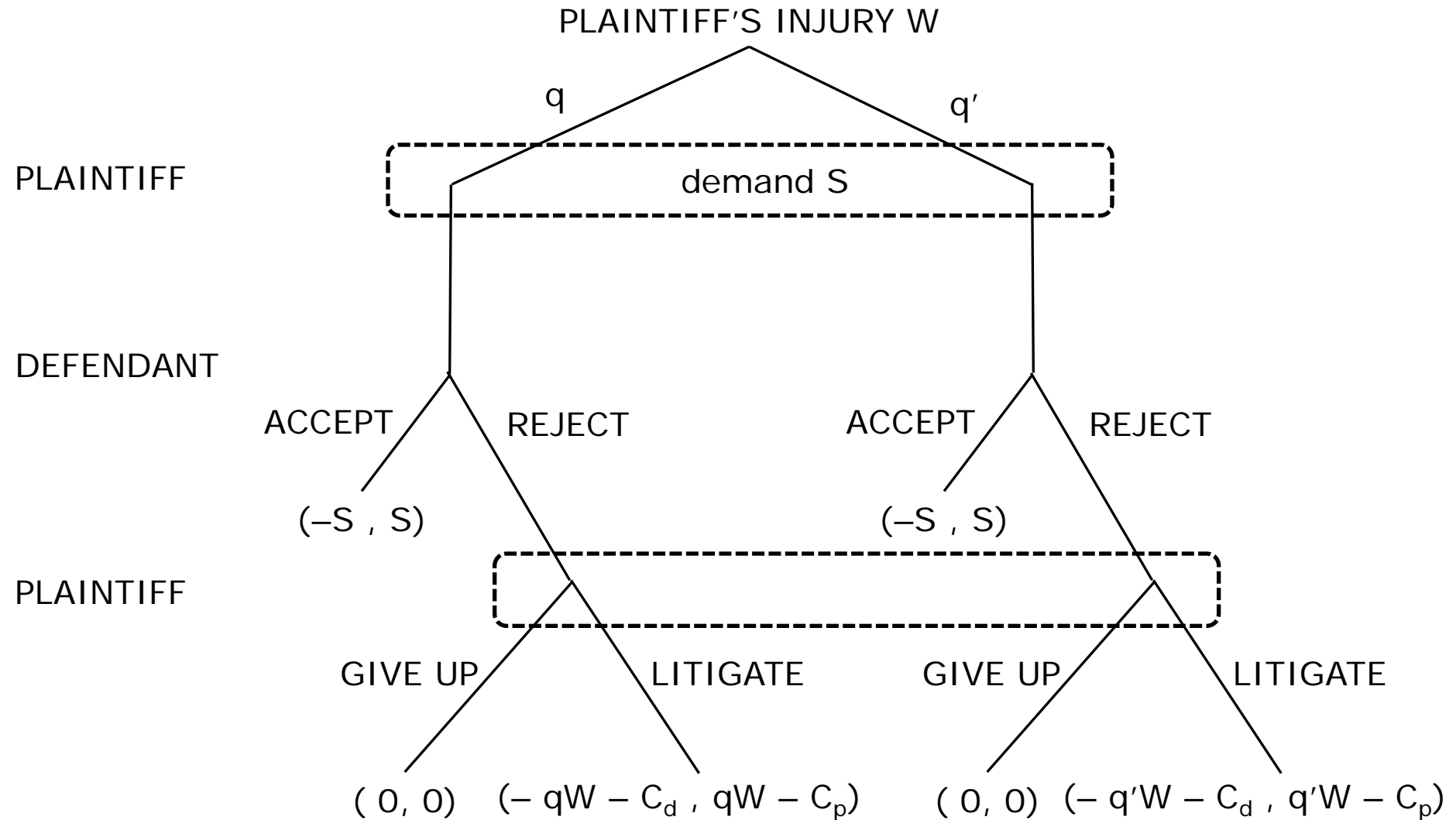
□ Screening

plaintiff demands settlement S (screens for q)
“reactive management of patient’s injury”

□ Signaling

defendant offers settlement S (signals q)
“proactive management of patient’s injury”

