

SB

377/532 File #4

TORT REFORM
(LETTERS &
ARTICLES FOR)

April 15, 1986

Representative Don Clocksin
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: HB 532

Dear Representative Clocksin:

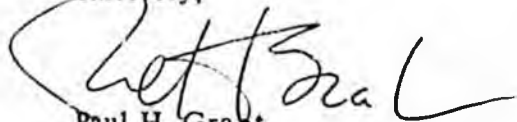
During my testimony on behalf of the ACLU, you raised a question concerning the allocation of the costs of arbitration under AS 9.43. I was concerned lest my testimony on that point mislead the committee, and so I looked into the matter further after I got back to the office.

You are correct that AS 9.43.100 provides that the arbitrator's costs and fees shall be allocated as provided in the award. Nonetheless, the arbitrator's power to allocate costs and fees does not change the conclusion that the arbitration requirement hampers the access of economically disadvantaged persons to dispute resolution mechanisms. Every litigant will still have to consider the potential for such an award in deciding whether to pursue litigable rights, and the deterrent effect of such a potential award will be greater for the economically disadvantaged than it will for the prosperous.

It is also safe to predict that as a practical matter most awards will allocate costs and fees evenly between the parties. This is standard practice, and nothing in the statute gives the arbitrator any impetus to do otherwise.

Please pass these thoughts on to the other committee members, with my apologies for any confusion my testimony may have caused.

Sincerely,



Paul H. Grant
For the Litigation Committee

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

To: Representative Mike Miller, Chairman
Members of the House Judiciary Committee

From: Scott A. Burgess, Executive Director *SAB*

Date: March 26, 1986

Subject: CSHB 532 - Tort Reform

On behalf of the Alaska Municipal League, thank you and all the members of the 14th Legislature for recognizing that an insurance crisis exists, and for taking on, what has already proven itself to be, a difficult issue. The League, on behalf of the 116 municipalities it represents, directly, and all local governments in Alaska, offers its assistance in finding short-term and long-term solutions.

Attached is a copy of an AML resolution on the insurance and tort reform issue from the 1986 Policy Statement which was sent to you at the beginning of the year. Also, the following policy appears on page 8 of the Statement:

F. TORT REFORM

The League urges the Legislature to review tort reform and to work for a viable municipal insurance system.

These policies came out of the discussions and actions at the annual conference in Fairbanks. The Board of Directors chose finding solutions to the availability and affordability of insurance for municipalities as one of its top four legislative priorities for this year. While the League has been working for several years to assist municipalities with their insurance needs, it has been unable to address and fully understand the current crisis.

The League is in support of legislation allowing municipalities to create a self-insured risk pool. The current statutes allowing for municipalities to form reciprocals is unnecessarily burdensome and expensive. It requires municipalities to essentially create an insurance company rather than contracting with existing insurance and financial agencies; requires a heavy surplus deposit over and above the current high premiums; and, is subject to unnecessary regulation by the Division of Insurance.

The League is already helping municipalities with their insurance needs. The League has pursued setting up a self-insurance pool program for several years but have been thwarted by interpretations of existing law, and our attempts to change it. The League has a group insurance program which is providing insurance coverage to over 80 municipalities for workers compensation, general liability, business auto, and errors and

omissions coverage for law enforcement, public officials, and school board members. However, because of the market and our inability to pool, we are unable to improve the program and offer the coverage desired.

The League has not been able to research the current tort reform issue well enough to commit to supporting all the recommended changes to the Statutes, or to make the direct connection between tort reform and the current insurance problem. Like you, local elected officials are equally concerned for both today's plaintiff and tomorrow's taxpayer. The Board of Directors is unsure whether the fault for the current insurance problems rest with a reckless society, the insurance industry, the justice system or State laws, or a combination of all. Therefore, the League is asking the Legislature for help to analyze the problem and develop reasonable solutions. Tort reform should be evaluated on whether it is good policy, and on the long term effects, not just as a possible solution to the current problem.

There is a problem. Municipalities, and others who will appear before you, are unable to obtain or afford insurance to protect themselves, their investments, and the public. The problem faced by municipalities is unique. Municipalities are regarded as high risk clients by insurance companies because they have a greater potential for being sued; therefore, they have, historically, been victims of paying higher premiums. This, itself, is not unique because the same applies to doctors. However, the fact that municipalities are in the business of providing high risk public services, such as fire and police, that they cannot stop providing just because of the cost or risk, is unique to municipalities. Secondly, municipalities are the victims of the "deep pocket" theory. Municipalities are named in suits, directly or indirectly, regardless of the degree of fault because there is a perceived unlimited ability to pay. A claim is not limited by the amount of insurance coverage but by assets, and juries perceive that municipalities need only raise taxes to pay the claim.

The League is currently collecting information through a survey of its 116 members on their recent insurance experiences. The survey is not complete; however, attached is the information from the communities that have responded to date. Also included is information from other municipalities in the AML Insurance Program, provided by our broker Frank B. Hall & Co. of Alaska.

Several bills are before the Legislature attempting to address the insurance problem in Alaska. We support the concept of allowing municipalities to form self-insured risk pools. An AML Legislative Subcommittee has reviewed the bills introduced this session and before your committee, and has no problem with the tort reform measures most completely covered in HB 532. However, the Subcommittee and the staff will follow the hearings and your deliberations closely to better understand all concerned before recommending any specific bill. The League, of course, is available to help you in any way we can to find short and long term solutions to the insurance problems faced by municipalities and others.

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 86-13

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE
URGING THE STATE LEGISLATURE TO INVESTIGATE
TORT REFORM AND THE REASONS BEHIND THE
UNAVAILABILITY OF CERTAIN LINES OF INSURANCE.

WHEREAS, insurance rates have increased astronomically and this has caused businesses to close and has created a financial burden on taxpayers in Alaska, and


WHEREAS, municipal insurance rates have increased as much as 500% in some areas, and

WHEREAS, day care operators, air carriers, truckers, contractors, CHAPP-affiliated businesses, doctors, and architects are in many cases unable to obtain any insurance, and

WHEREAS, the Alaska Municipal League feels strongly that an investigation into causes should be made and a solution to this problem must be found this year;

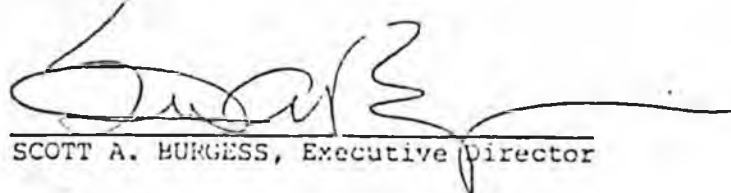
NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that the Office of the Governor and the Alaska State Legislature are urged to immediately pursue all avenues available to solve this problem and find a way to provide insurance in Alaska.

Adopted this 16th day of November, 1985.



LEO B. RASMUSSEN, President

ATTEST:



SCOTT A. BURGESS, Executive Director

<u>MUNICIPALITY</u>	<u>LAST YEAR PREMIUM/COVERAGE</u>	<u>THIS YEAR PREMIUM/COVERAGE</u>	<u>% of budget</u>	<u>JOIN/ SUPPORT POOLING</u>
ALAKANUK	UNINSURED	UNINSURED	4%	YES
ALEKNAGIK	\$ 4,500	\$15,000	13%	MAYBE
BARROW	\$ 4,100/\$ 1 million	\$10,000/\$500,000		
BETHEL	\$350,000	\$600,000	10%	YES
CORDOVA	\$ 21,000/\$ 1 million	\$ 31,850/\$500,000		
EAGLE	\$ 3,365/\$500,000	\$ 8,739/\$500,000	6%	YES
FAIRBANKS	\$212,876/\$20 million	\$514,167/\$5 million	2.5%	NO
GALENA	REPEATED CANCELLATIONS/PREMIUMS UP 200%		5%	MAYBE
GAMBELL	\$ 19,300/\$1 million	\$ 15,617/\$500,000		
HAINES BOROUGH	\$ 25,000	\$ 34,797	3.5%	NO
HOONAH	\$ 6,484/\$1 million	\$ 11,640/\$500,000		
HOUSTON	\$ 23,906	37,444	16%	MAYBE
JUNEAU	\$518,000	\$1,253,900	2%	YES
KAKE	\$ 10,617/\$1 million	\$ 7,080/\$500,000		
KENAI	\$ 85,000/\$10 million	\$320,000/\$10 million		NO
KODIAK	\$ 90,083/\$500,000	\$155,725/\$500,000	5%	YES
KOTZEBUE	\$140,000	\$280,000	5%	YES
LOWER KALSKAG	\$ 2,500/\$1 million	\$ 5,000/\$500,000		
McGRATH	\$ 13,596	\$ 41,063	7.5%	YES
NULATO	\$ 4,500/\$500,000	\$ 12,000/\$500,000	5%	YES
PALMER	\$138,000/\$10 million	\$219,000/\$1.5 million		YES
PELICAN	\$ 7,457/\$500,000	\$ 15,900/\$300,000	11.5%	YES
RUSSIAN MISSION	\$ 2,580/\$1 million	\$ 5,000/\$500,000		
St. MARY'S	\$ 4,200/\$1 million	\$ 5,000/\$500,000	10%	YES
SAND POINT	\$ 45,000	\$ 80,000	9%	YES
SITKA	\$ 53,753/\$10 million	\$131,628/\$5 million	3%	YES
SKAGWAY	\$ 31,883/\$1 million	\$ 55,806/\$ 1 million	6%	MAYBE
SOLDOTNA	\$110,000/\$10 million	\$270,000/\$10 million	6%	YES
TENAKEE SPRINGS	\$ 13,670	\$ 42,000	16%	YES
UNALASKA	\$131,124/\$14 million	\$ 99,468/\$4 million	10%	YES
WALES	\$ 11,663	UNINSURED		YES
WASILLA	\$ 11,000/\$6 million	\$19,000/\$1.5 million	2%	MAYBE

** ALL INFORMATION COMPILED BY THE ALASKA MUNICIPAL LEAGUE BY SURVEY. BACK-UP IS AVAILABLE THROUGH THE AML 105 Municipal Way, Suite 301, Juneau, Alaska 99801



TELEPHONE
(907) 586-1125

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

To: Representative Mike Miller
Members of the House Judiciary Committee

From: Scott A. Burgess, Executive Director 

Date: April 16, 1986

Subject: Joint and Several Liability

During the House Judiciary Committee meeting of April 10, Representative Sund requested the Alaska Municipal League to provide information regarding the effect of joint and several liability on insurance premiums and coverage for municipalities. We contacted our AML Insurance Program broker, Frank B. Hail & Co., who of course supports tort reform, with your questions. We were told that they were questions a broker could not answer, because premium rates are set by the insurance companies themselves. The following views have been developed from public hearings and data collected on both the State and national level. I believe there are two separate responses to your questions, one for municipalities participating in self-insurance pools, and one for municipalities totally insured through the commercial insurance market.

Last week, the House Judiciary Committee passed out HB 506 - Insurance Pooling, which would enable Alaska municipalities to pool their self-insurance reserves to insure the pool's aggregate losses, and to purchase catastrophic insurance for pool members. Under such a pool, a joint and several liability law becomes of utmost importance. Municipalities join a pool to cut the premium costs of insurance. In some pools currently operating, premiums have been reduced right off the top 25% - 33%. What is eliminated is the margin of profit afforded the broker, above and beyond operating expenses. The other major savings from insurance pools come from risk management and reduction of losses.

Under current law in the State of Alaska, there exists little incentive for a municipality to control losses and manage risk. Why should a municipality, especially a small one, expend money, time, and personnel to reduce risk, when it can be reassigned by the courts? There is no savings offered a municipality that successfully reduces its liability for any given accident from 99% to 1%. It is not difficult for a jury to find a 1% degree of fault by a municipality because, for instance, a tree branch was partially obstructing a stop sign, or whatever the basis for the claim may be. What that jury may not realize is that they have assigned to that municipality the potential for a full 100% liability for the jury award.

In a pool, a municipality receives a year-end dividend based upon the pool members' ability to manage their losses. The portion of their annual premium, not absorbed by losses, is returned to the pool members, minus the cost of administration. The annual dividend provides tremendous incentives for each municipality to continually improve their risk management capabilities. Without a strict joint and several liability law, that incentive to reduce loss is eliminated because no consistent, dependable link exists between effective risk management and reduced cost of insurance. The incentive connection between the two is eliminated by the court's ability to assign full damage liability to a single party, regardless of their degree of fault.

Under the second scenario (insurance through the commercial market), joint and several liability does not guarantee any short-term reduction in insurance premiums or increase the availability of insurance. Several legislators, and people offering testimony on tort reform legislation, have pointed out that not one insurance company has come forward and promised to reduce rates should tort reform pass. That may be true, and this should not be viewed as absolving insurance companies of fault for the current crisis, or for the need for insurance reform; however, it is a short-sighted view of the fundamentals of private enterprise. Many people seem to view the issue as some kind of proposed hostage exchange between elected officials and insurance companies, trading lower insurance premiums for changes in tort laws that are favorable to insurance companies. Testimony presented both on a national level, and before the House Labor and Commerce Committee, supporting the passage of effective tort reform laws maintains that tort reform would, indeed, result in increased availability of insurance, and lower premiums, but not before working through some basic business principles.

The passage of tort reform, especially joint and several liability, would make Alaska a more attractive market for insurance companies that handle public entities. Statistics available through the Division of Insurance demonstrate an incredibly low ratio of insurance companies per capita in Alaska, compared to any other state in the union (owed in part to the confessed efforts by the State Division of Insurance to make sure that companies operating within Alaska make a lot of money). Passage of tort reform would lure additional insurance companies into the State, increasing competition for our insurance dollar. And the easiest way to secure a portion of the market for a new company is to offer the same service for less money...not a difficult concept, but one seemed lost on many people who have testified before this and other committees.

While the Alaska Municipal League has not taken a position on specific tort reform legislation, we have asked the Legislature to help municipalities deal with the insurance crisis. We appreciate very much your action on insurance pooling legislation, and now ask you to address tort reform, as well. The U.S. Department of Justice, the National Council of State Legislatures, and countless others have called for reforms in state tort laws. It is hard to believe that their only motivation is to make insurance companies rich at the expense of plaintiffs and their attorneys. I believe the motivation behind the movement is fairness.

Thank you for your interest in this important issue. I am sure you can see the necessity of this legislation, for municipalities and other political subdivisions, in returning affordability and predictability to the public insurance market.

If you should have additional questions regarding this, or other insurance issues, please do not hesitate to call me. I have provided your committee testimony packets, and I will forward to you any additional information the League receives from our brokers, when available.

Jerry's
Automotive
(907) 683-2281

Mile 248.5 Parks Highway
Box 34
Healy, Alaska 99743

 McKinley
Kampground
(907) 683-2379

May 6, 1986


Representative M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Sir,

Please move House Bill 532 to the House Finance Committee in its original form. There is not much time.

I realize many of the House Judiciary are attorneys but I feel you can still see the need for reform. We can't continue to pay twice as much money for half as much coverage. Nothing is going to stop that until some of this madness in claims is curtailed.

Sincerely,


Corrine Colrud, Mrs.

DERRY & ASSOCIATES

Real Estate Appraisers & Counselors

Box 951 • Homer, Alaska 99603 • (907) 235-8431

April 27, 1986

Chairman Mike Miller
Box V(MS3100)
Juneau, Alaska 99811

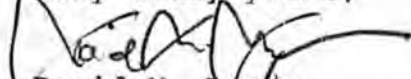
Dear Representative,

I am writing regarding House Bill 532 which I understand is now in your committee. I have long been troubled by the compensation awarded for various liability settlements through the court system. I respectfully request your affirmative vote on HB 532 to pass this legislation out of the House Judiciary committee so that other committees can review the legislation and hopefully adopt it.

The proliferation of lawsuits for all types of liability action has been an ongoing problem in Alaska. The impact of those suits has recently come home to rest in my profession, as a real estate appraiser. After a lengthy time and at a substantial cost, I have finally secured Errors and Omissions insurance for our firm. The insurance premium quotations reflected increases of 400-600% per year. I am now finding that we are very fortunate to have been able to secure Errors and Omissions insurance at all. The American Institute of Real Estate Appraisers and Society of Real Estate Appraisers are both citing difficulty nationally in obtaining any Errors and Omissions insurance for appraisers. I note from my efforts to secure Errors and Omissions insurance that Alaska has a poor reputation with insurance companies. At some point I feel we have to stop, take a look at our system, and adopt a more reasonable basis of compensation. I strongly support prompt changes in the court system to protect all parties to liability claims.

I understand from newscoverage that a debate has commenced between insurance companies and lawyers over who is to blame for the current situation. Any debate or dispute should be set aside and the issue itself resolved. The attorneys and insurance companies can continue their battle on their own time. Again, I ask for your prompt, affirmative consideration of HB532.

Very truly yours,



David M. Derry

PROFESSIONAL TRUST ADMINISTRATORS, INC

POB 220713

ANCHORAGE, ALASKA 99502-0713

907-249-4815

April 27, 1986

HOUSE LEADERSHIP
M. MIKE MILLER, MAJORITY WHIP
ALASKA STATE LEGISLATURE
FOUCH V
JUNEAU, ALASKA 99811

Re: House Bill 532

Professional Trust Administrators, Inc. has been created to fill a niche - a niche caused by the erosion of the civil justice system which has contributed to the instability of the liability insurance mechanism. We will act as trust administrators for self insured accounts, issuing a certificate of financial responsibility warranting that the self insured has put funds in trust to satisfy their public liability obligations. Our clients will include not only private enterprise, but also some of Alaska's governmental entities.

Even though the erosion of the civil justice system and insurance mechanism has created a market niche which will be lucrative, we live in the real world. As citizens and business persons in this State and Country, we are subject to the operations of the civil justice system should we ever sue or be sued.

The civil justice system is in need of your attention - now! The civil justice system needs tort reform - now!

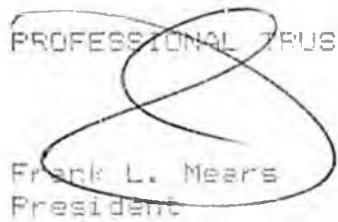
I urge you to pass legislation based upon the principles of sponsor substitute for HB 532 and the comprehensive solution proposed by the Citizen's Coalition for Tort Reform.


Tort reform as proposed by HB 532 will put predictability back into liability awards. This will allow the insurance mechanism, a risk spreading mechanism which must be able to predict both frequency of potential loss and severity of potential loss, to operate in a satisfactory manner.

Tort reform as proposed by HB 532 will reduce the cost of administering justice in our civil justice system; it will promote fairness in our system of civil justice for both parties: plaintiff and defendant.

This is an important issue, for all Alaskans, for all Americans. Please, weigh your decisions carefully, but promptly.

PROFESSIONAL TRUST ADMINISTRATORS, INC.


Frank L. Mears
President


Mary Rebecca Thomas
Vice President

THANK YOU!

PROFESSIONAL TRUST ADMINISTRATORS, INC
POB 220713
ANCHORAGE, ALASKA 99502-0713
907-248-4815

April 17, 1986

HOUSE JUDICIARY
M. MIKE MILLER, Chairman
ALASKA STATE LEGISLATURE
FOUCH V
JUNEAU, ALASKA 99811

Re: House Bill 532

Professional Trust Administrators, Inc. has been created to fill a niche - a niche caused by the erosion of the civil justice system which has contributed to the instability of the liability insurance mechanism. We will act as trust administrators for self insured accounts, issuing a certificate of financial responsibility warranting that the self insured has put funds in trust to satisfy their public liability obligations. Our clients will include not only private enterprise, but also some of Alaska's governmental entities.

Even though the erosion of the civil justice system and insurance mechanism has created a market niche which will be lucrative, we live in the real world. As citizens and business persons in this State and Country, we are subject to the operations of the civil justice system should we ever sue or be sued.

The civil justice system is in need of your attention - now! The civil justice system needs tort reform - now!


I urge you to pass legislation based upon the principles of sponsor substitute for HB 532 and the comprehensive solution proposed by the Citizen's Coalition for Tort Reform.


Tort reform as proposed by HB 532 will put predictability back into liability awards. This will allow the insurance mechanism, a risk spreading mechanism which must be able to predict both frequency of potential loss and severity of potential loss, to operate in a satisfactory manner.

Tort reform as proposed by HB 532 will reduce the cost of administering justice in our civil justice system; it will promote fairness in our system of civil justice for both parties: plaintiff and defendant.

This is an important issue, for all Alaskans, for all Americans. Please, weigh your decisions carefully, but promptly.

PROFESSIONAL TRUST ADMINISTRATORS, INC.


Frank L. Meas
President


Mary Rebecca Thomas
Vice President

THANK YOU!

Kenneth R. Pervier, M.D.
Suite 202
4003 Lake Otis Parkway
Anchorage, Alaska
April 30, 1986

Dear Mr. *Miller*

I am at present writing this letter in favor of strongly supporting aggressive Tort Reform in this state. Many of the other states in the Lower-48 will be watching us and the degree of EFFECTIVE legislature you pass. If small special interest groups and lawyer lobbyists end up gutting the bill as it is, thus making it totally impotent, then the insurance crisis for the state will continue. From my career stand point, I know personally of several physicians, unfortunately some of the more competent ones, who plan to LEAVE the state if significant reform is not forthcoming. I might find myself in that category if things don't significantly change. As with all other physicians in the country, I am noting an increase in "Lawyer Time" in my practice. This is taking away from my time and ability to render adequate care to my patients and the backlog of patients waiting for my services. Please take care that what is listed in HB-532 and SB-377 is passed intact. I strongly support this!

Thank you.

Sincerely,


Kenneth R. Pervier, M.D.

5/2/86

Dear Mr. *Miller*

I am at present writing this letter in favor of strongly supporting aggressive Tort Reform in this state. Many of the other states in the Lower-48 will be watching us and the degree of EFFECTIVE legislature you pass. If small special interest groups and lawyer lobbies end up gutting the bill as it is, thus making it totally impotent, then the insurance crisis for the state will continue. From my career stand point, I know personally of several physicians, unfortunately some of the more competent ones, who plan to LEAVE the state if significant reform is not forthcoming. As with all other practices in the country, I am noting an increase in "Lawyer Time" in our practice. This is taking away from our time and ability to render adequate care to our patients and the backlog of patients waiting for our services. Please take care that what is listed in HB-532 and SB-377 is passed intact. I strongly support this!

Thank you.

Linda Hoodley

Sincerely,

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

PO BOX 63
NAKNEK ALASKA 99813
(907) 246-4491

White in Juneau
BOX V
JUNEAU ALASKA 99811
(907) 465-4942 465-4943



CO CHAIRMAN
RESOURCES COMMITTEE

MEMBER
TRANSPORTATION
COMMITTEE

House of Representatives

DISTRICT 26

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGELAK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST GEORGE
ST PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

April 25, 1986

Lynn Shawback, President
Bristol Bay Contractor, Inc.
Box 234
King Salmon, AK 99613

Dear Lynn:

Thank you for your letter regarding House Bill 532, concerning insurance reform. As a point of clarification, I do not serve on the House Labor and Commerce Committee but want you to know that the bill did, in fact, pass from that committee. HB 532 is currently in the House Judiciary Committee.

For your information, I have enclosed a copy of a sectional analysis of HB 532 as it was reported out of the House Labor and Commerce Committee. Right now the House Judiciary Committee is working on the bill and there may well be substantial additional changes recommended by that Committee.

I would suggest that you might want to direct your comments on this issue to members of that committee which is chaired by Representative Mike Miller. I have taken the liberty of forwarding a copy of your letter to the Judiciary Committee.

Again, thank you for your expression of support for this bill.

Sincerely,

Adelheid Herrman:
Representative
District 26

AH:em:lb
enclosure

cc: Representative Mike Miller, Chairman
House Judiciary Committee



- TRUCKING
- BUSSING
- CAR RENTAL
- GENERAL CONTRACTING

Bristol Bay Contractors, Inc.

BOX 234 • KING SALMON, ALASKA 99613 • 246-3360

MARCH 20, 1986

Representative Adelheid Herrmann
House Labor & Commerce Committee
Pouch V(MS 3100)
Juneau, Alaska 99811

MAR 20 1986

Honorable Adelheid Herrmann:

House Bill 532 now in your committee attempts to help solve the insurance crisis by amending th Alaska court rules for liability and settlement awards. I urge you to vote yes on this Bill and attempt to have this bill out of your Committee immediately so that other committee's can begin their review.

This legislation is needed so that Alaskan businesses can obtain liability insurance in an amount needed for their operations and at a reasonable rate. Adequate insurance coverage is vital to Alaskan bussinesses and obtaining that coverage at a rate that businesses can afford is crucial to the continued economic health of small and large businesses.

My insurance rate has increased over 100 percent this year and the coverage that I need has decreased. In short, I am now paying more for less coverage. There is a danger that I may have to curtail my operations because I cannot operate without adequate insurance protection. If I do have to cut back my operations I will be forced to consider lay-offs of employees, reduce on maintaince of my vehicles, terminal, and facilities. Addionally, I will not be purchasing service and products as I do under normal operations. In a already sluggish economy any reduction of operations will contribute to the already high unemployment rate in Alaska.

HB532 will allow for victims to be compensated for their losses, however, it will reduce the amount of legal fees allowed under the present system. Reducing the total amount paid out during liability settlements and awards will encourage insurance underwriters to take part in the liability insurance coverage that Alaskan businesses need and at the same time provide protection to the injured party.

I encourage you to vote yes on HB532.

Sincerely,

Lynn Shawback, President
Bristol Bay Contractors, Inc.



Robert E. Giering, M.D.

A PROFESSIONAL CORPORATION
404B LAUREL ST. SUITE 103
ANCHORAGE, ALASKA 99508

TELEPHONE (907) 563-3232

April 22, 1986

Representative M. Mike Miller
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Miller:

Many citizens here in Anchorage had an opportunity on Saturday, April 19, 1986, to hear Robert Brumley, Deputy General Counsel, U.S. Department of Commerce, speak on "Tort reform and the Insurance Crises". By way of introduction, this man is a representative of a commission appointed by the President which worked through U.S. Attorney General Meese to research this problem. He reported three observations:

- 1) Having read House Bill 532, he said the concepts embodied in this piece of legislation are quite in line with similar remedies recommended by the commission.
- 2) He felt that the tort issue is a state problem and although federal recommendations may be forthcoming, the states must take action.
- 3) The issue is divided whether tort abuses or insurance excesses are the culprit. "Accomplishing tort reform would place the solution into the hands of insurance carriers and allow market factors to bring the insurance problems into line."

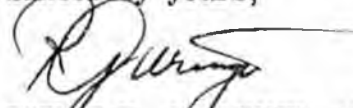
Do you find it interesting that a Federally appointed commission has reached, through an independent investigation, exactly the same conclusions as our own Citizens Coalition about the comprehensive solution to this civil justice problem?

APRIL 22, 1986
PAGE 2

I talked with Mr. Brumley after his report and asked him if he supported House Bill 532. He stated that although he could not do so, being a Federal representative, he did say that none of the concepts were out of line with the findings of his commission and that, if passed, it would be the most far reaching solution yet to remedy this problem.

I would like to hear your reasons for not taking positive action on House Bill 532.

Sincerely yours,



ROBERT E. GLERINGER, M.D.

REG/nas

KENAI AIR ALASKA, INC.

155 Granite Point Court
Kenai 99611

April 11, 1986

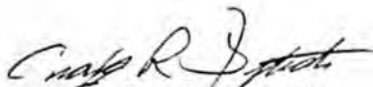
Alaska State Legislature
Box V
Juneau, Alaska 99801

Subject: Liability Insurance
Public Opinion Message

Aircraft Liability insurance is available through only two carriers, at the limits we require of 10 million per aircraft.

Liability premium, up 42½% over last year with no indication of rates for 1987. We've been forced to ground 2/3 of helicopter fleet through winter months to stay in business. Also have been forced to increase rates and will have to continue to do so.

We are fully behind the Citizens' Coalition for Tort Reform and will continue to support.


Craig R. Lofstedt
President
KENAI AIR ALASKA, INC.
155 Granite Point Court
Kenai, Alaska 99611

pc: Mike Navarre
Mike M. Miller
John Sund
Don Clocksin
Max. F. Gruenberg, Jr.
Robin L. Taylor
Fritz Pettyjohn
Randy Phillips

DAVID T. MAYSCHAK, M.D.

P.O. BOX 1209
PALMER, ALASKA 99645
Telephone (907) 745-8100

April 9, 1986

Mr. Mike Miller
Chairman of House Judiciary Committee
Room 124, Capitol Building
Alaska State Legislature
Pouch 5 (MS3100)
Juneau, AK 99811

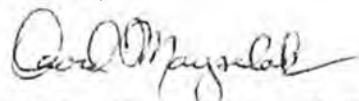
Dear Mr. Miller:

As a practicing physician and surgeon in the Palmer and Wasilla area, I want to express my concern regarding problems with liability insurance. Traditionally, the majority of physicians have been dedicated to taking care of people and the surgeon especially delights in freeing people from pain and disease. Unfortunately, this practice of health care delivery is now being severely compromised by attitudes of fear, suspicions and anxiety engendered by the liability crisis. In this day and age, it is impossible to provide good health care without adequate liability insurance. However, without adequate reform of the tort system, I fear that the problem will continue to snowball and, as has happened elsewhere in the United States, professionals will escape from the vicious circle of liability problems by simply abandoning their profession. That probably is a better alternative than either compromising their principles of health care or, on the other hand, driving up the cost of health care simply to protect themselves from untoward suits.

Alas, even when a physician contemplates another profession that may be associated with lower risk, even those professions today are not immune from unrestricted and even indiscriminate liability suits.

The United States Attorney General Tort Policy Working Group Analysis (February 1986) recommends meaningful legislation that would make possible affordable and available liability insurance. It's recommendations are included in HB 532 and SB 377 in their original form. Accordingly, I strongly urge you to support those bills in their original form and in that way to help enact meaningful tort reform.

Sincerely,



David T. Mayschak, M.D.

DTM:ljb

Southern Region
EMERGENCY
Medical Services Council, Inc.

April 11, 1985

Rep. Mike D. Miller, Chairman
Judiciary Committee
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Miller:

This letter is to request that the Judiciary Committee consider incorporating HB 418, "An Act relating to liability for providing emergency medical care," into another piece of legislation now in the Judiciary Committee such as HB 532. This bill slightly broadens the immunity from liability currently conferred upon certified emergency medical technicians and licensed mobile intensive care paramedics. This legislation is essentially a housekeeping bill which more clearly reflects the intent of the original language.

The language contained AS 08.64.365 was passed by the Legislature in 1974 when the paramedic licensing law was passed. I drafted the language contained in AS 18.08.086 in 1978 when the Legislature established the emergency medical technician certification requirements. The intent of these sections is to try to remove the fear of litigation from the shoulders of these providers at the times when they need to be most aggressive in the manner in which they do their jobs. This is the period when they are dealing with the very seriously injured or ill person. I'm sure Representative Koponen, EMF-I, would be able to verify this.

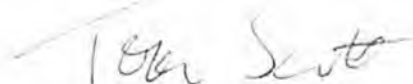
The reason why these changes are needed is that several attorneys have reviewed the present language and interpreted it to be very restrictive. If the plaintiff could show that they were not in immediate danger of the loss of their life (the fact that they lived might be prima facie evidence of that fact), then defendant emergency medical technician, most of whom in this state are volunteers, would not be able to use this as a defense. The intent of the legislature was that the EMTs should be covered in any serious case, not just imminently life threatening cases.

I recognize that it is getting late in the session. I am also aware of other factors that influence a bill's progress through the system. What I would propose is that the bill be passed out of HESS to Judiciary and then combined with HB 532. This bill seems to be germane and apparently has a good chance of being passed this session.

In these times of the malpractice crisis our volunteer EMTs and the cities and nonprofit organizations which operate them are becoming more and more fearful. This legislation will help ease that concern somewhat. At the same time the State's EMT certification and paramedic licensing programs do a good job of assuring that the consumer will receive quality emergency care when they are in need. These are the reasons the Representative Navarre and the House Labor and Commerce passed this bill out.

Thank you again for sponsoring the seat belt bill. We in EMS have been doing all that we can to get it passed. When you need more help, just let us know.

Warm regards,



Thomas D. Scott II
President/Executive Director

cc: Rep. Koponen
Rep. Gruenberg

Twelve Sixty Inn
Mile 1260 Alaskan Highway
Via Tok, Alaska 99780
(907) 778-XXXX 2205

Date: April 8, 1986

To: Insurance Task Force Members
Alaska State Legislators

Re: Insurance problems

From: 1260 Inn, Jim and Ann Shook

Jim + Ann

What is being done in regard to the insurance problems presently occurring in the State of Alaska?

My husband and I own and manage a small bush lodge near Northway, Alaska, 38 miles from the U.S.-Canadian border. We are the first all-service lodge open year-round when entering Alaska and the only one in 113 miles of highway. Thus we are a business that services throughout the year, Alaskans who are moving in and out, commercial trucking, highway construction crews, and seasonal tourists as well as the local community. We are open 365 days/year, from 7 a.m. to midnight or later and employ only 2-5 people depending upon the season. We have a steady but small business instead of a seasonal operation run by a corporation that specializes in tourists, making 'big bucks' in summer and forgetting travelers the rest of the year because it's not profitable. As a result, we are being penalized insurance-wise.

As a small 'mom & pop' operation, we are part of the backbone of the Alaskan Highway service system for travelers-- and we are being forced out of business. Is the State willing to provide those services to travelers if we go out of business?

Below are listed a few of the problems we've had this year with insurance:

(1 Liability - has a minimum regardless of income & size and that minimum is charged to each separate business in the same building. Our business is a 4000 sq.ft. 2-story log building with 5 rooms upstairs, a small cafe and bar downstairs with a liquor store attached. The minimum premium for liability is \$4,500; charged to each area, liquor store, bar, and the remainder, totalling \$13,500 for the one building. In 1985, the liquor store and bar grossed \$64,437. With the cost of resale items at \$48,679, we made \$15,758 to cover wages, monthly bank payments of \$1,800 for the license, other overhead as well as liquor liability of \$9,000 and fire insurance which is going up from \$6,000 (partial coverage only). And overhead in the bush is more expensive than anywhere else as we have to provide everything including electricity.

It is obviously a choice of charging you \$22.50/can of beer (equivalent to the increase in premiums), closing the business or taking a chance on being sued or burned out after 6 years of hard work.

(2 Due to our isolated location, our two wreckers (one large & one small), are not used on a regular basis but are essential to road traffic. If one of you goes in the ditch at 40 below on a dark night, wouldn't you like a wrecker service available? At present, liability for the two wreckers is approximately \$4,000. Last year, both wreckers made \$10,866 which barely pays for the maintenance & repairs, insurance fees and operator costs. The large wrecker had 2 semi-truck tows totalling \$3,000; one paid 6 months late, the other is suing for \$6,000 because the front axle was pulled off due to their truck being overloaded 40,000 lbs. & their tow hooks being broken. This was our first claim since being in business 6 years---it was denied because "it was not a collision". We ask you, "Why is it called 'towing insurance' if it only covers collision damages?" The same company, Superior Underwriters, now refuses to renew our policy. We are now in a position where we must sue the insurance company and defend ourselves against our customer's suit. We pay high insurance premiums to avoid this problem and yet, in the end, regardless of premium costs, it is the insurance company who interprets the policy to their benefit.

(3 We have just received a letter from the State Division of Motor Vehicles stating that the above mentioned liability insurance is not enough (\$500,000 liability for each accident & same for uninsured motorists). We were informed by our agent that we cannot get more unless we enter a 'high-risk' group since the insurance industry feels that is enough insurance for the average customer.

(over)

We are not a high risk! Because of the limited use of our wreckers, I inquired about trip insurance (by the individual service), but it's not available. We can't even legally use our own wreckers to upgrade our property without this insurance and that is taking away our constitutional rights as U.S. citizens.

The Division of Motor Vehicles wrote "I can understand the turmoil that this new law has wreaked upon not only yourself but many other businesses in Alaska. The effect has been widespread and many long time Alaskan businesses are closing down because they can not afford to purchase the new limits of insurance and choose not to disobey a law by operating with insufficient monies. . . . You will have to choose for yourself, your compliance with this law." How would you choose? ? ? ?

Our ideas for necessary changes are below:

- (1) Put a cap on certain types of suits-especially non-economic losses. Award suits according to plaintiffs actual proven expenses that have not been paid by other agents.
- (2) Liquor liability should be a civil, not a criminal matter (we are not criminals, just trying to do our job). More stringent laws should be made & enforced for drunk drivers not bartenders/owners. At this rate we will be sued when someone gets cancer because we sell cigarettes.
- (3) Suits should not even be allowed in the case of an 'accident', but only in the case of 'gross negligence'.
- (4) The court system should preview every case with a panel & dismiss those not concerning 'gross negligence' before going to trial & costing everyone involved.
- (5) Individuals who make unwarranted suits should be fined to pay court costs and required to pay all costs incurred by the defendant.
- (6) Insurance companies should stop paying unwarranted suits to save the hassle. This only encourages suits from other greedy or vindictive people.
- (7) Insurance companies should set premiums according to the size & income of business and set up trip insurance for intermittent use of equipment. Small businesses who are not in intra- or inter-state trade on a regular basis, use their vehicles primarily on their own property, or intermittently for customers, should not be required to comply with the "Commercial Financial Responsibility Law".
- (8) Premiums should not have to be paid in full yearly, at the beginning of the policy; but quarterly if desired. What right have they to use our \$25,000 or \$30,000 before we even receive the service? And if we can't pay the total amount, it is borrowed from the bank at a higher interest than a regular loan. We are paying interest & premium from day 1 when the service isn't completed until day 365.
- (9) Place limits on attorney fees and set up a system that an intelligent person can deal with and one that takes into account the problems of the 'bush': delayed mail service & supply delivery, distance from urban centers with expertise, forms, govt. offices etc.

We have been treated by attorneys & the court system as so much "fodder for the grist mill", and therefore, are handling the above legal matter on our own. Our required response to the Court summons was refused because it was not in black print (I only had a brown typewriter cartridge), was not on legal-size paper of a certain weight (I had none and am 253 miles from town), it was not double-spaced, the margins weren't exactly 1 1/2" from the top and so-on for several pages. I called the Trial Courts today in Fairbanks to request information on obtaining a "Change of Venue" in this case. I was told:

"It is not our job to give you this information. You should call an attorney."

They refused to send me any information, saying I had to do my own research. And this is a state office working for the public! ! Sounds to me like they're working for the attorneys at public expense.

- (10) Include small business owners or those who work with business on your 'insurance task force', as well as a representatives from the AVA and CHARR. What do commissioners know of the affects of insurance unless they have run a business?

We lodge owners are not willing to become CPA, attorney & insurance agent, all in one, working for what is fast becoming a non-profit business..

Our lodge is on the market and we will get out as soon as possible because the small, diverse business is coming to an end in Alaska.

There are no pros and cons. We can't wait for another session. Either change the laws and the legal & insurance systems or you will miss that warm, Alaskan hospitality on your next trip on the Highway.

cc: Governor Bill Sheffield

Barbara Dale, Coordinator of Boards & Commissions:

RECEIVED 17 1986



Robert E. Gieringer, M.D.

A PROFESSIONAL CORPORATION
4045 LAUREL ST SUITE 103
ANCHORAGE ALASKA 99508

TELEPHONE (907) 563 3232

April 10, 1986

Representative M. Mike Miller
P.O. Box V
Juneau, AK 99811

Dear Mr. Miller:

House Bill 532 is presently before you and needs your careful consideration. Every week another story comes out in the news media about a business or service which has had to discontinue because of its inability to meet the cost of liability. Some of these businesses are large established organizations. Sometimes even Municipal Governments are affected and must reduce their services on account of the problem. President Reagan has supported National tort reform in a recent statement.

I know you recognize this as a social problem of immense proportions and I am sure that you will take some action on this issue during this session of the legislature. The attorneys in Alaska will be pressing you in their best interest. I feel that if you pass a "watered-down" form of this Bill that you are not serving the needs of the people of Alaska. The laws of this State are meant to serve the people of the State of Alaska, not to serve those who are adept at working the laws for their own needs. Please work hard to give us a Bill which will allow us some peace of mind on this issue.

I support the concepts proposed by Citizens Coalition for Tort Reform. The concept of proportional liability should also be given your attention.

Sincerely yours,

ROBERT E. GIERINGER, M.D.

REG/nas

POLITICS AND POLICY

Proposals to Curb Damage Awards in Lawsuits Lead to Flood of Lobbying Efforts on Both Sides

By Brooks Jackson

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — Tort reform may sound like an issue that would interest only a law professor, but it's stirring up nearly every business, professional and consumer group here and in dozens of state legislatures. And it's making some people see red.

After a recent news conference on the subject, for example, a staff aide allied with consumer advocate Ralph Nader lunged at business lobbyist James Coyne, knocked him down and burst a blood vessel in his right eyeball. Mr. Coyne had suggested that Mr. Nader is secretly financed by personal injury lawyers. The Nader man, Jay Angoff, concedes, "I lost my temper."

Mr. Coyne has recovered, but the incident shows that feelings are running high in what is becoming a titanic legislative struggle.

On one side are those who favor limiting damage awards in personal-injury suits: practically the nation's entire business establishment, the insurance industry, the medical profession and assorted groups of educators and public officials. On the other side, backing the "consumer's right to sue," is an alliance of personal-injury lawyers, labor unions, consumer and environmental groups, and Mr. Nader.

The insurers, as well as manufacturers and some defense lawyers, say that the high cost of personal-injury lawsuits, a growing number of big damage awards and court decisions that have broadened manufacturers' liability are the major reasons for the current soaring cost and dwindling availability of liability insurance.

But Mr. Angoff, counsel for the National Insurance Consumer Organization, says restricting damages and liability would "penalize people who are already injured." He contends that there are "absolutely no data . . . to indicate that the legal system is even part of the reason for the astronomical increases in insurance rates."

Both sides have political-action committees that give millions of dollars in election-campaign contributions. Both also spend heavily on public relations, advertising and lobbying and can mobilize thousands of members to bring pressure on their congressmen or state legislators.

Already, for example, the insurance industry is spending \$6.5 million to try to convince the public that it has a "lawsuit crisis" rather than an "insurance crisis" on its hands.

One of its print advertisements shows a forlorn youth in a high school football jersey and says, "A lot of schools are thinking about closing down their sports programs. Why? It's part of the price of the lawsuit crisis." Other ads say that even clergymen are being sued for "religious malpractice" and that many obstetricians have stopped delivering babies out of fear of being sued.

Limits on Damage Judgments

For

- Alliance of American Insurers
- American Consulting Engineers Council
- American Medical Association
- National Association of Home Builders
- National Association of Manufacturers
- National Association of Realtors
- National Association of Town and Townships
- National Federation of Independent Business
- National School Boards Association
- U.S. Chamber of Commerce

Against

- Association of Trial Lawyers of America
- Brown Lung Association
- Consumer Federation of America
- Consumers Union
- Environmental Action
- National Council of Senior Citizens
- Public Citizen (Ralph Nader)
- United Auto Workers Union
- United Steelworkers Union
- Women's Legal Defense Fund

Television ads carry the same themes.

The ads are financed by the Insurance Information Institute, the publicity arm of the industry. They are aimed at influencing bills pending before Congress and in several state legislatures, as well as a ballot initiative in California. The industry's ads are concentrated in a dozen key states and the District of Columbia and are being timed to coincide with state legislative sessions.

Personal-injury lawyers say there isn't any way they can match such a publicity campaign. "We're David and they're Goliath," says Alan Parker, public-affairs director for the Association of Trial Lawyers of America.

But the trial lawyers aren't exactly fighting with slings and stones. Their organization has a Washington staff of about 100 people and a rapidly growing political-action committee with \$1.2 million in the bank at last report. It retains two of Washington's premier lobbyists, Democrat Thomas Boggs and Republican William Timmons.

The real strength of the lawyers' lobby, however, lies in its 60,000 members, who see a potential threat to their livelihoods. Various proposals now being considered would make it more difficult for people to collect damages for injury or illness, would limit the amount of damages clients could collect, and would even cap the amount lawyers could collect in fees.

California trial lawyers have attracted

pledges of more than \$1 million to fight a June 3 ballot initiative that would curb plaintiffs' ability to collect judgments from defendants in some cases. The president of the state trial lawyers' association, Peter Hinton, wrote in a March 17 letter to members: "Over a dozen firms and individuals in California have already committed more than \$100,000 to the fight. Some have contributed as much as \$300,600. We need every penny we can raise."

But wherever possible, the trial lawyers are keeping a low profile and leaving the talking to Mr. Nader and to allied consumer and union groups. Mr. Nader accuses the insurance industry of a "conspiracy" to raise premiums and strip victims of their rights. He and Joan Claybrook, an old ally who was the federal auto-safety chief in the Carter administration, have formed the Coalition for Consumer Justice, which includes consumer groups, some big labor unions and "victim" groups including sufferers from white-lung and brown-lung disease.

On the other side, a spokesman for the 270,000-member American Medical Association says the cost of malpractice judgments is the AMA's "issue No. 1." And a spokesman for the U.S. Chamber of Commerce says that group decided last week to start its own advertising campaign against escalating product-liability judgments.

The chamber hasn't decided how much it will spend, but it is likely to be a considerable sum. Barry Bauman, an attorney for the chamber, says the group also sees this as its top legislative issue for the coming year, and he says, "We don't want to shortchange it in any way."

In addition, Mr. Coyne, executive vice president of the American Consulting Engineers Council, has put together a coalition

of business groups supporting limits on damage judgments, called the American Tort Reform Association. The more than 200 member groups range, alphabetically, from the Academy of General Dentistry to the Wood Machinery Manufacturers of America.

Proposals to Curb Damage Awards in Lawsuits Lead to Flood of Lobbying Efforts on Both Sides

By Brooks Jackson

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — Tort reform may sound like an issue that would interest only a law professor, but it's stirring up nearly every business, professional and consumer group here and in dozens of state legislatures. And it's making some people see red.

After a recent news conference on the subject, for example, a state aide allied with consumer advocate Ralph Nader lunged at business lobbyist James Coyne, knocked him down and burst a blood vessel in his right eyeball. Mr. Coyne had suggested that Mr. Nader is secretly financed by personal-injury lawyers. The Nader man, Jay Angoff, concedes, "I lost my temper."

Mr. Coyne has recovered, but the incident shows that feelings are running high in what is becoming a titanic legislative struggle.

On one side are those who favor limiting damage awards in personal-injury suits: practically the nation's entire business establishment, the insurance industry, the medical profession and assorted groups of educators and public officials. On the other side, backing the "consumer's right to sue," is an alliance of personal-injury lawyers, labor unions, consumer and environmental groups, and Mr. Nader.

The insurers, as well as manufacturers and some defense lawyers, say that the high cost of personal-injury lawsuits, a growing number of big damage awards and court decisions that have broadened manufacturers' liability are the major reasons for the current soaring cost and dwindling availability of liability insurance.

But Mr. Angoff, counsel for the National Insurance Consumer Organization, says restricting damages and liability would "penalize people who are already injured." He contends that there are "absolutely no data . . . to indicate that the legal system is even part of the reason for the astronomical increases in insurance rates."

Both sides have political-action committees that give millions of dollars in election-campaign contributions. Both also spend heavily on public relations, advertising and lobbying and can mobilize thousands of members to bring pressure on their congressmen or state legislators.

Already, for example, the insurance industry is spending \$6.5 million to try to convince the public that it has a "lawsuit crisis" rather than an "insurance crisis" on its hands.

One of its print advertisements shows a forlorn youth in a high school football jersey and says, "A lot of schools are thinking about closing down their sports programs. Why? It's part of the price of the lawsuit crisis." Other ads say that even clergymen are being sued for "religious malpractice" and that many obstetricians have stopped delivering babies out of fear of being sued.

Limits on Damage Judgments

For

Alliance of American Insurers
American Consulting Engineers Council
American Medical Association
National Association of Home Builders
National Association of Manufacturers
National Association of Realtors
National Association of Towns and Townships
National Federation of Independent Business
National School Boards Association
U.S. Chamber of Commerce

Against

Association of Trial Lawyers of America
Brown Lung Association
Consumer Federation of America
Consumers Union
Environmental Action
National Council of Senior Citizens
Public Citizen (Ralph Nader)
United Auto Workers Union
United Steelworkers Union
Women's Legal Defense Fund

Television ads carry the same themes.

The ads are financed by the Insurance Information Institute, the publicity arm of the industry. They are aimed at influencing bills pending before Congress and in several state legislatures, as well as a ballot initiative in California. The industry's ads are concentrated in a dozen key states and the District of Columbia and are being timed to coincide with state legislative sessions.

Personal-injury lawyers say there isn't any way they can match such a publicity campaign. "We're David and they're Goliath," says Alan Parker, public-affairs director for the Association of Trial Lawyers of America.

But the trial lawyers aren't exactly fighting with slings and stones. Their organization has a Washington staff of about 100 people and a rapidly growing political-action committee with \$1.2 million in the bank at last report. It retains two of Washington's premier lobbyists, Democrat Thomas Boggs and Republican William Timmons.

The real strength of the lawyers' lobby, however, lies in its 60,000 members, who see a potential threat to their livelihoods. Various proposals now being considered would make it more difficult for people to collect damages for injury or illness, would limit the amount of damages clients could collect, and would even cap the amount lawyers could collect in fees.

California trial lawyers have attracted

pledges of more than \$1 million to fight a June 3 ballot initiative that would curb plaintiffs' ability to collect judgments from defendants in some cases. The president of the state trial lawyers' association, Peter Hinton, wrote in a March 17 letter to members: "Over a dozen firms and individuals in California have already committed more than \$100,000 to the fight. Some have contributed as much as \$300,000. We need every penny we can raise."

But wherever possible, the trial lawyers are keeping a low profile and leaving the talking to Mr. Nader and to allied consumer and union groups. Mr. Nader accuses the insurance industry of a "conspiracy" to raise premiums and strip victims of their rights. He and Joan Claybrook, an old ally who was the federal auto-safety chief in the Carter administration, have formed the Coalition for Consumer Justice, which includes consumer groups, some big labor unions and "victim" groups including sufferers from white-lung and brown-lung disease.

On the other side, a spokesman for the 270,000-member American Medical Association says the cost of malpractice judgments is the AMA's "issue No. 1." And a spokesman for the U.S. Chamber of Commerce says that group decided last week to start its own advertising campaign against escalating product-liability judgments.

The chamber hasn't decided how much it will spend, but it is likely to be a considerable sum. Barry Bauman, an attorney for the chamber, says the group also sees this as its top legislative issue for the coming year, and he says, "We don't want to shortchange it in any way."

In addition, Mr. Coyne, executive vice president of the American Consulting Engineers Council, has put together a coalition

of business groups supporting limits on damage judgments, called the American Tort Reform Association. The more than 200 member groups range, alphabetically, from the Academy of General Dentistry to the Wood Machinery Manufacturers of America.

Crisis in Liability Insurance Is Creating Mounting Pressure for New Legislation

4-9-86

By STEPHEN WERMIEL

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — The crisis over the soaring cost and scarcity of liability insurance is creating mounting pressure on Congress to act.

"The insurance problem is just all over the place," says Sen. John Danforth (R., Mo.), chairman of the Senate Commerce Committee.

The lightning rod for action is legisla-

tion to change the law of product liability — the part of the tort system in which those injured in accidents while using products from cars to telephone booths file lawsuits for damages against companies they blame for their injuries. Such changes have been hotly debated in congressional committees for several years, but now there is "greater urgency," says Sen. Danforth, whose staff is drafting legislation.

Added pressure will come from the Reagan administration, which is circulating its own proposed product-liability legislation. While the president's proposal will meet some opposition, it may also serve as a catalyst. "This will provide the 500-pound gorilla that's been missing," says Phillip Harter, a Washington lawyer who is pushing for changes in the law.

Time May Run Out

Consumer group opposition, and differences in legislative approaches, may thwart the pressure created by the crisis. "Legislation will make it out of committee and maybe even through the Senate, but I don't think there's time for the House to act this year," says Victor Schwartz, a lawyer and former law professor who represents the Product Liability Alliance, a business coalition pushing for changes in the law.

