

SB

211

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

1988 ~ May 8



Alaska State Legislature

SENATE

Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3755

May 6, 1988

MEMORANDUM

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Senator Jan Fawks
President of the Senate

SUBJECT: SB 211 "An Act relating to civil liability; and
providing for an effective date."

Senate Bill 211, which proposes changes to the civil liability system, has been referred to the House Judiciary Committee for consideration. For your review, I have attached a sectional analysis of CSSB 211 (Fin) am, the version of this bill which passed the Senate on March 30. I have also attached a sectional analysis of HCS CSSB 211 (L&C) prepared by the House Labor and Commerce Committee.

I would appreciate the committee's scheduling of this bill at its earliest convenience.

Thank you.

SECTIONAL ANALYSIS

CSSB 211 (Fin) am "An Act relating to civil liability; and providing for an effective date."

As passed by the Senate, CSSB 211 (Fin) am makes the following changes to the law:

Section 1. NONECONOMIC DAMAGES. Amends AS 09.17.010(b) by reducing the maximum amount of noneconomic damages which may be awarded for personal injury based on negligence.

The present statute has a limit of \$500,000 for such damages; CSSB 211 (Fin) proposes a maximum of \$100,000 for noneconomic damages, which are defined as subjective, nonpecuniary damages including pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, and all other nonpecuniary damages.

Section 2. PUNITIVE DAMAGES. Amends AS 09.17.020 by requiring clear and convincing evidence of specific conduct by the defendant before the court may award punitive damages.

The present statute has the same burden of proof (clear and convincing evidence), but does not specify the type of conduct which will trigger the award. CSSB 211 (Fin) provides that fraud, malice, gross negligence, or reckless disregard by the defendant may result in the award of punitive damages.

Section 3. DAMAGES RESULTING FROM COMMISSION OF A CRIME. Amends AS 09.17.030 by expanding the class of persons who may not recover damages for personal injury or death if the damages were incurred while the person was engaged in the commission of a crime.

The present statute provides that a person may not recover damages for injury or death if the damages were incurred while the person was engaged in the commission of a felony which substantially contributed to the injury or death.

CSSB 211 (Fin) replaces "felony" with "crime". This has the additional effect of precluding persons convicted of a

misdemeanor from recovering damages for personal injury or death if that crime substantially contributed to the injury or death.

Section 4. LIABILITY OF CRIMINAL DEFENDANTS. Further amends AS 09.17.030, to provide that a person convicted of a crime that substantially contributed to the person's injury or death can recover damages from the wrongdoer if the wrongdoer has also been convicted of a crime in which he/she was engaged at the time of the injury or death.

Section 5. AWARD OF DAMAGES. Amends AS 09.17.040(d) by allowing any party, not just the injured party, to request the court to enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump sum payment.

The present statute allows only the injured party to make such a request.

Section 6. INCREASES IN PERIODIC PAYMENTS. Amends AS 09.17.040(f) to make it clear that if the payment of future damages is made periodically rather than in a lump sum, the court may order increases in future payments for anticipated inflation.

Section 7. LIMITED LIABILITY OF CERTAIN DIRECTORS AND OFFICERS. Amends AS 09.17.050 to include members of the board of directors or an officer of an electric or telephone cooperative organized under AS 10.25.

Section 8. COLLATERAL BENEFITS. Repeals and reenacts AS 09.17.070, replacing it with language similar to that found in present statute AS 09.55.548(b) relating to collateral sources in malpractice actions.

This section of CSSB 211 (Fin) provides that a person may only recover damages that exceed amounts that he/she has already received from a collateral source, whether it be a private, group, or governmental source, either contributory or noncontributory. The only exceptions are where the collateral source by law or contract must seek subrogation, or from death benefits paid under life insurance.

This section further provides that the trier of fact shall be informed of the tax implications of an award of damages. The court may also take into account the value of the person's right to coverage which may have been exhausted or depleted by payment of these collateral benefits, and add a reasonable estimate of their probable value to the award.

Section 9. APPORTIONMENT OF DAMAGES. Amends AS 09.17.080(d) by modifying the theory of joint and several liability.

Under the present statute, a party can be held liable for all of the damages, even if that party has been allocated a certain percentage of the fault. The exception under the present statute is that where a party has been allocated less than 50% of the total fault allocated to all of the parties, that party may not be jointly liable for more than twice the percentage of fault allocated to that party.

CSSB 211 (Fin) establishes full joint and several liability in cases involving hazardous waste, environmental pollution, or violation of state or federal antitrust laws.

In all other cases, CSSB 211 (Fin) has the effect of eliminating joint liability, and making each defendant liable only for the share of the damages for which he/she is personally responsible.

Section 10. DEFINITIONS. Amends AS 09.17.900 by adding new definitions for "economic losses" and "noneconomic losses".

Section 11. COSTS ALLOWED PREVAILING PARTY. Amends AS 09.60.010 by eliminating the language "unless the civil action is contested without trial, or fully contested as determined by the court."

This has the effect of allowing the supreme court to determine the costs which may be allowed a prevailing party in a civil action. However, unless attorneys fees are authorized by statute or by an agreement between the parties, they may not be awarded in actions for personal injury, death, or property damage relating to fault.

Section 12. DIRECTOR'S ANNUAL REPORT. AS 21.06.110 currently requires the director of the Division of Insurance to submit an annual report to the legislature. CSSB 211 (Fin) requires this report to include an analysis of medical malpractice insurance rate changes occurring as a result of court decisions in the state.

Section 13. REPEALERS. 1) AS 09.17.010(c) would be repealed, to make the limit on noneconomic damages in section 1 applicable to all injuries. Currently, the limit on noneconomic damages does not apply to damages for disfigurement and severe physical impairment.

2) CSSB 211 (Fin) also repeals AS 09.17.040(c), which allows parties to agree to compute the award of future damages under

the rule adopted in Beaulieu v. Elliott, 434 P. 2d 665 (Alaska 1967). That case held that income taxes should be deducted from the allowance for past lost wages, but not from the allowance for inflation or for future lost wages. It further made no allowance for inflation or for future normal wage increases and approved the use of a per diem formula in computing damages for pain and suffering.

Section 14. REPORT. CSSB 211 (Fin) requires the Department of Law, with the assistance of the Department of Commerce and Economic Development, to report annually to the legislature on closed insurance claims and insurance company finances.

Section 15. APPLICABILITY OF ACT. This Act applies to all causes of action which accrue after the effective date.

Section 16. SEVERABILITY. If any provision of this Act is held invalid, the remainder of the Act is not affected.

Section 17. EFFECTIVE DATE. This Act takes effect immediately.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

Chairman-Representative Dave Donley

(907) 465-3892

May 3, 1988

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Explanation of proposed CS for SB 2.1

Before you today is a proposed House Labor and Commerce CS for SB 211, drafted in response to public testimony received during the last week of public hearings before our Committee and testimony received during the interim public hearing and statewide teleconference we hosted on November 13, 1988.

The changes in the proposed CS from the version of SB 211 that passed the Senate are:

1. Deletes Section 1. (lowered the cap on noneconomic damages from \$500,000 under current law to \$100,000).
2. Deletes Section 2. (limits the standards for award of punitive damages to only cases involving fraud, malice, gross negligence, or reckless disregard).
3. Leaves Section 3 unchanged - becomes Section 1 of the proposed CS. (plaintiff cannot receive damages if they were involved in a crime (FELONY) at the time they were injured and the crime (FELONY) substantially contributed to the injury or death).
4. Leaves Section 4 unchanged - becomes Section 2 of the proposed CS. (allows plaintiff to recover damages if person liable for their injuries was engaged in the commission of a crime or has been convicted of the crime).
5. Deletes Section 5. (allows either party to request periodic payments rather than only the plaintiff, as under current law).
6. Deletes Section 6. (amends section of law governing payment of damages by requiring judgement to include any increases in future payments for anticipated inflation).
7. Leaves Section 7 unchanged - becomes Section 3 of the proposed CS. (extends immunity from liability to members of the board of directors or an officer of an electric or telephone cooperative except for gross negligence).

8. Deletes Section 8. (repeals and reenacts collateral benefits language in existing statute).
9. Rewrites Section 9 (becomes Section 4 of the proposed CS) to establish three tiers of liability:
 - (1) Strict joint and several liability if action involves an intentional tort, toxic or hazardous waste, environmental pollution or damage, violation of state or federal antitrust statutes, a party who acted in consort or conspired with another party, or where the plaintiff is fault free.
 - (2) Modified joint and several liability if damages result from a breach of contract, manufacture and sale of a defective product, operation of an aircraft or motor vehicle, a land sale practice, a transaction involving a security, medical malpractice, medical expenses, an injury for which the party is strictly liable, vicarious liability imposed on the party, a construction project, an injury to an employee and the party is not the employer, and administrative hearings, *and design professionals having indication of*
for environmental pollution cleanup
 - (3) Strict several liability, if the party is not jointly and severally liable under (1) and (2).
10. Deletes Section 10. (definition of economic and noneconomic losses).
11. Deletes Section 11. (attorney fees may not be awarded to a party in a civil action (UNLESS THE CIVIL ACTION IS CONTESTED WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT)).
12. Rewrites Section 12. (becomes Section 5 of the proposed CS) relating to the Division of Insurance Directors annual report to the Legislature to include an analysis of rate changes for commercial and professional liability and workers' compensation insurance occurring as a result of any recent changes in law, including court decisions in the state involving personal injury or death, and actions or suggested actions to mitigate such rates.
13. Deletes Section 13. (repeals AS 09.17.010(c) - limits on noneconomic damages do not apply to disfigurement and severe physical impairment, and AS 09.17.040(c) - rules governing determining computation of future economic damages).
14. Rewrites Section 14. (becomes Section 6 of the proposed CS) relating to an annual report to the Legislature from the Department of law, with assistance of the Department of Commerce and Economic Development in cooperation of all state agencies, to delete ambiguous language and to include a report on the status of pending civil cases filed by the state against liability insurers and recommended changes to state occupational licensing laws that are intended to reduce civil litigation based on malpractice.

15. Leaves Section 15 unchanged - becomes Section 7 of the proposed CS. (applicability).
16. Deletes Section 16. (Severability clause).
17. Leaves Section 17 unchanged - becomes Section 8 of the proposed CS. (Effective date).

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HCS CSSB 211 (L&C)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 5/4/88 Agency Affected: Commerce & Econ. Dev.
Title: An Act relating to civil liability BRU: Division of Insurance
Sponsor: Labor and Commerce Components: Public Protection
Requester: Labor and Commerce

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	350.0	300.0	250.0	250.0	250.0	250.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	350.0	300.0	250.0	250.0	250.0	250.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of dollars)

GENERAL FUND	350.0	300.0	250.0	250.0	250.0	250.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The analysis required in Section 5 for the Director's Annual Report involves a legal and actuarial review of court decisions and an analysis of rate changes resulting from those decisions. This requires a review that present

(CONTINUED - NEXT SHEET)

Prepared by: Donald P. Koch Phone: 465-2571
Division: Insurance Date: 5/5/88
Approved by Commissioner: J. Anthony Smith Date: 5/5/88
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ANALYSIS - (CONTINUED)

staff does not have the needed expertise to conduct. The scope of the analysis is not sufficiently clear to give great precision to the fiscal impact of this proposal. We estimate that a review could be done by an independent actuarial firm with legal assistance. The depth of review would be subject to negotiation and design. We have estimated \$250,000 per year for this work. The remaining \$100,000 in FY 88 and \$50,000 in FY 89 is for participation in the effort required in Section 6. This section requires a report by the Department of Law, which will need the assistance of the Division of Insurance. This participation will require a substantial data collection and analysis effort by the division which it is not geared to accommodate. We expect also to contract for the necessary assistance to develop and implement methods to acquire the data and analyze same.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to civil liability
amending Civil Rule 82
Sponsor: Senate Judiciary
Requestor: Senate Finance

Agency Affected: Commerce & Econ. Dev.
BRU: Division of Insurance
Components: Public Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	25.0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	25.0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	25.0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford*
Division: Senator Rick Halford, Co-chairman
Senate Finance Committee

Phone: 465-4958
Date: 3/23/88

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to Civil Liability
Sponsor: Faiks, Hood, Bennett, et al.
Requestor: _____

Agency Affected: Department of Administration
BRU: Division of Risk Management
Components: Risk Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
TOTAL	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

The final benefit is impossible to accurately project, given that it will only affect liability not yet incurred. Based on the State's past liability claims experience, we project a 20% reduction in estimated ultimate loss and loss expense per fiscal year. The attached projection details the calculations using the State of Alaska's actuarial experience.

Prepared By: Don Hitchcock
Division: Risk Management

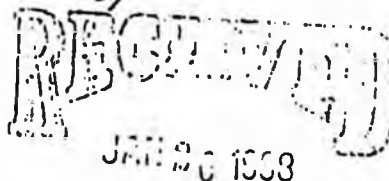
Phone: 465-2180
Date: January 18, 1988

Approved by Commissioner: John M. Andrews
Agency: Department of Administration

Date: 1/23/88

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)



FISCAL NOTE ANALYSIS
FOR SB 211

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

	YEAR OF OCCURRENCE						TOTAL
	1988	1989	1990	1991	1992	1993	
FY 88	-0-						
FY 89		306.0					306.0
Y E A R O F S A V I N G	FY 90	274.0	384.0				658.0
	FY 91	360.0	342.0	480.0			1,182.0
	FY 92	336.0	448.0	428.0	600.0		1,812.0
	FY 93	252.0	420.0	558.0	534.0	750.0	2,514.0
	FY 94		316.0	526.0	698.0	668.0	
	FY 95			394.0	656.0	872.0	
	FY 96				492.0	820.0	
	FY 97					616.0	
	Future	<u>874.0</u>	<u>1,092.0</u>	<u>1,366.0</u>	<u>1,706.0</u>	<u>2,132.0</u>	
	TOTAL	2,400.0	3,000.0	3,750.0	4,686.0	5,858.0	

These represent estimated future payments pattern over a twelve year payout period, i.e., each year.

12 months	12.8%
24 months	11.4%
36 months	14.9%
48 months	14.0%
60 months	10.5%
Balance	36.4%

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: CS SB 211(Fin)
 Publish Date: *Senate 3/24/88*
 Revision Date: Agency Affected: Alaska Court System
 Title: An act relating to civil liability... BRU: Trial Courts
 Sponsor: Faiks, Ahood, et al Components:
 Requestor: Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL
 REVENUE

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:
 Full-time
 Part-time
 Temporary

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg* General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 03/05/88
 Approved by: *Arthur H. Snowden, II* Administrative Director Date: 03/05/88
 Agency: Alaska Court System

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)
 Senate Secretary

MAR 18 1988

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Law
 Title: Relating to civil liability BRU: Legal Services
and amending Civil Rule 82
 Sponsor: Senate Judiciary Components: Operations
 Requestor: Senate Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford* Phone: 465-4958
 Division: Senator Rick Halford, Co-chairman Date: 3/23/88
Senate Finance Committee

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
BUREAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 4, 1988

SUBJECT: Civil liability - HCS CSSB 211(L&C)
TO: Representative Dave Donley
FROM: Michael F. Ford *M.F.*
Legislative Counsel

I wanted to bring two issues to your attention regarding HCS CSSB 211(L&C). First, AS 09.17.080(d)(2)(M) in section 4 of the bill appears to require certain environmental damages be awarded under a modified joint and several liability rule. In that same section, these damages appear to fall under a rule of pure joint and several liability under AS 09.17.-080(d)(1). It may be necessary to further amend (d)(1) to provide an exception for (d)(2)(M) if that is the intention of the committee. Second, the language in section 5 regarding insurance rate changes violates the single subject and title requirements of Article II, section 13 of the Alaska Constitution. The analysis of insurance rate changes resulting from changes in statutes is clearly not within the title of the bill. It includes subjects not necessarily related to civil liability, which creates a double subject problem.

Please contact me if you have further questions.

MFF:bb
b5/095

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/31/88

FURTHER REFERRALS:

Judiciary
Finance

DATE: 5/3/88

The Labor & Commerce Committee has considered CSSB 211(Fin)am

"An Act relating to civil liability; and providing for an effective date."

RECOMMENDS:

- replace with HCS CSSB 211 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Dave Donley (as amended)

Sp. Ellis no rec

Neil Rossman no rec

W.A. Paulsen as amended

Dave Donley

Chairman's signature

COMPARISON OF RESULTS IN JUSTICE CASE

California		Alaska	
(California <u>WITH</u> Tort Reform)		(Alaska <u>WITHOUT</u> Tort Reform)	
\$32,000 per year for life expectancy of 42 years	\$305,619	Total Jury Verdict	\$1,449,160
\$75,000 payment on July 1, 1995	28,113	Plts. 10% comparative neg.	-144,916
\$200,000 payment on July 1, 2005	28,101	Subtotal	<u>1,304,244</u>
\$400,000 payment on July 1, 2015	22,125	Present value of L.A. Hospital settlement as of July, 1985	-210,201
Present value of future payment as of July, 1985	<u>\$383,958</u>	Subtotal	<u>1,094,043</u>
Plus cash payment on July 1, 1985	50,000	Collateral benefits pursuant to AS 09.55.548 (b)	- 89,378
Plus attorney fees present value as of July 1, 1985	130,000	Subtotal	<u>1,004,665</u>
Plus costs	15,000	Prejudgment Interest @ 10.5% per annum from May 30, 1982 (date of injury) through March 16, 1988	683,534
TOTAL	<u>\$578,958</u>	Subtotal	<u>1,688,199</u>
		Rule 82 (a) attorney fees	171,319.90
		JUDGMENT	<u>1,859,518.90</u>
		Plus Costs (not yet known) (+)	<u> </u>

TORT REFORM WORKS!

In California, the plaintiff receives \$2,214,000 from a structured settlement for a present cost of \$578,950.00.

In Alaska, the plaintiff receives \$1,859,518.90 (+) for a present cost of \$1,859,518.90 (+).

The cost to health care consumers in Alaska is three times the amount that it is in California.

Senate Bill 211 will enact reforms benefitting all Alaskan insurance consumers while protecting those the civil justice system serves.

In November of 1987, MICA went to trial on the Justice v. Humana Hospital case. MICA insured each of the three defendants including the hospital on a "tail" policy purchased when Humana bought Community Hospital. The two physician defendants were dropped the day before trial by the plaintiff's attorneys and the hospital became a single defendant.

CASE FACTS:

Justice was seen in the emergency room on two occasions in May of 1982, from a fall in an Anchorage bar. The visits were both in the middle of the night and 25 hours apart. 48 hours later the patient presented himself to Los Angeles County Hospital where he was admitted and discharged the next day. He was admitted yet again five days later, discharged, and finally readmitted twelve days later comatose with a right sided hemiplegia.

LEGAL ACTION:

Separate suits were filed in California and later in Alaska. L.A. County made a settlement with an agreement that if the plaintiff was successful in Alaska, L.A. County could recover 1/3 of the Alaska award to a maximum of \$300,000.

TRIAL RESULTS:

MICA tried to join L.A. County Hospital in a joint defense. Certainly they were responsible for the last and longest treatment. Our court would not allow this and further would not allow any negligence by L.A. County to be a defense. The outcome was a verdict with the plaintiff 10% negligent and Humana 90% negligent. The verdict was an award totaling 1.3 million with add-ons for prejudgment interest and Rule 82 increasing the award to in excess of 2 million dollars.

TORT REFORM EFFECTS:

The cost to Alaska to pay for the plaintiff who had already received retribution in California is substantial. Tort Reform legislation would have had an absolute impact on the results of this case. Under Tort Reform legislation the extent of L.A. County's negligence would have to be considered, the percentage of fault for Humana would be affected under joint and several liability, collateral source from the L.A. settlement would have to be offset and finally a cap on non-economic losses would have impacted the judgment.

MICA feels this is an excellent representation of the positive effects of California tort reform. Because of our own laws, Alaskans paid in the extreme for a plaintiff that had been compensated elsewhere. Our analysis of the Justice case leads us to the irrevocable conclusion that tort reform legislation will decrease costs to Alaska and its citizens.



ALASKA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Miss Patricia Oakes
Box 30009
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(907) 520-5227

VICE CHAIRMAN
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130 Seward Street, #205
Juneau, AK 99801
(907) 586-2066

SECRETARY
Mrs. Marian R. Triggs
475 Panorama Drive
Fairbanks, AK 99712
(907) 457-4386

May 8, 1988

Hon. Jund Sund, Chairman
House Judiciary Committee

Dear Chairman Sund:

Although I will be unable to testify at this afternoon's hearing on the Committee Substitute for SB 211, I wish to go on record as spokesman for the Alaska Legislative Committee of the American Association of Retired Persons.

AARP and the State Legislative Committee, representing the legislative interests of the 28,000 older Alaskans who belong to AARP are opposed to the passage of SB 211 this year. We point out that in no state where tort reform has been adopted have liability insurance premiums shown any downward movement.

It is our belief that since the State of Alaska has joined in the suit against the insurance industry, the legislature should await the outcome of that litigation before adopting any legislation on the subject.

Thank you for this opportunity to make our opinion known to the Committee.

Respectfully,

A handwritten signature in black ink that reads "Bob Pavitt". The signature is written in a cursive style with a long horizontal stroke at the end.

Bob Pavitt



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April 27, 1988

Rep. Dave Donley, Chairman
House Labor & Commerce Committee
Room 113, Capitol
Juneau, Alaska

Dear Chairman Donley:

Inasmuch as I will be unable to attend the continued hearing on SCSSB 211 (Finance) presently before your committee, I am submitting the following testimony in writing, and will appreciate it being added to the hearing record on the bill.

My name is Bob Pavitt, and I'm Vice Chairman of the AARP ALASKA STATE LEGISLATIVE COMMITTEE that represents the legislative interests of the 27,000 older Alaskans who belong to AARP.

Our overall concern is that the legislation before you will not accomplish its objective (the lowering of liability insurance premiums), but that it will do substantial violence to the rights of injured parties to recover reasonable compensation for their injuries.

We have serious concerns with 2 sections of the bill--specifically Section 1 and Section 5.

Section 1 We believe that the reduced limitation on non-economic damages (from \$500,000 to \$100,000) may be discriminatory with respect to older people, who do not have a great earning potential in their retirement years.

Section 5 We are concerned with the removal of the term "injured party" in the requesting of periodic payments. Obviously, the prospect of a 20 year payoff is not very appealing to a 75-year old injured party.

On the very day (March 23rd) that I testified on this bill before the Senate Finance Committee, the Anchorage Daily News carried the story of a suit filed by the Attorneys General of 8 states against dozens of insurance companies claiming that the industry had conspired to create the current liability crisis. I respectfully submit to you that it might be well to await the results of that litigation before pressing forward with what we consider to be flawed tort reform legislation. Thank you for the opportunity to testify.

American Association of Retired Persons 1909 K Street, N.W., Washington, D.C. 20049 (202) 872-4700

John T. Denning *President* Jack Carlson *Executive Director*

JOINT AND SEVERAL LIABILITY

Questions and Answers

1. What is joint and several liability?

This is a rule of law that says that if two or more people *combine* to cause harm to another, they are each liable to their victim for the entire amount.

2. What is the reason for the rule?

Joint and several liability is a rule of FAIRNESS. It applies *only* when each wrongdoer has contributed in causing *all* of a victim's damages. Because each wrongdoer has in fact caused all of the victim's damages, it is only fair that the law make each of them responsible to the victim for the entire loss.

3. Why should one wrongdoer pay all the damages?

It is only fair to make a person who has caused all the damages pay for the losses he has caused, even if others may also be responsible. However, in most cases, one wrongdoer does not pay all the damages. If one wrongdoer compensates the victim, that person can force the others responsible to reimburse him for their share. Joint and several liability puts the burden for distribution of a loss among those who have caused it, and not on an innocent victim.

4. Does Alaska have pure joint and several liability?

No! In 1986, the state legislature adopted a *modified* form of joint and several liability, which limits a wrongdoer's liability to no more than twice his percentage of fault. In other words, if a wrongdoer is found to be 10% responsible for harming a victim, he would only have to pay 20% of the damages. This would mean that 80% of the damages must be borne by the innocent victim.

5. Why shouldn't the victim prove the degree of fault of everyone whose fault contributes to his injuries?

In most cases where two or more persons concur to cause damages to a victim, it is extremely difficult, if not impossible, for a victim to prove degrees of fault among wrongdoers. When each wrongdoer concurs to cause the victim's entire loss, it is fair to make each wrongdoer responsible for the whole.

6. How long can a victim wait to sue someone who has harmed them?

Ordinarily, the victim only has two years from the time of the accident or loss. If wrongdoers are liable under joint and several liability, their victim, by suing one wrongdoer, can preserve his rights against the rest. This is a very important right in Alaska, since many times an out-of-state wrongdoer cannot be located in time to meet the deadline for filing suits.

If the rule that those who combine to cause a victim's loss are liable for the entire loss is changed, then many wrongdoers would escape liability completely, since they could not be located in time for a victim to preserve his rights against them.

7. What happens if one guilty person has no money to compensate their victim? Under joint and several liability, who bears the risk of insolvency?

Under *pure* joint and several liability, the risk of insolvency is on the wrongdoers rather than on the innocent victim. The law has for many generations recognized that society is best served by having the wrongdoers bear the loss, because, to be held jointly liable, each must have been found to have caused all the damage. If the rule were abolished, the innocent victim would bear the loss.

Under Alaska's *modified* joint and several liability, since someone cannot be held liable for more than twice their percentage of fault, both the wrongdoer *and* the victim bear part of the risk of insolvency.

8. Why is it important that one of the responsible parties be solvent?

It is important that one of the responsible parties be solvent, so that innocent victims can be compensated for the wrongs done to them.

9. Can you give us some examples?

a. A plane crashes because an engine part was defective and because the airline did not properly inspect and maintain the engine. If the part would not have been defective, or the inspection had been properly performed, the accident would not have happened. If the part manufacturer is insolvent, under *pure* joint and several liability, the families of the passenger can be fully compensated by the airline for their loss. Without joint and several liability, they may receive only 50% of their damages from the airline, even though the airline's failure to inspect directly caused the plane to crash.

b. Leaching of toxic chemicals from a hazardous waste dumpsite has polluted a well which supplies water to a large housing project with expensive homes. Due to the carcinogenic nature of the chemicals, homeowners can no longer even bathe or wash their clothes in the water, let alone use it for cooking or drinking. There is an unusually high incidence of cancer and other serious ailments among subdivision residents, and their once-expensive homes are now worth absolutely nothing.

The dumpsite has been in use for over 15 years, and has changed hands several times. There are no records of who has been dumping, which chemicals, and in what quantities over that period of time. Although many companies have used the site, there are records for only one company which has been dumping PCB's, known carcinogens, during the past 2 years. If this is the only company that can be located, should the homeowners be left to bear the rest of the burden for their losses?

c. A car and a gasoline transport truck both enter an uncontrolled intersection without stopping and collide, causing the gas to ignite and burn adjoining buildings. The car has minimal insurance, and the car's driver has no assets to speak of. Each driver caused all the harm; under joint and several liability, each driver is liable for the whole. Without joint and several liability, the property owners

would bear 50 percent of their loss even though they contributed nothing to the accident!

10. Why should a person who is found to be 10 percent at fault be in a position to pay 100 percent of the damages?

First of all, in Alaska, **THIS IS NOT POSSIBLE.** Under current law, someone who is found to be 10 percent at fault would not pay more than 20 percent of their victim's damages.

Even under the *pure* joint and several liability enforced by most other states, this is an infrequent occurrence, although it can happen -- particularly in a complicated case with *multiple* wrongdoers. The greater the number of wrongdoers, the more likely the percentage of fault of each will be low.

You must keep in mind, however, that -- both in Alaska and in other states -- the 10 percent wrongdoer, to be liable in the first place, must have been found to have been a cause of *all* of the victim's damages. If joint and several liability were abolished to protect the 10 percent wrongdoer, it would also protect those who are 40, 50 and 60 percent at fault, as explained in the examples.

Also keep in mind that the 10 percent wrongdoer has the right to force the other wrongdoers to reimburse him for any damages beyond his percentage of fault. This places the burden where it should rightfully be -- on someone who caused the harm, rather than on someone already harmed through no fault of their own.

11. How much would the law be changed if wrongdoers who concur in causing damage were not responsible for the entire loss they caused?

This would be an extremely significant change in the law. It would overturn the carefully balanced legislative policy and design that has governed Alaska and other civil law jurisdictions since the time of the Romans, some two thousand years ago. It would also overrule thousands of well-reasoned cases where the rights of the parties were carefully evaluated.

NATIONAL CAMPAIGN AGAINST TOXIC HAZARDS

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EXCEPTIONS TO ABOLITION OF JOINT AND SEVERAL LIABILITY

1. Hazardous waste
2. Intentional torts
3. Where defendants acted in concert
4. Where defendants conspired to commit a wrongful act
5. Where defendant's share of judgment is uncollectable
6. Economic damages
7. Cases less than \$25,000 worth of total damages
8. Fault-free plaintiffs
9. Land sale practices
10. Pollution control cases
11. Security transactoins
12. Anti-trust
13. RICO Act cases
14. Where defendant is more than 25% at fault
15. Environmental pollution
16. Toxic case
17. Aircraft accidents
18. Strict liability cases
19. Product liability cases
20. Motor vehicle accidents
21. Medical expenses
22. Medical malpractice cases
23. Where defendant is more than 50% at fault
24. Situations not found in legislation and "having sound basis in public policy"
25. Defendants strictly liable for the manufacture and sale of defective product
26. administrative hearings
27. workers' comp cases which implead third parties
28. construction cases
29. contract cases
30. If damages cannot be apportioned
31. Radioactive waste
32. manufacture of generic products
33. business torts

JOINT AND SEVERAL LIABILITY

ABOLITION OR MODIFICATION
AS OF

JULY 1987

ALABAMA

Contributory no changes

ALASKA

1986 - any defendant less than 50 % at fault cannot be held jointly liable for more than two times the percentage of fault.

ARIZONA

1987 - Abolished except for:

1. intentional torts
2. hazardous waste

ARKANSAS

No changes

CALIFORNIA

1986 - Abolished for non-economic damages (Prop. 51).

COLORADO

1986 - Total abolition

1987 - Except in cases in which the defendants:

1. acted in concert
2. conspired to commit a wrongful act.

CONNECTICUT

1986 - Total abolition except where the defendants' share of judgment is uncollectable.

1987 - Except for economic damages.

DELAWARE

No changes

FLORIDA

1986 - Abolished except for:

1. cases less than \$25,000 worth of total damages
2. intentional torts
3. fault free plaintiffs
4. land sale practices
5. pollution control cases
6. security transactions
7. anti-trust
8. RICO Act cases

GEORGIA

1987 - Abolished, however, a jury may specify particular damages and award a jury verdict severally.

HAWAII

1986 - Abolished in non-economic damages cases except for:

1. a defendant is more than 25 % at fault
2. intentional torts
3. environmental pollution
4. toxic cases
5. aircraft accidents
6. strict liability cases
7. product liability cases
8. motor vehicle accidents

IDAHO

1987 - Abolished except for:

1. intentional torts
2. hazardous wastes

ILLINOIS

1986 - Abolished except for:

1. defendants more than 25 % at fault
2. medical expenses
3. medical malpractice cases
4. environmental cases

INDIANA

1984 - Total abolition

IOWA

1984 - Limited the doctrine so it would not apply to defendants found to bear less than 50 percent of total fault assigned to all parties, leaving them liable for their several amount. Iowa 1984 Act, Secs. 668.1-668.3, 619.17.

KANSAS

1978 - Abolished case law. Brown v. Keill, 580 P.2d 867 (Kan. 1978)

KENTUCKY

No changes

LOUISIANA

1987 - Abolished to the extent that a less than 20 percent defendant would not be responsible for more than 50 percent of the damages awarded.

MAINE

No changes

MARYLAND

Contributory - No changes

MASSACHUSETTS

No changes

MICHIGAN

1986 - The doctrine is fully applicable if the plaintiff is fault free. If a plaintiff is attributed with any degree of fault the doctrine applies as follows:

1. a defendant is severally liable for the degree of fault the court or jury assessed; and
2. there is joint liability for the degree of fault the unpaid portion at the same percentage of fault assessed.

MINNESOTA

No changes

MISSISSIPPI

No changes

MISSOURI

1987 - If the defendant is less at fault than the plaintiff, the defendant is limited to two times the level of fault assessed.

MONTANA

1987 - Abolished except for:

1. defendants more than 50 % at fault

NEBRASKA

No changes

NEVADA

1987 - Abolished except for:

1. product liability cases
2. toxic wastes
3. intentional torts
4. cases in which defendants acted in concert

NEW HAMPSHIRE

1981 - Abolished the doctrine in favor of several liability. N.H. Rev Stat. Ann. Sec. 507.7-a.

NEW JERSEY

No changes

NEW MEXICO

1981 - Abolished by case law. Abolition with exceptions.

1987 - Abolished except for:

1. intentional torts
2. situations not found in the main text of the legislation and "having sound basis in public policy"
3. among defendants who have a relationship imposing vicarious liability
4. defendants held strictly liable for the manufacture and sale of a defective product.

NEW YORK

1986 - Abolished in non-economic damages cases except for:

1. a defendant who is more than 50 % at fault
2. administrative hearings
3. in workers' compensation cases which implead third parties
4. intentional torts
5. toxic torts
6. product liability cases where the responsibility cannot be joined to the action
7. construction cases
8. contract cases
9. motor vehicle cases

NORTH CAROLINA

Contributory no changes

NORTH DAKOTA

1987 - Abolished except for:

1. intentional torts
2. cases in which defendants acted in concert

OHIO

1980 - Total abolition (Ohio Rev Code)

OKLAHOMA

1978 and 1981 - Case law which limits the rule to cases where damages cannot be apportioned or when plaintiff is not at fault.

✓ **OREGON**

1987 - Limits the doctrine to defendants who are 15 percent or more responsible. The doctrine applies in full in pollution, hazardous waste and radioactive waste cases.

PENNSYLVANIA

No changes

RHODE ISLAND

No changes

✓ **SOUTH CAROLINA**

Contributory no changes

SOUTH DAKOTA

1987 - Limited joint for those who are 50 % or less responsible for a wrongful action. Defendants pay no more than twice their percentage of fault.

TENNESSEE

Contributory - No changes

TEXAS

1987 - In order to be held jointly liable, a defendant's percentage of responsibility must reach certain thresholds:

1. In negligence and malpractice cases:
 - a. "Texas Rule" - defendant's percentage of responsibility must be greater than the plaintiff's; and
 - b. 21 % threshold - defendant's percentage of responsibility must be greater than 20 %.
2. In products liability cases a defendant must reach the 21 % threshold.
3. Where the plaintiff is fault free the defendant must reach a 11 % threshold.
4. There is no threshold for defendants in pollution injury cases and toxic torts.

UTAH

1986 - Total abolition.

VERMONT

1981 - Abolished the doctrine in favor of several liability. Ut. Stat. Ann. Tit. 12, Sec. 1036.

VIRGINIA

Contributory no changes

WASHINGTON

1986 - Abolished except for:

1. fault free plaintiff
2. defendants acted in concert
3. hazardous waste
4. business torts
5. manufacturing of generic products

WEST VIRGINIA

1980 - Abolition except in cases where defendants are more than 25 % at fault.

WISCONSIN

No changes

WYOMING

1986 - Total abolition

CITIZENS COALITION FOR TORT REFORM

907-561-6250

April 15, 1988



APR 20 1988

Senator Jalmar (Jay) M. Kerttula
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Kerttula:

Please find enclosed a breakdown of the cost of a recent verdict in favor of the plaintiff and against Humana Hospital and MICA, The Medical Indemnity Corporation of Alaska.

This case is an example of what really happens in our civil courts. Many plaintiff's lawyers have told you that there are not judgements in the State of Alaska in excess of one million dollars. Here, before you, is an example of one. I am certain that many of you have heard Mr. Roller, from the Division of Insurance, testify that jury verdicts are only the tip of the civil litigation iceberg. Below the water level on this iceberg, where we cannot see or measure, are the settled cases. Nevertheless, jury verdicts serve as bench marks, or "shadow verdicts", if you will, and it is against these verdicts that insurance companies attempt to settle claims. There are some interesting facts which can be read between the lines in an evaluation of this judgement.

For the record, the Los Angeles County settlement was \$650,000.00 with the provision that the plaintiff would have to return \$300,000.00 to California if successful in his Alaska lawsuit. The plaintiff was clearly far more successful in Alaska than he was in California. Please note the difference between the Alaska award of \$1,859,518.90 and the California award of 650,000.00. This seems "clear and convincing evidence" of the value of tort reform in California vs. the lack thereof in Alaska.

What is of further interest is that the California settlement was reduced to present value - by the Alaska Court - when it subtracted the amount from the verdict awarded in Alaska. At the same time the Alaska court computed the costs for economic and non-economic costs on the basis of future economic value - as opposed to again using present economic value - when it came to making the award. It seems to me this is a clear inconsistency on the part of Judge Gonzales. Either we should calculate everything as present value or at future value, but not be selective in calculating the deductions at present value and awards at future value.