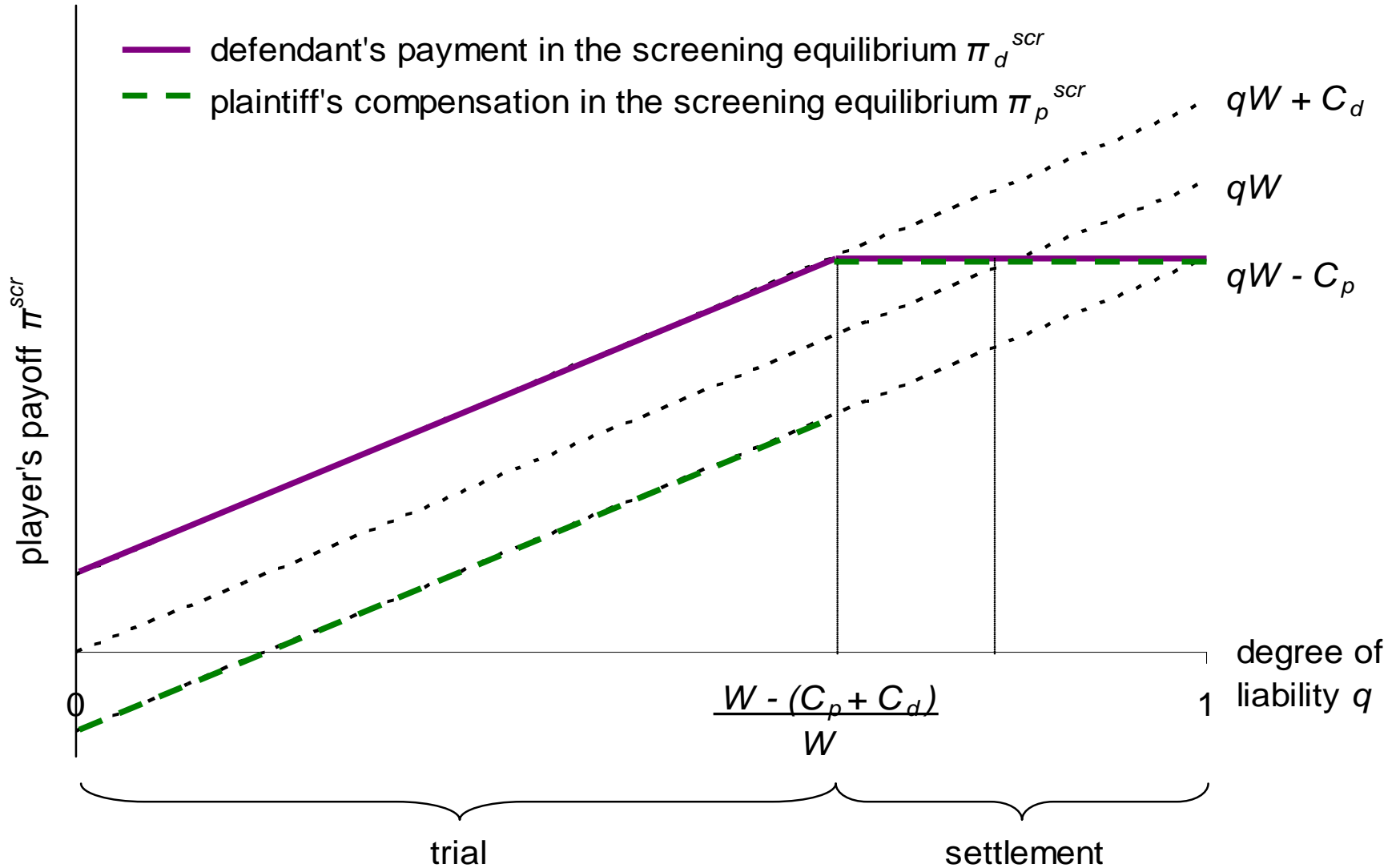
Plaintiff Screens for q



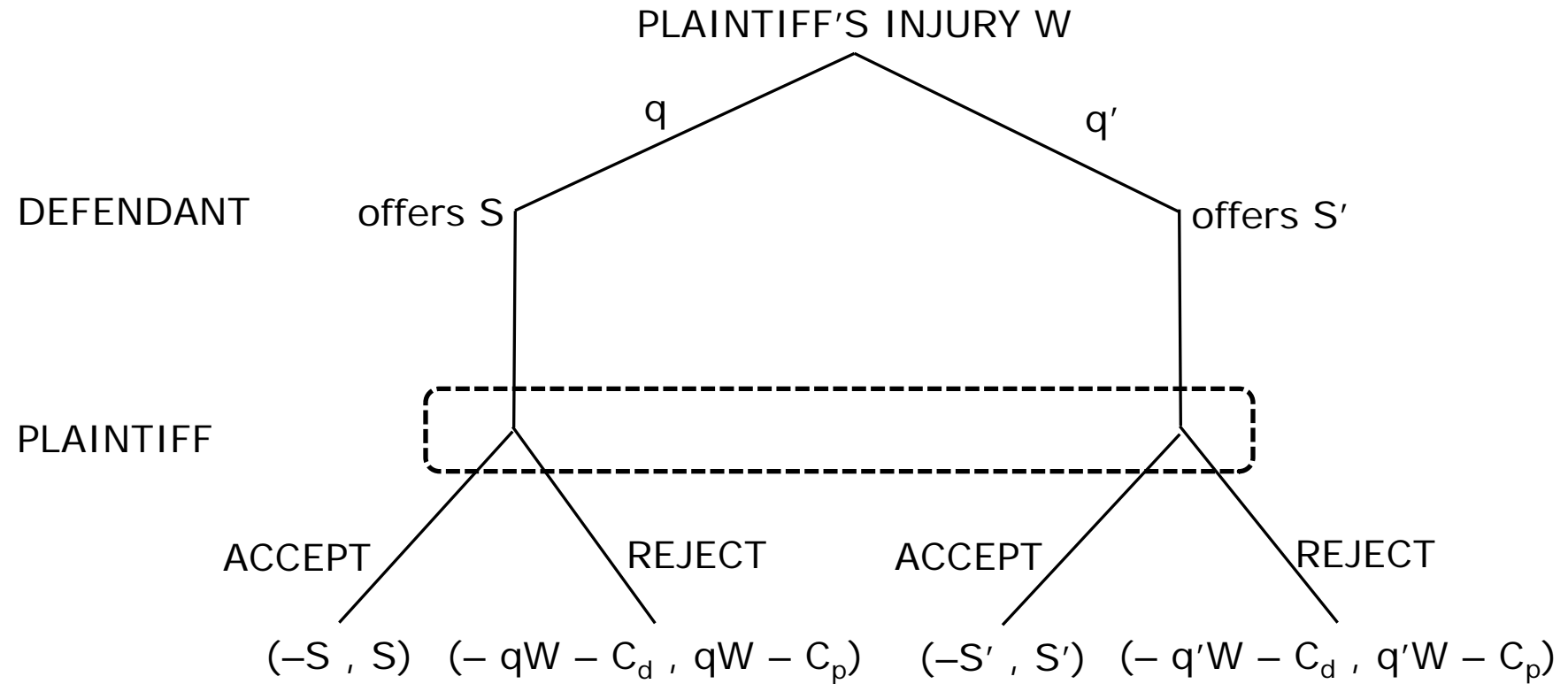
Plaintiff Screens for q – Equilibrium

- plaintiff always demands $W - C_p$
 - plaintiff always sues if defendant rejects demand
 - trial if $qW + C_d < W - C_p$
or $q < [W - (C_p + C_d)]/W$
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Plaintiff Screens for q - Payoffs