Past efforts, led by Sen. Robert Kasten (R., Wis.), focused on setting national standards for state and federal courts, specifying when manufacturers or distributors may be liable. Critics viewed the proposal as relieving the liability of manufacturers at the expense of accident victims. The bill became tied up in committee.

Now, Sen. Danforth is trying a different approach, one that is more a change in procedures than standards. His plan, still being drafted, wouldn't change liability, but would provide financial incentives to both sides to encourage settlements and discourage going to trial.

A Different Approach

The proposals the administration is drafting take a different approach, sources say, proposing to limit punitive and pain and suffering awards to \$100,000, capping fees charged by plaintiffs' lawyers on a sliding scale of 25% of the first \$100,000 in damages down to 10% after \$300,000. The administration would stop the practice of making defendants jointly liable, which has led to well-off defendants who were only partly responsible paying in full. These changes would be both in product liability cases and in lawsuits against the federal government and federal contractors.

However, the administration would also partially return to Sen. Kasten's controversial approach, setting liability standards for products, such as requiring proof of a negligent design or a defect. Similar proposals are in a bill introduced by Sen. Mitch McConnell (R., Ky.). Administration officials are seeking support from Sens. Danforth, Kasten and Slade Gorton (R., Wash.), hoping for some accommodation.

The crucial question is whether there is a compromise and on what terms. Sen. Danforth says, "I'm flexible, but some things in the administration's bill will be very difficult to sell."

Know the score on exports.

Who's shipping what? From which ports or cities? What's your market share? Who are your most likely prospects? How do you break out "basket categories?"

Target your marketing. The Journal of Commerce PIERS (Port Import Export Reporting Service) reports fill in all the facts from ship manifests. Our computer tabulates and tailors the data to your needs weekly, monthly or on-line. Detailed are all shipments in your field inbound or outbound through 47 major U.S. ports.

PIERS lists U.S. consignees/exporters by name and location; country of origin or destination; product data including quantities, weights, plus much more.

Check Susan Madrid for details. PIERS, The Journal of Commerce, 351 California St., Suite 850, San Francisco, CA 94104 (415) 982-7642; or contact us at 110 Wall Street, New York, NY 10005 (212) 208-0295

Journal of Commerce, Inc.

PIERS
PORT IMPORT EXPORT REPORTING SERVICE

A Knight-Ridder business service

Jervis B. Webb Company



Custom engineered conveying systems
for every industry since 1919.

Plants: Ann Arbor • Atlanta • Auckland
A. Lake • Barcelona • Boston • Boyne City
Brussels • Buenos Aires • Caracas • Chengde
Chicago • Cleveland • Detroit • Farmington Hills
Geneva • Greenville • Hamilton • Harbor Springs
Johannesburg • Karlsruhe • Kragujevac • London
Los Angeles • Melbourne • Mexico City • Montreal
Mt. Vernon • Oshkosh • Paris • Pellston • Port Huron
Saltillo • Sao Paulo • Seoul • Sydney • Taipei
Tokyo • Torino • Toronto • Wayne

Webb Drive • Farmington Hills • Michigan 48018
(313) 553-1000 • TELEFAX: 211A92 JWBBLR

In Canada, Different Legal And Popular Views Prevail

By PEGGY BERKOWITZ

Staff Reporter of THE WALL STREET JOURNAL

When it comes to medical malpractice, Canada's common-law system has almost all the features the American Medical Association is urging in the U.S. as a way to ease doctors' legal and insurance woes.

Pain-and-suffering awards are limited by Canadian Supreme Court rulings to about \$128,000. Contingency fees are banned in Ontario and restricted in several other provinces. Punitive damages are seldom awarded in personal-injury cases, and judges rarely permit jury trials of civil suits. And marginal and frivolous actions are discouraged by the possibility that the loser may have to pay up to two-thirds of the winner's court costs.

Largely because of such curbs, malpractice awards and out-of-court settlements are sharply lower in Canada, totaling only \$10 million in 1984—less than some jury awards to individual plaintiffs in the U.S. Malpractice insurance, in turn, costs significantly less. Even high-risk specialists like obstetricians and neurosurgeons will generally pay only \$3,500 for protection this year; many of their U.S. counterparts will pay \$90,000 or more.

But Canadians also have a set of attitudes toward both medicine and law, and a form of malpractice protection for doctors, that would be difficult to transplant to another country. They are only about one-fifth as likely as Americans to sue their doctors. There is no significant patient-rights movement, no vigorous lobby to change the legal system and little public complaint even from plaintiffs' lawyers.

Oversize Awards

Many Canadian lawyers, for instance, believe that settlements in the U.S. have grown unnecessarily large. "Awards for every type of personal injury are too high in the U.S. and aren't realistic," says Jacques Nols, a Montreal defense lawyer.

Moreover, while some feel that lawsuits can be a beneficial corrective in cases of negligence, many Canadian lawyers and doctors agree that limiting the size of settlements has no effect on the quality of medical care.

The "primary factor" controlling the medical practice, says Justice Allen M. Linden, who heads Canada's Law Reform Commission, "is the human desire to do a good job. Tort law is one factor, but I can't see whether the award is \$100,000 or \$200,000 or \$300,000 that it makes a heck of a lot of difference."

Adds Mr. Nols: "I simply don't believe a doctor will be sloppier because he knows there's a cap on awards." A number of Canadian lawyers, though, like their U.S. colleagues, believe the cap is unfair to the patient. "It hurts the plaintiff, there's no question about it," says Gordon Kugler, a Montreal lawyer.

For their part, Canadian patients "are perhaps more trusting," says Marc Goldberg, a Florida ophthalmologist who has practiced in both countries. They also pay little or nothing for medical care because of government health insurance. Frances Miller, a Boston University law professor, says this makes them less vengeful when a treatment goes wrong. "One factor, when you decide whether to sue," she explains, "is how much you're out of pocket."

When malpractice suits do arise, many doctors benefit from the Canadian Medical Protective Association. About 85% of physicians belong to the group, which provides

AWARDS for every type of personal injury are too high in the U.S. and aren't realistic,' says a Montreal defense lawyer.

legal defense and pays malpractice claims and settlements, but technically isn't an insurance company.

The 85-year-old association widely publicizes its intention to defend any suit in which it believes a doctor wasn't negligent. "They'll spend \$15,000 to fight a \$15,000 action," says Alan Lenczner, an attorney with McCarthy & McCarthy, a Toronto law firm whose clients include CMPA.

Lower Rates

Members will pay annual fees this year of \$288 to \$3,500, depending on their specialties. A large U.S. malpractice insurer, St. Paul Fire & Marine Insurance Co., says its typical premiums range from \$1,365 for an Arkansas general practitioner to \$106,508 for a Miami neurosurgeon.

Stuart Lee, CMPA's associate secretary treasurer, says it would be hard now for American doctors to contribute enough capital to form a similar group.

While conditions are still comparably favorable, some doctors and lawyers fear that Canadians are beginning to emulate their more litigious American neighbors. In 1984, the number of malpractice suits and the amount paid to claimants were both about twice as great as they were five years earlier. And CMPA's fees for some doctors have risen 1,000% in three years.

Ellen Picard, a professor of law and medicine at the University of Alberta, attributes this partly to the growing number of Canadian lawyers specializing in liability cases and partly to media reports of large awards in the U.S. She adds that, as a result, Canadian doctors have begun to react like American doctors, practicing more defensively.

However, she says, "I think Canada need not be headed the way of the U.S. (because of) the Canadian nature and the different practices of law and medicine."

Sear Alaska petitions for Chapter 11 reorganization

Anchorage News 4-10-86
Daily News

Regional airline served 40 bush communities

Sear Alaska Airlines, once a major regional carrier in the state, filed Wednesday to reorganize its finances under the protection of U.S. bankruptcy laws.

A Chapter 11 bankruptcy petition listed assets of \$48.5 million and liabilities of \$44.3 million.

The petition listed Alfred E. Gay, a major company shareholder, as the carrier's major unsecured creditor — owed \$12 million.

Gay could not be reached for comment Wednesday.

Sear, which owns 22 planes and six helicopters, had served 40 Bush communities, primarily out of Bethel, St. Marys, King Salmon, Dillingham and Aniak hubs.

But in late January, after 42 years of service, the airline suspended service and laid off 150 workers.

Jack McCormick, a Sear vice president for finance, said in a January interview the company couldn't afford the skyrocketing cost of federally required liability insurance.

But he said the company hoped to resume operation once it found affordable insurance.

McCormick also couldn't be reached Wednesday.

Other major creditors in the bankruptcy petition included American Avionics of Seattle, Bayly Martin & Fay of Alaska Inc., Chevron U.S.A., and Consolidated Aircraft of Sperryville, N.Y.

A Chapter 11 petition allows a company to keep creditors at bay while completing financial reorganization. The plan must meet creditor scrutiny and obtain court approval.

good news, bad news



Tanana Valley Clinic

Family Medical Care

Since 1951

April 9, 1986

Mr. Mike M. Miller
Alaska State Legislature
Box V
Juneau, AK 99801

Dear Mr. Miller:

I am writing to you about House Bill 532 and Senate Bill 377, the bills supported by the Citizens' Coalition for Tort Reform.

I write to you at present as a family physician who is active in obstetrics, but I will also be the President of the Alaska State Medical Association as of June 1986.

A family physician practicing obstetrics in Alaska, regardless of the volume of deliveries he does, if he wishes to obtain long-term liability insurance, will find a fifth year claims made premium (the premium that is roughly equivalent to an occurrence premium) of approximately \$50,000 per year facing him or her as of this year. This type of liability cost will literally change the face of the practice of medicine, and not for the better, in terms of eliminating bad practitioners but simply it will cause citizens to be unable to find a family physician who is willing to deliver their baby in many communities. Physicians and many other citizens in responsible positions who are vulnerable to lawsuits, view this as in large part a result of a society with a bad system for compensating perceived wrongs. The Citizens' Coalition for Tort Reform has introduced legislation which addresses the key problems with our society's manner of redressing grievances, and it is clear to us, although it may not be to all of you, that the only loud voices raised in opposition are those of that subgroup of attorneys which profits from the present system of handling torts.

Some recent unfortunate news I received was that the House Bill has recently had the key provision on statute of limitations deleted. This is a critical portion of any legislation on this matter because long-term unpredictability of losses is a major reason for the unavailability of reinsurance on large claims for many policyholders.

Page Two
April 9, 1986

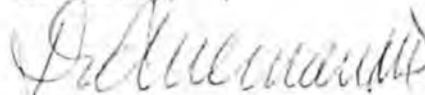
I have been told by the Fairbanks area leader of the Citizens' Coalition that many legislators appear to view tort reform as an issue with equal numbers of loud voices on both sides and are inclined not to act on tort reform during this session. I think that is a serious misperception of public feeling. Except for a limited number of people who perceive benefits to themselves from playing the role of plaintiff, I believe that attorneys involved in trial work and predominantly those who emphasize plaintiff work, are the only sizeable group that believes these changes are not needed. Other groups have been deliberately misled as to the effects of tort reform on redress of grievances.

Even plaintiffs have good reasons to look for changes in this system. A system which does not offer reinsurance for large claims will place them in an untenable position if they truly need to collect from a defendant who has only a few hundred thousand dollars of coverage and insufficient assets to make up the remainder of a large claim. To stall tort reform is to deny legitimate large claims their just resolution in a significant number of cases.

This is not a passing issue. I sincerely hope that the Citizens' Coalition Bill will pass substantially in its form as introduced, including a strict limitation on the statute of limitations. If it fails to pass this year, the funds and the people who support it will not allow the issue to die.

Not just in medicine, I think you need to consider the possibility of a society where people decline to take or keep positions of responsibility because of the unrealistic expectations and the punitive system of claims resolution which destroy the idealism that led them to those responsible positions in the first place. Please act positively in this legislation.

Sincerely,



Donald E. Thieman, M.D.

DET:njs



**HOWARD
COOPER
CORPORATION**

2756 COMMERCIAL DRIVE
P O BOX 739
ANCHORAGE, ALASKA 99501
(907) 279-5411

March 28, 1986

Mike Miller
Alaska State Legislature
Box V
Juneau, Alaska 99801

Dear Mr. Miller:

Howard-Cooper Corporation wholeheartedly supports both house bill 532 and senate bill 377.

The enactment of these bills will take great strides toward correcting an out of control situation.

We as suppliers of construction equipment and related services, have felt the bite of increased insurance premiums, both as an added company operating expense and a deterrent to contractor growth in the Alaska market.

Small contractors are being forced out of business by insurance rates, that have risen in multiples of 3, 4, and 5. I am referring not to the SNOWBIRD contractors, that are here when times are good, but Alaskan Contractors, that stick with it through good and bad times.

It is up to us, as Alaskans, to protect our own. Contractors are the life blood of a growing economy. Not to take action to protect these individuals is an affront to the Alaskan ideal.

We, as a group, must take control of this situation. We must establish limits. We must remove some of the incentive to litigate by utilizing the sliding scale as set forth in the aforementioned bills. It is extremely important that the FIREMAN, in this case the lawyers, not be inclined to light or feed the fires.

HOME OFFICE
PORTLAND, OR.

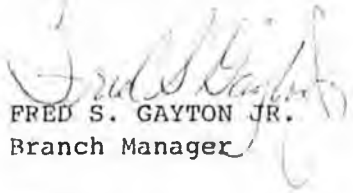
BRANCH OFFICES
ANCHORAGE, AK.
EUGENE, OR
MEDFORD, OR
PENDLETON, OR
RENTON, WA

The settlement processes would be greatly expedited with the enactment of, a clear cut statute of limitations, an award ceiling, and a reasonable balance of award dispersal between the plaintiff and the attorney.

We support the Citizens Coalition for Tort Reform and its' comprehensive solution.

Your concentrated efforts on behalf of all Alaskans is appreciated.

Sincerely,



FRED S. GAYTON JR.
Branch Manager

FSG: jlp

ALASKA DEVELOPMENT CONSULTANTS, INC.

Engineers Surveyors Planners
5313 Arctic Blvd., Suite 201 P.O. Box 4-3187
Anchorage Ak. 99502 Anchorage, Ak. 99509

Office: (907) 561-1044

March 25, 1986

Representative M. Mike Miller,
Chairman House Judiciary Committee
Alaska State Legislature
Box V
Juneau, Alaska 99801

Re: HB 532 and SB 377 - Tort Reform

Dear Legislator:

I am writing to you as a 28-year Alaskan resident who is entering my 18th year of professional practice as a civil engineer and the 9th year of business practice.

I urge your support and passage of legislation on tort reform, in particular House Bill 532 and Senate Bill 377. I support these bills as well as the Citizens Coalition for Tort Reform. I believe passage of these bills are vital to our business climate.

My company's professional liability insurance premium for \$1 million coverage limit rose from \$12,000 annual premium to \$16,000, to \$24,000 in three policy years. THEN, the 1985 "indicated" premium quote (an actual quote was never received; previous insurance company "left" Alaska) was \$130,000 +. This was a fivefold increase on the same volume of claims-free business.

A single quote for \$500,000 policy coverage limit was received for a \$55,000 annual premium - still an effective increase of more than four times.

In view of apparent volatility of the insurance market, skyrocketing premiums, and declining economy, all coupled with the fact that none of our existing or previous contracts have required professional liability insurance, we elected not to re-insure for "errors and omissions". Our favorable claims experience aided in this decision.

Also, nowhere in our wildest expectations did we budget for a fivefold increase in E & O premiums. Predictability! Affordability!

Alaska State Legislature
March 25, 1986
Page -2-

A recent survey of Alaskan architect-engineer firms, which an A/E ad hoc committee on professional liability insurance commissioned through the accounting firm of Peat, Marwick, Mitchell & Co., indicates an average 2 times increase in 1985 premiums for A/E firms with more than \$5 million in annual revenues. This rate of increase rose to more than 4 times the 1984 premium for small A/E firms in the range of \$100 to \$200 thousand annual revenues! Bear in mind that these are averages. A copy of this survey, in which 43 Alaskan firms responded, is attached for your information.

I know of several design firms who did not or could not renew their professional liability insurance policies for the same reasons. Several of these firms also have a favorable claims experience. We are one of those firms.

We are now faced with the situation where clients who did not previously require professional liability insurance are now requiring such coverage. One notable example is the Municipality of Anchorage who are themselves un-insured due to unavailability or unaffordability of liability insurance!

The Municipality has been without liability insurance since the first of the year, and now have a firm requirement for professional liability insurance for all professional design services where they have not previously required such in the past.

Meetings with Jack Coyne, Assistant Municipal Attorney, and Dave Berry, Director of Property and Facility Management, June 1985 and March 1986, respectively, indicate the Municipality of Anchorage has not experienced any claims or otherwise had a loss history on its civil projects (i.e., streets and roads, drainage, water and sanitary sewer line improvements).

A January 23, 1986 memorandum from the Municipality's Risk Management Division to all Municipal departments requires \$500,000 E & O coverage for professional services for ALL projects with construction values up to \$1 million, and \$1 million E & O coverage for projects exceeding this construction value.

A recent Municipal request for proposal for civil design services lists several projects in the range of \$50,000 to \$65,000 construction value. Based on our single quote received last spring, our professional liability insurance premium will equal or exceed the construction value of these projects which might have a design fee of 6% to 10% of the construction value!

Alaska State Legislature

March 25, 1986

Page -3-

This recent request for proposals, which were due to Municipality yesterday, covered a list of twelve water and sewer projects, of which only two had estimated construction values in excess of \$1 million. None of these projects are "Eklutna Water" or "Bradley or Susitna Hydroelectric" projects, either. I wonder if there are twelve "local Alaskan" engineering firms in Anchorage who still have professional liability insurance in force.

I have several real concerns regarding this problem. The first, obviously enough, concerns my own ability to be able to continue working. The second concern is that more and more of this design work will be awarded to "outside" engineering firms who have "branch" offices in Alaska. I feel strongly that profits, as well as payroll, made on Alaska projects should stay in Alaska and continue to be spent in Alaska! I wonder how many of these "outside" firms, like the insurance companies, are also going to "pull-out of Alaska" when the economic climate is no longer beneficial to them.

Another concern, though perhaps less direct, is the State subsidy of the student loan and other programs. Why bother!

Alaska's student loan program helped me through my undergraduate and graduate studies at the University of Alaska in Fairbanks (money spent in Alaska!). The purpose of the student loan program is purportedly to train and educate Alaskans to live and work in Alaska. Why bother when the Alaskan work cannot be awarded to Alaskan firms who cannot obtain/afford liability insurance, and the work "goes outside" anyway.

On the short-term, the architect-engineer community is attempting to work with the Municipality of Anchorage to resolve some of these insurance requirements, but in the long-term I believe tort reform is required to provide some predictability in the courts for the insurance companies and predictability and affordability for us Alaskans attempting to do business in Alaska.

I'm not trying to paint the insurance industry as being lily white, I doubt that any of us are that, but I do believe that they, and we, need help in modifying the climate of extremely liberal awards that presently seems to be prevalent in our courts.

Alaska State Legislature
March 25, 1986
Page -4-

I attended a professional liability seminar in Texas in early 1984, and was told by the speaker, an attorney for a major underwriter of professional liability insurance - one of two companies still writing in Alaska, that the courts in Alaska are so consumer-oriented that "you guys don't have a chance up there".

Where there were more than twelve insurance companies writing professional liability insurance in Alaska two years ago, we are told there are now two, possibly three underwriters now.

I sat as a juror on a personal injury/product liability case in 1983. I have seen the attitude that not only do we need to make someone well, we have to "make it up to them", and "somebody" has to pay. Unfortunately, no amount of money is ever going to replace a limb or a loved one.

I support every one of the elements in these two bills and the Citizen's Coalition for Tort Reform. I am not trying to limit victims rights and no one that I know is. Just as victims should be compensated in an appropriate and JUST manner, neither should they profit by their unfortunate experience.

I understand that the 13-point HB 532 is one of the more comprehensive tort reform bills in the nation. Many of these reforms have already been passed by other states "in South America" and many of these have been upheld as constitutional in the respective state supreme courts.

Again, I urge you to pass HB 532 and SB 377, and support other companion legislation.


I would suggest to you that if these bills are not passed, at the rate insurance companies are leaving Alaska, victims may lose rights due to the unavailability of insurance. After all, if there is no insurance in force, there may be no "deep pocket" to compensate victims with valid claims.

This started out to be a 50-word Public Opinion Message, but since I've exceeded the limit slightly, I guess a letter will have to do. While these are my opinions, discussions with others, both within and without the design community, indicate that many share these opinions.

Alaska State Legislature
March 25, 1986
Page -5-

If I can be of any assistance to you or provide any information,
please do not hesitate to contact me.

Very truly yours,


Stephen D. Shrader
House District 11
Senate District G

Encl: E & O Survey, dtd 2/27/86

SDS/cs



McCOOL-McDONALD
OF ALASKA INC. ARCHITECTS

March 25, 1986

The Honorable Mike Miller
Pouch V
Juneau, Alaska 99811

Re: Liability Insurance
Tort Reform

Dear Representative Miller:

Please look carefully into tort reform legislation which could equitably reduce the unpredictable costs of litigation. I believe this, in part, has caused dramatically increased cost of professional liability insurance for Architects and Engineers.

As you are probably aware, State contracts with Architects and Engineers require professional liability insurance. This makes availability and affordability of insurance critical to the State design process.

I have been practicing architecture in Alaska for over twenty years. The past nine months I have been a member of the Alaska American Institute of Architects-Consulting Engineers Council Committee on Professional Liability Insurance. My insurance has risen 290 percent from 1981 to 1985. Some Architects and Engineers have been unable to renew their insurance at any price.

As I see it, improvement is needed on several fronts to make insurance affordable:

1. Architects need to more diligently pursue quality control over their services.
2. Insurance companies need to more carefully manage their investments.
3. Courts need fair, but not unreasonable, high settlements for cost of pain and suffering (tort reform).

I assure you, the Architects of Alaska are improving the quality of their services. Please see that fair tort reform laws are enacted to combat the attitude that, "Oh well, you're insured ..." doesn't inflate court settlements and ultimately raise insurance premiums.

Sincerely,

McCool-McDonald of Alaska, Inc.

John E. McCool, Architect
Alaska Registration No. A-3534

JEM/lgh
A

SIGMA R. ALPHA, M.D.

NEUROLOGICAL MEDICINE

2841 DEBARR ROAD, SUITE #36

ANCHORAGE, ALASKA 99508

TELEPHONE 907-264-1818

March 26, 1986

Mike Miller
Chairman, Judiciary Committee
Alaska State Legislature
Box 5
Juneau, AK 99801

Dear Mr. Miller:

You have before your Committee HB 532 and SB 377. As a supporter of Citizens Coalition for Tort Reform, I urge you to act on these bills and send them on to the legislature. I am concerned that if we do not have passage of such tort reform legislation, major positive features of our society will no longer be continued. As an example, I would like to relate to you some of my personal experience in trying to practice medicine in Alaska.

I realize you have heard many stories about economic hardship imposed by ever-increasing insurance rates and decreasing availability of insurance. I don't have to go over these issues again here, both because you know them in detail and because money-complaints are always suspect and very situationally specific. I would like to express the non-monetary side of the story. That is, how the present legal atmosphere changes the way doctors are practicing medicine.

To illustrate this, I have to convey personal experience. I have worked for five years in Anchorage as a subspecialist in neurology. I have enjoyed the respect and support of the Anchorage medical community. I have been very busy in a rewarding and interesting practice. I have learned from and enjoyed serving 99% of the 6000-7000 patients I have seen since 1981. Nevertheless, I am currently carrying out arrangements made in 1984 and am leaving Anchorage. Why?

I have just been served my third suit. The first was settled out of court, after four years of harassment and a minimum of \$20,000 of effort on the part of my insurance company, for a grand sum of \$3000. The second suit has been dropped altogether after three and a half years of harassment and again, at least \$20,000 of effort on the part of my insurance company. The third suit, a pending one, has reached a new low in legal constructs. I am being sued for a patient I have never spoken to, have never seen, and have never in any way engaged as a patient!

Mike Miller
March 26, 1986
Page two

I won't bother you with the details. I would simply like to express to you the obvious. These suits have left me with a total loss of respect for Alaska legal system. They have created, and in my colleagues as well, a tendency to practice medicine "defensively" and thus spend far more money than is necessary on tests and investigations. The use of every available test seems to be the only legal criteria for what is considered good medicine. This inability to use experience and judgment to expedite care (because of the consequences of being wrong in the legal lottery system are so great) makes me less available for listening to and talking with patients who are truly ill. I have a waiting list of at least six weeks. It is outrageous to spend so much time in nonproductive pursuits.

I realize everybody has their own story. Rationalizations about a person's reaction to his circumstances abound. I am aware that this letter could generate skepticism. There is no way to convince you of the truth of what I am saying except to tell you the consequences are simple. I am quitting practice in Alaska. I will be leaving town at the end of this month. I will join the staff at the University of Arizona, no longer to see patients as a primary care physician. This will cut down the number of full-time neurologists in Anchorage to two (three neurologists for a population base of approximately 250,000 was danerously low in the first place).

It is a shame that I have to leave a practice which is so emotionally regarding and productive 99% of the time. Most of my patients are honest, straightforward, and care about their health. 1% of the spoilers, however, are more than one can endure when their effect is measured in literally hundreds of thousand of dollars and many man hours of time. The conduct of our legal system is not a cute game. It has consequences and one of them is the fact that I am stopping practice in this needed specialty.

I urge you to listen to the Citizens Coalition for Tort Reform. They are a groundswell movement, spontaneously developing out of the reaction to real imbalances in our society. As an elected representative, I urge you to listen to them, listen to the future.

Sincerely,

Sig R. Alpha, M.D.
SRA:gld
cc: Max F. Gruenberg Jr.
Randy Phillips

BLACK BULL

369 MULDOON ROAD
ANCHORAGE, ALASKA 99504

338-9922

3/25/86

Dear Mr. Miller,

Enclosed is a letter showing the difficulty the business community is having in obtaining adequate insurance coverage at a price we can absorb. My insurance premium was appx 1800⁰⁰ per year for the same coverage and include liquor liability three years ago.

I support HB 532 and SB 377 with the sliding scale on contingency fees and the Statue of Limitations clauses.

I also support fully the Citizen's coalition for Tort Reform and its comprehensive solution.

With our declining oil revenues I really think it is more important than ever to try to help our independent businesses survive as they are an important part of our economy.

I also wish it to be known that I do not support HB 549, H.B. 345 H.B. 609 and S.B. 138.

Sincerely yours
Annue Stillman
President L&L Productions Inc.



**Keith
Thomas
Associates**

INSURANCE BROKERS

2805 DAWSON, SUITE 202
ANCHORAGE, ALASKA 99503
PHONE (907) 561-5124

February 25, 1986

L&L Productions, Inc.
DBA Black Bull
369 Muldoon Road
Anchorage, AK. 99504

Dear Annie,

Per my conversation with Mel this afternoon, this is confirming that we have obtained a quote for general liability on the bar. Unfortunately, we are unable to obtain a quote for the liquor liability at this time. For limits of \$300,000 CSL, the annual premium for general liability only will be \$8032.96.

If renewal is desired, and full payment is not possible, we would be able to finance the policy through AFCO for \$2083.24 down, followed by nine payments of \$712.52.

Please notify our office as soon as possible if renewal is desired, because your previous policy expired 2-15-86.

If you should have any questions, please don't hesitate to contact our office.

Thank you,

Andrea Olson
Keith Thomas Associates

March 10, 1985

Mike M. Miller
Alaska State Legislature
Box V
Juneau, Alaska 99801

Dear Mr. Miller,

Please devote your time toward support and passage of HB 532 and SB 377, bills backed by the Coalition of Tort Reform.

As an independent real estate broker, I am experiencing difficulty obtaining Errors and Omissions coverage. Only two firms will now issue insurance in Alaska. More importantly, as an office building owner, I have experienced threefold cost increase in liability insurance in 1985 as compared to 1984. On one building, costs jumped from \$18,000 - \$49,000. On another building, cost jumped from \$30,000 - \$125,000 for the same coverage.

The problem stems from high and unpredictable awards made by juries. In such a judicial climate, insurance companies are unable to make meaningful forecasts of claims. The answer is enactment of meaningful tort reform legislation.

I support the total approach of Coalition for Tort Reform and urge you to do the same.

Sincerely,

Marigale Compton

Marigale Compton CCIM



PMS ✓
SD ✓
MC ✓

Peat, Marwick, Mitchell & Co.
Certified Public Accountants
Alaska Mutual Bank Building
601 West Fifth Avenue, Suite 700
Anchorage, Alaska 99501
907-276-7401

January 23, 1986

Dear Participant:

Attached are the results of the November, 1985 Errors and Omissions Insurance Survey conducted by the American Institute of Architects, Alaska Chapter, and the Alaskan Society of Professional Engineers. Fifty-five companies responded to the survey; however, only 43 companies provided information that could be utilized to compare changes from 1984 to 1985.

Exhibit I lists the individual responses of the 43 companies used in the survey. In addition, companies were categorized into six groups, based upon their 1984 revenue, and averages have been provided for each group. No significant changes in classification would have occurred if the companies had been categorized based upon their 1985 revenues.

Exhibit II provides a summary of comments made by respondents.

Several companies did not indicate whether their 1985 data was actual or quoted amounts; as such, the data for 1985 may not be the actual coverage, deductible and premium selected by a company.

If you have any questions please feel free to call me.

Very truly yours,

PEAT, MARWICK, MITCHELL & CO.

A handwritten signature in cursive script that reads "Larry L. Laughman".

Larry L. Laughman
Senior Manager

LLL:BM
Enclosure



AMERICAN INSTITUTE OF ARCHITECTS, ALASKA CHAPTER
and the
ALASKA SOCIETY OF PROFESSIONAL ENGINEERS

Errors and Omissions Insurance Survey

November 1985

AMERICAN INSTITUTE OF ARCHITECTS, ALASKA CHAPTER
and the
ALASKA SOCIETY OF PROFESSIONAL ENGINEERS

Errors and Omissions Insurance Survey

November 1985

1984 Revenues	Company	Coverage		Deductible		Premium		Multiplier	
		1984	1985**	1984	1985**	1984	1985**		
Less than \$200,000	1	\$ 1,000,000	1,000,000	5,000	5,000	3,000	13,104	4.37	
	2	100,000	100,000	5,000	5,000	2,500	7,172	2.87	
	3	100,000	250,000*	5,000	5,000	1,500	8,500	5.67	
	4	500,000	500,000	5,000	5,000	4,800	13,700	2.85	
	5	1,000,000	1,000,000	2,500	10,000*	3,000	36,000	12.17	
	6	250,000	150,000*	5,000	5,000	4,000	21,000	5.25	
	7	500,000	500,000	5,000	5,000	3,973	17,272	4.35	
	8	500,000	500,000	5,000	5,000	6,868	10,387	1.51	
Average		\$ 493,750	500,000	4,687	5,625	3,705	15,954	4.31	
\$200,001 to \$499,999	9	\$ 1,000,000	1,000,000	5,000	5,000	7,696	21,898	2.85	
	10	1,000,000	1,000,000	5,000	10,000	7,902	33,154	4.20	
	11	---	---"Not Provided"---	5,000	5,000	6,500	31,000	4.77	
	12	1,000,000	500,000*	10,000	15,000*	8,425	30,000	3.56	
	13	1,000,000	1,000,000	10,000	10,000	26,000	130,000	5.00	
	14	500,000	500,000	5,000	5,000	5,000	17,000	3.40	
	15	---	---"Not Provided"---	5,000	5,000	7,785	19,995	2.57	
	16	1,000,000	1,000,000	5,000	10,000*	11,058	37,844	3.42	
	17	500,000	500,000*	40,000	40,000	17,952	11,560	.64	
	18	100,000	100,000	10,000	10,000	8,714	66,750	7.66	
Average		\$ 762,500	700,000	10,000	11,500	10,703	39,920	3.73	
\$500,000 to \$999,999	19	\$ 1,000,000	1,000,000	25,000	25,000	18,000	54,000	3.00	
	20	1,000,000	1,000,000	10,000	10,000	19,000	29,000	1.53	
	21	500,000	1,000,000*	10,000	10,000	23,602	40,000	1.69	
	22	1,000,000	1,000,000	7,500	10,000*	6,500	96,000	14.77	
	23	1,000,000	1,000,000	15,000	15,000	26,180	28,756	1.10	
	24	1,000,000	1,000,000	15,000	15,000	7,800	22,500	2.88	
	25	100,000	100,000	10,000	10,000	12,000	16,000	1.33	
	26	1,000,000	250,000*	15,000	15,000	39,062	63,147	1.62	
	27	1,000,000	1,000,000	20,000	20,000	21,446	74,491	3.47	
	Average		\$ 844,444	816,666	14,167	14,444	19,289	47,009	2.44
\$1,000,000 to \$1,999,999	28	\$ 500,000	500,000	10,000	20,000*	15,500	44,500	2.87	
	29	1,000,000	1,000,000	25,000	25,000	24,000	130,000	5.42	
	30	---	---"Not Provided"---	10,000	20,000*	17,000	44,000	2.59	
	31	500,000	500,000	5,000	10,000*	11,892	46,972	3.95	
	32	---	---"Not Provided"---	10,000	20,000*	34,931	79,374	2.28	
Average		\$ 666,666	666,666	12,000	19,000	20,665	68,969	3.34	
\$2,000,000 to \$5,000,000	33	\$ 1,000,000	1,000,000	40,000	50,000*	30,000	130,000	4.33	
	34	1,000,000	1,000,000	50,000	50,000	44,937	127,000	2.83	
	35	1,000,000	1,000,000	25,000	50,000*	27,934	110,012	3.94	
	36	2,000,000	2,000,000	50,000	50,000	70,000	114,000	1.63	
	37	2,000,000	2,000,000	100,000	100,000	45,392	66,952	1.47	
	38	1,000,000	1,000,000	10,000	25,000*	65,809	147,475	2.24	
	39	2,000,000	2,000,000	50,000	75,000*	133,528	119,544	.90	
	Average		\$ 1,428,571	1,428,571	46,429	57,143	59,657	116,426	1.95
	Over \$5,000,000	40	\$ 1,500,000	1,500,000	100,000	100,000	55,000	220,000	4.00
41		2,000,000	2,000,000	50,000	75,000*	190,000	365,000	1.92	
42		---	---"Not Provided"---	25,000	25,000	30,000	35,000	1.17	
43		---	---"Not Provided"---	50,000	250,000*	50,000	150,000	3.00	
Average		\$ 1,750,000	1,750,000	56,250	112,500	81,250	192,500	2.37	

* Quote at 1984 level not provided.

** Actual or quotes.

AMERICAN INSTITUTE OF ARCHITECTS, ALASKA CHAPTER
and the
ALASKA SOCIETY OF PROFESSIONAL ENGINEERS

Errors and Omissions Insurance Survey

November 1985

The following is a summary of comments by respondents:

- The triple cost of premiums made it unfeasible for a small firm, such as ours, to continue to carry this coverage.
- New policy with new carrier - they would not cover prior acts, so the retroactive date became the date of the new policy. I am still trying to find insurance for my prior acts.
- Coverage was not renewed for 1985 due to an increase in premiums of over 400%.
- We are doing without errors and omissions insurance. In ten years of practice, we have never litigated a claim. In view of our reduced practice and low-risk projects, the premium increase is unconscionable. The insurance industry has a problem, not us, but they want us to pay for it.
- Applications were submitted to five firms. So far, two have declined, one pulled out of Alaska, one said its gross income was too small and still no response from the fifth. Did offer suggestions of a higher deductible and instead of the \$500,000 limit, suggested even \$250,000, but so far no response.
- The firm is now, in essence, uninsurable as the project insurance contract was canceled. The current practice of the insurance industry is an apparent deliberate method of putting the small businesses in this country either out of business entirely or at an uncompetitive disadvantage for lack of ability to obtain required insurance coverage.
- My old insurance broker sold the company to another broker who in turn sold to an Eastern company this year. At the same time, our insurance was due for renewal and the old insurance underwriter would not renew A&E liability insurance in Alaska. We had to find a new broker who filed applications with three companies but was having trouble getting quotations. In the meantime, the State DOT&PF terminated a contract we were working on for some time due to the fact that we did not have insurance coverage for a short period of time.

AMERICAN INSTITUTE OF ARCHITECTS, ALASKA CHAPTER
and the
ALASKA SOCIETY OF PROFESSIONAL ENGINEERS

Errors and Omissions Insurance Survey

- Errors and omissions insurance may not be affordable for us next year.
- Did not renew because of the cost. One of my clients is requiring \$500,000 in errors and omissions insurance. I am trying to get a new quote without prior acts coverage.
- Half the coverage for almost four times the premium -- that is an 800% increase. The carrier already told us we can expect a 20% to 30% increase for next year. This may tap us to the limit, that is, fold our doors. It is about time the federal government and the Alaska State legislature did something positive to keep small business firms in business. It is getting extremely difficult to compete with the big boys, especially with these dramatic insurance increases!
- In 1985, dropped coverage from \$1,000,000 with \$7,500 deductible to \$500,000 with \$10,000 deductible and the premium paid was \$34,000. Don't remember the May 24, 1985 questionnaire. Since my coverage runs from August 31 to August 31, it was easier to give you the actual amounts as they appear on my application for errors and omissions insurance. Basically, when considering we are paying five times the premiums for half the coverage, that represents a 1000% increase!

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER
FROM: PATRICIA BIEBER
PROVIDENCE HOSP, BOX 196604 99519
ANCHORAGE
261-3101

BILL NO: AB 532

SUBJECT: LIMITATIONS ON CIVIL LIABILITY

MESSAGE:

PROVIDENCE HOSPITAL IS ALARMED ABOUT THE IMPACT THAT THE EXTRA-ORDINARY INCREASES IN MALPRACTICE PREMIUMS WILL HAVE ON MEDICAL CARE DELIVERY AND THE SUBSEQUENT HEALTH OF ALASKANS. A SPECIAL CONCERN IS CARE FOR PREGNANT WOMEN. WE STRONGLY URGE THE PASSAGE OF MEANINGFUL TORT REFORM TO HELP RESOLVE THIS CRISIS.

DATE: 04/17/86 TIME: 15:52:49 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE JUDICIARY
SENATE JUDICIARY



Telegram

C9024

PDM ANCHORAGE ALASKA 15 05-03 1113A ADT

PMS

REP MIKE MILLER

JUNEAU

PLEASE PASS TDRT REFORM LEGISLATION BASED ON THE COMPRE-
HENSIVE SOLUTION PROPOSED BY THE CITIZENS COALITION.

GARY AND BARBARA BAUCH

2431 WEST 100 4 AVE

ANCHORAGE AK 99515

L-0167-0 1601876

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER
FROM: SANDRA ALTO
5733 JENNIFER CIRCLE
ANCHORAGE 99504
337-8837

BILL NO: HB 522
SUBJECT: UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES
MESSAGE:
PLEASE GIVE YOUR FULL SUPPORT TO HB 522.

DATE: 04/23/86 TIME: 11:16:49 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS

ED RATLIFF
6448 BARCLAY COURT
ANCHORAGE, AK

99504



Mailgram®



1-013415U093 04/03/86 ICS NY79621
00052 MLTN VA 04/03/86 JN22131

AHGA

HON. M. MIKE MILLER, CHAIRMAN
HOUSE JUDICIARY COMMITTEE
FOUCH V
JUNEAU, AK

99801

RE: HOUSE BILL 532 - CITIZENS COALITION FOR TORT REFORM
THIS BILL HAS, OR WILL SHORTLY COME BEFORE YOUR COMMITTEE FOR
CONSIDERATION. YOU ARE URGED TO STRONGLY PASS THIS BILL THROUGH
COMMITTEE AND ON TO THE FLOOR.
TORT REFORM AS PROPOSED BY HOUSE BILL 532 WILL ACHIEVE A FAIRNESS IN
OUR CIVIL JUSTICE SYSTEM THAT IS GREATLY NEEDED AT THIS TIME. THIS
FAIRNESS, UNDER THIS BILL, WOULD APPLY TO BOTH PLAINTIFF AND
DEFENDANT.
HELP RETURN STABILITY TO OUR SOCIAL JUSTICE SYSTEM AND CREATE A
STABLE
ENVIRONMENT IN WHICH OUR BUSINESSES IN THIS STATE MAY CONDUCT THEIR
BUSINESS IN SOME ATMOSPHERE OF CERTAINTY.
THIS IS AN IMPORTANT ISSUE FOR ALL ALASKANS. YOUR SUPPORT AND
PASSAGE
IS STRONGLY URGED.
KINDEST REGARDS,
ED RATLIFF
6448 BARCLAY COURT
ANCHORAGE, ALASKA 99504

1718 EST

MGMCOMP MGM

Form L-01342 1801557

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: BARBARA CLUTTER
663 DEAUW
FAIRBANKS, ALASKA
452-1611

99709

BILL NO: HB 532

SUBJECT: LIMITATIONS ON CIVIL LIABILITY

MESSAGE:

I AM A MEMBER OF NINETEEN PHYSICIAN CORPORATION IN FAIRBANKS. FOR THIS GROUP, OUR MALPRACTICE INSURANCE PREMIUMS INCREASED FROM \$206,000 TO \$354,000 LAST YEAR. TO COVER THIS INCREASE, WE HAD TO RAISE OUR FEES 7 PERCENT. I URGE YOUR SUPPORT FOR THE COALITION FOR TORT REFORM BILLS HB532 AND SB377.

DATE: 03/27/86 TIME: 13:52:10 SENT BY: FAIRBANKS LIO

COPIES TO: REPRESENTATIVE: DON CLOCKSIN
REPRESENTATIVE: JIM DUNCAN
REPRESENTATIVE: MIKE NAVARRE
REPRESENTATIVE: PAT POURCHOT
REPRESENTATIVE: BEN GRUSSENDORF
REPRESENTATIVE: ALBERT P. ADAMS
HOUSE JUDICIARY

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER
FROM: HANK RUST, RUST FLYING SERVICE
BOX 190325
ANCHORAGE 99519
243-1595

BILL NO:

SUBJECT: INSURANCE

MESSAGE:

INSURANCE COSTS UP NEARLY 100 PERCENT OVER LAST YEAR. SMALL BUSINESS
CANNOT OPERATE WHERE INSURANCE COSTS 25 PERCENT OF GROSS TORT
REFORM THE ONLY SHORT TERM RELEASE. IMPERATIVE YOU LEGISLATE SOME
FORM OF TORT REFORM THIS TERM OR TRANSPORTATION INDUSTRY IS DOWN THE
TUBES.

DATE: 04/01/86 TIME: 16:23:17 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER
FROM: DON WITSOE
P. O. BOX 871042
WASILLA AK 99687
376-2207
BILL NO: HB 481
SUBJECT: VERDICTS/DAMAGES/LIABILITY IN CIVIL ACTIONS
MESSAGE:
PLEASE VOTE IN FAVOR OF HB481.

DATE: 03/25/86 TIME: 14:28:23 SENT BY: MATSU LIO

COPIES TO: HOUSE MEMBERS
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE M. MIKE MILLER

FROM: ROBERT SMITH
P.O. BOX 870095
WASILLA AK
376-2517

99687

BILL NO: HB 481

SUBJECT: VERDICTS/DAMAGES/LIABILITY IN CIVIL ACTIONS

MESSAGE:

IN FAVOR OF TORTE REFORM, HB 481. IT IS DRIVING OUR BUSINESS PEOPLE
BROKE.

DATE: 03/24/86 TIME: 14:02:50 SENT BY: MATSU LIO

COPIES TO: HOUSE
SENATE

LEGISLATIVE AFFAIRS AGENCY

HJUD - MM Miller
John Sund
Grunberg
Taylor
Clocksin
Pearson Phillips

MEMORANDUM

Peggy -
Here are the petitions I spoke
to you about on phone 5/7. To
be distributed to:

All members of House Judiciary
Senators Lehtola, Kelly, Halpern
Reps. Larson, Catten, Murphy, Perkins

Thanks
Mary
Matt - Su 410

We, the undersigned residents of Eagle River, Chugiak,
 Birchwood and the Matanuska Valley, urge you to support the
 strongest possible legislation to reform tort laws in Alaska,
 especially the Sponsor Substitute for HB 532 and the strongest
 possible version of SB 377.

Name (Print and Write)

Address

Caryl Livingston Caryl Livingston SRB Box 6531 Wasilla
Debra Klein Debra Klein Box 2524 Palmer
~~W. Latta Stehlik~~ W. Latta Stehlik 1122 784 Palmer
SHARON KERN Sharon Kern Box 416 Palmer AK 99644
Patricia A Haugen Patricia A. Haugen 307 N Church Palmer AK 99601
Katherine L. Horvath Katherine L. Horvath Box 934 Palmer AK 99604
Dorothy L. Fecht Dorothy L. Fecht P.O. Box 2852 Palmer, AK 99644
Jodie J. Stiglic Jodie J. Stiglic P.O. Box 954 Palmer AK 99604
Theresa M. Hicks Theresa M. Hicks SRB Box 76918 Palmer AK 99604
Denise Willis Denise d. Willis PO Box 2473 Palmer AK 99604
Ann Judith Sjodin Judith Sjodin SRB Box 6634 Palmer AK 99604
Deborah Steward Deborah Steward Box 3382 Palmer AK 99645
Lace Coxton SRB Box 9394 Palmer, AK 99645
GLORIA BUSH Gloria Bush STRB Box 6750 Palmer, AK 99645
CLARA AGRANT Clara LaBont CAROL ANN DR. P.O. BOX 150 PALMER, AK 99645
Sharon A. Smith Sharon A. Smith P.O. Box 538 Palmer, AK
Audrey M. Lindquist Audrey M. Lindquist 424 E. Dogwood - E1 PALMER
Ernice K. FLINT Ernice K. Flint SRB Box 9801 Palmer AK 99645
Janes M. Haugen Janes M. Haugen - 307 N Church Palmer, AK. 99601
Paula A. Brill Paula A. Brill 248 S. Alaska St Palmer AK 99644

We, the undersigned residents of Eagle River, Chugiak,
 Birchwood and the Matanuska Valley, urge you to support the
 strongest possible legislation to reform tort laws in Alaska,
 especially the Sponsor Substitute for HB 532 and the strongest
 possible version of SB 377.

Name (Print and Write)	Address
Leon J. Kurn	Leon J. Kurn Box 642 Palmer AK 99645
Carolyn A. Kuhn	Carolyn A. Kuhn
Key Omar	Key Omar 512 Gold Key Lane Palmer AK 9964
Cheryl L. Clark-Hoath	Cheryl L. Clark-Hoath PO Box 876735 Wasilla AK 99687
Janice Werner	Janice Werner P.O. Box 7271 Palmer, AK 99645
Charlene Deemer	Charlene Deemer Box 876716 Wasilla AK 99687
Khinda Rousey D. Priest	Khinda Rousey D. Priest Box 988 Palmer, AK 99645
Harriet Weissen	Harriet Weissen Box 2035 Palmer, AK 99645
Phyllis J. Witzel	Phyllis J. Witzel Box 3497 Palmer AK 99645
Aedene L. Arthur	Aedene L. Arthur 5 Plumley Road SRB 7300 Palmer AK 9964
Cheri Johnston	Cheri Johnston SRB Box 7548A Palmer AK 9964
Charles N. Fer	Charles N. Fer Box 1513 Palmer, AK 996
Norma Stachick	Norma Stachick SRD Box 9771 Palmer, AK 99645
Patricia Mulligan	Patricia Mulligan S.R.B. Box 7634 Palmer, AK 9964
Lana Henley	Lana K. Henley P.O. Box 87-1740 Wasilla AK 99645
Wanda Wilson	Wanda Wilson SRB Box 7271 Palmer AK 99645
Patricia Wilson	
Patricia Wilson	Patricia Wilson PO Box 9571 Palmer 9964
Ken Klunder	Ken Klunder PO Box 241 Palmer 99645
Kim Nunert	Kim Nunert General Del. Palmer 99645

We, the undersigned residents of Eagle River, Chugiak, Birchwood and the Matanuska Valley, urge you to support the strongest possible legislation to reform tort laws in Alaska, especially the Sponsor Substitute for HB 532 and the strongest possible version of SB 377.

Name (Print and Write)

Address

<u>Diane Lee Summers</u> Diane Lee Summers	<u>22 East Anchorage #4</u>	<u>Palmer, Alaska</u>
<u>DIONA M. ROBERTS</u> DIONA M. ROBERTS	<u>Box 2875</u>	<u>PALMER AK 99645</u>
<u>Anita Leonard</u>	<u>Box 870692</u>	<u>Wasilla AK 99687</u>
<u>Elizabeth Hiller</u>	<u>1007 S. Service St Apt 3</u>	<u>Wasilla AK 99687</u>
<u>James & Lisa Hacker</u>	<u>P.O. Box 873431</u>	<u>Wasilla AK 99687</u>
<u>Donald Smith</u>	<u>P.O. Box 870011</u>	<u>Wasilla AK 99687</u>
<u>Harold M. Salak</u>	<u>P.O. Box 874706</u>	<u>Wasilla AK 99687</u>
<u>Rich D. Giller</u>	<u>Box 2844</u>	<u>Palmer 99645</u>
<u>Christine S. Giller</u>	<u>Box 1481</u>	<u>Palmer AK 99645</u>
<u>Diane K. Hocking</u>	<u>Box 1431</u>	<u>Palmer AK 99645</u>
<u>James S. Hocking</u>	<u>1047 S. Alaska St #1</u>	<u>Palmer AK 99645</u>
<u>Linda Braun</u>	<u>S.R. Box 7686-17</u>	<u>Palmer, Alaska 99645</u>
<u>James L. Giller</u>	<u>581 S. Denali</u>	<u>Palmer AK</u>
<u>James L. Giller</u>	<u>JAMES GILLER BOX 2052</u>	<u>PALMER AK 99645</u>
<u>James L. Giller</u>	<u>S.R. Box 568A</u>	<u>Wasilla AK 99687</u>
<u>M.H. Giller</u>	<u>S.R. Box 2991</u>	<u>Wasilla, AK 99687</u>
<u>Clara Giller</u>	<u>S.R. Box 2991</u>	<u>Wasilla, AK 99687</u>
<u>Lori L. Hacker</u>	<u>Box 873431</u>	<u>Wasilla AK 99687</u>

Christine S. Giller

We, the undersigned residents of Eagle River, Chugiak, Birchwood and the Matanuska Valley, urge you to support the strongest possible legislation to reform tort laws in Alaska, especially the Sponsor Substitute for HB 532 and the strongest possible version of SB 377.

Name (Print and Write)	Address
Alice J. Halinger	PO 3149 Palmer, AK 99645-3149
Carol W. Stenberg	PO Box 876984 Wasilla AK 99687
William F. Berto	PO Box 1000 Palmer AK 99645
Alan E. Mowbray	PO Box 77628 Wasilla AK 99687
James H. Miller	PO Box 7012 Palmer AK 99645
Boyer King	P.O. 771786 Eagle River AK 99577
Mike Burkhardt	PO 2745 Palmer AK 99645
Joan Taylor	Box 87643 Wasilla AK 99687
Arthur M. Miller	407 S. Colony Way Palmer AK 99645
J. David Miller	PO Box 2202 Palmer AK 99645
David Mayochak	POB 720 PALMER, AK 99645
Susan J. Lemay	PO Box 423 E. Dahlin Suite J Palmer AK 99645
Leah Nelson	Box 2556 Palmer AK 99645
Cathy D. Leland-Johnson	Box 876389 Wasilla AK 99687
Lois Hugel	PO Box 874663 Wasilla AK 99687
Robert M. Munsell	P.O. Box 872665 Wasilla AK 99687
Hilma M. Munk	PO Box 111000 Palmer AK 99645
John H. Jones	PO Box 30 Palmer AK 99645
Genevieve Young	SR C 8106 Palmer AK 99645
Marie R. Chandler	Rt. A. Box 6670, Wasilla AK 99687

We, the undersigned residents of Eagle River, Chugiak, Birchwood and the Matanuska valley, urge you to support the strongest possible legislation to reform tort laws in Alaska, especially the Sponsor Substitute for HB 532 and the strongest possible version of SB 377.