April 15, 1988

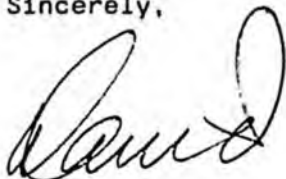
Page 2

Please note the cost of pre-judgement interest of \$683,534.00. The Alaska tort reform action in 1986 mandates pre-judgement interest be calculated from the date of filing. Had the 1986 law been in effect in 1982, there certainly would have been substantially less pre-judgement interest added to the award in this case. It is also very important to note there was no action taken on the Alaska case for a period of one year while the litigation was pursued in California. The one year lack of action in Alaska forced the pre-judgement interest award to increase \$117,446.

Finally I would like to draw your attention to Rule 82 attorney's fees. Please note in the Alaska case alone, the cost was \$171,319.90. In its history, MICA has paid out nearly half a million dollars in Rule 82 fees. To its certain knowledge, MICA has never been successful in recovering a single dime for Rule 82 fees when it prevailed. I think this illustrates clearly our contention that Rule 82 is a one-way street. It is awarded when there is a pocket to pick; when there is not a pocket, there is no award. The net effect is to increase the cost of awards by 10% or so in the State of Alaska. Further testament is the fact that we, the consumers, pay a premium rider for Rule 82 fees for every policy written in the State of Alaska.

Obviously the present liability crises is not over. The tort system is a clear and major part of the problem. I would urge your action on the Senate Bill 211, which is presently in Representative Donley's House Labor and Commerce Committee.

Sincerely,



David A. McGuire, M.D.
Chairman, Citizens' Coalition for Tort Reform

MKD03003/vv

MICA Medical Indemnity
Corporation of Alaska

ALEUT PLAZA
4000 OLD SEWARD HWY., SUITE 203
ANCHORAGE, ALASKA 99503

TO: MICA Executive Committee
MICA Claims Committee

FROM: Janet Johnston,
Claims Manager

DATE: March 17, 1988

RE: Judgement in Justice Case

At 2:00 p.m. this afternoon I was informed by Jim Delaney's office that Judge Gonzales had entered judgement in the Justice case in the amount of \$1,859,518.90. That figure is inclusive of prejudgement interest and Rule 82 attorney fees but does not include plaintiff's costs which have yet to be determined at a cost hearing. I do not expect that those will exceed \$100,000.

The judgement of was broken down as follows:

\$ 1,449,160.00	Amount of the verdict
- 144,916.00	10% plaintiff contributory negligence

\$ 1,304,244.00	Subtotal
- 210,201.00	Present value of L.A. County settle-
-----	ment as of July 1985
\$ 1,094,043.00	Subtotal
- 89,378.00	Collateral medical benefits

\$ 1,004,665.00	Subtotal
+ 683,534.00	Prejudgement interest at 10 1/2%
-----	from May 30, 1982 - March 16, 1988
\$ 1,688,199.00	Subtotal
+ 171,319.90	Rule 82 attorney fees

\$ 1,859,518.90	Final Judgement

To this final judgement figure will be added plaintiff attorney costs as they will be determined by the judge at a cost hearing to be held in the future.

DAVID A. MCGUIRE, M.D.

Orthopedic Surgery

DIPLOMAT OF THE AMERICAN BOARD
OF ORTHOPAEDIC SURGERY

4048 LAUREL STREET
SUITE 202
ANCHORAGE, ALASKA 99508

PHONE 907-562-4142

April 15, 1988

RECEIVED
APR 22 1988

Dave Donley, Representative
House Labor & Commerce Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Donley:

I am enclosing a recent memorandum from the staff at Providence Hospital. As you may know, the Supreme Court recently, in its Jackson vs Powers decision, allocated to the Hospital a non-delegable duty relative to care provided within the Emergency Room. This, in the view of the Sisters of Providence, has substantially increased their liability relative to malpractice actions against the Hospital. In their opinion, they already have an unacceptably high exposure, and the Supreme Court decision makes their continued operations untenable without enjoining physicians in the lawsuits provided.

Please note the second motion enacted by the Executive Committee of the staff of Providence Hospital, April 13, 1988. The unhappy fact of the matter is that continued escalation of liability exposure has brought the staff of Providence Hospital and the Administration of Providence Hospital, to very bitter loggerheads. There is more than a possibility that medical services are going to be curtailed as a result of this Supreme Court interpretation and as a result of the attendant liability.

Clearly there are at least two factors operating in this arena. The first is the magnitude of the liability, and the second is the distribution of the liability. Many may not quarrel that the distribution of the liability is appropriate relative to the Supreme Court's decision in Jackson vs Powers. Nevertheless, if that's the case, then the magnitude of the liability must be reduced or simply not tenable for the hospital to continue with the kind of loss exposure that it's had.

I am also enclosing correspondence between our Clinic, Anchorage Orthopedic Associates, and the other large orthopedic clinic in Anchorage, namely the Anchorage Fracture & Orthopedic Clinic. Again, I think the correspondence is self-explanatory. Nevertheless it's worth pointing out that from our point of view, (that is Anchorage Orthopedic Association), we cannot take the risk of interpreting films that are copies because they may miss some important detail. Anchorage Fracture & Orthopedic Clinic does not feel

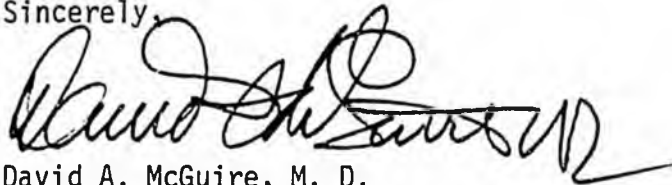
page 2 - Representative Don Donley

they can release the films because they've had instances in which the films have been stolen, misplaced, lost, etc. If litigation ensues and the films are not available, it's the physician's word against the patient and the plaintiff attorney. Clearly an untenable situation for "risk management". The immediate consequence to the citizens of the State of Alaska is that when I see a patient for a second opinion, I'm compelled to order new X-rays. These X-rays are an approximate cost of \$150.00. Given that I see an average of five to ten patients in any given week for second opinions, the arithmetic becomes important.

Representative Donley, this is an important problem, and we cannot afford to continue to ignore it. I understand that the Attorney General is contemplating action against the insurance companies for anti-trust, etc. To the extent that such activities are responsible for the present state of affairs, we support that investigation. To say that that alone is sufficient is clearly short-sighted if not self-serving. I'm certain that you are well aware that the Medical Mutual Insurance Companies in the State of Alaska have nothing whatever to do with Aetna, SIGNA, or any of the other major insurance companies that are being part of this action. To say that the action on the part of those insurance companies has anything whatever to do with the current state of affairs so far as medical liability insurance is concerned is to obscure the issue.

In 1976 and '76, the liability crisis became acute within the State of Alaska. There was a period of time in which medical care was provided only on an emergency basis. There were patients who were denied care because of their affiliation with identifiable subsets of the community. This is an unhappy state of affairs and should not be allowed to occur again. I do not feel that we can afford to ignore any longer that 20 to 40% of the physicians in the State of Alaska are uninsured, and not by choice. The insurance is available, it's simply not affordable. Recent verdicts and settlements in malpractice actions illustrate the point. It's not clear to me that we can afford a system that allocates one individual \$1.8 million dollars when he's already received \$650 thousand from a settlement in California. The parents of a baby born in Ketchikan recently received \$2.2 million dollars and the lawsuit continues. It doesn't take a genius to do the arithmetic to divide these kind of costs amongst the citizens of a state of 500,000 people. I urge your expeditious action to hold a hearing on Senate Bill 211 and the related issue of defining hospital liability.

Sincerely,



David A. McGuire, M. D.

DAM:li

T.B.R. OUTLINES OF ALASKA LAW
TORTS

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P.O. Box 1312
Juneau, Alaska 99802

TORTS

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TORTS

I. INTENTIONAL TORTS

A. Examples:

1. Assault and Battery

a) An act with intent to cause a harmful or offensive contact which actually places the victim in imminent apprehension of such a contact fulfills the elements of assault and battery. Malice is not an element. Merrill v. Faltin, 430 P.2d 913 (Alaska 1967).

b) Damages: A person is not entitled to actual or compensatory damages for assault and accordingly, not entitled to punitive damages if he/she suffers no mental or physical injury. Hamerly v. Denton, 359 P.2d 121 (1961).

Nominal? —

2. False Imprisonment

a) False arrest is one way to commit false imprisonment. Since the arrest involves restraint, it inherently involves imprisonment. City of Nome v. Ailak, 570 P.2d 162 (1977).

b) Defense: Where a shopkeeper has reasonable grounds to believe that the person has concealed upon his person unpurchased merchandise, such grounds acts as a defense to false imprisonment actions, if the person is detained in a reasonable manner for not more than a reasonable time to permit investigation or questioning. Malvo v. J. C. Penney Co., 512 P.2d 575 (Alaska 1973).

c) Alaska does not permit an individual to bring an action against the state for recovery of damages for various intentional torts, assault, battery, false imprisonment, libel, slander, etc. AS 09.50.250(3). But suit permitted where plaintiff's wrongful incarceration was caused by negligent record keeping, and not false imprisonment. Zerbe v. State, 583 P.2d 845 (Alaska 1978). See, Alaska State Tort Claims Act, Sec. V.A.

Emotional Injury

3. Emotional Injury. Intentional Infliction of Emotional Distress. Despite the fact that Worker's Compensation (AS 23.30) is the exclusive remedy for the injured worker, (See Sec. V) conduct by the employer's insurance carrier subsequent to the injury in which the carrier intentionally and maliciously misled the worker about his right to compensation and discouraged him from exercising his rights, will support a claim for emotional injury. Stafford v. Westchester Fire Ins. Co. of New York, Inc., 526 P.2d 37 (Alaska 1974).

Intentional Interference
w/ Contract Right

4. Intentional Interference with Contract Right. A contracting party has a claim against a third party who intentionally procures breach of contract. A prima facie case is established by proof of a breach intentionally procured. Defendant then must show that his conduct was justified. Plaintiff need not show malice or ill will. Long v. Newby, 488 P.2d 719 (Alaska 1971).

Trespass & Conversion

5. Trespass and Conversion. Plaintiff shall be awarded damages which would place him in a substantially equivalent position to that which he would have occupied had the trespass not been committed. Thrift Shop, Inc. v. Alaska Mutual Savings Bank, 398 P.2d 657 (Alaska 1975).

II. INJURY TO REPUTATION

A. Defamation

1. Definition of Libel: Every false and unprivileged publication which exposes a person to hatred, contempt, ridicule or obloquy, or causing him to be shunned or avoided or which tends to injure him in his occupation is "libelous". Golden North Airways v. Tanana Pub. Co., 15 Alaska 303, 218 F.2d 612 (1955).

2. Privilege.

a) A publication that is defamatory in itself is itself an injury entitling the injured one to recover damages unless it is shown to be true or that it is privileged. Pearson v. Fairbanks Pub. Co., 413 P.2d 711 (1966).

b) Truth is a complete defense, Fairbanks Publishing v. Pitka, 376 P.2d 190 (Alaska 1962) 445 P.2d 685 (Alaska 1968), Urethane Specialties v. Valdez, 620 P.2d 683 (Alaska 1980).

Absolute Privilege

c) Absolute Privilege: Judicial officers, attorneys, witnesses, jurors, legislators, government executive officers and others are accorded absolute privilege of publishing false and defamatory matter within certain limitations. Fairbanks Pub. Co. v. Francisco, 390 P.2d 784 (1964). Defamatory matter published in a judicial proceeding, although made maliciously, is absolutely privileged. Smith v. Bannister, 9 Alaska 632 (1939). This extends to affidavits as well as in-court testimony. Nizinski v. Currington, 517 P.2d 754 (1974).

Conditional Privilege

d) Conditional Privilege: News media is accorded "conditional privilege" to publish reports of a government official even though report may contain false and defamatory matter. This privilege is recognized because it is considered in public interest that information be made available as to what takes place in public affairs. Fairbanks Pub. Co. v. Francisco, 390 P.2d 784 (1964).

Malice negates conditional privilege

e) Malice: A defamatory statement made with the knowledge that it is false or with a reckless disregard of whether it is false negates the conditional privilege. Pearson v. Fairbanks Pub. Co., 413 P.2d 711 (1966). Restatement (Second) of Torts § 600 (1977) Urethane Specialties v. Valdez.

III. NEGLIGENCE

A. Overview: Prima Facie case of negligence is established by the existence of an act or omission which is a breach of a duty of due care and which is the proximate cause of the plaintiff's injury.

1. Duty

a) Defendant must have owed a duty of care to the plaintiff.

Duty of Care

b) Generally, the duty of care is the duty to act with that amount of care which a reasonably prudent person would use under the same or similar circumstances. Leich v. Lundquist, 540 P.2d 492 (Alaska 1975).

i) Inaction may also constitute a breach of duty. Sharp v. Fairbanks North Star Borough, 569 P.2d 178 (Alaska 1977).

Breach

2. Breach.

a) That duty must have been breached.

b) The breach of duty may be "misfeasance" or "nonfeasance". Transamerica Title Ins. Co. v. Ramsev, 507 P.2d 492 (Alaska 1973).

Causation

3. Causation:

Cause-in-fact

a) Cause-in-fact. The breach of duty must be the cause in fact of the injury, and

Proximate
foreseeable
probable
not extraordinary

b) Proximate cause. The injury to plaintiff must have been proximately caused by the breach. Larman v. Kodiak Electric Ass'n, 514 P.2d 1275 (Alaska 1973).

4. Damage. The plaintiff must have been injured. The injury may be to the person or to property.

5. Defenses. There are two types of defenses:

a) Defenses which may deny liability. See Comparative Negligence, Immunities, Statute of Limitations, Sec. III F.

b) "Defenses" which may reduce damage recovery. See Contribution, Indemnity, Sec. VI.

B. Duty. There are several duties in Alaska in addition to the basic duty to behave as a reasonable person would. Some of these special duties are created by statute, some by case law.

1. Duty Not to Violate Legislative or Administrative Standard or Negligence per se. The source of this special duty is judicial. The court may adopt as its standard of conduct for a reasonable

person the requirements of a legislative or administrative regulation. The purpose of the doctrine is to make the general reasonable person duty specific and precise.

a) Originally enunciated in Ferrell v. Baxter, 484 P.2d 250 (Alaska 1971) and refined in Bachner v. Rich, 554 P.2d 430 (Alaska 1976).

*Special Duty based
on regulation or law*

Per SC

b) In order for a regulation to qualify as a special duty for determining negligence per se, the purpose of the regulation violated must be:

i) To protect a class of persons which includes the one whose interest is invaded;

ii) To protect the particular interest which is invaded;

iii) To protect that interest against the particular hazard from which the harm results;

iv) To protect that interest against the kind of harm which has resulted.

c) The regulation may be employed as the applicable standard of care where the rule of conduct contained therein is expressed in specific, concrete terms.

i) The regulation may not be used as the standard of care where the regulation merely sets out a general or abstract standard of care. Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, rehearing 563 P.2d 256 (Alaska 1977).

ii) Nor will a safety clause in a government contract be considered the applicable standard of care toward a non-employee or non-business related person on the job site. Macev v. United States, 454 F.Supp. 684 (D.C. Alaska 1978).

negligence per se

d) The elements listed in (b) are necessary to a finding of negligence per se; however, the fact of adopting the regulations is discretionary with the trial court. Bachner.

e) If the trial court adopts the regulation or statute for purposes of determining negligence per se, the effect is that the statute or regulation will become a substitute for the usual common law reasonable person standard as the standard of care. The jury, so instructed, must then apply the standard of care to the remaining elements necessary to a determination of negligence.

f) A prior criminal conviction may be conclusive as to negligence if it arose from the same facts as the subsequent negligence action. Scott v. Robertson, 583 P.2d 188 (Alaska 1978). (Earlier conviction for driving while impaired, conclusive evidence of facts necessarily determined in subsequent civil action arising from same incident.)

2. Duty of Owner and Occupier of Land. Alaska has abandoned the common law classifications of trespasser, licensee and invitee as a means of determining the type of duty owed by the land owner or occupier.

a) Now a reasonable person standard applies. The owner must maintain his property in a reasonably safe condition in view of all the circumstances, including:

b) A land owner is not liable if 1) the injury results from the natural conditions of the land, and 2) the injured person was under no duty to pay the owner for his use of the property.

i) The likelihood of injury to others;

ii) The seriousness of the injury;

iii) And the burden on the respective parties of avoiding the risk. Webb v. City & Borough of Sitka, 561 P.2d 731 (Alaska 1977).

Health Care
Provider's
Duties

3. Duty of the Health Care Provider. This duty has its source in the Medical Malpractice Act, AS 09.55.535-560.

a) The legislature has determined that the reasonableness of the conduct of a "health care provider" is measured by the degree of care ordinarily exercised in the field or specialty in which the defendant is practicing. AS 09.55.540(a)

i) The plaintiff has the burden of proving by a preponderance of the evidence the degree of care ordinarily exercised in the field or specialty, the defendant's failure to abide by this degree of care, as well as the burden of proving that plaintiff's injuries were the "proximate result" of the breach of duty. AS 09.55.540(a)

ii) Priest v. Lindig, 583 P.2d 173, (Alaska 1978), applies a community rather than national standard.

iii) There is no presumption of negligence on the part of the defendant. 09.55.540

iv) A "health care provider" includes a physician, psychologist, dentist, nurse, chiropractor and physical therapist. 09.55.560.

b) The health care provider is also under a duty to obtain the informed consent of a patient under certain circumstances.

i) The provider is liable for failure to obtain informed consent if claimant establishes by a preponderance of the evidence both failure to inform of common risks and reasonable alternatives and that but for the failure to inform, claimant would not have consented. 09.55.560.

ii) It is a defense to a claim of lack of informed consent that the risk was either commonly known or too remote, the

patient had already indicated lack of heed of any risk, consent was not possible, or disclosure would have had an adverse effect on the patient's condition. 09.55.560(b).

c) A patient and a health care provider may execute an agreement to submit to arbitration. 09.55.535.

i) Any claim filed after such an agreement is formed shall be submitted to an arbitration board, which may appoint an expert advisory panel.

ii) The report of the expert advisory panel is admissible in court as if its contents were testified to by its preparers. 09.55.536(e).

d) No advance insurance payment is admissible as an admission of liability. 09.55.546

e) Damages are awarded in accordance with principles of common law. 09.55.548

f) Good Samaritan Act AS 09.65.090 waives liability for simple negligence even when committed at a hospital by a doctor in an emergency.

4. Duty of the Common Carrier. A higher standard of care is imposed on common carriers transporting passengers for hire. They must exercise the highest degree of care for the safety of passengers. Widmver v. Southeast Skyways, Inc., 584 P.2d 1 (Alaska 1978).

5. The common carrier duty also applies to a prisoner. Wilson v. Kotzebue (Op. No. 2331, May 1981).

6. Employer's Duty Regarding Defects in Machinery. The employer has a special statutory duty to protect employees from defects or insufficiency in machinery on the job and is liable to the employee or representative. AS 23.25.010.

a) Contributory negligence is not a defense if the employee's contribution to the injury

Common Carrier
Duty of Care

Employer's Duty
to Employee

was slight and the negligence of the employer gross. AS 23.25.010.

b) This statutory remedy is not available for an employee covered by worker's compensation. Haman v. Allied Concrete Products, 495 P.2d 531 (Alaska 1972). (See Worker's Compensation Sec. V. E.)

Dram Shop Act
in Alaska

7. Duty of Innkeeper/Bartender. There is now a Dram Shop Act in Alaska. In Alesna v. LeGrue, 614 P.2d 1387 (1980) the Supreme Court gave a private right of action against the licensee to a person injured by a drunk. Recent enactment of AS 04.21.020 provides for civil liability for a licensee who provides alcohol to a minor or a drunk.

Bailee

8. Duty of a Bailee.

a) Standard of Care: Bailee is liable for any loss or injury to bailed goods caused by failure to exercise degree of care of a reasonably careful owner.

i) This liability may be modified by contract so long as the provision is not unconscionable.

ii) Alaska refuses to exempt bailee from liability when bailment is at the bailor's risk but there is no provision concerning bailee's own negligence.

iii) A provision requiring the bailor to provide insurance does not absolve the bailee from liability for negligence.

iv) Strict liability is applied if otherwise appropriate to bailors and lessors. It is attached on the basis of the existence of a defect in the product rather than on negligent conduct. Bachner v. Pearson, 479 P.2d 319 (Alaska 1970).

b) Burden of Proof: Once loss or damage to bailed property is shown, burden shifts to bailee. Dresser Indus., Inc. v. Foss Launch & Tool Co., 560 P.2d 393 (Alaska 1977).

C. Breach. The determination of breach of the applicable duty involves factual analysis of whether the conduct that actually occurred was a deviation from the applicable standard of care.

1. Means of Establishing. Breach may be established by direct or circumstantial evidence, or by res ipsa loquitur.

2. In the doctrine of res ipsa loquitur, circumstantial evidence may establish a prima facie case of negligence where:

i) The accident is of the type which does not ordinarily occur in the absence of someone's negligence;

ii) The instrumentality is within the exclusive control of the defendant;

iii) The occurrence was not due to any voluntary action by the plaintiff. Widmyer v. Southeast Skyways, Inc., 584 P.2d 1 (Alaska 1978); Crawford v. Rogers, 406 P.2d 189 (Alaska 1965).

D. Causation. Recall that both cause-in-fact and proximate cause are necessary for the determination of negligence.

1. Cause-in-fact may be established in either of two ways:

a) "But-for" cause. Plaintiff would not have been injured but for defendant's negligence; or

b) "Substantial factor" cause. Even if defendant's conduct was not a "but for" cause (i.e., if either one of two acts would cause the injury), defendant is still liable if his conduct was a substantial factor in bringing about the injury. State v. Guinn, 555 P.2d 530 (Alaska 1976) (Failure of State to remove disabled truck was substantial factor cause in death of motorist who collided with truck.) See also, State v. Abbott, 498 P.2d 712, 726-

27 (Alaska 1972) and Sharp v. Fairbanks North Star Borough, 569 P.2d 178, 181-182 (Alaska 1977).

Proximate Cause

Foreseeable
Proximate
Not Extraordinary

2. Proximate Cause—A public policy determination of liability for unexpected types or methods of injury. Vance v. United States, 355 F.Supp. 756 (D.C. Alaska 1973).

a) Recall the difference between problems of direct causation (where there are no intervening forces) and indirect causation.

"Intervening Force"

b) "Intervening force" (the foreseeability of which determines defendant's liability) is one which actively operates after the defendant has acted. Sharp v. Fairbanks North Star Borough, 569 P.2d 178 (Alaska 1977).

E. Damages

1. What Damages Can Be Recovered

Foreseeable proximate not extraordinary

a) In general, all damages proximately caused by a party's tortious actions are recoverable. ERA Helicopters v. Digicon Alaska, 518 P.2d 1057 (Alaska 1974).

b) Past damages, that is those damages already suffered at the time of award, may include past economic loss, medical expenses, lost earnings and past pain and suffering. City of Whittier v. Whittier Fuel & Marine Corp., 577 P.2d 216 (Alaska 1978); Alaska Airlines v. Sweat, 568 P. 2d 916 (Alaska 1977).

c) Future damages, or those damages yet to be suffered at the time of award may include prospective medical bills, lost earnings and pain and suffering. Sweat.

Future economic loss awards not reduced to present value
- inflation affect
- investment risk shouldn't be placed on it

i) Special-Alaska rule does NOT reduce future economic loss awards to present value. Beaulieu v. Elliott, 434 P.2d 665 (Alaska 1967).

ii) Reason for NOT reducing plaintiff's award to its present value by subtracting an amount equivalent to that which would

be realized by prudent, safe investments: the court believed that any earnings from a reduction to present value would be offset by inflationary pressures. Further, there is an inherent risk involved in investments and the plaintiff should not be forced to assume that risk. Beaulieu.

lost wages
computation

iii) In computing future lost wages, no allowance is made for salary increases. This, however, has been slightly modified in State v. Guinn, 555 P.2d 530, 545-546 (Alaska 1976), where automatic wage increases keyed to longevity may be included in an award for lost wages. In Guinn, the step increases were contained in a collective bargaining agreement and could be accurately predicted.

iv) Regarding income taxes, the court indicated in Beaulieu that future earning capacity is not reduced by future income taxes since such taxes are speculative, but past wages lost are subject to a reduction for state and federal income taxes since they may be accurately computed.

d) Interest:

i) Prejudgment interest is the interest earned from the time the cause of action accrues until the time of judgment. State v. Phillips, 470 P.2d 266 (Alaska 1970). The rate of prejudgment interest in Alaska is 10 1/2% under AS 45.45.010 on cases filed after July 1, 1980. Cases filed before 1980 bear interest at 8%. Juneau v. Commercial Union, 598 P.2d 957 (Alaska 1979).

ii) Post-judgment interest is that interest earned from the time of settlement or judgment until the amount is paid. Guin v. Ha, 591 P.2d 1281 (Alaska 1979). Judgments after July 1, 1980 bear interest at 10 1/2% prior to July 1, 1980, at 8%.

Obligation to
mitigate damages

e) Mitigation of Damages. Plaintiff has duty to mitigate damages by seeking alternate employment; however, the duty does not extend to taking employment which is temporary and of significantly less responsibility than original employment. Univ. of Alaska v. Chauvin, 521 P.2d 1234 (Alaska 1974).

Collateral Source
Rule

f) Collateral source rule prevents the defendant from showing at trial that plaintiffs received payments through insurance or other sources for injury caused by defendant's negligence. Aydlett v. Haynes, 511 P.2d 1311 (Alaska 1973).

2. Who is Liable For Damages

Respondeat
Superior

a) Respondeat Superior, Employer liable for negligent acts or omissions of employee committed in the scope of employment. Luth v. Rogers & Babler Construction, Co., 507 P.2d 761 (Alaska 1973). Fruit v. Schreiner, 502 P.2d 133 (Alaska 1972).

Independent
Contractor

b) Independent Contractor. Generally the employer is not vicariously liable for the negligence of an independent contractor. Hobbs v. Mobil Oil Co., 445 P.2d 933 (Alaska 1968). Exceptions:

Exceptions:

i) Where employer has retained control over the actual manner of work. Hobbs. State v. Morris, 555 P.2d 1216 (Alaska 1976) (State did not have sufficient control over work of private employer contractor, and was thus not liable for contractor's failure to provide safety equipment; dissent held state inspector should have known of violations of safety regulations and would have imposed liability).

ii) Where the delegated duties involve unreasonable risk of harm to others. Alaska Airlines v. Sweat, 568 P.2d 916 (Alaska 1977). (Scheduled air carrier should not be permitted to barter away its responsibility to passengers by contracts with other carriers.) See Restatement Second Of Torts § 428.

iii) Where plaintiffs can bear burden of showing independent negligence on the part of the employer, such as failing to turn over premises to independent contractor that are free of safety hazards. Sloan v. Atlantic Richfield Co., 552 P.2d 157 (Alaska 1976).

Defences

F. Defenses to Negligence

Alaska is
Comparative Neg.
State.

Abolished are:
contributory neg.
last clear chance
assumption of risk

1. Comparative negligence is adopted in Alaska. Contributory negligence, (which defeated plaintiff's claim if he were even slightly negligent himself) last clear chance, and assumption of risk are abolished in Alaska. Kaatz v. State, 540 P.2d 1037 (Alaska 1975).

a) Pure form comparative negligence originating in admiralty and judicially adopted in California and Florida is adopted in Alaska.

b) Under a "pure form", the plaintiff's damages are simply reduced in proportion to the amount of negligence which is attributed to him. Kaatz v. State, 540 P.2d 1037 (Alaska 1975).

c) Alaska rejected the "modified form", such as Wisconsin's 50% system, in which a negligent plaintiff may recover only so long as the amount of his fault does not exceed 50% of the total fault attributable to the parties.

d) Assumption of risk had previously been judicially abolished in Leavitt v. Gillaspie, 443 P.2d 61 (Alaska 1968).

2. Immunities. See IMMUNITIES AND SPECIAL STATUS PARTIES, Sec. V.

3. Statute of Limitations. See T.B.R. CIVIL PROCEDURE OUTLINE.

IV. PRODUCTS LIABILITY

A. Overview:

1. Products liability is the general category for ascertaining the liability of a commercial SUPPLIER

Products
Liability

of a PRODUCT to a person INJURED by the product. In a fact pattern which includes a PRODUCT furnished by a commercial SUPPLIER which INJURES, always consider the following avenues of recovery:

- a) - liability based on supplier's representation.
- b) - liability based on supplier's negligence.
- c) - liability based on supplier's implied warranty.
- d) - strict liability in tort.

Strict Liability
B. Strict Liability in Tort.

1. Duty. A strict duty is owed by a commercial supplier who must provide a product free from defects.

a) The purpose of imposing strict liability on manufacturer or retailer is to insure that the costs of injury resulting from defective products are borne by suppliers rather than by consumers. Cloud v. Kit Manufacturing, 563 P.2d 248 (Alaska 1977).

b) Recall that the defendant must be the supplier of a PRODUCT, not merely a service.

i) The Supreme Court, in an important recent case, held that a company that installed and repaired truck parts is not strictly liable in tort because it did not sell a PRODUCT. It held itself out only as a repair SERVICE. (However, a business that sells used products may be strictly liable in tort.) Restatement (Second) of Torts § 402-A. Swenson Trucking v. Truckweld, 604 P.2d 1113 (Alaska 1980).

c) To whom is the duty owed? Any user or consumer.

d) To what types of harm? Personal injury and sudden and calamitous property damage are recoverable; purely economic loss such as decline in value of property (purchased item a

Duty owed by commercial supplier of a product (not service)

To whom owed:
consumer or user

econ. loss not recoverable

Personal Injury & with property damage are recoverable

"lemon") is not recoverable. Morrow v. New Moon Homes, Inc., 548 P.2d 279 (Alaska 1976).

Rational for including economic

e) Personal injury and property damages are grounded in tort law which applies in products liability. Economic loss is a contract law theory and is not recoverable in products liability. Contract damages are intended to fulfill reasonable economic expectations. Tort damages are concerned with the safety of products. Northern Power & Engine Corp. v. Caterpillar, 623 P.2d 324 (Alaska 1981). Engine failure is not "sudden and calamitous."

Breach
Show product defective in design or manufacture

2. Breach: The plaintiff must show that the product is defective in either manufacture or design.

a) Defect in Manufacture. Elements are:

i) Manufacturer placed product in the stream of commerce.

ii) Manufacturer knew that the product was to be used without inspection for defects.

iii) The product was "defective", i.e., that it deviated from the manufacturer's intended result.

iv) The defect caused the personal injury and property damage alleged.

Defect evidenced by personal injury or California's property damage

Clary v. Fifth Avenue Chrysler Center, Inc., 454 P.2d 244 (Alaska 1969); Sturm, Ruger & Co., Inc. v. Dav, 594 P.2d 38, (Alaska 1979); rehearing 615 P.2d 621 (Alaska 1980).

b) Defect in Design. Elements are:

i) Manufacturer placed product in the stream of commerce.

ii) Manufacturer knew that the product was to be used without inspection for defects.

iii) The product was defective in that it either:

1) Failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner; or

2) Was designed in such a way that the design caused the injury, and that the manufacturer failed to prove that the benefits of the design outweighed the risks of danger inherent in the design (knowledge of manufacturer of danger measured at time of manufacture. Caterpillar Tractor Co. v. Beck, 593 P.2d 87 (Alaska 1979); Heritage v. Pioneer Brokerage Sales, Inc., 604 P.2d 1059 (Alaska 1979). The factors to be considered in weighing the risks and benefits include

- Factors
- a. the gravity of the danger,
 - b. the likelihood that such danger would occur, and
 - c. the mechanical feasibility at the time of sale, cost and adverse consequences of alternative designs.

iv) The defect caused the personal injury and property damage alleged.

Caterpillar Tractor Co. v. Beck, 593 P.2d 871 (Alaska 1979).

c) Special problem with design defect cases:

i) Intended use: lack of direction or warnings may be a defect. Failure to warn is established by:

A. Manufacturer put the product in the stream of commerce.

Design Defect

Manufacturer failed to prove benefits of the design outweighed the risks inherent in the design. Beck

D. The manufacturer knew that the product was to be used without inspection for defects.

C. The defect caused the personal injury or property damage alleged.

D. The product is deemed to be defective without a warning or instructions if the jury finds that the manufacturer did not accompany the product with sufficient warning as to make the product safe (if no warning would make the product safe, the danger must be eliminated).

E. These warnings must be made in a form that will reach the ultimate consumer.

Sturm, Ruger & Co., Inc. v. Day, 594 P.2d 38 (Alaska 1979).

ii) Supplier is also charged with the duty of anticipating likely consumer misuse. Butaud v. Suburban Marine & Sporting Goods, Inc., 543 P.2d 209 (Alaska 1975), 555 P.2d 42 (Alaska 1976).

Supplier must anticipate types of consumer misuse

3. Causation.

a) Actual - where plaintiff claims that the defect was failure to warn, he must also show that but for failure to warn, harm would not have occurred.

Failure of intermediary to discover defect does not excuse supplier's liability

b) Proximate - defendant supplier's liability is not extinguished by intermediary's failure to discover defect.

4. Damages.

a) See Damage Sec. III. Recall that Alaska denies recovery for purely economic loss. Morrow v. New Moon Homes, 548 P.2d 279 (Alaska 1976).

Punitive damages possible

b) Punitive damages. In Sturm Ruger v. Day, 594 P.2d 38 (Alaska 1979), the court upheld the applicability of punitive damages to some

strict liability cases, for the purposes of punishment of the wrongdoers, deterrence of others and prevention of disadvantage to the socially responsible competitor. On remand for a new trial, the court set a ceiling on punitive damages. (The court indicated that the punitive damage award of \$2.9 million was the product of passion or prejudice.)

5. Defenses.

a) Comparative negligence (See Sec. V.): The manufacturer must show that the user:

- i) Was actually aware of the defect and
- ii) Voluntarily and unreasonably encountered the risk known to him, or
- iii) That he misused the product and that this was a proximate cause of the injury.

Butaud v. Suburban Marine & Sporting Goods, Inc., 543 P.2d 209 (Alaska 1975), 555 P.2d 42 (Alaska 1976); Caterpillar Tractor Co. v. Beck, 593 P.2d 871 (Alaska 1979).

C. Liability Based on Supplier's Negligence.

1. Duty - commercial suppliers owe a duty of care to anyone injured by the product. Larman v. Kodiak Electric Ass'n, 514 P.2d 1275 (Alaska 1973); Restatement Second Of Torts § 395. ("reasonably prudent supplier").

2. Breach - the defective product must be caused by defendant's negligence.

a) In manufacturing defect cases, the plaintiff may use direct evidence, circumstantial evidence or res ipsa loquitur.

b) In design defect cases, the plaintiff must show that the designer:

- i) Knew or should have known that the product was likely to be dangerous without proper warning or instructions.

ii) Had no reason to believe that the user would recognize the danger.

iii) Actually failed to give a warning which adequately conveyed the required information to the user.

Restatement (Second) Of Torts § 388

3. Causation - the supplier's failure to exercise reasonable care must have proximately caused the injury. Larman.

4. Damages - recall that mere economic loss is not recoverable. New Moon.

5. Defenses.

a) Comparative negligence: The manufacturer must show that the plaintiff failed to exercise the care of a reasonably prudent person, which failure contributed to the accident; damages are reduced in proportion to the degree of fault attributed to the plaintiff. Kaatz v. State, 540 P.2d 1037 (Alaska 1975).

Representation

D. Liability Based on Supplier's Representation.

Express Warranties

1. Express Warranties of Fitness for a Particular Purpose. Elements:

a) Seller expressly tells or promises the buyer that the product is safe and fit for a particular purpose.

i) Note that defendant must be a seller. One who repairs is not vulnerable to warranty claim. Swenson v. Truckweld, 604 P.2d 1113 (Alaska 1980).

b) The product is not in fact fit for such purposes.

c) The fact that the product is not fit for such purposes causes the accident.

AS 45.05.094 (Alaska's adoption of Uniform Commercial Code § 2-313); Morrow v. New Moon Homes, 548 P.2d 279 (Alaska 1976).

2. Defenses - Recall that the statute of limitations for breach of warranty is four years and that the breach occurs when delivery is made. However, if warranty explicitly extends to future performance, cause of action accrues when breach is or should have been discovered. AS 45.05.242. See CIVIL PROCEDURE OUTLINE, Statute of Limitations.

*Implied
warranty*

E. Liability Based on Implied Warranty.

*- Fitness for
particular Purpose*

1. Implied Warranty of Fitness for a Particular Purpose. Elements:

a) The manufacturer, at the time of the sale, had reason to know of a particular purpose for which the product was required.

b) The manufacturer, at the time of the sale, had reason to know that the buyer was relying on the retailer's skill or judgment in furnishing suitable goods.

c) The product was not in fact fit for the purpose for which it was sold.

d) The unfitness of the product for a particular purpose caused the accident.