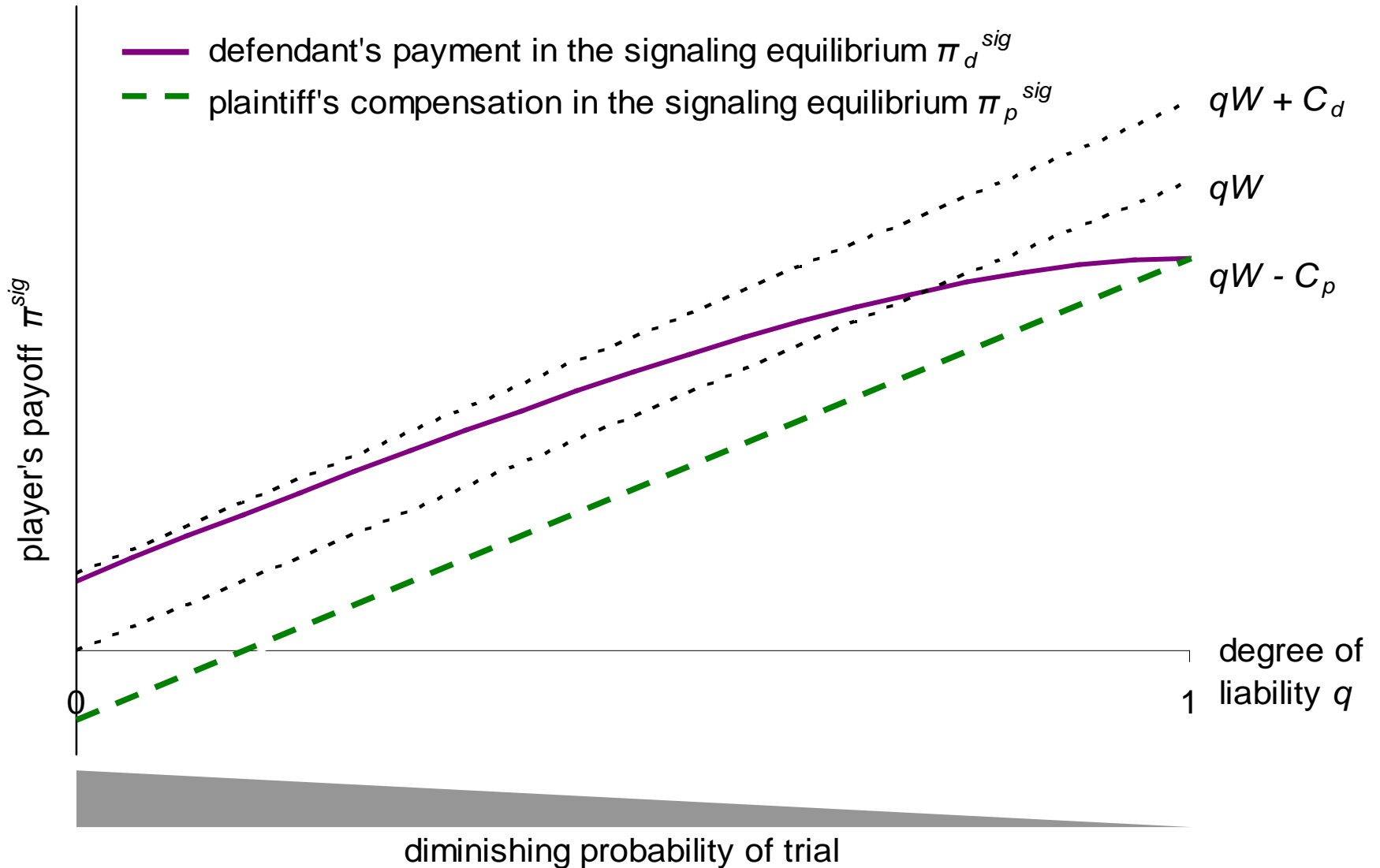
Defendant Signals q



Defendant Signals q – Equilibrium

- defendant always offers $qW - C_p$
 - plaintiff indifferent between accept / reject
 - plaintiff more likely to reject lower offers