Name (Print and Write)	Address
Laura A. Carney LAURA A. CARNEY	P.O. Box 217 SUTTON AK. 99674
LARRY ROBINSON	2000 E. 36th ANCHORAGE AK. 99508
Cheryl Wilson	1013 E. Diamond #268 Anch AK. 99515
Frank ...	1-320P-N ... AK 99657
STACY Sims	2495 KANITNA Dr. Eagle River 99577
William W Resinger WILLIAM W RESINGER	HUNTLEY RD P.O. Box 859 PALMER, ALASKA 99645
STACY Sutton	P.O. Box 75177 Wasilla AK 99683
JOHAN VAN HOESEN John Van Hoesen	6715 Blackburn St., Anchorage, Ak 99502
John ...	P.O. Box 3595 Palmer AK 99645
Julia Jones	P.O. Box 3595 Palmer AK 99645
Mary FEARIN Mary ...	P.O. Box 8740.31 Wasilla 99687.
Shirley L. Morgan Shirley L. Morgan	S.R.D. Box 934 Palmer Ak. 99645
Shirley Dyer	PO Box 1991 Palmer, Ak. 99645
Kelly S. Blakeman (Kelly S. Blakeman)	P.O. Box 3743 Palmer Ak 99645
Kathy Warren Kathy Warren	P.O. Box 2035 Palmer, AK 99645
Sarah Jackson Sarah Jackson	PO Box 3155 Palmer AK 99645
Joyce Miles JOYCE Miles	P.O. Box 13-195 Trapper Creek 99683
Sherry Snyder Sherry Snyder	Box 2625 Palmer AK 99645
Sherry Snyder	P.O. Box 185 Sutton, AK. 99674

We, the undersigned residents of Eagle River, Chugiak, Birchwood and the Matanuska Valley, urge you to support the strongest possible legislation to reform tort laws in Alaska, especially the Sponsor Substitute for HB 532 and the strongest possible version of SB 377.

Name (Print and Write)

Address

Terry Klein Jerry Klein POB. 3565 Palmer 99645

Lucille Magee Lucille Magee P.O. 1975 Palmer 99645

Mario Arlo 216 P.O. Box 2724 Palmer 99645

Al. Laurin P.O. Box 973843 Wasilla 99687

R.A. Strigler P.O. Box 2136 Palmer AK

Winnau Maltin POBox 174388 Eagle River AK 99577

Walter P.O. SRBBox 9524 Palmer AK

Mary Peterson P.O. Box 876836 Wasilla AK. 99687

Maureen Ruckman P.O. Box 373 Sutton, AK 99687

Wicki LaLonde SRB 7347-A3 Palmer, AK 99645

Pat Russell General Delivery Palmer, AK. 99645

~~BOBBY VANOVER~~ Bobbi Vanover POBox 3504 Palmer, AK 99645

Fan Landauer POBox 873822 Wasilla AK 99687

William D. Murray SRD 9152 Palmer Alaska 99645

We, the undersigned residents of Eagle River, Chugiak, Birchwood and the Matanuska Valley, urge you to support the strongest possible legislation to reform tort laws in Alaska, especially the Sponsor Substitute for HB 532 and the strongest possible version of SB 377.

~~Kim Matthews~~
Name (Print and Write)

Address

Kim Matthews SRA Pavle 4167 - Palmer, AK 99645

W.D. Cunningham Birchwood Palmer, AK

Ronald L. Hoak SRA Box 6025D Palmer AK 99645

^{Boone J. Kibler}
Boone J. Kibler Rt 194 Palmer AK 99645

^{Berry Munstetter}
Berry Munstetter P.O. Box 874492 Wasilla AK 99687

Patricia A. Merrill Box 2766 Palmer, AK 99645

^{Victoria A. Faust}
Victoria A. Faust Box 870372 Wasilla, AK 99687

Luke Belle Fikard Finger Lake Height Sub. AK 4 Lot 7.
John Belle Fikard Gen. P.O. Palmer, AK 99645.

Madeline Stinson P.O. Box - 723972 Eagle River, AK 99645

John B. Letz P.O. Box 2435 Palmer AK 99645.

Mark Stewart 561 S. Denali Suite E, Palmer

Mark C. Stewart Alaska 99645

Mary Rardon 1236 W 10th Anch. AK 99501

We, the undersigned residents of Eagle River, Chugiak, Birchwood and the Matanuska Valley, urge you to support the strongest possible legislation to reform tort laws in Alaska, especially the Sponsor Substitute for HB 532 and the strongest possible version of SB 377.

Name (Print and Write)

Address

Mary Ann Boyd 1065 Randa Way, Palmer, AK 99645

Both A. Cape Both A. Cape Box 1983 Palmer, AK 99645

Barbara J. Ferraro BARBARA J. FERRARO Box 340, Palmer AK 99645

Marvyn Burleson MARVYN BURLESON Box 195, PALMER 99645

Simund H. Restad SIMUND H. RESTAD SHD Box 9571 PALMER, AK 99645

Chienku Ping Chienku PING P.O. Box 2885, Palmer, AK 99645

Laura M. Kale Laura M. Kale 1465 Scotwood Wasilla, AK 99665

Karen M. Kebler KAREN M. KEBLER SDB Box 7028 Palmer AK 99645

Wm W. Mitchell (Wm W. Mitchell) Box 137, Palmer, AK 99645

Donald Erickson Donald Erickson Box 1081 Palmer - AK 99645

Clyde W. Hornal Clyde W. Hornal P.O. Box 870361 Wasilla, AK 99667

X.C. Christensen X.C. Christensen Box 1073 Palmer, AK 99645

Ronald E. Carling Ronald E. Carling Box 2294 Palmer 99645

Charles Christensen Charles Christensen Box 1073 Palmer, AK 99645

Dorothy Helm Dorothy Helm P.O. Box 3136 Palmer, AK 99645

We, the undersigned residents of Eagle River, Chugiak, Birchwood and the Matanuska Valley, urge you to support the strongest possible legislation to reform tort laws in Alaska, especially the Sponsor Substitute for HB 532 and the strongest possible version of SB 377.

Name (Print and Write)	Address
<i>and Mrs. ...</i> LUST MERRAD	Box 874969 WASILLA 99687
<i>W. Vleeshouer</i> OENS W. VLEESHOUER	P.O. Box 871472 WASILLA 99687
<i>W. Vleeshouer</i> Ali Ali Vleeshouer	1152 M. Kee Lane Wasilla 99687
<i>Sandra C. ...</i> Sandra C. ...	Box 872666 Wasilla 99687
<i>Kathleen P. ...</i> KATHLEEN PUFFER	P.O. Box 874855 Wasilla 99687
<i>Diane N. Robinson</i> DIANE N. ROBINSON	2801 ... Way Wasilla 99687
<i>Mrs. Irene Bush</i> Mrs. Irene Bush	P.O. Box 870354 Wasilla AK 99687
<i>Ulrich Siekmeyer</i> ULRICH SIEKMEYER	2750 ... Way Wasilla AK 99687
<i>Jeanne M. Tordan</i> Jeanne M. Tordan	SRD Box Palmer, AK 99645
<i>Edith M. Pinquish</i> Edith M. Pinquish	P.O. Box 870315 Wasilla 99687
<i>... ..</i> Wasilla AK 99687
<i>Beverly Barrera</i> Beverly Barrera	P.O. Box 872911 Wasilla, AK 99687
<i>Sixta A. Barrera</i> SIXTA A. BARRERA	P.O. Box 872911 Wasilla, AK 99687

We, the undersigned residents of Eagle River, Chugiak, Birchwood and the Matanuska Valley, urge you to support the strongest possible legislation to reform tort laws in Alaska, especially the Sponsor Substitute for HB 532 and the strongest possible version of SB 377.

Name (Print and Write)

Address

Deborah Ann Bok - SR Box 91779 Palmer, AK 99644

Petersen, Esther - P.O. Box 2744 Palmer, AK

Petersen, Esther - P.O. Box 2744 Palmer, AK

Michelle Miller - P.O. Box 6747 Palmer, AK

Shelley Windmiller - Shelley Windmiller 344 S. Cobble # B-3 Palmer, AK

Deborah Gillespie 200 Anna St Palmer AK 99645

Jack H. H. 1802 W 57th Anch, AK 99503

Theresa, Sue P.O. Box 87-1037 Wasilla AK 99687

Paula O'Connell SR Box 5346A Wasilla, AK Paula O'Connell

Valerie Pickle Box 91 Sutton AK 99674

Dondalee Southern SR Box 6525V Wasilla, AK

Kentucky, Lori - ^{hru} Kentucky - P.O. Box 871306 Wasilla, AK

Cheranne, Mabel SR Box 7642 Palmer, AK 99645

Linda J. Allen Box 2556 Palmer, AK 99645

Joe Sitton
Chris Birch
Introduced: 12/5/85
Postponed: 12/9/85

RESOLUTION NO. 85-086

A RESOLUTION SUPPORTING THE
CITIZENS' COALITION FOR TORT REFORM REGARDING
INSURANCE PREMIUMS

WHEREAS, the Fairbanks North Star Borough has had its budget reserve seriously diminished by the unanticipated increase of \$600,000 in its annual insurance premium last year, and has been adjusted to an additional \$500,000 increase this year; and

WHEREAS, other Alaska communities, businesses, school districts, and private citizens are similarly suffering because of the need for legislative redress of the problems peculiar to the Alaska insurance industry; and

WHEREAS, Alaska has a limited availability of liability insurance programs and has experienced a dramatic rise in liability premiums; and

WHEREAS, legislative remedies are needed to restore predictability and affordability to liability insurance programs; and

WHEREAS, the Citizens' Coalition For Tort Reform has identified those areas needing legislative remedy, and has proposed solutions;

NOW, THEREFORE, BE IT RESOLVED by the Fairbanks North Star Borough Assembly that it supports the efforts of the Citizens' Coalition for Tort Reform to achieve legislative remedies, and urges the Alaska Legislature to make these reforms a priority of this legislative session.

PASSED AND APPROVED THIS 24TH DAY OF APRIL, 1986.

Presiding Officer

ATTEST:

Clerk of the Assembly

RESOLUTION SUPPORTING
THE CITIZENS COALITION FOR TORT REFORM
REGARDING INSURANCE PREMIUMS

WHEREAS: The Greater Ketchikan Chamber of Commerce has had its member reserves seriously diminished by the unanticipated increase in their annual insurance premiums, and;

WHEREAS: other Alaska communities, businesses, school districts and private citizens are similarly suffering because of the need for legislative redress of the problems peculiar to the Alaska insurance industry, and;

WHEREAS: Alaska has a limited availability of liability insurance programs and has experienced a dramatic rise in liability premiums, and;

WHEREAS: legislative remedies are needed to restore predictability and affordability to liability insurance programs, and;

WHEREAS: the Citizens Coalition for Tort Reform has identified those areas needing legislative remedy and has proposed solutions;

NOW, THEREFORE, BE IT RESOLVED: The Greater Ketchikan Chamber of Commerce supports the efforts of the Citizens Coalition for Tort Reform to achieve legislative remedies and urges the Alaska State Legislature to make these reforms a priority of the coming and future legislative sessions.

DATED at KETCHIKAN, ALASKA this 21st day of April, 1986.

Joy E. Clark

JOY CLARK, PRESIDENT
GREATER KETCHIKAN CHAMBER OF COMMERCE
P.O. Box 5957
KETCHIKAN, AK 99901

Don Harrison

Don Harrison
Second Vice-President

Larry Herrman

Larry Herrman
Secretary

Paul Wingren

Paul Wingren
Immediate Past President

Scott E. Milner, CPA

Scott Milner
Treasurer

Jack Davies

Jack Davies, Director

Jim Elkins

Jim Elkins, Director

Neil Gray

Neil Gray, Director

Terilyn Lynn

Terilyn Lynn, Director

Bob Norton

Bob Norton, Director

Roger Stone

Roger Stone, Director

Mike Cusack

Mike Cusack, Director

Carolyn Ehlers

Carolyn Ehlers, Director

Jan French

Jan French, Director

Gary Larson

Gary Larson, Director

Angelo P. Martin

Angelo Martin, Director

Dwight Stampflee

Dwight Stampflee, Director



**Groups, Organizations and Businesses
supporting the tort reform positions of
The Citizens Coalition for Tort Reform
(5/7/86)**

Alaska Air Carriers	Cordova Chamber of Commerce
Alaska Airmen's Association	Cordova City Council
Alaska Broadcasters Assn.	Dillingham Chamber of Commerce
Alaska Chapter American Institute of Architects	Fairbanks Chamber of Commerce
Alaska Chapter, American Optometric Assn.	Fairbanks North Star Borough Assembly
Alaska Dental Society	Houston City Council
Alaska Hotel & Motel Assn.	Humana Hospital - Alaska
Alaska Movers Assn., Inc.	Independent Electrical Contractors Assn.
Alaska Oil Marketers Assn.	Insurance Brokers & Agents Assn.
Alaska Physical Therapy Assn.	International Assn. of Drilling Contractors
Alaska Rental Assn.	International Childbirth Education Association
Alaska Section, Am. Soc. of Civil Engineers	Ketchikan Chamber of Commerce
Alaska Society of Professional Engineers	Matanuska-Susitna Borough Assembly
Alaska State Chamber of Commerce	Midnight Sun Travel, Inc.
Alaska State Health Assn. (Hospitals)	Palmer Chamber of Commerce
Alaska State Medical Assn.	Pension Consultants
Alaska Truckers Assn.	Professional Engineers in Private Practice Alaska
Alaska Visitors Assn.	Professional Physical Therapists Assn.
American College of Nurse Midwives, Ak Chapter	Risk Management Assn.
Anchorage Board of Realtors	Sitka Chamber of Commerce
Anchorage Chamber of Commerce	Soldotna City Council
Anchorage Daycare Operators	Southern Alaska Life Underwriters
Anchorage Restaurant & Beverage Assn. (ARBA)	Utility Contractors of Alaska
Associated General Contractors	Wasilla City Council
Cabaret Hotel & Restaurant Retailers (CHARR)	

	Initials	Date
Prepared By		
Approved By		

Sen. Don Bennett
 Sen. Jack Coghill
 Sen. Bettye Jakrenkamp
 Rep. Mike Davis
 Rep. Steve Frank
 Rep. John Ringsted
 Rep. Niilo Koponen
 Rep. Richard Schultzy
 Rep. Mike Miller

Re Tort Reform.

I support the State Chamber position on Tort Reform.

It seems juried feel that insurance companies have deep pockets, especially if the insured is a governmental unit or a large corporation. We need to assume more responsibility for our actions instead of looking for someone to sue.

RAY KOHLER
 P.O. BOX 607
 FAIRBANKS, AK 99701



Sincerely
 Ray Kohler

ALASKA STATE CHAMBER OF COMMERCE POSITION ON TORT REFORM:

Reasonable restrictions should be placed on portions of judicial awards which are not directly related to a victim's financial loss and which require liability to follow fault.

This will increase predictability of insuring specific casualties. Legislation which will take the following actions is supported by ASCC:

- 1) Place a cap on non-economic judicial awards (pain & suffering, inconvenience, etc.)
- 2) Require structured settlements in the form of periodic payments of judgments.
- 3) Permit collateral insurance coverage to be presented to juries.
- 4) Establish a sliding scale for contingent fee agreements between attorneys & plaintiffs
- 5) Amend the rules of liability so a person at fault is responsible only for the degree of injury which was caused by his or her negligence.

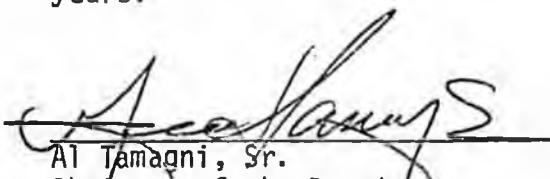
CITIZENS COALITION FOR TORT REFORM, inc.

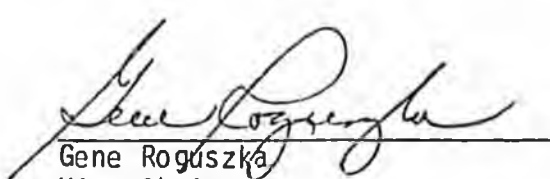
"voices raised in unison..."

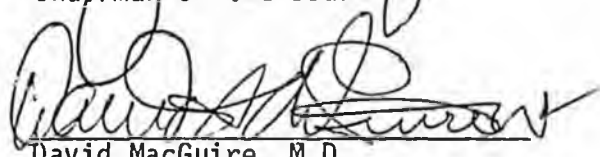
March 28, 1986

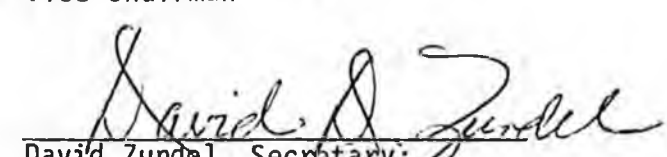
TO: ALL LEGISLATORS

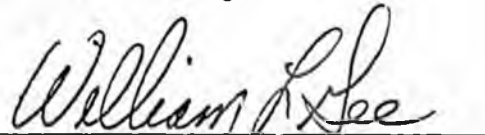
Please note that the Citizens Coalition for Tort Reform continues to support the principles set forth in our original comprehensive solution. Those principles are contained in SSHB 532 and most of them are in SB 377. We appreciate the hard work and support which has been put forth in the effort to reform some of the tort practices which have developed in the past few years.


Al Tamagni, Sr.
Chairman of the Board

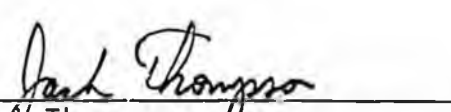

Gene Roguszka
Vice Chairman

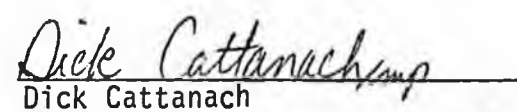

David MacGuire, M.D.
Vice President;
President, Alaska State
Medical Society

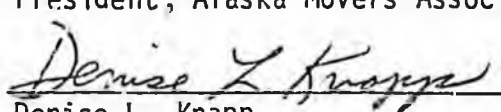

David Zundel, Secretary;
Executive Director,
Alaska Air Carriers

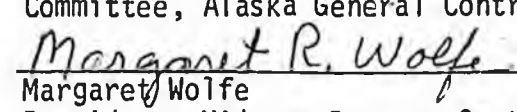

Bill Gee, Treasurer

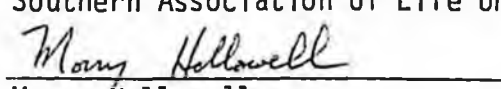

Frank Mears, President
Professional Trust Administrators, Inc.

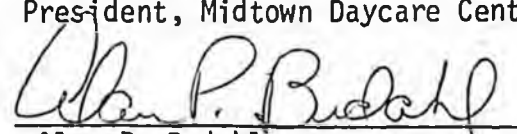

Jack Thompson
President, Alaska Movers Association

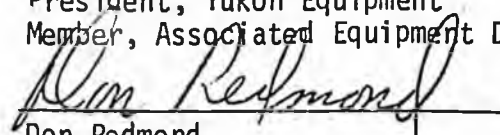

Dick Cattanauch
Chairman, Insurance Tax and Bonding
Committee, Alaska General Contractors

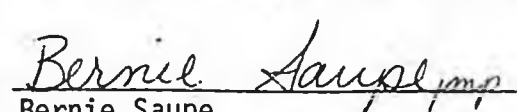

Denise L. Knapp
Board Member
Southern Association of Life Underwriters


Margaret Wolfe
President, Midtown Daycare Center Inc.


Morry Hollowell
President, Yukon Equipment
Member, Associated Equipment Distributors


Alan P. Budahl
President, Alaska Hotel & Motel Association


Don Redmond
President, Alaska Rental Association


Bernie Saupé
Vice-President, Alaska Oil Marketers
Association, Inc.

Marilyn Pierce-Bulger
Marilyn Pierce-Bulger
Chairman, Alaska Chapter
American College of Nurse-Midwives

Martha A. Dearborn
Martha A. Dearborn
Executive Director
Alaska Dental Society

T.J. Thrasher
T.J. Thrasher
Executive Director
Alaska Trucking Association

James E. Suttle
James E. Suttle
Chairman, Alaska Chapter
International Association of
Drilling Contractors

Marigale Compton
Marigale Compton
Liason, Anchorage Board of Realtors

Anita Farley
Anita Farley
Childbirth Educator

Lynn J. Coon, O.D.
Lynn J. Coon, O.D.
Legislative Chairman, Alaska Chapter
American Optometric Association

Dr. Vince Haneman P.E.
Dr. Vincent S. Haneman, Jr., P.E.
Immediate past President, Alaska
Society of Professional Engineers
and Dean of Engineering - University
of Alaska, Fairbanks

Nelson M. Franklin
Nelson M. Franklin
Chairman, Professional Engineers
in Private Practice

Charles H. Selman
Charles H. Selman
President, Caberet Hotel and
Restaurant Retailers (CHARR)

Mary Pierce
Mary Pierce
Risk Management Consultant

Michael W. Gordon
Michael W. Gordon
Board Member, (ARBA)
Anchorage Restaurant & Beverage Assoc.

Roy Robinson
Roy Robinson
Vice-President, Alaska Broadcasters
Association

Diane E. Ramey
Diane E. Ramey
Liason, Alaska Physical Therapy
Association

Dennis DeWitt
Dennis DeWitt
Executive Director, Health Association
of Alaska



ALASKA VISITORS ASSOCIATION

P.O. BOX 10-2220
ANCHORAGE, AK 99510
(907) 276-6663

Telex: 25 147
Within Alaska 090-25-147
Lower U.S. 0305-25-147
Canada 0305-25-147
International J14 25-147

1984-85 EXECUTIVE OFFICERS

President
DENNIS BRANDON
Sheffield Enterprises
Anchorage, Alaska

Vice President - Administration
DEAN WEIDNER
The Weidner Co.
Mercer Island, Washington

Vice President - Government Relations
CHRIS VON IMHOF
Alaska Resort
Girdwood, Alaska

Vice President - Marketing
GARY ODLE
Alaska Airlines
Seattle, Washington

Secretary
HAL T. WEST
Alaska West Associates
Anchorage, Alaska

Treasurer
A. K. KIRK LANTERMAN
Holland America Westlours
Seattle, Washington

Executive Director
DALE FOX

PAST PRESIDENTS

GEORGE SUNDBORG
1950

ROBERT E. ELLIS
1951-1952

EDWARD D. COFFEY
1952-1955

MARSHALL CRUTCHER
1956-1958

BEN CRAWFORD
1959-1959

EVERETT PATTON
1957-1959

ROBERT A. BAKER
1959-1960

ROBERT E. ELLIS
1960-1962

ROBERT GIERSUORF
1962-1963

E. E. SWOFFORD
1963-1964

H. JACK MUSIEL
1964-1966

JAMES JOHNSON
1966-1967

FRANK DOWNEY
1967-1968

BILL STEFFIELD
1968-1969

JOHN MONROE
1969-1970

RONALD LAY MORE
1970-1971

JOHN STEVENS
1971-1972

LEN LAURANCE
1972-1973

E. AL PARRISH
1973-1974

A. E. "BUD" HAGBERG
1974-1975

CHUCK WEST
1975-1977

CHARLES CONWAY
1977-1978

JIM BINKLEY
1978-1979

MARTHA EDWARDS
1979-1980

ROLF KLUG
1980-1981

DAVE PALMER
1981-1982

CHRIS VON IMHOF
1982-1983

ROBERT H. BRENNAN
1983-1984

A RESOLUTION IN SUPPORT OF TORT REFORM

WHEREAS, liability insurance is a necessary cost of doing business within the tourism industry in Alaska; and,

WHEREAS, liability insurance costs have continued to rise to prohibitive levels for many businesses; and,

WHEREAS, these higher costs result in a higher end product cost to the consumer; and,

WHEREAS, these higher costs of insurance are forcing many important visitor attractions out of business and prohibiting the entry of others,

THEREFORE BE IT RESOLVED that the Alaska Visitors Association make Tort Reform a Legislative priority and further direct the board and staff to work with the Citizen's Advocate Committee for Tort Reform and the Governor's Task Force on Insurance.

SUBMITTED BY: Jan Wrentmore, Suzanna Mullen, Bob Jacobsen, Lee Crane and Rob Englebrecht

PASSED October 12, 1985 by a vote of the membership at the Annual AVA Convention.

On the following five pages you will find a summary of the desired actions of the Citizen Advocate Committee for Tort Reform

Rev. M. Miller

Requested by: Paul Barry
Assemblyperson

MATANUSKA-SUSITNA BOROUGH

RESOLUTION SERIAL NO. 86-61

A RESOLUTION OF THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH
SUPPORTING LEGISLATION REGARDING LIABILITY AND OTHER INSURANCE.

WHEREAS, area businesses and local governments have been unable to afford liability and other necessary insurance; and

WHEREAS, Alaska has a limited availability of liability insurance programs and has experienced a dramatic rise in liability premiums; and

WHEREAS, legislative remedies are needed to restore predictability and affordability to liability insurance programs; and

WHEREAS, the Citizens Coalition for Tort Reform and the United States Attorney General's Report from the Tort Policy Working Group of 1986 have identified those areas of public policy needing legislative remedy and have proposed solutions;

NOW THEREFORE, BE IT RESOLVED that the Matanuska-Susitna Borough supports the efforts of the Citizens Coalition for Tort Reform and the United States Attorney General's Report from the Tort Policy Working Group of 1986; and urges the Alaska Legislature to make the passage of this legislation of the highest priority for this Second Session of the Fourteenth Legislature.

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to Governor Bill Sheffield, Senators Kerttula and DeVries and Representatives Larson and Hurley.

PASSED AND APPROVED by the Assembly of the Matanuska-Susitna Borough this 1st day of May, 1986.

Dorothy A. Jones
Dorothy A. Jones, Mayor

ATTEST:

Chris Seagraves
Chris Seagraves, Borough Clerk

(SEAL)

A RESOLUTION SUPPORTING
THE CITIZENS COALITION FOR TORT REFORM
REGARDING INSURANCE PREMIUMS

WHEREAS: The Greater Ketchikan Chamber of Commerce has had its member reserves seriously diminished by the unanticipated increase in their annual insurance premiums, and;

WHEREAS: other Alaska communities, businesses, school districts and private citizens are similarly suffering because of the need for legislative redress of the problems peculiar to the Alaska insurance industry, and;

WHEREAS: Alaska has a limited availability of liability insurance programs and has experienced a dramatic rise in liability premiums, and;

WHEREAS: legislative remedies are needed to restore predictability and affordability to liability insurance programs, and;

WHEREAS: the Citizens Coalition for Tort Reform has identified those areas needing legislative remedy and has proposed solutions;

NOW, THEREFORE, BE IT RESOLVED: The Greater Ketchikan Chamber of Commerce supports the efforts of the Citizens Coalition for Tort Reform to achieve legislative remedies and urges the Alaska State Legislature to make these reforms a priority of the coming and future legislative sessions.

DATED at KETCHIKAN, ALASKA this 21st day of April, 1986.

Joy E. Clark
JOY CLARK, PRESIDENT
GREATER KETCHIKAN CHAMBER OF COMMERCE
P.O. Box 5957
KETCHIKAN, AK 99901

Scott E. Milner, CPA
Scott Milner
Treasurer

Mike Cusack
Mike Cusack, Director

Carolyn Ehlers
Carolyn Ehlers, Director

Jim French
Jim French, Director

Gary Larson
Gary Larson, Director

Angelo P. Martin
Angelo Martin, Director

Dwight Stampfle
Dwight Stampfle, Director

Don Harrison
Don Harrison
Second Vice-President

Larry Herrman
Larry Herrman
Secretary

Paul Wingren
Paul Wingren
Immediate Past President

Jack Davies
Jack Davies, Director

Jim Elkins
Jim Elkins, Director

Neil Gray
Neil Gray, Director

Terilyn Lynn
Terilyn Lynn, Director

Bob Norton
Bob Norton, Director

Roger A. Stone
Roger Stone, Director



Alaska Public Health Association



P.O. Box 4-1825 • Anchorage, Alaska 99509

RESOLUTION REGARDING TORT REFORM

The Alaska Public Health Association,

Knowing that tort law appears to be a major cause of the insurance availability/affordability crisis; and

Acknowledging that there are a number of beneficial reforms of tort law that the Alaska Legislature may enact;

Therefore, calls upon the Alaska Legislature to pass tort reform legislation that contains at a minimum the following provisions:

- 1) Limitation on civil liability, to include limitation on non-economic damages.
- 2) Evidence of collateral benefits; to allow jurors to know about insurance or other benefits paid to victims, so amounts may be adjusted to prevent a windfall double recovery.
- 3) Limitation on apportionment of damages; to direct damage payments proportionate to a defendant's degree of fault.
- 4) Limitation on attorneys' contingency fees; to set contingency fees to reasonable amounts on a "sliding scale".
- 5) Periodic payments (instead of lump sum) for awards.

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison..."

May 1, 1986

Hon. William A. Sheffield
Governor of Alaska
P.O. Box A
Juneau, AK 99811

Dear Governor Sheffield:

We have read your letter to Senators Faiks and Sackett, and Representative Miller, and agree with the statement that "we take clear and measured steps toward tort reform."

The issue of tort reform and insurance costs has been debated in this state as far back, at least, as 1971, and perhaps longer. The subject was studied in 1975, and an additional study was made in 1979 on the issue of compensation for bodily injury. In addition, your own task force, appointed in 1985, had an opportunity to look into the problem. And similar studies have been undertaken by the U. S. government, California and other states, many of them documented in publications of the Rand Institute for Civil Justice.

In short the volume of studies is significant. And the experience of those areas where tort and insurance reforms have been enacted is also significant. Let us point out just two such experiences.

First, the California example. In 1975, the California legislature adopted some reforms for the area of medical insurance. These included a cap on awards of non-economic damages, at \$250,000 (not tied to awards of economic damages.) Second, a sliding scale for lawyers contingency fees was established. Third, periodic payments were instituted for awards of \$50,000 and over. Fourth, information on collateral sources of funds was made available to the jury. *AND INSURANCE IS AVAILABLE*. California's medical malpractice insurance rates are up 150 percent over 1975; but the rest of the nation is up 300 percent!

In Alaska, by contrast, the result of the 1975 medical malpractice insurance crisis was that the Legislature enabled the formation of a non-profit medical insurance company, Medical Indemnity Corporation of Alaska (MICA). You appoint state officials to the MICA board of directors. MICA is non-profit, and does not have stockholders or issue dividends. It has committed none of the so-called abuses of the insurance industry. And it pegs its insurance rates to needs only, not to profits. MICA has had to raise its rates as much as 100 percent from last year to this year, even without purchasing re-insurance. When the cost of purchasing re-insurance was added, the increase, in some categories was 140 percent from 1985 to 1986.

Contrasting the California experience with Alaska should make it clear to you that continued failure to face the tort reform issue squarely will never help end the crisis.

The rise in rates for Alaska doctors is mirrored in almost every other aspect of Alaskan life. Air taxi operators have added \$40 per hour to their charges, just to cover insurance. Small construction contractors are hard-pressed to bid for Municipality of Anchorage contracts because the local government is now asking bidders to come up with greater coverage since the Municipality no longer purchases insurance. The Valley Hospital can afford insurance in the amount of only \$500,000, for which the cost is \$670 per day. Architects have seen liability insurance costs increase between 150 percent to 700 percent. Your own Department of Transportation and Public Facilities is cognizant of the difficulties encountered by architects, engineers and construction firms in getting affordable insurance. The liquor license holders have paid out only \$724,000 in premiums this year, according to an industry source; testimony to the fact that many are going "bare." And Sheffield Enterprises has seen its liability insurance costs triple. Day care centers have added to the hourly charge because of insurance costs.

To put the suggestion for more studies in fuller perspective, consider the experience of the Alaska Court System during the past few years. From FY 1983 to FY 1985, civil damage suit filings in Superior Court more than doubled. This came at a time when the overall court suit filings increased by only 18 percent. Civil damage suits rose from 1,038 to 2,096 in that period. This is out of all proportion to any population increase. Delaying for more studies is unnecessary. The crisis is now!

As for your concern about joint and several liability, there is something basically unfair about a situation in which one of several defendants may be stuck with the whole bill. Under your formula, a defendant who is 50 percent guilty may end up paying the entire award. And you do not mention the liability of plaintiffs who may be under the influence of drugs or alcohol. The primary payee in many single-car accident cases has been the State and local governments, where the driver had been abusing substances. The government has been the defendant because it happened to build the road. Your own Department of Law should be able to supply information on such cases, since it has been defending the State constantly.

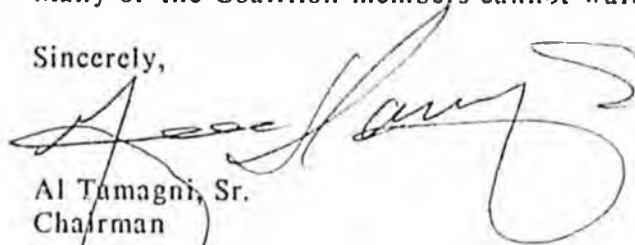
Right now, Governor, two-thirds of the cost of arriving at settlements or awards is paid to attorneys. That figure is from the federal Report of the Tort Policy Working Group, issued this February. We feel it is unreasonable to let this situation continue. The cost of bringing relief to victims must be lowered. Lowering that cost should not diminish the amount which goes into enriching lawyers, and keeping our insurance premiums high.

As for your objection to tying the cap on non-economic damages to economic damages: You are correct in noting that a person who is hurt should be compensated for the hurt, not the provable economic loss. Unfortunately, the current system already discriminates against people on the basis of wealth; and we would not widen that gulf. We do not advocate linking the cap to economic damages.

The Citizens Coalition was formed last year after people from many walks of Alaska life, professions, businesses and consumers found that insurance rates were high and availability was low. Putting together our Coalition would not have been possible if there was not widespread distress and the knowledge that other remedies have failed.

In addition to the list of Coalition member organizations, we have resolutions of support from the city councils of Wasilla, Cordova, Soldotna and Houston, from the Fairbanks North Star Borough Assembly, from the Chambers of Commerce in Fairbanks, Anchorage, Palmer, Sitka, Ketchikan and more. It is no light thing to organize a coalition this broad, as I am sure you realize. Do not ignore our situation. Many of the Coalition members cannot wait another year for relief.

Sincerely,



Al Tamagni, Sr.
Chairman

P.S. Enclosed is a copy of the Federal Task Force Report and letter from our Board of Directors.

cc: Senator Jan Faiks
Senator John Sackett
Representative Mike Miller.

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison.."

TO: ALL LEGISLATORS

FROM: CITIZENS' COALITION FOR TORT REFORM

SUBJECT: ENCLOSED DATA FOR YOUR USE AND REVIEW

Thanks,



Al Tamugni, Sr.
Chairman

Court ruling targets costly trial delays

While tort reform has captured its share of headlines lately, the court system has been working quietly and with little notice to deal with delays in moving cases to trial.

As anyone who has been involved with litigation knows all too well, delay in court proceedings is a persistent and frustrating problem. In a rapidly growing state like Alaska, the number of cases continues to increase faster than the number of judges and other court personnel assigned to deal with the cases.

In criminal cases, court rules require the courts to bring the cases to trial within a limited period of time. These rules are imposed by the state and federal constitutions, which guarantee accused persons a right to a speedy trial.

In civil cases, there is no similar constitutional requirement for a speedy trial. This means that it may take years before a civil case is tried. Often such a delay is necessary because of the complexity of the case. In other cases, the parties may not want to push the matter to a trial because they are trying to work out their differences without the high expense of a trial. In some cases, however, long delays have occurred simply because the courts are crowded.

The Alaska Supreme Court recently adopted a new court rule to address the problem of delay in Anchorage's Superior Court. The principal feature of this rule is establishment of a new "fast track" for certain kinds of civil cases. When new civil cases (other than divorces) are filed, the lawyers must describe the nature of the dispute and the likely length of a trial. If the case is not within certain categories of particularly complex cases, and if the trial is expected to take less than 10 days, the case will be assigned to the new "fast track." Three Superior Court judges are handling these fast track cases.

Once a case is on the fast track, the lawyers must ask for a trial date within nine months. If a trial date has not been requested in nine months, the judge may dismiss the case.



Legal notes

Dick McCann

When a trial date is requested, the judge will hold a conference to set the trial date. The new rule requires the judge to schedule the trial within four months of the conference.

One other new feature of this rule is a provision requiring both sides in a lawsuit to give their opponents copies of basic documents relevant to the case. Under the previous rules, a party was only required to provide copies if the other side asked for them.

These new procedures have been adopted on an experimental basis after considerable study. Judges and court administrators will be watching closely to see the effects of these changes. One possible effect will be to clear many cases from the system.

Often the parties to a lawsuit do not make serious settlement efforts until they are faced with a trial with all of its commitments of time and money. By forcing the parties to either set the case for trial or have the case dismissed, the court will find out fairly quickly which cases involve real disputes that must go to trial. Cases that must be tried should go to trial sooner.

If this effort is successful, it should benefit anyone who needs to use the court system to obtain a decision within a reasonable amount of time. Even those who are not involved in lawsuits may be pleased if this system is effective.

In this year of shrinking state budgets, efficient use of the courts is a much more desirable alternative than the expense of hiring more judges and court personnel.

Dick McCann has been a practicing attorney for 15 years and is managing partner of Perkins Coie's Anchorage office.

DILLINGHAM CHAMBER OF COMMERCE

BOARD OF DIRECTORS

A RESOLUTION SUPPORTING THE
CITIZENS' COALITION FOR TORT REFORM REGARDING
INSURANCE PREMIUMS

WHEREAS, the members of the Dillingham Chamber of Commerce are seriously concerned about the increase in annual insurance premiums and lack of availability in rural areas, and

WHEREAS, other Alaska communities, businesses, school districts, and private citizens are similarly suffering because of the need for legislative redress of the problems peculiar to the Alaska insurance industry, and

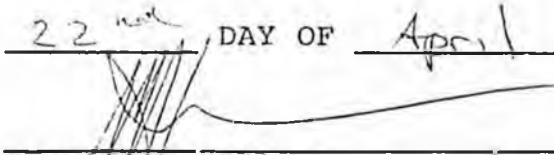
WHEREAS, Alaska has a limited availability of liability insurance programs in Bush Alaska, and has experienced a dramatic rise in liability premiums, and

WHEREAS, legislative remedies are needed to restore predictability and affordability to liability insurance programs, and

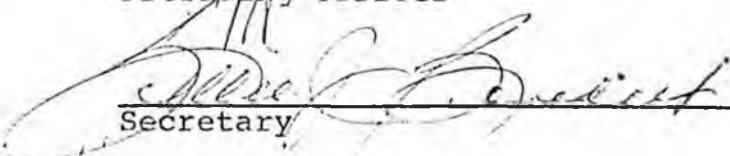
WHEREAS, THE Citizens' Coalition for Tort Reform has identified areas needing legislative remedy, and have proposed solutions

NOW, THEREFORE, BE IT RESOLVED by the Dillingham Chamber of Commerce that it supports the efforts of the Citizens' Coalition for Tort Reform to achieve legislative remedies, and urges the Alaska Legislature to make reforms a priority of the legislative session.

PASSED AND APPROVED THIS 22nd DAY OF April



Presiding Officer



Secretary

ATTEST:

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison..!"

TO: ALL LEGISLATORS

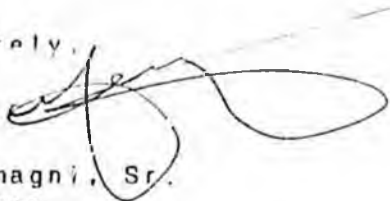
FROM: CITIZENS COALITION FOR TORT REFORM

SUBJECT: INFORMATION ON CONTINGENCY FEES

THE OTHER SIDE OF CONTINGENCY FEES BENEFIT TO ALL PARTIES

READ THE LOGIC

Sincerely,



Al Tamagni, Sr.
Chairman

negligence. Insurance may not be available to cover all risks or may be too costly for many people.

Two of the four major MICRA provisions, if extended to all negligence actions, would help solve the current dilemma of rising insurance premium costs and shrinking insurance availability. The two provisions recommended for extension are limits on attorney contingency fees⁶¹ and the provision for periodic payment of damages.⁶² The actual relief that would result from an extension cannot be forecast precisely.⁶³ Industry analysts predicted, however, that medical malpractice payouts would decrease by twenty percent after the 1975 enactment of MICRA.⁶⁴ Empirical evidence from some states showed awards decreased as much as fifty percent from 1975 to 1977.⁶⁵

After MICRA was enacted, insurers were able to halt increases in malpractice insurance rates because of lower payouts and settlements.⁶⁶ In fact, one appellate court acknowledged that medical malpractice premiums went down by twenty-five percent without adjusting for inflation after the enactment of MICRA.⁶⁷ Analogous provisions extended to all negligence cases may be expected to have a similar effect on liability insurance premiums in general. Steps toward reform, beginning with the extension of selected MICRA provisions, would improve the capability of the tort system to meet the needs for which

the system was established.⁶⁸ Each MICRA provision will be analyzed individually in the context of extension, beginning with the limitation on contingency fees and followed by the periodic payments provision. Policy considerations will be addressed first, followed by discussion of constitutional questions.

A. Extension of the Limitation on Contingency Fees

The first MICRA provision proposed for extension to all negligence actions is the sliding scale limitation on contingent attorneys' fees. The United States is one of very few nations that permits plaintiffs' attorneys to set fees as a percentage of either court awards or settlements.⁶⁹ The medical malpractice insurance crisis provided the impetus for enactment of the MICRA limitation on contingency fees.⁷⁰ By enacting the contingency fee limitation, the California Legislature decreased the high cost of medical malpractice insurance premiums which threatened the availability of medical care.⁷¹ In addition, the legislature sought to avoid potential recovery problems created by insufficient liability coverage for patients injured by medical malpractice.⁷² The legislature determined that the limited sliding fee scale of MICRA would reduce costs to malpractice defendants and insurers, particularly in the large number of cases resolved through settlement.⁷³ Since the attorney fee limitation of MICRA⁷⁴ permits an attorney a smaller portion of the settlement, plaintiffs may be more likely to agree to a lower settlement.⁷⁵ In addition, the limit on attorneys' fees deters attorneys from litigating marginal cases or encouraging clients to hold out for unrealistically high settlements.⁷⁶

Certain immutable characteristics of the contingency fee arrangement have made this method of compensation the subject of vigorous debate over the years.⁷⁷ The confluence of interest between attorney and client bound by a contingency fee agreement is marginal.⁷⁸ In

61. See *supra* note 40 and accompanying text.

62. See CAL. CIV. PROC. CODE §667.7(f).

63. The American Bar Association estimated that one of the MICRA provisions, abrogation of the collateral source rule, alone would reduce medical malpractice payouts by up to 20%. An empirical study following 1985 medical malpractice reforms nationwide showed that in states requiring reduction of awards by the amount of collateral source payments, payouts dropped 50% from 1975 to 1977. Bell, *Legislative Intrusions into the Common Law of Medical Malpractice: Thoughts About the Deterrent Effect of Tort Liability*, 35 SYRACUSE L. REV. 939, 946 (1984).

64. *Id.* at 947. A smaller reduction in medical malpractice awards resulted from the cap on noneconomic damages. *Id.* States that enacted caps in 1975 had malpractice awards 19% lower in 1977. *Id.*

65. *Id.* at 948. In addition to this finding, economists who have studied states that enacted limitations on attorneys' contingent fees concluded that the limits have increased the number of cases dropped by five percent, decreased the size of settlements by nine percent, and reduced by eleven percent the number of cases tried. The MICRA provisions taken together resulted in a 25% decline in medical malpractice premiums for most hospitals in the state in the years following enactment of MICRA. *American Bank & Trust Co. v. Community Hospital of Los Gatos-Saratoga, Inc.*, 36 Cal. 3d 359, 382-83, 683 P.2d 670, 685, 204 Cal. Rptr. 671, 686 (Mosk, J., dissenting) (1984).

66. *American Bank & Trust*, 36 Cal. 3d at 382-83, 683 P.2d at 685, 204 Cal. Rptr. at 686.

67. *Id.* at 382-83, 683 P.2d at 685, 204 Cal. Rptr. at 686 (1984); Brief of Amicus Curiae, Fred J. Hiestand at 7, *American Bank and Trust Co. v. Community Hospital of Los Gatos-Saratoga, Inc.*, Civil No. 24171 (Cal. Supreme Court filed Aug. 9, 1983) (on file at the Pacific Law Journal).

68. Report of the California Citizens' Commission on Tort Reform, *Righting the Liability Balance*, Sept. 1977, at 141.

69. *Id.* at 159. For example, Great Britain has banned the contingency fee. *Id.*

70. See *supra* note 3 and accompanying text.

71. *Id.*

72. *Id.*

73. *Roa v. Lodi Medical Group*, 37 Cal. 3d 920, 930-32, 695 P.2d 164, 170-71, 211 Cal. Rptr. 77, 83-84 (1985).

74. CAL. BUS. & PROF. CODE §6146.

75. *Koa*, 37 Cal. 3d at 926-27, 695 P.2d at 166-67, 211 Cal. Rptr. at 79-80.

76. *Id.* at 930-31, 695 P.2d at 170, 211 Cal. Rptr. at 83.

77. MacKinnon, *Contingent Fees for Legal Services* 39 (1964).

78. *Id.*

fact, conflicts of interest are inherent in the contingency fee arrangement.⁷⁹ Since the fee is paid regardless of the amount of time spent on the case, early settlement may be advantageous to the attorney, especially when a small claim is involved. Extensive bargaining or a trial might yield a higher recovery for the plaintiff, but the additional amount of compensation to the attorney may be insignificant or wholly disproportionate to the amount of time necessary to pursue the claim.⁸⁰

Those opposed to extending MICRA argue that giving a smaller percentage to the attorney representing a plaintiff with high damages in a negligence action actually harms the plaintiff.⁸¹ The rationale is that attorneys will not vigorously prosecute or even undertake cases if compensation per unit of time expended is insufficient.⁸² This argument is not supported by evidence obtained from jurisdictions in which fee limitations are applied. For example, New Jersey has adopted a sliding contingency fee scale for all tort actions.⁸³ Despite a fee scale that was even less generous to attorneys than the MICRA scale when it was adopted, no problems resulting from the fee limitation were reported in New Jersey.⁸⁴ In fact, commentators in New Jersey have indicated that New Jersey's limited contingency fee detractors were wrong in predicting that the poor would suffer impaired access to the courts.⁸⁵

Contingency fee arrangements are not as risky for the attorney as the name suggests.⁸⁶ A noted authority states that plaintiffs recover, either by suit or settlement, in the vast majority of cases in which a lawyer is retained.⁸⁷ The argument for limitation of contingency

79. *Id.* Schwartz & Mitchell, *An Economic Analysis of the Contingent Fee in Personal Injury Litigation* 22 STAN. L. REV. 1125, 1136-39 (1970); Brief of Amicus Curiae, Fred J. Hiestand at 4, *Roa v. Lodi Medical Group*, Civil No. S.F. 24435 (Cal. Supreme Court filed Aug. 10, 1982) (on file at the Pacific Law Journal).

80. MacKinnon, *supra* note 77 at 198.

81. Brief of Amicus Curiae, Fred J. Hiestand at 17, *Roa v. Lodi Medical Group*, Civil No. S.F. 24435 (Cal. Supreme Court filed Aug. 10, 1982) (on file at the Pacific Law Journal).

82. *Id.*

83. The percentage of the recovery permitted for attorneys' contingency fees has been increased by the New Jersey Legislature since the original enactment of a sliding scale limiting contingency fees. NEW JERSEY RULES OF GENERAL APPLICATION, 1:21-7, 1984.

84. *Id.*

85. *New Jersey's Maximum Contingent Fee Schedules: The Validity of Rule 1:21-7*, 5 RUT.-CAM. 534 (1974). "The [New Jersey] rule's detractors may have overstated their objections by predicting impaired access of the poor to the courts." *Id.* at 549.

86. Connell, *The Lawsuit Lottery* 145 (1979). In other words, "there is very little that is contingent about the contingent fee." *Id.*

87. *Id.*, citing address by Professor Maurice Rosenberg, Columbia Law School, American Bar Association Convention (1976).

fees is strongest when recovery is almost certain.⁸⁸

Since 1975 California legislators have repeatedly offered bills for consideration that would limit or regulate contingency fees.⁸⁹ The MICRA scale is the most reasonable quantitative proposal offered thus far, and should be extended to all negligence actions.⁹⁰ In addition, constitutional challenges to MICRA have been met successfully and similar constitutional challenges to a MICRA extension can be overcome.

The contingency fee limitation of MICRA was upheld as constitutional by the California Supreme Court in *Roa v. Lodi Medical Group*.⁹¹ *Roa* was one of a recent series of cases involving the constitutionality of the various MICRA provisions.⁹² The Court in *Roa* applied a rational basis standard of review to hold that the sliding scale for contingency fees was not a denial of due process or a violation of equal protection.⁹³ The rational basis standard of review is the lower tier of the traditional two-tier approach to judicial review of legislation on constitutional challenges.⁹⁴ In order to meet the rational basis standard of review, the statute being challenged must bear a rational relation to any conceivable legitimate state interest.⁹⁵

88. *Id.*

89. The legislature considered at least nine bills seeking to limit or regulate contingent fees in 1975. They ranged from AB 7 (no maximum schedule but subject to court approval) to AB 14, 1672 (a flat 10% except that counsel and client may split the first \$1,667 any way they wish). See also SB 407, SB 397, AB 1, AB 926 and AB 1941 (on file at Pacific Law Journal).

90. Report of the Committee on Medical Professional Liability, 102 ABA Annual Rep. 786, 851 (1977). See also Dept. of HEW Report of Secretary's Committee on Medical Malpractice 919730 pp. 34-35; Kohlman, *An Equitable Contingency Fee Contract* 50 STATE BAR J. 268, 295-98, n.42 (1975). A sliding scale approach has been recommended as the preferable form of regulation. Attorneys fees should be related to the amount of legal work and expense involved in handling a case and not to the fortuity of the plaintiff's economic status and degree of injury. A decreasing maximum schedule of attorney's fees, set on a state by state basis and reasonably generous in the lower recovery ranges, would prevent the denial of access to legal representation. *Id.*

91. 37 Cal. 3d 920, 695 P.2d 164, 211 Cal. Rptr. 77 (1985). Upon a denial of petition for rehearing on the date of judgment, February 7, 1985, plaintiff/appellant petitioned the U.S. Supreme Court for certiorari on the ground that Business & Professions Code §6146 violates the first and fourteenth amendments of the U.S. Constitution. Docket A85216 U.S. filed July 12, 1985 (notes on file at the Pacific Law Journal).

92. Other cases included *American Bank and Trust Co. v. Community Hospital of Los Gatos-Saratoga, Inc.*, 36 Cal. 3d 359, 683 P.2d 670, 204 Cal. Rptr. 671 (1984) (upholding the MICRA provision authorizing periodic payment of future damages in medical malpractice actions); *Barme v. Wood*, 37 Cal. 3d 174, 689 P.2d 446, 207 Cal. Rptr. 816 (1984) (upholding the MICRA provision that bars a collateral source from obtaining reimbursement from a medical malpractice defendant).

93. *Roa*, 37 Cal. 3d at 926-27, 695 P.2d at 166-67, 211 Cal. Rptr. at 79-80.

94. See G. GUNTHER, *CASES AND MATERIALS ON CONSTITUTIONAL LAW* 657-897 (9th ed. 1975); Bice, *Standards of Judicial Review Under the Equal Protection and Due Process Clauses*, 50 SO. CAL. L.R. 689 (1977).

95. *Westbrook v. Mihaly*, 2 Cal. 3d 765, 784, 471 P.2d 487, 500, 87 Cal. Rptr. 839, 852

Application of the rational basis standard of review includes extreme deference to the legislature⁹⁶ and a presumption of constitutionality.⁹⁷ In addition, the burden of proving the statutory classification unconstitutional is on the party challenging the statute.⁹⁸ Historically, the rational basis test has been applied to economic and social welfare legislation.⁹⁹ Since MICRA relates to public health care, the statute is appropriately analyzed under the rational basis standard of review.¹⁰⁰

In contrast to the rational basis test, the strict scrutiny standard of review requires that the challenged legislation be necessary to serve a compelling state interest.¹⁰¹ The strict scrutiny test has been applied when legislative classifications impinge on suspect classes¹⁰² or fundamental rights.¹⁰³ The legislative classifications in MICRA do not require application of the strict scrutiny standard of review¹⁰⁴ because neither a suspect class nor a fundamental right is affected by the Act. Therefore, the rational basis test has been chosen repeatedly by courts reviewing medical malpractice legislation¹⁰⁵ and was applied by the California Supreme Court in the four MICRA challenge cases.¹⁰⁶

(1970); accord, *McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1969) (presumption of constitutionality; statutory classifications deemed unconstitutional only if no circumstances reasonably may be conceived for justification); see also *McGowan v. Maryland*, 366 U.S. 420 (1961).

96. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 71 (1911).

97. See, e.g., *McGowan*, 366 U.S. at 420.

98. See, e.g., *Lindsley*, 220 U.S. at 78-79.

99. G. Gunther, *supra* note 94, at 658; Larson, *Constitutional Law: Equal Protection—An Emerging Standard of Review*, 43 WASHBURN L.J. 106, 107 (1974).

100. See, e.g., *Roa*, 37 Cal. 3d at 926-27, 695 P.2d at 166-67, 211 Cal. Rptr. at 79-80.

101. L. TRIBE, *AMERICAN CONSTITUTIONAL LAW*, §16-4 at 1009-02 (1978).

102. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973). Classifications are considered suspect when the class is subjected to a history of purposeful unequal treatment, or is relegated to a position of political powerlessness so as to need special protection from the majoritarian political process. *Id.* The U.S. Supreme Court has held that suspect classifications include those made on the basis of race. *Id.* Classifications based upon alienage are considered suspect. *Truax v. Raich*, 239 U.S. 33, 39-41 (1915). National origin classifications also are deemed suspect and may not be used to deny equal protection. *Hernandez v. Texas*, 347 U.S. 475, 478-80 (1954).

103. *San Antonio*, 411 U.S. at 33-34. Fundamental rights are those rights explicitly or implicitly guaranteed by the U.S. Constitution. *Id.*

104. *D'Amico v. Board of Medical Examiners* 11 Cal. 3d 1, 18, 520 P.2d 10, 22-31 Cal. Rptr. 78, 798-99 (1974) (right to practice medicine not fundamental); *Jones v. State Board of Medicine*, 97 Idaho 859, 555 P.2d 399 (1976) (limits on recovery for medical malpractice neither infringe a fundamental right nor affect a suspect class), cert. denied, 431 U.S. 914 (1977); *Paro v. Longwood Hospital*, 369 N.E. 2d 985, 987-88 (1977) (classifications made under malpractice act do not violate equal protection clause of the fourteenth amendment of the United States Constitution).

105. See *supra* note 104 and accompanying text.

106. See *supra* notes 91-92 and accompanying text.

Applying the rational basis standard, the court in *Roa* stated the legislature could reasonably have concluded MICRA's sliding scale limitation on attorneys' fees would be more equitable than a flat contingency fee.¹⁰⁷ The sliding scale ensures that an attorney does not receive a "windfall" simply because a client is seriously injured.¹⁰⁸ In order to relate an attorney's fee more closely to the amount of legal work and expense involved in a case and less to the plaintiff's economic status and degree of injury, a decreasing schedule of fees should be set by each state. The schedule should be generous with regard to smaller awards so potential plaintiffs are not deprived of representation.¹⁰⁹ The sliding scale guarantees that the most seriously injured plaintiffs will retain the largest share of any recovery secured on their behalf.¹¹⁰

The rationale in *Roa* for upholding the constitutionality of the MICRA contingency fee limitation can be applied to all negligence actions.¹¹¹ The limitation does not infringe on the right of negligence victims to retain counsel.¹¹² The provision merely places a limit on the compensation an attorney may receive when representing an injured plaintiff under a contingency fee arrangement.¹¹³ The validity of legislative regulation of attorneys' fees is well established¹¹⁴ and the constitutionality of this limiting regulation as an exercise of the police power has been settled.¹¹⁵ Therefore, extension of the limitation on attorneys' contingency fees can be supported.

107. *Roa*, 37 Cal. 3d at 933, 695 P.2d at 172, 211 Cal. Rptr. at 85.

108. *Id.* at 929, 933, 695 P.2d at 169, 172, 211 Cal. Rptr. at 81-82, 85.

109. Report of Committee on Medical Professional Liability, 102 ABA Annual Rep. 786, 851 (1977).

110. *Roa*, 37 Cal. 3d at 929, 933, 695 P.2d at 169, 172, 211 Cal. Rptr. at 81-82, 85.

111. Statutory limitations on attorneys' fees are not uncommon, either in California or other states. See, e.g., *American Trial Lawyers v. New Jersey Supreme Court*, 66 N.J. 258, 330 A.2d 350 (1974); *Gair v. Peck*, 6 N.Y. 2d 97, 188 N.Y.S. 2d 491, 160 N.E. 2d 45 (1958), appeal dismissed, 361 U.S. 373 (1960). In California, attorneys' fees have long been regulated both in workers' compensation proceedings (Lab. Code §4906) and in probate proceedings (Prob. Code §§910, 911). Other states have already adopted maximum fee schedules that apply to all personal injury contingency fee arrangements. *Id.* In addition, the United States Congress has passed several laws limiting the amount of attorney fees chargeable in various types of cases. See, e.g., 28 U.S.C. §2678 (1966) (limit on attorneys' fees in actions under the Federal Tort Claims Act); 42 U.S.C. §406 (b)(1) (1968) (limit on attorneys' fees in actions under the Social Security Act); 38 U.S.C. §3404 (1958) (limit on attorneys' fees for claims under the Veterans' Benefit Act).

112. *Roa*, 37 Cal. 3d at 929, 695 P.2d at 169, 211 Cal. Rptr. at 81-82.

113. *Id.* at 929, 695 P.2d at 169, 211 Cal. Rptr. at 81-82.

114. See, e.g., *Calhoun v. Massie*, 253 U.S. 170 (1920).

115. *Roa*, 37 Cal. 3d at 926-927, 695 P.2d at 166-67, 211 Cal. Rptr. at 79-80. See, e.g., *Frisbie v. U.S.*, 157 U.S. 160, 165-66 (1895) (attorneys must accept limited fees for the processing of federal pension claims); *Yeiser v. Dysart*, 267 U.S. 540, 541 (1925) (state may place

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison.."

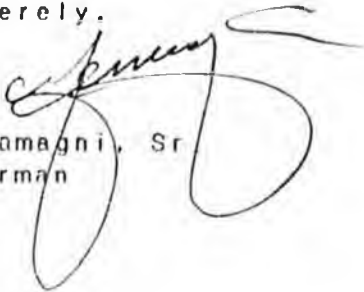
TO: ALL LEGISLATORS

FROM: CITIZENS COALITION FOR TORT REFORM

SUBJECT: ENCLOSED DATA FOR YOUR INFORMATION AND USE

ARE THESE THE FRIVOLOUS INVESTMENTS INDICATED BY ROBERT HUNTER?

Sincerely,


Al Tamagni, Sr.
Chairman

ALASKA INVESTMENTS OF INSURANCE COMPANIES IN ALASKA
AS OF DECEMBER 31, 1984

	Total 1984 Investments (000)	Total 1984 Net Premiums (All Companies) (000)	Total 1983 Investments (000)	Total 1983 Net Premiums (All Companies) (000)
INSURANCE COMPANY INVESTMENTS				
1 Domestic Life Company.....	1,331	663	2,459	594
4 Domestic and Foreign Title Insurance Companies.....	5,333	19,116	4,278	19,343
9 Domestic Property and Casualty Companies.....	18,179	119,463	36,049	83,050
201 Foreign Property and Casualty Companies.....	1,357,719	324,493	1,270,907	331,434
138 Foreign Life Insurance Companies.....	1,639,792	259,463	1,731,049	230,300
2 Hospital/Medical Service Corporations, F&D.....	634	51,854	628	46,700
3 Fraternal Benefit Societies.....	15,552	1,792	9,374	1,356
Total	3,031,140	776,844	3,054,744	712,778

TYPE OF INVESTMENT

	1983 (000)	1984 (000)	Percent Inc./Dec.
Alaska - State G. O. Bonds	218,483	210,107	(3.4)
Alaska - Political Subdivision Bonds	238,094	216,709	(8.9)
Alaska - Special Revenue Bonds	1,111,376	1,187,034	6.8
Alaska Industrial Bonds	1,047,565	874,285	(16.5)
Alaska Public Utilities	48,000	63,103	31.4
Alaska Real Estate	9,198	23,131	151.4
Alaska Mortgages	212,416	235,077	10.6
Common Stock and Bond Investments - % Allocated to Alaska Properties	143,005	204,660	43.8
U.S. Government Housing Authority Bonds	2,671	132	(95.0)
Alaska Policyholders Loan and Liens	12,002	10,807	(9.9)
Bank and Time Certificates	11,934	14,095	18.1
Total	3,054,744	3,039,140	(0.5)

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison.."

TO: ALL LEGISLATORS

FROM: CITIZENS COALITION FOR TORT REFORM

SUBJECT: ENCLOSED DATA FOR YOUR INFORMATION AND USE

LET'S CONTROL THESE RESOURCES FOR ALL THE PEOPLE TO US AND HAVE
AVAILABLE.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Tamagni, Sr.", with a large, stylized flourish extending from the end of the signature.

Al Tamagni, Sr.
Chairman

17, 11, 11, 11

Extending MICRA Liability Limitations To All Negligence Actions: The Case For Tort Reform

"The tort system is the only element of American society that continues to function as though resources were unlimited."¹

In 1975, the California Legislature enacted the Medical Injury Compensation Reform Act (MICRA)² in response to an apparent crisis in the health care field.³ The perceived crisis was twofold.⁴ First, many insurance companies issuing medical malpractice insurance policies in California determined that their costs were so high malpractice coverage

1. Address by Robert Willmore, Deputy Assistant Attorney General, National Association of Attorneys General Tort Liability Conference, San Francisco, (June 26, 1985).

2. 1975 Cal. Stat. c. 1, §1, at 3949. During the 1975 Second Extraordinary Session of the California Legislature called by Governor Edmund G. Brown, Jr., the legislature considered medical malpractice problems faced by the state. The session was labeled extraordinary because the legislature met in the interval between regular legislative sessions. *Id.*

3. *Id.* at 4007. Recognition by the California Legislature of a crisis is contained in the preamble to MICRA which states in pertinent part:

The Legislature finds and declares that there is a major health care crisis in the State of California attributable to skyrocketing malpractice premium costs and resulting in a potential breakdown of the health delivery system, severe hardships for the medically indigent, a denial of access for the economically marginal, and depletion of physicians such as to substantially worsen the quality of health care available to citizens of this state. The Legislature, acting within the scope of its police power, finds the statutory remedy herein provided is intended to provide an adequate and reasonable remedy within the limits of what the foregoing public health safety considerations permit now and into the foreseeable future.

4. Governor Brown's proclamation to the California Legislature stated in pertinent part:

The cost of medical malpractice insurance has risen to levels which many physicians and surgeons find intolerable. The inability of doctors to obtain such insurance at reasonable rates is endangering the health of the people of this State, and threatens the closing of many hospitals. The longer term consequences of such closings could seriously limit the health care provided to hundreds of thousands of our citizens.

In my judgment, no lasting solution is possible without sacrifice and fundamental reform. It is critical that the Legislature enact laws which will change the relationship between the people and the medical profession, the legal profession and the insurance industry, and thereby reduce the costs which underlie these high insurance premiums.

Id. at 3947.

4. KEENE, CALIFORNIA'S MEDICAL MALPRACTICE CRISIS, A LEGISLATOR'S GUIDE TO THE MEDICAL MALPRACTICE ISSUE 27 (1976); see, e.g., *When Doctors Went Out On Strike*, U.S. NEWS & WORLD REP., May 26, 1976, at 4, col. 1 (strike by San Francisco anesthesiologists angered at rising malpractice insurance costs); see also, *When Doctors Rebel Against Higher Insurance Costs*, U.S. NEWS & WORLD REP., January 19, 1976, at 36, col. 2 (work slowdown by Los Angeles County doctors due to proposed insurance rate increase of 486 percent); see

Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party.

(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein:

ATTORNEY'S FEES IN AVERAGE CASES			
	<i>Contested</i>	<i>Without Trial</i>	<i>Non-Contested</i>
First \$2,000	25%	20%	15%
Next \$3,000	20%	15%	12.5%
Next \$5,000	15%	12.5%	10%
Over \$10,000	10%	7.5%	5%

Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court in its discretion in a reasonable amount.

(2) In actions where the money judgment is not an accurate criteria for determining the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered.

(3) The allowance of attorney's fees by the court in conformance with the foregoing schedule is not to be construed as fixing the fees between attorney and client.

(4) Attorney's fees upon entry of judgment by default shall be determined by the clerk. In all other matters the court shall determine attorney's fees. Awards not pursuant to the schedule set forth in subparagraph (1) of this Rule shall be made only upon motion.

(b) Allowance in Mental Cases. In proceedings under the Mental Health Act, the attorney appointed to represent the patient shall be allowed and paid a fee of \$25.00, unless the judge, in his discretion, orders otherwise. A lay advisor appointed in such proceedings shall be allowed and paid a fee of \$10.00, unless the judge, in his discretion, orders otherwise. (Amended by Supreme Court Order 497 effective January 18, 1982)

I. In General

The common law did not permit allowance of attorney's fees as costs to the prevailing party, but in Alaska such allowance is of relatively ancient origin and prior to attainment of statehood the matter was regulated by statute. *McDonough v. Lee*, Op. No. 378, 420 P2d 459 (Alaska 1966).

The purpose of this rule is to encourage settlement of civil litigation as well as to avoid protracted litigation. *Miklautsch v. Dominick*, Op. No. 538, 452 P2d 438 (Alaska 1969).

Where a mechanics' union files a four-count complaint against the beneficiary of a deed of trust to foreclose the mechanics' liens but prevails on only one count, the trial court may properly refuse to award either party costs or attorney's fees. *Brand v. First Federal Savings & Loan Association of Fairbanks*, Op. No. 658, 478 P2d 829 (Alaska 1970).

This rule does not apply where plaintiff seeks an injunction and are awarded an injunction which is to be void if the defendant pays certain damages, since the rule in such case is not an accurate criterion for determining a fee. *Stauber v. Granger*, Op. No. 777, 495 P2d 67 (Alaska 1972).

The purpose of this rule is only to partially compensate a client for the productive work done by his attorney. It is irrelevant that actual attorney's fees are less than the amount awarded. *State v. Abbott*, Op. No. 600, 498 P2d 712 (Alaska 1972).

The determination of which party prevails and is entitled to costs is within the discretion of the trial judge. *DeWitt v. Liberty Leasing Co. of Alaska*, Op. No. 818, 499 P2d 599 (Alaska 1972).

A party is not barred from appealing from the disallowance of costs and

attorney's fees by his acceptance of payment of the judgment and by signing a document entitled "Satisfaction of Judgment." *DeWitt v. Liberty Leasing Co. of Alaska*, Op. No. 818, 499 P2d 599 (Alaska 1972).

Under this rule, an award of pre-judgment interest is to be included in the amount of the "money judgment." *Era Helicopters, Inc. v. Digicon Alaska, Inc.*, Op. No. 999, 518 P2d 1057 (Alaska 1974).

Under this rule, a trial judge may award attorney fees without a formal motion and without a hearing, especially in a situation where the parties seeking to be heard did not file a formal request for fees. *Urban Development Company v. Dekreon*, Op. No. 1083, 526 P2d 325 (Alaska 1974).

This rule does not apply in a divorce action. *Burrell v. Burrell*, Op. No. 1169, 537 P2d 1 (Alaska 1975).

A trial judge may award attorney's fees without a formal motion and without a hearing. *National Bank of Alaska v. J.B.L. & K. of Alaska, Inc.*, Op. No. 1239, 546 P2d 579 (Alaska 1976).

A "hold harmless" indemnity clause includes the cost of recovery in the clause itself. *Manson-Osberg Co. v. State*, Op. No. 1292, 552 P2d 654 (Alaska 1976).

Where parties' potential liability for payment of actual recovery greatly exceeded potential liability for cost of defense, the main issue could not be said to be the cost of defense. *Continental Ins. Co. v. U.S. Fid. & Guar. Co.*, Op. No. 1298, 552 P2d 1122 (Alaska 1976).

The cost of in-house counsel is not an attorney's fee within the meaning of this rule. *Continental Ins. Co. v. U.S.*

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison.."

TO: ALL LEGISLATORS

FROM: CITIZENS' COALITION FOR TORT REFORM

SUBJECT: ENCLOSED DATA FOR YOUR USE AND REVIEW

Thanks,

Al Tamagni, Sr.
Chairman

On Saturday February 1, 1986, the Fort Richardson Flying Club's flight operations were suspended due to the inability of the Department of the Army to negotiate the renewal of the excess liability policy with the previous carrier. The suspension also affects the Fort Wainwright Flying Club. The remaining Army Flying Clubs are not affected.

The Alaska Flying Clubs do approximately 25% of the total flying of all Army flying clubs. There are currently 289 members of which 74 are Active Duty Military, 50 Reserves, and 57 Retired Military. Dues are assessed at \$15.00/month.

The Army is requesting a maximum liability of \$250,000 per seat and \$5,000,000 per occurrence, with a \$100,000 deductible. The deductible is self-insured by the Army's established rate for hull and liability to \$100,000.

The majority of Anchorage area flight schools are currently carrying \$100,000 per seat liability and \$500,000 per occurrence. The Army's established limits may not be affordable for the flying club to continue operations.

The impact on the Fort Richardson Flying Club is wide ranging as outlined below:

1) Financial - The club's annual operating budget exceeds \$500,000 per year. The eleven (11) member staff has an annual payroll of approximately \$136,000. The maintenance on the airplanes is accomplished by a contracted mechanic at a cost of \$25-30,000 per year.

2) Contracted personnel:

- a. Thirteen (13) Flight Instructors - per hour basis.
- b. Eighteen (18) lease back airplane owners - per hour basis.

3) Alaska State Student Loan (ASSL) Program - Currently approximately 35 students are utilizing the ASSL Program with approximately \$85,000 on account at the flying club. ASSL funds are required to be placed on account at the flying club. The state requires 25 hours of instruction per three month period or 8.3 hours per month. An extended down time can put many students in non-compliance with state requirements for maintaining full-time status.

4) Veterans - The Flying Club is approved for the training of Veterans for flight training. There are currently twelve (12) members using veterans assistance for flight training.

Is It Us?

The following is a condensed transcript of an interview conducted by the AIA with Victor O. Schinnerer & Company management, including J. Sprigg Duvall, president; Paul Genecki, senior vice president, and Thomas H. Porterfield, vice president.

AIA: Both DPIC and Victor O. Schinnerer (VOSCO) had agreed to meet with us today but we were advised yesterday that DPIC had decided that they could not make the meeting. And so we are with VOSCO people only. But in this current market, they provide coverage for at least half the insured architects.

Is there any good news for architects about insurance?

DUVALL: We did a study some time ago that indicated that the losses we paid in dollars represented only six one-hundredths of 1 percent of the construction values put in place by the architects and engineers against whom those claims were made. That's an incredibly high performance; a very low error rate. The problem is, in those rare instances—and six one-hundredths of 1 percent means a rare instance—it's very costly.

AIA: Looking at that small percentage, what can architects learn from those claims?

DUVALL: If you look at the period '80 to '84, the frequency of claims against architects did not increase all that much. It went from 43 per 100 insureds in 1980 to 44.4 in 1984. So it's not the frequency of claims; it's the severity of them that is the problem.

AIA: Of the claims that go to trial, do architects win more or lose more?

GENECKI: They win two-thirds of all the claims that go to court.

DUVALL: But I'm afraid in most of the cases we settled out of court, there really was a basis for a finding of fault against the architect, in the minds of our defense lawyers and probably the jurors themselves, because they had to give their permission to settle the cases.

AIA: What kinds of people were the claimants?

DUVALL: The most recent study we did involved 802 claims on architectural projects, and in 272 of those, the claimant was the owner.

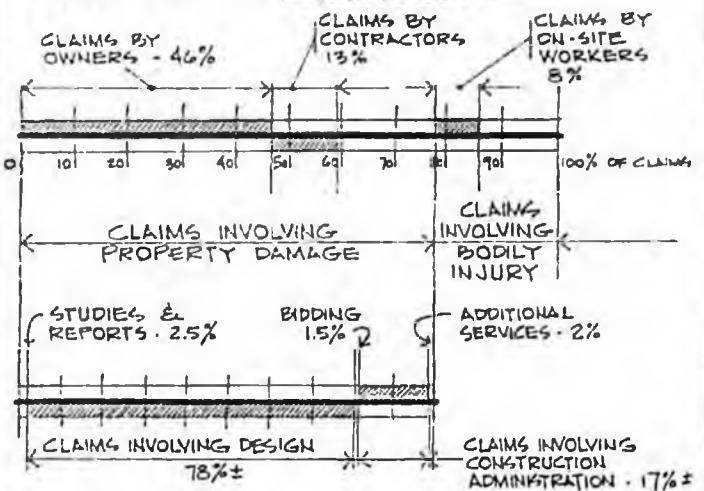
AIA: So these were claims that might have been prevented contractually?

DUVALL: Not in every case, because I suspect some number of these claims by owners were actually third-party actions when the owners had been sued by the contractors. The second largest category is bodily injury claims by the public.

AIA: Is there any way architects can use these data to protect themselves?

DUVALL: As a starting point, architects should use the standard AIA documents. Also, if I were an architect, I would be very

WHO SUES ARCHITECTS



—AND FOR WHICH PHASE OF SERVICES

careful about the financial integrity of my client. I'd be very careful about the degree to which he had been involved in previous construction and how that had turned out.

AIA: What else do the claims data say?

DUVALL: I think the claims data would disabuse a lot of architects about what they think the problems are. I know in the past, there was a feeling that bodily injury and death was a major element. The fact of the matter is, although 22 percent of the claims involve bodily injury and death, only 15 percent of the loss dollars are spent on those claims. If we could eliminate that 15 percent, we would avoid probably one year's rate increase.

AIA: Then pain and suffering would not be architects' issues?

DUVALL: Not major issues, no.

AIA: Is it true that half of the 22 percent of the bodily injury claims involve on-site workers?

GENECKI: Yes. They're the biggest single group we can identify.

AIA: So if we could convince state legislatures to include us under the workers' compensation umbrella, we could put an end to 50 percent of the bodily injury claims.

At the same time, architects feel that the judicial system is a lottery and that there's no predictable fairness to it all. Do the claims data bear out that sentiment?

DUVALL: Well, we've paid when we thought we would win, we've won when we thought we would lose. But I think, overall, we've probably paid when we should have and won when we should have.

PORTERFIELD: We don't believe the legal system is out to get design professionals.

DUVALL: I think it's more a case that buildings are very complicated. To me, a modern building is very much like a ship, and there are virtually no ships that are perfectly designed, and there are virtually no buildings that are perfectly designed. Buildings, like ships, need shakedown cruises. There's going to be a list of things that need correction. The problem is that where years ago owners looked to architects to pay only for the major corrections, now they're looking to them to pay for more and more.

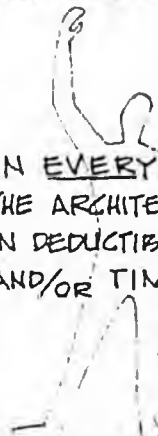
AIA: What's an architect to do, then, given that mentality?

OF THE 44 CLAIMS PER 100 INSURED, VOSCO REPORTS:

- IN 9 CASES THE INSURANCE PAID THE PLAINTIFF
- IN 13 CASES THEY PAID LEGAL DEFENSE ONLY, AND
- 22 CASES WERE SETTLED WITH NO PAYMENT BY THE INSURANCE COMPANY.



IN EVERY CASE THE ARCHITECT PAID IN DEDUCTIBLE \$ AND/OR TIME.



5) Current students - there are approximately 107 current students enrolled in the flying club - includes ASSL students. In CY1985 there were 91 students who obtained pilot ratings.

As a Veteran utilizing the flying club for flight training, I have been unable to train since 1 February 1986. In the event of a permanent closure, I would be forced to transfer schools and run the risk of losing my benefits for flight training as the maximum allowed break in training is six months.

I feel the Army should do the following:

- 1) That the Department Army (ACIF) Army Central Insurance Fund set obtainable and affordable liability limits.
- 2) That the Army Central Insurance Fund self-insure the flying clubs until an acceptable commercial policy is obtainable, and if that is not possible, then the ACIF establish a reasonable rate for the liability deemed necessary to maintain the airplanes.

SIGNED _____ DATE _____

CLUB MEMBER (FT. RICHARDSON FLYING CLUB)

ADDRESS:

PHONE # (H) _____ (W) _____

DUVALL: In the short term, if I were an architect, I would be collecting my insurance premium as a direct reimbursement. As a reimbursable expense, it would be provided in the contract that the owner is going to pay to the architect a percentage of each billing, which will be a line item for insurance. And if my insurance costs are \$2.20 per \$100 of billings and I've billed the client for \$10,000, I'm going to charge him \$220 and show it as an item.

Now, the argument is that it'll encourage claims, but when you've reached the point where claims are running at 44-plus per hundred insureds, there's not much more claims encouragement you can give. That is a frightening frequency of claims.

AIA: What else could an architect do?

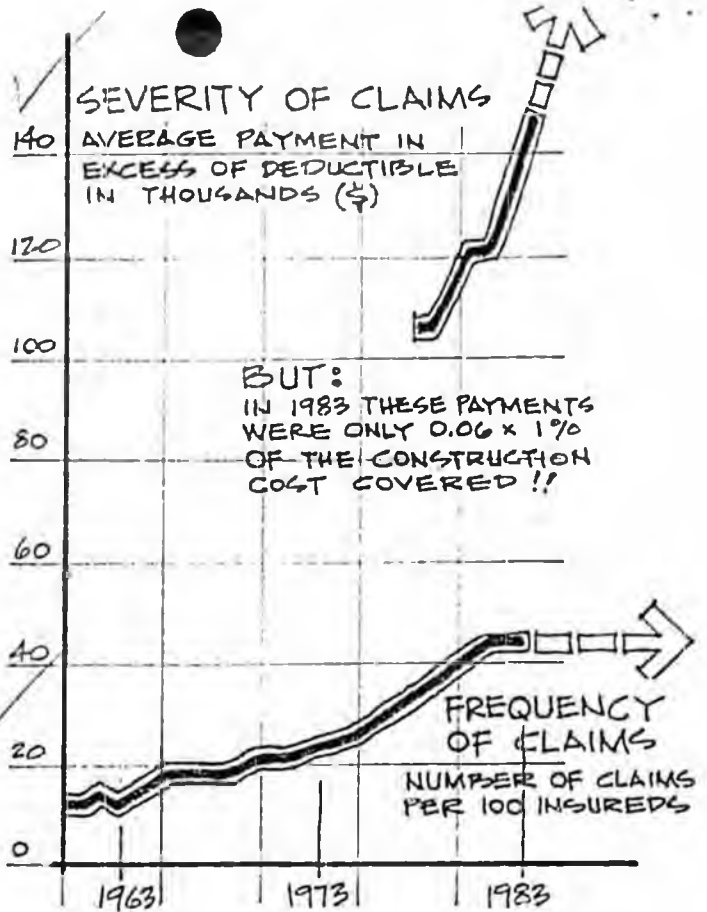
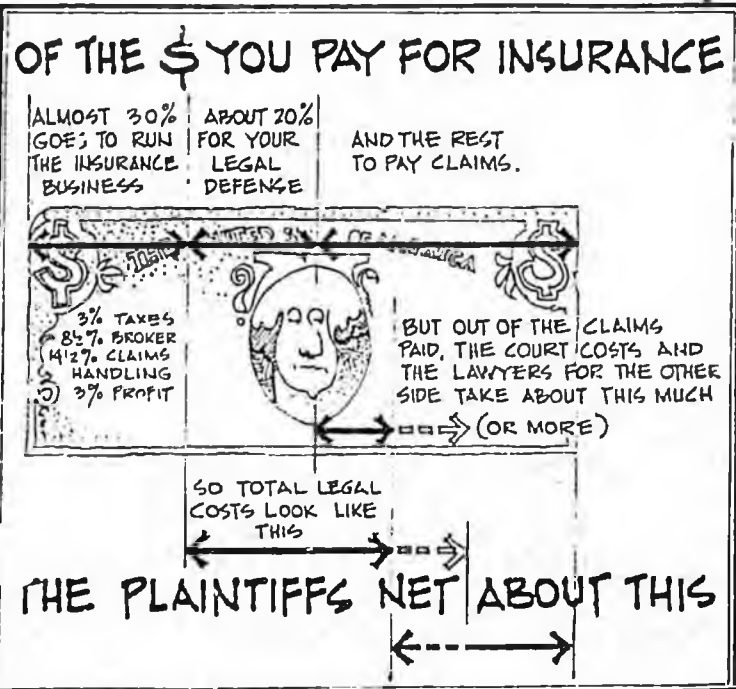
GENECKI: He could build into his contract that, after some period of operation of the structure, the owner will, on a fee basis, have the architect come back and make a detailed analysis—a walk-through of the structure—to see if maybe there are some maintenance items that the owner is not particularly aware of. Or the architect finds out that the building is being used a little differently from the way he was told originally and adjustments need to be made.

AIA: By the same token, could you say, given the fact that roofs are the primary cause of claims, that the architect should go back and watch the supervision of the placement of the roof on building? On the one hand, architects could increase their potential liability because they would be physically on the roof observing the entire installation; on the other hand, they might decrease liability because finally roofs would be put on correctly. Do you have any feelings about that at all—which argument is the stronger of the two?

GENECKI: We'd rather see them out there.

DUVALL: The presence of a knowledgeable person has got to create some deterrent to the roofing subcontractor from cutting corners, if nothing else.

GENECKI: Surely if the roof does fail, then the courts, the



owner and everybody else are going to expect the professional would have been more involved.

AIA: But they expect it anyway.

DUVALL: Yes, I'm not sympathetic to these theories of "let's not do that because by doing it there is more liability."

AIA: You'd probably say charge more and be present.

DUVALL: Charge more and do it. Be there—with knowledgeable people. Just a body there isn't going to do it.

Here we're touching on another subject that is near and dear to me, and that is, I don't think architects charge enough... and I don't think architects pay their consultants enough, and I think a lot of these things happen because there isn't sufficient talent, sufficient staff available, competent staff to get done what needs to be done to avoid having these problems. I think the fees are remarkably low.

GENECKI: Sticking with roofing, we don't have the empirical evidence yet, but it's my guess that 50 percent of all of the claims involving roofing also involved the substitution of material or a system different from that in the original drawings and specs.

AIA: That gets us back to the 78 percent of the cases that are property damage. You say 46 percent of those are initiated by the owner. Is it possible that those claims could be defeated, so to speak, by having better owner-architect relations or having better owner-architect contracts?

GENECKI: Yes, especially if you include relations.

DUVALL: It used to be that nobody wanted to talk to the owner about the possibility that disputes could arise. At 44 claims per 100 insured we're well past it. If at the outset of a project, an architect has frankly discussed with the owner the problem and the need for some form of contingency fund, I think it can be controlled much better than it is being now.

AIA: Are there any kinds of owners who need special handling, special education?

DUVALL: Well, you have the committee owners. And that generally involves churches, hospitals and schools.

GENECKI: And local government.

DUVALL: Churches have always bothered me because they represent a disproportionate amount of loss and they have all the elements that have got to lead to problems. They have a limited budget; they always want far more than they can afford; it's a committee of amateurs. Probably most serious of all, they have a

Continued on page six



Resolution 86-4

A RESOLUTION SUPPORTING THE CITIZEN'S COALITION FOR TORT REFORM REGARDING INSURANCE PREMIUMS.

WHEREAS, the City of Houston has had its budget reserve seriously diminished by the unanticipated increase of 16% in its annual insurance premium; and,

WHEREAS, other Alaska communities, businesses, school districts, and private citizens are similarly suffering because of the need for legislative redress of the problems peculiar to the Alaska insurance industry; and

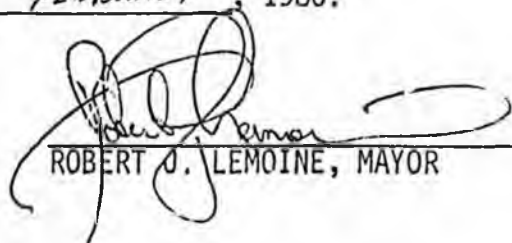
WHEREAS, Alaska has a limited availability of liability insurance programs and has experienced a dramatic rise in liability premiums; and

WHEREAS, legislative remedies are needed to restore predictability and affordability to liability insurance programs; and

WHEREAS, the Citizens' Coalition for Tort Reform has identified those areas needing legislative remedy, and have proposed solutions;

NOW, THEREFORE, BE IT RESOLVED by the COUNCIL OF THE CITY OF HOUSTON, ALASKA, that it supports the efforts of the Citizens' Coalition for Tort Reform to achieve legislative remedies, and urges the Alaska Legislature to make these reforms a priority of the 2nd session of the 14th legislature.

PASSED AND APPROVED THIS 13th DAY OF FEBRUARY, 1986.


ROBERT J. LEMOINE, MAYOR

ATTEST:


ELSIE M. O'BRYAN, CITY CLERK



D.J.'s ALASKA RENTALS INC.

Formerly Andrews Alaska Rentals & Sales
405 BONIFACE PARKWAY • ANCHORAGE, ALASKA 99504-1099
(907) 337-2552

DON REDMOND, President

December 18, 1985

Citizens Coalition for Tort Reform
738 H Street
Anchorage AK 99501

To Whom It May Concern:


D.J.'s Alaska Rentals, Inc., a tool and equipment rental agency, submits the following information that reflects typical positions of many professionals and businesses in Alaska and nationwide concerning increases in liability insurance costs:

From December 31, 1984 through December 31, 1985 our General Liability costs for \$1,500,00.00 in coverage was \$23,760.00. Annual cost per \$1000.00 was \$15.84.

From December 31, 1985 through December 31, 1986 General Liability quoted cost for ONLY \$300,000.00 in coverage is \$30,737.20. Annual cost per \$1000.00 is \$102.44, which is 6.47 times the 1985 cost!

THERE HAVE BEEN NO CLAIMS FILED!

Sincerely


Don Redmond, President



CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison.."

TO: ALL LEGISLATORS

FROM: CITIZENS' COALITION FOR TORT REFORM

SUBJECT: ENCLOSED DATA FOR YOUR USE AND REVIEW

Thanks,

Al Tamagni, Sr.
Chairman

On Saturday February 1, 1966, the Fort Richardson Flying Club's flight operations were suspended due to the inability of the Department of the Army to negotiate the renewal of the excess liability policy with the previous carrier. The suspension also affects the Fort Wainwright Flying Club. The remaining Army Flying Clubs are not affected.

The Alaska Flying Clubs do approximately 25% of the total flying of all Army flying clubs. There are currently 289 members of which 74 are Active Duty Military, 50 Reserves, and 57 Retired Military. Dues are assessed at \$15.00/month.

The Army is requesting a maximum liability of \$250,000 per seat and \$5,000,000 per occurrence, with a \$100,000 deductible. The deductible is self-insured by the Army's established rate for hull and liability to \$100,000.

The majority of Anchorage area flight schools are currently carrying \$100,000 per seat liability and \$500,000 per occurrence. The Army's established limits may not be affordable for the flying club to continue operations.

The impact on the Fort Richardson Flying Club is wide ranging as outlined below:

- 1) Financial - The club's annual operating budget exceeds \$500,000 per year. The eleven (11) member staff has an annual payroll of approximately \$136,000. The maintenance on the airplanes is accomplished by a contracted mechanic at a cost of \$25-30,000 per year.
- 2) Contracted personnel:
 - a. Thirteen (13) Flight Instructors - per hour basis.
 - b. Eighteen (18) lease back airplane owners - per hour basis.
- 3) Alaska State Student Loan (ASSL) Program - Currently approximately 35 students are utilizing the ASSL Program with approximately \$85,000 on account at the flying club. ASSL funds are required to be placed on account at the flying club. The state requires 25 hours of instruction per three month period or 8.3 hours per month. An extended down time can put many students in non-compliance with state requirements for maintaining full-time status.
- 4) Veterans - The Flying Club is approved for the training of Veterans for flight training. There are currently twelve (12) members using veterans assistance for flight training.

Is It Us?

The following is a condensed transcript of an interview conducted by the AIA with Victor O. Schinnerer & Company management, including J. Sprigg Duvall, president; Paul Genecki, senior vice president, and Thomas H. Porterfield, vice president.

AIA, Both DPIC and Victor O. Schinnerer (VOSCO) had agreed to meet with us today but we were advised yesterday that DPIC had decided that they could not make the meeting. And so we are with VOSCO people only. But in this current market, they provide coverage for at least half the insured architects.

Is there any good news for architects about insurance?

DUVALL: We did a study some time ago that indicated that the losses we paid in dollars represented only one hundredths of 1 percent of the construction values put in place by the architects and engineers against whom those claims were made. That's an incredibly high performance; a very low error rate. The problem is, in those rare instances—and six one-hundredths of 1 percent means a rare instance—it's very costly.

AIA: Looking at that small percentage, what can architects learn from those claims?

DUVALL: If you look at the period '80 to '84, the frequency of claims against architects did not increase all that much. It went from 43 per 100 insureds in 1980 to 44.4 in 1984. So it's not the frequency of claims; it's the severity of them that is the problem.

AIA: Of the claims that go to trial, do architects win more or lose more?

GENECKI: They win two-thirds of all the claims that go to court.

DUVALL: But I'm afraid in most of the cases we settled out of court, there really was a basis for a finding of fault against the architect, in the minds of our defense lawyers and probably the jury. Architects themselves, because they had to give their permission to settle the cases.

AIA: What kinds of people were the claimants?

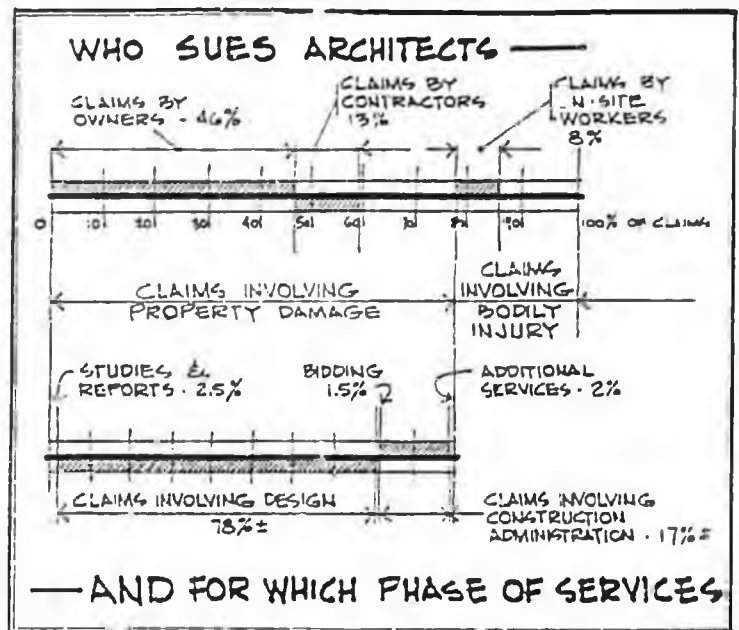
DUVALL: The most recent study we did involved 802 claims on architectural projects, and in 372 of those, the claimant was the owner.

AIA: So these were claims that might have been prevented contractually?

DUVALL: Not in every case, because I suspect some number of these claims by owners were actually third-party actions when the owners had been sued by the contractors. The second largest category is bodily injury claims by the public.

AIA: Is there any way architects can use these data to protect themselves?

DUVALL: As a starting point, architects should use the standard AIA documents. Also, if I were an architect, I would be very



—AND FOR WHICH PHASE OF SERVICES

careful about the financial integrity of my client. I'd be very careful about the degree to which he had been involved in previous construction and how that had turned out.

AIA: What else do the claims data say?

DUVALL: I think the claims data would disabuse a lot of architects about what they think the problems are. I know in the past, there was a feeling that bodily injury and death was a major element. The fact of the matter is, although 22 percent of the claims involve bodily injury and death, only 15 percent of the loss dollars are spent on those claims. If we could eliminate that 15 percent, we would avoid probably one year's rate increase.

AIA: Then pain and suffering would not be architects issues?

DUVALL: Not major issues, no.

AIA: Is it true that half of the 22 percent of the bodily injury claims involve on-site workers?

GENECKI: Yes. They're the biggest single group we can identify.

AIA: So if we could convince state legislatures to include us under the workers' compensation umbrella, we could put an end to 50 percent of the bodily injury claims.

At the same time, architects feel that the judicial system is a lottery and that there's no predictable fairness to it all. Do the claims data bear out that sentiment?

DUVALL: Well, we've paid when we thought we would win; we've won when we thought we would lose. But I think, overall, we've probably paid when we should have and won when we should have.

PORTERFIELD: We don't believe the legal system is out to get design professionals.

DUVALL: I think it's more a case that buildings are very complicated. To me, a modern building is very much like a ship, and there are virtually no ships that are perfectly designed, and there are virtually no buildings that are perfectly designed. Buildings, like ships, need shakedown cruises. There's going to be a list of things that need correction. The problem is that where years ago owners looked to architects to pay only for the major corrections, now they're looking to them to pay for more and more.

AIA: What's an architect to do, then, given that mentality?

OF THE 44 CLAIMS PER 100 INSURED, VOSCO REPORTS:

- IN 9 CASES THE INSURANCE PAID THE PLAINTIFF
- IN 13 CASES THEY PAID LEGAL DEFENSE ONLY, AND
- 22 CASES WERE SETTLED WITH NO PAYMENT BY THE INSURANCE COMPANY.

IN EVERY CASE THE ARCHITECT PAID IN DEDUCTIBLE \$ AND/OR TIME

On Saturday February 1, 1966, the Fort Richardson Flying Club's flight operations were suspended due to the inability of the Department of the Army to negotiate the renewal of the excess liability policy with the previous carrier. The suspension also affects the Fort Wainwright Flying Club. The remaining Army Flying Clubs are not affected.

The Alaska Flying Clubs do approximately 25% of the total flying of all Army flying clubs. There are currently 289 members of which 74 are Active Duty Military, 50 Reserves, and 57 Retired Military. Dues are assessed at \$15.00/month.

The Army is requesting a maximum liability of \$250,000 per seat and \$5,000,000 per occurrence, with a \$100,000 deductible. The deductible is self-insured by the Army's established rate for hull and liability to \$100,000.

The majority of Anchorage area flight schools are currently carrying \$100,000 per seat liability and \$500,000 per occurrence. The Army's established limits may not be affordable for the flying club to continue operations.

The impact on the Fort Richardson Flying Club is wide ranging as outlined below:

1) Financial - The club's annual operating budget exceeds \$500,000 per year. The eleven (11) member staff has an annual payroll of approximately \$136,000. The maintenance on the airplanes is accomplished by a contracted mechanic at a cost of \$25-30,000 per year.

2) Contracted personnel:

- a. Thirteen (13) Flight Instructors - per hour basis.
- b. Eighteen (18) lease back airplane owners - per hour basis.

3) Alaska State Student Loan (ASSL) Program - Currently approximately 35 students are utilizing the ASSL Program with approximately \$85,000 on account at the flying club. ASSL funds are required to be placed on account at the flying club. The state requires 25 hours of instruction per three month period or 8.3 hours per month. An extended down time can put many students in non-compliance with state requirements for maintaining full-time status.

4) Veterans - The Flying Club is approved for the training of Veterans for flight training. There are currently twelve (12) members using veterans assistance for flight training.

5) Current students - there are approximately 107 current students enrolled in the flying club - includes ASSL students. In CY1985 there were 91 students who obtained pilot ratings.

As a Veteran utilizing the flying club for flight training, I have been unable to train since 1 February 1986. In the event of a permanent closure, I would be forced to transfer schools and run the risk of losing my benefits for flight training as the maximum allowed break in training is six months.

I feel the Army should do the following:

- 1) That the Department Army (ACIF) Army Central Insurance Fund set obtainable and affordable liability limits.
- 2) That the Army Central Insurance Fund self-insure the flying clubs until an acceptable commercial policy is obtainable, and if that is not possible, then the ACIF establish a reasonable rate for the liability deemed necessary to maintain the airplanes.

SIGNED _____ DATE _____

CLUB MEMBER (FT. RICHARDSON FLYING CLUB)

ADDRESS:

PHONE # (H) _____ (W) _____

Is It Us?

The following is a condensed transcript of an interview conducted by the AIA with Victor O. Schinnerer & Company, management, including J. Sprigg Duvall, president; Paul Genecki, senior vice president, and Thomas H. Porterfield, vice president.

AIA, Both DPIC and Victor O. Schinnerer (VOSCO) had agreed to meet with us today but we were advised yesterday that DPIC had decided that they could not make the meeting. And so we are with VOSCO people only. But in this current market, they provide coverage for at least half the insured architects.

Is there any good news for architects about insurance?

DUVALL: We did a study some time ago that indicated that the losses we paid in dollars represented only six one hundredths of 1 percent of the construction values put in place by the architects and engineers against whom those claims were made. That's an incredibly high performance: a very low error rate. The problem is, in those rare instances—and six one-hundredths of 1 percent means a rare instance—it's very costly.

AIA: Looking at that small percentage, what can architects learn from those claims?

DUVALL: If you look at the period '80 to '84, the frequency of claims against architects did not increase all that much. It went from 43 per 100 insureds in 1980 to 44.4 in 1984. So it's not the frequency of claims; it's the severity of them that is the problem.

AIA: Of the claims that go to trial, do architects win more or lose more?

GENECKI: They win two-thirds of all the claims that go to court.

DUVALL: But I'm afraid in most of the cases we settled out of court, there really was a basis for a finding of fault against the architect, in the minds of our defense lawyers and probably the jury. Architects themselves, because they had to give their permission to settle the cases.

AIA: What kinds of people were the claimants?

DUVALL: The most recent study we did involved 802 claims on architectural projects, and in 372 of those, the claimant was the owner.

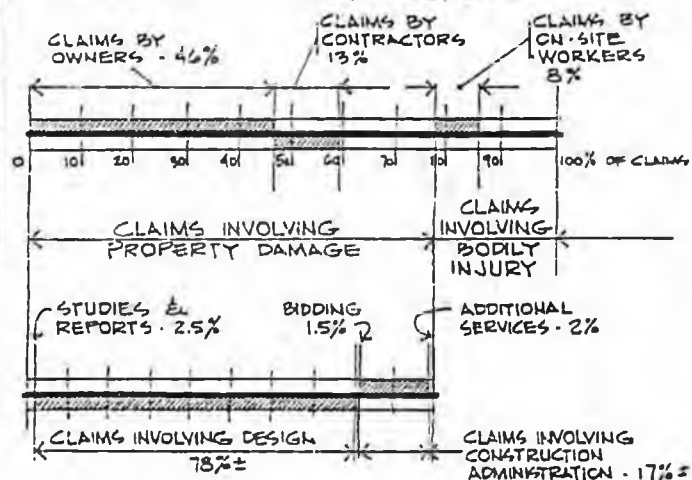
AIA: So these were claims that might have been prevented contractually?

DUVALL: Not in every case, because I suspect some number of these claims by owners were actually third-party actions when the owners had been sued by the contractors. The second largest category is bodily injury claims by the public.

AIA: Is there any way architects can use these data to protect themselves?

DUVALL: As a starting point, architects should use the standard AIA documents. Also, if I were an architect, I would be very

WHO SUES ARCHITECTS



—AND FOR WHICH PHASE OF SERVICES

careful about the financial integrity of my client. I'd be very careful about the degree to which he had been involved in previous construction and how that had turned out.

AIA: What else do the claims data say?

DUVALL: I think the claims data would disabuse a lot of architects about what they think the problems are. I know in the past, there was a feeling that bodily injury and death was a major element. The fact of the matter is, although 22 percent of the claims involve bodily injury and death, only 15 percent of the loss dollars are spent on those claims. If we could eliminate that 15 percent, we would avoid probably one year's rate increase.

AIA: Then pain and suffering would not be architects' issues?

DUVALL: Not major issues, no.

AIA: Is it true that half of the 22 percent of the bodily injury claims involve on-site workers?

GENECKI: Yes. They're the biggest single group we can identify.

AIA: So if we could convince state legislatures to include us under the workers' compensation umbrella, we could put an end to 50 percent of the bodily injury claims.

At the same time, architects feel that the judicial system is a lottery and that there's no predictable fairness to it all. Do the claims data bear out that sentiment?

DUVALL: Well, we've paid when we thought we would win; we've won when we thought we would lose. But I think, overall, we've probably paid when we should have and won when we should have.

PORTERFIELD: We don't believe the legal system is out to get design professionals.

DUVALL: I think it's more a case that buildings are very complicated. To me, a modern building is very much like a ship, and there are virtually no ships that are perfectly designed, and there are virtually no buildings that are perfectly designed. Buildings, like ships, need shakedown cruises. There's going to be a list of things that need correction. The problem is that where years ago owners looked to architects to pay only for the major corrections, now they're looking to them to pay for more and more.

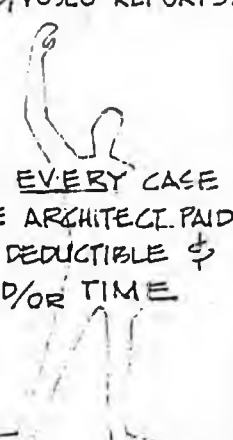
AIA: What's an architect to do, then, given that mentality?

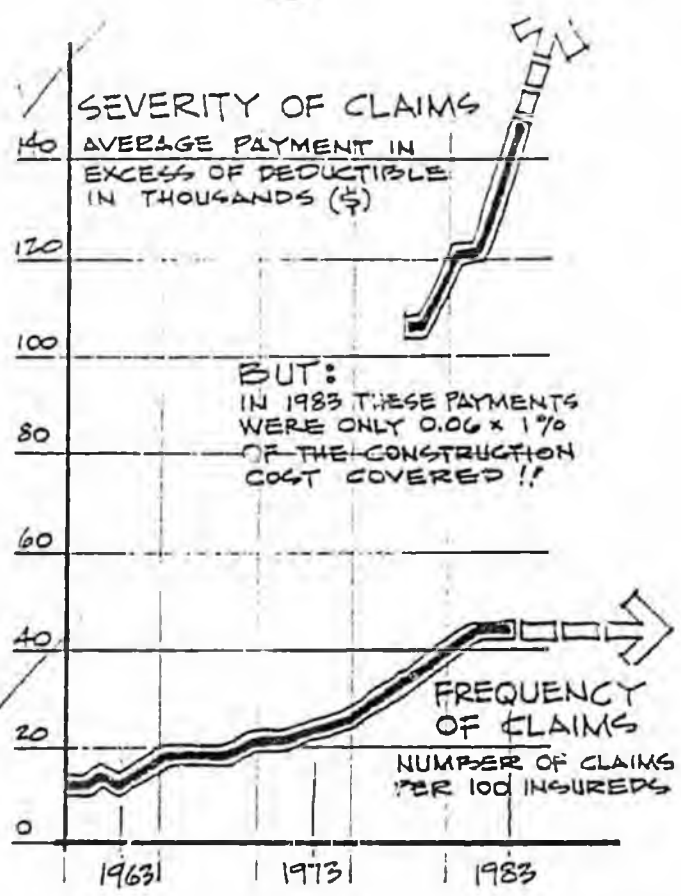
OF THE 44 CLAIMS PER 100 INSURED, VOSCO REPORTS:

- IN 9 CASES THE INSURANCE PAID THE PLAINTIFF
- IN 13 CASES THEY PAID LEGAL DEFENSE ONLY, AND
- 22 CASES WERE SETTLED WITH NO PAYMENT BY THE INSURANCE COMPANY.



IN EVERY CASE THE ARCHITECT PAID IN DEDUCTIBLE \$ AND/OR TIME





owner and everybody else are going to expect the professional would have been more involved.

AIA: But they expect it anyway.

DUVALL: Yes. I'm not sympathetic to these theories of "let's not do that because by doing it there is more liability."

AIA: You're probably say charge more and be present.