AS 45.05.098 (Alaska's adoption of Uniform Commercial Code § 2-314) Prince v. LeVan, 486 P.2d 959 (Alaska 1971); Morrow v. New Moon Homes, 548 P.2d 279 (Alaska 1976).

*Implied warranty of
merchantability*

2. Implied Warranty of Merchantability. Elements:

a) The product (may be food or alcohol) was sold in the regular course of defendant's business, and defendant sold the particular product in question.

b) The product was not fit for the ordinary purposes for which it was used, or did not conform to the promises or affirmations of fact made on the container or label.

c) The product's failure to be fit for its intended purposes caused the injury.

AS 45.05.096 U.C.C. § 2-315; Morrow v. New Moon Homes, 548 P.2d 279 (Alaska 1976).

3. Warranty Defenses on Personalty.

a) The plaintiff did not give the seller notice of the breach of warranty within a reasonable time after the plaintiff discovered or should have discovered the breach. AS 45.05.174(c)(1). (U.C.C. § 2-607).

b) The parties modified or limited the buyer's remedies for damages, AS 45.05.230, U.C.C. § 2-719) and such modifications or limitations are not unconscionable. AS 45.05.072 (U.C.C. § 2-302).

c) The warranties were excluded or modified, and such exclusions or modifications were not unreasonable nor unconscionable.

i) To be effective, modifications and exclusions of the warranty of merchantability must mention merchantability and if they are in writing, must be conspicuous.

ii) To be effective, modifications and exclusions of the warranty of fitness must be both in writing and conspicuous.

AS 45.05.100(b); (U.C.C. § 2-316) Morrow v. New Moon Homes, 548 P.2d 279 (Alaska 1976).

d) Statute of Limitations. 4 years. AS 45.05.242. See IV D(2).

V. IMMUNITIES AND SPECIAL STATUS PARTIES

State Tort Claims Act A. The State Tort Claims Act: The State as a Defendant.

1. Under the State Tort Claims Act, AS 09.30.250, the State is immune from suit in certain circumstances. Sec. 1 immunizes the State from suits based on the act or omission of an employee exercising due care in the execution of a statute or regulation and from suits based upon the exercise or performance (or failure of exercise or

discretionary
function

↑

v.

|

v

operational
function

performance) of a discretionary function on the part of a state agency or employee.

Section 2 immunizes the state from suit for damages caused by the imposition of quarantine.

Section 3 immunizes the state against actions arising out of assault, battery, false imprisonment or arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. See INTENTIONAL TORTS Section I. 2(c).

2. The most important of these immunities is the DISCRETIONARY FUNCTION SOVEREIGN IMMUNITY. The state is protected from suit on its discretionary, policy making functions (such as the decision of where to build roads or overpasses) (Jennings v. State, 566 P.2d 1304 (Alaska 1977)), but remains vulnerable to suit for its operational functions (such as the actual removing of snow from the roads) (State v. Abbott, 498 P.2d 712 (Alaska 1972)).

3. In Carlson v. State, 598 P.2d 969 (Alaska 1979) the State was found liable for personal injuries inflicted by a bear, when the bear was attracted to the site of the attack by garbage that had accumulated on State-owned property.

The attack occurred after the State had ceased its litter removal for the vacation season. The lower court found that appellee's decision regarding maintenance of the highway was a discretionary function for which the State was immune from suit under AS 09.50.250(1). The Supreme Court found that the State's decision on the broad question of whether to maintain highway turnouts in the winter was indeed a policy determination that could not give rise to tort liability. But, the decision made pursuant to that policy, on how to implement it, or when to cease maintenance are operational decisions. As to those, the State is under a duty to act with reasonable care, and is thus not immune under the State Tort Claims Act.

4. Summary: If state's action is discretionary, planning or policy-making, state is immune from suit under Sec. 1 of State Tort Claims Act, AS 09.50.250. If state's action is operational or

ministerial, state is vulnerable. Adams v. State, 555 P.2d 235 (Alaska 1976); State v. I'Anson, 529 P.2d 188 (Alaska 1974).

B. Suits Against Municipality AS 09.65.070 prohibits the following claims against the municipality:

1. Those based on failure to inspect property for violation of law or safety hazard, to discover a violation of law or health hazard if inspection is made, or to abate a violation of law or health hazard once it is discovered, or

2. Those based on a discretionary function, or

a) Urethane Specialties v. Valdez, 620 P.2d 683 (Alaska 1980). Lesser government official in issuing a public warning exercises a discretionary function, but City is not immune with regard to the warning's content. Injured party must show malice (i.e., knowledge that the statement is false or is made with reckless disregard of the truth), or

3. Those based upon a licensing or zoning proceeding or

4. Those based on the gratuitous extension of city services outside the city, or

5. Those based on agreement with the state to meet emergency public safety requirements.

In addition, a city cannot further restrict the period of time in which to bring an action through ordinance. Johnson v. Fairbanks, 583 P.2d 181 (Alaska 1978).

C. Family Immunity (Spouse, Minors, Family)

1. Interspousal tort immunity is not recognized. Cramer v. Cramer, 379 P.2d 95 (Alaska 1963).

2. Parent or guardian who signs for minor is liable for damages resulting from minor's negligent driving, unless minor can prove financial responsibility (e.g. insurance). AS 28.15.071.

3. Minor has the right to bring claim for relief against parents for negligent infliction of harm. Hebel v. Hebel, 435 P.2d 8 (Alaska 1967).

4. A child-employee in violation of child labor laws may waive Worker's Compensation benefits and proceed against the employer in tort. Receipt of Worker's Compensation benefits is not determinative of whether a child has exercised a conscious intent to choose compensation benefits as opposed to bringing a claim in tort. Whitney-Fidalgo Seafoods, Inc. v. Beukers, 554 P.2d 250 (Alaska 1976).

Death &
Survival

D. Death and Survival

1. Wrongful Death AS 09.55.580. Action must be commenced within two years after the death. Haakanson, Personal Representative of the Estates of Simeon and Annie Squartsoff v. Wakefield Seafoods, Inc., 600 P.2d 1087 (Alaska 1979). Even though the statute requires that the 'personal representative' bring the wrongful death action within two years, the disability of minority will toll the running of the statute of limitation. This case was brought on behalf of two surviving children more than two years after the death of their parents.

2. Survival Statute AS 09.55.570. At common law personal tort actions were extinguished by the death of the plaintiff. However, under this statute, all causes of action, except defamation, survive both the death of the plaintiff victim and the defendant-tortfeasor and may be maintained by the plaintiff's personal representative against the defendant's personal representative.

3. Death of a Minor AS 09.15.010. Besides the wrongful death act and the survival act there is a special provision that parents or guardians may sue for the injuries to or death of a child.

Worker's

Compensation

E. Worker's Compensation AS 23.30.

1. The statutory remedies under AS 23.30 are the exclusive remedy of the injured employee against employer for injuries received in the course of employment.

Dual Capacity
Doctrine has been
Rejected in Alaska

2. The dual capacity doctrine provides that an employer apparently protected by the exclusive liability of worker's compensation insurance may become liable to the employee in tort if, in respect to that tort, he occupies a position which places upon him obligations independent and distinct from his role as an employer. In, State v. Purdy, (601 P.2d 258 (Alaska 1979), the Supreme Court rejected the dual capacity doctrine and upheld its prior decisions that the recovery under worker's compensation is exclusive, i.e., it is in place of all other liability to which the employer might be subjected because of the injury to the employee.

VI. CONTRIBUTION.

A. The Uniform Contribution Among Joint Tortfeasors Act AS 09.16.010 - 060 Alaska adopted the 1955 version of the Uniform Act in 1970.

1. The statute abrogates the common law rule of no contribution (that is, no sharing of damages among defendants) and provides for a right of contribution among defendants who are jointly and severally liable, even though judgment has not been recovered against all of them. AS 09.16.010(a).

Pay pro rata
share only

2. The Uniform Act provides that a tortfeasor is compelled to make contribution only up to his pro rata share of the entire liability.

a) example: If there are three defendants, each is liable for 33 1/3% of the total liability even though one of the defendants was 90% at fault.

b) California has interpreted its own version of the Uniform Act to permit comparative contribution, that is, contribution among the defendants in proportion to fault. American Motorcycle v. Superior Court, 578 P.2d 899 (Calif. 1978).

3. In Artic Structures v. Wedmore, 605 P.2d 426 (Alaska 1979), an employee, injured in the course of his employment, sued various third party defendants that had made safety inspections and provided the scaffolding from which he fell. Some defendants urged the abolition of the rule of joint

and several liability in Alaska. The question was whether the liability of multiple third party defendants should be apportioned on the basis of fault or several liability. Petitioners argued for comparative fault under Kaatz. After discussing the legislative history and commissioner's comments, the court concluded that the legislature intended that:

- a) liability be joint and several;
- b) contribution be pro rata and not comparative, thus breaking with California's holding in American Motorcycle;
- c) Worker's Compensation be the exclusive employee remedy against the employer;
- d) the employer not be required to contribute. Neither would the worker's award be offset by any comparative negligence of the employer.

unlike Calif., Alaska's contribution is pro rata, not comparative (which would apportion based on liability)

The court has reaffirmed Arctic Structures in State v. Wien Air, 619 P.2d 119 (Alaska 1980).

Indemnity

B. Indemnity

1. There are situations in which one defendant such as a manufacturer or wholesaler may be held to INDEMNIFY another defendant, such as a retailer. The concept has its origin in contract. Burgess Construction Co. v. State, 614 P.2d 1380 (Alaska 1980)

- a) It may arise without agreement and by operation of law to prevent a result which is regarded as unjust or unsatisfactory. PROSSER at 310 (4th ed.)
- b) Application: Alaska has refused to adopt the active/passive dichotomy which compels the active tortfeasor to indemnify the passive tortfeasor as in California. State v. Kaatz, 572 P.2d 775 (Alaska 1977).



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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February 19, 1986

MEMORANDUM

TO: Representative Steve Rieger

ATTN: Lisa Rubenstein

FROM: Mark Torgerson *MT*
Legislative Analyst

RE: Insurance and Tort Reform
Research Request 86-089

You asked this agency to address a number of issues on tort reform, including:

- California's cap on medical malpractice damage awards;
- current regulation of insurance premiums in Alaska, and the effect of damage awards on insurance premiums;
- the impact of insurance rates on State commerce;
- the impact of tort claims on the State treasury; and
- tort reform efforts in other states and Congress.

We contacted private insurance companies, the Alaska Department of Insurance, the Alaska Department of Administrations Division of Risk Management, State and national medical associations, the American Trial Lawyers Association, the Insurance Services Office, and the National Association of Insurance Commissioners.

Effect of California's Limit on Damages in Medical Malpractice Cases

California's Legislature enacted the Medical Injury Compensation Reform Act (MICRA) in 1975. As you know, a section of the act limits the dollar damages for noneconomic losses incurred by an injured party in

a medical malpractice suit to \$250,000.¹ According to Ron Neupauer, Underwriting Manager for the Medical Insurance Exchange of California (MIEC), the effect of the section's damage "cap" on jury awards, out-of-court settlements and malpractice insurance rates cannot be easily quantified. Mr. Neupauer explained that the statutory cap was appealed in the courts, and its constitutionality was questionable until the United States Supreme Court recently refused to hear an appeal from the state court, thereby affirming the law's validity. Mr. Neupauer asserted that the provisions in the law were not strictly followed or enforced because of this "constitutional cloud." Mr. Neupauer further stated that the law's effect on the size of damage awards and insurance costs may be discernible in the future.

A recent letter written by Jay Dee Michael of the California Medical Association provides the following information on the size of malpractice awards and on malpractice premiums in California:

	<u>Nationwide</u>	<u>California</u>
Average size of malpractice awards	\$974,000	\$396,000
Premium increase in average policy since 1975	300 percent	150 percent
Premium increase in average policy in 1985	33 percent	15 percent

We contacted Mr. Michael, who was unsure of the year(s) used to calculate the size of the award and the source of the information. We are attempting to verify these data and will forward our findings to you.

The above average shown for California malpractice awards conflicts with data provided by the California Board of Medical Quality Assurance. By law, attorneys, insurers and courts must report malpractice settlements, judgments and arbitration awards of \$30,000 or more to the board. Ms. Joyce Miller, Administrative Analyst for the board, provided data showing that the average award per reported claim increased by 86 percent between 1980 to 1984, from \$153,929 to \$286,301. Because this does not include payments for settlements and judgments less than \$30,000--which usually comprise the majority of claims--these averages overstate the actual average settlement.

Mr. Neupauer stated that MIEC's average annual increase of premium in the state was just under five percent during the past 10 years. He also stated that MIEC also insures doctors in Alaska, Nevada, Idaho and

¹Noneconomic losses in the act include pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.

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Hawaii. In these states, the rate of premium increases has been more rapid than those in California, and rates for all of these states but Idaho are now higher than those in California.² According to Mr. Neupauer, the MIEC believes that California's tort reforms "have had a significant moderating effect" on the rate of increase in malpractice premiums for California doctors.³

Regulation of Insurance Rates in Alaska

In response to your request for information on regulation of insurance rates in Alaska, we provided your office with a copy of House Research Agency memorandum 85-239, "Regulation of the Insurance Industry in Alaska." As that memo points out, AS 21.39.010 gives the Alaska Division of Insurance rate-regulating authority. Each insurer must file its proposed rates and supporting data with the division, which can disapprove rates deemed excessive, discriminatory or inadequate to make a reasonable underwriting profit.

In addition, the division allows "deviations" from the approved rates. The majority of insurers are members of an approved rating organization (such as the Insurance Services Office, Inc.), which files standard rates on members' behalf. Alaska Statute 21.39.070 provides that rating organization members may apply to the Division of Insurance for a deviation from the standard rates. The division approves requests for deviations if they meet the same general standards required in rate filings (excessiveness, etc.). According to Don Koch, Chief of Market Surveillance for the division, there is no limit to deviations, but each must be justified by the insurer and approved by the Division of

²Mr. Neupauer stated that the rates MIEC charges Alaska's doctors now exceed MIEC's California rates by an average of 32 percent. At one time, MIEC's rates for Alaska and California were identical.

³"Tort reforms" includes other provisions of the 1975 act. For example, the act provides that evidence of collateral sources of benefits available to the injured party may be admitted by the court. Lawyers argue that this encourages juries to reduce an injured party's award accordingly.

Insurance.⁴ Insurers may request a deviation on all insurance they sell or may limit deviations to a specific class within one line of insurance. According to Richard Block of the Alaska National Insurance Company, many insurers sold insurance below filed rates until recently.

Correlation Between Damage Awards and Insurance Premiums

You asked if there is any correlation between the size of damage awards and insurance premium rates. Insurance companies generally set rates by determining the amount needed to pay for claims and for "loading," which is intended to cover the insurer's sales expense, overhead and profit. Losses include payments for settlements and court-awarded damages. Although the size of damage awards affects the extent of a company's underwriting losses, an insurance company may decide not to adjust premiums if its return on invested funds compensates for the losses.

For example, liability insurance premiums decreased in the late 1970s and early 1980s while underwriting losses during this same time increased steadily. Note, however, that interest rates were at record high levels during this period. Lower interest rates in recent years have reduced investment income causing insurance companies to pay more careful attention to underwriting losses and increasing premiums when underwriting losses are experienced.

Impact of Insurance Rates on State Commerce

You asked us to determine the impact of rising insurance rates on business activity in the state, specifically, the number of jobs lost, businesses closed, or professions changed to reduce liability risks. To the best of our knowledge, there is no method to separate the effects of insurance rates from the effects of other economic factors which influence a business's ability to make a profit. These other factors include the number of competitors, demand for business services, regulatory impacts, and operating costs.

⁴In addition, insurers may request "schedule ratings" which allow further deviation from the rate filing. These deviations apply to specific factors such as safety or business location. According to Mr. Koch, insurers must document and justify deviations allowed buyers. Mr. Koch stated that the division can make field investigations and declare rate law violations for unjustified deviations. Because of staff shortages, the division has made no field investigations during the past two years.

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We contacted 13 state commercial air and surface carriers and asked each to assess the impact of insurance rates on their business activity.⁵ One of the 13 companies--Seair--stated that they stopped operations specifically because of unavailability of insurance.⁶ The other companies have continued operations although some have laid off employees who have not normally been laid off. The owners of companies affected by lay-offs stated that these were caused by a number of factors, including increased competition (resulting in less revenue) and rising operating costs. In addition, all of the contacted companies stated that insurance costs were a major factor affecting operating costs.⁷

We contacted Martha MacDermaid, Executive Director of the Alaska State Medical Association (ASMA), to ascertain the impact of insurance costs on the medical profession. Ms. MacDermaid stated that the ASMA recently surveyed members to determine the effect of insurance costs on business. Although the results of the survey are incomplete, Ms. MacDermaid stated that some obstetricians are quitting the obstetric practice because of insurance costs. Moreover, some doctors have "gone bare," that is, they have decided to practice without insurance protection. We will send the results of the ASMA survey when it is received.

Impact of insurance rates on tourism. Like other businesses, those involved in tourist-related enterprises (boating, aviation) are paying more for liability insurance than was required in prior years. Some of these businesses cannot get the amount of coverage which they previously purchased; others cannot afford it. According to Mr. Hank Rust of Rust's Air Taxi in Anchorage, his business paid \$100,000 in 1985 for insurance on six airplanes. Mr. Rust has been told that identical coverage could double when the policy is renewed in 1986.

Mr. Rust further stated that the additional insurance costs must either be absorbed as an additional cost or passed on to customers via more expensive fares. Mr. Rust said that profits could be affected in either case because the demand for services is roughly the same each

⁵Attachment A includes the companies contacted.

⁶According to Seair's President Al Gay, the company can get insurance for five of the airline's 32 planes.

⁷As you know, the rising cost and unavailability of liability insurance is a nationwide phenomenon. For example, the American Trucking Association recently claimed that 100 companies failed financially because of increased insurance costs.

year, and competition has increased because of the recent deregulation of the Alaska Transportation Commission. Mr. Rust noted that increased fare prices could 'scare away' potential customers.⁸

Insurance Rate Increases During the Past Two Years. According to Richard Block, the only way to accurately determine insurance cost increases for businesses and professionals is by individual survey. As noted, insurance companies file rates with the Division of Insurance. However, insurers usually deviate from the filed rates based upon the particular risk involved and competition for the business. In recent years, insurance premiums were often 20 to 50 percent below filed rates. Currently, premiums are at or slightly above filed rates. In other words, premiums for many buyers can more than double with no change in the standard rate filing. This makes standard rate filings of little value in an attempt to determine premium increases. Moreover, the Division of Insurance does not keep usable records on deviations.

Premium increases for some businesses have been proportionately larger than increases for others. For example, the American Medical Association reported that average increases for general practitioners--considered a low risk segment of the medical profession--increased 31.4 percent during the past two years. However, average premiums for all physicians increased by 44.8 percent during the same period.

As another example, the National Society of Professional Engineers reported that average premiums for engineers and architects increased by 15 percent in 1984 and 35 percent in 1985. However, the average premium increases for structural engineers has been higher because they have experienced the worst loss records in the profession in recent years.

Impact of Tort Claims on the State Treasury.

You asked us to find out the number of tort claims filed against the State in 1985, the number of cases the State lost, payments on these cases, and the range of damage awards paid by the State. According to information supplied by the Department of Law, 120 tort complaints were filed against the State of Alaska during fiscal year 1985, and 78 complaints have been filed during fiscal year 1986. These complaints include physical injury cases and nonphysical injury claims such as sexual harassment or wrongful termination. A list of these cases is

⁸We contacted Dave Stewart of the Alaska Division of Tourism. According to Mr. Stewart, the division received no complaints related to insurance from businesses involved in the tourist industry.

included as Attachment B. The Department of Law does not record whether it wins or loses a case; nor does it keep records of damages awarded. However, the Department of Administration's Division of Risk Management compiles data on all claims filed by third parties against the State. These records include the legal complaints handled by the Department of Law. In addition, the data include claims for physical and nonphysical injuries, with no available breakdown between the two types. Attachment C contains tables from the Division of Risk Management. These tables contain historical data on third-party claims filed against the State. Those categories which contain predominantly third-party physical injury claims include general liability, malpractice and auto liability. Attachment C also contains a table showing frequency, severity and average of general liability claims paid since 1980. Note that most claims incurred are in the \$0-\$50,000 range.

The following table shows total State losses for primarily third-party physical injuries in fiscal years 1983 to 1986. Outstanding reserves are estimated amounts needed to pay on unsettled claims. Loss and expense payments include amounts paid for claims and related litigation expenses during the year. Recoveries include amounts received from other insurance sources. As the table illustrates, the State has incurred almost \$8,000,000 for filed injury claims during the past four years.⁹

TABLE 1
 SUMMARY OF LOSSES
 GENERAL LIABILITY, AUTO LIABILITY AND MALPRACTICE

Fiscal Year	Outstanding Reserves	Loss Payments	Expenses Payments	Recoveries	Net Incurred
1983	\$1,726,290	\$810,034	\$477,807	\$7,448	\$3,021,579
1984	1,165,907	551,688	294,546	9,306	2,021,447
1985	1,562,392	401,734	214,586	241	2,178,953
1986	<u>624,545</u>	<u>58,806</u>	<u>8,095</u>	<u>0</u>	<u>691,446</u>
Total	\$5,079,134	\$1,822,262	\$995,034	\$16,995	\$7,913,425

⁹Note that some injured parties with potential claims against the State have probably not filed their claims. In addition, recoveries lag losses and reserves may not necessarily equal losses paid. The actual net incurred loss will not be known until all cases are settled.

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Tort Reform in Other States and Congress

In order to address your question on tort reform activity in other states during the past five years, we sent requests for information to all 49 states and a number of congressional committees. When the information is received, we will forward our findings.

In addition, Attachment D contains a list of medical malpractice legislation enacted between 1971 and 1985. During this time, eight states placed statutory caps on malpractice damages while thirteen states limited attorney contingency fees. Moreover, the statutes in 12 states allow periodic payments on damage awards.¹⁰

Congressional Bills. There are a number of insurance-related bills pending in Congress; Attachment E provides a summary of the proposed legislation. Please contact our agency if you wish to review copies of these bills.

I hope that this information is helpful to you. Please call me if you have additional questions.

MT

Attachments

¹⁰States with damages caps are California, Indiana, Louisiana, Nebraska, New Mexico, South Dakota, and Virginia. States with limits on contingency fees include California, Florida, Indiana, Iowa, Michigan, Nebraska, New Jersey, New York, Oregon, South Dakota, Tennessee, Virginia, and Utah. Periodic payments are allowed in Alaska, Arkansas, California, Delaware, Florida, Indiana, Louisiana, Maine, Maryland, New York, South Carolina and Wisconsin.

Attachment A

Businesses Contacted for this Memorandum

<u>Air Carriers</u>	<u>Location</u>
Alaska Aeronautical Industries	Anchorage
Rust's Air Taxi	Anchorage
Seair	Anchorage
Wilbur's Flying Service	Anchorage
Harold's Air	Fairbanks
Cook Inlet Aviation	Homer
Channel Flying	Juneau
<u>Trucking Firms</u>	
Big State Trucking	Anchorage
Carlisle Enterprises	Anchorage
Frontier Transportation	Anchorage
Lynden Transport	Anchorage
Air Land Transportation	Fairbanks
Weaver Brothers Trucking	Kenai

ATTACHMENT B

Special Tort Report
February 11, 1986

FY '85

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
33000185	2602	BILLINGSLEY V SMITH (-----DCAK)	840702	850919
33000285	1801	SMITH D&E V ST (PROP DAMAGE--TRCT)	840724	840904
33000385	1603	POLLARD V KALWARA & ST (UNLAWFUL SEIZURE--TRCT)	840724	850424
33000485	9987	DAVIDSON V ST (NEGLIGENT DESIGN--TRCT)	840730	000000
33000585	3806	URQUHART V ST & DON FRANK (GRAVEL OVERLOAD--TRCT)	840803	841231
33000685	2602	MCWAIN V WOOTEN & ST (DOT/PF IMPROPER GRADING--TRCT)	840810	000000
33000785	2602	SOUZA V ENDELL & ST (1983 FINGER INJURY--USDC)	840810	000000
33000885	1603	STANBERG V ST (KLEHINI DROWNING--TRCT)	840813	000000
33000985	2601	GOVT EMPL INS CO V HOWELL (PD--TRCT)	840820	840829
33001085	2602	DEWITT V ST (FAIL TO PROVIDE MED ASST--TRCT)	840821	000000
33001185	9915	MYERS V ST (FOSTER CARE PLACEMENT--TRCT)	840829	000000
33001285	9994	BICKMORE V ST (1983--TRCT)	840829	840919
33001385	3806	YODER V ST (INTENTNL TORT OF CO-WORKER--TRCT)	840829	850403
33001485	2602	LOCKHART V BETZ (1983 RACE DISCRIM--TRCT)	840829	850814
33001585	9902	ROBERTS V ST (UNSWTH)	840914	000000
33001685	9950	MORONEY V ST (NEG SUPER KOR--TRCT)	840906	000000
33001785	3806	CRANE V WILKIE & ST (RAPE IN STA PK LOT--TRCT)	840906	000000
33001885	3806	MORMAN V NC MACHINERY (FAIL TO INSPECT VEHICLE--TRCT)	840906	850701
33001985	1318	SKULTKA V ST (FISHERMAN--TRCT)	840919	860131
33002085	2601	LOCKHART V BETZ (1983 RACE DISCRIM--DCAK)	840919	841114
33002185	2422	K & R ENTERPRISES, INC V ST (NEG RECORDKEEPING--TRCT)	840920	850828
33002285	2602	PRZYBYLA V JOHNSTON (HARRASS ST TROOPER--TRCT)	840925	000000
33002385	9955	NICKERSON V ST (1983--TRCT)	840928	860131
33002485	3806	HOLZHEIMER V CLARK (CIV RTS '83--TRCT)	840928	000000
33002585	3806	SCHEIBL V CLARK & ST (EXCESS FORCE--TRCT)	841012	000009
33002685	9989	VANDER SLOOT V VAN GELDER (EXCESS FORCE--TRCT)	841012	851107
33002785	3806	STRACK V ST (NEG HWY MAINT--TRCT)	841012	841231
33002885	3806	L&H ENTERPRISES V ST (DETRIMENTAL REL--TRCT)	841012	000000
33002985	2316	MANCUSO V ST (DAMAGE TO SEIZED VESSEL--TRCT)	841026	841114
33003085	9953	FAIKS V PITTMAN (SLANDER--TRCT)	841026	000000
33003185	9955	SANFORD, M V ST (IMPROPER GAS DISPOSAL--TRCT)	841102	000000
33003285	2804	SHADE, A V ST (DEFECTIVE PLANE TIEDOWN--TRCT)	841102	000000
33003385	9989	DARBYSHIRE, I V ST (4TH AMEND/1983--TRCT)	841102	000000
33003485	4005	NEWSOM, P V DICKENS, H (CIVIL RIGHTS/1983--DCAK)	841102	850513
33003585	9953	LUPRO, INC (CAP. OFFICE SUPPLY) V ST (ANTITRUST--TRCT)	841121	000000
33003685	9994	ST V MORRISON (JAIL SUPERVISION--)	841121	000000
33003785	9945	NELSON, J V ST (UNSWTH--TRCT-WA)	841220	000000
33003885	2602	ST V DUFREY, M (WC--TRCT)	841220	000000
33003985	9902	RYAN, A V. ST (UNSWTH--TRCT-WA)	841220	000000
33004085	9915	RICHEY, B V ST (FAILURE TO MONITOR--TRCT)	841220	000000
33004185	9945	DONALDSON, M V ST--(BREACH OF WC SETTLEMENT--TRCT)	841224	000000
33004285	9955	RECTOR V ST (EDDIE--TRCT)	841224	850919
33004385	9089	JUDICIAL MISCONDUCT	841224	000000
33004485	2602	ANDERSON V WILSON (1983 COPYRIGHT INFRINGE--FED.)	850104	000000
33004585	9989	BENKA, J V AK POWER AUTHORITY (WRONGFUL TERM--TRCT)	850108	850429
33004685	9989	KIDWELL, S V AK POWER AUTHORITY (WRONGFUL TERM--TRCT)	850108	000000
33004785	9989	ARMOUR, C V. AK POWER AUTHORITY (FAIL TO INSPECT--TRCT)	850108	000000
33004885	2602	WILSON V. MCCONNELL (PI--TRCT)	850108	851231
33004985	1603	BOEING JETFOIL CONTRACT NEGOTIATION	850111	850111

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
33005085	1603	BARRETT V ST (PI S&F--)	850111	850111
33005185	1603	ZABEK, B V. ST (SEX HARASSMENT--TRCT)	850115	000000
33005285	9953	NICK, E V. ST (API NEG RELEASE--TRCT)	850123	000000
33005385	9955	HOFF, J V. ST (HWY MAINT--TRCT)	850123	000000
33005485	1603	HAMMOND V ST (NEG HWY MAINT--TRCT)	850123	850123
33005585	9989	WILLMARTH, R V ST (FALSE ARREST--TRCT)	850123	000000
33005685	9905	DORIS, C V. API (NEG RELEASE--TRCT)	850123	000000
33005785	1417	BULCOA V. O/S SMARAGD & ARC (WRONGFUL DEATH/ADMIR--TRCT)	850123	000000
33005885	9953	AGF CONSTR. INC V. ST (NEG SUPER IC--TRCT)	850131	000000
33005985	2601	1985 SERVICE RECEIPT (ADMIN. FILE--ADMIN)	850131	850227
33006085	2602	SPECIAL LITIGATION MISC (ADMIN FILE--ADMIN)	850131	851118
33006185	1318	MASON V LYNCH V NANGLE (NEG RECORDKEEPING--TRCT)	850201	000000
33006285	1603	ALMONTE, L V ST (S&F--CLAIM)	850214	860114
33006385	1603	HEUSSLER V HOLBROOK (HWY MAINT--CLAIM)	850214	000000
33006485	2420	EITEL, G V HUNT (JUDICIAL ABUSE--DCAK)	850219	000000
33006585	1603	CHURCH, K V ST (NEG DESIGN --CLAIM)	850227	850802
33006685	9911	BROWNE, S V COTTLE, A & ST (SEXUAL HARASSMENT--TRCT)	850228	000000
33006785	9953	CHRISTIAN, C V ST (HWY MAINT--TRCT)	850301	000000
33006885	9950	HANSON V ST (NEG BLASTING--TRCT)	850301	000000
33006985	3806	CONSUMERS INSURANCE CO V ST (HWY MAINT--TRCT)	850308	000000
33007085	1801	LOY V ST (TRESPASS--TRCT)	850308	000000
33007185	3806	GALLAHAN, R V ST (MALPRACTICE--TRCT)	850308	850730
33007285	3806	YODER V ST (APPEAL)	850308	000000
33007385	3806	CONRAD V ANDERSON & ST (FI/HWY MAINT--TRCT)	850312	000000
33007485	9996	SAHM V ST (SEXUAL HARASSMENT--TRCT)	850320	851227
33007585	1603	BAUDER, B V ST (NEG INVESTIGATION--CLAIM)	850328	000000
33007685	3019	BLAKE, S V HALL, J (FALSE ARREST--TRCT)	850328	860122
33007785	1603	DELANEY, L V ST (EMPLOYEE SANCTION--CLAIM)	850328	000000
33007885	1603	FIN, M V LARSON, R (INMATE PROPERTY LOSS--TRCT)	850403	000000
33007985	1603	JNTZ, J V ST (FALSE ARREST--TRCT)	850403	000000
33008085	2602	TWIN VILLAGE COUNCIL V THORSRUD (TRESPASS--TRCT)	850405	000000
33008185	9991	BOUFFIQUX, T V ST (FAILURE TO WARN-SUICIDE--TRCT)	850405	850725
33008285	9987	KALLSTROM-DAVISCOURT CONST V ST (CONTRACT NEG--TRCT)	850410	000000
33008385	4014	MCBETH, J V ENDELL, R (1983 CIVIL RIGHTS--TRCT)	850410	850904
33008485	2601	LACK, J V ST & LACK, L (PFD GARNISHMENT--TRCT)	850410	850828
33008585	9915	BEISH V ST (NEG LICENSING--TRCT)	850410	000000
33008685	3013	RUBALACA V ST (APPEAL--USDC-AK)	850417	851121
33008785	1603	WILLARD, K V JAMES, J (NEG RELEASE FROM API--TRCT)	850424	000000
33008885	9900	KELLY V ST (C & U PUNISHMENT--USDC-AK)	850424	000000
33008985	9955	Q.C. COMPANY V ST (FAIL TO DO PLAN REVIEW--TRCT)	850424	000000
33009085	9989	JOHNS V JOLIKER (FALSE ARREST--TRCT)	850424	000000
33009185	9987	BLACKBURN V ST (FERRY S&F--TRCT)	850509	000000
33009285	1603	DUNNING, R ST (FALSE ARREST--USDC-AK)	850509	000000
33009385	3013	STEPHENS, C V. ST (WRONGFUL COLLECTION--TRCT)	850509	000000
33009485	9987	CAMERON V. ST (INMATE INJURY--TRCT)	850509	000000
33009585	4004	COSTLOW V ST (1983--USDC-WA)	850509	000000
33009685	2602	HAUSE, S V. ST (INMATE SUICIDE ATTEMPT--TRCT)	850509	000000
33009785	1211	KING V. ST (FALSE CERTIFICATION--TRCT)	850517	000000
33009885	3013	REYNOLDS, C V ORTON, J (ILLEGAL S&S--TRCT)	850528	851010

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
33009985	1603	STATON, J V ST (1983--TRCT)	850528	000000
33010085	1603	JEPPSEN, D V ST (SEXUAL DISCRIM--TRCT)	850528	851218
33010185	1603	STOTT, C V ST (S&F ON DOCK--CLAIM)	850528	000000
33010285	9902	WASHBURN V ST (ASBESTOSIS--TRCT-WA)	850531	000000
33010385	9962	BAUMER V ST (S&F--TRCT)	850531	000000
33010485	1603	YOUNG V ST (SLOPE FAILURE--CLAIM)	850531	851107
33010585	9970	CORNELL V ST (NEG CONSTR/MAINT-AIRPORT--TRCT)	850531	000000
33010685	9970	SOUTHCENTRAL AIR V KOREAN AIR ST (NEG CONSTR-AIRPT--TRCT)	850531	000000
33010785	9955	BURNS V ST (NEG HWY DESIGN- TRCT)	850531	000000
33010885	9989	JONES V ST (NEG POLICE INVESTIGATION--_____)	850531	000000
33010985	3806	GLOVER, D V. ST (NEG HWY MAINT--TRCT)	850605	000000
33011085	3806	COMMEAN, C V ST (AUTO PT CLAIM--CLAIM)	850605	000000
33011185	9915	COOPER V ST (IMPROPER DETENTION--TRCT)	850605	000000
33011285	9915	HOWELL V ST (NEG PROSECUTION--USDC-AK)	850605	851227
33011385	3013	LANTZ, R. V. ST (WITHHOLDING OF FUNDS--TRCT)	850605	850718
33011485	1211	RENAUD, C V. ST. (SEX/AGE DISCRIM--TRCT)	850607	000000
33011585	9970	PEDERSEN V ST (NEG. DESIGN, OP, & MAINT--TRCT)	850613	000000
33011685	3806	QUINLAN V PIONEER HOME (NEG. SUPERVISION--TRCT)	850613	000000
33011785	1603	COHERN M. V. ST (PD-CLAIM)	850613	850718
33011885	1603	EMARD V ST (FALSE ARREST--CLAIM)	850613	851015
33011985	1603	DAVIS D V ST (APPEAL--APCT)	850613	000000
33012085	1603	O'CONNOR V ST (SEX HARRASSMENT--TRCT)	850613	000000