to enforce $qW - C_p$
(deter defendant from offering too little)
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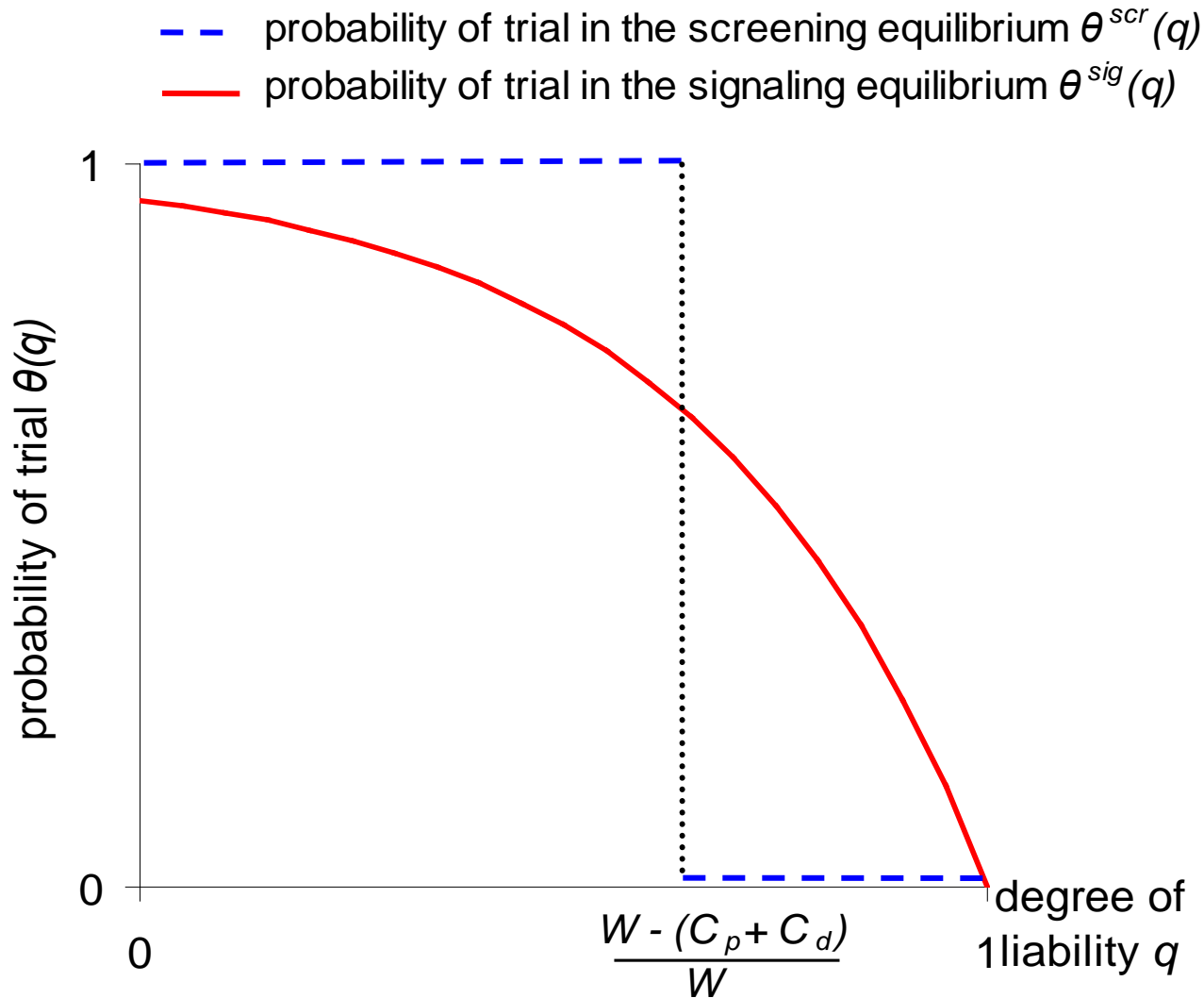
Defendant Signals q - Payoffs