DUVALL: Charge more and do it. Be there—with knowledgeable people. Just a body there isn't going to do it.

Here we're touching on another subject that is near and dear to me, and that is, I don't think architects charge enough, and I don't think architects pay their consultants enough, and I think a lot of these things happen because there isn't sufficient talent, sufficient staff available, competent staff to get done what needs to be done to avoid having these problems. I think the fees are remarkably low.

GENECKI: Sticking with roofing, we don't have the empirical evidence yet, but it's my guess that 50 percent of all of the claims involving roofing also involved the substitution of material or a system different from that in the original drawings and specs.

AIA: That gets us back to the 78 percent of the cases that are property damage. You say 46 percent of those are initiated by the owner. Is it possible that those claims could be defeated, so to speak, by having better owner-architect relations or having better owner-architect contracts?

GENECKI: Yes, especially if you include relations.

DUVALL: It used to be that nobody wanted to talk to the owner about the possibility that disputes could arise. At 44 claims per 100 insured we're well past it. If at the outset of a project, an architect has frankly discussed with the owner the problem and the need for some form of contingency fund, I think it can be controlled much better than it is being now.

AIA: Are there any kinds of owners who need special handling, special education?

DUVALL: Well, you have the committee owners. And that generally involves churches, hospitals and schools.

GENECKI: And local government.

DUVALL: Churches have always bothered me because they represent a disproportionate amount of loss and they have all the elements that have got to lead to problems. They have a limited budget; they always want far more than they can afford; it's a committee of amateurs. Probably most serious of all, they have a

DUVALL: In the short term, if I were an architect, I would be collecting my insurance premium as a direct reimbursement. As a reimbursable expense, it would be provided in the contract that the owner is going to pay to the architect a percentage of each billing, which will be a line item for insurance. And if my insurance costs are \$2.20 per \$100 of billings and I've billed the client for \$10,000, I'm going to charge him \$220 and show it as an item.

Now, the argument is that'll encourage claims, but when you've reached the point where claims are running at 44-plus per hundred insureds, there's not much more claims encouragement you can give. That is a frightening frequency of claims.

AIA: What else could an architect do?

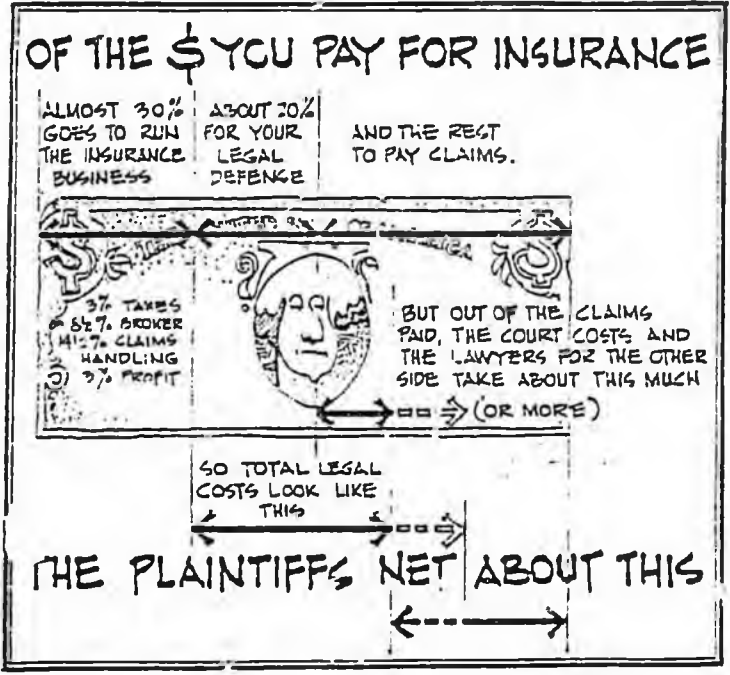
GENECKI: He could build into his contract that, after some period of operation of the structure, the owner will, on a fee basis, have the architect come back and make a detailed analysis—a walk-through of the structure, to see if maybe there are some maintenance items that the owner is not particularly aware of. Or the architect finds out that the building is being used a little differently from the way he was told originally and adjustments need to be made.

AIA: By the same token, could you say, given the fact that roofs are the primary cause of claims, that the architect should go back and watch the supervision of the placement of the roof on building? On the one hand, architects could increase their potential liability because they would be physically on the roof observing the entire installation; on the other hand, they might decrease liability because finally roofs would be put on correctly. Do you have any feelings about that at all—which argument is the stronger of the two?

GENECKI: We'd rather see them out there.

DUVALL: The presence of a knowledgeable person has got to create some deterrent to the roofing subcontractor from cutting corners, if nothing else.

GENECKI: Surely if the roof does fail, then the courts, the



On Saturday February 1, 1986, the Fort Richardson Flying Club's flight operations were suspended due to the inability of the Department of the Army to negotiate the renewal of the excess liability policy with the previous carrier. The suspension also affects the Fort Wainwright Flying Club. The remaining Army Flying Clubs are not affected.

The Alaska Flying Clubs do approximately 25% of the total flying of all Army flying clubs. There are currently 289 members of which 74 are Active Duty Military, 50 Reserves, and 57 Retired Military. Dues are assessed at \$15.00/month.

The Army is requesting a maximum liability of \$250,000 per seat and \$5,000,000 per occurrence, with a \$100,000 deductible. The deductible is self-insured by the Army's established rate for hull and liability to \$100,000.

The majority of Anchorage area flight schools are currently carrying \$100,000 per seat liability and \$500,000 per occurrence. The Army's established limits may not be affordable for the flying club to continue operations.

The impact on the Fort Richardson Flying Club is wide ranging as outlined below:

1) Financial - The club's annual operating budget exceeds \$500,000 per year. The eleven (11) member staff has an annual payroll of approximately \$136,000. The maintenance on the airplanes is accomplished by a contracted mechanic at a cost of \$25-30,000 per year.

2) Contracted personnel:

- a. Thirteen (13) Flight Instructors - per hour basis.
- b. Eighteen (18) lease back airplane owners - per hour basis.

3) Alaska State Student Loan (ASSL) Program - Currently approximately 35 students are utilizing the ASSL Program with approximately \$85,000 on account at the flying club. ASSL funds are required to be placed on account at the flying club. The state requires 25 hours of instruction per three month period or 8.3 hours per month. An extended down time can put many students in non-compliance with state requirements for maintaining full-time status.

4) Veterans - The Flying Club is approved for the training of Veterans for flight training. There are currently twelve (12) members using veterans assistance for flight training.

5) Current students - there are approximately 107 current students enrolled in the flying club - includes ASSL students. In CY1985 there were 91 students who obtained pilot ratings.

As a Veteran utilizing the flying club for flight training, I have been unable to train since 1 February 1980. In the event of a permanent closure, I would be forced to transfer schools and run the risk of losing my benefits for flight training as the maximum allowed break in training is six months.

I feel the Army should do the following:

- 1) That the Department Army (ACIF) Army Central Insurance Fund set obtainable and affordable liability limits.
- 2) That the Army Central Insurance Fund self-insure the flying clubs until an acceptable commercial policy is obtainable, and if that is not possible, then the ACIF establish a reasonable rate for the liability deemed necessary to maintain the airplanes.

SIGNED _____ DATE _____

CLUB MEMBER (FT. RICHARDSON FLYING CLUB)

ADDRESS:

PHONE # (H) _____ (W) _____

Is It Us?

The following is a condensed transcript of an interview conducted by the AIA with Victor O. Schinnerer & Company management, including J. Sprigg Duvall, president; Paul Genecki, senior vice president, and Thomas H. Porterfield, vice president.

AIA: Both DPIC and Victor O. Schinnerer (VOSCO) had agreed to meet with us today but we were advised yesterday that DPIC had decided that they could not make the meeting. And so we are with VOSCO people only. But in this current market, they provide coverage for at least half the insured architects.

Is there any good news for architects about insurance?

DUVALL: We did a study some time ago that indicated that the losses we paid in dollars represented only six one hundredths of 1 percent of the construction values put in place by the architects and engineers against whom those claims were made. That's an incredibly high performance—a very low error rate. The problem is, in those rare instances—and six one-hundredths of 1 percent means a rare instance—it's very costly.

AIA: Looking at that small percentage, what can architects learn from those claims?

DUVALL: If you look at the period '80 to '84, the frequency of claims against architects did not increase all that much. It went from 43 per 100 insureds in 1980 to 44 in 1984. So it's not the frequency of claims; it's the severity of them that is the problem.

AIA: Of the claims that go to trial, do architects win more or lose more?

GENECKI: They win two-thirds of all the claims that go to court.

DUVALL: But I'm afraid in most of the cases we settled out of court, there really was a basis for a finding of fault against the architect. In the minds of our defense lawyers and probably the claimants themselves, because they had to give their permission to settle the cases.

AIA: What kinds of people were the claimants?

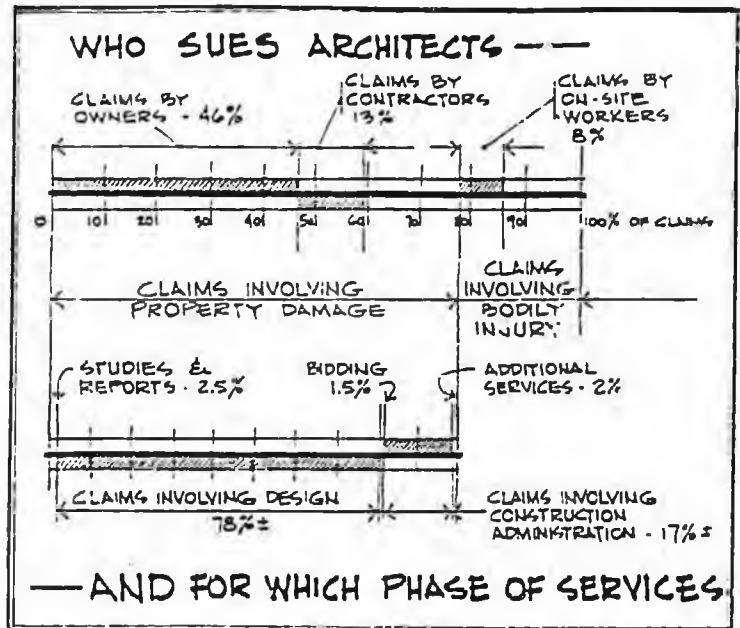
DUVALL: The most recent study we did involved 802 claims on architectural projects, and in 372 of those, the claimant was the owner.

AIA: So these were claims that might have been prevented contractually?

DUVALL: Not in every case, because I suspect some number of these claims by owners were actually third-party actions when the owners had been sued by the contractors. The second largest category is bodily injury claims by the public.

AIA: Is there any way architects can use these data to protect themselves?

DUVALL: As a starting point, architects should use the standard AIA documents. Also, if I were an architect, I would be very



careful about the financial integrity of my client. I'd be very careful about the degree to which he had been involved in previous construction and how that had turned out.

AIA: What else do the claims data say?

DUVALL: I think the claims data would disabuse a lot of architects about what they think the problems are. I know in the past, there was a feeling that bodily injury and death was a major element. The fact of the matter is, although 22 percent of the claims involve bodily injury and death, only 15 percent of the loss dollars are spent on those claims. If we could eliminate that 15 percent, we would avoid probably one year's rate increase.

AIA: Then pain and suffering would not be architects' issues?

DUVALL: Not major issues, no.

AIA: Is it true that half of the 22 percent of the bodily injury claims involve on-site workers?

GENECKI: Yes. They're the biggest single group we can identify.

AIA: So if we could convince state legislatures to include us under the workers' compensation umbrella, we could put an end to 50 percent of the bodily injury claims.

At the same time, architects feel that the judicial system is a lottery and that there's no predictable fairness to it all. Do the claims data bear out that sentiment?

DUVALL: Well, we've paid when we thought we would win; we've won when we thought we would lose. But I think, overall, we've probably paid when we should have and won when we should have.

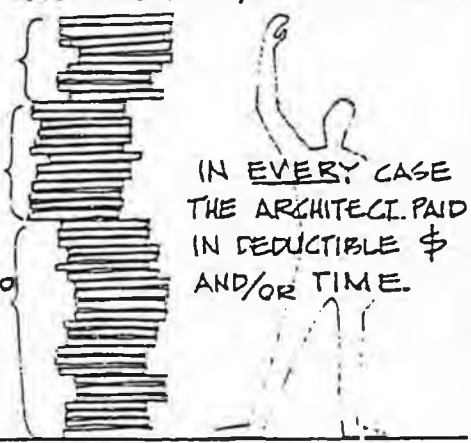
PORTERFIELD: We don't believe the legal system is out to get design professionals.

DUVALL: I think it's more a case that buildings are very complicated. To me, a modern building is very much like a ship, and there are virtually no snips that are perfectly designed, and there are virtually no buildings that are perfectly designed. Buildings, like snips, need shakedown cruises. There's going to be a list of things that need correction. The problem is that where years ago owners looked to architects to pay only for the major corrections, now they're looking to them to pay for more and more.

AIA: What's an architect to do, then, given that mentality?

OF THE 44 CLAIMS PER 100 INSURED, VOSCO REPORTS:

- IN 9 CASES THE INSURANCE PAID THE PLAINTIFF
- IN 13 CASES THEY PAID LEGAL DEFENSE ONLY, AND
- 22 CASES WERE SETTLED WITH NO PAYMENT BY THE INSURANCE COMPANY.



IN EVERY CASE THE ARCHITECT PAID IN DEDUCTIBLE \$ AND/OR TIME.

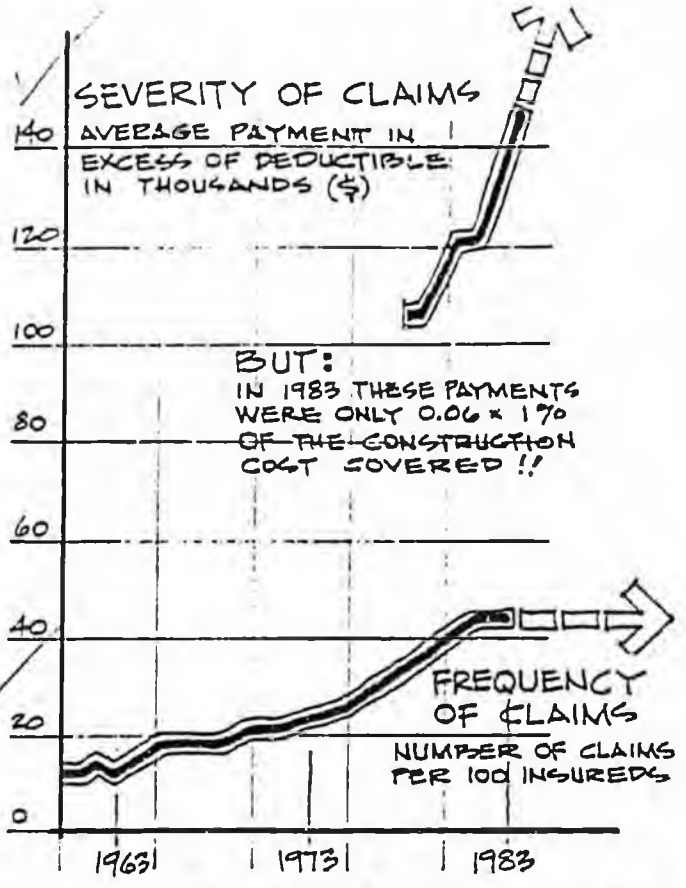
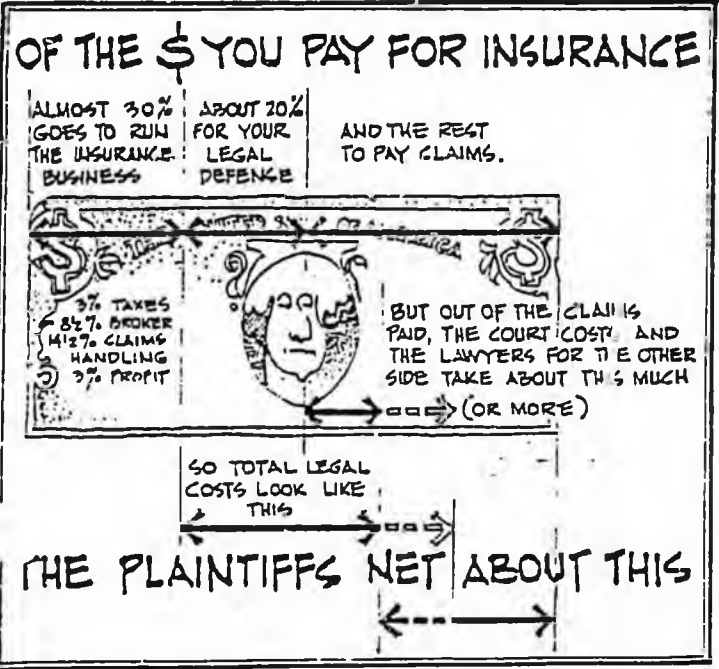
DUVALL: In the short term, if I were an architect, I would be collecting my insurance premium as a direct reimbursement. As a reimbursable expense, it would be provided in the contract that the owner is going to pay to the architect a percentage of each billing, which will be a line item for insurance. And if my insurance costs are \$2.20 per \$100 of billings and I've billed the client for \$10,000, I'm going to charge him \$220 and show it as an item.

Now, the argument is that'll encourage claims, but when you've reached the point where claims are running at 44-plus per hundred insureds, there's not much more claims encouragement you can give. That is a frightening frequency of claims.

AIA: What else could an architect do?
 GENECKI: He could build into his contract that, after some period of operation of the structure, the owner will, on a fee basis, have the architect come back and make a detailed analysis, a walk-through of the structure, to see if maybe there are some maintenance items that the owner is not particularly aware of. Or the architect finds out that the building is being used a little differently from the way he was told originally and adjustments need to be made.

AIA: By the same token, could you say, given the fact that roofs are the primary cause of claims, that the architect should go back and watch the supervision of the placement of the roof on the building? On the one hand, architects could increase their initial liability because they would be physically on the roof observing the entire installation; on the other hand, they might decrease liability because finally roofs would be put on correctly. Do you have any feelings about that at all—which argument is the stronger of the two?

GENECKI: We'd rather see them out there.
 DUVALL: The presence of a knowledgeable person has got to create some deterrent to the roofing subcontractor from cutting corners, if nothing else.
 GENECKI: Surely if the roof does fail, then the courts, the



owner and everybody else are going to expect the professional would have been more involved.
 AIA: But they expect it anyway.
 DUVALL: Yes, I'm not sympathetic to these theories of "let's not do that because by doing it there is more liability."
 AIA: You'd probably say charge more and be present.
 DUVALL: Charge more and do it. Be there—with knowledgeable people. Just a body there isn't going to do it.
 Here we're touching on another subject that is near and dear to me, and that is, I don't think architects charge enough, and I don't think architects pay their consultants enough, and I think a lot of these things happen because there isn't sufficient talent, sufficient staff available, competent staff to get done what needs to be done to avoid having these problems. I think the fees are remarkably low.
 GENECKI: Sticking with roofing, we don't have the empirical evidence yet, but it's my guess that 50 percent of all of the claims involving roofing also involved the substitution of material or a system different from that in the original drawings and specs.
 AIA: That gets us back to the 78 percent of the cases that are property damage. You say 46 percent of those are initiated by the owner. Is it possible that those claims could be defeated, so to speak, by having better owner-architect relations or having better owner-architect contracts?
 GENECKI: Yes, especially if you include relations.
 DUVALL: It used to be that nobody wanted to talk to the owner about the possibility that disputes could arise. At 44 claims per 100 insured we're well past it. If at the outset of a project, an architect has frankly discussed with the owner the problem and the need for some form of contingency fund, I think it can be controlled much better than it is being now.
 AIA: Are there any kinds of owners who need special handling, special education?
 DUVALL: Well, you have the committee owners. And that generally involves churches, hospitals and schools.
 GENECKI: And local government.
 DUVALL: Churches have always bothered me because they represent a disproportionate amount of loss and they have all the elements that have got to lead to problems. They have a limited budget; they always want far more than they can afford; it's a committee of amateurs. Probably most serious of all, they have a



Resolution 86-4

A RESOLUTION SUPPORTING THE CITIZEN'S COALITION FOR TORT REFORM REGARDING INSURANCE PREMIUMS.

WHEREAS, the City of Houston has had its budget reserve seriously diminished by the unanticipated increase of 16% in its annual insurance premium; and,

WHEREAS, other Alaska communities, businesses, school districts, and private citizens are similarly suffering because of the need for legislative redress of the problems peculiar to the Alaska insurance industry; and

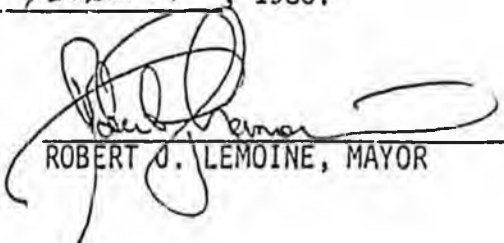
WHEREAS, Alaska has a limited availability of liability insurance programs and has experienced a dramatic rise in liability premiums; and

WHEREAS, legislative remedies are needed to restore predictability and affordability to liability insurance programs; and

WHEREAS, the Citizens' Coalition for Tort Reform has identified those areas needing legislative remedy, and have proposed solutions;

NOW, THEREFORE, BE IT RESOLVED by the COUNCIL OF THE CITY OF HOUSTON, ALASKA, that it supports the efforts of the Citizens' Coalition for Tort Reform to achieve legislative remedies, and urges the Alaska Legislature to make these reforms a priority of the 2nd session of the 14th legislature.

PASSED AND APPROVED THIS 13th DAY OF FEBRUARY, 1986.


ROBERT J. LEMOINE, MAYOR

ATTEST:


ELSIE M. O'BRYAN, CITY CLERK



D.J.'s ALASKA RENTALS INC.

Formerly Andrews Alaska Rentals & Sales

405 BONIFACE PARKWAY • ANCHORAGE, ALASKA 99504-1099
(907) 337-2552

DON REDMOND, President

December 18, 1985

Citizens Coalition for Tort Reform
738 H Street
Anchorage AK 99501

To Whom It May Concern:

D.J.'s Alaska Rentals, Inc., a tool and equipment rental agency, submits the following information that reflects typical positions of many professionals and businesses in Alaska and nationwide concerning increases in liability insurance costs:

From December 31, 1984 through December 31, 1985 our General Liability costs for \$1,500,00.00 in coverage was \$23,763.00. Annual cost per \$1000.00 was \$15.84.

From December 31, 1985 through December 31, 1986 General Liability quoted cost for ONLY \$300,000.00 in coverage is \$30,737.20. Annual cost per \$1000.00 is \$102.44, which is 6.47 times the 1985 cost!

THERE HAVE BEEN NO CLAIMS FILED!

Sincerely


Don Redmond, President



CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison..."

TO: ALL LEGISLATORS

FROM: CITIZENS' COALITION FOR TORT REFORM

SUBJECT: ENCLOSED DATA FOR YOUR USE AND REVIEW

Thanks,

Al Tamagni, Sr.
Chairman

EC 8-8 Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.

EC 8-9 The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

(Added by Supreme Court Order 128 effective May 6, 1971)

CPR 65.

CANON 8—A LAWYER SHOULD ASSIST IN IMPROVING
THE LEGAL SYSTEM

DR 8-101 Action as a Public Official.

(A) A lawyer who holds public office shall not:

(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

(3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

CPR 63

Insurance woes haunt city airport

By RICK FOLSTAD
Staff Writer

A resolution that would allow Soldotna to shut down its airport if insurance can't be obtained is scheduled to go before the City Council Wednesday.

The resolution also relaxes operator indemnification responsibilities at the Soldotna Airport and passes any additional airport insurance costs onto those operators.

The resolution was drawn up by City Manager Rich Underkofler at the request of the council. It calls for the city to pay its share of financial responsibility in any lawsuits according to its degree of fault or negligence. It replaces an earlier proposal that would have cleared the city of any and all lawsuits.

In addition, the resolution states that if the airport's annual premium for liability insurance exceeds the present \$42,000, the difference in cost will be passed onto the airport users.

"In lieu of the commercial operators buying (more) insurance, the city will try to buy it and spread the cost among the users," said Underkofler.

Fifty percent of any additional cost will be assessed to the long-term lessees on a square footage basis and 50 percent will be

See SOLDOTNA, Page A-7

JUN 14 1986

...Soldotna airport proposal pending

Continued from Page 1

shouldered by the annual, monthly and transient aircraft tie-down users.

Required coverage for commercial operators would remain at its present rate.

According to the resolution, if the city can't purchase insurance coverage to the degree it deems necessary to "adequately protect its taxpayers (\$10 million combined single limit as of 1986), the airport shall be closed, without any liability to the city, on 24 hours written notice to lessee."

The city's present insurance policy,

which expires June 30, is underwritten by Lloyds of London through the Walters and Olson Inc. insurance company of Soldotna.

"Lloyds won't even quote us a price until two months before our premium is due," said Underkofler.

Kurt Olson of Walter and Olson said Lloyds is one of the few insurance companies still underwriting policies for airports.

Last year was a bad year for aviation, said Olson. "World wide, there were 2,200 fatalities. In the past, we've had years with fewer than 100 fatalities."



March 24, 1986

End-Year Data Confirms Industry's Figures:

End-year data released by ISO/NAII confirm what the industry has been asserting for months: that 1985 was one of the worst years ever for the property/casualty insurance industry. On an operating basis, the industry had a loss of \$5.4 billion.

Full-Year Financial Results for 1985
(billions)

	<u>Industry estimates as of early Jan.</u>	<u>Nader/Hunter estimates</u>	<u>ISO/NAII financial results</u>
Operating Loss	\$5.5	\$5.5	\$5.4
After-Tax Net Income	\$1.7	\$6.6	\$2.0
Rate of Return (Stat. basis)	2.5%	7%	2.8%

On an after-tax basis, net income was \$2.0 billion, close to the early estimate of \$1.7 billion and way below the Hunter/Nader estimates of \$6.6 billion. The rate of return on a statutory basis was 2.8% in 1985, close to the earlier estimate of 2.5%.

Big rise in surplus:

Surplus increased by \$12.5 billion in 1985 or 20 percent, from \$63.8 billion at year-end 1984 to \$76.3 billion at year-end 1985.

Changes in Surplus
(billions)

Surplus: End 1984	\$63.8
Changes in 1985:	
Net Income After Tax	\$ 2.0
Unrealized Capital Gains	5.1
New Funds	7.7
Less Stockholder Dividends and Other Minor Items	2.3
Total	\$12.5
Surplus: End 1985	\$76.3

As the chart indicates, unrealized capital gains at \$5.1 billion and new funds at \$7.7 billion were the dominant factors behind the increase in surplus in 1985. The strong stock market led to the rise in the value of insurance companies' portfolios in stocks. Also, the strong market for p/c stocks provided an

added incentive for companies to raise capital. Also, parent companies of p/c subsidiaries infused cash into their companies to bolster their reserves and capital.

The following schematic illustrates the income flows in 1985:

1985 Profit (Loss) in P/C Industry
(billions)

Earned Premiums	\$113.2	<u>Earned premiums</u>
Incurring Losses (includes loss adjustment expense)	118.1	less claim losses,
Expenses	37.6	less expenses and
Policyholder Dividends	2.2	less <u>policyholder</u>
Underwriting Loss	(24.7)	<u>dividends</u> produce an
Investment Income	19.5	<u>Underwriting Loss.</u>
Operating Loss*	(5.4)	<u>This loss was offset by</u>
Realized Capital Gains	5.4	<u>income from</u>
Tax Credits	2.0	<u>investments (interest and</u>
Net After-Tax Income	2.0	<u>dividends) to produce an</u>
		<u>operating loss.</u>
		<u>However, capital gains</u>
		<u>primarily from the sale of</u>
		<u>stocks offset this loss,</u>
		<u>plus tax credits so that</u>
		<u>net after-tax income was</u>
		<u>positive.</u>

*Includes minor items at a negative \$200 million.

FINANCIAL RESULTS FOR 1985 AND 1984
(millions)

	1985	1984	<u>Improvement (Deterioration) 1985 vs. 1984</u>
Net Written Premium	\$144,336	\$118,591	21.7%
Net Earned Premium	133,246	115,010	15.9
Incurring Loss & Loss Adjustment Expense	118,127	101,446	16.4
Expenses	37,626	32,943	14.2
Statutory Underwriting Gain (Loss)	(22,507)	(19,379)	(16.1)
Policyholder Dividends	2,229	2,098	6.2
Net Underwriting Gain (Loss)	(24,736)	(21,477)	15.2
Pretax Operating Income	(5,403)	(3,817)	(41.6)
Net Investment Income Earned	19,465	17,660	10.2
Net Realized Capital Gains (Losses)	5,361	3,063	(75.0)
Net Investment Gain	24,826	20,723	19.8
Net Income After-Tax	1,957	828	136.4
Policyholder Surplus (Consolidated)	76,288	63,909	19.6
Trade Ratio, Post-Dividends	116.4	118.0	1.4

Sean Mooney, Ph.D., CPCU
I.I.I. Senior Vice President, Economist

NAIB views

Current system of civil justice proving too costly

WASHINGTON, DC — Robert H. Moore, president of the National Association of Insurance Brokers, said February 19 that Americans will continue to suffer the penalties of a runaway civil justice system until they better understand the social and economic burdens that the system imposes.

Moore, senior vice president of Alexander & Alexander, testified before the senate commerce committee on the availability and affordability of insurance. He was accompanied by Alan Page of Johnson & Higgins who also presented a statement.

Moore warned against seeking scapegoats for the current liability insurance crisis. Moore cautioned that the search for a solution should not degenerate "into a mad scramble to find the bad guys."

System too costly

"When Americans ultimately come to recognize that the economic fallout from our present civil justice system may be too costly, then, and only then, will we have a serious effort at meaningful tort reform," said Moore. "And to be effective, such an effort will have to be led by a coalition representing labor, the legal profession, the business community, academia and others."

Moore told the committee, chaired by Senator Danforth (R), Missouri, that — while the insurance industry itself has contributed to the problem by roller coaster underwriting policies — "it must be candidly acknowledged that the insurance industry cannot, on its own, bring about the needed reforms."

Chief Justice Warren Burger has identified a significant flaw in the civil justice system, said Moore, by pointing out that "the total cost of the process is often equal to, or greater than what finally goes to the pockets of the litigant seeking relief." Tort reform is obviously needed when a very substantial portion of awards to victims is consumed by legal fees and transaction costs, Moore said.

Other costs to our society, Moore said, include:

COMMERCIAL OCEAN MARINE SERVICES

Ins. on all types of hulls, marine liabilities & cargoes

Call John Adams or Kathy Monsen
Pacific General Agency, Inc.
115 2nd Ave. N., P.O. Box 368
Edmonds, WA 98020 • (206) 771-5044

- Higher prices for many goods and services sought by Americans.
- Reduced ability to produce new products and develop new technologies.
- Weakened economic efficiency in U.S. industry.
- Eroded ability to compete in international markets.
- Consequent loss of employment opportunities in the U.S.

Moore commends Danforth

Moore commended Danforth for holding hearings that may lead to what the country needs — "a thoughtful analysis of the complex and inter-related dynamics of the business of insurance."

Page called for the expansion of the Risk Retention Act to cover other liability insurance lines in addition to product liability, arguing that this would increase insurance capacity.

Page also told the committee, "The insurance industry does not require federal capital or federal guarantees to solve the insurance crisis — rather, by allowing sophisticated buyers of insurance to meet their own insurance needs, we can preserve existing capacity for the public by providing new insurance protection for commercial buyers of liability insurance."

WAIB luncheon seminar scheduled for March 5

SAN FRANCISCO -- "What Do Companies Really Want" - A Guideline for Professional Submissions and Acceptances - is the topic of a luncheon seminar scheduled by the Northern California Chapter of the Western Association of Insurance Brokers for 11:30 a.m., March 5, at Gino's in San Francisco.

Speakers are Laura S. Danoff, CPCU, assistant vice president, casualty manager, Montgomery & Collins, Inc., San Francisco, and David C. Fisher, CPCU, underwriting manager, Aetna Life & Casualty, Walnut Creek.

The cost of lunch is \$20 per person. Further information is available from the WAIB office, phone (415) 392-5383.

Scott Holman advanced by Republic Indemnity

ENCINO, CA — Scott Holman, CPCU, has been elected vice president of Republic Indemnity Company of America and named southern California division manager, James J. Carolan, executive vice president, has announced. Holman, who has been assistant vice president and marketing manager for the past year, will have responsibility for marketing, underwriting, claims, loss control and field audit for the southern California region, Carolan said.



Scott Holman

A graduate of California State University at Northridge, Holman entered the insurance business as a multiple line producer with Employers of Wausau in Los Angeles in 1972. He later served with EBI in Santa Monica and San Jose. He also was with Bolton & Co. in South Pasadena, specializing in large line workers' compensation and captive products before joining Republic in 1983 as senior marketing representative in the San Fernando and San Gabriel Valleys.

Fischer advanced at Seattle

SEATTLE — Addington, Baldwin & McDaniel, Inc., Seattle broker, has announced the promotion of Clista A. Fisher, CPCU, to administrative manager. She joined AB&M in August 1985 as a commercial customer service representative. Before joining the agency ranks, she spent eight years with Safeco.

NEED HELP?

Try a QUICK ACTION want ad.
See page 12 for details.

SERVING THE PACIFIC COAST FOR OVER 100 YEARS

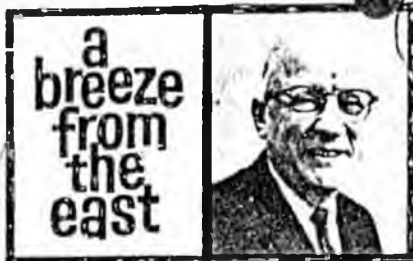
DEANS and HOMER

Insurance Managing Underwriters

340 Pine Street

San Francisco, California 94104

LOS ANGELES • SAN DIEGO • STOCKTON • SEATTLE • PORTLAND



by Andrew L. Hunigan

Senate testimony

Bragg urges restraint in attempts to solve insurance problems

WASHINGTON, DC — Solution of the problems in insurance is of concern to the federal level of government, but the tools for the solution are at the state level, in cooperation with the insurance industry, Jeffrey S. Bragg, head of the Federal Insurance Administration advised members of the senate committee on commerce, science and transportation last week.

In testimony before the committee, Federal Insurance Administrator Jeffrey S. Bragg said, "If we are really to find a solution to today's insurance problems, insurers, insureds, insurance departments and state officials must resist the temptation to point fingers (of blame) and work together to identify the underlying problems."

Fixing blame unrealistic

Bragg told the committee, "Simply to blame anyone for taking advantage of high interest rates and giving the insureds a temporary bargain is somewhat unrealistic in terms of the real world in which we live," but he also remarked, "There is some basis for concern that the insurance industry did, in past years, let itself be diverted by the allure of higher investment return from what should be one of its most important principles: loss reduction and prevention."

Turning to the subject of tort reform, Bragg said, "One underlying problem which must be resolved is the growing belief that for every mishap a person suffers, there must be a financial remedy. We have moved more and more toward strict liability without a need to establish fault. And as the standards of liability have been stretched, there has been a tendency for more generous damage awards."

Bragg suggested, "The whole

concept of reasonableness and fault needs to be revisited," and he declared, "Insurance companies have for too long been viewed by many as a source of unlimited funds which could be paid out without seeming to cost anything to the average person. Now there are some who see the resources of the federal government as temptingly available to provide the means of paying for a tort system that is becoming too expensive to fund through the premiums of insureds.

"If the federal government is brought into the picture before the hard choices are made as to how to conduct our tort and reparations systems, we will only be shifting burdens to taxpayers and postponing the day of decision," Bragg concluded.

EDITORIAL COMMENT

A puzzlement . . .

For many years most of the insurance industry has pointed to contingency fee agreements in personal injury cases as a contributing factor to the growing costs of litigation and a pressure for rising liability insurance rates.

Most insurance observers agree that the high percentages of liability judgments that are taken through contingency fees have inflated demands, settlements and awards in personal injury cases.

In personal injury litigation that goes to trial the plaintiff counsel commonly gets from $\frac{1}{3}$ to $\frac{1}{2}$ of the award. Although there is some variation in the contingency percentage, we often have wondered why competition has not produced lower percentages in view of the rather large potential for return.

Over the years in the insurance field, for example, agents' commissions have declined substantially through the pressure of competition.

In the law there certainly is no shortage of attorneys to provide competitive pressure that, we have been told in economics class, tends to keep prices down. If true competition existed in the field of law it seems that contingency fee percentages should have come down over the past 20 years and current pressures for legislation to put caps on such arrangements would not be necessary.

INSURANCEWEEK

3-14-86



"USA TODAY hopes to serve as a forum for better understanding and unity to help make the USA truly one nation."

—Allen H. Neuharth
Chairman and Founder
Sept. 15, 1982

John C. Quinn
Editor

John Seigenthaler
Editorial Director

OPINION

The Debate: INSURANCE CRISIS

Today's debate includes our opinion that reforms are needed to control the costs of liability lawsuits so insurance will be available and affordable, an opposing view from Louisiana, other views from California, Massachusetts, and the District of Columbia, and voices from across the USA.

Limit fees, lawsuits; ensure justice for all

The insurance crisis is hitting us where it hurts.

In Chicago, the city is removing playground equipment. It can't live with huge insurance premiums and lawsuits.

In California, ski resorts are raising the prices of lift tickets, insurance costs are up, and someone — you know who — has to pay. Across the USA, doctors are not delivering babies — too many lawsuits, not enough insurance. Day-care centers are closing. Roller skating rinks are folding. Swimming pools are empty.

Who's to blame? There's plenty to go around.

Our legal system encourages litigation. Eye-popping awards whet the appetites of ambitious lawyers and a lottery-minded public hoping to strike it rich. Personal misfortune no longer is personal — someone has to pay.

The insurance industry is at fault, too. High premiums are strangling the golden goose. When interest rates soared and big bucks could be made on investments, insurance companies were happy to sign you up and take your money.

Now, pay-outs are up and investment income is down. Consumers are forced to make up the difference by paying high rates — if they can get insurance at all.

Some states are striking back with laws to limit such suits. Washington and Maryland acted last week, and 15 others are considering legislation.

States need to enact these reforms:

- Put a lid on some payments. Allow reimbursement for medical expenses, lost wages, property damage, etc. But limit awards for punitive damages, physical pain, and emotional stress.

- Limit lawyers' fees. Contingency fees can claim from a third to a half of a settlement. Set up a sliding scale for fees, with lower percentages for higher amounts.

- Penalize lawyers to file frivolous lawsuits.

- Pay large awards in installments instead of lump sums.

- Eliminate the "deep pockets" doctrine, which requires defendants to pay not on the basis of how responsible they were, but on how much money they have. In 36 states, if you're just 1 percent at fault, you could pay all the damages if other responsible parties can't make up.

- End double payments. In some states, judges and juries cannot be told a plaintiff may collect elsewhere.

Some people say that's unfair. Of course, the injured must retain the right to sue for damages. But abuses must end.

Legal reform is only the first step. Insurance companies must take the second step. If they gouge the public and don't make insurance available and affordable, they will invite — and deserve — strict government regulation.

And the third step? That's up to us. We must get over the notion that a lawsuit — any lawsuit, regardless of merit — is our ticket on the gravy train.

It's time we got rid of that misguided national motto: "See you in court."

States snapping lid on 'pain' payments

By Cheryl Mattox Berry
USA TODAY

The push is on to limit soaring liability insurance awards.

Monday, Maryland became the second state in four days to place a cap on "pain and suffering" for all types of liability claims. Washington passed a similar law Friday.

"There is ... a crisis of major proportions," said Hugh Jones, chairman of New York's Liability Insurance Advisory Commission.

That commission Monday proposed limiting damage awards, and Gov. Mario Cuomo endorsed most proposals, except a \$250,000 lid on payments made by public enti-

ties. He called the money limit too "drastic" right now.

President Reagan also plans to propose federal legislation to limit pain and suffering awards and lawyers' fees.

"I think it is unquestionably a trend," said Robert Frank Jr., a Boston trial lawyer.

Some lawyers already are attacking the legislation.

"I think it's terrible," Marilanna S. Smith, executive director of the Association of Trial Lawyers of America. "It's bad because the people that get hurt the most and suffer the most are having their rights taken away from them."

Bills limiting liability are pending in 14 states: Maine, Massachusetts, New Hamp-

shire, Delaware, South Carolina, Florida, Alabama, Illinois, Michigan, Iowa, Kansas, Nebraska, Oklahoma, Colorado.

Here's why:

■ Costs of liability insurance are soaring — matching the rise in payouts.

■ Communities and businesses have lost coverage — no matter the cost.



REVIEW & OUTLOOK

Tort Reform

President Reagan has asked the Justice Department to find some way to damp the litigation explosion. While there's only so much the federal government can do, this high-level attention to the problem is entirely appropriate. Abuses by lawyers and activist judges are raising liability-insurance rates at such a rapid rate that some goods and services are either no longer available or are costing consumers more and more money.

By now, collecting examples of tort-law outrages is almost a national sport. Our favorite from last week: A woman claimed that an X-ray test interfered with her "psychic" abilities and won a \$1 million award against a Philadelphia hospital. The Coney Island roller coaster remains closed for lack of insurance, as are city playgrounds, day-care centers and even fire and police departments across the country.

As we've said before, the root of this problem can be found with judges who insist on substituting their personal notions of "fairness" for traditional law. Since about 95% of the country's tort cases are brought in state courts, most of the reform will have to come from state legislatures, a process that already is well under way. But a recent Justice Department report, along with other studies, suggests these avenues for reform:

Force judges to return to a fault standard for liability. In the early 1960s, liberal judges began scuttling the rule that only defendants who acted negligently could be liable. Judges decided that "deep pockets," usually corporations, should pay whenever anyone suffered. For example, in the 1982 case of *Beshada vs. Johns-Manville*, the New Jersey Supreme Court mysteriously concluded that even if the manufacturer couldn't have known about possible dangers of a product it still somehow should have warned consumers. The judges thought an increase in insurance premiums made inevitable by their reasoning "not a bad result."

End joint and several liability. To guarantee access to deep enough pockets, judges have taken the limits of causation into the twilight zone. Now anyone with even a remote role can be liable for the full amount. This is a special problem for local governments, since taxpayers are the deepest pockets of all. In 1984, in Hayward, Calif., a speeding motorcycle without a helmet collided with a car and suffered brain damage. It was found 80% responsible for the accident, but didn't have much insurance. The city was found 1% responsible (for deciding not to have a stop sign at the intersection) and had to pay the full \$2.2 million award.

Limit "non-economic" damages.

The idea of torts is to compensate a victim for identifiable harm, such as lost income. It's become a lottery to create instant millionaires. Medical malpractice awards now average \$1 million, up from \$200,000 a decade ago. Much of this is under vague headings like "pain and suffering." Likewise, punitive damages, once reserved for intentional injuries, are routinely tacked on. In the ridiculous Pennzoil case against Texaco, the jury tacked on a cool \$3 billion in punitive damages on top of \$3 billion in regular damages.

Remove the litigation subsidy. The widespread use of class-action contingency-fee financing has enriched some lawyers but hasn't helped plaintiffs much. Lawyers from both sides typically gobble up two-thirds of the judgments. Lawyers have an incentive to bring worthless cases: Chemical companies, wanting to end the litigation, settled the Agent Orange case for \$180 million even though the judge later said that there was no persuasive evidence that the defoliant had hurt anyone.

Opposition to tort reform has come mostly from plaintiff lawyers and Naderites, such as Joan Claybrook, late of the Carter regulatory apparatus. The true villain, we learn from these interested worthies, is the insurance industry. They say premiums are now rising because insurance companies were slow to raise their rates. You heard that right. These self-styled "consumerists" are complaining that insurers didn't charge higher premiums, which are of course usually passed along to consumers. They would be on much firmer ground if they argued that the insurance industry, which likes to see its investment income swelled by rising premium income, hasn't done enough to resist predatory lawyers. But you won't hear them saying that.

The Justice Department is working on a proposal to limit the liability of the federal government and its contractors by capping damage awards and contingency fees. It may also propose a uniform standard for the states, which would be a useful effort to encourage states to make their changes as consistent as possible.

More than half of the states already have proposed legislation to reform torts. Californians will vote in June on Proposition 51, which would curtail joint and several liability. Alaska and Colorado have the English rule on costs, which cuts down on frivolous cases by making the losing party pay the winner's lawyers.

In short, despite the loud protests of lawyers who have turned tort law into a gravy train at great cost to the public, reform is getting under way. It isn't coming a moment too soon.

Enterprise Liability

The cable tram to Roosevelt Island in New York City stopped for two weeks recently because the insurance company refused to renew the policy. It looked like another victim of the litigation explosion set off by activist judges. But the residents of the island got the New York State Legislature to become the new insurer. The tram is running again. Now it's the taxpayers who are being taken for a ride.

So it goes in the world of American torts, or personal injury, law. There hasn't been a single accident in the 10 years of operating the tram, but insurance companies fear the possibility of multimillion-dollar verdicts even where there is no fault. Insurers are getting out of underwriting entire activities, like trams, day-care centers and midwifery. Consumers pay the bill, either through taxes as in the tram case, or through higher prices or through the unavailability of goods and services. Faced with this litigation explosion, about half the states are considering bills to get tort liability under control.

A Justice Department report on torts last week said that reinstating the fault standard was the single most needed change. The current *Journal of Legal Studies*, published at the University of Chicago, describes how fault has been replaced by a notion called "enterprise liability." This scheme, devised by liberals in the early 1960s, says that business enterprises should be responsible for *any* injuries caused by products they introduce into commerce, no matter if the products were as safe as technology allowed or were misused. This is entirely different from the age-old view of the common law that with few exceptions there is no liability without fault.

George Priest, a Yale law professor, traced the history of enterprise liability to a desire on the part of some academics and judges for torts to become a system of national insurance,

not just a forum for fairly resolving disputes. Mr. Priest says the impetus for holding defendants strictly liable was the New Deal notion of law as "social justice." Liberal judges embraced broader liability to pick the deep pockets of corporate defendants.

The judges appointed themselves as income redistributors. Canadian lawyer Ernest Weinrib points out that it's only in the U.S. that judicial fiat could create strict liability. Elsewhere, courts are supposed to resolve disputes between the opposing parties, not redistribute wealth according to their idea of social justice. Mr. Weinrib described how the Australian High Court refused to abandon the fault standard. Strict liability should be adopted "if at all, openly and after adequate public inquiry and parliamentary debate and not worked towards covertly, in the course of judicial decision, by the adoption of policy factors which assume its desirability as a goal."

Judges make lousy social engineers. Costs of goods rise with insurance premiums, hurting the poor and defeating the very purpose of the judicial activism. The result can be that only industries with wealthy consumers survive huge new premiums. A modest ski lodge in Tennessee may not be able to pry its premiums, but you can bet the slopes will still be full in Aspen. It may be hard to find an insured family doctor in Harlem, but richer Americans can still pay higher fees to cover higher premiums.

When judges start acting like politicians, it's time for the politicians to remind them of the separation of powers. State legislators can undo strict liability by passing statutes requiring that a party actually be at fault to be held liable for damages. This would not be revolutionary. It is the common law in the rest of the world, and was our law until the Great Society invaded the courts.

International: The Marcos family is said to control Benguet, Page 22.

International: Dixons offers \$2.76 billion for British Woolworth, 22.

Ahead of the Market: Last-hour selling binge routs stock prices, 39.

Politics: NASA faces tougher Congress in wake of shuttle disaster, 40.

Malpractice Liability: Can the Law Serve Both Doctors and Patients?

By MICHAEL WALDHOLZ

Staff Reporter of THE WALL STREET JOURNAL

Malpractice liability has lately become one of the most divisive issues among doctors and lawyers.

"Physicians are leaving the profession in unheard-of droves because of a system they don't understand, they can't cope with and which is getting worse," says James Todd, a surgeon and a top official of the American Medical Association. At fault for the burgeoning lawsuits and staggeringly high premiums many doctors pay, he argues, are a legal system that encourages meritless litigation and trial lawyers who profit exorbitantly from malpractice cases.

"Malpractice lawsuits result from malpractice," counters Robert Habush, a partner with the Milwaukee law firm Habush, Habush & Davis and president-elect of the Association of Trial Lawyers of America. Mr. Habush says that present laws help protect patients' rights and ensure their access to the courts. He believes the situation calls for changes in the insurance industry and more careful monitoring by doctors of competence in the profession.

What follows is a debate organized by The Wall Street Journal between Dr. Todd and Mr. Habush.

Dr. Todd: We now have a mentality in this country that says court action is the only way to settle disputes. But in court, lawyers' theatrics often produce compensations that no one can consider reasonable. If the medical profession is guilty of anything, it is overselling its wares. Everyone now expects a perfect result, so when a defective child is born the response is to blame the doctor. Sure, there are doctors who perform negligently on occasion. But we are firmly convinced the number is not representative of the level of litigation that is going on.

Mr. Habush: Doctors are upset by malpractice litigation because they're under siege. They are under tremendous pressure from competition from health maintenance organizations, and from health insurers who are limiting coverage. The income pie is shrinking, and higher premiums exacerbate the situation. Doctors feel attacked from all sides, and malpractice is the thing they can lobby and complain about. Nobody likes being sued. But it bothers the hell out of doctors when lay people tell them how to practice.

Dr. Todd: When you say we resent being "peer reviewed" by a jury, sure we do, because they're not peers. "Peer" means somebody in the same profession.

Mr. Habush: Listen, the problem isn't juries or lawyers. An outstanding physician said, "There's just too much incompe-



Habush

'WE THINK the problem of high premiums is eminently solvable...'

'ALL OF A sudden, the lawyers are insurance experts.'



Todd

tence and negligence in the medical profession." That was Dr. Todd, in the *Internal Medicine* magazine in November 1984.

The U.S. government's own statistics say 20,000 to 25,000 of the nation's 400,000 doctors are ill—by candidates for some type of discipline due to incompetence or being impaired by alcohol, mental illness or criminal behavior. Yet in 1984, state medical licensing boards disciplined only 1,400 doctors. It's the incompetent doctors who are causing the insurance problem. In Pennsylvania, 1% of the doctors accounted for 25% of medical malpractice payments.

Dr. Todd: Unfortunately, the incompetent doctors are not the most likely ones to get sued. We wish they were, so we could get rid of them. I've said medicine can do a better job disciplining doctors. But you can't say more discipline means less suits. Florida is hailed for its number of disciplinary actions against doctors, but it continues to be a hotbed of malpractice agitation, debate and battle. The point is that two-thirds of all doctors have been sued at some time, but only 50% of all suits have any basis in merit.

Mr. Habush: The problem for doctors is simply that, for some of them—the high-risk surgeons and obstetricians, for example—insurance has become costly. Unlike some industries, which can't get any liability insurance these days, the problem in medicine is affordability, not availability. It's there, it's just gotten more expensive for some.

Dr. Todd: Wrong. I suggest you go to Virginia, where St. Paul (Fire & Marine Insurance Co.), the only company writing malpractice insurance, won't cover new physicians. And in states where rates are so high, new doctors are leaving. In three years, Massachusetts General Hospital hasn't kept one of the 13 anesthesiologists it trains each year.

Mr. Habush: I must tell you, where doctors are leaving the profession it's a good

thing. Frankly, I'm glad some aren't delivering babies anymore, because some shouldn't be. The system is weeding out doctors who shouldn't be practicing. Still agree that a doctor sued for malpractice shouldn't be labeled incompetent.

Dr. Todd: That's what you're trying to do.

Mr. Habush: No, no, you're wrong. A point is that there is an established pattern among some doctors who get sued repeatedly—successfully—which hasn't been addressed by the medical establishment or licensing boards. In Wisconsin, there's a plastic surgeon who had 13 malpractice settlements and judgments against him and his ticket was never pulled.

Dr. Todd: It's not so easy. The physician-owned insurance companies sometimes do identify doctors deemed an insurable risk. But because of the rules of confidentiality, if the insurance company writes to the licensing board saying, "We think this guy is an ever-present danger," we be in court for breach of confidentiality.