***** TORT CASES FY 86 ***** AS OF 02/12/86

WMNO	ATTY	CDAT	TITL
BLN			
33000186	1604	851107	DOVER V STATE (NEG. INSPECTION--CLAIM)
33000286	3806	000000	GREENE V MAMMOTH OF AK & ST (HWY MAINT--TRCT)
33000386	3013	000000	STEARNS, T. V. WILLIAMS, J. & BAINBRIDGE R. (1983--TRCT)
33000486	9955	000000	ADAMS V. STATE (ROADSIDE OBSTACLE--CLAIM)
33000586	9989	860131	DENARDO V WILLIAMS (WRONGFUL TERMINATION)
33000686	0962	000000	O'BRIEN V ST (NEG DRIVING--TRCT)
33000786	9962	000000	KNIGHT V PARKER (SLANDER--TRCT)
33000886	9914	000000	VANDERSLOOT V VANGELDER (DEFAMATION--DCAK)
33000986	9994	000000	MCCUTCHEON V ST (DEFAMATION--TRCT)
33001086	1603	851107	PETERS V ST (WRONGFUL TERMINATION--CLAIM)
33001186	9953	000000	ASPEN EXPLORATION CORP V SHEFFIELD (EXEC TORT--TRCT)
33001286	9962	000000	FELTHAUSER V ST (SAFE WORK PLACE--TRCT)
33001386	9912	000000	DANIELS V JONES (WHISTLEBLOWER--TRCT)
33001486	9914	000000	AK ENVIRON INDUSTRIES V ROSS (SLANDER--TRCT)
33001586	3206	000000	BRIGGS V ST (NEG HWY MAINT--TRCT)
33001686	2420	000000	EITEL V HOLLAND (WRIT OF MANDAMUS APPEAL--9TH CIR)
33001786	3019	000000	LEMON V ST (FALSE IMPRISONMENT--TRCT)
33001886	1318	860128	GOODLATAW V ST (WRONGFUL DEATH--USSUPCT)
33001986	1318	860206	MASON V LYNCH V ST (PT REV CONTRUCTIVE NOTICE--APCT)
33002086	3806	000000	BLAKE V RICHARDS (FALSE ARREST--TRCT)
33002186	9945	000000	CITY OF HAINES V HESS (CONTRIBUTION--TRCT)
33002286	4009	000000	FRAZIER V ST (FALSE ARREST--TRCT)
33002386	9905	000000	ISACKSON V ST (HWY MAINT--TRCT)

***** TORT CASES FY 86 ***** AS OF 02/12/86

<u>WMNO</u>	<u>ATTY</u>	<u>CDAT</u>	<u>TITL</u>
<u>BLN</u>			
33002486	1603	000000	ST V ALYESKA (INDEM APPEAL--APCT)
33002586	9915	000000	WHEELER VID (FAIL TO MONITOR/INTERVENE--TRCT)
33002686	9950	000000	BEARD V ST (FAIL PROVIDE SAFETY DEVICE--TRCT)
33002786	9970	000000	FOSTER V ST (AIRPORT MAINT--TRCT)
33002886	9991	000000	TAYLOR V PETER KIEWET SONS, INC (SAFE WORKPLACE--TRCT)
33002986	9945	000000	LARSON V ST (JONES ACT--DCAK)
33003086	9987	000000	LIPSCOMB V DONNELLY (INMATE BATTERY--TRCT)
33003186	9913	860131	EDWARDS V FABE (LEGAL MALPRACTICE PD--TRCT)
33003286	9955	000000	HACKATHORN V ST (HWY MAINT--TRCT)
33003386	9915	000000	TRONICK (MISHANDLING OF BODY--CLAIM)
33003486	9987	000000	EVAN (JAIL SUICIDE--CLAIM)
33003586	1211	000000	JENKINSON V ST (WRONGFUL TERMINATION--TRCT)
33003686	9995	000000	WHITESIDES ENTERPRISES V ST (BULLDOZER RENTAL--TRCT)
33003786	1603	851218	CARLSON V CLERK OF SUPERIOR COURT (COURT CLERK NEG--TRCT)
33003886	9902	000000	OSBORN V AK MARINE HWY SYS (JONES ACT ASBESTOSIS--TRCT-WA)
33003986	9905	000000	HARDMAN V ST (SUICIDE/NEG INMATE SUPRV--TRCT)
33004086	9953	000000	CWC FISHERIES V ST (SET NET RIGHTS--TRCT)
33004186	1603	851218	MORINO V ST (NEG RECORDKEEPING--TRCT)
33004286	4014	000000	SPRINGER V COREY (ASSAULT/1983--DCAK)
33004386	4005	000000	LIPSCOMB V ENDELL (ASSAULT/COND OF CONFINEMENT--TRCT)
33004486	3013	000000	MANTEI V CRAIG (FAIL REMOVE HWY OBSTACLE--TRCT)
33004586	1603	851126	ELROD (TRAILER SPACE/EVIDENCE--CLAIM)
33004686	9950	000000	MOTOROLA, INC. V KOREAN AIR LINES CO. (AIRPORT NEG--TRCT)

***** TORT CASES FY 86 ***** AS OF 02/12/86

WMNO	ATTY	CDAT	TITL
DLN			
33004786	3013	000000	HOLZHEIMER V CLARK (ATTY FEES/COSTS--APCT)
33004886	1603	000000	CARNEY V ST (QUASI JUDICIAL NEG--TRCT)
33004986	9989	000000	ZAHARI V AK POWER AUTHORITY (FAIL REQUIRE INSURANCE--TRCT)
33005086	9962	000000	ANDREWS V ST (TORT--TRCT)
33005186	9962	000000	BENTLEY V HUDSON (MALPRACTICE--DCAK)
33005286	9950	000000	APPLIED MAGNETICS CO V KOREAN AIR (AIRPORT MAINT--TRCT)
33005386	3806	000000	FINCH V ST (PETITION FOR REVIEW--APCT)
33005486	1603	000000	DEMED V HOEY (S&F--TRCT)
33005586	3013	000000	GEE V ST (INMATE PI--TRCT)
33005686	9955	000000	BURTON V ST (NEG DESIGN--TRCT)
33005786	3806	000000	FINCH, ST V (PETITION FOR REVIEW--APCT)
33005886	3806	000000	L&I ENTERPRISES V ST (APPEAL--APCT)
33005986	9999	000000	MCCLURE V EVERGREEN HELICOPTERS (CONTRIBUTION--DCAK)
33006086	9999	000000	ROX V ST (NEG SUPERVISION--TRCT)
33006186	9999	000000	UNDERWRITERS AT LLOYDS V ST (NEG AIRPORT MAINT--TRCT)
33006286	9999	000000	MCKINLEY V DAHLBERG (NEG HWY MAINT--TRCT)
33006386	9989	000000	JONES V ST (WRONGFUL TERMINATION--TRCT)
33006486	1603	000000	FLETCHER V BURNHAM (JUDICIAL IMMUNITY--DCAK)
33006586	1211	000000	WALT V ST (WRONGFUL DISCHARGE/CIVIL RIGHTS--APCT)
33006686	9999	000000	REDMOND V ST (HWY MAINT--TRCT)
33006786	9955	000000	SCHUMACHER V CLARK (AST EXCESS FORCE--TRCT)
33006886	9950	000000	NAHORNEY V KOREAN AIR LINES (AIRPORT MAINT--TRCT)
33006986	9950	000000	VICKERS V KOREAN AIR LINES (AIRPORT MAINT--TRCT)

***** TORT CASES FY 86 ***** AS OF 02/12/86

WMND	ATTY	CDAT	TITL
BLN			
33007086	9999	000000	GORDON V ST (NEGLIGENCE--TRCT)
33007186	9999	000000	CARSON V AVILA (NEGLIGENCE--TRCT)
33007286	99 9	000000	ZIEMANN V MUNICIPALITY OF ANCHORAGE (PEDESTRIAN--TRCT)
33007386	1006	000000	BAKKE V BAKKE (NEGLIGENCE--TRCT)
33007486	9999	000000	CHANNEL CONSTRUCTION V ST (NEGLIGENCE--TRCT)
33007586	9999	000000	RICHARDS V ST (NEG FRISK--TRCT)
33007686	9999	000000	SAILOR V ST (SNOWBLOWER--TRCT)
33007786	9950	000000	SCHAPS V ST (AIRPORT MAINT--TRCT)
33007886	9950	000000	BAIRD V KOREAN AIR LINES (AIRPORT MAINT--TRCT)

ATTACHMENT C

Summary of Losses
December 31, 1985

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	-----CLAIMS-----		OUTSTANDING RESERVES	+ LOSS PAYMENTS	+ EXPENSE PAYMENTS	= TOTAL INCURRED	- RECOVERIES	= NET INCURRED
	TOTAL	OPEN						

COVERAGE: MARINE P&I - FERRY EXPL (17)

<i>State</i>	1980			5,850		5,850		5,850
	1981			18,598	963	19,561		19,561
<i>employees</i>	1982			10,000	1,841	11,841		11,841
	1983	74	10	252,385	44,345	319,034	924	318,110
	1984	284	24	114,176	470,098	627,926	73,961	553,965
	1985	232	15	250,165	555,232	822,815	65,278	757,537
	1986	133	75	97,150	106,982	204,223	1,078	203,146
	TOTAL	727	124	713,876	1,211,106	2,011,250	141,240	1,870,010

COVERAGE: TRAVEL ACCIDENT (18)

<i>state</i>	1979			35,000		35,000		35,000
<i>employees</i>	1981			18,598	1,331	19,929		19,929
	1982			75,000		75,000		75,000
	1984			75,000		75,000		75,000
	TOTAL	4		203,598	1,331	204,929		204,929

✓ COVERAGE: GENERAL LIABILITY (20)

<i>Third party</i>	1978	231	2	4,652	980,952	457,708	1,443,312	123,422	1,319,890
	1979	289	4	115,823	909,895	474,685	1,500,404	21,048	1,479,355
	1980	267	10	733,635	691,491	420,916	1,846,041	15,607	1,830,435
	1981	211	13	1,750,370	3,017,498	791,351	5,559,219	1,283,301	4,275,918
	1982	217	13	197,161	1,609,421	566,906	2,373,488	442,159	1,931,329
	1983	311	35	1,566,192	504,733	474,865	2,545,789	6,900	2,538,890
	1984	339	42	995,482	336,466	269,387	1,601,336		1,601,336
	1985	449	49	778,463	181,730	176,014	1,136,208		1,136,208
	1986	121	34	582,783	28,810	8,095	619,688		619,688
	TOTAL	2,435	202	6,724,562	8,260,997	3,639,927	18,625,486	1,892,437	16,733,050

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	-----CLAIMS-----		OUTSTANDING RESERVES	+	LOSS PAYMENTS	+	EXPENSE PAYMENTS	=	TOTAL INCURRED	-	RECOVERIES	=	NET INCURRED
	TOTAL	OPEN											

✓ COVERAGE: AUTO LIABILITY (50)

	1978	114			156,007	20,026			176,032				176,032
<i>Third party</i>	1979	111		-200	1,335,605	50,500			1,385,905	806,501			579,404
	1980	82			497,423	27,197			524,620	70,049			454,571
	1981	131			128,248	3,460			131,707				131,707
	1982	177	1	20,854	170,825	5,530			197,209				197,209
	1983	188	3	160,098	302,937	2,122			465,157	548			464,609
	1984	214	5	117,903	209,508	2,820			330,231	8,306			321,925
	1985	274	13	779,743	217,649	12,152			1,009,543	241			1,009,302
	1986	88	19	41,762	26,246				68,009				68,009
	TOTAL	1,379	41	1,120,160	3,044,445	123,807			4,288,412	885,644			

COVERAGE: AUTO PHYSICAL DAMAGE (51)

	1978	7			1,604	56			1,660	427			1,233
<i>State property</i>	1979	28	1	2,315	35,001	1,398			38,714	7,108			31,606
	1980	306	4	358	173,658	14,839			188,855	39,293			149,562
	1981	299	10	89	254,748	13,149			267,986	43,541			224,445
	1982	420	4	965	434,184	15,465			450,614	62,892			387,722
	1983	427	6	113	340,707	16,818			357,637	25,249			332,389
	1984	114	1	6,000	72,140	4,895			83,035	1,639			81,396
	1985	38	1	585	19,616	55			20,256	41			20,216
	1986	7	2	913	3,434	275			4,622				4,622
	TOTAL	1,646	29	11,338	1,335,091	66,950			1,413,379	180,189			

COVERAGE: REAA PROPERTY (70)

	1978	6			142,398	601			142,999	11,403			131,596
<i>State property</i>	1979	8			2,407,922	483			2,408,405	740,224			1,668,181
	1980	2			12,193				12,193				12,193
	1981	2			225,073				225,073	205,073			20,000
	1982	2			621,290				621,290				621,290
	1983	1			850				850				850
	TOTAL	21		0	3,409,725	1,085			3,410,809	956,700			

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	-----CLAIMS-----		OUTSTANDING RESERVES	LOSS PAYMENTS	EXPENSE PAYMENTS	TOTAL INCURRED	RECOVERIES	NET INCURRED
	TOTAL	OPEN	+	+	=	-	=	

✓ COVERAGE: GENERAL LIABILITY-ST ADM (21)

<i>Third party</i>	1978	1		403		403		403
	1979	2		1,500		1,500		1,500
	1980	2		147		147		147
	1981	5		39,169	481	39,650		39,650
	1982	2	1	15,000		15,000		15,000
	1983	3		2,364		2,364		2,364
	1984	9		5,714	16,880	22,595	1,000	21,595
	1985	13	4	3,586	20,977	26,918		26,918
	1986	4		3,750		3,750		3,750
	TOTAL	41	5	18,586	38,339	112,326	1,000	111,326

COVERAGE: MAR P&I - FERRY 3RD PARTY (23)

<i>Third party</i>	1978	62		170,029	42,206	212,235	131,325	80,910	
	1979	72	2	7,600	376,947	439,218	342,169	97,049	
	1980	71	3	9,930	572,049	613,043	450,545	162,498	
	1981	155	5	54,188	635,716	74,392	79,605	684,691	
	1982	292	7	260,526	657,838	94,380	1,012,745	161,892	
	1983	270	4	32,511	531,976	28,529	593,016	76,919	
	1984	74	1	5,000	27,288	188	32,476	32,476	
	1985	66	4	11,082	20,076	5	31,162	31,162	
	1986	30	5	10,925	9,659	20,584		20,584	
	TOTAL	1,092	31	391,763	3,001,579	325,435	3,719,776	1,242,454	2,476,322

COVERAGE: MARINE P&I - OTHER (24)

<i>Third party</i>	1978	3		29,042	2,680	31,722	8,469	23,252	
	1979	2		1,446	250	1,696	207	1,489	
	1980	3		3,403		3,403	1,275	2,128	
	1981	4		9,300	125	9,425		9,425	
	1982	1		275		275		275	
	1983	2		351		351		351	
	1985	3		5,373		5,373		5,373	
	TOTAL	18		-0	49,189	3,054	52,243	9,951	42,292

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	-----CLAIMS-----		OUTSTANDING RESERVES	+	LOSS PAYMENTS	+	EXPENSE PAYMENTS	=	TOTAL INCURRED	-	RECOVERIES	=	NET INCURRED
	TOTAL	OPEN											

COVERAGE: AIRPORT LIABILITY (27)

<i>Third party</i>	1978	13			177,099		45,314		222,413		197,089		25,324
	1979	43			266,423		219,493		485,916		415,293		70,623
	1980	24	3	740,000	111,989		7,568		859,557		94,644		764,913
	1981	31	2	87,336	74,809		75,358		237,503		34,517		202,986
	1982	36	1	331,923	222,903		83,111		637,937				637,937
	1983	28	2	19,009	298,190		11,135		328,333		1,537		326,796
	1984	22	6	594,525	8,720		118,473		721,717				721,717
	1985	17	4	17,173	10,392		13,717		41,282				41,282
	1986	6	5	322,129			1,961		324,090				324,090
	TOTAL	220	23	2,112,094	1,170,524		576,129		3,858,747		743,080		3,115,667

COVERAGE: AIRCRAFT LIABILITY (28)

<i>Third party</i>	1981	1											
	1982	4			23,500		529		24,029				24,029
	1983	2	1	12,374	767		2,626		15,767				15,767
	1985	4	2	36,058	71,892		4,163		112,112				112,112
	TOTAL	11	3	48,432	96,159		7,317		151,908				151,908

COVERAGE: MISCELLANEOUS (29)

<i>Third party</i>	1979	5			59,139		131,286		190,426		639		189,786
	1982	3			687,000		61,109		748,109		79,056		669,052
	1983	1			75,000				75,000				75,000
	1985	1	1	893			14,107		15,000				15,000
	TOTAL	10	1	893	821,139		206,503		1,028,534		79,696		948,839

✓ COVERAGE: MALPRACTICE (40)

<i>Third party</i>	1982	1					18,225		18,225				18,225
	1987	1					820		820				820
	1984	4	2	52,522			5,459		57,981				57,981
	1985	2	1	600			5,083		5,683				5,683
	TOTAL	9	3	53,122			29,587		82,709				82,709

STATE OF ALASKA
 RANGE TABLE SHOWING
 FREQUENCY, SEVERITY, AND AVERAGE
 FOR TOTAL INCURRED CLAIMS WITHIN SPECIFIED RANGES
 VALUED AS OF: 02/11/86

COVERAGE IS: GENERAL LIABILITY

FISCAL YEAR	0 - 50,000	50,001- 100,000	100,001- 150,000	150,001- 200,000	200,001- 250,000	250,001- 300,000	300,001- 500,000	500,001- ALL
1981								
TOTAL \$	672,079	269,404	110,000	153,367			1,734,379	2,619,995
FREQ.	196	4	1	1			4	3
AVG LOSS	3,394	67,351	110,000	153,367			433,594	873,331
1982								
TOTAL \$	797,736	429,353	122,530	357,962	237,409		673,109	670,174
FREQ.	212	6	1	2	1		2	1
AVG LOSS	3,762	71,392	122,530	178,981	237,409		336,554	670,174
1983								
TOTAL \$	734,035	319,290	501,503	200,000	202,672	270,000		520,000
FREQ.	302	4	4	1	1	1		1
AVG LOSS	2,430	79,570	125,375	200,000	202,672	270,000		520,000
1984								
TOTAL \$	865,934	597,034	240,000			300,000		
FREQ.	337	8	2			1		
AVG LOSS	2,567	74,629	120,000			300,000		
1985								
TOTAL \$	949,585	150,000	125,000					
FREQ.	456	2	1					
AVG LOSS	2,082	75,000	125,000					
1986								
TOTAL \$	256,927	150,000				300,000		
FREQ.	1,057	2				1		
AVG LOSS	1,646	75,000				300,000		
TOTAL								
TOTAL \$	4,276,256	1,913,071	1,099,033	711,329	440,081	870,000	2,407,488	3,810,169
FREQ.	1,661	26	9	4	2	3	6	5
AVG LOSS	2,575	73,580	122,115	177,832	220,041	290,000	401,248	762,034

ATTACHMENT D

Medical Malpractice Legislation Enacted in the U.S. 1971 - 1985

*ψ - Dr. McCune in
X - Marilyn - Coalition*

MEDICAL MALPRACTICE LEGISLATION
ENACTED IN THE UNITED STATES 1971 - 1985
STATES SURVEY UPDATE 1985

Deborah R. Siegel, Director
Long-Range Planning
Medical Society of the State
of New York

MEDICAL MALPRACTICE LEGISLATION
ENACTED IN THE UNITED STATES 1971 - 1985

<u>STATE</u>	<u>HAVE PROVISIONS FOR:</u>	<u>DO NOT HAVE PROVISIONS FOR:</u>
<u>ALABAMA</u>	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
<u>ALASKA</u>	Claims Made & Occurrence policies Collateral Sources Periodic Payments *	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees
* Jury cannot be advised of periodic payments use. Highest premium \$5 mil/\$5 mil is \$40,246 annually.		
<u>ARIZONA</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees Periodic Payments
Highest premium (\$3,000,000 coverage) is \$30,000 annually. \$5 mil/\$5 mil coverage available.		
<u>ARKANSAS</u>	Claims Made & Occurrence policies Collateral Sources Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees
Average premiums range between \$900 and \$7,000. \$7,000 highest in the state.		
<u>CALIFORNIA</u>	Claims Made & Occurrence policies Caps on Awards Collateral Sources Contingency Fees Periodic Payments	Caps on Physicians' Personal Assets
The highest premium (\$1 mil/\$3 mil coverage) is \$51,920 for Neurosurgeons. \$10 mil/\$10 mil is available. \$2 mil/\$4 mil is the most common, but there are a large number of \$5 mil/\$5 mil policies. Have had a cap on pain and suffering (non-economic damages) since 1975 (\$250,000). It was upheld by the Supreme Court this year. They feel, as far as it's effect on premium costs, that it will be felt more now and in the next few years than it had been previously. While it is believed to be of value, no empirical data will be available before November or December, 1985. There are already signs that the trial lawyers will go for higher economic damages and will try to undo what's been done-there have been proposals to this effect and also to raise the level of the cap.		
<u>COLORADO</u>	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

Average premiums range from \$1,600 - \$26,000. \$26,000 highest.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>CONNECTICUT</u>	Claims Made Policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets

Contingency Fees (not mandated but are used).
Periodic Payments (not mandated but are used in large settlements).

Highest premium (for Neurosurgeons, Cardiologists, Orthopedics) is \$27,000, but will rise to \$31,800 after an 18% increase. The highest coverage is \$1 mil.

<u>DELAWARE</u>	Claims Made policies Collateral Sources Contingency Fees * Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets
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* The contingency fee schedule is 35% on first \$100,000; 25% on next \$100,000; and 10% on the balance.

Average premiums range between \$5,000-\$10,000. The highest is \$21,000 for fourth year OB/GYN's.

<u>FLORIDA</u>	Claims Made & Occurrence policies Contingency Fees * Periodic Payments **	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources
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* Contingency fee scale (subject to Supreme Court changes). The sliding scale ranges from 15% - 45% depending upon the point at which the case is settled. 15% on awards in excess of \$2 mil.

** On awards over \$500,000.

Highest premium (OB Surgeons and Neurosurgeons) \$78,450 (\$100,000/\$300,000). Highest coverage: \$1 mil/\$3 mil.

<u>GEORGIA</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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Highest premium is \$37,000. Highest coverage is \$10 mil/\$10 mil.

<u>HAWAII</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments
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* Attorney fees must be approved by the court.

Highest premiums are \$33,000 annually. Total physician liability: \$5 mil/\$5 mil.

<u>IDAHO</u>	Claims Made & Occurrence policies	Caps on Awards * Caps on Physicians' Personal Assets Collateral Sources * Contingency Fees * Periodic Payments
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* Caps, collateral sources and contingency fees had statutes but were declared unconstitutional several years ago.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>ILLINOIS</u>	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

The highest premium is \$83,000 (Neurosurgeons) and total physician liability is \$5 mil/\$5 mil. Most physicians in state carry \$1 mil/\$3 mil.

<u>INDIANA</u>	Claims Made & Occurrence policies * Caps on Awards Caps on Physicians' Personal Assets Contingency Fees ** Periodic Payments	Collateral Sources
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* Four companies writing occurrence policies and one writing claims made (with a long tail).

** Via a statute created patients compensation fund.

Feel very strongly that their \$500,000 cap on awards has helped keep premiums down.

<u>IOWA</u>	Claims Made & Occurrence policies ** Collateral Sources * Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Periodic Payments
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* Modified collateral sources provision and contingency fees are not statutorily mandated, but are used.

** Are moving towards claims made only.

The highest coverage is \$5 mil.

<u>KANSAS</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Contingency Fees * Periodic Payments
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Physicians' Personal Assets and Awards beyond coverage are covered via a "health care stability fund". This adds a 110% surcharge on premiums.

* Attorneys fees are not covered by statute, but are expected to be "reasonable" - the courts don't like to get involved - generally 25% - 50% of settlement.

Premiums for physicians who can't get coverage through two companies, possibly get it through JUA - if they pass personal interview which determines the physicians willingness to properly inform patients.

Have a cap on punitive damages.

Premiums are very variable.

<u>KENTUCKY</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>LOUISIANA</u>	Claims Made & Occurrence policies Caps on Awards Periodic Payments *	Caps on Physicians' Personal Assets Collateral Sources Contingency Fees

* Periodic payments are used via authority of the Attorney Generals office.

Since 1975 have three caps of \$500,000 each:

Medical malpractice - private physicians; medical malpractice - employers of physicians in Louisiana; state liability for all other tort actions.

The highest premium is in the range of \$21,000.

<u>MAINE</u>	Claims Made Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees
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Have instituted monthly meetings with trial lawyers in response to their liability crisis.

Highest premium \$40,000 (Neurosurgeons).

<u>MARYLAND</u>	Claims Made & Occurrence policies Contingency Fee * Periodic Payments **	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources
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* Contingency fee statute allows judge to review attorney's fees.

** Periodic payments optional, not mandated.

The highest premium (OBGYN) is \$35,000 for \$1 mil/\$3 mil. Highest coverage is \$1 mil/\$3 mil with a \$5 mil excess.

<u>MASSACHUSETTS</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments
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* Though no statutory provision for contingency fees, they are used: 33 1/3% - 50%.

The highest premium is \$15,300 (Orthopedics, Plastic Surgeons, Neurosurgeons, OBGs).

<u>MICHIGAN</u>	Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments
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* Court rule allows 33% contingency fees.

Highest premium \$55,000 (OBGs', Neurosurgeons). \$1 mil/\$1 mil highest coverage.

<u>MINNESOTA</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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Highest policy is \$20,000. Total physicians liability \$4 mil/\$5 mil.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>MISSISSIPPI</u>	Modified Claims Made policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments *

* Contingency fees and periodic payments are used.

Highest premium (Neurosurgeons/Anesthesiologists) \$31,000. \$5 mil/\$5 mil highest coverage available.

<u>MISSOURI</u>	Claims Made & Occurrence policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments **
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* Are moving to claims made only.

** Although not statutorily mandated the judge may opt for it.

The range of premiums is \$1,200 - \$34,000. \$34,000 is the highest. Total physicians' liability is \$5 mil/\$5 mil.

<u>MONTANA</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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The highest premium is \$20,000.

<u>NEBRASKA</u>	Claims Made & Occurrence policies Caps on Awards * Collateral Sources Contingency Fees	Caps on Physicians' Personal Assets Periodic Payments
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* Caps on awards are covered via a participating voluntary state fund. The cap is \$1 mil.

The highest premium is about \$11,000. Total physician liability is \$1 mil/\$3 mil.

<u>NEVADA</u>	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments
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* Contingency fees are used - generally 30% - 40% but can go up to 50%.

The highest premium is \$44,160 for \$1 mil/\$3 mil coverage. The highest coverage available is \$5 mil/\$7 mil.

<u>NEW HAMPSHIRE</u>	Occurrence policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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* Moving towards Claims Made.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>NEW JERSEY</u>	Claims Made & Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments

* Sliding scale contingency fees.

Average premium is \$9,000; the highest is \$30,000 (Neurosurgeons) \$1 mil/\$1 mil coverage. The highest coverage is \$5 mil.

Currently before legislature is a four part bill which includes caps on awards, collateral sources, periodic payments, expert witness and certificate of meritorious claim.

<u>NEW MEXICO</u>	Claims Made policies Caps on Awards * Caps on Physicians' Personal Assets	Collateral Sources Contingency Fees Periodic Payments
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* Caps on awards excluding punitive damages.

Have since 1976 a \$500,000 cap (excluding punitive damages). Feel it has had somewhat of an effect on premium costs. The courts are very conservative - only two cases have been awarded the \$500,000. The conservative climate, the cap and the whole malpractice bill are what keeps the premiums low.

<u>NEW YORK</u>	Claims Made & Occurrence policies Collateral Sources Contingency Fees * Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets
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* Contingency Fees: 33 1/3 - 30% of first \$250,000; 25% next \$250,000; 20% next \$500,000; 15% next \$250,000; and 10% of any further amount.

Highest premium is \$83,000 for Neurosurgeons - \$1 mil/\$3 mil.

New York physicians pay the highest premium rates overall in the country. Downstate especially so.

<u>NORTH CAROLINA</u>	Claims Made policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments
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* Contingency fees are not a statutory provision, though they are used - average is 20%-30%.

The highest premium is \$17,000 (Neurosurgeons). \$5 mil/\$5 mil coverage is available.

<u>NORTH DAKOTA</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees *
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* Contingency fees are not a statutory provision, though they are used - generally 33 1/3%.

The average premium is very variable and the highest is \$45,000 (Neurosurgeon). Highest coverage is \$10 mil.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>OHIO</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees Periodic Payments

Current bills will attempt for a cap on punitive damage and certain economic damages, contingency fees and periodic payments. Feel the "situation is deteriorating rapidly." Major hospital carriers are requiring hospital medical staffs to change bylaws to include as criteria for membership that a physician carry \$1 mil coverage. Feel this will only encourage larger awards.

Highest premium is \$17,000 for Neurosurgeon -- \$1 mil/\$3 mil. The highest coverage is \$5 mil. There is a \$250,000 cap on pain and suffering and collateral sources provision.

Have had a \$250,000 cap since 1975 on non-economic damages - no cap on economic or punitive damages.

<u>OKLAHOMA</u>	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments *
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* Neither contingency fees or periodic payments are statutorily mandated but can be used (contingency fees are generally 40 - 50% of award).

Average premium is \$4,000. The highest premium is \$12,000 (OBGs, Neurosurgeons, Plastic Surgeons) \$1 mil/\$3 mil.

<u>OREGON</u>	Claims Made & Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments
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* Contingency fees: 35% on first \$100,000; 35% on next \$100,000 and 10% on balance.

Highest premium, \$5 mil coverage: \$40,000. Going to \$64,000 in 1986 (Neurosurgeon).

<u>PENNSYLVANIA</u>	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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No limit to amount of insurance physician can buy, a catastrophic loss fund covers \$1 mil. including personal assets.

<u>RHODE ISLAND</u>	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments *
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*Periodic payments not statutorily mandated, in actuality, they are used.

Highest premium is \$30,000 (\$1 mil/\$3 mil coverage).

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>SOUTH CAROLINA</u>	Periodic Payments Caps on Physicians Personal Assets *	Caps on Awards Collateral Sources Contingency Fees

* Physicians Personal Assets are covered through a patients compensation fund (no cap).

Highest premium (\$1 mil/\$3 mil) is \$5,600 for a Neurosurgeon.

<u>SOUTH DAKOTA</u>	Claims Made & Occurrence policies Caps on Awards Collateral Sources Contingency Fees	Caps on Physicians' Personal Assets Periodic Payments
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Have had a \$500,000 cap on general damages since 1974-75. Feel it hasn't made any difference on premium costs as premium rates continue to go up.

The highest premium is \$32,000 for Orthopedic Surgeons and Neurosurgeons. Can buy as high a policy as they wish.

<u>TENNESSEE</u>	Occurrence policies Collateral Sources Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Periodic Payments **
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* Contingency fees maximum is 33%.

** No provision for periodic payments but judge can use.

Highest premium approximately \$30,000.

<u>TEXAS</u>	Claims Made & Occurrence policies*** Caps on Awards *** Caps on Physicians' Personal Assets* Collateral Sources	Contingency Fees ** Periodic Payments **
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* Homestead rule covers physicians' personal assets.

** Contingency fees and periodic payments are not statutorily mandated, but are used.

*** A \$500,000 cap on awards since 1975. This cap is now being challenged. Feel the cap has had a positive effect on keeping premium costs down.

*** Moving towards claims made policies.

\$1 mil/\$3 mil is the highest coverage.

<u>UTAH</u>	Occurrence policies * Collateral Sources Contingency Fees **	Caps on Awards Caps on Physicians' Personal Assets Periodic Payments
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* Moving towards claims made policies.

** Contingency fees - 33 1/3%.

Highest policy is \$18,600.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>VERMONT</u>	Claims Made	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments

* Contingency fees not mandated but used.

Rural community and general conservative climate keep situation under control.

The highest premium for \$1 mil/\$3 mil coverage (Neurosurgeons) is \$10,889 or \$24,622 depending on company (mature rates). Highest coverage is \$1 mil/\$3 mil with a \$9 mil excess.

<u>VIRGINIA</u>	Claims Made & Occurrence policies Caps on Awards * Contingency Fees	Caps on Physicians' Personal Assets Collateral Sources Periodic Payments
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* Caps on awards \$1 mil.

Highest premium is \$42,000 (Neurosurgeon). Highest coverage is \$5 mil.

<u>WASHINGTON</u>	Claims Made policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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* Claims made policies only starting in 1986.

Average premium \$8,500. Highest premium \$25,690 (\$1 mil - Neurosurgeon). Highest coverage available \$5 mil/\$7 mil.

<u>WEST VIRGINIA</u>	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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The average premium is \$11,700. The highest is \$48,000 (Neurosurgeon). \$10 mil coverage available.

<u>WISCONSIN</u>	Claims Made & Occurrence policies ** Caps on Physicians' Personal Assets* Periodic Payments ***	Caps on Awards Collateral Sources Contingency Fees ***
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* A physician is required to purchase \$200,000 coverage which makes him eligible for a patients compensation fund. Awards beyond his coverage and personal assets are handled via this fund.

** 85-90% are occurrence policies.

*** Contingency fees are not statutorily mandated, but are used.

*** A modified periodic payment rule is used for awards of future damages of \$1 mil.

The highest premium is \$44,600 (Neurosurgeon).

<u>STATE</u>	<u>HAVE PROVISIONS FOR:</u>	<u>DO NOT HAVE PROVISIONS FOR:</u>
<u>WYOMING</u>	Claims Made & Occurrence policies Collateral Sources Structured Awards *	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees

* Structured awards are not consistently recognized by the courts.

Highest premium (\$1 mil coverage) under \$20,000.

Insurance-Related Legislation: A Roundup

While federal regulation of the insurance industry is blocked by the McCarran-Ferguson Act of 1945 (PL 79-15), there are a number of bills in the 99th Congress that address specific insurance problems. Following is a roundup of their status:

Product Liability

Manufacturers hope recent concern over the availability of business insurance will rekindle interest in legislation to set federal standards to govern product-liability lawsuits. They contend that such standards, which they have been seeking since the late 1970s, would reduce exorbitant settlements.

Sen. John C. Danforth, R-Mo., chairman of the Commerce, Science and Transportation Committee, has promised early action on a bill (S 1999) to establish federal standards and set up a new system to allow victims to recover damages without going to court.

An earlier version without the compensation system (S 100), which had been pushed for several years by Sen. Bob Kasten, R-Wis., died in the committee last May on an 8-8 tie vote. (1985 Weekly Report pp. 2730, 1586)

Trial lawyers heatedly oppose the concept of uniform tort-law standards, and so do many state officials. Consumer groups and organized labor are fighting provisions that they say would make it difficult for victims of unsafe products to recover damages.

In the House, leaders of the Energy and Commerce Committee, which has jurisdiction over the matter, are interested in product-liability legislation but are waiting for the Senate to take the lead.

Pollution Liability

Insurers failed to obtain major relief from liability for hazardous-waste cleanup costs in a bill (HR 2005) to reauthorize the "superfund" cleanup program.

The House and Senate each passed versions of the reauthorization bill, and a conference to settle differences will probably take place early in the new session.

In neither bill did insurers get their prime objective: relaxation of the "strict, joint and several liability" standard that can hold them responsible for toxic-waste problems decades after a policy lapsed, regardless of how small a share of responsibility they carry.

They could yet win some relief, however, through a House provision that would make it easier for the Environmental Protection Agency to make out-of-court settlements to release from liability parties who have contributed only small amounts of waste to a dump site. (1985 Weekly Report p. 2619)

Vaccine Compensation

Legislation (S 827) to compensate people injured by adverse reactions to some vaccines remains stalled in the Senate Labor and Human Resources Committee.

Sen. Paula Hawkins, R-Fla., says the bill is needed both to help victims and to ensure the availability of vaccines. Some pharmaceutical companies have stopped making certain vaccines, such as DPT (diphtheria, pertussis and tetanus), because of the risk of lawsuits on

behalf of children who suffer rare but severe side effects.

Opponents of the bill object to a provision that would require victims to give up their right to sue if they want to receive compensation from the government. (1985 Weekly Report pp. 2742, 1594)

Medical Malpractice

The American Medical Association is backing a bill (S 1804) by Sen. Orrin G. Hatch, R-Utah, to spur states to revise their medical malpractice laws.

The bill would offer states up to \$4 million as an incentive to enact specific changes in malpractice laws, such as limiting attorneys' fees and putting a cap of \$250,000 on awards for pain and suffering.

The bill is pending in the Senate Labor and Human Resources Committee, which Hatch chairs.

Another approach was offered by Reps. Richard A. Gephardt, D-Mo., and W. Henson Moore, R-La., in HR 3084. Their bill would set up an alternative to lawsuits, featuring a combination of binding arbitration by an independent body and judicial review of claim amounts.

Other bills would set up screening boards to examine claims (S 175, HR 2659), make it easier for doctors to insure themselves (S 1357, HR 2261), and make it possible for military personnel to sue for malpractice in military hospitals (HR 3174).

Antitrust Exemption for Insurance

House Judiciary Committee Chairman Peter W. Rodino Jr., D-N.J., says his panel will re-examine the antitrust exemption the industry enjoys as a result of the McCarran-Ferguson Act. (Background, p. 149)

The law exempts the insurance industry from federal regulation so long as it is regulated by the states, and it allows insurance companies to share information and set joint rates without violating antitrust laws.

The insurance industry generally opposes efforts to limit its privileges. A few executives of larger companies, however, have said they would be willing to give up the antitrust exemption, which they feel protects smaller, less efficient companies.