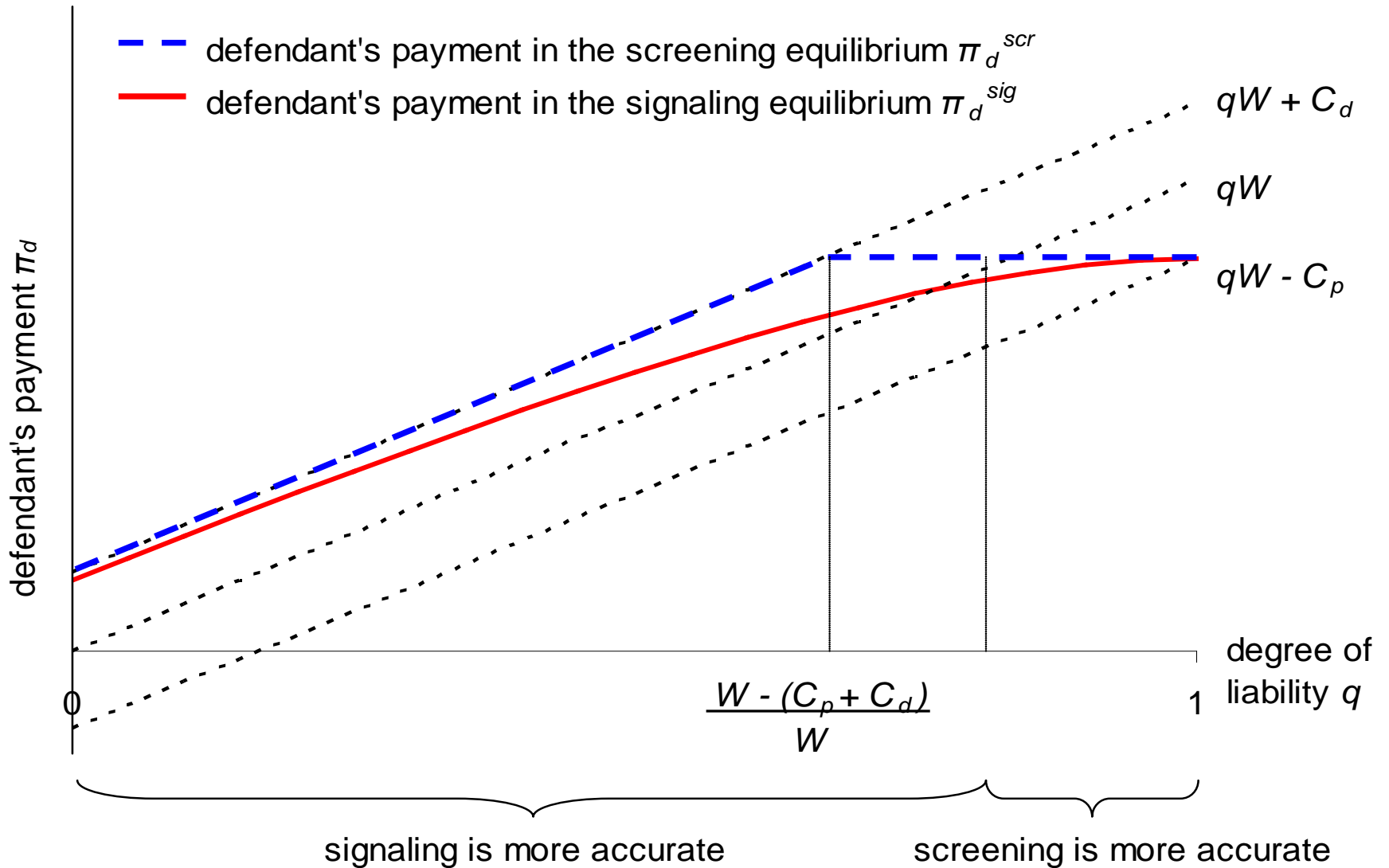
Screening versus Signaling

- Probability of Trial
 - Defendant's Expected Payment
 - Accuracy of Deterrence