Mr. Habush: In any case, we think the problem of high premiums is eminently solvable. When two or three neurosurgeons in a state get hit for large judgments, has tremendous impact on the rest of the neurosurgeons. That's because insurers classify specialties together when they set rates. In Wisconsin, for instance, just neurosurgeons form one class. There's obstetricians and gynecologists rated as class. No one in their right mind would ever agree to have their automobile insurance or homeowner's insurance rated in class that small. There's no way to spread the cost of claims.

In Wisconsin, for instance, if you combine all surgeons in one class, the neurosurgeon's 1985-86 premium drops from \$1545 to \$9,500, and all the other surgical specialties get a premium increase of just 2 bucks. But the AMA and other medical groups aren't lobbying state governments and Washington to change insurance practices, because nonspecialists—the majority of their members—would holler. They don't want to be lumped with the high-risk guys.

Dr. Todd: All of a sudden, the lawyers are insurance experts. You know, you've got 35 doctor-owned insurance companies. If they could find a way to cut the cost they would have done it. First of all, sta-

In Canada, Different Legal And Popular Views Prevail

miums exacerbate the situation. Doctors feel attacked from all sides, and malpractice is the thing they can lobby and complain about. Nobody likes being sued. But it bothers the hell out of doctors when lay people tell them how to practice.

Dr. Todd: When you say we resent being "peer reviewed" by a jury, sure we do, because they're not peers. "Peer" means somebody in the same profession.

Mr. Habush: Listen, the problem isn't juries or lawyers. An outstanding physician said, "There's just too much incompe-

It's there, it's just gotten more expensive for some.

Dr. Todd: Wrong. I suggest you go to Virginia, where St. Paul (Fire & Marine Insurance Co.), the only company writing malpractice insurance, won't cover new physicians. And in states where rates are so high, new doctors are leaving. In three years, Massachusetts General Hospital hasn't kept one of the 13 anesthesiologists it trains each year.

Mr. Habush: I must tell you, where doctors are leaving the profession it's a good

class. No one in their right mind would ever agree to have their automobile insurance or homeowner's insurance rated in a class that small. There's no way to spread the cost of claims.

In Wisconsin, for instance, if you combine all surgeons in one class, the neurosurgeon's 1985-86 premium drops from \$19,545 to \$9,500, and all the other surgical specialties get a premium increase of just 200 bucks. But the AMA and other medical groups aren't lobbying state governments and Washington to change insurance practices, because nonspecialists—the majority of their members—would holler. They don't want to be lumped with the high-risk guys.

Dr. Todd: All of a sudden, the lawyers are insurance experts. You know, you've got 35 doctor-owned insurance companies. If they could find a way to cut the cost, they would have done it. First of all, state legislatures don't change insurance practices; state commissioners do.

We have looked at rate differentials, and there is no question it does cause political problems for us with our members. It would be the easiest thing in the world if you don't want people responsible for their acts, if you just want to solve the dollars-and-cents issue.

But let's talk about what we are doing. We are educating the doctor; we've had meetings with the Justice Department and Federal Trade Commission to achieve immunity for peer-review activities. We are pressing for a bill in Congress to require reporting of malpractice claims to a central agency so those doctors can be tracked. We're looking to put a limit of \$250,000 on awards for pain and suffering, beyond medical costs and lost wages. We want payments spread over a period of time instead of lump sums.

Mr. Habush: That's not tort (judicial-system) reform; it's tort deform, taking rights away from victims. When a jury makes a judgment, that's to compensate someone who's been victimized by physicians or hospitals.

Dr. Todd: I resent using inflammatory terms like "victimized." We're not asking to limit whatever it takes to maintain support, rehabilitate or treat. But pain-and-suffering awards can be limited, and where it's been done state courts have held it constitutional.

Mr. Habush: You also want to limit lawyers' contingency fees (the portion of a settlement, sometimes as high as 40%, paid to the attorney). But an article in a doctors' magazine says those states that limited fees have seen an upsurge in suits and award sizes.

Dr. Todd: We're saying (contingency fees) raise the costs (of insurance). In New York City, one law firm alone in a recent year made \$11 million in contingency fees.

Mr. Habush: Well, they're not in the operating room, hurting people.

Dr. Todd: They're hurting all society, if you want my opinion.

Mr. Habush: It isn't the solution. Doctors must insist on a change in insurance practices. We have to help them get immunity for better peer review, and, yes, we have to help doctors explain to the public that not all bad results are malpractice. But these joint efforts can't be done as long as we're hollering at each other.

Dr. Todd: Sure, but it's an absolute one-way street. We're the ones who have to change, while the bar refuses to admit there might be a scintilla of something wrong within the judicial system. If something's not done there, I think the situation is going to roll out of control until the insurance mechanism crashes, and the federal government is going to step in and do something neither of us is going to be happy with.

In Canada, Different Legal And Popular Views Prevail

By PEGGY BERKOWITZ

Staff Reporter of THE WALL STREET JOURNAL

When it comes to medical malpractice, Canada's common-law system has almost all the features the American Medical Association is urging in the U.S. as a way to ease doctors' legal and insurance woes.

Pain-and-suffering awards are limited by Canadian Supreme Court rulings to about \$128,000. Contingency fees are banned in Ontario and restricted in several other provinces. Punitive damages are seldom awarded in personal-injury cases, and judges rarely permit jury trials of civil suits. And marginal and frivolous actions are discouraged by the possibility that the loser may have to pay up to two-thirds of the winner's court costs.

Largely because of such curbs, malpractice awards and out-of-court settlements are sharply lower in Canada, totaling only \$10 million in 1984—less than some jury awards to individual plaintiffs in the U.S. Malpractice insurance, in turn, costs significantly less. Even high-risk specialists like obstetricians and neurosurgeons will generally pay only \$3,500 for protection this year; many of their U.S. counterparts will pay \$90,000 or more.

But Canadians also have a set of attitudes toward both medicine and law, and a form of malpractice protection for doctors, that would be difficult to transplant to another country. They are only about one-fifth as likely as Americans to sue their doctors. There is no significant patient-rights movement, no vigorous lobby to change the legal system and little public complaint even from plaintiffs' lawyers.

Oversize Awards

Many Canadian lawyers, for instance, believe that settlements in the U.S. have grown unnecessarily large. "Awards for every type of personal injury are too high in the U.S. and aren't realistic," says Jacques Nols, a Montreal defense lawyer.

Moreover, while some feel that lawsuits can be a beneficial corrective in cases of negligence, many Canadian lawyers and doctors agree that limiting the size of settlements has no effect on the quality of medical care.

The "primary factor" controlling the medical practice, says Justice Allen M. Linden, who heads Canada's Law Reform Commission, "is the human desire to do a good job. Tort law is one factor, but I can't see whether the award is \$100,000 or \$200,000 or \$300,000 that it makes a heck of a lot of difference."

Adds Mr. Nols: "I simply don't believe a doctor will be sloppier because he knows there's a cap on awards." A number of Canadian lawyers, though, like their U.S. colleagues, believe the cap is unfair to the patient. "It hurts the plaintiff, there's no question about it," says Gordon Kugler, a Montreal lawyer.

For their part, Canadian patients "are perhaps more trusting," says Marc Goldberg, a Florida ophthalmologist who has practiced in both countries. They also pay little or nothing for medical care because of government health insurance. Frances Miller, a Boston University law professor, says this makes them less vengeful when a treatment goes wrong. "One factor, when you decide whether to sue," she explains, "is how much you're out of pocket."

When malpractice suits do arise, many doctors benefit from the Canadian Medical Protective Association. About 85% of physicians belong to the group, which provides

AWARDS for every type of personal injury are too high in the U.S. and aren't realistic,' says a Montreal defense lawyer.

legal defense and pays malpractice claims and settlements, but technically isn't an insurance company.

The 85-year-old association widely publicizes its intention to defend any suit in which it believes a doctor wasn't negligent. "They'll spend \$15,000 to fight a \$15,000 action," says Alan Lenczner, an attorney with McCarthy & McCarthy, a Toronto law firm whose clients include CMPA.

Lower Rates

Members will pay annual fees this year of \$288 to \$3,500, depending on their specialties. A large U.S. malpractice insurer, St. Paul Fire & Marine Insurance Co., says its typical premiums range from \$1,365 for an Arkansas general practitioner to \$106,508 for a Miami neurosurgeon.

Stuart Lee, CMPA's associate secretary treasurer, says it would be hard now for American doctors to contribute enough capital to form a similar group.

While conditions are still comparably favorable, some doctors and lawyers fear that Canadians are beginning to emulate their more litigious American neighbors. In 1984, the number of malpractice suits and the amount paid to claimants were both about twice as great as they were five years earlier. And CMPA's fees for some doctors have risen 1,000% in three years.

Ellen Picard, a professor of law and medicine at the University of Alberta, attributes this partly to the growing number of Canadian lawyers specializing in liability cases and partly to media reports of large awards in the U.S. She adds that, as a result, Canadian doctors have begun to react like American doctors, practicing more defensively.

However, she says, "I think Canada need not be headed the way of the U.S. (because of) the Canadian nature and the different practices of law and medicine."

Scope of Nation's Liability Verdicts

By GARY COHN

Staff Reporter of THE WALL STREET JOURNAL

MIAMI—More than two years after he sold his fashionable Bay Harbor Islands restaurant, Denis Rety's case finally went to court. He claimed that a letter labeling him an anti-Semite, widely circulated by a local businessman in 1982, had angered the Jewish community and triggered a boycott of his restaurant, eventually forcing him to file for bankruptcy.

On Feb. 20, after a nine-day trial and just over an hour of deliberation, a Dade County Circuit Court jury agreed to award Mr. Rety a total of \$22.5 million—more than even Mr. Rety's attorneys had been seeking. The presiding judge in the case, Jack Turner, subsequently reduced the award to slightly more than \$3 million. "It was so excessive as to shock the conscience of the court," he says.

The Rety case made front-page news here because of the circumstances of the disputes and the exceptionally high preliminary award. But multimillion-dollar verdicts and settlements aren't unusual in Florida. Local juries have increasingly been handing down seven-figure awards in a wide variety of lawsuits, ranging from death and disability cases to one involving allegations of psychiatric malpractice.

Certainly Florida isn't the only place where multimillion-dollar verdicts are escalating. But a look at the situation here does give another perspective on the current national controversy over such awards and their impact on the insurance industry. While a lot of attention has been focused recently on extreme cases—for example, last month's award by a Philadelphia jury of \$988,000 to a woman who said a CAT scan had caused her to lose her psychic powers—it is perhaps more significant that big awards have become almost routine in certain parts of the U.S.

Florida's first seven-figure jury award is believed to have been granted in 1967. From then through 1979 there were 55 such verdicts, an average of less than five a year. By contrast, there were 187 from 1980 through Dec. 3, 1985—an average of more than 30 a year. Florida now ranks third (behind much more populous New York and California) in the total number of multimillion-dollar awards, according to Jury Verdict Research Inc. in Solon, Ohio. South Florida's metropolitan areas account for a large percentage of these.

Why such a high concentration of large awards? Lawyers, judges and others familiar with the legal system say that South Florida has one of the nation's most aggressive plaintiff bars, and that the state's appellate courts have generally shown a predisposition to let high awards stand. Moreover, says Judge Turner, local juries have become so "notorious" for their awards that plaintiff attorneys across the country will often try to file or transfer their cases here. In Dade County, he notes,

It's as if "multimillion-dollar verdicts are the norm rather than the exception."

Russell Moran, the editor of the New York Jury Verdict Reporter, says that the large numbers of minorities and transplanted retirees in South Florida may account in part for the size of the awards. "Anytime you have a population that is heavily underprivileged," he explains, "the awards tend to be a lot higher." He adds that people who used to live in major metropolitan areas where big awards have been common for some time may be more inclined to grant such awards themselves. As jurors, they don't "fall off their seats" when an attorney asks for more than \$1 million in damages, he says.

The following is a selected list of seven-figure awards and settlements in Florida

WHILE attention has been focused on extreme cases, it is perhaps more significant that big awards have become almost routine in some places.

over the past six months. Many are on appeal and could be reduced or reversed.

Nov. 1: The family of a 37-year-old Jacksonville woman who was killed when a tractor-trailer jackknifed and crossed a highway median is awarded \$2.5 million. The plaintiff's attorney says that he offered to settle the case for much less but that the insurance company rejected his offer, preferring to go to court.

Nov. 5: The Metro-Dade Commission, Dade County's governing body, unanimously approves a \$1.9 million settlement with the 16-year-old son of a couple killed when their car was hit broadside by a police car going 70 miles per hour in a 45-mile-per-hour zone.

Nov. 18: In a medical-malpractice case, a Pensacola woman settles for \$3.5 million. She had claimed that her child, now 3½, was born with profound brain damage because of obstetrical malpractice, poor training of residents and lack of supervision of residents at her hospital.

Dec. 4: A 24-year-old woman settles for \$4.2 million after an accident in which her car was hit from behind at a red light, leaving her paralyzed below the waist.

Dec. 9: A former National Aeronautics and Space Administration engineer wins \$5 million from a Dade County hospital after surgery to correct a congenital brain malformation that had begun to affect his walking. The 31-year-old engineer was in a coma for two weeks after the operation and was completely paralyzed when he came to. The jury forewoman tells the Miami Herald that her colleagues figured

"that's what he's going to need to make life comfortable." The award was subsequently reduced to \$4 million.

Dec. 12: The wife and four children of a 26-year-old construction worker who fell 24 stories to his death on a worksite accident won \$4.5 million. The jury agrees that the company that owned the apartment complex under construction had rushed the building subcontractor and otherwise caused unsafe conditions.

Dec. 17: A 36-year-old real estate saleswoman wins \$1.3 million in a medical-malpractice case after an operation that left her breasts severely damaged.

Jan. 9: The family and estate of a man killed when the pistol of another man accidentally went off during a struggle over ownership of work tools are awarded \$1 million in a wrongful-death judgment.

Feb. 7: A 23-year-old welder wins \$5 million for permanent injuries suffered when hundreds of pounds of roofing shingles fell on him at work. During a week-long trial, the welder had testified that his injuries would prevent him from returning to manual labor, thus causing significant loss of future earnings.

Feb. 21: An Orlando jury awards \$5 million to a woman who claimed malpractice on the part of her psychiatrist after she attempted suicide by setting herself on fire. The presiding judge subsequently says he might overturn the verdict because of allegations of jury tampering.

March 14: A federal judge rules that former Metro-Dade police officer should pay \$1.3 million to the family and estate of a man he shot three years earlier. The defendant is currently appealing a manslaughter conviction stemming from the shooting.

March 17: A woman whose father was run over and killed while working at a telephone-company repair site wins a \$4.6 million jury award. At the time of the accident, the driver had twice the legal standard for drunkenness; he has pleaded guilty to felony manslaughter charges stemming from the accident.

March 26: The family of a woman who died seven years ago after gynecological surgery wins \$4.3 million from a local hospital and anesthesiologist. In 1980, a jury had found the hospital and doctor liable after a two-week trial. But the judge at the time ordered a new trial on the issue of damages because he felt the jury was confused over how to award them.

April 1: A 30-year-old woman paralyzed when the Jeep she was riding in rolled over after crashing with another vehicle wins \$19.5 million—\$10 million of it in punitive damages from American Motors Corp., the Jeep's manufacturer. The jury blamed AMC for failing to warn the public of an alleged defective design. After trial, the jury's forewoman was quoted as saying: "The only way you can tell a company you don't like what they are doing is through high awards."

ALASKA CLIPPING
SERVICE

Anchorage Times
Anchorage, Al

APR 21 1980

Tort reform's better than nothing

Dear Editor:

May I respond to L. Ames Luce's April 4 opinion on tort reform? This is not an apology for the foibles of the insurance industry; it is just that Luce befogs the issue.

Why do trial attorneys invest so much time in developing profiles of favorable and unfavorable prospective jurors? Why do I read in this very newspaper an article about some acting school back East that specializes in teaching trial attorneys to be better actors? All this seems to be in aid of their doing the best possible job for their client.

But when examined in sober perspective, doesn't this smack of something that at this moment cannot put a name to? What does this have to do with the hallowed concepts of a "fair" trial and "blind justice?" Why does even the Chief Justice of the United States Supreme Court criticize the legal excesses that have developed in the past decade?

Many outside of the insurance industry have come to realize the tort system of justice is out of control. Many citizens, business and public entities have already lost or are in serious danger of losing their rights. Luce's rhetoric about the "systematic and devastating assault upon the rights of the citizens of this state" is, I suspect, a camouflaged concern about the possible

Letters to the editor

loss of rights of Alaskan trial lawyers.

I believe the so-called tort reform proposals to be bandages applied to an already sick and dying body. I have long maintained the only lasting and effective solution to be the radical step of removing the insurance function entirely from the tort system; replacement being a system of binding arbitration. But, dear public out there, tort reform is better than nothing and I strongly recommend you express your thoughts to your legislators.

Peter C. Huycke
508 W. Sixth Ave.

Editorial Opinion and Comment of

FAIRBANKS

Daily News - Miner

"Independent in All Things Neutral in Name"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Tort reform needed

The House Judiciary Committee is expected to complete work this week on a measure that should be adopted this session; a comprehensive package of reforms to liability issues. The Senate Judiciary Committee passed its version of the legislation on to the Finance Committee last week.

As Alaskans have seen our insurance premiums skyrocket, we've joined the interest nationwide in accomplishing reforms that will change the way liability issues are tried and decided, addressing the inequities in the way liability lawsuits are handled. The issue has come to be known as tort reform, after the legal term tort, meaning a wrongful act.

The Citizens Coalition for Tort Reform explains that skyrocketing jury awards in liability lawsuits is a critical factor in the cost of insurance. For example, the coalition says, about 20 percent of the price of a ladder represents insurance costs.

The coalition is backing a comprehensive approach to tort reform. Among the provisions it supports:

- Limit noneconomic awards to \$250,000.
- Structure periodic payments in cases where the award exceeds \$50,000.
- Set a sliding scale for contingent fees that encourage early resolution of claims while providing fair compensation for attorneys.
- Require those filing personal injury complaints to swear under oath that they believe all claims are true.
- Require courts to direct damage payments proportionate to a defendant's degree of fault.
- Instruct juries to itemize award verdicts.
- Require that punitive damages—which punish defendants for negligence beyond their liability for actual damages—are paid to the state of Alaska, that is, the whole society.
- In instances of wrongful death, allow for death benefits only to spouses, children or other current economic dependents.
- Require that a lawsuit be filed within two years of the date of the act or omission on which the complaint is based.
- Encourage settlements that avoid costly trials through arbitration of claims up to \$50,000 before turning to the court.

Backers of the comprehensive approach warn that it won't bring down insurance premiums—that scenario is too complex for a direct cause-and-effect impact. However, they believe it will stabilize costs and make it possible for many businesses and governmental units to obtain insurance they've been forced to do without. They point out that in the 10 years since California adopted tort reform legislation and even in the presence of concerted legal challenges, medical malpractice insurance costs in that state rose at half the rate of the rest of the nation. In California, the average increase was 150 percent; nationwide it was 300 percent.

In Alaska, they believe adoption of a comprehensive tort reform package will have positive effects. The House is now considering HB532 and the Senate is considering SB377. Depending on what changes each house made, a conference committee may be necessary before a final measure is adopted.

It's rare to see legislation with the diverse backing that this package has. It's supported by groups and individuals ranging from day care providers to engineers to truckers to dentists and doctors. The widespread support is a reflection of the importance tort reform has to Alaskans. Its passage should remain a top priority of legislators.

Filings affected

Marquardt requests insurers to adjust rates to new law

OLYMPIA — Washington Insurance Commissioner Dick Marquardt is telling insurance companies writing liability insurance in Washington that new rate filings must take into consideration newly-adopted changes in the state's tort laws. Marquardt said that since the governor signed the tort reform bill, "It's a new ball game, and the ball is in the companies' court."

All rate changes asked for so far by the companies have been based on their expected losses under the old law, Marquardt said. "The changes in the law will affect the companies' predictions of future losses. And if the outlook for losses is different, the rates should be re-figured. They just don't fit," he contended.

After the legislature passed the bill, the companies were notified that if the governor signed it, pending or future rate increases would have to be recalculated. "We've been denying rates change requests because if we simply delayed action on them, they could take effect automatically under present law," Marquardt said.

Marquardt warned there may be additional delays in rate approvals because of changes required by the new laws. "The tort law changes create considerable extra work for this office," Marquardt said, "and we don't have a casualty actuary — a specialist in figuring what the companies should be charging or laying away for future claims." Marquardt said that due to the complex nature of the work, securing the services of a qualified actuary and getting the necessary information in hand could take some time.

"The new law applies to all lawsuits filed on or after August 1 of this year," Marquardt said. "The companies are now writing insurance to protect policyholders against lawsuits which will be decided in court on the basis of the new law."

Marquardt said he recognizes the difficulties some companies will face in meeting the new requirements, but he emphasized that if lower costs are going to result from the recent tort law changes, then consumers should be given the benefits of those changes.



Insurance
Information
Institute

William Street
New York, N.Y. 10038
(212) 669-9200

The EXECUTIVE Letter

RECEIVED
DIV. OF INSURANCE

MAR 31 AM '86
ALASKA DEPT. OF
COMMERCE & ECONOMIC
DEVELOPMENT

March 3, 1986

Vol. 18 No. 42

ADMINISTRATION GIVES A PREVIEW OF ITS TORT REFORM VIEWS

Assistant Attorney General Richard Willard last week gave the Federal Bar Association a preview of the Reagan administration's review of tort law problems. Willard heads the interagency task force which is producing a series of reports, the first of which is due in mid-March.

He said the current liability insurance crisis is due to two factors: insurers' cash-flow underwriting in the past and the "explosion of civil liability." The latter is due to the combined effects of three changes in the law: the trend to no-fault liability; the erosion of the doctrine of causation, including the rise of joint liability; and sharp increases in the size of damage awards. He warned that "tort liability cannot be a constantly expanding concept" and indicated that the Justice Department will recommend efforts to change overall public attitudes rather than pursue specific tort reform proposals.

The task force is not likely to recommend indemnification of federal contractors, because that would merely transfer the cost rather than solve the tort law problem, Willard said. It is looking at the liability problems of federal government employees and also the impact of federal civil rights laws on local government liability. While endorsing federal product liability law in concept, the administration is not embracing any specific legislation at this point.

PRODUCT LIABILITY LEGISLATION DEBATED

Insurers, consumer groups, manufacturers and attorneys last week presented to the Senate Commerce Committee their views on new product liability legislation. The bill (S.1999), introduced by Committee Chairman Sen. John C. Danforth (R-MO), will establish a uniform federal liability standard which would incorporate a no-fault victim compensation system. Danforth admitted that his bill is "not perfect and leaves room for improvement." Consumer advocates said they would favor an incentive system which would award those manufacturers who work out a prompt settlement with victims and punish those who carry on with unreasonable litigation.

Attorneys, who have been at odds with Congress over federal product liability legislation, remained firmly opposed to any changes in the current system. Manufacturers, while acknowledging their reservations about the bill, generally favor the idea of a uniform law in the hopes it would improve the affordability and availability of liability insurance. Les Cheek of Crum & Forster offered specific suggestions for changes in the legislation, indicating that the standard of liability in the alternative claims mechanism was unworkable.

HIGH COURT LETS CITIES OFF THE ANTITRUST HOOK

The Supreme Court last week eased the threat of antitrust lawsuits against local governments that regulate economic activities. In an 8-to-1 decision, the Court said municipal rent control laws do not violate federal antitrust statutes. By extension, the ruling also validates local zoning laws, taxicab regulation, cable TV franchises and other rules that were under legal challenge. The decision clarifies a 1978 case in which the Court ruled that local governments could be held liable under antitrust law for economic regulation that exceeded authority granted to them by the state. The latest decision came in Fisher vs. City of Berkeley (Docket No. 84-1538).

HAZARDOUS WASTE OPERATORS DEBATE INSURANCE DEADLINE CHANGE

Representatives of the hazardous waste management industry last week presented opposing views on legislation (HR.3917) which would extend the period allowed for compliance with federal financial responsibility requirements. Testifying before the Senate Environmental Pollution Subcommittee, small hazardous waste management companies said the unavailability of adequate liability insurance made it impossible to meet the Nov. 1, 1985, deadline. Extending the deadline, they added, would allow them to develop alternatives to commercial insurance. Technically, those not in compliance are operating illegally.

Representatives of larger companies noted, however, that the insurance problem will not disappear in a year and that granting an extension will not help resolve the problems of those who are unable to comply with financial responsibility requirements. They said an extension of the deadline would be unfair to those companies which did meet the compliance deadline. The bill was passed by the House of Representatives last December and awaits action by the Senate.

PENNSYLVANIA GOVERNOR VETOES BILL TO RETAIN GENDER-BASED RATING

Insurers are considering their options following Pennsylvania Gov. Dick Thornburgh's veto of a bill (HB.452) which would have retained gender-based rating for auto insurance (see ExL 2/18/86). The governor said he could not support legislation which affords less protection against unfair sexual classifications than is (legally) afforded against unfair classifications

based upon race, religion or national origin." He said what should be identified are underlying rating factors which better reflect actual variations in driving and safety records of many males and females. "While such factors might coincide with the sex of the insured, rates should be based on those underlying factors and not per se on sex."

Since the bill was passed by more than a two-thirds margin in both houses and a veto can be overturned by such a majority, insurers may lobby for that to be done. Another possibility is lobbying for Senate concurrence with the House-passed bill (SB.1037), which would, among other things, postpone implementation of unisex rating for 18 months while the State Government Commission -- a legislative body -- develops a plan for implementation. Some insurers believe the commission might find that the problems of unisex outweigh the supposed benefits, resulting in a commission recommendation for a modification of the unisex directive. The governor said he could support legislation to delay unisex implementation while a "legislative-executive inquiry" seeks alternative methods for determining auto insurance rates, but his veto message seems to flatly rule out use of sex as a rating classification.

COOK COUNTY SUIT AGAINST ASBESTOS MANUFACTURERS DISMISSED

A Cook County Circuit Court (Chicago) judge has dismissed lawsuits filed by 34 school districts in Illinois against dozens of asbestos manufacturers seeking to force the companies to pay the cost of removing the substance from school buildings. Judge Richard Curry rejected the suits (Cook County Circuit Court 85-CH-811, 812 and 3905) ruling the school districts, including the Chicago school system, failed to prove the companies knew of the dangers of the substance when they sold it to the schools. The cost of removing the asbestos, he ruled, should be paid by the school districts or the state under the Illinois Asbestos Abatement Act. Only about \$3 million has been appropriated for the act, however, significantly less than the \$55 million expected cost for removal of the asbestos from the schools. The suits were filed last year against 78 firms that mine, manufacture, sell and install the material. An appeal is expected.

INSURERS AND INDUSTRY CRITICS CLASH AT ICAN MEETING

Industry critics such as Ralph Nader, Robert Hunter and several trial lawyers clashed with insurance industry representatives in Los Angeles Feb. 21 and 22 at a meeting of the Insurance Consumer Action Network (ICAN). Most of the approximately 100 persons attending were plaintiff attorneys, with representatives from government and insurance companies and some consumers also present. Insurance Information Institute spokespersons represented the industry on two panels: one dealing with insurance company profits, and another dealing with auto insurance questions including territorial rating and compulsory insurance. ICAN, which bills itself as "a network of consumer insurance

advocates ... dedicated to defining and protecting insurance consumers' rights," received its start-up funds from a past president of the California Trial Lawyers Association.

TRIAL LAWYER TOURING COUNTRY TO PROMOTE BOOK

William M. Shernoff, a past president of the California Trial Lawyers Association and a force behind the Insurance Consumer Action Network (see item above), is on a 15-day tour promoting through television appearances his new book, "Payment Refused." Published by Richardson & Steirman of New York, the book reviews in detail "bad faith" claims brought by Shernoff involving all lines of insurance. The Insurance Information Institute and the American Council of Life Insurance are arranging for industry representatives to appear with Shernoff, as was the case last week in New York City where he kicked off his tour with appearances on two stations.

MICHIGAN'S AUTO LAWS GET MODIFIED

Efforts to modify the auto insurance provisions of Michigan's Essential Insurance Act (EIA) appear headed for success. Unlike last year's package, the 1986 version apparently has Gov. James Blanchard's support. The major thrust of the reform measure is to relieve the onerous rating provisions of the old law, allowing rates outside of Detroit to be set competitively while retaining some restrictions on Detroit rates.

The law also mandates a 20% discount for personal injury protection rates after Feb. 1, 1987, to reflect the state's seat belt usage law. Other sections of the proposed law deal with auto theft, including the establishment of an auto theft authority.

R.I. GOVERNOR NAMES INDUSTRY PANEL ON AVAILABILITY

Rhode Island Gov. Edward D. DePrete has established a 25-member Governor's Insurance Council, made up of insurance industry executives, to address problems of availability and affordability in the current insurance market. The governor, a former insurance agent, has targeted three main purposes for the Council: to ensure that the needs of the insurance consumer are being met; to establish communications between the insurance industry and state government; and to retain existing jobs as well as to create new employment.

VERMONT BANKING AND INSURANCE COMMISSIONER NAMED

Vermont Gov. Madeleine Kunin has named Thomas P. Menson, former executive vice president and chief operating officer of the Bank of Vermont, as the new banking and insurance commissioner. He succeeds David Bard, who resigned to become president of the New England IBM Credit Union.

Carl C.A. Lee, Editor



BUSINESS LIABILITY SURVEY

Your response to this survey will help THE UNITED STATES CHAMBER OF COMMERCE—the world's largest federation of businesses, chambers of commerce, and trade and professional associations—in its comprehensive LIABILITY CRISIS PROJECT. The Chamber has launched the Project to study and help resolve the liability crisis to help thousands of businesses like your own that are confronted by soaring liability costs.

1. What is your business or profession? RETAIL AND WHOLESALE PETROLEUM SALES

2. How many people do you employ? 65

3. Have you been able to renew or obtain the liability insurance you need?

Yes.

No.

4. Have your premiums risen?

Yes.

No.

If yes, how much? (Check only one.)

10-50%

51-100%

101-500%

More than 500%

5. What effect has this increase had on your firm? PLASTIC - MAJOR IMPACT ON EARNINGS

6. What kind(s) of liability coverage present the greatest problem for you? (Check all that apply.)

General (Casualty).

Transportation.

Environmental (including Hazardous Waste).

Officers and Directors.

Professional (Architects, Engineers, CPAs, etc.).

Product.

Medical Malpractice.

OTHER (Please specify) UMBRELLA

7. What alternatives are you pursuing? (Check all that apply.)

Dropping products or services.

Self-insurance. TO A DEGREE

Going out of business.

Going bare (operating without liability insurance).

LOOKING FOR NEW CARRIER

8. Have you contacted your state insurance commissioner?

Yes.

No.

9. In your opinion, why are the number of liability suits and damage awards increasing? (Check all that apply.)

The professional and business community is less competent.

The civil justice system encourages frivolous claims. ATTORNEYS & COURTS

Liability is based on the ability to pay, not wrongdoing. DEEP POCKETS

Consumers have unrealistic expectations.

OTHER (Please specify) INSURANCE COMPANIES

RAISED RATES UNREALISTICALLY

10. Which of the following approaches to this problem should the U.S. Chamber pursue? (Check all that apply):

Civil justice reform. CONTINGENCY FEE BASIS CONTROLLED - MAXIMUMS

Federal product liability reform.

Tort reform.

Changes in insurance industry law.

All of the above.

OTHER (Please specify) _____

No action.

11. In relation to economic costs arising from injury, the size of awards is: (Check only one.)

Too low.

About right.

Excessive.

12. Do you see the problem getting better or worse for you? (Check only one.)

Better.

Worse.

13. The number and outcome of liability claims against your firm are: (Check only one.)

Predictable.

Unpredictable. NONE IN RECENT YEARS

OPTIONAL: (If the results of this survey are published, they will be published in the aggregate. Your response will not be made public.)

Name: R. G. BIRKINSHAW

Title: GENERAL MANAGER MARKETING

Company: TOPAZ OIL CORPORATION, INC.

Address: P.O. BOX 10-1619

ANCHORAGE, AK 99510

Telephone: (907) 279-8555

Small Firms And
Social Security

Which Business
Ads Are Best?

John Naisbitt On The
Future Of Franchising

Nation's Business®

The liability insurance crisis is the most serious threat to business today.

Companies risk bankruptcy by paying soaring premiums or going without insurance. The results include lost jobs and higher prices.

Experts blame a litigation explosion in which there is a private civil lawsuit for every 15 Americans. Many of those suing count on a trend of fat awards that assume wrongdoing

by business. Page 22.

Liability: Trying Times

By Harry Bacas

An overweight man with a history of coronary disease has a heart attack while trying to start a lawn mower. In a suit against the manufacturer, he argues that pulling the starter rope required excessive effort. A jury awards him \$1 million in damages—plus interest.

A drug dosage administered by hospital personnel to a child who then suffers brain damage exceeds the manufacturer's specifications. The child's parents nevertheless sue the manufacturer—and are awarded \$22 million.

A motorcyclist, injured when he runs off the road into a parked truck, sues the truck's owner. A mediation board, citing the motorcyclist's own role in the accident, limits a damage award to \$20,000. The case goes to a jury, which increases the award to \$4.2 million.

Those examples of recent damage awards are not isolated instances but are part of a cycle that is pulling more and more businesses, particularly smaller and med am-size ones, into what has become one of the most serious problems facing business today—the liability-insurance crisis.

The crisis begins with damage awards in cases that are frequently based on thin legal grounds. It moves to the insurance companies that raise premiums—or limit or deny coverage—to stem losses caused by the swollen awards. It ends up with the businesses that face massive cost increases or are unable to obtain coverage at any price.

For that reason, reform of the civil justice system is a key goal of business organizations that want to ease the liability crisis. A second goal is adoption of a federal product-liability law to replace the present patchwork of individual state laws that require manufacturers and retailers to comply with many different and often conflicting statutes or face lawsuits.

In discussing the overall liability cri-

"We are reaching the point where we can no longer afford product liability insurance," says Maynard B. Weaver, president of an Omaha company that

makes man-lift cranes. He saw his insurance payments rise 500 percent in one year and his coverage limits go down.



Jack Hayes, a free-lance writer based in Roswell, Ga., also contributed to this article.

Huge jury awards and a patchwork of laws are principal reasons for a scary insurance crisis into which business has been plunged.

sis at a recent congressional hearing, the U.S. Chamber of Commerce declared:

"A preliminary survey . . . indicates that businesses in every region of the country have experienced extreme hardship. In fact, there have been business closures due to the dramatic increase in premium payments. Each day, we learn firsthand of another segment of our economy which has been affected by this crisis. There seem to be no boundaries."

Testifying for the business organization, William C. Wyer, president of the Delaware State Chamber of Commerce, added: "Small businesses are bearing the brunt of the present crisis."

Evidence from businesses across the country supports that statement:

Maynard B. Weaver, president of Elliott Equipment Corporation, an Omaha manufacturer of man-lift cranes, reports that his liability insurance payments are \$18,000 a month, up 500 percent from 1984, though his coverage has been reduced. "We are reaching the point where we can no longer afford product liability insurance," he says.

The Amigo Company, a family-owned manufacturer of motorized wheelchairs, has never had a successful insurance claim brought against it. But General Manager Alden Thieme says that, because of the insurance crisis, he does not know whether the company can stay in business.

Amigo, which has offices in Albuquerque, N.M., and a factory in Bridgeport, Mich., was told last year that its insurance premiums were being raised from \$30,000 to \$150,000.

Though Thieme obtained coverage from a Bahamas broker for \$45,000, Amigo expects its 1986 liability insurance costs to be \$100,000 to \$120,000. "The liability crisis is getting completely out of hand," he says. His company experienced the problem firsthand when it had to face a type of lawsuit becoming increasingly common—those in which the defendant is chosen on the basis not of fault, but ability to pay.

Alden Thieme manages a company that manufactures motorized wheelchairs in Bridgeport, Mich. Although it has never lost a liability

suit, its insurance premiums are skyrocketing. Thieme blames a legal system that encourages litigation and allows huge jury awards.

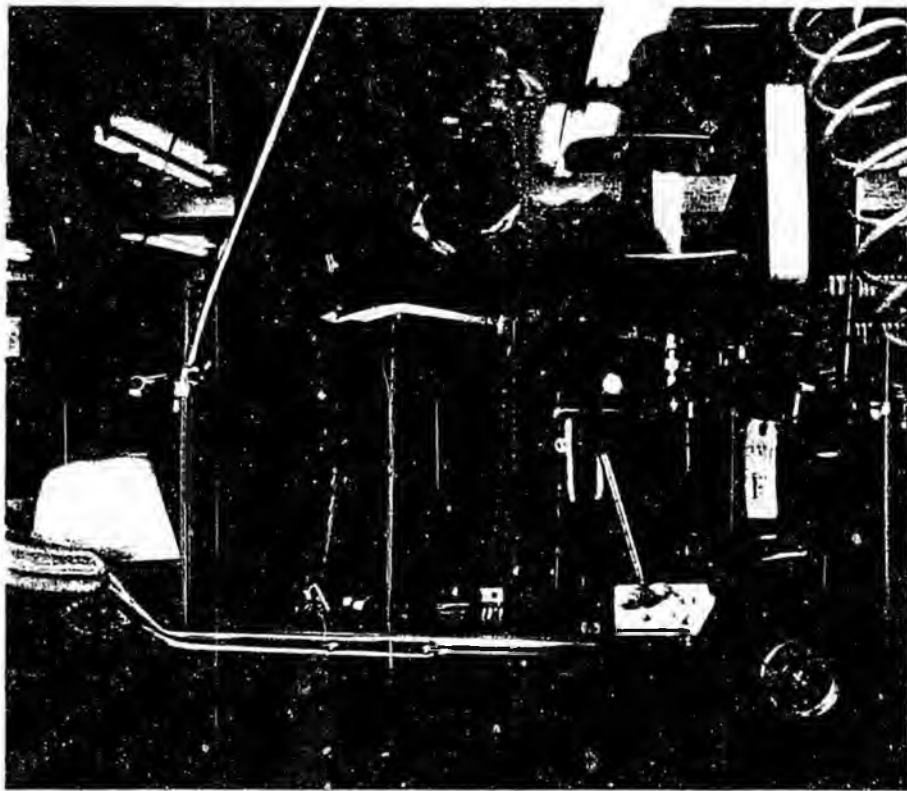


PHOTO: CURTIS LEECE

Thieme recalls that a woman in a wheelchair, accompanied by her husband, was killed when struck by a car that had run a red light on a California street. "The driver had no insurance, so the husband sued us," Thieme says. "The case dragged on for two years before we won. But it cost us \$170,000 to defend ourselves."

The company, founded by Thieme's brother, Allen, has 120 employees, does \$10 million a year in sales and is the leader in its field. Allen Thieme was named national Small Business Person of the Year in 1981 for successfully launching the firm. His brother and general manager now says that if in-

surance premiums continue to soar, "it will wipe us out. If we keep adding to our costs, we will price ourselves out of the market."

Vernon Hayes, president of Hayes and Stolz, which makes grain-processing machinery in Fort Worth, Tex., operated without insurance for several weeks last year after his primary policy was canceled. "What do you do?" he asks. "Everybody in America can't shut down. And it's hard to put 70 people out of work." By paying an 800 percent premium increase, he finally obtained a new policy, but it did not provide as much coverage as the canceled policy.

Dick Taylor, a Salt Lake City insur-

COVER STORY

Liability: Trying Times

David and Ruth Hampe—paying bills for their Somerset, Pa., auto salvage yard—needed a bank loan after their liability insurance premium nearly doubled.



PHOTO: JOHN JOHNSON—BLACK STAR

ance agent who is also current president of the Independent Insurance Agents of America, says, "My customers think I'm nuts suggesting they are lucky to renew at double last year's premiums."

It is becoming more and more apparent, he says, that "price is no longer the issue. It's a question of availability, of just finding the coverage."

Joseph Prendergast, American Ski Federation president, says ski resort operators are facing premium increases ranging to 500 percent. He adds that companies that sell roller skis—which have wheels and are used on nonsnow surfaces—are unable to obtain any coverage.

David Hampe had filed no claims under the liability insurance on the wrecker and dump truck he uses in his auto salvage business in Somerset, Pa., but recently received notice his premiums had nearly doubled. He did not have the cash needed to pay the bill and took out a bank loan so he could.

Edward Cone, chief executive officer of Graco Children's Products, Elverson, Pa., says the deductible on his basic-

coverage policy went from \$25,000 to \$150,000 in 1985, and he had to canvass five sources to get the \$500,000 coverage he needed before anyone would sell him an excess risk policy. And that provided one fourth the coverage at a cost five times greater than his previous policy. "We have not had any large claims," he says. "Our claims experience does not nearly justify those rates. But, because of the cost, we will have to evaluate our product lines, and we may get out of some." One of those lines is children's car seats.

All 50 states require use of special car seats for tots, Cone notes. "They have to meet federal standards," he says. "It is not a product that is likely to be used for any other purpose than the one it's designed for. Yet, in our court system, that won't mean a thing to a jury. They see an injured child, and they say, 'Somebody has to pay.'"

He cites a \$10 million claim against another car-seat manufacturer resulting from an accident in which a passenger not wearing a seat belt was thrown against a baby strapped into a car seat.

Long-range trends, as well as awards

in specific cases, spotlight the connection between the litigation explosion in the nation's courts and the insurance crisis.

In 1984 there was one private, civil lawsuit for every 15 Americans. The number of personal injury cases with awards of \$1 million or more is now more than 13 times the 1975 total. A record 12 million lawsuits were filed in state courts between 1978 and 1983. The average product liability award has increased from \$345,000 to more than \$1 million in 10 years, and the number of product liability suits filed in federal courts alone has tripled since 1960.

There are three times as many lawyers practicing now as there were in the 1950s, and it costs 37 times more to run the tort system than it did then.

Chief Justice Warren Burger says the American public "has an almost irrational focus—virtually a mania—on litigation as the way to solve all problems."

Richard K. Willard, an assistant U.S. attorney general, asks of the fast-growing insurance crisis that is affecting more and more businesses: "How did we get into this mess?" He continues: "I believe the answer lies in recent legal movements by activist judges and tort lawyers who see no bounds to the ever increasing expansion of tort liability."

The traditional basis of tort liability is fault—one individual's actions have caused harm to another individual, who seeks recompense. But under the current trend, Willard says, tort law is increasingly invoked to punish those who have done nothing wrong but have resources to pay damages.

Rick Berman, executive vice president of Dallas' S&A Restaurant Corporation and chairman of the Liability Crisis Steering Committee recently created by the U.S. Chamber of Commerce to coordinate lobbying and other efforts in behalf of reform, says that curbing tort system abuses "is the main road to solution of this problem."

The Chamber committee, he explains, was established as a catalyst to bring together the many interested groups seeking a solution to the insurance crisis. Among other activities, he points out, the committee operates a clearinghouse "to share information and to inform the public of the dimensions of the liability problem."

And the impact of the problem on the general public is much greater than is generally realized.

Of the 13 U.S. firms making football helmets a few years ago, only three are still in production. The others

dropped out because of insurance costs.

Rick Berman, of Dallas' S&A Restaurant Corporation, heads a business group seeking state changes in the legal tort system and uniform product liability standards.

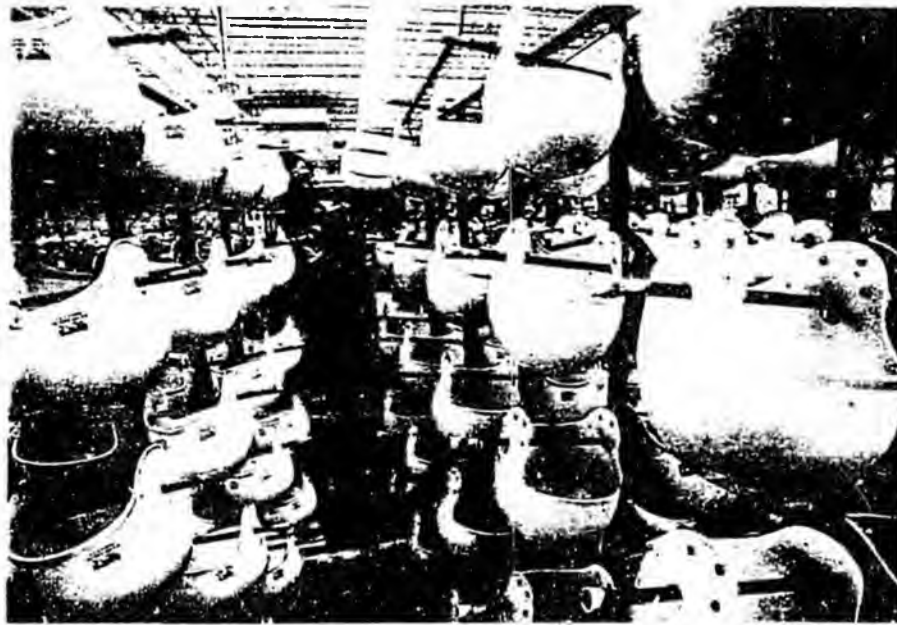


PHOTO: JON RILEY-FOLIO



PHOTO: C. THATCHER

Malpractice awards against physicians reached an average \$950,000 in 1984, and the costs of liability insurance for medical practitioners generally are changing the way many of them approach their patients. The trend to defensive medicine involves additional—and often costly—tests and procedures by physicians concerned that failure to go those extra lengths could lead to allegations of negligence.

But the combination of higher insurance costs and defensive medicine is raising the nation's medical bills an estimated \$2 billion to \$4 billion a year, an expense being felt mainly by employers who provide health insurance to workers.

Consumers can no longer purchase the drug Bendectin, which had been the only safe and effective treatment for persistent nausea in pregnant women. The manufacturer took it off the market when liability insurance reached \$10 million a year, more than 80 percent of annual sales. A nationwide shortage of vaccine to protect children from diphtheria and whooping cough developed when all but one of several companies manufacturing it halted production in the face of mounting liability insurance costs.

Insurance rate boosts are showing up in the price of goods. Twenty percent of the cost of a stepladder now represents the manufacturer's expenses for liability insurance. There is also an effect on employment. Of the 13 U.S. firms making football helmets a few years ago, only three still are. The others dropped out because of insurance costs.

Owners and managers of smaller businesses could face problems beyond the immediate question of insurance coverage, says Jan E. Smith, president of a Bradenton, Fla., business-investment firm. "If banks find a company has lost its liability insurance, they may start asking, 'What about those operating loans we made to that company?' And they may not renew those notes.

Each day, we learn firsthand of another segment of our economy which has been affected. Small businesses are bearing the brunt of this [liability] crisis.

—William C. Wyer, president, Delaware State Chamber of Commerce

Banks may require liability insurance before they will make a loan."

In his testimony to Congress for the U.S. Chamber, William Wyer said: "Perhaps this crisis will reserve ultimately its harshest consequences for American consumers. When obstetricians withdraw from their profession, it is the quality of health care for all of us which suffers. When sporting goods manufacturers go overseas, it is the

American worker who becomes unemployed.

"And when . . . firms announce price increases primarily to cover rising insurance costs, it is all of us who will pay more through higher prices."

The actual and threatened problems of the liability crisis have spurred a wide range of reactions by those most affected—individual business and professional people, their trade organizations, the insurance industry and the legal profession.

These are among steps being taken on the business side:

- Business people in all fields are shopping more aggressively for coverage by obtaining quotes from several brokers. They are also accepting higher deductibles and are self-insuring when they can afford to.

- Many businesses are hiring consultants to conduct risk audits and help them analyze their insurance needs more carefully. Consultants are also showing companies how to minimize exposure to large damage awards by keeping detailed records on product-safety management programs with an eye toward impressing juries if they ever face them.

- Some companies unable to meet massive premium increases or even to obtain coverage are, like Vernon Hayes of the Fort Worth machinery-manufacturing company, taking the ultimate step of "going bare"—operating without liability insurance and hoping for the best.

- Contractors are setting up subsidiaries without assets to work

COVER STORY

Liability: Trying Times

Ski resort operators have more than weather to worry about. They are paying liability insurance premiums

that have increased up to 500 percent in a year.

liability areas like cleanup of hazardous waste and asbestos removal.

- Engineers and architects are writing contracts that require clients to share the risks or indemnify them against claims.

- Organizations are establishing special programs to help member companies and individuals curtail exposure to risk. The American Medical Association, for example, is showing physicians how to avoid or correct situations that might invite lawsuits. The National Restaurant Association is teaching members how to lower their vulnerability to lawsuits stemming from later conduct of customers who have been served drinks.

In addition to such specific steps, there is the drive by many business organizations for long-term reforms in the civil justice system and in basic laws on liability.

The National Association of Independent Insurers, American Insurance Association and Alliance of American Insurers have joined in supporting three tort system reforms they say will improve the affordability and availability of liability insurance:

1. Fair application of the "several liability" doctrine, which assigns damages based on the defendant's determined share of negligence, rather than on ability to pay.

2. Abolition of punitive damages in civil liability litigation on the ground that they excessively drive up settlements and awards.

3. Adoption of "state of the art" rules that will limit product, professional and municipal liability claims to standards prevailing at the time a damaging act takes place, rather than at the time of litigation.

In addition to the Steering Committee, the U.S. Chamber of Commerce is establishing a Blue Ribbon Civil Justice Action Group to recommend legal system changes that would reduce the extent and cost of litigation and would increase the availability and affordability of liability insurance.

One area of top concern to those seeking reform of the civil justice system is the practice of compensating lawyers through contingency fees, which are based on the amount of damage awards they win for their clients. Critics say that policy encourages lawyers to encourage clients to file lawsuits on a no-lose basis—the client incurs no costs if the lawyer does not win an award.

Tim Reath, chief executive of the

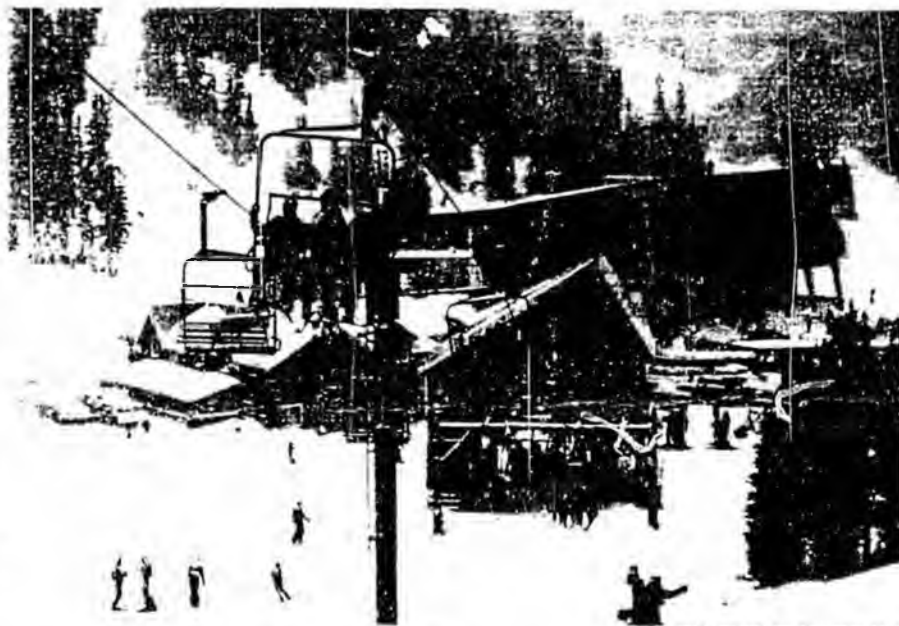


PHOTO: MICHAEL PHILIP NANNHEIM-FOLIO

eastern division of Jardin Insurance Brokers and past president of the National Association of Insurance Brokers, says, "Within a couple of years, we're going to see some serious reform activity in this area. We definitely need to get off the contingency system."

There is a division within the legal profession on the system. The American Bar Association published in its journal recently a debate on the contingency approach, with one lawyer terming it an "indispensable delivery device ... for the use of the civil law as a hammer in support of consumer interests." But another attorney asserted that "the pro-plaintiff trend of the last 25 to 30 years" has made the contingency fee a luxury that "must be controlled or modified in some way if the American system of justice is to be preserved."

Peter Perlman, president of the Association of Trial Lawyers of America, argues that the contingency fee system cannot be blamed for the surge in personal injury suits.