Taxation

The property-casualty insurance industry would be hit hard by the tax-reform bill (HR 3838) passed by the House Dec. 17. That segment of the industry has paid little tax in recent years because of its investment and accounting practices.

The House bill would tax the companies' income from currently tax-exempt securities, and would impose a 20 percent minimum tax on property-casualty companies beginning in 1988.

Life and health insurance companies were generally relieved that the House bill ignored proposals to tax employees' health insurance and the increase in the value of life insurance policies.

Blue Cross and Blue Shield companies would have to pay \$1.7 billion in taxes, however, because of a provision that would tax them as if they were profit-making companies (1985 Weekly Report pp. 2190, 2715).

ATTACHMENT E

Insurance-Related Legislation

COMPARISONS BETWEEN "TORT REFORMS" SOUGHT BY THE INSURANCE INDUSTRY AND
THE LAW OF ONTARIO, CANADA

In most of the 50 states, the insurance industry is seeking legislation that would make it more difficult for injured people to win lawsuits and would limit the amount of money they could recover if they do win. The law of Ontario, Canada (where the insurance industry is raising rates just as it is in the United States, see Chart 2) already contains the provisions the insurance industry seeks, as the following chart shows:

The insurance industry wants:

Ontario, Canada has:

A. Caps on compensation for pain and suffering -- e.g., for quadriplegia or brain damage -- typically of \$250,000.

A. Caps on compensation for pain and suffering. Ontario has a cap of \$100,00 in 1978 Canadian dollars (\$185,000 in current Canadian dollars). See Andrews v. Grand and Toy Alberta Ltd., 2 S.C.R. 229 (1978); Ontario Law Reform Commission Report on Products Liability, at 62 (1979) (hereinafter "Ontario Law").

B. Restrictions on punitive damages: e.g., limiting punitive damages to a specific amount or a specific multiple of the compensatory award, or absolutely prohibiting punitive damages.

B. Restrictions on punitive damages. In Canada, punitive damages are virtually unknown in tort cases. They are allowed only for intentional torts. Ontario Law at 75; Linden, Canadian Tort Law, at 49-51 (1977).

C. A prohibition on injured people specifying the amount they seek in the complaint (in legal jargon, eliminating the *ad damnum* clause).

C. A prohibition on injured people specifying the amount they seek in the complaint. In Ontario, the plaintiff is not permitted to demand a specific amount in the complaint. See Gray v. Alanco Development, Inc., 1 O.R. 597 (1967); Ontario Law at 75.

D. Restrictions on contingency fees -- e.g., by establishing a sliding scale that reduces the percentage of the award the lawyer can receive as the award gets larger.

D. No contingency fees. In Ontario, contingency fees are prohibited. Ontario Law at 72, 75.

E. Restrictions on the role of the jury -- e.g., taking the authority to determine the amount of punitive damages away from the jury, or requiring the jury to answer detailed interrogatories that limit its discretion.

E. Restrictions on the role of the jury. There is no constitutional right to a jury trial in Canada. Most trials are judge trials. Ontario Law at 74, 102-04.

F. Penalties for "frivolous"
suits -- e.g., requiring the
plaintiff to pay the cost of
defending such a suit.

F. Penalties for "frivolous"
suits. In Ontario, if the
plaintiff loses he must pay the
defendant's attorney's fees, as
well as his own. Ontario Law at
72, 76.

WHAT HAPPENS TO INSURANCE RATES WHEN "TORT REFORM"
LEGISLATION IS ENACTED?

Virtually every "tort reform" measure the insurance industry is seeking is currently the law in Ontario, Canada (See Chart 1). Yet the insurance industry is raising premiums by 400%, cancelling coverage in mid-term and refusing to provide coverage at any price in Ontario, Canada just as it is in the United States. For example:

o The insurance industry has refused to provide insurance at any price for Ontario day care centers (See Exhibit 1).

o The insurance industry has refused to provide insurance at any price to all but 1 of 121 Canadian School Boards responding to a questionnaire (See Exhibit 2).

o The insurance industry has refused to provide liability insurance for Toronto and many other cities (See Exhibit 3).

o The insurance industry has refused to provide liability insurance at any price to the Canadian national ski teams, which have never had a major claim against them (See Exhibit 4).

o The insurance industry has raised premiums 1000% and at the same time reduced coverage for the Ontario intercity bus industry (See Exhibit 5).

o Hospitals in Toronto can still get insurance, but only at "greatly increased" premiums (See Exhibit 6).

o An insurance company renewed the Ontario School Bus Operators Association's policy on December 1 -- at 400% more than it charged the year before (See Exhibit 1).

If any of the organizations denied coverage were ever sued -- and many of them have never been sued in the past -- they would be sued under the laws of Ontario, where pain and suffering awards are capped at \$185,000, punitive damages are virtually non-existent, contingency fees are prohibited and the plaintiff must pay the defendant's attorney's fees if he loses. Yet the insurance industry is raising its rates 400% and more, cancelling policies in mid-term and refusing to provide coverage at any price both in the U.S., which has not enacted the tort provisions the industry seeks, and in Ontario, Canada, where such provisions have long been in the law.

Liability coverage crunch may shut day-care agencies

By Elaine Carey Toronto Star

Two of the largest day-care agencies in Metro may be forced to close down next month because they have been unable to renew their liability insurance.

Family Day Care Services, which provides care for about 600 children through home care and a school-age centre, and Cradlestep Crèche, which cares for another 550 children, say they can't get insurance at any cost.

Cradlestep's policy expires Jan. 31 while Family Day Care has until the end of February to try to find some solution, said John Pepin, its executive director.

"But our agent and two others have been trying everywhere and there just isn't anything," he said. "If it's hitting us this way, it will eventually hit the others as well."

'Pay 1,000 per cent'

Family Day Care, one of the oldest registered charities in Canada, has been in operation for 135 years and has never had an insurance claim, he said. Its premiums rose 65 per cent last year to about \$2,500 but this year the insurer refused to renew the policy.

"At this point we are willing to pay 1,000 per cent more if necessary, but we can't even get a quote," he said.

Dr. Myrna Francis, executive director of Cradlestep Crèche — which has operated for almost 50 years without a claim — said their insurer refused to renew their policy when it expired Dec. 31, but granted them a month's extension to try to find other insurance. But insurers simply say they will no longer issue policies to day-care centres.

The provincial Day Nurseries Act requires day-care centres to have liability insurance to operate, she said, and they have informed the province of the situation.

'Deficit financing'

"We are just waiting to hear from the government and we will very shortly have to decide what course of action to take," she said.

Pepin said the implications of putting 1,150 children out of day care are "horrendous. Most of these people are low-income and without day care they would lose their jobs.

"Even if we do get some kind of ministerial approval to operate without insurance, if there was ever a suit and we're not protected, we put ourselves in a very vulnerable position," he said. "We

can't afford to self-insure — we have barely enough funds as it is and we end up deficit financing every year. Where would we find the funds to cover it?"

The liability insurance industry in Canada has hit a crisis because of skyrocketing court awards and falling interest rates. Many companies have simply refused to issue policies for vulnerable groups, including four of Metro's municipal governments and the Metro School Board, which are now self-insuring.

Insurers cite problems in the United States, where several day-care centres have been charged with sexually abusing children in their care, as one reason for their unwillingness to renew day-care policies.

Umbrella Day Care Coalition, which arranges insurance for 185

non-profit day-care centres in Metro, did manage to get insurance Oct. 1 for only a slight premium increase, "but we had to stay away totally from American insurance companies," director Judd Hall said.

The U.S. company they had been dealing with for years refused to renew at all, she said, and up until a week before the policy expired "no one would touch it." The coalition eventually found a British insurer who was willing to take on the policy.

But Pepin said that company and others willing to renew policies two months ago are now flatly refusing, claiming that one suit involving a small child could cost them millions.

"I think, as all these day-care organizations come up for renewal, they will find enormous problems," he said.

Higher insurance rates hit school bus operators

By Kim Zarnour Toronto Star

School bus companies and school boards are bracing themselves for hefty vehicle insurance increases that threaten to put some smaller bus operations out of business.

If school boards don't take the brunt of the increase, officials say, parents may have to find another way to get their children back and forth to school.

Metro area boards spent about \$70 million transporting more than 123,000 students last year. Board officials say the cost of that service will increase considerably when the new busing contracts are negotiated in the spring.

Insurance companies blame the higher rates — which are also causing problems for municipalities, school boards and trucking companies — on increasing frequency and cost of claims and higher court awards to accident victims.

Bus operators and school boards said yesterday that the situation took them by surprise.

"It just seemed to hit us in November and December," said Ted Moorhead, president of the School Bus Operators Association of Ontario. Moorhead said he was shocked by a 400 per cent increase when he renewed his insurance Dec. 1.

Charter bus companies have already been hit with big jumps in

insurance rates. Gray Coach Lines, Ltd. recently hiked the price of monthly commuter passes to cover higher liability insurance premiums. The Ontario Motor Coach Association has called for an investigation by a legislative committee.

Moorhead said most school bus operators haven't yet been hit by the increases, but they fear it's inevitable.

While some operators say the increases will be no more damaging than the soaring gas prices of recent years, others, especially the smaller companies, are worried.

"I can't take any large increases without going bankrupt. If it goes up 100 or 200 per cent, then I'll have to think about closing my doors," said Ronald Young, who operates a fleet of 50 buses for the Peel Board of Education. "The school board is going to have to bear the brunt of the increase, and they in turn will have to pass it on to the taxpayers."

William McWhirter, transportation officer with the Toronto board, said school boards will just have to find the money somehow.

"If we don't realize that the whole industry is in trouble and try to help them out, then we're not going to have any transportation service at all."

The bus operators association has scheduled a meeting to discuss the insurance problem next week.



416/963-0311

685 Yonge Street
Toronto, Ontario
M7A 3W6Ministry of
Consumer and
Commercial
RelationsBACKGROUND NOTES - January 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: SCHOOL BOARDS

121 of the 105 boards (excluding Canadian Forces Board and Treatment Centres) responded to an insurance questionnaire distributed in early December 1985 and at this time only one board has been unable to obtain liability insurance coverage at all. The board is the Moose Factory Island District High School Area.

Several boards have had to reduce the maximum liability insurance coverage that was available to them last year.

The premium increases have ranged from a low of 12% to a high of 563% over the previous year's premium.

Several boards have indicated that new exclusions have been imposed on them by the insurance industry, such as sports related activities, shop programs, and environmental issues. At this time the only boards to have advised us that this has been given to them in writing by their insurance broker are the Wellington County Board of Education and the Kirkland Lake Board of Education. The Wellington County Board of Education has halted all physical education programs until further notice.

We are currently working with the Ontario Association of School Business Officials to review that options are available to school boards to solve this problem.

No board is expected to close because of a lack of insurance.

The Ontario Association of School Business Officials has been trying for some time to arrange a co-operative for school boards under which they would insure each other. Planning for this continues, and OASBO has asked for Ministry of Education assistance in collecting the required data. The Ministry is considering this request, which includes a request for financial assistance (about \$25,000).

An inter-ministry work group has been formed to examine the entire insurance situation, led by Consumer and Commercial Relations. The Ministry of Education has representation on this committee.

'Crisis' team to investigate soaring price of insurance

By Denise Harrington Toronto Star

A provincial task force will look at government-run coverage and tougher insurance regulations in a bid to solve the crisis of soaring premiums facing Ontario cities, school boards and hospitals.

"This government is not prepared to stand aside while this crisis threatens some elements of our economic and social system," Consumer Minister Monte Kwinter told the Legislature yesterday.

The task force, under former Economic Council of Canada chairman David Slater, will examine the costs and availability of liability insurance in Ontario and whether rules governing the industry could be improved to ensure stable rates.

Kwinter also announced yesterday a new plan to pay limited compensation to customers of bankrupt insurance companies.

The government will help hospitals pay for massive premium increases if they face "true financial hardship," Kwinter promised.

Replying to questions in the Legislature, Kwinter said the

□ Metro day-care agencies may close without insurance. Page A1

Liberal government is not considering offering automobile insurance or public sickness and disability insurance.

"At the present time the government's preference is not to be in the insurance business," Kwinter added outside the Legislature.

"On the other hand, if the case can be made, and if it can be documented that this would be the route to go and makes economic sense and provides the kind of services required, we would certainly look at it."

Metro and the municipalities of Toronto, York, Etobicoke and East York have been unable to get any insurance coverage against personal injury for 1986. The province is encouraging municipalities to set up insurance pools to handle soaring rates and lack of coverage.

'Doing nothing'

Opposition Leader Larry Grossman complained that Kwinter has, "after six months of literally doing nothing," decided to appoint a task force "that will take a minimum of another three months before anything happens."

New Democratic Party leader Bob Rae said the government should introduce a sickness and disability insurance plan for all Ontarians, as well as an auto insurance scheme similar to those in Manitoba and Saskatchewan.

But Kwinter pointed out public insurance plans in those two provinces were facing deficits this year. He said the problem of soaring premiums was worldwide because of high court awards, low interest rates paid on investment on premiums, and competitive cut-rate premiums offered several years ago.

Outside the Legislature, Kwinter said the government will set up a plan to provide a maximum of \$200,000 in coverage to customers of companies that go bankrupt. All parties will be asked to pay into and at rates to be set later.

Exhibit 4

Insurance problems may curtail season for Canadian skiers

Special and Canadian Press
OTTAWA

Canada's national ski teams may have to leave the World Cup circuit at the end of this month because of an insurance problem that could also cripple competitive skiing across Canada.

Ron Payment, executive director of the Canadian Ski Association, says the inability to get sufficient liability insurance may force the association not only to call home its national teams but also to cancel all domestic competitions.

Most provincial ski programs and some club programs would also be affected, since they are tied to the CSA's insurance policy. The CSA executive plans an emergency meeting on Jan. 23 in Ottawa.

Glen Wurtels, the national head coach, said yesterday in Kitzbuehel, Austria, that he hadn't been told that the teams might be called home or even that there is an insurance problem.

"It certainly is news to me. I find it extremely hard to even envision it happening; I really can't imagine something happening on that scale."

Mr. Wurtels said he could not see Sport Canada, with its huge investment in Olympic sports, allowing the teams to be called home.

The association is one of a growing group of sports organizations finding it difficult to purchase liability insurance at an affordable cost.

The CSA says it was first told that the price of liability insurance would double, and then found that

coverage was unavailable at any price.

The association's current coverage on national alpine, cross-country, jumping, free-style, biathlon and nordic combined skiers, coaches and staff ends on Jan. 29, after several extensions by the New York-based American Home Assur-

SKI — Page A2

Ski teams can't get liability insurance

● From Page One
ance Co.

"I'm not sure what will happen after that," Mr. Payment said yesterday. "The odds are good we won't have insurance. The executive must decide what to do.

"If we don't find re-insurers... it could mean recalling all the teams and it could affect all of our developing teams leading to 1988," the year of the Winter Olympics in Calgary.

Mr. Payment said he understands that U.S. teams may also be having insurance problems. He said, however, that European ski teams don't face the sort of problem confronting Canadian teams, at least in part because accident settlements tend to be lower in Europe.

He said he has been trying to get more information on the European situation to see if he can point pointers to help Canadian ski teams deal with their difficulties.

CSA was first advised by its insurance agent it could expect to pay between \$80,000 and \$100,000 for \$10-million in liability insurance for 1988. Mr. Payment said the CSA, which has never had a major liability claim against it, was willing to pay that amount, but later found that insurance companies had backed away from offering liability insurance of any price.

In 1984, the CSA paid \$7,000 for liability insurance, with the premiums rising to \$47,000 last year.

Mr. Payment said the association has been unable to find coverage from any of about 100 companies it has approached. That leaves the association with the option of going

through the remaining three months of the season without liability insurance.

"If we had no insurance, it would expose the coaches and staff to (possible) lawsuits and we could have mass resignations," Mr. Payment said. "Some volunteers have indicated they will resign if there is no insurance."

The CSA is considering buying accident insurance for the skiers, but that is expensive and it does not cover the volunteers, coaches, staff and the association.

"If a skier becomes paralyzed, accident insurance may pay \$250,000, but he may decide to sue. A settlement of a few million isn't unusual."

The increased difficulty of getting adequate liability insurance, a result of large claim settlements in North America, has affected all Canadian amateur sports organizations.

Hugh Glynn, president of the National Sport and Recreation Centre, had no instant remedy, but said the problem needs immediate attention. He said he informed Otto Jelonek, the Minister of Fitness and Amateur Sport, about the situation before Christmas, but has not had a reply.

"One thing is for certain: the Government must step in. They will bring volunteer organizations to a standstill, if they keep this up. It appears to be a pressure tactic (by the insurance companies) to bring action from the Government.

"Our organizations have gone as far as Lloyd's of London and they have turned us down."

Rob Toller, a spokesman for Mr. Jelonek, said on Monday that the minister was extremely concerned about the situation and was "seeking the best advice he could find" from the sports community and the insurance industry.

"But really, he doesn't know just what he can do to ease the situation."

Barbara McDougall, Minister of State for Finance, indicated in Parliament on Monday that she will be bringing in new policies to deal with the general problems of liability insurance, but she did not elaborate on what those initiatives would be. A special committee of the Ontario Legislature already has been struck to study the situation.

Robert Mait
Jan. 15/86

Exhibit 5

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS



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Ministry of
Consumer and
Commercial
Relations

BACKGROUND NOTES - JANUARY 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: BUSES

Since the OMCA wrote the Premier on September 18th, senior staff from MTC and CCR have been involved in meetings and initiatives aimed at assisting the bus industry. Notably, arrangements were made with the Facility Association to provide insurance coverage for this industry, the Honourable Ed Fulton has met with the OMCA and has gained insight into the insurance crisis from the industry's perspective, and the Deputies from MTC, CCR, and Tourism and Recreation have met to seek solutions to this problem.

The Deputy Minister of CCR met with representative from the Ontario Motor Coach Association on November 23, 1985.

EFFECTIVE IMMEDIATELY bus carriers tariff increases will be approved by the Minister MTC without referral to the OHTB. This will allow tariff increases due to insurance premium increases to be approved in a week instead of the previous 30-60 days.

The intercity bus industry in Ontario is facing increased costs of liability insurance. Premiums have increased ten-fold from levels of \$2000-3000 per coach to \$20000-24000 per coach for much less coverage.



416/963-0311

555 Yonge Street
Toronto, Ontario
M7A 2M6Ministry of
Consumer and
Commercial
RelationsBACKGROUND NOTES - January 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: HOSPITALS

In June of 1985, the Ministry of Health became aware of a major price increase in hospital liability insurance.

July 8, 1985, the staff of the Ministry of Health met with representatives of the Ontario Hospital Association and their insurance brokers.

Both the Ministry of Health and the O.H.A. met with the Superintendent of Insurance subsequently to review options/alternatives that might be available.

The Ontario Hospital Association has established a Task Force, including an observer from the Ministry of Health to review the alternatives available in the industry. The review will include examination of options such as self insurance, change in coverage from occurrence to claims made, etc.

A group of 20 Metro Toronto hospitals are conducting a similar, but independent, review.

The hospitals of the Province are still able to purchase liability insurance, although at a greatly increased premium.

In terms of the increased premiums, the Ministry of Health has not made any overall provision for the costs but is reviewing each hospital's overall financial position and is prepared to provide additional funds in cases of true financial hardship.

April 21, 1987

MEMORANDUM TO THE MEMBERS
OF THE ALASKA STATE LEGISLATURE
REGARDING TORTS IN GENERAL AND
GENERAL COMMENTS WHY SENATE BILL
NO. 211 AND HOUSE BILL NO. 250
SHOULD NOT BE ENACTED *

FROM: WAYNE ANTHONY ROSS, PATRICK G. ROSS,
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HISTORY

A tort is a term that is generally applied to a miscellaneous group of civil wrongs other than a breach of contract, for which a court of law will afford a remedy in the form of an action for damages. The Law of Torts is concerned with the compensation for losses suffered by private individuals through conduct of others which is regarded as socially unreasonable.

As previously stated and very broadly speaking, a tort is a civil wrong, other than breach of contract, for which the law will provide a remedy in the form of an action for damages. A tort is therefore nothing more than one kind of

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Specific comments on why Senate Bill 211 and House Bill 250 should not be enacted are the subject of a separate memo to you.

legal wrong for which the law will give a particular redress to the individual that has been wronged.

Included under the general heading of torts are civil wrongs consisting of direct interferences with the person, such as assault, battery, and false imprisonment. Also included are direct interferences with property such as trespass or conversion as well as various forms of negligence and damages to reputation. These individual wrongs have very little in common with, and are entirely unrelated to, one another except by historical accident. The only principle that can tie all these various wrongs together is the principle that an individual who is injured should have his injuries compensated and anti-social behavior is to be discouraged.

The previously mentioned torts are basically the original common law torts that have been recognized through the years. In addition, as we become more civilized, new torts are recognized from time to time by the courts which create new causes of action where none had been recognized before. Several examples include the intentional infliction of emotional distress, the obstruction of an individual's right to go where he likes, invasion of an individual's right to privacy, denial of an individual's right to vote, the infliction of prenatal injuries to an unborn child, and the alienation of affections of a parent, to name only a few examples.

The Law of Torts is not static or limited and the limits of its development are consistently being refined as society evolves.

The historical origins of tort law still influence the Law of Torts substantially. When the common law of England first emerged, a plaintiff could have no cause of action for harm that he suffered unless his claim fit into the form of some existing and recognized writ. By the middle of the 19th century, this concept had been modified and replaced to a great extent by the modern procedural codes of law.

Gradually, as time passed, the concept of tortious contact or conduct and actionable damages has expanded. Many believe that such access to legal remedies are a mark of a government of laws and prevent the "self help" of the past wherein private parties and even families would feud and physically clash to settle their differences.

INTENTIONAL TORTS

Intentional torts, such as assault and battery, trespass, intentional infliction of emotional distress, and false imprisonment, by their definition require an intent on the part of the actor or doer. This intent does not mean that the individual must intend that result that flows from his actions. It merely means that the individual must intend to achieve some result when he acts for the purpose of accomplishing that result, or believes that the intended result is

substantially certain to follow from his act. The intent is not necessarily a hostile intent or a desire to do any harm. Therefore, the mere intent to place ones foot off of a sidewalk onto the grass of a neighbor's yard would be a sufficient intent for the intentional tort of trespass. It is merely an intent to bring about a result which will invade the interests of another in a way that the law will not sanction.

The defendant may be liable even though he has meant nothing more than a good natured practical joke or earnestly believed that he would not injure the plaintiff. The defendant would also be liable even in the event that he felt that he was seeking to protect the plaintiff's own good.

In other words, the defendant's act must be a voluntary act. A contraction of muscles will suffice. The movement of a finger on the trigger of a gun is sufficient.

The individual's state of mind may involve many things: He may intend to move his finger for the purpose of pulling the trigger, for the purpose of causing the bullet to strike a man, for the purpose of merely causing the bullet to exit the barrel, for the purpose of killing a man, for the purpose of revenge, for the purpose of defending his country, or for the purpose of protecting himself against attack. Intent would thus be commonly used to describe the desire to bring about physical consequences of an action up to and including the death.

The mental concept which inspires the act is called a motive. Motive is only one step removed from the muscular contraction. Each (intent and motive) has its own importance in the Law of Torts and a justifiable motive such as that of self-defense, may avoid liability for the intent to kill.

The "Intent concept" in Tort law is, however, broader than a desire to bring about physical results. It extends beyond those consequences which are desired, to consequences that the actor believes are substantially certain or should believe are substantially certain to follow from what he does. For instance, an individual who throws a bomb into a crowd of people may wish to only kill the president and no one else. But since he knows that the death of others is substantially certain to follow, or should know that the death of others is substantially certain to follow, it must be said that he intends to kill them. In addition, the individual who fires a bullet into a dense crowd may earnestly and diligently hope and pray that no one will be hit. But since he must believe and know that someone is substantially certain to be hit, he intends the result.

CAVEAT

The mere knowledge and appreciation of a risk, though short of substantial certainty, is not the equivalent of intent. Therefore, the individual who acts in the belief or consciousness that he is causing an appreciable risk of harm to

another may be negligent. If the risk is great, his conduct may be characterized as reckless or wanton, but it is not classified as an intentional wrong. However, it would still remain an actionable tort under the theories of negligence.

Very few intentional torts cases exist in Alaska. However, the general principles applicable to Tort law remain the same, with exception of the area of vicarious liability, which is discussed below.

One intentional tort recognized in Alaska is assault and battery. Assault and battery occurs if one acts intending to cause a harm of offensive contact with a person of another, and if the latter is put in an immediate apprehension of such contact, and such contact results. Liability will attach regardless of whether the actor acted with a feeling of hostility or ill will toward the other. In addition, punitive damages may only be awarded where the plaintiff has in fact suffered actual damages.

In addition, the intentional tort of false imprisonment or false arrest is recognized in Alaska. False imprisonment consists generally of a situation in which the actor confines the victim within some boundaries fixed by the actor, without legal justification, by either an intentional act or an omission intended to result in such confinement. The tort of false imprisonment is generally meant to protect an individual's interest in freedom from restraint of movement. The

boundary does not have to be a stone wall or fence. The boundary can readily be a body of water if it would be unreasonable for the victim to be required to cross that boundary. In addition, a victim may be restrained and imprisoned when his movements are restrained in an open street, in a travelling automobile, or if he is compelled to go along with the actor against his will. All that is really required is a mere obstruction of the right to go where the victim pleases. However, the victim may not merely be inconvenienced; he must be blocked from all reasonable exit.

In addition, the intentional tort of intentional infliction of emotional distress is available in Alaska, but usually only where the actor has acted in an outrageous or especially flagrant manner. However, common carriers have an elevated duty of care to their passengers such that insults to the passenger may suffice.

VICARIOUS LIABILITY FOR INTENTIONAL TORTS

Generally an employer is not liable for the intentional torts and actions of his employees. However, in the event that the duties of the employee such that an intentional tort could be committed by the employee and furtherance of the employer's interests, vicarious liability will attach. Likewise, with regard to employers employing independent contractors.

physical propensity to be harmed that is unknown to the actor will not limit the actor's liability.

BRIEF OVERVIEW OF NEGLIGENCE

Negligence

For a cause of action to exist in negligence, there must be four elements. First, the actor must owe a legal duty of some type to conform to a standard of conduct recognized by society as a whole for the protection of others against an unreasonable risk. Secondly, there must be a breach of that duty, i.e. a failure to conform to the standard of conduct. Third, there must be a reasonably close connection of a causal relationship (substantial factor) between the conduct of the actor and the resulting injury. Fourth, there must be actual loss or damage resulting to the interests of another from the breach of this duty.

Negligence is thus based simply upon conduct. However, if any one of the four elements are missing, a cause of action for negligence does not exist.

In the concept of negligence, an intentional act on the part of the actor is not required. A failure to act will suffice, if that failure to act would breach a duty of care owed by the actor to the injured party. The duty of care would exist because of some special relationship between the parties

which imposes a duty to act such as parent-child, attorney-client, physician-patient, teacher-student, etc.

As previously stated, there must be some duty owed to the plaintiff. Generally the duty of care would be one of reasonableness; i.e. that standard of care that a person of ordinary prudence would exercise under the circumstances.

However, if the tortfeasor is proven to have violated a statute, ordinance, or rule that embodies a reasonable standard of care, the plaintiff will have established a prima facie case of negligence, legally called "negligence per se." The burden is then placed on the defendant to show reason or excuse for his violation.

Several classes or groups of defendants are held to a higher standard of care than that of ordinary care of a prudent person. Common carriers (airlines, buslines, taxicabs) are held to the highest degree of care with respect to their passenger's safety. Healthcare providers are held to that degree of knowledge or skill possessed or the degree of care ordinarily exercised by providers practicing in the same speciality or in the same field. Insurance companies are held to a duty not to act negligently in the conduct of defending the insured under an insurance policy. In addition, suppliers of chattels (rental agencies) must inspect for defects and inform of those defects if found. In each of these situations,

the actor is held to a higher degree of care than mere reasonableness.

As previously stated, for a cause of action in negligence to lie, there must be legal cause of the harm that resulted. This legal cause must be causation in fact. In other words, a defendant will not be liable to the plaintiff's injury unless he has in fact caused that injury. This does not mean, however, that a situation that would appear remote to the layman would preclude recovery.

If the act or omission of the defendant was a substantial factor in bringing about the result, it will be regarded as a cause in fact and therefore a legal cause of the harm. Ordinarily, it will be a substantial factor if the result that occurred would not have occurred without it.

In order to satisfy the substantial factor test, it must be shown that the accident would not have happened "but for" the actor's negligence and that the negligent act was so important in bringing about the injury that reasonable men would regard it as a cause and attach responsibility to it. Thus, there must be some reasonable connection between the act or omission of the defendant and the damage which the plaintiff has suffered.

This can be illustrated with a stack of dominoes that have been lined up on edge, each domino being placed so that in the event the preceding domino topples, the secondary domino

will topple in turn. As can readily be seen with the first domino representing the act or omission and the last domino representing the harm, the force exerted on the first domino to topple it will eventually cause the last domino to topple. The act of the individual pushing over the first domino did not actually cause the last domino to fall. Instead, the act of the individual pushing over the first domino set in force a chain of events that reasonably led to the falling of the last domino. A reasonable person of ordinary prudence would believe that the action of pushing the first domino caused the falling of the last domino, or that the act of pushing over the first domino would be reasonably certain to cause the fall of the last domino.

However, this causal connection is tempered within that which is foreseeable. In the event that the harm caused is so far remote from the act or omission of the actor to be unforeseeable, then liability will not lie.

For instance, a defendant railway company maintains a station platform with a hole in it. A passenger descending from the train, steps into the hole and sprains her ankle. The sprain develops into inflammatory rheumatism, which becomes endocarditis, and the woman dies.

The defendant could reasonably have foreseen that the hole might cause some injury to a passenger. However, upon no ordinary basis of human experience could it anticipate that it

would cause death from inflammation of the heart. Is the defendant liable for the death? In 1899, the Minnesota Supreme Court in the case of Keegan v. Minneapolis and St. Paul R. Co., 76 Minn. 90, 78 N.W. 965, ruled that the plaintiff could recover for the death caused by the hole in the station platform.

As previously stated, if the defendant could not reasonably foresee any injury as the result of his act, or if his conduct was reasonable in light of what he could anticipate, there is no negligence and no liability attached. However, if he does unreasonably fail to guard against harm which he could foresee, then liability will attach, provided that plaintiff had a duty to act in the first place.

However, there must be some limit with respect to foreseeability. In one sense, almost nothing is quite unforeseeable, since there is a very slight mathematical chance, recognizable in advance, that even the most freakish accident will occur. For instance, in the case of Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99, (1928), the plaintiff was standing by a platform upon which rested a set of railway scales. The defendant, while boarding the train, dropped a brown paper bag full of ordinary fireworks that exploded. The explosion was alleged by the plaintiff to have jarred the platform upon which the scales sat sufficiently to topple the scale on to Mrs. Palsgraf. What is meant by the term

foreseeability is that the consequences must be a normal, substantial part of the risk, which a reasonable man would recognize as fair to be taken into account at the time of his act. Considering Mrs. Palsgraf, would it be reasonable for the man that was carrying the bag of fireworks to foresee that in the event the bag was dropped and an explosion ensued, someone in the near vicinity would be injured. If the answer is yes, liability would attach. Thus, there must be some reasonable connection between the act or omission of the defendant and the damage which the plaintiff has suffered. The New York court of appeals ordered that plaintiff's complaint be dismissed because plaintiff had failed to show defendant's actions to be rooted in a "wrong."

COMPARATIVE NEGLIGENCE

Alaska is a comparative negligence jurisdiction utilizing the concept of pure comparative negligence. What this means is that the negligence of all parties will be considered in any award of damages. If the plaintiff is contributorily negligent, this contributory negligence will not be a bar to recovery, but will be a factor by which the court will lessen the amount of damages that the plaintiff is allowed to collect. (In other words, given 100% of the total possible liability in any given case, if the plaintiff is found 50% negligent and the defendant is found 50% negligent, and the plaintiff has suffered damages of \$1,000.00, the plaintiff will

be allowed on a pure comparative negligence basis to recover only half of that or \$500.00).

However, in the event that the defendant acted intentionally, such as in the case of an assault and battery, then any negligence on the part of the plaintiff will not reduce the recovery at all. Therefore, negligence is not a defense to intentional torts.

VICARIOUS LIABILITY FOR NEGLIGENT TORTS

An employer is subject to liability for injuries caused by the tortious conduct of his employees within the scope of their employment.

An example of this theory could encompass the construction of the Alaska Pipeline, in which a welding company is contracted to weld joints of pipe to be utilized in the pipeline itself. The company has the right to control directly or indirectly the performance of the welding done by the employee welders of the welding company. Assuming that the employees welded in a deficient manner such as to cause substantial leaks in the pipe joints after the pressurized oil was placed in the line, the welding company would probably be found vicariously liable for the damages that resulted.

Often, in the law, there are referrals to masters and servants. These are legal terms. A servant is a person employed by a master (employer) to perform service for that master, whose physical conduct and the performance of his

duties is controlled or is subject to a right to control of the master.

As can readily be seen, the employee must only be subject to a right to control of the master. The employee does not have to be under the actual control of the master.

However, where the employee, under the Doctrine of Frolic and Detour, frolics in the performance of his duties; i.e. chooses a path or course of action that is in no remote way related to his duties under the employment of the employer, the employer will not be liable. However, if the employee merely detours in his path of performing his duties, the employer will be liable. An example of a detour can be seen where a delivery boy, rather than returning from a delivery directly to the employer's offices, makes a brief detour for personal reasons and is involved in a motor vehicle accident causing death. If the employee's act is found to have been foreseeable by the employer (that the employee may detour on his way back to the employer's place of business) then the employer may be found liable. Therefore, once it has been determined that the employee is a servant, the master may be subject to vicarious liability for his servant's torts in the event that the servant was working within the scope of his employment, including brief deviations.

In addition, the master may of course be liable on the basis of any negligence of his own in selecting or dealing

with the servant, or for the acts which he has authorized or ratified the servant to do.

However, in the event that a servant commits intentional torts, a master will not be liable UNLESS the intentional tort (assault and battery, false imprisonment, malicious defamation) is of the type where the employment is likely to lead to such torts.

As previously stated, under the Doctrine of Vicarious Liability with respect to intentional torts, a shopkeeper employing an independent contractor for security purposes to preclude shoplifting, may find himself liable for the intentional torts of those security people. In the shoplifting scenario, potential intentional torts include assault and battery, false imprisonment, and possibly defamation of character.

The same would be true with respect to a bouncer employed in a bar. The bar owner could reasonably anticipate and foresee the bouncer being involved in a situation where force was used, to include physical restraint of a patron of the bar or heated arguments between the patron of the bar and the bouncer.

INDEPENDENT CONTRACTORS

The employer of an independent contractor may be liable for any negligence of his own in connection with the work to be done by the independent contractor. However, the

common law rule is that the employer will not be vicariously liable for the torts of the independent contractor, unless the independent contractor has been placed in the position of actually being a servant of the employer/master, rather than actually an independent contractor. Two examples of this include areas of work that is inherently dangerous to others, or will be dangerous unless particular precautions are taken; and where the employer has a duty that he is not allowed by law to delegate the independent contractor.

As previously stated, common carriers, to include airlines, buslines, and taxi cabs have a non-delegable duty to transport their passengers safely. In the independent contractor type scenario, the employer of the independent contractor, since it is a common carrier, has a duty to insure that this duty of safe transport of passengers is complied with. This duty cannot be delegated to the individual taxi cab drivers, airline pilots, or bus drivers and liability will attach.

In addition, under the Doctrine of Safe Place, a landowner or occupier of land must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of the respective parties of avoiding the risk. Hiring of an independent contractor to maintain the premises may not suffice if the landowner is found to have a duty to inspect and insure

the compliance of the independent contractor to keep the property in a reasonably safe condition. In addition, in accordance with Alaska landlord-tenant statutes, the landlord has specific enumerated duties with respect to the habitability and safety of any premises which the landlord rents or leases. A violation of these duties would constitute both a breach of that duty and negligence per se, whether the duty had been delegated to an independent contractor or not.

Good examples of inherently dangerous activities include blasting, construction, or any activity likely to endanger passers-by.

PUNITIVE DAMAGES

Punitive damages are sums that are awarded a part from any compensatory or nominal damages, usually as a punishment or deterrent levied because of particularly aggravated misconduct on the part of the defendant. Punitive damages are generally awarded with or a combination one of three purposes in mind:

- 1) Punish the wrongdoer;
- 2) Set an example for others;
- 3) Deter the defendant from similar conduct in the future.

Punitive damages are not given as a matter of right. Punitive damages will only apply in the event that the

plaintiff proves sufficiently serious misconduct on the part of the defendant, as to be deemed outrageous.

As previously stated, the main theory in support of punitive damages is punishment and setting an example that would deter similar conduct in the future.