 - Plaintiff's Expected Compensation
 - Accuracy of Compensation
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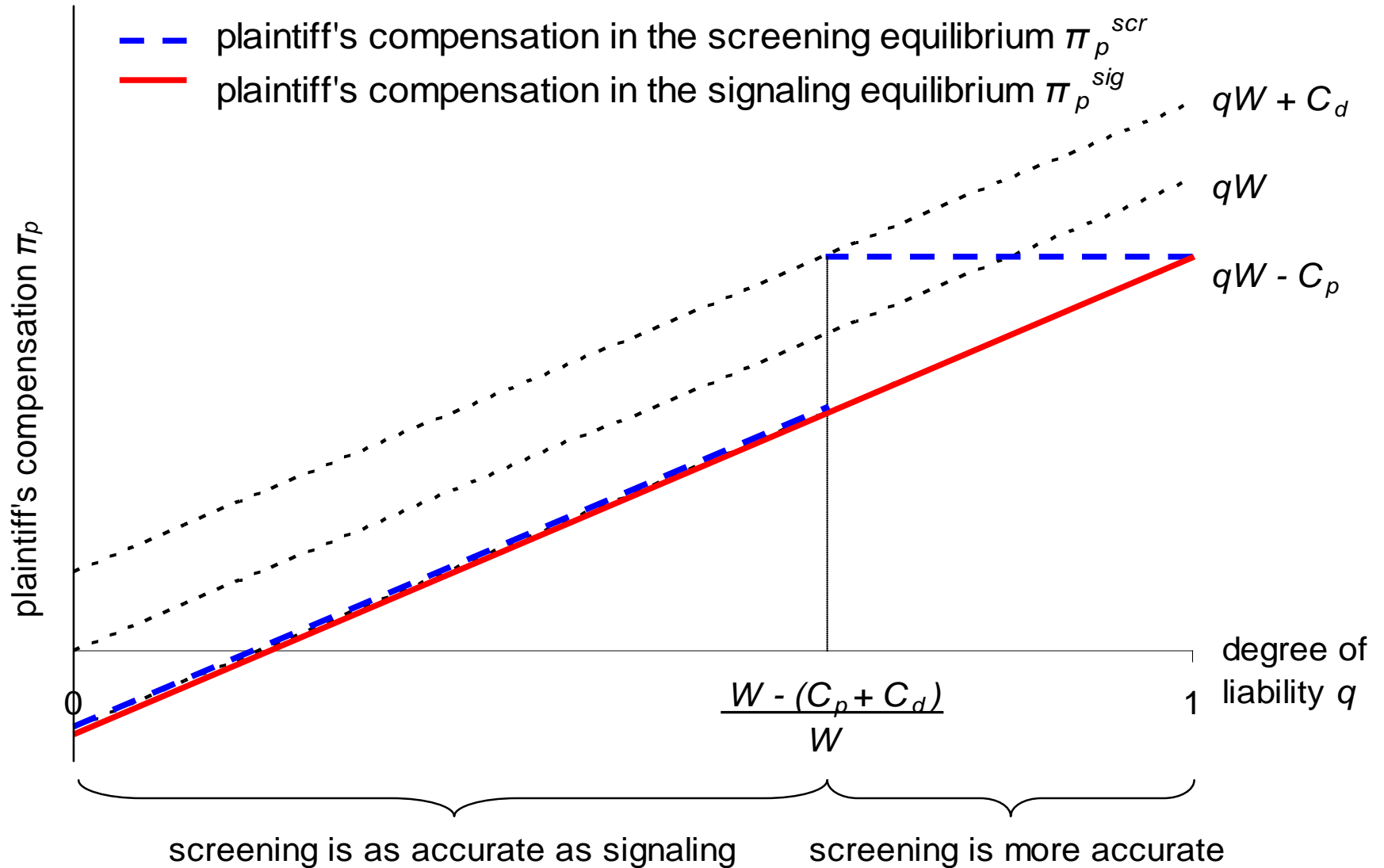
Probability of Trial