"Under the contingency fee system," he argues, "victims may have an incentive to bring weak claims, because they risk nothing. But, conversely, the contingent-fee lawyer has no such incentive, because the compensation for a weak claim is likely to be zero."

What about the argument that sharply increased advertising by lawyers seeking clients has been a factor in the litigation explosion? Joel Hyatt, whose 30-second television commercials have made him one of America's best-known lawyers and his law firm the nation's

second largest, says advertising by lawyers has contributed little to increasing case loads of damage claims.

"The injury area of the law was already being served by the legal profession," he says. Hyatt, whose firm has 375 attorneys in 200 offices, says their work is mostly in divorce cases, bankruptcies and probate law. Less than 5 percent is in injury cases, he says.

But he does have a recommendation for the insurance industry. The current problem, he says, is not the large jury awards that receive much attention, but "the far greater number of small cases that should never have been brought to court."

Hyatt says some lawyers created "a whole frivolous lawsuit industry" after insurance companies made the "bad mistake" of deciding "that, if the cost of litigating a case was greater than the amount insurers could settle for, they would make the economic decision to buy those cases off—pay \$5,000 to settle rather than \$8,000 to fight the case." He says insurers should take the long view by fighting the bad cases regardless of the expenses involved.

Some insurance companies have begun to do that and to defend themselves in other ways. Increasingly, they are writing policies to cover only claims made during the life of the policy, excluding retroactive claims. Some are also limiting how much they will pay for legal defense of the insured company and for punitive damages.

Though the tort system and the cur-

Franklin W. Nutter, president of the Alliance of American Insurers, says the availability of affordable insurance depends on a climate of "legal and regulatory stability."



PHOTO © MICHAEL KEZA

rent, fragmented product liability laws are viewed as the principal pressures on insurance rates, insurance companies concede that part of the problem represents a delayed reaction to early 1980s pricing and investment policies. Interest rates were so high that the companies competed intensely for funds to invest. To attract premiums that could be used as investment capital, the entire industry engaged in what was termed "cash-flow underwriting." A former marketing vice president with one of the 10 largest property-casualty insurers says, "The theory was that, if you could sell a dollar's worth of risk protection for 50 cents and still end up with a dollar and 5 cents after investments, you'd be ahead of the game."

But, in 1984, as losses overtook investment returns, insurers became far more careful about what risks they would take at what price, and premium increases, limitations and even cancellation of coverage followed.

Another factor that put pressure on premium costs was the shrinkage of the reinsurance market, where underwriters spread risks they have insured. Andre Maisonnier, president of the Reinsurance Association of America, told a congressional hearing recently: "Insurance policies and reinsurance contracts written in the 1950s and 1960s for relatively low premiums are now responding—pursuant to court decisions or retroactive legislation—to claims which were never anticipated under the contracts. The resulting impact on reinsurance has been traumatic."

Maisonnier says the withdrawal of foreign reinsurance capital has reduced the property-casualty industry's capacity by about \$5 billion, or approximately 7 percent. "We can foresee that 1986 will be much more difficult for U.S. reinsurers than 1985, simply because the funds are not going to be available," he adds.

Some critics accuse the industry of overreacting to its revenue problems. J. Robert Hunter, president of the National Insurance Consumer Organization and a former federal insurance administrator, joined with Ralph Nader at a recent press conference to argue that industry loss reports were "misleading and fraudulent." They held that the \$5.5 billion loss cited for last year did not reflect tax credits and the increased value of investments and listed dividends as expenses.

Franklin W. Nutter, president of the Alliance of American Insurers, replied that the criticism was based on "voodoo

accounting." He said the reports were based on requirements of state insurance regulators who, among other things, specify that dividends be carried as expenses. Hunter said insurance companies do not willingly withhold coverage: "We are not in the business of not selling insurance."

Resolution of the problem is not expected to come quickly. The insurance

industry still faces difficulties. Final 1985 figures are expected to show a premium cost ratio of 116 for the year, compared with 118 for 1984. (The ratio uses a base of 100, meaning that for every dollar of premiums in 1985, the industry paid \$1.16 in costs and claims.)

At the same time, the dimension of the problem and business demands for action are getting attention. Mary Jane Fisher, Washington-based correspondent for the insurance industry publication, *National Underwriter*, says, "The members of Congress are getting heat from their constituents who want something done about availability and pricing of liability insurance."

Though the campaigns for civil justice reform and a uniform product liability law continue to be pressed, and the insurance industry is working its way out of its financial problems related to investment policies of recent years, many individual businesses worry that they will sooner or later face the dilemma of Maynard Weaver of Omaha's Elliott Equipment Corporation:

"We'll go broke if we pay the premiums. If we go bare, we risk product liability suits shutting us down. We're just sitting here bleeding to death." ■

To order reprints of this and the following article, see page 77.

Insurance Industry Gains And Losses

The U.S. insurance industry collects \$249 billion a year in premiums. That is 6.9 percent of the gross national product and an average of \$972 for every man, woman and child in the country.

There are 5,600 insurance companies, with nearly 2 million employees (a third of them agents and brokers) and assets of \$985 billion.

The Insurance Information Institute says that 48 percent of the world's premiums are collected in the United States, followed by Japan, 13 percent, and West Germany, 8 percent.

Property-casualty insurance in this country, most of it written by 900 companies, takes in \$118 billion in premiums, about half of it in personal auto and homeowner policies and half in business lines.

For two years, property-casualty insurers have had net operating losses. In

1984 the total loss was \$3.8 billion; in 1985, \$5.5 billion. Critics charge that those losses are overstated, but the industry denies that accusation, stating that 1985 was the worst year for insurance since the San Francisco earthquake of 1906.

The companies have been paying out \$1.18 in claims settlements and expenses for every \$1 they collected in premiums.

Of the payout, 88 cents goes for claims and adjustment expenses, 25 cents for sales and administrative expenses, 2 cents for dividends to policyholders and 3 cents for taxes.

Losses in some lines were much larger than the overall loss. General liability policies cost the companies \$1.51 for every \$1 they got in premiums. Commercial auto liability cost \$1.42. Medical malpractice cost \$1.61.

Liability: Trying Times

By Harry Bacas

An overweight man with a history of coronary disease has a heart attack while trying to start a lawn mower. In a suit against the manufacturer, he argues that pulling the starter rope required excessive effort. A jury awards him \$1 million in damages—plus interest.

A drug dosage administered by hospital personnel to a child who then suffers brain damage exceeds the manufacturer's specifications. The child's parents nevertheless sue the manufacturer—and are awarded \$22 million.

A motorcyclist, injured when he runs off the road into a parked truck, sues the truck's owner. A mediation board, citing the motorcyclist's own role in the accident, limits a damage award to \$20,000. The case goes to a jury, which increases the award to \$4.2 million.

Those examples of recent damage awards are not isolated instances but are part of a cycle that is pulling more and more businesses, particularly smaller and medium-size ones, into what has become one of the most serious problems facing business today—the liability-insurance crisis.

The crisis begins with damage awards in cases that are frequently based on thin legal grounds. It moves to the insurance companies that raise premiums—or limit or deny coverage—to stem losses caused by the swollen awards. It ends up with the businesses that face massive cost increases or are unable to obtain coverage at any price.

For that reason, reform of the civil justice system is a key goal of business organizations that want to ease the liability crisis. A second goal is adoption of a federal product-liability law to replace the present patchwork of individual state laws that require manufacturers and retailers to comply with many different and often conflicting statutes or face lawsuits.

In discussing the overall liability cri-

"We are reaching the point where we can no longer afford product liability insurance," says Maynard B. Weaver, president of an Omaha company that

makes man-lift cranes. He saw his insurance payments rise 500 percent in one year and his coverage limits go down.



Jack Hayes, a free-lance writer based in Roswell, Ga., also contributed to this article.

Huge jury awards and a patchwork of laws are principal reasons for a scary insurance crisis into which business has been plunged.

sis at a recent congressional hearing, the U.S. Chamber of Commerce declared:

"A preliminary survey indicates that businesses in every region of the country have experienced extreme hardship. In fact, there have been business closures due to the dramatic increase in premium payments. Each day, we learn firsthand of another segment of our economy which has been affected by this crisis. There seem to be no boundaries."

Testifying for the business organization, William C. Wyer, president of the Delaware State Chamber of Commerce, added: "Small businesses are bearing the brunt of the present crisis."

Evidence from businesses across the country supports that statement:

Maynard B. Weaver, president of Elliott Equipment Corporation, an Omaha manufacturer of man-lift cranes, reports that his liability insurance payments are \$18,000 a month, up 500 percent from 1984, though his coverage has been reduced. "We are reaching the point where we can no longer afford product liability insurance," he says.

The Amigo Company, a family-owned manufacturer of motorized wheelchairs, has never had a successful insurance claim brought against it. But General Manager Alden Thieme says that, because of the insurance crisis, he does not know whether the company can stay in business.

Amigo, which has offices in Albuquerque, N.M., and a factory in Bridgeport, Mich., was told last year that its insurance premiums were being raised from \$30,000 to \$150,000.

Though Thieme obtained coverage from a Bahamas broker for \$45,000, Amigo expects its 1986 liability insurance costs to be \$100,000 to \$120,000. "The liability crisis is getting completely out of hand," he says. His company experienced the problem firsthand when it had to face a type of lawsuit becoming increasingly common—those in which the defendant is chosen on the basis not of fault, but ability to pay.

Alden Thieme manages a company that manufactures motorized wheelchairs in Bridgeport, Mich. Although it has never lost a liability

suit, its insurance premiums are skyrocketing. Thieme blames a legal system that encourages litigation and allows huge jury awards.

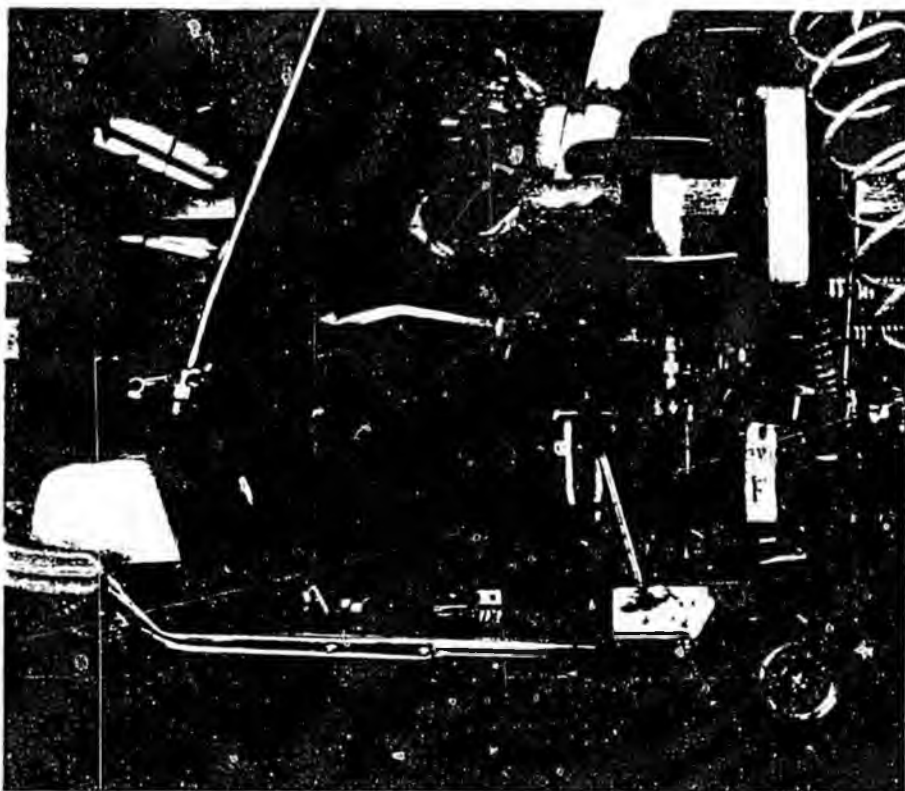


PHOTO CURTIS LEECE

Thieme recalls that a woman in a wheelchair, accompanied by her husband, was killed when struck by a car that had run a red light on a California street. "The driver had no insurance, so the husband sued us," Thieme says. "The case dragged on for two years before we won. But it cost us \$170,000 to defend ourselves."

The company, founded by Thieme's brother, Allen, has 120 employees, does \$10 million a year in sales and is the leader in its field. Allen Thieme was named national Small Business Person of the Year in 1981 for successfully launching the firm. His brother and general manager now says that if in-

surance premiums continue to soar, "it will wipe us out. If we keep adding to our costs, we will price ourselves out of the market."

Vernon Hayes, president of Hayes and Stolz, which makes grain-processing machinery in Fort Worth, Tex., operated without insurance for several weeks last year after his primary policy was canceled. "What do you do?" he asks. "Everybody in America can't shut down. And it's hard to put 70 people out of work." By paying an 800 percent premium increase, he finally obtained a new policy, but it did not provide as much coverage as the canceled policy.

Dick Taylor, a Salt Lake City insur-

COVER STORY

Liability: Trying Times

David and Ruth Hampe—paying bills for their Somerset, Pa., auto salvage yard—needed a bank loan after their liability insurance premium nearly doubled.



PHOTO: LYNN JOHNSON—BLACK STAR

ance agent who is also current president of the Independent Insurance Agents of America, says, "My customers think I'm nuts suggesting they are lucky to renew at double last year's premiums."

It is becoming more and more apparent, he says, that "price is no longer the issue. It's a question of availability, of just finding the coverage."

Joseph Prendergast, American Ski Federation president, says ski resort operators are facing premium increases ranging to 500 percent. He adds that companies that sell roller skis—which have wheels and are used on nonsnow surfaces—are unable to obtain any coverage.

David Hampe had filed no claims under the liability insurance on the wrecker and dump truck he uses in his auto salvage business in Somerset, Pa., but recently received notice his premiums had nearly doubled. He did not have the cash needed to pay the bill and took out a bank loan so he could.

Edward Cone, chief executive officer of Graco Children's Products, Elverson, Pa., says the deductible on his basic-

coverage policy went from \$25,000 to \$150,000 in 1985, and he had to canvass five sources to get the \$500,000 coverage he needed before anyone would sell him an excess risk policy. And that provided one fourth the coverage at a cost five times greater than his previous policy. "We have not had any large claims," he says. "Our claims experience does not nearly justify those rates. But, because of the cost, we will have to evaluate our product lines, and we may get out of some." One of those lines is children's car seats.

All 50 states require use of special car seats for tots, Cone notes. "They have to meet federal standards," he says. "It is not a product that is likely to be used for any other purpose than the one it's designed for. Yet, in our court system, that won't mean a thing to a jury. They see an injured child, and they say, 'Somebody has to pay.'"

He cites a \$10 million claim against another car-seat manufacturer resulting from an accident in which a passenger not wearing a seat belt was thrown against a baby strapped into a car seat.

Long-range trends, as well as awards

in specific cases, spotlight the connection between the litigation explosion in the nation's courts and the insurance crisis.

In 1984 there was one private, civil lawsuit for every 15 Americans. The number of personal injury cases with awards of \$1 million or more is now more than 13 times the 1975 total. A record 12 million lawsuits were filed in state courts between 1978 and 1983. The average product liability award has increased from \$345,000 to more than \$1 million in 10 years, and the number of product liability suits filed in federal courts alone has tripled since 1960.

There are three times as many lawyers practicing now as there were in the 1950s, and it costs 37 times more to run the tort system than it did then.

Chief Justice Warren Burger says the American public "has an almost irrational focus—virtually a mania—on litigation as the way to solve all problems."

Richard K. Willard, an assistant U.S. attorney general, asks of the fast-growing insurance crisis that is affecting more and more businesses: "How did we get into this mess?" He continues: "I believe the answer lies in recent legal movements by activist judges and tort lawyers who see no bounds to the ever increasing expansion of tort liability."

The traditional basis of tort liability is fault—one individual's actions have caused harm to another individual, who seeks recompense. But under the current trend, Willard says, tort law is increasingly invoked to punish those who have done nothing wrong but have resources to pay damages.

Rick Berman, executive vice president of Dallas' S&A Restaurant Corporation and chairman of the Liability Crisis Steering Committee recently created by the U.S. Chamber of Commerce to coordinate lobbying and other efforts in behalf of reform, says that curbing tort system abuses "is the main road to solution of this problem."

The Chamber committee, he explains, was established as a catalyst to bring together the many interested groups seeking a solution to the insurance crisis. Among other activities, he points out, the committee operates a clearinghouse "to share information and to inform the public of the dimensions of the liability problem."

And the impact of the problem on the general public is much greater than is generally realized.

Of the 13 U.S. firms making football helmets a few years ago, only three are still in production. The others

dropped out because of insurance costs.

Rick Berman, of Dallas' S&A Restaurant Corporation, heads a business group seeking state changes in the legal tort system and uniform product liability standards.

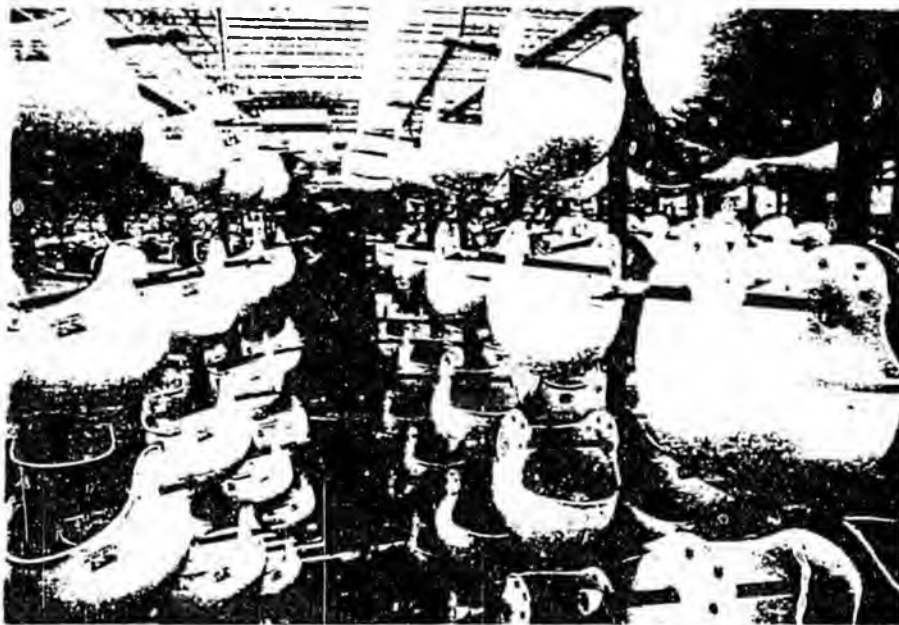


PHOTO: ON RILEY—POLJO



PHOTO: G. THATCHER

Malpractice awards against physicians reached an average \$950,000 in 1984, and the costs of liability insurance for medical practitioners generally are changing the way many of them approach their patients. The trend to defensive medicine involves additional—and often costly—tests and procedures by physicians concerned that failure to go those extra lengths could lead to allegations of negligence.

But the combination of higher insurance costs and defensive medicine is raising the nation's medical bills an estimated \$2 billion to \$4 billion a year, an expense being felt mainly by employers who provide health insurance to workers.

Consumers can no longer purchase the drug Bendectin, which had been the only safe and effective treatment for persistent nausea in pregnant women. The manufacturer took it off the market when liability insurance reached \$10 million a year, more than 80 percent of annual sales. A nationwide shortage of vaccine to protect children from diphtheria and whooping cough developed when all but one of several companies manufacturing it halted production in the face of mounting liability insurance costs.

Insurance rate boosts are showing up in the price of goods. Twenty percent of the cost of a stepladder now represents the manufacturer's expenses for liability insurance. There is also an effect on employment. Of the 13 U.S. firms making football helmets a few years ago, only three still are. The others dropped out because of insurance costs.

Owners and managers of smaller businesses could face problems beyond the immediate question of insurance coverage, says Jan E. Smith, president of a Bradenton, Fla., business-investment firm. "If banks find a company has lost its liability insurance, they may start asking, 'What about those operating loans we made to that company?' And they may not renew those notes.

Each day, we learn firsthand of another segment of our economy which has been affected. Small businesses are bearing the brunt of this [liability] crisis.

—William C. Wyer, president, Delaware State Chamber of Commerce

Banks may require liability insurance before they will make a loan."

In his testimony to Congress for the U.S. Chamber, William Wyer said: "Perhaps this crisis will reserve ultimately its harshest consequences for American consumers. When obstetricians withdraw from their profession, it is the quality of health care for all of us which suffers. When sporting goods manufacturers go overseas, it is the

American worker who becomes unemployed.

"And when . . . firms announce price increases primarily to cover rising insurance costs, it is all of us who will pay more through higher prices."

The actual and threatened problems of the liability crisis have spurred a wide range of reactions by those most affected—individual business and professional people, their trade organizations, the insurance industry and the legal profession.

These are among steps being taken on the business side:

- Business people in all fields are shopping more aggressively for coverage by obtaining quotes from several brokers. They are also accepting higher deductibles and are self-insuring when they can afford to.

- Many businesses are hiring consultants to conduct risk audits and help them analyze their insurance needs more carefully. Consultants are also showing companies how to minimize exposure to large damage awards by keeping detailed records on product-safety management programs with an eye toward impressing juries if they ever face them.

- Some companies unable to meet massive premium increases or even to obtain coverage are, like Vernon Hayes of the Fort Worth machinery-manufacturing company, taking the ultimate step of "going bare"—operating without liability insurance and hoping for the best.

- Contractors are setting up subsidiaries without assets to work in high

COVER STORY

Liability: Trying Times

Ski resort operators have more than weather to worry about. They are paying liability insurance premiums

that have increased up to 300 percent in a year.

liability areas like cleanup of hazardous waste and asbestos removal.

- Engineers and architects are writing contracts that require clients to share the risks or indemnify them against claims.

- Organizations are establishing special programs to help member companies and individuals curtail exposure to risk. The American Medical Association, for example, is showing physicians how to avoid or correct situations that might invite lawsuits. The National Restaurant Association is teaching members how to lower their vulnerability to lawsuits stemming from later conduct of customers who have been served drinks.

In addition to such specific steps, there is the drive by many business organizations for long-term reforms in the civil justice system and in basic laws on liability.

The National Association of Independent Insurers, American Insurance Association and Alliance of American Insurers have joined in supporting three tort system reforms they say will improve the affordability and availability of liability insurance:

1. Fair application of the "several liability" doctrine, which assigns damages based on the defendant's determined share of negligence, rather than on ability to pay.

2. Abolition of punitive damages in civil liability litigation on the ground that they excessively drive up settlements and awards.

3. Adoption of "state of the art" rules that will limit product, professional and municipal liability claims to standards prevailing at the time a damaging act takes place, rather than at the time of litigation.

In addition to the Steering Committee, the U.S. Chamber of Commerce is establishing a Blue Ribbon Civil Justice Action Group to recommend legal system changes that would reduce the extent and cost of litigation and would increase the availability and affordability of liability insurance.

One area of top concern to those seeking reform of the civil justice system is the practice of compensating lawyers through contingency fees, which are based on the amount of damage awards they win for their clients. Critics say that policy encourages lawyers to encourage clients to file lawsuits on a no-lose basis—the client incurs no costs if the lawyer does not win an award.

Tim Reath, chief executive of the

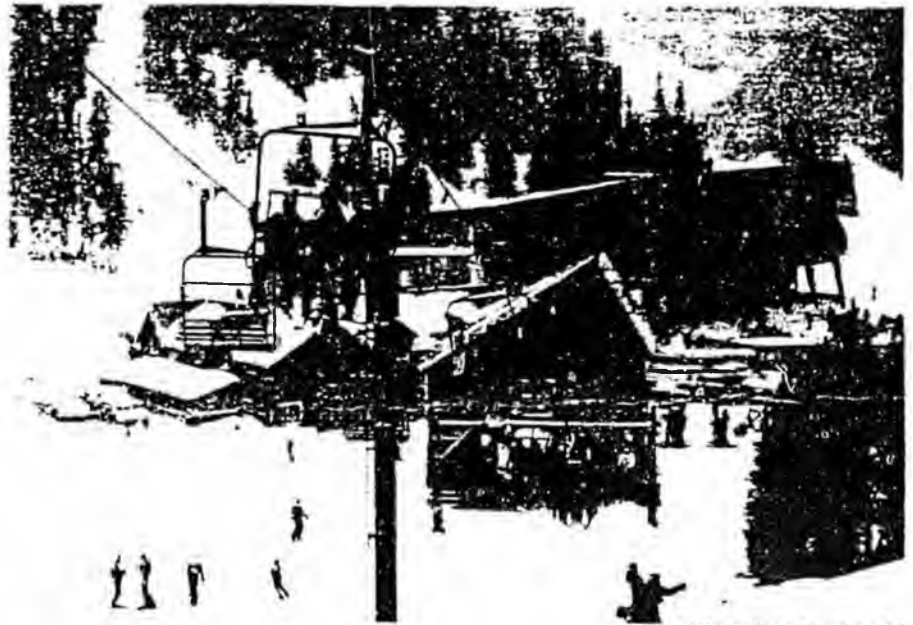


PHOTO MICHAEL PHILIP MANHEIM-FOLIO

eastern division of Jardin Insurance Brokers and past president of the National Association of Insurance Brokers, says, "Within a couple of years, we're going to see some serious reform activity in this area. We definitely need to get off the contingency system."

There is a division within the legal profession on the system. The American Bar Association published in its journal recently a debate on the contingency approach, with one lawyer terming it an "indispensable delivery device ... for the use of the civil law as a hammer in support of consumer interests." But another attorney asserted that "the pro-plaintiff trend of the last 25 to 30 years" has made the contingency fee a luxury that "must be controlled or modified in some way if the American system of justice is to be preserved."

Peter Perlman, president of the Association of Trial Lawyers of America, argues that the contingency fee system cannot be blamed for the surge in personal injury suits.

"Under the contingency fee system," he argues, "victims may have an incentive to bring weak claims, because they risk nothing. But, conversely, the contingency-fee lawyer has no such incentive, because the compensation for a weak claim is likely to be zero."

What about the argument that sharply increased advertising by lawyers seeking clients has been a factor in the litigation explosion? Joel Hyatt, whose 30-second television commercials have made him one of America's best-known lawyers and his law firm the nation's

second largest, says advertising by lawyers has contributed little to increasing case loads of damage claims.

"The injury area of the law was already being served by the legal profession," he says. Hyatt, whose firm has 575 attorneys in 200 offices says their work is mostly in divorce cases, bankruptcies and probate law. Less than 5 percent is in injury cases, he says.

But he does have a recommendation for the insurance industry. The current problem, he says, is not the large jury awards that receive much attention, but "the far greater number of small cases that should never have been brought to court."

Hyatt says some lawyers created "a whole frivolous lawsuit industry" after insurance companies made the "bad mistake" of deciding "that, if the cost of litigating a case was greater than the amount insurers could settle for, they would make the economic decision to buy those cases off—pay \$5,000 to settle rather than \$8,000 to fight the case." He says insurers should take the long view by fighting the bad cases regardless of the expenses involved.

Some insurance companies have begun to do that and to defend themselves in other ways. Increasingly, they are writing policies to cover only claims made during the life of the policy, excluding retroactive claims. Some are also limiting how much they will pay for legal defense of the insured company and for punitive damages.

Though the tort system and the cur-

Franklin W. Nutter, president of the Alliance of American Insurers, says the availability of affordable insurance depends on a climate of "legal and regulatory stability."

rent, fragmented product liability laws are viewed as the principal pressures on insurance rates. Insurance companies concede that part of the problem represents a delayed reaction to early 1980s pricing and investment policies. Interest rates were so high that the companies competed intensely for funds to invest. To attract premiums that could be used as investment capital, the entire industry engaged in what was termed "cash-flow underwriting." A former marketing vice president with one of the 10 largest property-casualty insurers says, "The theory was that, if you could sell a dollar's worth of risk protection for 50 cents and still end up with a dollar and 7 cents after investments, you'd be ahead of the game."

But, in 1984, as losses overtook investment returns, insurers became far more careful about what risks they would take at what price, and premium increases, limitations and even cancellation of coverage followed.

Another factor that put pressure on premium costs was the shrinkage of the reinsurance market, where underwriters spread risks they have insured. Andre Maisonpierre, president of the Reinsurance Association of America, told a congressional hearing recently: "Insurance policies and reinsurance contracts written in the 1950s and 1960s for relatively low premiums are now responding—pursuant to court decisions or retroactive legislation—to claims which were never anticipated under the contracts. The resulting impact on reinsurance has been traumatic."

Maisonpierre says the withdrawal of foreign reinsurance capital has reduced the property-casualty industry's capacity by about \$5 billion, or approximately 7 percent. "We can foresee that 1986 will be much more difficult for U.S. reinsurers than 1985, simply because the funds are not going to be available," he adds.

Some critics accuse the industry of overreacting to its revenue problems. J. Robert Hunter, president of the National Insurance Consumer Organization and a former federal insurance administrator, joined with Ralph Nader at a recent press conference to argue that industry loss reports were "misleading and fraudulent." They held that the \$5.5 billion loss cited for last year did not reflect tax credits and the increased value of investments and listed dividends as expenses.

Franklin W. Nutter, president of the Alliance of American Insurers, replied that the criticism was based on "voodoo



PHOTO BY MICHAEL KEZA

accounting." He said the reports were based on requirements of state insurance regulators who, among other things, specify that dividends be carried as expenses. Hunter said insurance companies do not willingly withhold coverage: "We are not in the business of not selling insurance."

Resolution of the problem is not expected to come quickly. The insurance

industry still faces difficulties. Final 1985 figures are expected to show a premium cost ratio of 116 for the year compared with 118 for 1984. (The ratio uses a base of 100, meaning that for every dollar of premiums in 1985, the industry paid \$1.16 in costs and claims.)

At the same time, the dimension of the problem and business demands for action are getting attention. Mary Jane Fisher, Washington-based correspondent for the insurance industry publication, *National Underwriter*, says, "The members of Congress are getting heat from their constituents who want something done about availability and pricing of liability insurance."

Though the campaigns for civil justice reform and a uniform product liability law continue to be pressed, and the insurance industry is working its way out of its financial problems related to investment policies of recent years, many individual businesses worry that they will sooner or later face the dilemma of Maynard Weaver of Omaha's Elliott Equipment Corporation:

"We'll go broke if we pay the premiums. If we go bare, we risk product liability suits shutting us down. We're just sitting here bleeding to death." ■

To order reprints of this and the following article, see page 77.

Insurance Industry Gains And Losses

The U.S. insurance industry collects \$249 billion a year in premiums. That is 6.9 percent of the gross national product and an average of \$972 for every man, woman and child in the country.

There are 5,600 insurance companies, with nearly 2 million employees (a third of them agents and brokers) and assets of \$985 billion.

The Insurance Information Institute says that 48 percent of the world's premiums are collected in the United States, followed by Japan, 13 percent, and West Germany, 8 percent.

Property-casualty insurance in this country, most of it written by 900 companies, takes in \$118 billion in premiums, about half of it in personal auto and homeowner policies and half in business lines.

For two years, property-casualty insurers have had net operating losses. In

1984 the total loss was \$3.8 billion; in 1985, \$5.5 billion. Critics charge that those losses are overstated, but the industry denies that accusation, stating that 1985 was the worst year for insurance since the San Francisco earthquake of 1906.

The companies have been paying out \$1.18 in claims settlements and expenses for every \$1 they collected in premiums.

Of the payout, 88 cents goes for claims and adjustment expenses, 25 cents for sales and administrative expenses, 2 cents for dividends to policyholders and 3 cents for taxes.

Losses in some lines were much larger than the overall loss. General liability policies cost the companies \$1.51 for every \$1 they got in premiums. Commercial auto liability cost \$1.42. Medical malpractice cost \$1.61.

New Directions In Liability Laws

Safeguards for business that are uniform nationwide—those are reformers' goals

Product liability law in this country is a confusing patchwork. Only 31 states have statutes, and no two are the same. Congressional bills establishing uniform nationwide standards have been stymied repeatedly, with trial lawyers leading the lobbying.

The result is confusion for businesses, insurers and injury victims alike. A case that would be won in one state would be lost in another.

With lawsuits increasing more than 500 percent in a decade, courts have become clogged. Decisions are delayed.

Litigation takes years to run its course before victims are compensated, and then legal costs often take more than half the money paid in claims. A Rand Corporation study of asbestos liability cases showed that lawyers' fees consumed 63 percent of all damage awards. Since the 1950s the population has grown 60 percent, the number of lawyers 200 percent and the cost of the tort system, adjusted for inflation, 700 percent.

Although liability law arises from the tort system—a person who wrongs another must compensate him for the wrong—in recent practice it has been moving in new directions.

Questions of negligence and fault ("Did someone do wrong, and did it cause this injury?") have grown nearly irrelevant. Instead, courts have moved toward a concept of entitlement to injury compensation: "A person has been hurt, and somebody has to pay for it. Who involved has the deepest pockets?"

The judge in the celebrated Agostini Orange case pressured the seven chemical company defendants to pay \$20 million to Vietnam veterans and their families even though, he said later, he did not believe there was any medical evidence to support their claims.

In this effort to find compensation for victims, judges have created a doctrine of "strict liability." This means that manufacturers are responsible for more than doing their best to produce products without defects. They are also responsible for creating product designs whose usefulness outweighs all possible hazards, and they must foresee ways in which a product might be misused and warn against them.

U.S. Asst. Atty. Gen. Richard K. Willard (left) blames lawyers and judges who have tried to compensate

all plaintiffs at the expense of anyone with deep pockets.



PHOTO BY MICHAEL LEZZA

The limits on manufacturers' liability have been steadily expanded.

Biro Manufacturing Company in Marblehead, Ohio, is being sued for a hand injury caused by a hamburger grinder the company sold 27 years ago. Originally sold to the Air Force, the grinder was privately owned and in commercial use when the accident took place. Its safety guard had been removed.

H.B. Pouse & Company in Chicago is being sued for injuries on a bench milling machine it sold in 1947. The machine, still owned by the original purchaser, was being used by a new operator in an obviously unsafe manner.

Business people generally want laws that assure a reasonable balance between rights of plaintiffs and defendants.

Some have proposed that product liability be removed from the area of tort and a new no-fault compensation system be created that would operate like workers' compensation. The system, supported by business taxes, would use administrative shortcuts to avoid courts, guarantee victims speedy relief from economic losses and protect manufacturers from suits.

Other business people, and the Reagan administration, see the answer in

reforming present liability laws. A coalition of business groups has advanced the following as goals of such reform:

- A fault-based standard for judging the adequacy of product design and the appropriateness of safety warnings.
- A statute of limitations on the time period during which manufacturers can be held liable for a defective product.
- A standard limiting the number and size of punitive damage awards for injuries from a particular product defect.
- A standard requiring that damages reflect the extent to which plaintiffs contributed to their injuries.
- A clear presumption that government contractors are not liable for injuries resulting from equipment or systems that they have built to government specifications.

Sen. Robert W. Kasten (R-Wis.), author of the best-known reform bill, says enactment would "put money for injuries back into the hands of the victims rather than in the pockets of lawyers."

He says uniform nationwide liability standards, "by placing clear responsibility on people who make unsafe products, will bring about the manufacture of safer products . . . and do so without one cent spent for additional regulation." ■

—Harry Bacas

The Lawyering of America

We are now seeing the glimmers of a new legal crisis in America. It arises from the clamor over liability insurance and a vague unease that lawyers are exercising too much influence. The United States now has more lawyers (an estimate of 5,900 of them in 1985) per capita than any other major nation. Since 1950, their numbers have grown twice as fast as the population. But our sense that lawyers are meddling too much sits awkwardly with the great American faith in law as a remedy for almost any ill. Or, as one book a few years ago put it, "Sue the Bastards."

The key to understanding this confusion—if not entirely dispelling it—is to grasp a basic truth. Lawyers and law firms are businesses, and their business is conflict. Creative lawyering often means exploiting or creating conflicts. Just as companies develop new products, so lawyers search for new legal theories on which to sue. Rights of action are lawyers' markets. But their economic self-interest—their legal innovations—may subvert their social usefulness. The civil-justice system's essential purpose is to resolve conflict, not to excite it.

It's often a pretense that lawyers represent other people's grievances rather than their own economic interests. There are thousands of cases where lawyers, not their supposed clients, are the main aggressors. In the early 1980s, for example, many new "high technology" companies sold stock to the public. Many of these admittedly speculative stocks subsequently collapsed. Now

there are dozens of suits against these companies, their officers, accountants and insurance companies alleging that investors were misled. But the suits have been brought by a few law firms on a contingency-fee basis. The lawyers—who typically take 30 percent or more of a settlement or damages—stand to win the most.

Of course, a rising tide of lawsuits is not the only reason for more lawyers. Greater government regulation, complicated tax rules and expanding international business have all contributed. But the growth of lawsuits also has a big multiplier effect. It requires defense lawyers and lawyers to advise people and companies how to avoid being sued. Consider the evidence of more litigation:

- Since 1970, membership of the Association of Trial Lawyers of America has nearly tripled, to 60,000. (In the same period, all lawyers rose 90 percent.) To belong, half a lawyer's work must be representing people in personal-injury cases.

- The number of product-liability cases filed in federal courts has risen from 1,579 in 1975 to 10,745 in 1984. Although most cases are settled before trial, the volume of jury awards in product-liability and medical-malpractice suits roughly tripled between 1975 and 1984, says Jury Verdict Research Inc.

- Since the mid-1970s, suits against officers and directors of public corporations—from shareholders, employees, customers and others—have more than doubled, according to The

Wyatt Co., a Chicago actuarial firm. Many of these cases are contingency-fee cases.

To be fair, the liability-insurance mess—complaints from doctors, cities, consulting engineers, day-care centers and others that insurance is too costly or unavailable—is not entirely the doing of lawyers. The insurance industry bears much of the blame. A few years ago companies lowered premiums to compete for business. They expected to earn lush profits by investing premium income at high interest rates. Declining interest rates wrecked that gamble and, combined with steep insurance losses, triggered premium increases and coverage cutbacks. But the insurers' blunder only mitigates the role of lawyers.

Side effects: If courts adopt expansive liability doctrines, then the costs—not just insurance—will be huge. The gravest danger is becoming a precautionary society. Unintended side effects are already emerging. The threat of suits has driven some drug companies from manufacturing vaccines; consulting engineers now refuse to work on hazardous sites for

fear of suits. Companies are losing outside directors for lack of liability coverage. As attorney Peter Huber argues, courts deal poorly with the full social effects of products, like vaccines, whose public benefits overwhelm the risks. Courts see only mistakes. "Beneficiaries of risk-reducing products... do not litigate," he writes.

Stating the problem is easier than solving it. Lawsuits are an important discipline on corporate and individual

irresponsibility. They do compensate victims. There is no neat dividing line between too much or too little liability. But we can impose self-restraint on the legal system by treating lawyers for what they are—businesses. We need legal rules with proper economic incentives. In damage suits, the losing side should always pay the other side's legal fees. This would deter weak suits by reducing the pressure for expedient settlements that are less than the cost of litigation. And a losing defense would ultimately pay if its delays ran up the other side's costs.

These common-sense ideas strike many lawyers as radical. They aren't. One inevitable complaint is that having losers pay would make it tougher for people of modest means to bring legitimate cases to court. This is nonsense. The reality is that the contingency-fee lawyer is already financing these cases. Strong cases would be more attractive under this system, because—aside from the contingency fee—the lawyer would also recover costs. But weak cases would be less attractive (the losing contingency-fee lawyer would pay the other side's legal fees), and they should be. The system exists to settle conflicts, not to generate lawyer caseloads. In a subtle way, commercial interests of lawyers now corrupt the law.

So let the lawyers grumble. If the current insurance mess leads to any good, it will be renewed political interest in our legal system. And that is as it should be. To paraphrase an old cliché: law is sometimes too important to be left to lawyers.



The big danger is becoming an overly cautious, rigid society

them, will indeed become benefactors of humankind. And it is through the teaching and the study of the humanities that we may come most surely and rapidly to any successful prospect for achieving those goals for our system of education, and for

leaving to a more remote posterity a legacy as rich and as brilliant as Jefferson, in his own time, left and passed down to us in our time.

Thank you very much.

The American Tort System

A TIME TO REBALANCE THE SCALES OF JUSTICE

By WILLIAM M. McCORMICK, *Chairman and Chief Executive Officer, Fireman's Fund Insurance Companies*

Delivered to Commonwealth North, Anchorage, Alaska, January 7, 1986

GEORGE BERNARD SHAW once wrote, "The road to hell is paved with good intentions." Probably no statement better describes the start of our tort system in this country. With the best of intentions, the scales of a system designed to render justice have been tipped. The balance has moved so far toward the desire to compensate all injuries and all losses that the overall cost to society has become too high. We have reached a point where exposure to liability is becoming almost limitless and incalculable, making everyone — governments, businesses and individuals — a victim.

Now, even people whom common sense would judge innocent are found liable by our courts.

In making these observations, I want to make it clear that I am doing it as a citizen, not as an insurance expert or as a lawyer. As chief executive of a major insurance company, I find myself in the middle of the current debate on our tort system. I have had the opportunity to examine the issues firsthand, and I don't mind telling you that I have become very concerned about the societal cost and fairness of litigation in this country.

To put the tort problem into perspective, let's look at a few recent suits and their outcomes:

—A little league player was injured when a fly ball hit him on the head. His parents sued the coaches on the theory that they were negligent in putting their son in the outfield. The parents recovered a settlement. As a result, the athletic league may have to disband because it cannot afford liability insurance. And coaches everywhere are beginning to worry about whether their contribution of time is worth the new risk.

—A man was hurt when a drunk driver crashed into the phone booth he was using. The California Supreme Court held that the manufacturer of the phone booth could be held liable for the man's injuries.

—A burglar accidentally fell through a painted-over skylight while he was stealing lights from the roof of a public school. He sued the school district and covered \$260,000 in damages plus a continuing income.

—In New York City, a man attempted suicide by jumping in front of a subway train. The man was injured but did not die; he sued, claiming the driver should have put the brakes on faster. The New York Transit Authority paid \$650,000.

—A man sued for emotional damages after seeing a leopard kill a neighbor's child at the circus. He was awarded more than \$1 million. The child's parents, who had not witnessed the accident firsthand, received \$120,000.

These few cases — and believe me, there are many more — do make you wonder where we are heading. Something is wrong when parents get paid damages because their child can't

catch. Something is wrong when a manufacturer is liable because its telephone booths don't withstand sidewalk attacks from speeding autos. Something is wrong when a burglar can recover from the taxpayers because a public school wasn't safe to break into. Something is wrong when a person can sue because he was injured while trying to kill himself. Something is wrong when someone is paid \$1 million for observing an accident, however tragic.

Decisions such as these are beginning to outrage our common sense notions of justice. Why is this happening? The fact is, the justice system as we long knew it no longer exists. The system no longer provides a clear definition of the law. It encourages plaintiffs to sue, hampers defense, makes incredible awards, and has stretched the line that defines responsibility from "true negligence" to what almost amounts to "innocent bystander." And as a result, the system is overloaded and fails to provide prompt, just and full compensation to injured victims at a reasonable cost.

1800s-1960s: Historical Stability

A little historical perspective is needed to understand how we got to where we are.

There are two broad areas of the law: criminal and civil. Tort law falls under the civil category and includes everything from slip and fall cases to automobile accidents to libel suits.

The rules in tort law center on what kinds of injuries can be compensated and what has to be proved to win the lawsuit. We inherited these rules from English common law. In the past, changes in these rules evolved slowly, largely from court decisions, not from statutes.

In America, we have 50 different state court systems and hundreds of federal courts that must interpret and apply these laws. There is often a difference between the rule in one place and the rule applied in another. Overall, however, most court decisions on tort law have followed the same general trend.

Surprisingly enough, even with all the minor adjustments and additions made through nearly 200 years of American court decisions, the balance struck by English common law remained essentially the same from the early 1800s until the 1960s.

With limited exception, a person suing could recover only if he proved that the defendant was at fault — that the defendant's negligence caused the injury. If the plaintiff — the person bringing the lawsuit — was the primary cause of his own injury through negligence or deliberate conduct, he could not recover.

Plaintiffs could usually get damages for intangible pain and suffering only if there was an accompanying physical injury. And punitive damages — punishment awards over and above compensation for injury — were available only for truly outrageous conduct. In other words, tort laws were defined in such a

manner that one only obtained redress for cases of true negligence, not for the personal risks of everyday life.

1960s—Today: The Erosion of Justice

The tort system we have today — only 25 years later — is vastly different. Our generation has overturned 200 years of legal tradition.

To illustrate recent changes, let's look at just a few of the important decisions of the last 25 years in California. I have chosen California because its lead has often been followed by other states.

In 1961, California rejected the common law doctrine of sovereign immunity, which for centuries had protected cities and states from lawsuits. In fiscal 1984, California cities — that's California taxpayers — paid out more than \$19 million in claims, up from \$5 million just three years ago.

In 1962, the concept of fault was tossed aside in the area of product liability. Now, an injured person doesn't have to prove any negligence — just that the injury might have been prevented by a different product design. That's how you get lawsuits against telephone booth manufacturers for not making their product crashproof.

In 1968, the California Supreme Court changed the standard of care owed by landowners, extending the duty of "utmost care" to even criminal trespassers. You can now see why a burglar robbing a school can successfully sue for injuries.

In 1975, California replaced the doctrine of "contributory negligence" with "comparative negligence." Comparative negligence allows an injured party to recover if he is partly — or even primarily — at fault for an accident.

Not only has legal doctrine been substantially altered, the dollar value of awards has ballooned. The tort system today has more million dollar winners than a state lottery. You may think that the high awards you read about are aberrations, but in 1984 the average product liability verdict was over a million dollars. The average medical malpractice award was \$950,000.

Courts today also have become more liberal in awarding punitive damages. Recently, an insurance company disputed the proper settlement amount with a couple whose car was rear-ended. The insurance company offered \$4,500; the couple believed they were entitled to \$17,000. They sued, claiming the insurance company had failed to settle their claim in good faith, and recovered \$7.4 million in punitive damages. Regardless of who was right or wrong, the punitive damages awarded were totally out of proportion to the claim at hand.

And courts in many states are handing out extraordinary awards even where there is no physical injury, just the mental trauma caused by watching an injury happen to someone else, or the worry brought on by fear that an injury might occur in the future. That is why the man who saw the boy killed at the circus sued and why people are now suing for fear of contracting AIDS.

Huge damage awards are a recent phenomenon. The first million-dollar tort verdict was awarded in 1961. In 1983 alone, this country settled 360 cases for \$1 million or more. By comparison, in the entire judicial history of Canada, there have been only six \$1 million tort cases — and three of those cases, applying Canadian law, were decided by U.S. courts. No other country pays these huge amounts.

The financial cost of our tort reparations system is staggering: In 1984, the tort system was estimated to cost 37 times as much as it did in 1950. Commercial liability insurers alone

spent \$2.9 billion defending suits in 1983; and legal defense costs had risen to 25 cents per premium dollar, compared with 5 cents per dollar in the 1950s.

The System Today: Expensive and Unpredictable

But while these statistics point out some of the dimensions of what has happened to our legal system in the past 25 years, there is another aspect that is harder to quantify and that is the cost of uncertainty as to what the law is. Just over a hundred years ago, U.S. Supreme Court Justice Oliver Wendell Holmes wrote: "The tendency of the law must always be to narrow the field of uncertainty."

That tendency hasn't been very apparent lately. Certainty and predictability have been two casualties of the developments of the last 25 years. Without certainty and predictability, plaintiffs sue, defendants don't know how to protect themselves and we in the insurance industry can't price, and in some cases can't accept, risks.

And do not forget, there is enormous leverage on these recent court cases. Decided cases are only the tip of the iceberg; they directly affect the thousands of other cases that get settled before going to court, not to mention acting as a stimulant for ever more lawsuits.

Defendants often pay huge settlements just to avoid the uncertainty of court judgments. One particularly successful plaintiff attorney in Los Angeles recently bragged to a journalist that defendants "are so afraid of going before the jury . . . that they are ready to settle a \$10,000 claim for \$100,000."

The impulse to find someone else to blame, and thus get compensated — and compensated highly — for every injury, has serious economic and behavioral repercussions. America has the most litigious and expensive legal system in the world, with the number of lawsuits and amount of damages growing at an unprecedented rate.

We now have three times as many lawyers per capita as England, and more than 20 times as many per capita as Japan. Can you believe that one out of every 12 adult Americans will be involved in a lawsuit this year?

Runaway tort litigation means we all pay higher prices for everything, whether it's in product prices, insurance rates or in municipal, state and federal taxes.

For example, the City of New York, which is large enough to be self-insured, pays claims itself. In 1983, New York City paid claims totaling \$78 million. That was \$78 million the city could have spent on police protection, subway improvements or road repair. By the year 2000, New York City expects to pay more to settle lawsuits than it pays to provide fire protection.

Even the federal government faces high liability costs: There are now 40,000 civil cases pending against the United States, with damage claims of over \$138 billion.

But the biggest dollar cost imposed by our tort reparations system is the invisible tax we pay on almost every product and service we buy. When you purchase a stepladder, for example, one-fifth of the price tag goes to cover the manufacturer's liability protection. The product liability component of a GM car now costs more than the steel that goes into it.

The Societal Cost of Litigation

But money is just money. If everything gets more expensive because we decide to maintain our current tort liability system, somehow we will all muddle through. Our standard of living will go down a bit, we'll be a little less competitive in international markets, and a number of small companies will go out of business. What is more frightening, however, is that soon there

may be some necessary products and services that are no longer available at any price.

Day care centers all across the country are closing their doors. We have all read about instances of misconduct. But in addition, there is an attitude that if Susie hits Johnny with a building block, it's grounds for a suit claiming inadequate supervision and demanding punitive damages. The result is that many day care centers simply can't afford — or get — insurance.

Non-profit organizations and local government boards are now having trouble finding anyone willing to serve because they cannot afford insurance to protect their board members from lawsuits. Community service is rewarding, but for most of us it's not so rewarding that we would risk our homes and savings in a lawsuit — just for the privilege of volunteering personal time.

And some manufacturers of life-saving products have quit because the threat of product liability suits is so overwhelming. In the last few years, seven companies have withdrawn from the business of making anesthesia machines; only two are left. Johnson & Johnson recently withdrew a drug designed to prevent sudden infant death syndrome — crib death. The reason wasn't that the drug didn't work: It does. But because it is given to high-risk infants, some of whom would die of crib death regardless of whether or not they took the drug, the company did not feel it could expose itself to the inevitable product liability suits.

And American vaccine makers are being driven out of the business as well. There is only one maker of whooping cough vaccine in the United States, and they are talking about getting out of the business. Why? Because the vaccine, which saves thousands of lives every year, is not perfectly safe: It causes unavoidable injury in three out of every one million children. As a result, the manufacturer has attracted more than 100 lawsuits over the last three years, amounting to almost \$2 billion in claims. The entire U.S. market for all vaccines amounts to \$250 million.

Where is the next vaccine or wonder drug going to come from if the companies can't even distribute the life-saving products that they have already developed?

What we are facing is an issue that is very important and that affects all of society. The pendulum of the American tort system has swung too far. The desire to hugely reward every claimant is creating too great a price. The belief that the world owes us a living has come full circle — back to us. Each of us now lives in almost mortal fear of being sued, particularly if we have — or through insurance have access to — money. We can no longer count on being protected by the law: we can now be attacked by it.

What Is the Problem?

Part of the problem is the inherent difficulty of balancing the competing objectives in any tort law system. As society has become more complex over the centuries, the task of delicately balancing competing social goals — each of which has a place, and none of which can be totally neglected — is more difficult. How does one balance the tradeoffs among:

- Full compensation for injured parties;
- Deterrence of negligence or punishment of outrageous behavior;
- Deterrence of self-injuring behavior;
- Maintenance of an efficient court system for dispute resolution; and

— Avoidance of limitless or incalculable liability in order to encourage the productive elements of society and avoid disincentives for economic development and innovation?

Part of the problem is the fact that the enormous changes in legal doctrine made over the past 25 years have been, for the most part, invisible. Courts have expanded the law on a case-by-case basis without much public debate or even notice.