It is usually the defendant's mental state that is said to justify a punitive award against him, rather than his outward conduct. This mental state can be characterized as maliciousness, recklessness, wanton disregard, or outrageousness. However, where the defendant has been found to have acted in good faith, punitive damages are not appropriate.

SO-CALLED TORT REFORM

Up until now, damages redressable through the courts for intentional torts and negligence have been required to bear a "reasonable" or "rational basis" relationship between the amount awarded and the harm that resulted. Recently, a move has generally surfaced on a nationwide basis (primarily backed by the insurance company lobby) to limit the amount of monetary damages that a plaintiff can receive from any given defendant or group of defendants. This movement is called "TORT REFORM." The tort reform movement has met with mixed results across the nation. According to court opinions, five states (California, Florida, Indiana, Nebraska and Wisconsin) have upheld damage limitations in medical malpractice actions while courts in seven states (Idaho, Illinois, Montana, New Hampshire, North

Dakota, Ohio and Texas) have declared such limitations unconstitutional. During the 1986 state legislative session alone, forty-one separate states passed legislation to restrict some rights of innocent victims to sue and be fully compensated for their injuries (according to a report of the National Conference of State Legislatures, July, 1986).

While the insurance industry as a whole is a substantial proponent of tort reform, they are not alone. In conjunction with the insurance industry are business and professional lobbies, including manufacturers of hazardous goods and toxic chemicals.

Among measures considered by various states and/or enacted in 1986 were arbitrary limits on pain and suffering awards, limitations on punitive damage awards, mandatory limits on lawyers' contingency fees, modification or joint and several liability so as to preclude full recovery in the event a liable party is unable to pay, restrictions on lump sum payments to the plaintiff and relaxed liability standards.

An excellent example with respect to the lack of feasibility of a realistic cap on tort damage awards, as suggested in Alaska S.B. 211 and H.B. 250 governs the application of the award of damages in medical malpractice cases. An actual case will serve as this excellent example:

The plaintiff is a minor infant, who at the time of his birth, was being delivered by cesarean section. The

physician cut the umbilical cord prior to removing the child from the womb of the mother. The physician then experienced substantial difficulties in removing the child from the womb, which resulted in a period of time passing before the child could be given adequate medical treatment. As a result, the child has suffered permanent brain damage of an irreversible nature and will require institutional care for the rest of its natural life. What can be the measure of economic damages in a case such as this? The child has never held a job and never will hold a job. The child has had no opportunity whatsoever to develop any indication, through education or otherwise, of what the child's job or vocation capabilities could have been. Therefore, there is no data that can be utilized to compute a loss of earnings. A financial cap may not provide for the medical care, treatment, and physical care that this child needs for the duration of its life expectancy. In fact, a financial cap imposed by a legislature may be substantially less than the minimum amount of money that will be required to meet the needs of this child.

In addition, it is impossible to calculate and place a monetary value on the non-economic damages that this child has suffered. Will the \$100,000.00 cap on an award of damages proposed by SB 211 and HB 25 adequately make this child whole? Will it adequately compensate the child (or his parents) for pain, suffering, inconvenience, physical impairment,

disfigurement, mental anguish and emotional distress? Not likely.

In addition, another excellent example that shows the lack of feasibility of a cap on tort damage awards adequately compensating the plaintiff involves the following scenario:

A young individual, having recently graduated with a Masters Degree in psychology, but prior to an opportunity to practice in his chosen field, is involved in an automobile accident. The young psychologist is not treated for any type of medical disability because no injury is apparent. Several weeks later, the young psychologist begins experiencing loss of feeling in his extremities and severe headaches. He goes to an Osteopath, who x-rays his neck for fracture, but prior to reviewing the developed x-rays, attempts to make adjustments in the young psychologist's spinal alignment. Unbeknownst to the Osteopath and the young psychologist, the young psychologist is suffering from cracked cervical vertebrae (i.e. a broken neck). As a result of the osteopath's manipulation of the cervical vertebrae of the young psychologist, he is paralyzed and becomes a quadraplegic for life.

Will a cap on liability effectively provide for the economic damages, to include lost wages, medical care and treatment, as well as medical care in the future? Not likely. In the event that the young psychologist is in his late 20's, he will probably have a life expectancy remaining of

approximately forty years. Will a \$100,000.00 cap on non-economic damages reasonably compensate our psychologist for pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish and emotional distress? This computes to only an average annual income of \$2,500.00 (assuming a cap of \$100,000.00) to provide for all non-economic damages! In such a situation, S.B. 211 and H.B. 250 propose to compensate our young man at the rate of less than \$7.00 per day!

How can a monetary amount be placed on a total loss of feeling of the body and its limbs? How can a monetary amount be placed on the value of the deprivation of becoming a husband and parent? How can a monetary amount be placed on the value to an individual of seeing his children grow up and being able to run and play with them, help them in their schoolwork, help them tie their shoes, help them dress, etc. The young psychologist will be physically precluded from taking part in even the simplest task requiring physical ability. Will \$100,000.00 compensate him for these losses? Not likely.

MYTH:

"Casualty insurance companies are going broke because of frivolous claims and huge jury awards, encouraged by lawyers with contingency fee contracts."

FACT:

"Casualty insurance companies are tremendously profitable because juries are usually very conservative; frivolous claims are economically discouraged by contingency fee agreements."

Where the attorney is representing an injured plaintiff, the attorney can charge the plaintiff on an hourly basis, or the attorney can charge on a contingent fee basis, i.e., by charging a percentage of any recovery.

In many cases, injured parties simply cannot afford to pay an attorney on an hourly basis for protracted litigation, especially when such other litigation is against defendants such as insurance companies or other large corporations with substantial financial resources to mount a defense. The contingent fee arrangement, therefore, allows the average person to obtain access to the courts for redress of their grievances. Otherwise, this access would be beyond their financial capabilities and would effectively deny them the right to be made "whole".

Contingency fee agreements discourage frivolous claims because of the fact that the law firms are footing the bill for the claim and are only going to advance those claims that they feel have a good opportunity to succeed on behalf of these clients. It is economically irresponsible and suicidal for a firm to advance and finance frivolous claims.

In the movie Casablanca, a French officer named Louie repeatedly utilized the ploy of "rounding up the usual suspects." When Louie was accused of knowing about gambling at Rick's (Humphrey Bogart's nightclub) - and when Ingrid Bergman and Bogart were escaping from their oppressors - Louie used his tactic of arresting his usual innocent suspects.

The insurance industry is in effect rounding up its usual suspects - people with claims, their lawyers, and the jury system - as scapegoats for unjustifiable premium increases, claiming as justification that an increase in awards is financially crippling the insurance industry.

Based on studies by the Rand Institute for Civil Justice, 10% of all malpractice incidents results in actual malpractice claims. Less than half of those claims are ever paid. Thus in only 4% of all instances of malpractice are victims compensated. In addition, less than 1% of patients, clients, or customers bring any claim against professionals such as accountants, lawyers, doctors, engineers and others.

In 1975, defendants won 81% of all court cases reported, and in 1978, defendants won 88%. (Rand Institute Statistics).

The insurance industry, through the utilization of sensational newspaper headlines, would have most people think that malpractice claims result constantly in huge payments. However, The National Institute of Trial Advocacy cites the

Rand Institute Report stating that the median settlement before trial is only \$9,500.00 and median settlement during trial is \$13,350.00. This does not include those cases dismissed without any award at all. Of all the claims brought before the courts and tried by a jury nationwide, substantially fewer than half result in an award to the claimant.

Insurance companies wish to restrict the rights of the injured to a jury trial. In this attempt, they ridicule juries by parading before the media the same six or seven examples of what they call "outrageous verdicts."

It would appear that insurers want the public to believe that juries always give huge sums to undeserving victims, thus driving up the cost of insurance.

In a current case that is pending in Wisconsin, a young man of approximately twenty-four years of age, with a 23 year old wife and four pre-school age children was employed in the lane of a natural gas pipeline that crossed underneath an electrical high tension feeder line. The electrical high tension feeder line carried a current of 8,000 volts. While handling a rope tied to the end of a piece of gas pipe suspended from a crane, the boom of the crane either touched or came in close proximity to the feeder line resulting in an electrical shock to the man. He was killed. Unfortunately for him and his family he was revived. We say "unfortunately" because Rodney is now a quadraplegic who will be confined to a

wheelchair for the rest of his life. His hips are totally calcified and not functional at all. He has the current mental capacity of a three year old child and will remain in institutions until the day he dies. As a result, his wife and children have been deprived of a husband and father, as well as the income that could be produced for a remaining life expectancy of 41.9 years.

In addition, plaintiff's counsel was able to prove that the electric company had knowledge of the pipeline going underneath its transmission lines and refused to take any steps to protect any workers from electrical shock.

More importantly, plaintiff's attorneys were able to prove a concerted effort on the part of the Crane Manufacturers of the United States to prevent the utilization of an invention called a proximity warning device on all cranes being manufactured. This proximity warning device enabled the operator of the crane to adjust the sensitivity of the sensor on the boom of the crane boom, to the extent that an alarm would go off in the cab of the crane when the boom came within a certain distance of the electrical feeder line (adjustable from ten to approximately forty feet). The approximate cost of this proximity warning device is around \$400.00. For the expenditure of \$400.00, Rodney would not be in the wheelchair - Rodney's wife would have her husband at home - and more tragically, Rodney's children would have their father.

Finally, preliminary computations revealed that if the cost of medical care needed by Rodney on a day-to-day basis did not increase during the 41.9 years of his life expectancy and if the cost of the nursing home did not increase at all during 41.9 years, these costs alone would total approximately 2.5 million dollars.

As can readily be seen, a cap of \$100,000.00 for the damages that Rodney has received will fall far short of meeting his economic damages. Instead, Rodney's family would be required to pay at least 2.4 million dollars for Rodney's care. More than likely, Rodney would become a ward of the state and be supported by the taxpayers of Wisconsin. His non-economic damages would never be recovered at all!! This is not just unfair -- it is absurd. Yet, this is the result if the provisions of Senate Bill 211 and/or House Bill 250 are applied!

The property and casualty insurance industry claimed a 5.5 billion dollar loss in 1985. In reality, it earned 6.6 billion. According to the National Insurance Consumer Organization's president, Jay Robert Hunter (former Federal Insurance Administrator in the Ford and Carter Administration):

- 1) Insurance industries claim to a 1985 loss is false because losses are defined to include expenditures that are not losses, such as dividends declared by profitable companies, and

2) Income is defined in such a way as to exclude certain sources of revenue, such as realized capital gains, and

3) The stock index of property/casualty insurers rose by 46% during 1985 - almost double the rise of the general stock market - according to the January 24, 1986 issue of National Underwriter.

4) Insurance companies' net worth rose by 7.5 billion in 1985, from 62.4 billion at the end of 1984 to 71.0 billion at the close of 1985.

In June of 1986, the previously mentioned president of the National Insurance Consumer Organization, Robert Hunter, issued a report on the first quarter 1986 property casualty insurance industry profits showing industry profits rose 2.11 billion or 1,227%. In fact, the property casualty insurance industry, using its own self-serving accounting definitions, admits that net profit for the first half of 1986 totalled 5.7 billion, up from 930 million a year earlier. This would hardly appear to be an industry that is being crippled and brought to its knees by alleged damage awards to undeserving victims.

According to Mr. Hunter, the insurance industry goes in a cyclical manner. He states, "1984 was a typical bottom-of-the-cycle year. The last time it happened was in the mid-1970's. . . At that time, the country observed the precise phenomena that we see today." Hunter also noted, "at the top

of the cycle a few years ago, the now dreaded liability insurance policy rates were being slashed wildly and [insurance was] even being sold after the insured event happened, such as in the case of the MGM Grand Hotel fire where [retroactive] liability insurance coverage was written months after the fire."

By blaming the legal system for the insurance companies' own prior mistakes and mismanagement of funds, the insurance industry accomplished three goals. First, it provided a convenient scapegoat for the sudden surge in premium prices and reduction in coverage for their commercial customers. Second, it provided the excuse to lobby for limits to their own future pay-out obligations. Third, it enabled the insurance industry to enlist the support of the business and industries who were abused by the insurance companies by exploiting the business communities' natural eagerness for more limited liability from lawsuits. In other words, TORT REFORM.

The insurance industry would have the uninformed public believe that a litigation explosion is taking place. However, the best available evidence indicates that state courts, where approximately 95% of tort cases are brought, are not experiencing any litigation explosion. The National Center for State Courts compiled evidence in a most recently released report entitled "A Preliminary Examination of Available Civil and Criminal Trend Data in State Trial Courts for 1978, 1981,

and 1984 (April 1986)." The findings on tort filings are particularly interesting. Increase in tort case filings between 1978 and 1981 was only 2%, while the population growth for those states was 4% during the same time period. Between 1981 and 1984, the population grew another 4% while tort filings increased 7%. For the entire period 1978 to 1984, total tort filings increased 9% while the population increased by 8%.

In Congressional testimony on August 6, 1986, Robert T. Roper, Director of the Court Statistics and Information Management of the National Center for State Courts, told the Economic Stabilization Subcommittee of the House Committee on Banking, Finance and Urban Affairs, "There is not one shred of evidence to indicate that there is a litigation explosion in the state court system!" (Emphasis ours)

Statistics compiled by Jury Verdict Research (J.V.R.) are widely used by proponents of tort reform to demonstrate a lawsuit crisis. However, J.V.R. board chairman Phillip Herman has testified at the same hearing with Mr. Roper that J.V.R. data does not support any claim of recently escalating jury verdict awards. He stated that the apparent reason for this erroneous impression is that a number of highly publicized news articles quoting J.V.R. statistics have grossly misstated those statistics. J.V.R. average jury award figures, which are frequently cited to represent trends, are not typical figures

since they are skewed to the right, heavily influenced by a few large jury verdicts. The median figures which are the correct measurement to reflect typical awards have remained at approximately \$8,000.00 in 1979 dollars, since 1959, according to statistics compiled by the Rand Corporation. Finally, in the April 21, 1986 issue of Business Week, an article titled "The Explosion and Liability Lawsuits is Nothing but a Myth," concluded that there is no litigation explosion in this country.

The Ad-Hoc Insurance Committee of the National Association of Attorneys General in a May 1986 report concluded,

"The facts do not bear out the allegations of an explosion in litigation or in claim size, nor do they bear out the allegations of a financial disaster suffered by property/casualty insurers today. They finally do not support any correlation between the current crisis and availability and affordability of insurance and such litigation. Instead, the available data indicate that the causes of, and therefore the solutions to, the current crises lie with the insurance industry itself." (Emphasis ours.)

It should thus appear that tort reform is not the answer, but merely a means of the insurance industry perpetuating its grossly disproportionate profit structure, thereby insuring that the companies continue to line their pockets with gold at the expense of the man paying the premiums.

POSSIBLE SOLUTIONS

Federal Laws:

1) Congress should repeal the insurance industries' exemption from anti-trust laws, federal regulation, and Federal Trade Commission scrutiny.

2) Congress should establish a Federal Office of Insurance to monitor the industry closely and establish strict standards for state regulators to follow.

3) Congress should establish a national industry - funded reinsurance program, to compete with foreign reinsurers to exert downward pressure on foreign reinsurance rates, thus enabling domestic insurers to reduce their rates to the consumer.

4) Congress should require insurance companies to routinely disclose how much they take in on premiums and investment income, and how much they pay out in verdicts and settlements, plus reserves and other expenditures. This data should be broken down into specific categories, such as trucking concerns, daycare centers, schools, municipalities, private auto insurance, the pipeline industry, the gas industry, the oil industry, and even the welding industry.

Had such a disclosure been required in the last several years, it would have been extremely difficult for the insurance company to mislead the media and the public as they have done.

State Laws:

1) In the absence of a Federal Reporting and Disclosure Law, states should require the same information to be routinely disclosed to state insurance regulators.

2) States should consider more authority and funding to state insurance departments, thereby providing a watchdog on the insurance industry as a whole.

3) States should afford citizens greater consumer protection and representation before the insurance regulatory bodies, including direct intervention in rate proceedings similar to those now conducted with respect to utility service.

4) States should revoke or relax existing prohibitions against individuals and individual businesses from joining co-op groups to purchase self-insured liability insurance.

5) States should earnestly require that insurance companies take greater steps to engage in loss prevention efforts such as research and advancement of health and safety conditions, and to disclose evidence in their claims, files of known defective products or hazardous conditions to appropriate regulatory authorities.

The above possible solutions are frequently referred to as "Sunshine Laws" that result in full disclosure of actual

claims paid by the insurance industry, rather than the figures they choose to release.

We do not need "tort reform."

We need insurance reform - in an effort to stop price gouging as it exists today through the utilization of a phantom crisis for a basis.

It is interesting to note that during the five year period ending in December of 1983, malpractice insurance carriers took in 7 billion in premiums and 1.7 billion in investment income. This is a total income of 8.7 billion. Of this 8.7 billion, only 1.4 billion was paid in claims. This results in a gross profit of 7.3 billion dollars. This is hardly indicative of an insurance industry suffering substantial losses and brought to its knees by alleged, unjustified high jury awards to undeserving victims.

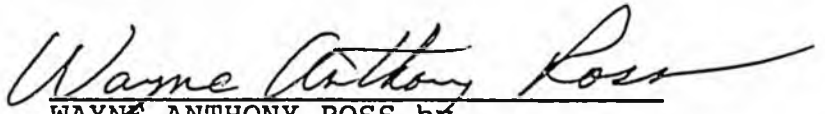
The purpose of tort law is to give a victim redress for a wrong that they have suffered. In other words, it is to make the plaintiff whole. The insurance industry, in achieving ceilings on damage awards, prevents the purpose of tort law. It prevents deserving victims who have suffered gross damage from being made whole through compensation for that damage. Ceilings on the amount of damages awarded to a victim also defeat the purpose of punitive damages with respect to punishment of the wrongdoer for his evil act or omission, deterring others from acting in a similar manner, and setting an example

for others to follow in their dealings with the public as a whole.


We urge you to change the focus of your scrutiny. Instead of talking about tort reform and thus advocating a position beneficial to the wealthy, and all too often greedy insurance companies, we urge you to focus on the injured victims, the people we represent, who need your help. Examine the insurance industry. Examine it carefully. We believe only then will you find that instead of "tort reform" your constituents should be given "insurance reform."

Should you have any questions, feel free to contact us.

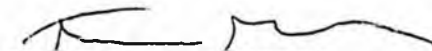
Sincerely,



WAYNE ANTHONY ROSS by
Patrick G. Ross



PATRICK G. ROSS



THOMAS S. GINGRAS



ALLEN M. BAILEY



EDWARD L. MINER

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METHODOLOGY

During the period of July 24 through August 2, 1987, 496 residents of 51 Alaskan communities were personally contacted by telephone by professional interviewing employees of the Dittman Research Corporation of Alaska. The views and opinions of the Alaskan residents were recorded on a strictly confidential basis.

Research Design - A random sample design was featured which provided that all adult residents of the communities included had essentially an equal chance of being interviewed.

Sample Selection - The sample was selected through a random selection process from the most current directory for each community.

PROCESSING THE DATA

Dittman Research employees completed coding, editing, data entry and verification, while data processing was completed through the in-house Dittman Research Corporation Computer system featuring the Statistical Package for the Social Sciences (SPSS/PC+) programs. The SPSS program is one of the most sophisticated research-oriented data processing and analytical systems available, and is designed specifically for the processing and analysis of survey research data.

AWARENESS

Overall, approximately two-out-of-five (39%) Alaskan residents reported they are aware of an issue called "tort reform"...

Question:

"Have you heard of an issue called 'Tort reform'?"

39% Yes
60% No
1% Unsure

...with the lowest awareness levels being found in the Southcentral region (Matanuska-Susitna Valley and Kenai Peninsula), while higher awareness levels are found in Anchorage, Fairbanks and Southeastern Alaskan communities...

Region:	Yes	No
Rural.....	37%	61%
Central.....	42%	58%
Southcentral.....	19%	81%
Anchorage.....	44%	54%
Southeast.....	44%	54%

Demographically, higher awareness percentages are noted among 41-55 year-olds (53%), who work at degree-required white-collar jobs (67%) and/or own their own business (57%) and earn over \$60,000 per year (55%).

DEFINITION
AND
UNDERSTANDING

Among those who have heard of "tort reform," nearly three-out-of-four (71%) are aware of the basic elements of the issue...

Question:

(IF "YES, HEARD OF TORT REFORM," THE FOLLOWING QUESTION WAS ASKED...)

"What is it about?"

34%	Limits liability awards against professionals
20%	About lawsuits
17%	About insurance costs and availability
8%	Just heard of it
4%	Miscellaneous
18%	Unsure

Geographically, the highest awareness of the "limitation of liability" aspect is found in Fairbanks (44%) and Anchorage (39%)...

Region:	General Availability and cost of _Insurance_	About Lawsuits	Limit Professional _Liability_
Rural.....	33%	28%	28%
Central.....	11%	7%	44%
Southcentral.....	29%	36%	7%
Anchorage.....	15%	18%	39%
Southeast.....	12%	27%	23%

...while demographically, highest understanding of the "liability" element ^{is} found in upper-income (\$60,000 plus @ 40%) younger and middle-aged (35-36%) males (37%) who manage a business (44%) and/or work at a college-degree-type white collar job (41%).

SUPPORT
OR
OPPOSITION

Overall, by a ratio of well over 4:1 (73% to 16%),
Alaskans state-wide favor tort reform...

Question:

"Tort reform is a set of proposals being put forth in many states across the nation, and the objective of Tort reform is to set some limits for a person's liability when they are sued for negligence or personal injury. Under some circumstances these proposals may limit the amount of money an injured person can currently receive from a lawsuit. Generally speaking, do you favor or oppose Tort reform?"

73%	Favor
16%	Oppose
11%	Unsure

...and following an explanation and description of what tort reform is, Fairbanks and Rural Alaskans are most likely to support the reform effort...

Region:	Support	Oppose
Rural.....	80%	10%
Central.....	83%	9%
Southcentral.....	68%	22%
Anchorage.....	71%	18%
Southeast.....	69%	14%

...as far as politics are concerned, Republicans are most in favor (79%), and the other demographic categories remain consistent -- 41-55 year-olds (79%), upper-income (81%) males (75%) with white-collar (79%) or owner/manager jobs (82-83%) are most likely to have a favorable point-of-view.

STRENGTH OF
SUPPORT OR OPPOSITION

The "intensity of feeling" scale is heavily weighted on the strongly favorable side of the issue...

Question:

"Do you strongly (favor/oppose) this measure, or only somewhat (favor/oppose) it?"

48% Strongly favor tort reform
34% Somewhat favor tort reform
9% Somewhat oppose tort reform
8% Strongly oppose tort reform

...with highest strongly favor ratings coming from the Fairbanks and Southeastern areas...

Region:	Strongly _Favor_	Somewhat _Favor_	Somewhat _Oppose_	Strongly _Oppose_
Rural.....	48%	45%	5%	2%
Central.....	55%	32%	8%	2%
Southcentral...	46%	29%	8%	17%
Anchorage.....	45%	34%	10%	9%
Southeast.....	53%	31%	10%	4%

Once again, the most support is found among older (65% of 56 years and older), upper-income (57% of \$60,000 plus) white-collar (52%) Republican (59%) business owners (58%) and managers (69%).

SIGN A PETITION?

At this time, approximately three-out-of-four (74%) Alaskans reported they would be willing to sign a petition to put the tort reform issue on the ballot...

Question:

"If you were asked to sign a petition to put the issue of Tort reform on the ballot at the next election, do you think you probably would or would not?"

74% Would
16% Would not
10% Unsure

...and with the exception of Southcentral, all geographic regions are very similar in their support (71-78%)...

Region:	Would	Would Not
Rural.....	78%	14%
Central.....	77%	16%
Southcentral.....	65%	17%
Anchorage.....	76%	17%
Southeast.....	71%	15%

The established support pattern for tort reform remains consistent on this measurement as well -- older (80%) upper-income (80%) college-degreed (76%) Republican (78%) business owners (78%) and managers (87%) were all most likely to sign a petition.

VOTE FOR OR
AGAINST TORT REFORM

At this point, if the tort reform issue were on the ballot, the ratio would be approximately 4:1 in favor of the measure...

Question:

"And if Tort reform is on the ballot, do you think you would vote for or against it?"

65% Vote for
15% Vote against
19% Unsure

...with highest "vote for" totals in the Rural region, and very similar elsewhere...

Region:	Vote_For	Vote Against
Rural.....	76%	8%
Central.....	66%	11%
Southcentral.....	64%	21%
Anchorage.....	63%	17%
Southeast.....	66%	12%

Demographically, older (71%) male (68%) upper-income (70%) Republicans (71%) who own (70%) or manage (85%) a business remain clearly supportive, but in addition, 76% of skilled blue-collar craftsmen also said they would vote for tort reform if it were on the ballot.

CHANGE JOINT AND
SEVERAL LIABILITY LAW

Overall, approximately four-out-of-five Alaskans (81%) reported it would be acceptable to them if the law known as "joint and several liability" were changed...

Question:

"Sometimes two defendants are sued together and lose, and one of them can't pay their part of the damages. In Alaska, under a law known as JOINT AND SEVERAL LIABILITY, the defendant who can pay is then required to pay more than his share of the award. Some people want to change this so that defendants would pay only their share, even if it means that the injured party would receive less in damages than the court awarded. How acceptable would such a change be to you...very acceptable, somewhat acceptable, not too acceptable or not at all acceptable?"

45% Very acceptable
36% Somewhat acceptable
7% Not too acceptable
8% Not at all acceptable

...with very similar combined "acceptable" scores noted in each region...

Region:	Very/Somewhat _Acceptable_	Not too/ Not at all _Acceptable_
Rural.....	80%	12%
Central.....	83%	14%
Southcentral....	83%	11%
Anchorage.....	80%	17%
Southeast.....	82%	13%

The combined acceptable scores are also very similar throughout the various demographic categories, however, some respondent classifications were particularly high -- notably Republicans (89%), business owners (86%), business managers (89% and skilled blue-collar workers (92%).

SLIDING FEE INSTEAD
OF CONTINGENCY SYSTEM

Establishing a sliding fee scale rather than utilizing a contingency system is considered "acceptable" by approximately three-out-of-four (74%)...

Question:

"In personal injury cases, lawyers for people suing someone else are often paid a fixed percentage of damages that are awarded. The bigger the damages, the bigger the lawyer's fee; and if there are no damages awarded, lawyers get no fees. This is called the contingency fee system. Some people would like to require a "sliding fee" for an injured person's lawyer, so that as the dollar size of a case goes up, the amount of money that the lawyer gets also goes up, but not as fast as when the lawyer gets a fixed percentage of the damages. How acceptable would a "sliding scale" fee system for paying lawyers be to you...very acceptable, somewhat acceptable, not too acceptable or not at all acceptable?"

43% Very acceptable
31% Somewhat acceptable
8% Not too acceptable
11% Not at all acceptable

...and there is strong regional agreement everywhere, although Southcentral is lower again...

Region:	Very/Somewhat Acceptable	Not too/ Not at all Acceptable
Rural.....	76%	16%
Central.....	74%	22%
Southcentral....	65%	22%
Anchorage.....	76%	20%
Southeast.....	80%	15%

Similarly, there is consistently strong support among all demographic categories with the combined "acceptable" ratings exceeding 62% in every case. The strongest acceptable response to establishing a sliding fee schedule was noted among business managers (91%).

REDUCE DAMAGE AWARDS BY DEDUCTING
COMPENSATION ALREADY RECEIVED

Again, by a wide margin, Alaskans support changes in tort law -- in this case, nearly three-out-of-four respondents state-wide (73%) favor reducing damage awards when some compensation has already been received...

Question:

"Under the "collateral source rule," the current civil justice system permits the winner of a lawsuit to be compensated twice. For example, an injured person whose medical bills are paid by health insurance may receive those expenses again in a civil suit. Would you favor or oppose requiring the judge to reduce the amount of damage awarded by a jury by subtracting compensation already received by the victim from other sources?"

73% Favor
20% Oppose
7% Unsure

Geographically, support for this change is highest in Anchorage and Fairbanks...

Region:	Favor	Oppose
Rural.....	61%	22%
Central.....	77%	19%
Southcentral.....	69%	19%
Anchorage.....	76%	19%
Southeast.....	69%	25%

...with the pattern of stronger support among older, male, upper-income Republican business owners and managers continuing. However, in this case, they are joined by younger people -- 75% of the 18-24 year-olds, and 78% of the \$20,000-\$40,000 annual income category.

LIMIT ADDITIONAL
COMPENSATION TO \$250,000

Approximately two-out-of-three state-wide respondents (68%) favored placing a \$250,000 limit on the amount of money that could be awarded on top of actual economic damages...

"In many cases, significant parts of damage awards in personal injury lawsuits do not represent compensation for actual economic damage, but represent additional compensation for non-economic damage such as "pain and suffering." Would you favor or oppose placing a limit of \$250,000 on the maximum amount of money that could be awarded in addition to actual economic damage?"

68% Favor
24% Oppose
8% Unsure

...with Fairbanks area residents most supportive at approximately three-out-of-four, and the rest of the state at two-out-of-three...

Region:	FAVOR	OPPOSE
Rural.....	67%	24%
Central.....	78%	14%
Southcentral.....	65%	24%
Anchorage.....	67%	27%
Southeast.....	66%	24%

Demographically, older business owners are most supportive (78-81%), however, lower income respondents (70% of \$20,000 annual income) and skilled blue-collar craftsmen (73%) join them, and this is one of the few cases where females are more supportive of a tort reform issue than males (70% females, 66% male).

LIABILITY INSURANCE PREMIUMS INCREASING
TOO MUCH DUE TO EXCESSIVE DAMAGE AWARDS

Find 10 Alaskans somewhere and ask them whether liability insurance premiums are increasing too much due to excessive damage awards, and eight of them will tell you "yes"...

Question:

"Do you feel liability insurance premiums of the public-at-large are or are not increasing too much due to excessively high damage awards from lawsuits?"

81% Are
11% Are not
8% Unsure

...and it basically wouldn't matter where you were in Alaska -- sentiment is similar in each geographic region...

Region:	Are	Are_not
Rural.....	76%	10%
Central.....	80%	14%
Southcentral.....	85%	8%
Anchorage.....	81%	12%
Southeast.....	81%	12%

PERSONAL INCREASE IN LIABILITY
INSURANCE PREMIUM

Overall, over half of all Alaskans (55%) reported they have personally had an increase in their liability insurance premium...

Question:

"Have you personally had an increase in your liability insurance premium?"

55%	Yes
39%	No
6%	Unsure

...however, on a geographic basis, only one-third (35%) of Rural respondents have personally faced this problem. On the other hand, nearly two-out-of-three (62%) of Southcentral residents reported they have been personally affected by an increase in their liability insurance premiums...

Region:	Yes	No
Rural.....	35%	59%
Central.....	59%	38%
Southcentral.....	62%	26%
Anchorage.....	55%	38%
Southeast.....	56%	41%

Again, the most frequent or highest response rates are noted among 41-55 year-olds (70%) upper-income (63%) Republican (60%) males (58%) who own their own businesses (70%) or work as white-collar degreed professionals (62%).

FAVOR OR OPPOSE TORT REFORM AFTER
LOOKING AT BOTH SIDES MORE CLOSELY

After both sides of the issue are more fully presented, the number who favor tort reform increases to 81%...

Background:

"And now I'd like to present two different sides of the Tort reform issue and ask you which side you tend to agree with the most... (OPTIONS WERE ROTATED)..."

- A. Those in favor of Tort reform include air carriers, medical professionals, architects, engineers, and day care operators, among others, and they say that the prime factors in making some forms of insurance either unobtainable or very expensive are excessive civil suit awards, frivolous lawsuits and laws that can make the extent of a person's liability uncertain. They say that because of the liability crisis, some professionals now refuse to practice their trades. They say that consumers necessarily end up paying higher prices for products and services due to the high cost of insurance and extra precautions designed only to defend against lawsuits.

Supporters say that without reforms, more and more businesses and professionals will no longer be able to afford high insurance premiums and will either go without insurance or will go out of business.

- B. People opposed to Tort reform include trial attorneys, among others, and they say that customers place their faith in those who provide services and that they expect them to provide them safely and correctly. They say that an injured person needs the right to sue for as much as possible when things go wrong. They say that even if insurance rates go down, that the savings will not be passed along to the customer.

Opponents also say that reforms would protect those who are incompetent, willfully negligent, or irresponsible. They say that reducing jury awards will only protect and encourage those who do harm to others.

Question:

"What about you -- given what you know from both sides, would you favor or oppose Tort reform?"

81% Favor
13% Oppose
5% Unsure

Geographically, Southcentral respondents remain relatively less supportive, however, their support rate is still strong at approximately three-out-of-four (74%). In the other areas, support for tort reform exceeds four-out-of-five (81-88%) in every case...

Region:	FAVOR	OPPOSE
Rural.....	88%	12%
Central.....	84%	11%
Southcentral.....	74%	17%
Anchorage.....	81%	14%
Southeast.....	83%	10%

Looking at the demographic cross-references, the internal consistency continues with the highest "favor" scores again coming from upper-income (85%), older (84%) male (83%) respondents who own (88%) or manage (85%) businesses. In addition, over nine-out-of-ten (91%) skilled blue-collar craftsmen also favor tort reform.

FINDING : First of all, specific awareness is quite low overall -- thirty-nine percent (39%) reported they have heard of "tort reform" and 34% of those respondents knew it referred to "limiting liability awards." This means a total of approximately 13% overall ($.34 \times 39 = 13.26\%$) could be expected to be aware of the specific "limitation of liability" element of tort reform.

FINDING : Secondly, 71% of those who have heard of tort reform are basically aware of the type of issues involved. This means the general awareness is approximately at the one-out-of-four level (28%) overall ($.71 \times 39 = 27.69\%$).

CONCLUSION: IN TOTAL, THESE TWO FINDINGS MEAN THAT IT'S STILL NECESSARY TO CAPTURE THE INITIAL POSITIVE "MIND SET" WHICH IS ESSENTIAL IN SUCCESSFUL ELECTORAL ISSUES.

FINDING : In terms of natural support, "tort reform" clearly has the high ground -- when the basic description of tort reform is initially presented, three-out-of-four Alaskans (73%) are supportive, while 16% are opposed and 11% unsure.

FINDING : Later, when the issues are more fully developed and both sides presented, support for tort reform increases to four-out-of-five (81%), while opposition declines to 13% and unsure drops to 5%.

CONCLUSION: COMBINED, THESE TWO FINDINGS MEAN THERE ISN'T ANY DOUBT THAT THE BASIC ELEMENTS INVOLVED IN TORT REFORM HAVE A STRONG BASIS OF NATURAL SUPPORT, AND THAT THE INITIATIVE AND REFERENDUM PROCESS CAN BE EFFECTIVELY APPLIED TO REDUCE LIABILITY INSURANCE PREMIUMS IN ALASKA.

- FINDING : At this point in time, without incurring additional expenditures to familiarize Alaskans with the issue, petition-signing efforts will be most productive in Fairbanks, Anchorage and Southeast (basic awareness figures of 42%, 44% and 44% respectively).
- FINDING : For maximum effectiveness, signature efforts and fund-raising should target registered Republican and non-partisan voters who are over 25 and who earn \$40,000 and more per year in white-collar occupations and/or as business owners/managers. Also, state and local government workers are supportive -- this means signature gathering efforts should also be directed toward locations or centers of government employment.
- FINDING : Fairbanks is a good base for tort reform efforts -- especially important to link it with employment and job security.