Defendant's Payment



Plaintiff's Compensation



From Reactive to Proactive Management of Patient Injury

- go to trial *more* often to maintain equilibrium
 - make asymmetric information about liability work in favor of defendant
 - improve accuracy of deterrence and compensation if plaintiff's litigation cost small relative to defendant's
 - won't change accuracy of determining *true* negligence, i.e. still subject to jury error
 - particularly beneficial for hospitals with sharp improvements in their patient safety performance record
 - change plaintiff's perceived distribution of q
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Evidence from the *Cook County Jury Verdict Reporter*

- new lawsuits and verdicts
from Cook County Circuit Court docket
verdict awards overstate eventual payouts
 - settlements (w/ or w/o lawsuit)
voluntarily reported by attorneys
large plaintiff verdicts likely reported
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Observations and Variables

Observations

- all settlements and verdicts
- 07/01/2001 to date
- Cook County, IL – Law Division

Variables

- Injury Date
 - Clinical Category Of Case (e.g. Birth Injury to Child)
 - Vital Status
 - Patient Sex
 - Patient Age
 - Case Number (if suit filed)
 - Award
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Control Group of 6 Hospitals

Hospital	FY 2002 Discharges
University of Chicago Hospitals	27,873
Rush University Medical Center	27,611
Advocate Illinois Masonic Medical Center	21,676
Resurrection Medical Center	19,782
Mount Sinai Hospital	19,589
University of Illinois Medical Center at Chicago	17,642
Saint Mary of Nazareth Hospital Center	15,316

Settlements – Mean (mil. \$) [Number]

Hospital	Before Apr 96 – Apr 06	After May 06 – current
University of Chicago	2.29 [7]	[0]
Rush University	3.30 [7]	[0]
Advocate Illinois Masonic	5.03 [8]	[0]
Resurrection	3.13 [6]	[0]
Mount Sinai	3.89 [4]	[0]
University of Illinois	2.55 [17]	7.88 [2]
Saint Mary of Nazareth	2.90 [2]	[0]

Verdicts – Mean (mil. \$) [Pltf, Deft]

Hospital	Before Apr 96 – Apr 06	After May 06 – current
University of Chicago	1.58 [2,9]	[0]
Rush University	4.83 [1,6]	[0]
Advocate Illinois Masonic	3.70 [1,0]	[0]
Resurrection	0.35 [1,1]	[0]
Mount Sinai	1.00 [1,4]	[0]
University of Illinois	0 [0,1]	[0]
Saint Mary of Nazareth	0 [0,0]	[0]