Each change has been a well-intentioned attempt to compensate someone for some injury. But the revolution in legal philosophy that occurred with the best of intentions affects all of society. Yet it was done by courts based on what they perceived to be changes in prevailing values without the benefit, or crucible, of public debate and legislative mandate.

Part of the problem is that most business people, most consumers and even some legislators think that tort reform is an area for the experts. They hear trial lawyers argue with insurance executives over the impact of the collateral source rule or the doctrine of joint and several liability, and their eyes glaze over. They figure the experts deserve each other.

There are no doubt even more parts to the problem. The result, however, is clear: We in America have the most unpredictable, expensive and litigious tort system in the world. This is no longer a problem just for lawyers, for the insurance industry or for the courts. The time for leaving decisions to narrow categories of experts is over. The costs — both economic and societal — are too great.

What Is the Solution?

We can't look to the lawyers to solve the problem. Abraham Lincoln, a lawyer himself, once said that the highest duty of an attorney was to discourage litigation. While I certainly support his view, it is a tough standard. It's like asking doctors to discourage medicine or ad agencies to discourage advertising. In fact, just the opposite is happening as lawyers increasingly advertise for tort clients.

We can't look to insurance companies to solve the problem. As middlemen, insurers are in the business of spreading risks in a society, not picking up the tab for them. Insurance is unusual in that it must price its product to cover the cost of lawsuits today and many years into the future. As long as the courts define the rules, the policies will be competitively priced to reflect those rules. If the liabilities are undefined, the insurance cannot, or should not, be written.

Finally, we can't look to the courts alone to solve the problem. Courts are focused institutions which decide narrow cases involving the parties before them. Only occasionally do they see repercussions beyond the immediate case. If they did, they would probably not have set many of these recent precedents.

It took 25 years of case-made changes in doctrine to create our most litigious society in the world; but we do not have 25 years to correct it. The stakes are simply too high. So, if we can't look to the lawyers, and we can't look to the insurance companies, and we can't look to the courts to solve the problem, who can we look to? Well, look around.

Citizens Must Act

The answer lies with us as citizens and with the legislature. But the legislature will not act until the voters make their voices known. Everyone must get involved because everyone is paying the price — municipalities, businesses, citizens and even the trial lawyers, who are themselves having trouble getting liability insurance.

It is time for all of us to step back and readdress some basic questions:

- Is fault still important?
- Where do we draw the line on defining and assigning liability?
- Should there be limits on financial damages?
- When does ease of suit cripple the productive elements of society?

These questions — and others — are big, important and complex. They must be thoroughly analyzed and debated at the local, state and national levels by everybody, not just the experts. We must understand the issues. We must talk to one another. We must involve our legislators. Only then will the system begin to change.

The key is to become involved. When citizens are involved, legislative change happens. Last fall in California, Lee Phelps, a retired Marine, founded a lobbying group to protect property owners from being sued by criminal trespassers who injure themselves on their property. To overrule the California Supreme Court case that held otherwise, Lee Phelps raised and spent \$5,000. He faced opposition from the California Trial Lawyers Association, which had contributed over half a million dollars to candidates last year. But he got the measure passed. So something can be done.

The following are some solutions we might consider:

Put some *limits on liability*, whether that's limits on types of claims or on the size of damages awarded. For example:

- Product liability when there is no negligence on the part of the manufacturer and where the injured parties' own negligence contributed to the problem;

- Pain and suffering awards, particularly when there's no physical injury or when the injury occurred to someone else;

- Size of awards where the impact of taxes, expenses and collateral sources are significant.

A second area in need of reform is *punitive damages*. The original justification for punitive damages was to deter outrageous behavior, willful and wanton misconduct. In recent years, this good standard has been diluted to the point of capriciousness.

Third, we must reexamine the concept of *comparative negligence*. This doctrine allows plaintiffs to recover large damages even if they are more responsible for the injury than the defendant. That's what allows people who throw themselves in front of subway trains to recover hundreds of thousands of dollars from the taxpayers. It should be possible for judges to dismiss lawsuits at an early stage if the plaintiffs are clearly responsible.

Fourth, we must eliminate *joint and several liability*. The defendant should be financially responsible only for his own fault in the incident, and not for someone else's fault if that person can't pay.

Fifth, we should limit the *contingency fee system*, which encourages frivolous lawsuits and provides an irresistible incentive to extend the line on defining liability.

Sixth, we should seriously consider establishing a mechanism for mandatory, *non-binding arbitration* of smaller claims, which make up the bulk of tort cases. If a plaintiff then carries his case on to the courts, he should pay defense costs if he does not prevail.

But the specific details of one tort reform proposal or another aren't important yet. What matters is that we as a society make some comprehensive and fundamental changes to put our tort system back in balance. Tort law is an integrated system and piecemeal solutions will not do.

Someone once said that people get the kind of government they deserve. In a democracy, it's also true that we get the kind of civil justice system we deserve.

I think we deserve a system that is predictable. A system that provides prompt, just and full compensation to injured victims at a reasonable cost. A system that does not make each of us a potential target for lawsuits arising from someone else's accidents. A system, in other words, that does not outrage our common sense notions of justice.

But if that's the kind of system we want, then we must work to get it. We do not have it now.

Agriculture's Crossroads

WHICH WAY FROM HERE?

By KEN NIELSEN, *President of Farmland Industries, Inc.*

Delivered at the ASAE Winter Meeting, Chicago, Illinois, December 19, 1985

THANK YOU, Bill (Johnson), and good morning, ladies and gentlemen. I am both pleased and honored to participate in this forward-looking conference. *Pleased* by the challenge of sharing some of my thoughts about the forces of change that are reshaping American agriculture. *Honored* by this opportunity to address a group whose contributions in science and technology I recognize as having been important factors in the progress that has given America the world's greatest food production and distribution system.

But I am also a little bit *bothered* by the assignment you've given me.

Your conference theme: "The World Food Situation — Now and the Year 2007," flies in the face of some advice offered by two noted men of our time. One is the historian, Sir Kenneth Clarke, who said: "Predicting the future is, intellectually, the

most disreputable form of public utterance."

The other sage is the legendary movie-maker Sam Goldwyn, who's supposed to have said, "Never make predictions — especially about the future."

Certainly, I lay no claim to more acute future vision than anyone else. Indeed, I often find myself puzzling more about what will happen next week — or what the weather will be for spring planting — than about the condition of agriculture in the 21st Century, as important as this subject is to us all.

And yet the year 2007 is much closer than it seems. It's 22 years off. Just 22 years ago John F. Kennedy was shot and that seems like yesterday to some of us.

Still, I believe I'll be more comfortable discussing some of the changes affecting present world food conditions as they relate to America's farmers and ranchers. My projections of

MARCH 24, 1986

\$1.95

F.Y.I
FROM
SENATOR
STURGENLEWIS

TIME

Sorry, America, Your Insurance Has Been Canceled



JUNEAU AK 99801
#268C*****CAR-RT-SORT**CR09
#CMPDV698897*0 1399801 APR87
AK00

COVER STORY

Sorry, Your Policy Is Canceled

Nation

TIME/MARCH 24, 1986

On the Hawaiian island of Molokai, pregnant women who want a doctor in attendance when they give birth fly to neighboring Oahu or Maui. The five Molokai doctors who once delivered babies have stopped doing so because malpractice insurance would cost them more than the total of any obstetrical fees they could hope to collect.

Will County, Ill., last week closed its forest preserves until it can get a new liability policy on them—if that can be done at all—and Blue Lake, Calif. (pop. 1,200), has shut its skating rink, parks and tennis court. Hundreds of other towns in California and in New York State are "going bare." That is, they simply cannot get liability insurance.

The Texas sesquicentennial cattle drive, part of the state's celebration of 150 years of independence from Mexico, bogged down this month after one day on the road because liability insurance covering the 49 longhorn steers that were involved was doubled and the organizers could not afford it. The drive resumed last Friday with only 28 steers, whose owners agreed to pay for the insurance themselves.

Century Cartage Co., a small truck line out of Atlanta, is still in business only because the Georgia Public Service Commission approved an "emergency" 5%

rate increase for its customers. But that boost came nowhere near meeting the cost of liability-insurance premiums that doubled to \$48,000 last year and then leaped to \$114,000 at the start of 1986.

Outrageous? Yes. Ridiculous? In many cases. Unreasonable? Certainly. And yet the examples represent just a small sampling from a rising host of problems growing out of what has become a new national crisis. Given the litigious nature of American society these days, just about any kind of business, profession or government agency is likely to become the target of a suit alleging malpractice or negligence resulting in personal injury. That makes liability insurance, the kind that pays off on such claims, just about as vital as oil in keeping the economy functioning. But in the past two years, liability insurance has become the kind of resource that oil was in the 1970s: prohibitively expensive, when it can be bought at all. The result is a pinch from which few can escape—not even liability specialists like J.B. Spence or Robert Rearden.

Spence, a Miami lawyer, is the kind of attorney insurers often blame for their troubles. He has won and earned a healthy slice of several multimillion-dollar awards for clients who suffered personal injuries. But if Spence should be

sued for malpractice or negligence, as is happening to lawyers more and more, he would have to pay any court-ordered damages out of his own pocket. "There is no market that will sell me liability insurance," says Spence. "I am going bare, and it is a frightening prospect."

Rearden, president of Duncan Peek Inc., an Atlanta insurance brokerage, earns commissions selling policies at soaring premium rates. But when the time came to renew his own professional liability policy, his carrier wanted to jack up his \$13,000 premium by 861%, to \$125,000; Rearden had to scramble to find another company that would only triple his premium cost. "And that's me, and I'm in the insurance business!" wails Rearden. "That's what I mean when I say this crisis is affecting everybody."

And how. After years of eye-popping damage awards and shortsighted insurance-company practices, the U.S. is in danger of having its insurance canceled. The cost of this crisis, once generally hidden, is now hitting home. The \$9.1 billion Americans paid last year in liability-insurance premiums was almost 60% higher than the figure as recently as 1983 and roughly equal to the combined 1985 budgets of the National Aeronautics

Even more insidiously, the problem threatens the very character of American life, from the Great Peace March across the U.S. (which came apart last week in the Mojave Desert, partly because of a lack of liability coverage) to police patrols in New York's suburban Rockland County (suspended last week in the towns of Piermont and Sloatsburg; 13 officers have been told to sit at headquarters' desks while the towns look for a liability insurer to replace one that has gone into receivership). Factory owners seeking to expand, entrepreneurs seeking to launch new enterprises, young businessmen seeking to set up shop: all are running into an obstacle far harder to surmount than high taxes and interest rates in their pursuit of the American dream. Liability insurance has become their most crippling cost.

As a result, doctors have been marching on state capitols, some threatening to shut down their practices. Industry groups and insurance companies have launched loud lobbying and advertising campaigns. Bills have been introduced or passed in all 50 state legislatures to limit liability awards or regulate insurance practices or both. Congress has held public hearings. But federal and state lawmakers, who have been faced with cutting through a jungle of conflicting statistics, arcane accounting practices and tangled legal theory, have mostly come out baffled. Says South Dakota Republican Senator Larry Pressler: "We have not been able to get past the finger-pointing stage."

Consumer groups point to the insurance companies. When interest rates were high, they say, insurers wrote policies with little concern about how they would make good if claims went up and returns on their investments went down. Insurers point to the legal system. Juries, they say, have been handing out punitive damage awards that resemble lottery jackpots.

Lawyers point to the negligence of Big Business. It can be redressed, they say, only if individuals have a right to present their cases to a jury. Businessmen point to changing attitudes. The individualistic notion of taking risks and accepting responsibility, they say, has been replaced by a sue-everyone-in-sight reaction to any accident. What makes the problem such a nightmare is that, to some extent, all of the finger pointers have a point.

What it finally boils down to is a matter of statistical logic and insurer psychology. If a few giant jury awards, actual or merely possible, can offset the premiums on an entire line of insurance, the companies feel they must raise premiums for everybody until there is some hope of making a profit. This means that premiums may bear no relationship to an individual policyholder's record, and buyers of many kinds of insurance are suddenly paying three or four times as much as they did a year or so earlier. Of all places, Hartford, Conn., known as the insurance capital of the world because so many carriers have their headquarters there, saw its own municipal liability coverage slashed to only \$4 million, vs. \$31 million in the 1984-85 fiscal year, despite a 20% rise in total premiums, to \$1.8 million.

Some insurers are shying away from covering certain types of risks at any price. If there is no way of figuring what kind of damages a jury might award to the parents of a child molested at a day-care center, for example, then the companies will find it best to stop writing that kind of insurance at all. Says James Wood, a member of a firm of actuaries whose headquarters are in Atlanta: "If you are an insurer and have \$100,000 in assets, do you want to risk those assets to keep day-

and Space Administration and the Central Intelligence Agency. This year's total is sure to show another giant leap.

Every American pays: doctors and their patients, ski-slope operators and their patrons, municipal governments and their taxpayers, those who process cheese and those who eat pizza, those who take the bus and those who lease private jets, those who drill for oil and those who heat their homes.

Risky business, life.
Always has been.
But is it
more so these days?
Must be. The horror
stories go on and
on and on . . .

Lacrossed Up

As one of only two U.S. makers of lacrosse equipment, William H. Brine of Milford, Mass., lets customers know how to place reorders by printing his company's phone number on the back of each helmet. Now the helmets carry another message: a warning that lacrosse is a dangerous game. In 1984, Brine (photo) paid \$8,000 annually for \$25 million worth of product-liability insurance. In December, he received notice that his premium was going up to \$200,000 for just \$1 million of protection. Brine is taking his chances uninsured. "If we have a large judgment against us," he says, "it could be the end of lacrosse."

Other sporting-goods manufacturers face similar dilemmas: many U.S. firms have decided to abandon the manufacture of amateur hockey gear.



care centers open? The answer is probably no, because you do not know what you have to charge when you do not know what the ultimate costs of providing coverage might be." Most insurers flatly refuse to write policies to protect companies against suits arising from injuries caused by environmental pollution. They say they have no way of gauging the risk. That complicates further the question of who will pay for cleaning up toxic-waste dumps.

The dubious distinction of paying the highest increase on record may belong to Specialty Systems Inc., a Richmond, Ind., firm, that specializes in removing asbestos from buildings. Insurers are so terrified of anything having to do with asbestos that they canceled

Specialty's policies three times between November 1984 and last April, though the nine-year-old company has never been sued. Because customers demand proof of insurance before they will give Specialty any business, the company wound up buying a \$500,000 policy from the Great American Insurance Co. of Cincinnati, on which it will pay at least \$460,000 in premiums, an increase of more than 4,900% over the \$9,361 premium on its last full-year policy. Says Specialty President Frederick Treadway: "About half a million dollars paid to the insurance company for virtually nothing."

The situation is studded with an endless variety of similar horror stories (see



Manufacturers massing to urge product-liability reform on Capitol Hill
"There are going to be people who are dumb and stupid."

boxes). Among the most prominent are those that involve municipal services. The city council of Blue Island, Ill. (pop. 22,000), last October voted down a 30% increase in property taxes thought necessary to pay rocketing liability-insurance premiums, and the town expects to self-insure for the 1986-87 fiscal year, taking a chance that a large judgment might force taxes up anyway. Five counties in Missouri closed their jails for several weeks last fall, sending some prisoners elsewhere for incarceration and releasing minor offenders outright. The jails reopened after the counties' sheriffs set up a self-insurance pool, which was financed by tax money.

Among professionals, malpractice in-

rosurgeon in Long Island, N.Y., about \$83,000.

Product-liability insurance presents a major problem for the makers of everything from toys to antitoxins. Pertussis vaccine for children ran short a year ago because Connaught Laboratories suspended production for a nine-month period during which it could not find insurance at an acceptable price. Now Lederle Laboratories, the only other maker of the vaccine, is talking of halting output in July if a threatened cutoff of its liability insurance materializes. Beech Aircraft figures the cost of liability premiums at a stunning \$80,000 on each plane it sells. Says William Mellon, director of corpo-

Strung Out

When New York City's Roosevelt Island was opened for residential development nearly eleven years ago, part of its allure was a tramway that would soon connect the community to midtown Manhattan in six scenic minutes.

That lifeline was cut last month when the tram's liability premium soared from \$800,000 to nearly \$9 million a year. Operators shut down the system, forcing some 5,250 islanders to spend up to an hour commuting on buses and subways.

After two weeks, New York State assumed responsibility for the tramway under a "self-insurance" plan that is increasingly becoming the solution of last resort for municipal services. Many legislators, however, are dubious about forcing governments to enter the insurance business. Meanwhile, the little tram that couldn't, now can—at least until somebody sues.



Bad Trip

For sponsor PROpeace, the anti-nuclear Great Peace March between Los Angeles and Washington turned out to be a movable flop, beset by celebrity no-shows, cold weather and a lack of funds that last week

caused the project's collapse. One major headache was the inability to obtain a \$5 million liability policy required by some municipalities along the marchers' route. Because they lacked such coverage, 900 or so PROpeaceniks were denied the use of a schoolyard in Claremont, Calif., where they had planned to camp their third night on the road.

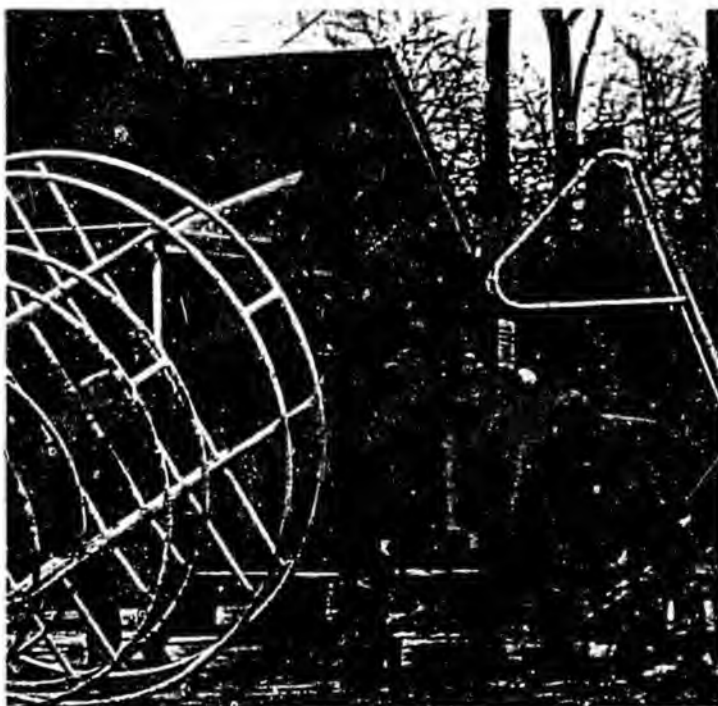
Sponsors of public events ranging from San Francisco's Chinese New Year festival to Maine's Fryeburg country fair have also run into trouble securing liability coverage. The main reason: the unpredictable nature of claims made by audience members, onlookers and participants.



rate communications: "The owner-pilot market has all but dried up, and one cause is the cost of product liability. It has driven the price of a new airplane out of the reach of the average person who wants to buy one." Some commercial fishing boats that once sailed out of Pacific Northwestern ports have been put into dry dock because owners could not afford liability-insurance premiums that commonly have doubled in the past year or so.

Rising premiums are forcing up prices on a variety of services too. Ski-lift tickets are jumping by \$2 or \$3 at many resorts. Through last year Kennestone Hospital in Marietta, Ga., insured itself for the first \$1 million of any claims that might be made and paid a premium of \$70,000 for additional coverage up to a maximum of \$10 million. Now the premium has quintupled to \$350,000, and on top of that the hospital has had to come up with another \$1 million for its self-insurance trust fund, because the deductible was raised to \$2 million. Says Executive Director Bernard Brown: "If you come to our hospital, you pay the price. It is being passed through."

Day-care centers, which have become an essential part of American life in an era of two-career families, are a striking example of how the insurance crunch may soon affect the lives of many unwary citizens. Operators fume that allegations of child abuse at a handful of centers have spooked insurers into indiscriminately



Workers dismantling playground equipment on Chicago's Northwest Side
Says the insurer: "Park districts are a terrible risk for any carrier."

canceling liability policies or demanding giant premiums. Mission Insurance Group, the chief provider of coverage for day-care centers, abruptly pulled out of the business last year. The handful of insurers that will still write day-care policies insist either on specifically excluding claims for damages arising from sexual abuse or setting up rules for strict supervision, such as unannounced visits by special investigators. Says Suzanne Grace, associate director of the Georgia Day Care Association: "The insurers are telling us, 'We don't care what your record is.' This business has the perceived risk of killing an insurance company."

There is one area of general agreement about what has caused the insurance crisis: plain old-fashioned greed. Ah, but *whose* greed?

Insurers and some of their customers blame aggressive lawyers, inventive judges and soft-hearted juries for twisting legal concepts of negligence into novel shapes to justify excessive damage awards to people who claim personal injury (a tort in legal parlance). Avaricious lawyers, they argue, seek outrageously high damages for clients who have flimsy cases, so that the lawyers can reap huge contingency fees (if the case fails the plaintiff's attorney earns nothing, but if it succeeds he commonly takes one-third and, on occasion, as much as 50% of the award). Says Edward Levy, general manager of the Association of California Insurance Companies: "Lawyers are out to make a buck, and they seem to have little concern for the overall societal effects of what they are doing."

Plaintiffs' attorneys are every bit as willing to point the finger. Insurance companies, they charge, are using deceptive tales of excessive damage awards to justify the exorbitant premiums that they charge the public. Says Browne Greene, president-elect of the California Trial Lawyers Association: "Their greed takes us back to the robber barons of the 19th century." Many consumer organizations add that insurers are seeking unjustified premium hikes to cover up their own bad management and poor judgment of risks.

City Halt

Insurance woes have made for a sorry spectacle in the Northern California seaside village of Point Arena (pop. 450). When its \$2 million liability policy expired in July, village officials decided to take the chance of going without coverage. A new policy was eventually offered, but at 50% more than the old rate of \$6,700. Point Arena declined. Says Tracy Du Pont (photo): "We would be broke."

Fearing personal vulnerability in litigation against the town, Du Pont's predecessor Kay Spack resigned in August. The town council voted to install wry signs at town limits warning visitors to "enter at your own risk," but abandoned the plan when a motel owner threatened to sue. Less wry is the prediction of some experts that two-thirds of California's 440 towns and cities will be forced to operate without liability insurance by next July.



Overboard

When the board of Detroit's Armada Corp. meets these days, the directors could easily fit into a subcompact car—never mind a limo. The company, which produces automotive exhaust systems, had carried \$10 million in liability coverage for its ten-member board and 28 corporate officers. Last November it was notified that the rate would increase from \$45,000 a year to \$720,000. Armada refused to pay. Fearing exposure to litigation, eight board members, including Chairman Jerry D. Luptak (photo), resigned last month. (Luptak remained as president.)

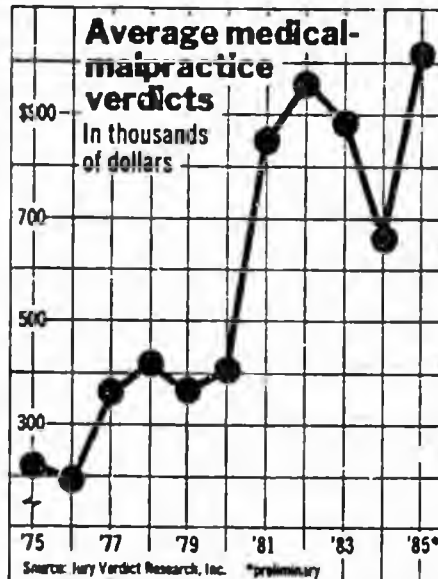
Vice President Lowell Robinson could not recruit more than two new directors. Says he: "It's getting very difficult to find qualified people." The number of lawsuits filed against directors of U.S. corporations, by some estimates, has climbed by more than 150% since 1974.



Nation

Americans have always been a litigious people. But there does seem to be a rise in the number and size of liability suits facing every type of company, from soccer-ball makers to cigarette manufacturers. From 1977 to 1981, the number of civil lawsuits in state courts grew four times as fast as the population of the U.S. And in the decade between 1974 and 1984, the number of product-liability suits in federal courts expanded 580%. The first million-dollar verdict did not occur until 1962, but there were 401 in 1984, according to Jury Verdict Research Inc., a private group. The average verdict in product-liability cases now tops \$1 million; preliminary figures for 1985 indicate that the average verdict in medical malpractice cases also exceeded \$1 million for the first time. These giant awards, insurers say, exert an influence out of proportion to their numbers. They set a target for plaintiffs and their attorneys to shoot for, and move defendants to offer high out-of-court settlements rather than take a chance on what a jury might do.

The Association of Trial Lawyers of America counters by arguing that the Jury Verdict Research figures on averages are distorted by a relatively small number of huge verdicts. In addition, they say, the figures count only the initial outcomes of trials that the plaintiffs won. If defendant victories, out-of-court settlements and verdicts reduced on appeal were factored in, say the lawyers, even the average level of awards would be much lower. ATLA asserts that more than two-thirds of the million-dollar awards compensate victims or relatives for genuinely serious injuries, such as death or permanent paralysis, reflecting a laudable determination by juries to see that companies pay the price for misdeeds that once went unpunished.



In some cases, people are successfully pressing claims that seem patently silly. One example: a man who attempted suicide by jumping in front of a subway train sued the New York City Transit Authority, contending that the motorman of the subway that hit him had been negligently slow in bringing the train to a halt. He won \$650,000 in an out-of-court settlement.

Y... much of the lore surrounding the subject has been exaggerated. ATLA analyzed several cases that insurers regularly trot out to prove that the system has got out of hand and found that the facts did not quite support the versions that have passed into insurance folklore and public print, although one or two, even after correction, still sound odd. Some examples:

► According to one frequently cited tale, a body builder competing in a footrace with a refrigerator strapped to his back

was injured when one of the straps came loose; he sued several defendants, including the strapmaker, and won \$1 million. The facts, according to the lawyers' group: ten athletes competed in a televised stunt race, each with a 400-lb. refrigerator strapped to his back; each received a written contract guaranteeing that the equipment had been tested for safety. Franco Columbo, a world-champion body builder, did fall and suffered total knee displacement that required extensive surgery. At the trial, testimony showed that the equipment had never been tested on anyone of Columbo's size while running (he is 5 ft. 7 in., much smaller than anyone else in the race). In fact, the engineer for the fitness center that developed the contest said that he had warned the organizer, Trans World International, that the whole race was unsafe. Columbo did win slightly less than \$1 million from Trans World, but the strapmaker was not sued because the strap never broke.

► Another tale allegedly involves a fat man with a history of coronary disease who suffered a heart attack while trying to start a Sears lawn mower, sued Sears and the manufacturer, contending that too much force was required to pull the rope, and won \$1,750,000. The real story, the trial lawyers point out, is that a 32-year-old doctor, who had no history of heart trouble, fell victim to a heart attack after futilely yanking the lawn mower's starter cord 15 times. A Philadelphia jury found that the mower's exhaust valve failed to meet the manufacturer's own specifications, hindering start-up to the extent that the rope indeed had to be pulled with excessive force. The jury did award \$1,750,000, but the case was subsequently settled for an undisclosed amount.

Birth Pangs

Six out of every ten babies born in Rhode Island draw their first breath in the Women & Infants' Hospital of Providence, a 102-year-old institution that handles only obstetrical and gynecological cases. The facility also takes high-risk cases from nearby hospitals, a practice not calculated to attract insurance salesmen. Women & Infants' has managed to hold on to a \$3 million primary malpractice policy, but it has been trying vainly since last October to renew its \$10 million supplemental coverage.

No field in medicine has been harder hit by the insurance crisis than obstetrics. According to the American College of Obstetricians and Gynecologists, 73% of its 24,500 members have been sued for malpractice at least once. To escape the soaring cost of malpractice protection, some 3,000 ob-gyns have abandoned the specialty.



Crying Shame

The Edith B. Jackson child-care program operates seven day-care homes, a nursery school and toddler center for some 45 children in New Haven, Conn. Affiliated with Yale University, the widely recognized project has not incurred a single insurance claim in 13 years in business. Yet last year the program's liability coverage was canceled, and the only substitute policy available, for \$2,400, is six times the 1984 premium and specifically excludes coverage for child abuse.

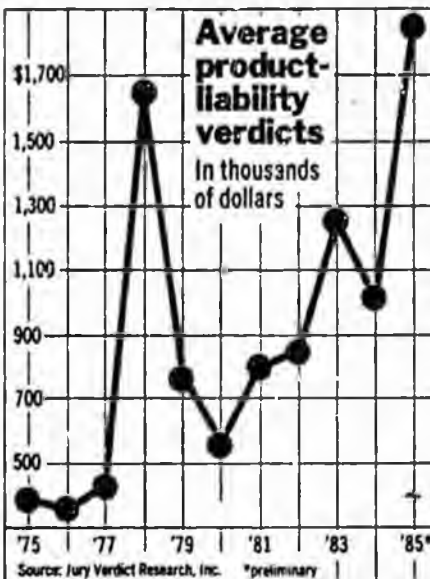
Co-Director Judy Silverman (left in photo) charges that underwriters are unduly skittish about day care because of a few widely publicized child-abuse cases. But even she is worried: "We try to be very careful," she says, "but I am uneasy. If a case of abuse came up and we were sued, my co-director and I could be held responsible."



Nation

▶ Another oft-used example is of two Maryland men who supposedly put a hot-air balloon into a commercial laundry dryer. The machine exploded, injuring both men, who won \$885,000 from the maker of the dryer. What actually happened is that the men took the balloon to a hospital that had laundry equipment designed for industrial purposes. The dryer vibrated violently and then exploded. Both men were injured: one required microsurgery to reattach his hand, which was almost severed. The dryer's maker had a patent on a device that would have stopped the dryer automatically if it began to vibrate excessively, but had declined to install the device on the dryer because of the cost. Oddly, in this case the actual award, \$1,260,000, exceeded the figure usually quoted, but the lawyers point out that the common account of the case ignores the dryer manufacturer's failure to install the protective device.

▶ In yet another celebrated case, a burglar supposedly fell through the skylight of a school, sued and was awarded \$260,000, plus \$1,500 a month. The full story, it seems, is that a 19-year-old man and three friends tried to take a floodlight off the roof of a California high school as a lark; he fell through the skylight and suffered loss of the use of all four limbs, plus severe brain damage. The skylight had been painted the same color as the roof and was indistinguishable at night; the school district knew that it was dangerous because someone else had been killed falling through a similar skylight at another school six months earlier, and had scheduled the skylight for repainting. It settled out of court for \$260,000, plus \$1,200 a month initially, to be increased by 3% each year. Still, it seems debatable whether someone should be so generously com-



pensated for injuries, even that severe, sustained while committing a theft.

Yet whatever the merits of these and other specific cases, the insurance companies are correct in their basic contention: an evolution in liability law has led to higher jury awards and is at least partly responsible for the rise in insurance rates. One important change: the amounts assessed by juries to compensate for lost wages, medical payments and the like now make up a small part of many liability awards. Juries are increasingly likely to add on far larger amounts for noneconomic damages, that is, for such unquantifiable things as pain and suffering.

Equally significant is the growing size of punitive damages, which supposedly serve the same purpose as a don't-ever-do-anything-like-that-again fine of the defendant. Juries sometimes find that a person's actual damages amounted to

only a few thousand dollars, yet decide that the corporation at fault should also pay punitive damages in the millions. In one startling case, now awaiting decision by the U.S. Supreme Court, an Alabama couple sued Aetna Life & Casualty Co., claiming that it had wrongfully refused to pay \$1,650 of the wife's hospital bill. A jury awarded them punitive damages of \$3.5 million, or 2.121 times the size of the disputed bill.

Courts and legislatures have steadily expanded definitions of who can be sued, and on what grounds. These days you usually can sue city hall, despite the doctrine of sovereign immunity, which holds that governments cannot be sued without their consent. State laws, and court interpretations of them, have granted that consent more and more.

Another legal concept being used ever more widely is that of strict liability, which makes possible an award of damages without any proof of negligence. Initially it was applied, for example, to businesses conducting abnormally dangerous activities. Now it has been expanded to product-liability cases: a plaintiff need not prove that the manufacturer of a product was negligent, only that the plaintiff was injured while using the product in the manner intended.

More states have also adopted looser standards of comparative negligence. Even if an accident was partly due to the plaintiff's own negligence, he can successfully sue someone else who also bears some of the blame. In California, for example, a woman who stumbled in a church parking lot on the way to a meeting sued the church, the group holding the meeting and the city, contending that the lot was not lit well enough. Although the defendants felt she was largely responsi-

Truck Stop

Tom Leonard's Miami-based trucking firm, founded by his grandfather in 1919, was besieged in recent years by a fleet of problems, including sharp tax increases and price competition. The company (1984 sales: \$21 million) managed to work around all of them but one: finding the \$5 million in liability insurance it was required to carry. Because many Leonard trucks hauled parts of the space shuttle, rockets and other explosives, underwriters kept hiking rates, limiting coverage and finally refusing to provide sufficient insurance at any price. When his coverage expired last July, Leonard simply shut down.

Insurance is scarce for carriers of any hazardous materials, especially if flammable or toxic. "Companies used to write us up with no problem," says Leonard. "But when rates changed, we may as well have been child molesters."



Sawed Off

The saws, lathes and other woodworking equipment manufactured by the Oliver Machinery Co. of Grand Rapids are designed to last for years. That sign of good workmanship is anathema to insurers, who shun hazardous products that can lead to lawsuits over long periods. "A machine may be 50 or 60 years old, been through a number of owners," says Company President Dana Baldwin. "But if someone gets hurt on it, we will get sued." Largely because of that exposure, Oliver's product-liability premium quadrupled this year, from \$72,000 to \$282,000.

Oliver swallowed its rate hike, but others cannot; 34 of the 113 members of the Wood Machinery Manufacturers of America have left the business. In their place are small, single-product companies that do not have the same long insurance "tail" that often gets caught in lawsuits.



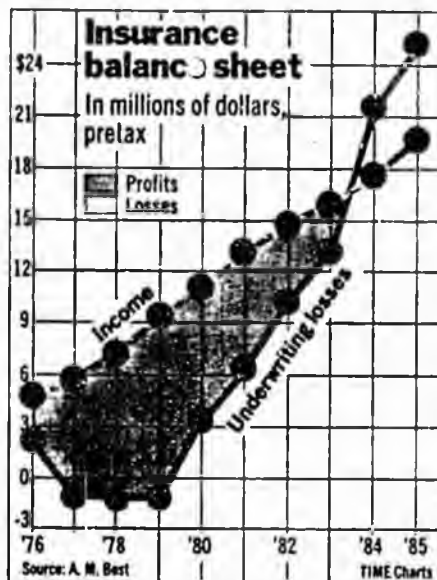
Nation

ble, all three agreed to a settlement paying her \$80,000.

Perhaps the thorniest concept, one that has become a growing factor in many cases, is called "joint and several liability." It allows a plaintiff to sue everyone who might share in the responsibility for an accident, and if any one of the defendants is found to be partially at fault, that defendant may be forced to pay the entire judgment. Originally, it was applied to wrongdoers who had acted in concert, but now is more often invoked against defendants who acted independently. In practice, it increasingly means that awards fall most heavily on the defendant with "deep pockets," often the one carrying the most insurance. The doctrine is now in force in nearly all states.

One way to show how these concepts work—and the effects they can have on insurance coverage—is through a classic case settled last year that began with a child's fall and ended with most of Chicago's parks being stripped of certain kinds of playground equipment. It began in 1978 when two-year-old Frank Nelson fell through a wide space at the top of a slide in a city playground and struck his head on the pavement 11 ft. below. He suffered severe brain damage; the left side of his body is still paralyzed, and his speech and vision are impaired. Nelson's family sued the manufacturer of the slide, the contractor who installed it and the Chicago Park District. Lawyers contended that the district had been negligent in failing to warn against use of the slide by small children, in not providing proper supervision of the playground and not putting a softer surface under the slide.

Officials of the park district and its insurer, U.S. Fidelity and Guaranty Co. of Baltimore, still contend that the primary



responsibility for the accident fell on Frank's mother; she allowed the boy to go on a slide he was too young to use, and should have been watching him more closely. But they never formally accused the mother of negligence in pretrial proceedings; such an argument would not have succeeded unless they also could have convinced a jury that the park district bore no blame: whatever. In this case the park district was the defendant with the deep pockets—\$50 million in liability insurance—and Fidelity was afraid that it would be hit with the largest share of any judgment. Paul Jacob, the insurer's Chicago branch manager, notes that in Illinois a defendant who is found to bear any part of the responsibility for an accident can be liable for all of a damage award. Says he: "Showing that any defendant is not 1% negligent is virtually impossible."

Unwilling to risk paying the damages

a jury might award to a child who had been so severely injured, Fidelity offered a settlement. It proposed to put up \$1.5 million to buy an annuity that will make payments each year to Frank Nelson for the rest of his life. The family accepted, and the case was closed without trial.

But that is not quite the end of the story. Fidelity at first canceled the park district's insurance, but eventually renewed for much less coverage at a greatly increased premium. "Park districts are a terrible risk for any carrier to have to assume," explains Jacob. Finally, the park district, gun-shy because several suits are still pending against it, began tearing down all jungle gyms and slides over 6½ ft. high and carting them out of the city's 513 playgrounds. "Accidents happen no matter what you do," says Park District Treasurer Jack Matthews. "In the past, when Johnny fell off the swings, the park superintendent took him to the hospital, and that was the end of it. Now the parks are inundated with suits."

Such cases show how complex and changing legal doctrines can increase the risks faced by insurance companies and make those risks more unpredictable. But, as consumer advocates point out, they do not explain the full story. The legal doctrines in question have been evolving for many years. The rise in the number of personal-injury lawsuits and the size of jury awards has also been gradual. But apart from medical malpractice for both doctors and insurers for at least a decade, it is only in the past two years that liability premiums have exploded and policies have been canceled wholesale.

What happened? Lawyers and consumer activists charge that insurers are paying the price—rather, trying to

Stiff Drinks

From 5 to 6 p.m., the price of a Heineken beer at the Red Blazer restaurant in Concord, N.H., was \$14.75 instead of the usual \$2.25, and a Beefeater's martini cost \$40. Inflation? Sort of. The Red Blazer and some 400 other New Hampshire bars sponsored an Unhappy Hour last month to dramatize the rising cost of liability insurance for liquor retailers. The restaurant's premium had been hiked from \$1,000 to \$12,000 annually, and its owner hoisted bar tabs in protest. As courts have held tavern owners at least partly responsible for damage caused by intoxicated customers, retail liquor outlets have felt the squeeze from insurance companies. But Unhappy Hour prices are not likely to become permanent: New Hampshire Insurance Commissioner Louis Bergeron argues that higher premiums have actually raised bar costs no more than 18¢ a drink.



Hung Up

When a late-winter storm dumped nearly 100 in. of snow on California's Sierra Nevada range near Lake Tahoe in March 1982, operators of the Alpine Meadows ski area closed down their 13 lifts and warned guests not to venture onto the slopes. When an avalanche struck, however, it did not bury the ski trails but the parking lot and a ski-patrol building, killing seven people. The families of three victims sued Alpine Meadows for \$10 million in damages.

Last December a jury decided that the resort was not responsible for the tragedy. Nevertheless, Alpine Meadows did not emerge unscathed: legal fees for the trial totaled some \$700,000, and the resort's 1986 liability premium doubled, to nearly \$800,000. Like other businesses hit with major cost increases, Alpine Meadows passed on the added expense. It raised the price of a one-day lift ticket from \$24 to \$26.



make the public pay the price—for their own mismanagement and bad judgment. Liability insurance has always been a notoriously cyclical industry. Says Robert Hunter, head of the National Insurance Consumer Organization: "At the top of the cycle you write [policies for] everybody, no matter how bad, and at the bottom you cancel everybody, no matter how good. It's a manic-depressive cycle."

Harsh words, but again containing some truth. In the best of times, property and casualty insurers, the kind that issue liability policies, rarely make much money on underwriting: the premiums collected have exceeded claims paid in only two of the past ten years. Most of their profits come from investing the premiums they collect. Five years ago, when the prime rate, keystone of the U.S. interest-rate structure, hit an incredible high of 21½%, such investments paid off very, very well.

Insurers grudgingly concede that they went all out to attract premium income that could be invested at those towering interest rates. They wrote liability policies that posed a high risk at premiums low enough to almost guarantee an underwriting loss; competitive rate-cutting slashed some premiums by 20% or more. But the insurers never got the bonanza they expected. Underwriting losses rose faster than investment income grew even when interest rates were at their peak.

Then the bottom fell out. Interest rates began tumbling in 1981; the prime is now at an eight-year low of 9%. Underwriting losses ballooned. Foreign reinsurers—Lloyd's of London is the biggest—that indemnify most American casualty companies against extraordinary losses, cut back sharply or ran away from the business entirely, leaving the American firms to shoulder the losses alone. Finally, in 1984 underwriting losses swallowed up investment income entirely and, according to industry statistics, property casualty insurers suffered an overall pretax loss of \$3.8 billion. It was the first red-ink figure in nine years. In 1985 the pretax loss increased to \$5.5 billion. Some 40 liability insurers have become insolvent in the past two years.

Like the figures on jury verdicts, the insurers' profit-and-loss statistics are in sharp dispute. Consumer advocates insist that if adjustments are made for some quirks in insurance accounting (primarily involving the treatment of taxes, dividends and the rising paper value of investments), the industry made a net profit every year. The Insurance Information Institute, indeed, has acknowledged an industry profit after taxes of \$1.7 billion last year, which it contends still amounts to a poor return.

The National Insurance Consumer Organization maintains that the true figure was \$5 billion. Given that, the industry's critics argue, the premium increases now being posted go far beyond what is justified. Sneers Gerry Spence, a famed Wyoming trial lawyer (no relation to Mi-



In the Pool

Many Americans have experienced the mismanagement and bad judgment of the insurance industry. The industry has been a notoriously cyclical industry. At the top of the cycle, you write policies for everybody, no matter how bad, and at the bottom you cancel everybody, no matter how good. It's a manic-depressive cycle.

Harsh words, but again containing some truth. In the best of times, property and casualty insurers, the kind that issue liability policies, rarely make much money on underwriting: the premiums collected have exceeded claims paid in only two of the past ten years. Most of their profits come from investing the premiums they collect. Five years ago, when the prime rate, keystone of the U.S. interest-rate structure, hit an incredible high of 21½%, such investments paid off very, very well.

Then the bottom fell out. Interest rates began tumbling in 1981; the prime is now at an eight-year low of 9%. Underwriting losses ballooned. Foreign reinsurers—Lloyd's of London is the biggest—that indemnify most American casualty companies against extraordinary losses, cut back sharply or ran away from the business entirely, leaving the American firms to shoulder the losses alone.

Like the figures on jury verdicts, the insurers' profit-and-loss statistics are in sharp dispute. Consumer advocates insist that if adjustments are made for some quirks in insurance accounting (primarily involving the treatment of taxes, dividends and the rising paper value of investments), the industry made a net profit every year. The Insurance Information Institute, indeed, has acknowledged an industry profit after taxes of \$1.7 billion last year, which it contends still amounts to a poor return.

The National Insurance Consumer Organization maintains that the true figure was \$5 billion. Given that, the industry's critics argue, the premium increases now being posted go far beyond what is justified. Sneers Gerry Spence, a famed Wyoming trial lawyer (no relation to Mi-

ami's J.B. Spence): "What the insurance companies have done is to reverse the business so that the public at large insures the insurance companies." Consumerists often point to the judgment of Wall Street, hardly a Naderite stronghold. Stock traders bid up the price of property-casualty insurance shares an average of about 50% last year, in the apparent belief that the industry at minimum is on its way back to solid profitability.

Well, maybe. But that road to recovery threatens, at least for the moment, to cripple large segments of the U.S. economy and be extremely costly for every policyholder, taxpayer and consumer. Every day brings word of new repercussions: doctors raising their fees, playgrounds closing, swimming meets being called off, transit systems facing financial jolts, fraternal societies having their coverage canceled, old service companies closing down. Amid all of the attendant finger pointing, a serious search is under way for some solutions.

Self-insurance is a strategy that many businesses, professional people and governments are exploring (or, more often, being forced into). But the experience of doctors indicates it is not much of a solution. In the mid-1970s, doctors organized a number of companies, promptly dubbed "bedpan mutuals," to write malpractice insurance at lower premiums. But several of the bedpan mutuals are said to be in financial trouble, and as a group they too are raising premiums rapidly. Going bare is an act of desperation: business executives and professionals who are operating without insurance almost unanimously voice deep worry that a single big lawsuit could wipe them out.

As might be expected, many are seeking new legislation as a solution. But what line should it take? One approach is called tort reform, which involves putting limits on damage awards in malpractice, negligence and personal-injury cases. Advocates insist that this will allow insurers to get enough of a handle on their potential risks to make writing liability policies a predictable exercise rather than a crapshoot. The leading ideas:

- ▶ Put limits on pain-and-suffering awards and punitive damages. Republican Senator Mitch McConnell of Kentucky has introduced a congressional bill encouraging states to cap pain-and-suffering awards at \$100,000 and to require that punitive damages be paid to a court, as outright fines are, rather than to a plaintiff and his or her attorney.

- ▶ Establish stricter standards for proving who really bears how much of the blame for an accident or injury. Senator John Danforth, a Missouri Republican, is sponsoring a bill that would set uniform federal standards in product-liability cases to replace the present morass of 50 often conflicting state laws; it would require a plaintiff to prove negligence or fault by the manufacturer.

- ▶ Either abolish the doctrine of joint and

Nation

several liability or revise it along the lines of a proposition that Californians will put to a vote on June 3. The proposition would make a defendant's share of any pain-and-suffering award proportionate to the defendant's degree of blame; a defendant found to bear 25%, say, of the responsibility for an accident or injury could be forced to pay no more than 25% of the damages. That would be more equitable, but requiring juries to assess proportionate shares of fault among several defendants would add to the complexity of lawsuits and the time needed to settle them.

► Limit contingency fees, so that lawyers would have less incentive to seek outsize damages for their clients. Several states are pondering variations on a California law that sets up a sliding scale in medical malpractice cases: an attorney can take up to 40% of the first \$50,000 of a judgment, but that share dwindles by stages to only 10% of any amount over \$200,000.

► Institute some sort of punishment, perhaps a fine, for attorneys who file frivolous suits. At minimum, reformers often urge adoption of the European system, under which the loser of a lawsuit usually pays the winner's court costs.

This last idea has yet to gain much ground, but different combinations of the others are being advanced in several states. The National Conference of State Legislatures estimates that around 1,200 bills have been introduced since last December dealing with the insurance crisis in one way or another, and most contain some sort of tort reform. On the federal level, besides the McConnell and Danforth proposals, a Reagan Administration study group headed by Assistant Attorney General Richard Willard is expected to recommend a bill limiting pain-and-suffering awards and punitive damages; it would also establish tighter standards for gauging fault to govern suits in federal courts. (Uncle Sam has more than a bystander's interest: the U.S. was a defendant in more than 10,000 damage suits in fiscal 1985, and wound up paying \$200 million to plaintiffs.)

Some 600 members of the National Association of Manufacturers descended on Washington last week to lobby for the Danforth bill, which besides setting national standards for product-liability suits would establish a new procedure for speedy out-of-court settlement of claims for economic damages. They first gathered at the Marriott Hotel to swap horror stories and pep talks. Under present legal rules, "you're afraid to try anything, put any new product on the market," cried Gust Headbloom, president of Michigan's Apex Broach & Machinery Co. Peter J.

Nord, president of Schauer Manufacturing Corp. in Cincinnati, which makes battery-charging machines, drew loud applause by declaring, "There are going to be people who are dumb and stupid and screw up no matter what we do." Ohio Democratic Congressman Thomas Luken showed up to cheer on the manufacturers. Said he: "Probably no recent issue has snowballed so quickly."

After eating paper-bag lunches, the manufacturers boarded buses to Capitol Hill to buttonhole legislators from their home states. So many Michiganders packed into the office of Democratic Sen-

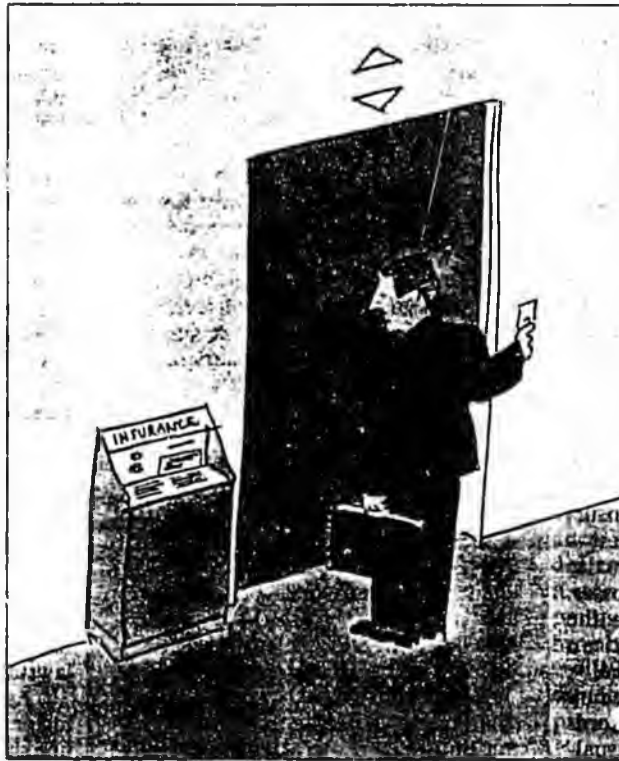
Congress in numbers large enough to wield formidable blocking power. There is a question, too, of whether the courts would uphold any serious tort reforms that might be enacted. One omen: the Cook County, Ill., circuit court last year ruled that major parts of a newly enacted law stretching out damage awards in medical malpractice cases violated the Illinois constitution.

The alternative legislative approach to the insurance crisis is tighter regulation of insurance companies. At the federal level, trial lawyers and consumer advocates are pressing for repeal of the insurance industry's exemption from antitrust laws. That exemption allows insurers to share information and, according to their opponents, engage in collusive premium-setting policies that would be illegal in any other industry. In state legislatures, many proposed bills would enlarge the authority of insurance commissioners to block arbitrary policy cancellations and gargantuan premium increases. The Florida department of insurance has written a proposed bill that would require insurers to disclose what discounts and surcharges they apply to premium rates. Without that information, says Insurance Commissioner Bill Gunter, "the rate itself is meaningless." He adds, "We think insurers need someone to look over their shoulder and keep them honest."

One mildly encouraging sign is that a growing number of legislators seem to recognize that, just as the crisis has no single cause, it cannot have any single solution. They are proposing various combinations of tighter insurance regulation and tort reform. A bill on the verge of enactment by the Minnesota legislature would set up "joint underwriting associations" to issue liability policies, written by the state, to customers who could not get commercial insurance; any losses would be picked up jointly by the state's insurers. But to limit those losses, the bill also would restrict punitive damages, among other tort reforms.

Some combination of measures seems needed, and fast. Anything that affects matters ranging from the pace of oil exploration to the availability of slides in Chicago playgrounds must be taken very seriously. The nation, once proud of its frontier individualism, has gradually adopted a no-risk mentality based on the belief that if anything bad happens, someone should be made to pay. But as damage awards lose any connection to actual damages and insurance companies flail around anxiously, that someone is turning out to be everyone.

—By George J. Church.
Reported by Anne Constable/Washington, B. Russell Leavitt/Atlanta and Michael Riley/Los Angeles



ator Carl Levin that several of the businessmen had to perch on upended attached cases. Levin warned them that "the whole spirit of Congress is to get away from regulation," but promised to take a careful look at the Danforth bill. Plaintiffs' attorneys, needless to say, oppose all tort-reform plans. They commonly accuse insurers of creating a sense of crisis to enact laws that would deny just compensation to victims of malpractice or injury. More troubling, they insist that all the tort-reform ideas would undermine a fundamental principle of democracy: the idea that any citizen should have unrestricted access to the courts for redress of any grievances he might suffer. Robert Habush, president of the Association of Trial Lawyers, says of the tort-reform movement, "In my 25 years in law, this is as serious a threat to the civil justice system as I have ever seen. People have decided there is going to be a hanging, and it is just a question of what tree and what rope."

In all probability, that seriously overstates the case. Present and former trial lawyers populate state legislatures and