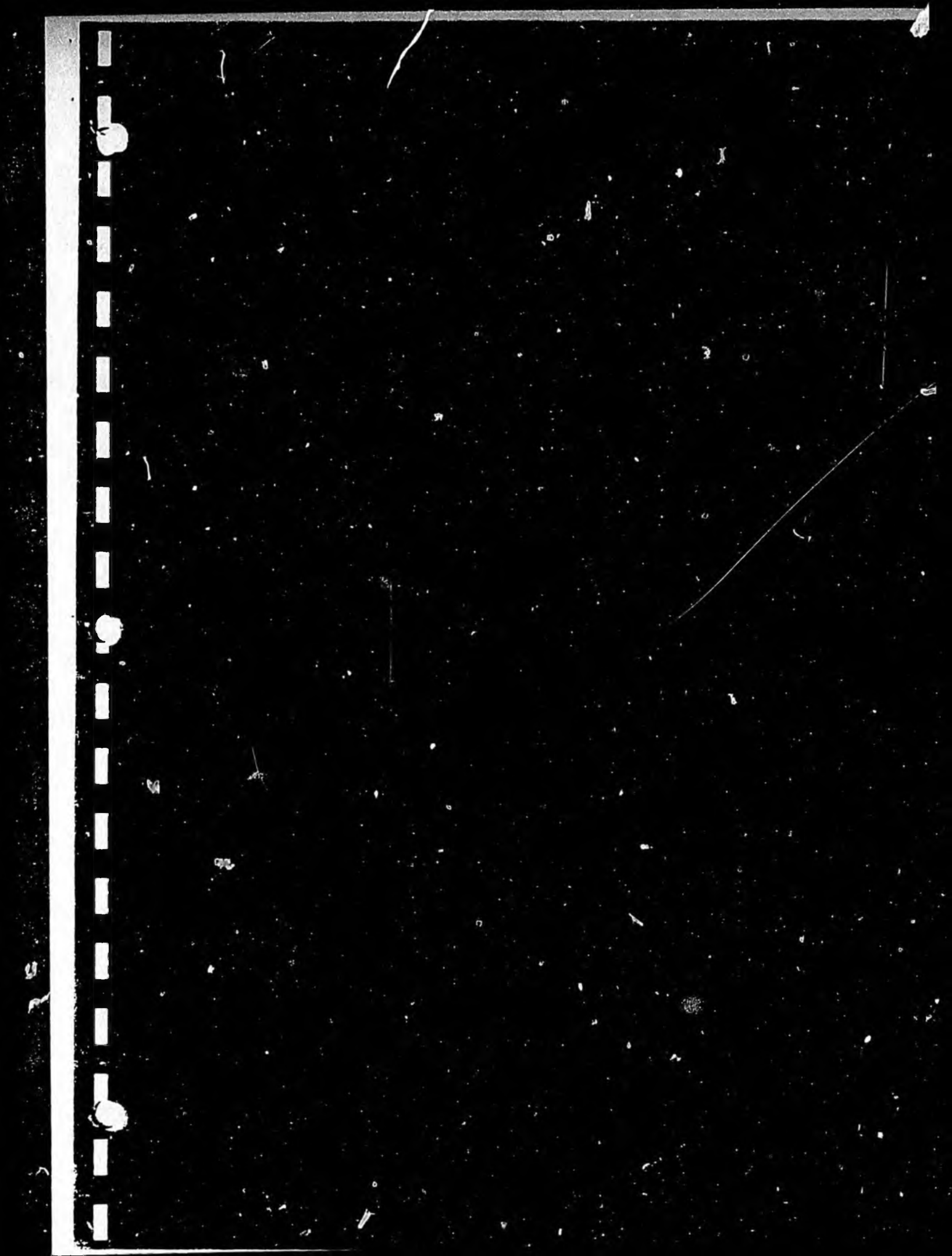
CONCLUSION: IN TERMS OF GEOGRAPHIC AND DEMOGRAPHIC TARGETING, A FAIRBANKS BASE IS PARTICULARLY IMPORTANT, AND THE PETITIONING SHOULD BE CONCENTRATED IN ANCHORAGE AND SOUTHEAST, AS WELL. WITHIN THESE REGIONS, SIGNATURE GATHERING WILL BE MOST EFFECTIVE IN MORE AFLUENT AREAS AMONG WHITE-COLLAR MALES WHO OWN OR MANAGE BUSINESSES. GOVERNMENT EMPLOYEES AND SKILLED BLUE-COLLAR CRAFTSMEN ARE ALSO GOOD TARGETS. AND ON TWO ISSUES -- "SLIDING FEE" AND "\$250,000 LIMIT ON NON-ECONOMIC DAMAGES" -- FEMALES ARE ALSO PARTICULARLY SUPPORTIVE. POLITICALLY, REPUBLICANS ARE MOST SUPPORTIVE, FOLLOWED BY NON-PARTISANS.

- FINDING A : There is high agreement throughout the state (81%) that excessive damage awards are causing liability insurance premiums to increase too much
- FINDING B : There is also high agreement (81%) regarding changing the law regarding joint and several liability so that defendants pay only for their share of the blame
- FINDING C : Three-out-of-four (74%) support establishing a "sliding fee" basis for lawyer compensation instead of the contingency system (female 76%, male 73%)
- FINDING D : Approximately three-out-of-four (73%) also support subtracting compensation already received from the amount of damages that can be subsequently awarded
- FINDING E : Over two-thirds (68%) favor placing a \$250,000 limit on the amount of damages which could be awarded in addition to actual economic damages (female 70%, male 66%)

CONCLUSION: THE SIGNIFICANCE OF FINDINGS "A" THROUGH "E" IS THAT THE HIGH AGREEMENT WITH "FINDING A" CAN BE USED TO "BOOT STRAP" THE OTHERS, PARTICULARLY ELEMENTS "C" "D" AND "E". FOR EXAMPLE, REFERENCES TO THESE THREE ELEMENTS SHOULD ALMOST ALWAYS BE PRECEDED OR FOLLOWED BY REFERENCES TO ELEMENT "A" IN ORDER TO CLEARLY ESTABLISH, JUSTIFY AND REINFORCE THE CAUSAL RELATIONSHIPS. ELEMENT "B" CAN STAND ALONE, OR BE LINKED WITH ANOTHER OF THE "C" THROUGH "E" ELEMENTS. HOWEVER, THE MAIN "CARRIER" IN THE PETITION EFFORT SHOULD BE ELEMENT "A".

ALSO, CONSIDERING THE PUBLIC INFORMATION ELEMENT, I WOULD RECOMMEND NOT RELEASING THE RESULTS OF THE SURVEY AS SURVEY RESULTS, RATHER, IT MAY WORK BETTER TO UTILIZE THE FINDINGS AS SIMPLY THE POSITION OF THE CITIZEN'S COALITION FOR TORT REFORM -- WE KNOW IT WILL WORK WELL BECAUSE IT IS SO TOTALLY IN TUNE WITH THE PUBLIC. LATER, WHEN THE EFFORT MIGHT NEED A BOOST TO KEEP THINGS MOVING ALONG AT A RAPID PACE, THE RESULTS OF THE SURVEY CAN BE RELEASED AND ESSENTIALLY HAVE A "TWO FOR THE PRICE OF ONE" EFFECT.

SUMMARY : AND FINALLY, IN SUMMARY OF THE VARIOUS CONCLUSIONS, I'VE NEVER KNOWN OF ANY INITIATIVE EFFORT IN ALASKA THAT BEGAN WITH SUCH A HIGH DEGREE OF PUBLIC SUPPORT ON SO MANY DIFFERENT POINTS -- THE HIGHEST NEGATIVE SCORE WAS ONLY 24% (ONE-OUT-OF-FOUR) WHO OPPOSE A \$250,000 LIMIT TO NON-ECONOMIC DAMAGES -- AND OVERALL, WHEN INFORMED OF WHAT IS GENERALLY CONSIDERED BOTH SIDES OF THE ISSUE, ALASKANS, BY A MARGIN OF 81% TO 13%, SUPPORT TORT REFORM. THE KEY ELEMENT NOW IS TO FOLLOW THIS OUTLINE REGARDING WHO TO TARGET, WHERE TO FIND THEM AND WHAT TO SAY.



HEARD OF AN ISSUE CALLED TORT REFORM

DEMOGRAPHICS	HEARD OF TORT REFORM		
	UNSURE	YES	NO
TOTAL.....	1%	39%	60%
LOCATION			
RURAL.....	2%	37%	61%
CENTRAL.....	0%	42%	58%
STHCNTR.....	0%	19%	81%
ANCHORAGE.....	2%	44%	54%
STHEAST.....	2%	44%	54%
REGISTER			
DEMOCRAT.....	1%	37%	62%
REPUBLICAN.....	2%	40%	58%
LIBERTARIAN.....	0%	29%	71%
NON-PART.....	1%	44%	55%
NOT REGIS.....	0%	14%	86%
SEX			
MALE.....	1%	43%	56%
FEMALE.....	1%	36%	63%
AGE			
18-24 YRS OF AGE..	0%	11%	89%
25-40.....	1%	40%	60%
41-55.....	2%	53%	45%
56+ YRS.....	1%	31%	68%
INCOME			
N-R.....	0%	54%	46%
TO \$20,000 INCOME..	0%	22%	78%
\$20,000-\$40,000..	1%	31%	67%
\$40,000-\$60,000..	0%	43%	57%
\$60,000+.....	3%	55%	42%
WORK FOR			
FEDERAL.....	2%	31%	67%
STATE.....	4%	59%	36%
LOCAL.....	0%	52%	48%
PRIVATE.....	1%	40%	59%
NOT WORKG.....	0%	29%	71%
TIME IN AK			
UNDER 1 YR IN AK..	0%	28%	72%
1-4 YRS.....	1%	32%	67%
5-9 YRS.....	2%	33%	65%
10-14 YRS.....	0%	47%	53%
15+ YRS.....	1%	42%	57%

HEARD OF AN ISSUE CALLED TORT REFORM

DEMOGRAPHICS	HEARD OF TORT REFORM		
	UNSURE	YES	NO
TOTAL.....	1%	39%	60%
KIND OF WORK			
DEGREE W/ COLLAR..	3%	67%	30%
NONDEGREE W/ COLLAR..	2%	43%	55%
SKILLED W/ COLLAR..	0%	27%	73%
NONSKILLED W/ COLLAR..	0%	15%	85%
NOT WORKING.....	0%	26%	74%
HOME MAKER.....	0%	31%	69%
OWNERSHIP			
OWN BUSINESS.....	0%	57%	43%
MANAGE.....	3%	42%	55%
NEITHER.....	1%	34%	64%

WHAT IS TORT REFORM ABOUT

DEMOGRAPHICS	TORT REFORM					
	UNSURE	JUST HEARD OF	INS. COSTS/AVAIL	ABT LEGAL SUITS	LIMITS PROF LIAB	MISCELLANEOUS
TOTAL.....	18%	8%	17%	20%	34%	4%
LOCATION						
RURAL.....	6%	0%	33%	28%	28%	6%
CENTRAL.....	19%	11%	11%	7%	44%	7%
STHCNTR.....	7%	21%	29%	36%	7%	0%
ANCHORAGE.....	19%	6%	15%	18%	39%	3%
SHEAST.....	27%	8%	12%	27%	23%	4%
REGISTER						
DEMOCRAT.....	13%	7%	14%	26%	40%	0%
REPUBLICAN.....	19%	6%	18%	18%	33%	6%
LIBERTARIAN.....	37%	0%	31%	0%	31%	0%
NON-PART.....	19%	10%	16%	20%	31%	5%
NOT REGIS.....	16%	0%	34%	16%	34%	0%
SEX						
MALE.....	11%	10%	19%	17%	37%	6%
FEMALE.....	25%	6%	15%	24%	29%	1%
AGE						
16-24 YRS OF AGE.....	0%	37%	45%	0%	18%	0%
25-40.....	19%	5%	15%	20%	36%	5%
41-55.....	13%	6%	18%	24%	35%	3%
56+ YRS.....	29%	16%	16%	12%	24%	4%
INCOME						
N-P.....	6%	13%	13%	20%	49%	0%
TO \$2000 INCOME.....	19%	18%	22%	19%	18%	5%
\$20,000-\$40,000.....	21%	9%	14%	16%	32%	8%
\$40,000-\$60,000.....	16%	11%	18%	26%	28%	0%
\$60,000+.....	19%	0%	18%	19%	40%	3%
WORK FOR						
FEDERAL.....	16%	0%	21%	22%	41%	0%
STATE.....	8%	4%	13%	27%	44%	4%
LOCAL.....	14%	9%	23%	18%	22%	13%
PRIVATE.....	20%	6%	17%	19%	36%	2%
NOT WORKG.....	21%	16%	16%	18%	26%	3%
TIME IN AK						
UNDER 1 YR IN AK.....	54%	46%	0%	0%	0%	0%
1-4 YRS.....	11%	4%	4%	30%	42%	9%
5-9 YRS.....	22%	10%	10%	9%	48%	0%
10-14 YRS.....	22%	0%	30%	11%	32%	5%
15+ YRS.....	16%	10%	18%	25%	28%	3%

WHAT IS TORT REFORM ABOUT

DEMOGRAPHICS	TORT REFORM					
	UNSURE	JUST HEARD OF	INS. COSTS/AVAIL	ABT LEGAL SUITS	LIMITS PROF LIAE	MISCELLANEOUS
TOTAL.....	18%	8%	17%	20%	34%	4%
KIND WORK						
DEGREE W/COLLAR	17%	5%	15%	18%	41%	3%
NONDEGREE W/COLLAR	21%	3%	12%	23%	38%	3%
SKILLED BL COLLAR	0%	6%	36%	29%	23%	6%
NONSKILLED BL COLLAR	14%	36%	39%	0%	0%	11%
NOT WORKING.....	10%	37%	10%	17%	27%	10%
HOUSEWIFE.....	26%	7%	18%	19%	25%	4%
OWN MANAGE						
OWN BUSIN.....	18%	9%	20%	19%	31%	4%
MANAGE.....	21%	0%	21%	7%	44%	8%
NEITHER.....	17%	8%	15%	22%	34%	3%

GENERALLY DO YOU FAVOR OR OPPOSE TORT REFORM

DEMOGRAPHICS	GENERALLY		
	UNSURE	FAVOR	OPPOSE
TOTAL.....	11%	73%	16%
LOCATION			
RURAL.....	10%	80%	10%
CENTRAL.....	8%	83%	9%
W. CENTRAL.....	10%	68%	22%
ANCHORAGE.....	11%	71%	18%
S. EAST.....	17%	69%	14%
REGISTER			
DEMOCRAT.....	10%	69%	21%
REPUBLICAN.....	9%	79%	12%
LIBERTARIAN.....	29%	51%	20%
NON-PART.....	12%	76%	15%
NOT REGIS.....	12%	68%	21%
SEX			
MALE.....	10%	75%	15%
FEMALE.....	12%	71%	17%
AGE			
18-24 YRS OF AGE..	13%	64%	23%
25-40.....	10%	71%	19%
41-55.....	8%	79%	13%
56+ YRS.....	17%	75%	8%
INCOME			
IN-R.....	18%	67%	14%
\$0-\$20,000 INCOME..	19%	60%	21%
\$20,000-\$40,000..	13%	72%	15%
\$40,000-\$60,000..	9%	77%	14%
\$60,000+.....	3%	81%	16%
WORK FOR			
FEDERAL.....	8%	73%	19%
STATE.....	10%	76%	16%
LOCAL.....	4%	78%	18%
PRIVATE.....	10%	75%	15%
NOT WORKG.....	16%	68%	17%
TIME IN AK			
UNDER 1 YR IN AK..	0%	59%	41%
1-4 YRS.....	9%	76%	17%
5-9 YRS.....	9%	69%	21%
10-14 YRS.....	16%	73%	14%
15+ YRS.....	12%	75%	13%

GENERALLY DO YOU FAVOR OR OPPOSE TORT REFORM

DEMOGRAPHICS	GENERALLY		
	UNSURE	FAVOR	OPPOSE
TOTAL.....	11%	73%	16%
KINDWORK			
DEGREE W/COLLAR:	4%	79%	16%
NONDEGREE/COLLAR:	11%	75%	14%
SKILLED B/COLLAR:	8%	77%	14%
NONSKILLED/COLLAR:	13%	63%	23%
NOT WORKG.....	15%	73%	12%
HOME MAKR.....	16%	65%	18%
OWN MANAG			
OWN BUSNS.....	5%	82%	12%
MANAGE.....	11%	83%	6%
NEITHER.....	12%	70%	18%

HOW STRONGLY FAVOR OR OPPOSE TORT REFORM

DEMOGRAPHICS	HOW STRONG				
	UNSURE	STRONGLY FAVOR	SOMEWHAT FAVOR	SOMEWHAT OPPOSE	STRONGLY OPPOSE
TOTAL.....	2%	68%	34%	9%	8%
LOCATION					
RURAL.....	0%	68%	45%	5%	2%
CENTRAL.....	3%	55%	32%	8%	2%
STHCNTR.....	0%	66%	29%	8%	17%
ANCHORAGE.....	3%	45%	36%	10%	9%
SHEAST.....	2%	53%	31%	10%	6%
REGISTER					
DEMOCRAT.....	2%	62%	34%	9%	12%
REPUBCAN.....	2%	59%	27%	6%	6%
LIBERTARIAN.....	0%	28%	44%	0%	28%
NON-PART.....	3%	65%	37%	10%	5%
NOT REGIS.....	0%	63%	38%	13%	7%
SEX					
MALE.....	2%	69%	36%	7%	8%
FEMALE.....	2%	66%	33%	11%	7%
AGE					
18-24 YRS OF AGE.....	0%	28%	45%	16%	13%
25-40.....	1%	43%	37%	11%	7%
41-55.....	4%	53%	29%	5%	8%
56+ YRS.....	1%	65%	26%	4%	5%
INCOME					
UN-R.....	5%	51%	32%	9%	4%
\$0-\$2999.....	1%	37%	39%	9%	16%
\$30,000-\$40,000.....	1%	46%	38%	11%	5%
\$40,000-\$60,000.....	1%	47%	36%	8%	8%
\$60,000+.....	6%	57%	26%	6%	8%
WORK FOR					
FEDERAL.....	3%	31%	46%	21%	0%
STATE.....	5%	62%	21%	10%	3%
LOCAL.....	0%	37%	50%	6%	9%
PRIVATE.....	2%	50%	32%	7%	9%
NOT WORKG.....	1%	50%	30%	10%	9%
TIME IN AK					
UNDER 1 YR IN AK.....	0%	63%	16%	28%	13%
1-4 YRS.....	1%	40%	42%	10%	6%
5-9 YRS.....	1%	42%	34%	11%	11%
10-14 YRS.....	6%	48%	33%	7%	6%
15+ YRS.....	1%	52%	32%	7%	8%

HOW STRONGLY FAVOR OR OPPOSE TORT REFORM

DEMOGRAPHICS	HOW STRONG				
	UNSURE	STRONGLY FAVOR	SOMEWHAT FAVOR	SOMEWHAT OPPOSE	STRONGLY OPPOSE
TOTAL.....	2%	48%	34%	9%	8%
KIND WORK					
DEGREE W/ COLLAR.....	2%	52%	30%	7%	9%
NONDEGREE W/ COLLAR.....	3%	50%	33%	8%	6%
SKILLED BL COLLAR.....	2%	51%	32%	9%	7%
NONSKILLED COLLAR.....	2%	24%	52%	11%	11%
NOT WORKING.....	0%	59%	28%	5%	8%
HOMEMAKER.....	1%	46%	32%	12%	8%
OWN MANAG					
OWN BUSINESS.....	3%	58%	26%	4%	8%
MANAGE.....	0%	69%	25%	7%	0%
NEITHER.....	2%	43%	37%	10%	8%

PROBABLY SIGN A PETITION TO PUT THE ISSUE OF TORT REFORM ON THE BALLOT

DEMOGRAPHICS	SIGNPETH		
	UNSURE	WOULD	WOULDN'T
TOTAL.....	10%	76%	16%
LOCATION			
RURAL.....	8%	78%	16%
CENTRAL.....	8%	77%	16%
STHCNTR.....	18%	65%	17%
ANCHORAGE.....	8%	76%	17%
STHEAST.....	14%	71%	15%
REGISTER			
DEMOCRAT.....	12%	71%	17%
REPUSCAR.....	7%	78%	15%
LIBRTARR.....	0%	71%	29%
NON-PART.....	11%	77%	12%
NOTREGIS.....	13%	51%	36%
SEX			
MALE.....	8%	76%	18%
FEMALE.....	12%	76%	14%
AGE			
18-24YRS Q ¹ AGE..	9%	65%	26%
25-40.....	9%	72%	20%
41-55.....	12%	77%	11%
56+ YRS.....	11%	80%	8%
INCOME			
IN-R.....	8%	76%	17%
TO\$20000 INCOME..	16%	61%	24%
\$20,000-\$40,000..	12%	71%	17%
\$40,000-\$60,000..	6%	81%	14%
\$60,000+.....	9%	80%	11%
WORKFOR			
FEDERAL.....	12%	72%	16%
STATE.....	16%	72%	12%
LOCAL.....	11%	69%	20%
PRIVATE.....	7%	76%	17%
NOTWORKG.....	12%	74%	14%
TIMEINAK			
UNDER1YR IN AK..	0%	56%	44%
1-4 YRS.....	12%	75%	13%
5-9 YRS.....	8%	69%	23%
10-14YRS.....	11%	68%	20%
15+ YRS.....	10%	78%	12%

PROBABLY SIGN A PETITION TO PUT THE ISSUE OF TORT REFORM ON THE BALLOT

DEMOGRAPHICS	SIGNPETN		
	UNSURE	WOULD	WOULDN'T
TOTAL.....	10%	76%	16%
KINDWORK			
DEGREE WTCOLLAR.	9%	76%	16%
NONDEGREEWTCOLLAR.	10%	77%	13%
SKILLED BLCOLLAR.	10%	71%	19%
NONSKILLED BLCOLLAR.	8%	64%	28%
NOTWORKG.....	15%	68%	17%
HOMEMAKR.....	11%	77%	12%
OWNMANAG			
OWNBUSNS.....	8%	78%	16%
MANAGE.....	7%	87%	6%
NEITHER.....	11%	72%	18%

VOTE FOR OR AGAINST TORT REFORM IF IT IS ON THE BALLOT

DEMOGRAPHICS	BALLOT		
	UNSURE	VOTE FOR	VOTE AGAINST
TOTAL.....	19%	65%	15%
LOCATION			
RURAL.....	16%	76%	8%
CENTRAL.....	23%	66%	11%
STHCNTR.....	15%	64%	21%
ANCHORAGE.....	19%	63%	17%
STHEAST.....	22%	66%	12%
REGISTER			
DEMOCRAT.....	22%	61%	17%
REPUBLICAN.....	18%	71%	12%
LIBERTARIAN.....	18%	42%	40%
NON-PART.....	19%	67%	15%
NOT REG'ED.....	21%	61%	18%
SEX			
MALE.....	16%	68%	16%
FEMALE.....	22%	63%	15%
AGE			
16-24 YRS OF AGE..	15%	59%	26%
25-40.....	17%	64%	19%
41-55.....	23%	67%	10%
56+ YRS.....	22%	71%	6%
INCOME			
UN-R.....	24%	69%	7%
TO \$20000 INCOME..	26%	52%	22%
\$20,000-\$40,000..	19%	66%	15%
\$40,000-\$60,000..	15%	69%	16%
\$60,000+.....	19%	70%	11%
WORK FOR			
FEDERAL.....	19%	64%	16%
STATE.....	21%	65%	14%
LOCAL.....	21%	65%	15%
PRIVATE.....	17%	66%	16%
NOT WORKG.....	22%	65%	14%
TIME IN AK			
UNDER 1 YR IN AK..	16%	56%	28%
1-4 YRS.....	19%	65%	16%
5-9 YRS.....	24%	56%	19%
10-14 YRS.....	20%	65%	15%
15+ YRS.....	17%	70%	13%

VOTE FOR OR AGAINST TORT REFORM IF IT IS ON THE BALLOT

DEMOGRAPHICS	BALLOT		
	UNSURE	VOTE FOR	VOTE AGAINST
TOTAL.....	19%	65%	15%
KINDWORK			
DEGREE WTCOLLAR:	19%	67%	14%
NONDEGREEWTCOLLAR:	21%	63%	16%
SKILLED BLCOLLAR:	11%	76%	13%
NONSKILLED BLCOLLAR:	19%	57%	24%
NOTWORKG.....	27%	60%	12%
HOUSEWIFE.....	18%	69%	13%
OWNMANAG			
OWNERS.....	17%	70%	14%
MANAGE.....	6%	85%	9%
NEITHER.....	21%	63%	16%

CHANGE JOINT AND SEVERAL LIABILITY LAW SO THAT DEFENDANTS ONLY PAY THEIR SHARE

DEMOGRAPHICS	PAYSHARE				
	UNSURE	VERY ACCEPTABLE	SOMEWHAT ACCEPTABLE	NOT TOO ACCEPTABLE	NOT AT ALL ACCEPTABLE
TOTAL.....	5%	45%	36%	7%	8%
LOCATION					
RURAL.....	8%	41%	39%	6%	6%
CENTRAL.....	3%	42%	41%	6%	8%
STHCNTR.....	6%	57%	26%	3%	8%
ANCHORAGE.....	4%	42%	38%	8%	9%
STHEAST.....	5%	46%	36%	8%	5%
REGISTER					
DEMOCRAT.....	7%	42%	33%	8%	10%
REPUBLICAN.....	1%	52%	37%	6%	7%
LIBERTARIAN.....	0%	51%	49%	0%	0%
NON-PART.....	6%	40%	39%	8%	7%
NOT REGIS.....	6%	50%	29%	6%	9%
SEX					
MALE.....	4%	45%	36%	7%	9%
FEMALE.....	5%	45%	37%	7%	7%
AGE					
18-24 YRS OF AGE.....	2%	39%	41%	11%	6%
25-40.....	5%	40%	40%	7%	8%
41-55.....	3%	51%	31%	6%	10%
56+ YRS.....	8%	49%	34%	5%	5%
INCOME					
UN-R.....	14%	38%	30%	10%	7%
TO \$20000 INCOME.....	5%	47%	29%	6%	13%
\$20,000-\$40,000.....	4%	45%	41%	7%	4%
\$40,000-\$60,000.....	4%	52%	33%	4%	5%
\$60,000+.....	3%	36%	40%	9%	12%
WORKFOR					
FEDERAL.....	2%	37%	39%	13%	8%
STATE.....	5%	40%	38%	9%	9%
LOCAL.....	0%	34%	45%	7%	14%
PRIVATE.....	3%	48%	36%	7%	7%
NOT WORKG.....	10%	47%	32%	4%	7%
TIME IN AK					
UNDERLYR IN AK.....	0%	43%	44%	0%	13%
1-4 YRS.....	4%	40%	43%	8%	5%
5-9 YRS.....	4%	36%	41%	7%	13%
10-14 YRS.....	4%	46%	39%	5%	6%
15+ YRS.....	5%	50%	31%	7%	7%

CHANGE JOINT AND SEVERAL LIABILITY LAW SO THAT DEFENDANTS ONLY PAY THEIR SHARE

DEMOGRAPHICS	PAYSHARE				
	UNSURE	VERY ACCEPTABLE	SOMEWHAT ACCEPTABLE	NOT TOO ACCEPTABLE	NOT AT ALL ACCEPTABLE
TOTAL.....	5%	45%	36%	7%	8%
KINDWORK					
DEGREE W/COLLAR..	2%	42%	40%	4%	12%
NONDEGREE W/COLLAR..	3%	39%	39%	11%	7%
SKILLED B/COLLAR..	1%	59%	33%	5%	2%
NONSKILLED B/COLLAR..	4%	39%	36%	10%	12%
NOT WORKG.....	13%	47%	29%	2%	9%
HOME MAKR.....	8%	49%	33%	5%	6%
OWN MANAG					
OWN BUSN.....	2%	53%	33%	5%	6%
MANAGE.....	3%	53%	36%	3%	6%
NEITHER.....	5%	42%	37%	7%	8%

REQUIRE SLIDING FEE FOR INJURED PERSON'S LAWYER INSTEAD OF CONTINGENCY SYSTEM

DEMOGRAPHICS	SLIDGFEE				
	UNSURE	VERY ACCEPTABLE	SOMEWHAT ACCEPTABLE	NOT TOO ACCEPTABLE	NOT AT ALL ACCEPTABLE
TOTAL.....	6%	43%	31%	8%	11%
LOCATION					
RURAL.....	8%	49%	27%	10%	6%
CENTRAL.....	5%	33%	41%	6%	16%
STHCNTR.....	12%	37%	28%	3%	19%
ANCHRAGE.....	4%	46%	30%	10%	10%
STHEAST.....	5%	44%	36%	10%	5%
REGISTER					
DEMOCRAT.....	8%	39%	30%	10%	13%
REPUBLICAN.....	5%	46%	31%	8%	10%
LIBERTARIAN.....	9%	20%	42%	0%	2%
NO-PART.....	5%	45%	31%	9%	11%
NOT REGIS.....	6%	46%	36%	3%	10%
SEX					
MALE.....	6%	42%	31%	7%	14%
FEMALE.....	6%	44%	32%	9%	9%
AGE					
18-24 YRS OF AGE.....	5%	30%	42%	13%	11%
25-40.....	6%	46%	31%	8%	9%
41-55.....	7%	44%	30%	7%	13%
56+ YRS.....	6%	40%	29%	8%	17%
INCOME					
UN-R.....	11%	35%	33%	3%	18%
\$0-\$2000 INCOME.....	11%	41%	22%	12%	15%
\$20,000-\$40,000.....	4%	43%	35%	9%	8%
\$40,000-\$60,000.....	5%	44%	32%	5%	14%
\$60,000+.....	5%	46%	32%	8%	10%
WORKFOR					
FEDERAL.....	4%	38%	35%	12%	10%
STATE.....	2%	50%	33%	7%	8%
LOCAL.....	5%	48%	28%	7%	12%
PRIVATE.....	6%	43%	31%	7%	12%
NOT WORKG.....	8%	41%	30%	9%	12%
TIME IN AK					
UNDER 1 YR IN AK.....	0%	31%	54%	16%	0%
1-4 YRS.....	4%	39%	36%	13%	8%
5-9 YRS.....	6%	48%	29%	6%	11%
10-14 YRS.....	4%	43%	36%	5%	12%
15+ YRS.....	7%	43%	28%	8%	13%

REQUIRE SLIDING FEE FOR INJURED PERSON'S LAWYER INSTEAD OF CONTINGENCY SYSTEM

DEMOGRAPHICS	SLIDG FEE				
	UNSURE	VERY ACCEPTABLE	SOMEWHAT ACCEPTABLE	NOT TOO ACCEPTABLE	NOT AT ALL ACCEPTABLE
TOTAL.....	6%	43%	31%	8%	11%
KIND OF WORK					
DEGREE W/ COLLAR.....	8%	48%	26%	5%	15%
NONDEGREE W/ COLLAR.....	3%	41%	35%	12%	9%
SKILLED B/ COLLAR.....	7%	50%	29%	6%	9%
NONSKILLED B/ COLLAR.....	6%	38%	38%	4%	16%
NOT WORKING.....	7%	43%	27%	12%	10%
HOMEMAKER.....	8%	39%	32%	7%	13%
OWN MANAGER					
OWN BUSINESS.....	4%	47%	34%	4%	11%
MANAGE.....	6%	70%	21%	3%	6%
NEITHER.....	7%	40%	32%	10%	12%

REDUCE AMOUNT OF DAMAGE AWARDED BY SUBTRACTING COMPENSATION ALREADY RECEIVED

DEMOGRAPHICS	REDCLINS		
	UNSURE	FAVOR	OPPOSE
TOTAL.....	7%	73%	20%
LOCATION			
RURAL.....	16%	61%	22%
CENTRAL.....	5%	77%	19%
STHCNTR.....	11%	69%	19%
ANCHORAGE.....	5%	76%	19%
STHEAST.....	5%	69%	25%
REGISTER			
DEMOCRAT.....	8%	73%	19%
REPUBLICAN.....	9%	78%	14%
LIBERTARIAN.....	0%	60%	40%
NON-PART.....	7%	70%	23%
NOTREGIS.....	3%	72%	24%
SEX			
MALE.....	5%	75%	20%
FEMALE.....	9%	71%	20%
AGE			
18-24 YRS OF AGE..	7%	75%	18%
25-40.....	7%	71%	22%
41-55.....	7%	72%	20%
56+ YRS.....	8%	75%	17%
INCOME			
N-R.....	13%	62%	25%
TO \$20,000 INCOME..	8%	65%	27%
\$20,000-\$40,000..	5%	78%	17%
\$40,000-\$60,000..	6%	75%	19%
\$60,000+.....	10%	71%	20%
WORKFOR			
FEDERAL.....	0%	71%	29%
STATE.....	7%	80%	12%
LOCAL.....	12%	63%	25%
PRIVATE.....	8%	74%	18%
NOTWORKG.....	6%	71%	23%
TIME IN AK			
UNDER 1 YR IN AK..	16%	54%	31%
1-4 YRS.....	7%	71%	22%
5-9 YRS.....	5%	70%	24%
10-14 YRS.....	4%	76%	20%
15+ YRS.....	9%	74%	18%

REDUCE AMOUNT OF DAMAGE AWARDED BY SUBTRACTING COMPENSATION ALREADY RECEIVED

DEMOGRAPHICS	REDCATS		
	UNSURE	FAVOR	OPPOSE
TOTAL.....	7%	73%	20%
KINDWORK			
DEGREE WTCOLLAR:	10%	72%	18%
NONDGREEWTCOLLAR:	7%	75%	18%
SKILLED BLCOLLAR:	8%	73%	19%
NONSKLDBLCOLLAR:	4%	68%	28%
NOTWORKG.....	0%	81%	19%
HOMEMAKR.....	8%	67%	25%
OMNMANAG			
OMNBUSHS.....	8%	74%	18%
MANAGE.....	6%	82%	12%
NEITHER.....	7%	71%	22%

LIMIT OF \$250,000 ON WHAT COULD BE AWARDED IN ADDITION TO ECONOMIC DAMAGES

DEMOGRAPHICS	LIMITS		
	UNSURE	FAVOR	OPPOSE
TOTAL.....	8%	68%	24%
LOCATION			
RURAL.....	8%	67%	24%
CENTRAL.....	8%	78%	14%
STHCNTR.....	11%	65%	24%
ANCHORAGE.....	6%	67%	27%
SHEAST.....	8%	68%	24%
REGISTER			
DEMOCRAT.....	10%	65%	25%
REPUBLICAN.....	7%	74%	20%
LIBERTARIAN.....	0%	40%	60%
NON-PART.....	8%	69%	23%
NOT REGIS.....	6%	65%	29%
SEX			
MALE.....	6%	66%	28%
FEMALE.....	10%	70%	20%
AGE			
18-24 YRS OF AGE.....	0%	67%	33%
25-40.....	7%	64%	28%
41-55.....	10%	69%	20%
56+ YRS.....	10%	78%	12%
INCOME			
UN-R.....	17%	48%	35%
\$0-\$20,000 INCOME.....	8%	70%	22%
\$20,000-\$40,000.....	7%	68%	25%
\$40,000-\$60,000.....	11%	69%	20%
\$60,000+.....	4%	71%	25%
WORKFOR			
FEDERAL.....	4%	57%	39%
STATE.....	5%	63%	33%
LOCAL.....	9%	66%	24%
PRIVATE.....	8%	69%	23%
NOT WORKG.....	7%	73%	18%
TIME IN AK			
UNDER 1 YR IN AK.....	0%	56%	44%
1-4 YRS.....	3%	66%	31%
5-9 YRS.....	8%	65%	27%
10-14 YRS.....	6%	68%	25%
15+ YRS.....	10%	70%	20%

LIMIT OF \$250,000 ON WHAT COULD BE AWARDED IN ADDITION TO ECONOMIC DAMAGES

DEMOGRAPHICS	LIMITS		
	UNSURE	FAVOR	OPPOSE
TOTAL.....	8%	68%	24%
KINDWORK			
DEGREE WTCOLLAR..	8%	68%	24%
NONDEGREE WTCOLLAR..	6%	67%	27%
SKILLED BLCOLLAR..	6%	73%	20%
NONSKILLED BLCOLLAR..	10%	55%	35%
NOTWORKG.....	5%	73%	22%
HOMEWKR.....	12%	74%	15%
OWNMANAG			
OWNBUSNS.....	4%	81%	15%
MANAGE.....	3%	61%	36%
NEITHER.....	9%	66%	25%

LIABILITY INSURANCE PREMIUMS INCREASING TOO MUCH DUE TO EXCESSIVE AWARDS

DEMOGRAPHICS	PREMIUMS		
	UNSURE	ARE	ARE NOT
TOTAL.....	8%	81%	11%
LOCATION			
RURAL.....	14%	76%	10%
CENTRAL.....	6%	80%	14%
STHCNTR.....	7%	85%	8%
ANCHORAGE.....	8%	81%	12%
STHEAST.....	7%	81%	12%
REGISTER			
DEMOCRAT.....	10%	75%	14%
REPUBCAN.....	6%	88%	7%
LIBRTARK.....	31%	51%	18%
NON-PART.....	6%	83%	11%
NOTREGIS.....	10%	69%	21%
SEX			
MALE.....	8%	79%	13%
FEMALE.....	8%	82%	10%
AGE			
16-24 YRS OF AGE..	9%	76%	16%
25-40.....	9%	77%	14%
41-55.....	6%	83%	11%
56+ YRS.....	8%	89%	2%
INCOME			
U-R.....	8%	79%	14%
TO \$2000 INCOME..	13%	76%	12%
\$20,000-\$40,000..	6%	82%	12%
\$40,000-\$60,000..	10%	84%	6%
\$60,000+.....	5%	80%	15%
WORKFOR			
FEDERAL.....	6%	86%	7%
STATE.....	17%	71%	12%
LOCAL.....	7%	83%	11%
PRIVATE.....	6%	81%	14%
NOTWORKE.....	10%	81%	9%
TIMEINAK			
UNDER 1 YR IN AK..	0%	85%	15%
1-4 YRS.....	4%	86%	10%
5-9 YRS.....	9%	77%	14%
10-14 YRS.....	11%	77%	12%
15+ YRS.....	8%	82%	10%

LIABILITY INSURANCE PREMIUMS INCREASING TOO MUCH DUE TO EXCESSIVE AWARDS

DEMOGRAPHICS	PREMIUMS		
	UNSURE	ARE	ARE NOT
TOTAL.....	8%	81%	11%
KINDWORK			
DEGREE WTCOLLAR:	9%	75%	16%
NONDEGREE WTCOLLAR:	6%	85%	9%
SKILLED BLCOLLAR:	5%	90%	5%
NONSKILLED BLCOLLAR:	10%	66%	24%
NOTWORKG.....	7%	83%	10%
HOMEMAKR.....	11%	79%	9%
COMPANAG			
OWBUSNS.....	6%	83%	13%
MANAGE.....	6%	88%	6%
NEITHER.....	9%	80%	11%

PERSONALLY HAD AN INCREASE IN YOUR LIABILITY INSURANCE PREMIUM

DEMOGRAPHICS	YOUR LINS		
	UNSURE	YES	NO
TOTAL.....	6%	55%	39%
LOCATION			
RURAL.....	6%	35%	59%
CENTRAL.....	3%	59%	38%
STHCNTR.....	11%	62%	26%
ANCHORAGE.....	7%	55%	38%
STHEAST.....	3%	56%	41%
REGISTER			
DEMOCRAT.....	6%	50%	44%
REPUECAN.....	4%	60%	36%
LIBTARI.....	9%	60%	31%
NON-PART.....	7%	55%	38%
NOTREGIS.....	15%	49%	36%
SEX			
MALE.....	8%	58%	34%
FEMALE.....	5%	51%	44%
AGE			
16-24 YRS OF AGE..	7%	27%	66%
25-40.....	6%	51%	43%
41-55.....	7%	70%	23%
56+ YRS.....	6%	58%	36%
INCOME			
N-P.....	8%	55%	38%
<\$2000 INCOME..	12%	44%	44%
\$20,000-\$40,000..	3%	52%	45%
\$40,000-\$60,000..	8%	63%	29%
\$60,000+.....	5%	59%	36%
WORKFOR			
FEDERAL.....	6%	77%	37%
STATE.....	0%	62%	38%
LOCA.....	11%	49%	40%
PRIVATE.....	5%	55%	39%
NOTWORKG.....	9%	53%	39%
TIMEINAK			
UNDER 1 YR IN AK..	0%	41%	59%
1-4 YRS.....	8%	44%	48%
5-9 YRS.....	4%	58%	38%
10-14 YRS.....	4%	51%	46%
15+ YRS.....	8%	58%	34%

PERSONALLY HAD AN INCREASE IN YOUR LIABILITY INSURANCE PREMIUM

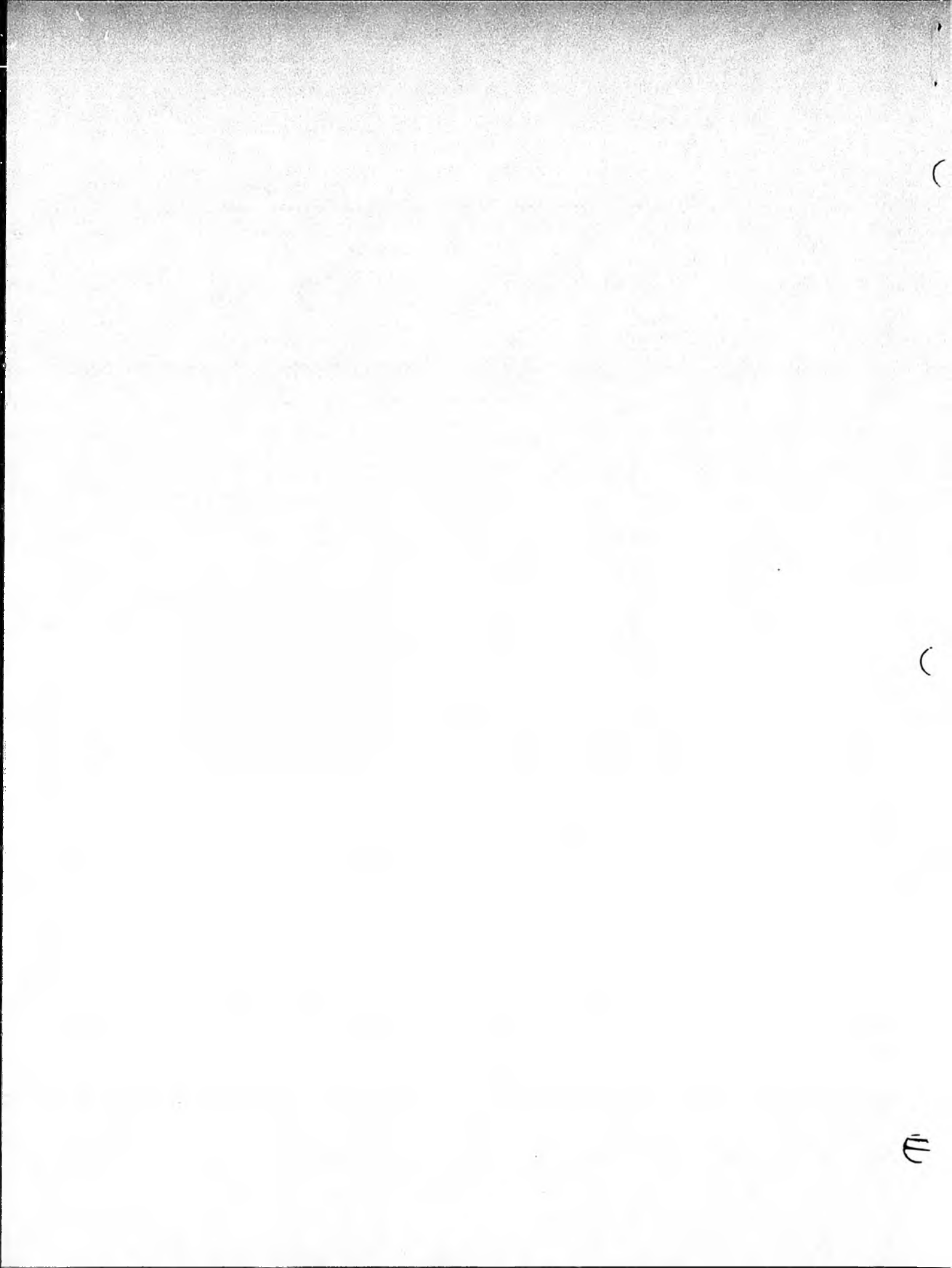
DEMOGRAPHICS	YOUR LINS		
	UNSURE	YES	NO
TOTAL.....	6%	55%	39%
KINDWORK			
DEGREE W/COLLAR.....	5%	62%	33%
NONDEGREE W/COLLAR.....	4%	59%	37%
SKILLED BL COLLAR.....	8%	60%	32%
UNSKILLED COLLAR.....	10%	26%	63%
NOT WORKING.....	11%	59%	30%
HOUSEMAKER.....	7%	50%	43%
OWNERSHIP			
OWN BUSINESS.....	6%	70%	26%
MANAGE.....	6%	66%	28%
NEITHER.....	7%	50%	43%

GIVEN WHAT YOU KNOW ABOUT BOTH SIDES, WOULD YOU FAVOR OR OPPOSE TORT REFORM

DEMOGRAPHICS	FAVOR/OPPOSE		
	UNSURE	FAVOR	OPPOSE
TOTAL.....	5%	81%	13%
LOCATION			
RURAL.....	0%	88%	12%
CENTRAL.....	5%	84%	11%
STHCNTL.....	10%	74%	17%
ANCHORAGE.....	5%	81%	14%
STHEAST.....	7%	83%	10%
REGISTER			
DEMOCRAT.....	6%	76%	18%
REPUBLICAN.....	2%	86%	12%
LIBERTARIAN.....	0%	69%	31%
NON-PART.....	8%	81%	11%
NOT REGIS.....	3%	82%	15%
SEX			
MALE.....	5%	83%	13%
FEMALE.....	6%	80%	14%
AGE			
16-24 YRS OF AGE.....	6%	76%	18%
25-40.....	3%	80%	16%
41-55.....	7%	82%	11%
56+ YRS.....	9%	84%	8%
INCOME			
IN-R.....	14%	75%	11%
TO \$20000 INCOME.....	11%	67%	22%
\$20,000-\$40,000.....	3%	85%	12%
\$40,000-\$60,000.....	4%	84%	13%
\$60,000+.....	4%	84%	11%
WORKFOR			
FEDERAL.....	4%	89%	7%
STATE.....	7%	80%	14%
LOCAL.....	2%	85%	13%
PRIVATE.....	4%	79%	17%
NOT WORKG.....	9%	81%	10%
TIME IN AK			
UNDER 1 YR IN AK.....	0%	87%	13%
1-4 YRS.....	2%	84%	13%
5-9 YRS.....	4%	80%	16%
10-14 YRS.....	8%	79%	14%
15+ YRS.....	6%	81%	12%

GIVEN WHAT YOU KNOW ABOUT BOTH SIDES, WOULD YOU FAVOR OR OPPOSE TORT REFORM

DEMOGRAPHICS	FAVOR/OPPOSE		
	UNSURE	FAVOR	OPPOSE
TOTAL.....	5%	81%	13%
KINDWORK			
DEGREE W/COLLAR..	4%	84%	12%
NONDEGREE W/COLLAR:	5%	81%	13%
SKILLED BL/COLLAR:	5%	91%	5%
NONSKILLED/COLLAR:	2%	64%	34%
NOT WORKG.....	13%	80%	7%
HOME MAKR.....	7%	83%	10%
OWN MANAG			
OWN BUSNS.....	1%	88%	11%
MANAGE.....	3%	85%	12%
NEITHER.....	7%	79%	14%



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Insurance Industry Profitability

Nationwide, property/casualty insurance industry profitability hit a record high in 1986, and another record high in 1987. In fact, in 1987 the industry set at least four all-time profitability records:

- * Highest net profit, \$13.7 billion (See Attachment I);
- * Highest operating profit, \$13.7 billion (See Chart I);
- * Highest year-end surplus, \$98 billion (See Chart II);
- * Highest premiums written, \$192 billion (See Chart III).

P-C Insurers Report Dramatic Income Gains

BY SUSAN NAROD

The property-casualty insurance industry recorded a dramatic improvement in operating income in 1987.

Insurers reported pre-tax operating

Pre-Tax Operating Income More Than Doubled In 1987

income of \$13.7 billion last year, according to preliminary data compiled by A.M. Best Co. This contrasted sharply with operating earnings of \$5.4 billion in 1986 and operating losses of \$4.0 billion and \$5.6 billion in 1984 and 1985, respectively.

"The improvement in profitability reflected basic economics—revenues increased faster than claim costs," said Dr. Sean Mooney, economist and senior vice president of the Insurance Information Institute.

In 1987, revenues earned from premiums rose 13.3 percent, while claims costs increased at a slower rate of 8.6 percent. As a result, the underwriting loss declined from

Cont'd on Page 39

P-C Insurers Report Dramatic Income Gains

Cont'd from Page 1

\$15.9 billion in 1986 to \$9.8 billion in 1987.

In addition to underwriting results, investment income, interest and dividends earned from assets in 1987 increased 7.3 percent to \$23.5 billion.

Net written premiums rose 8.7 percent in 1987—less than half the 22 percent increases reported for 1985 and 1986.

"The stock market plunge on Oct. 19 didn't result in large realized losses for the p-c industry in 1987 because realized capital gains or losses are reported only when a stock is sold, according to Dr. Mooney.

"Most insurance companies hold stocks for a long time and probably didn't sell a large proportion of their portfolio in a weak market," said Dr. Mooney.

Sales can result in realized capital gains as long as the selling price is above the purchase price, he noted, adding that many stocks were purchased by insurance companies years ago.

Moreover, realized capital gains or losses also occur when bonds are sold. Bonds generally constitute the major portion of an insurance company's portfolio and have contributed to capital gains in the past few years.

Unrealized capital losses of \$6.0 billion were reported for the industry in 1987. Since stocks on the balance sheet were reported at market value, the drop in the stock market is recorded as an unrealized capital loss.

Figures on capital values are pre-

liminary estimates. No actual data have been reported for the fourth quarter of 1987, when the stock market plunged.

The unrealized loss was the major factor explaining the small growth in policyholder surplus for the industry in 1987.

Despite \$13.7 billion reported for net income after taxes, policyholder surplus increased by only \$3.9 billion, from \$93.6 billion at the end of

Investment Income Grew 7.3 Percent To \$23.5 Billion

1986 to \$97.5 billion at the end of 1987.

There is nothing disastrous on the p-c financial horizon at the moment, although "there are some clouds," observed Dr. Mooney.

The negative signs, according to Dr. Mooney, include stock market weakness, pressure on claims from auto accidents, higher medical care costs and increased litigation, in addition to rising competition.

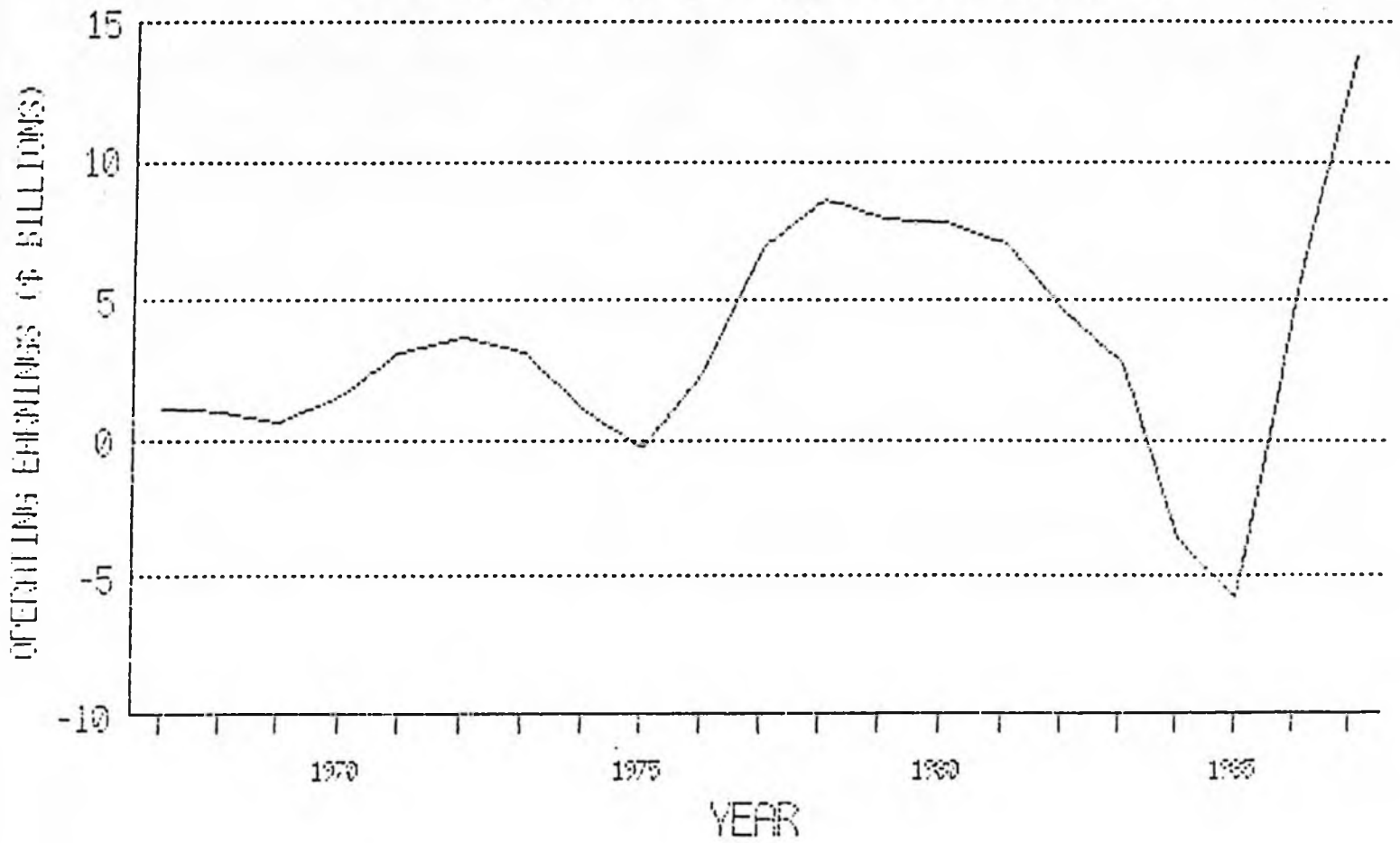
Dr. Mooney expects 1988 to culminate with claims growing faster than premium growth, with the result that net income will probably deteriorate.

Nevertheless, Dr. Mooney said that, "it's a general feeling that the industry is going through a fairly stable period, so that 1989 will probably look the same as 1988." □

NATIONAL UNDERWRITER

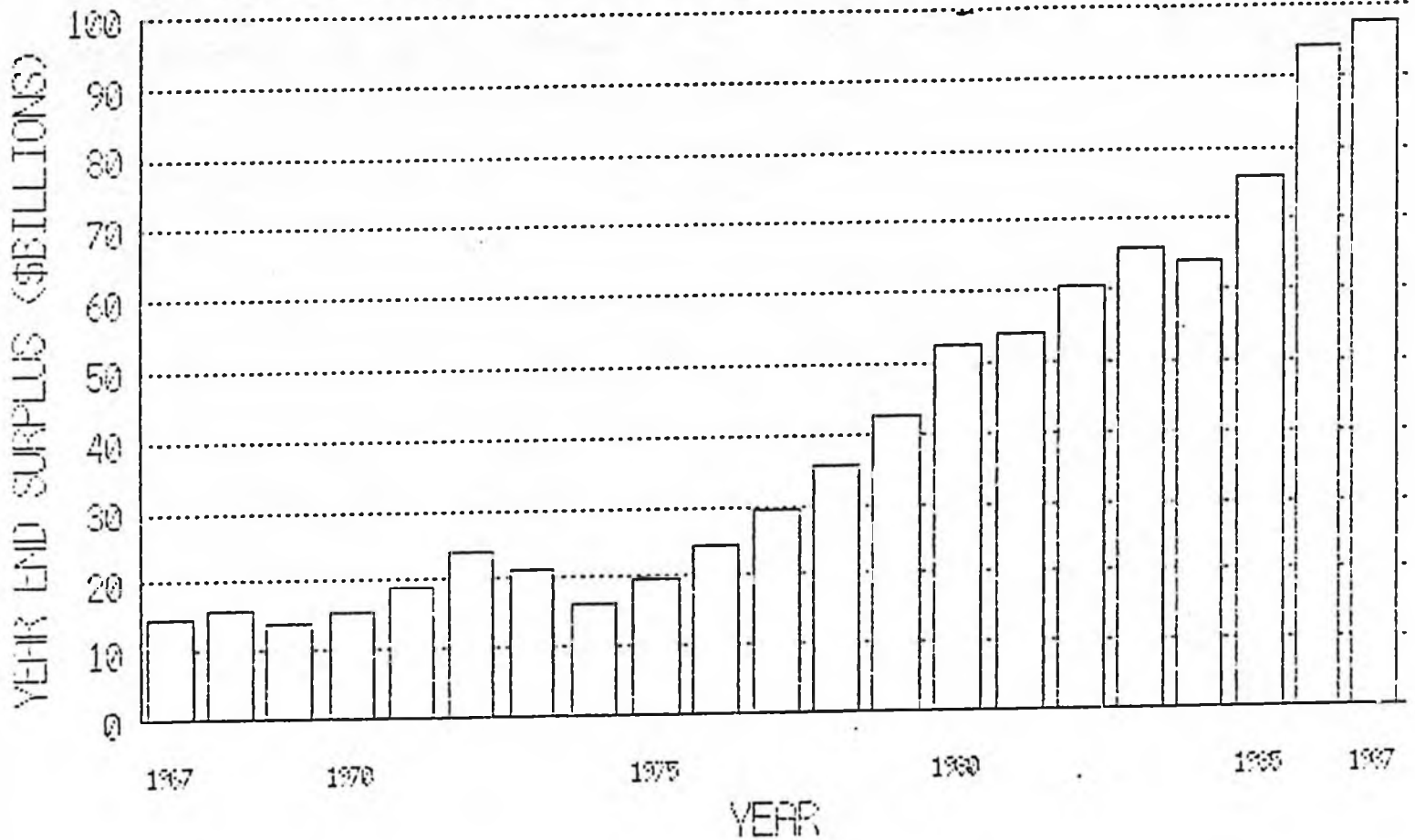
JANUARY 11, 1988

PROPERTY/CASUALTY OPERATING EARNINGS



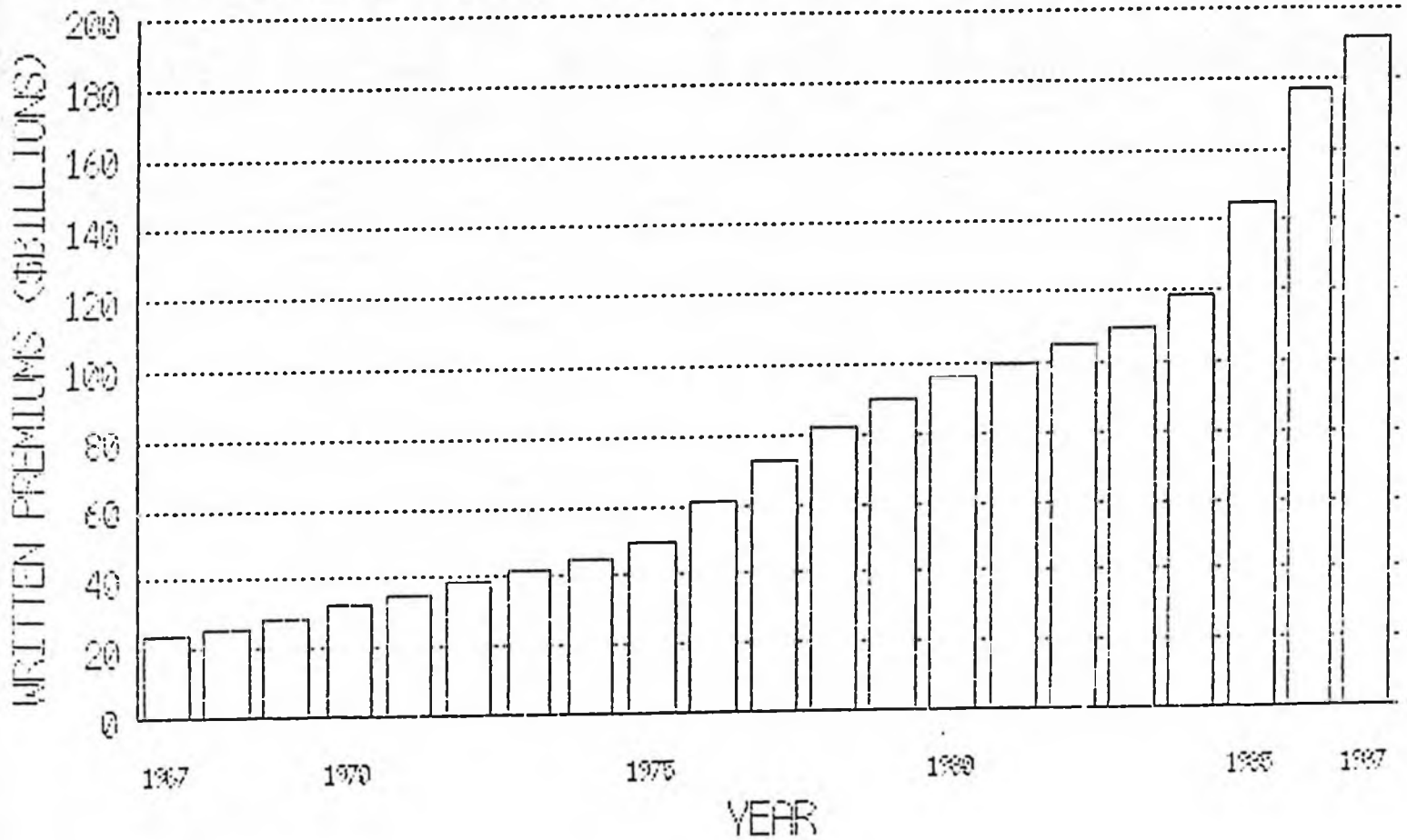
Source: Best's Insurance Management Reports; Insurance Information Institute, Insurance Services Office.

PROPERTY/CASUALTY YEAR END SURPLUS



Source: Best's Insurance Management Reports; Insurance Information Institute; Insurance Services Office.

PROPERTY/CASUALTY WRITTEN PREMIUM



Source: Best's Insurance Management Reports; Insurance Information Institute; Insurance Services Office.



Note on the Property/Casualty Industry's Record \$13.7 Billion Profit in 1987

The property/casualty insurance industry earned a record net profit of \$13.7 billion in 1987, after having earned a then-record profit of \$12.7 billion in 1986.

The industry has emphasized, however, that its \$12.7 billion net profit in 1986 is really not as great as it appears, since only \$5.4 billion of that profit, or 44%, is operating profit -- profit from its insurance operations. The bulk of its profit, the industry has stressed, came from realized gains -- sales of stock in an unusually inflated stock market. See Insurance Information Institute, The Executive Letter, "Earnings Improve, But Asset Sales Remain Primary Income Source," March 23, 1987. The industry pointed out that its capital gains were extraordinarily high in 1986, and that those high capital gains could not be expected to continue.

In 1987 those high capital gains did not continue, yet the industry made more money than it ever had before -- \$13.7 billion. That \$13.7 billion consisted entirely of operating profit -- profit from insurance operations -- up 154% from its \$5.4 billion operating profit in 1986. If the stock market had not crashed in October, its net profit would have been even higher.

THE IMPACT OF TORT CHANGES ON INSURANCE RATES

"It is clearly impossible to say that if you adopt a certain tort reform, you will get 'X' reductions in premiums."

— Franklin W. Nutter, 3/86

President, Alliance of American Insurers

In early 1986 the insurance industry launched a multi-million dollar media campaign proclaiming a "lawsuit crisis." The crisis, industry representatives claimed, was driving up insurance rates and forcing the cancellation of coverage. To solve the problem, the industry called upon lawmakers to make radical changes in the civil justice system.

But when asked by consumer advocates, legislators, and insurance commissioners, whether their proposals to limit victims' compensation will bring down insurance rates or ease availability, insurance industry executives reply that it's impossible to say.

In December 1986, the National Insurance Consumer Organization (NICO) released documents prepared by State Farm Fire and Casualty Company, Great American West, and the Insurance Services Office, which demonstrate that limiting tort laws would have little or no effect on rates. State Farm told the Kansas Insurance Department that restricting joint and several liability and limiting punitive damages would have no impact, while capping damages for pain and suffering would reduce rates by no more than one percent.

The Florida Experience

The best evidence of the negligible impact of tort changes on insurance rates has been provided by two of the leading liability insurers in the country.

In the summer of 1986, the Florida legislature enacted several restrictions limiting compensation to injured victims. These restrictions included: restricting joint and several liability (the liability of more than one wrongdoer causing the same harm), capping compensation for non-economic damages, such as disfigurement and sterility, and limiting punitive damages.

In August, the Aetna Life & Casualty Company and the St. Paul Company filed documents with the Florida insurance commission concluding that these limitations on victims' rights will have no effect on insurance rates.

More recently in Florida, over 100 companies have told the Florida Insurance Department that the tort limits passed by the legislature will reduce liability premiums by an average of only one percent.

At the same time, insurers in Florida are increasing medical malpractice premiums by 25 to 35 percent.

Similar Actions in Other States

Not surprisingly, the experience of other states which passed restrictions on compensation in 1986 has been similar to Florida's. For example:

- After the Washington state legislature approved a cap on non-economic damages, insurers sought substantial but unjustified rate increases. They were rejected by the insurance commission.
- After Colorado enacted a \$250,000 cap on non-economic damages as well as other "reforms," the Hartford Insurance Company announced it would start cancelling current malpractice policies in 1987. This led Republican legislators to charge that "the insurance industry deceived the legislature when it pushed the reforms as dealing with the liability crisis."
- In Maryland, the state's major medical malpractice insurer was granted a fifty percent rate increase only months after successfully lobbying for a \$350,000 cap on non-economic damages.

The Ontario Experience

Most tort changes the industry is seeking in the U.S. — including caps, restrictions on punitive damages, and the prohibition of contingency fees — are currently the law in Ontario, Canada. Yet the insurance industry in Canada has raised some premiums by 400 percent or more, cancelled coverage in mid-term, and refused to provide coverage at any price in some cases.

Who Benefits?

Wrongdoers and insurance companies are the only beneficiaries of proposals to limit citizens' rights to use the courts. In no state are there either requirements or hard promises that any of the savings will go to insurance consumers.

The real way to lower rates and increase the availability of insurance is meaningful insurance reform — not cut-backs in the rights of citizens under the civil justice system.

THE NEED FOR INSURANCE REFORM

In 1984 Americans spent \$287 billion—or over 11 percent of their disposable income—on insurance. The cost and availability of insurance has a significant impact on our work, our homes, and our recreation. Yet, remarkably, the insurance industry operates largely outside of the public eye.

Through its enormous power and influence, the insurance industry has gained unprecedented special privileges. The federal government provides virtually no regulation or oversight of the industry. Among the privileges the industry enjoys are:

- exemption from anti-trust laws, which prevent price-fixing;
- exemption from scrutiny by the Federal Trade Commission;
- exemption from disclosing even the most basic information on its income and payouts on different types of insurance.

The federal government has left the job of regulating insurance companies to the states—with mixed results. State insurance commissioners are typically underfunded and understaffed. Few even employ an actuary. Many have developed "cozy" relationships with the industry they are supposed to regulate. (Half of all insurance regulators come from or return to the industry, according to the General Accounting Office.) Consumer interests have been poorly represented in the insurance rate and policy making process.

Consumers, small businesses, non-profit organizations, and others are now paying the price for the insurance companies' free reign: staggering increases in the cost of liability insurance; unjustified cancellation of policies; and an assault on the rights of innocent victims to receive just compensation for injuries caused by defective and dangerous products.

The solution to the so-called "insurance crisis" is more effective regulation of the insurance industry. Reforms aimed at making the industry more accountable to consumers will curtail its short-sighted underwriting practices, its mismanagement, and its historical boom and bust cycle.

WHAT CONGRESS SHOULD DO

Enact Disclosure Legislation or "Sunshine Laws"

Disclosure legislation should require the insurance industry to submit, on a sub-line by sub-line, insured by insured basis, the amount it pays out in claims compared to its premium and investment income. The analysis of such data, which the industry currently refuses to disclose, is essential to determine the true financial condi-

tion of the industry, as well as the likely effect of any restrictions on injured people and on insurance companies.

Repeal Industry's Special Exemptions

The McCarran-Ferguson Act, which exempts insurance companies from anti-trust laws and allows them to fix prices, should be repealed. Moreover, Congress should direct the Federal Trade Commission—currently prohibited from even studying the industry—to investigate prices, services, and underwriting practices in the industry.

Regulate Foreign Reinsurers and Create Alternative

Much reinsurance (insurance for insurance companies) is written by foreign companies such as Lloyd's of London. Free-market American or foreign regulated companies often demand arbitrary cancellation of coverage or premium increases. Because of their tremendous impact on the American insurance market, foreign reinsurers should be subjected to regulation to ensure that their underwriting decisions are in the public interest.

Further Regulate Lloyd's and Start Currently

Unregulated Lloyd's raises its rates. In 1985, Lloyd's insurance program should be allowed to compete with U.S. firms and help stabilize rates. Such a program was very successful during the "insurance crisis" of the 1960's.

Create a Federal Office of Insurance

National insurance is a \$310 billion business accounting for 12% of our gross national product. Yet, no state regulates the industry. For a number of years, state regulation has not always protected the public. A federal office of insurance would monitor the industry and establish standards for state regulators.

WHAT STATES SHOULD DO

Require Experience Rating

Good drivers pay less than bad drivers for auto insurance, and homeowners who are good risks pay less than those who are bad risks. But many professionals (such as doctors) and businesses pay a set rate, regardless of their individual claims experience, i.e., they are not experience-rated.

By requiring insurance companies to experience-rate all professional and commercial risks, just as they experience-rate drivers and homeowners, states could reduce insurance rates for most insureds.

Improve State Regulation

State insurance commissioners must be provided with enough personnel, particularly actuaries, to effectively

WHAT PEOPLE ARE SAYING ABOUT LIABILITY INSURANCE AND VICTIMS' RIGHTS

"We are witnessing a multi-million dollar advertising and public relations hoax — a fraud financed by the insurance industry seeking to enrich its already huge profits at the expense of innocent victims. Its chief beneficiaries are the perpetrators of harmful products, hazardous chemicals and dangerous conditions in the workplace and environment."

— *Ralph Nader*

On the Consumer Benefits of the Civil Justice System

"Civil justice is one of the great triumphs of the American system. It allows any person, regardless of their resources, to challenge the largest corporate or government power and receive compensation for wrongful injuries. It forces wrongdoers to change their products and practices or risk further liability. It forces public disclosure of defective products and dangerous practices. The civil justice system must be preserved and the rights of consumers protected. The public interest demands no less."

— *Joan Claybrook, President of Public Citizen, before the Commerce, Transportation and Tourism Subcommittee of the House Committee on Energy and Commerce, 5/21/86*

"Where product liability has had a notable impact — where it has most significantly affected management decision making — has been in the quality of the products themselves. Managers say products have become safer, manufacturing procedures have been improved, and labels and use instructions have become more explicit."

— *Nathan Weber, author of The Conference Board's 1987 report, "Product Liability: The Corporate Response," based on a survey of the risk managers of 232 major corporations*

On the "Lawsuit Crisis"

"The explosion in liability lawsuits is nothing but a myth."

— *Business Week, 4/21/86*

Today as in 1976, the insurance industry blames the legal system for huge premiums. Their implausible claim is that judges and juries became generous in 1976, stingy for the next eight years and inexplicably generous again."

— *Robert Hunter, President, National Insurance Consumer Organization, New York Times, 4/13/86*

"Compare the estimated \$28 to \$35 billion spent in 1985 on tort litigation to the \$32 billion Americans spend on tobacco each year, or the \$60 billion spent on alcohol products each year, or the \$80 billion gross income earned by doctors each year."

— *Ralph Nader, before the Economic Stabilization Subcommittee of the House Committee on Banking Finance and Urban Affairs, 8/6/86*

"Our studies do not support any claim of recently escalating jury awards."

"A number of highly publicized news articles quoting our statistics have grossly misstated them."

— *Philip J. Hermann, Chairman of the Board, Jury Verdict Research, before the Economic Stabilization Subcommittee of the House Committee on Banking Finance and Urban Affairs, 8/6/86*

"Not only is the evidence missing to indicate a significant national increase in filings above the increase in population, but in a number of state courts, selected civil filings have decreased between the period 1981-1984."

"Changes in the number of these filings [tort, contract, real property rights and small claims] are not attributable to an increase in the propensity of Americans to sue, but rather to an increase in the number of Americans."

"The existence of any litigation explosions has been cyclical, and there is no evidence to support the notion of a continuing nationwide increase in lawsuits in the state trial courts between 1981-1984."

— *Robert Roper, Director, Court Statistics and Information Management Project, National Center for State Courts, before the Economic Stabilization Subcommittee of the House Committee on Banking, Finance, and Urban Affairs, 8/6/86*

"Not surprisingly, a jury of peers tends to increase awards over time by no more than the rise in medical costs, general inflation and the value of lost work. Recent changes in average jury awards and numbers of lawsuits filed mirror increases in average wages, medical costs, life expectancy and population growth."

— *Dr. Mark Cooper, author of the 1986 Consumer Federation of America report, "Trends in Liability Awards: Have Juries Run Wild?"*

(over)

REFORMING THE CIVIL JUSTICE SYSTEM

The insurance industry, the medical profession, product manufacturers and sellers, and municipalities are seeking legislation at the state and federal level that would drastically alter the civil justice system.

The proposals promoted by these industry and professional trade groups are cited as necessary to reign in a civil justice system that is allegedly "out of control."

These "tort packages" generally include legislation that caps the amount of money an injured victim can recover from a guilty party, eliminates or severely limits a jury's ability to assess punitive damages against guilty defendants, increases the burden of proof for injured victims, and restricts the long-standing doctrine of joint and several liability.

Industry-backed "Tort Packages" Do Nothing To Reform The Civil Justice System

Adoption of these "tort packages" will do nothing to improve the efficiency of the civil justice system. Enacting the industries' list of tort law changes will only ensure that innocent victims do not receive full compensation for their injuries and guilty parties escape justice.

Besides shortchanging the victims, the "tort packages" under consideration in many states would likely result in an *increase* in civil litigation rather than a decrease.

For instance, capping damages that guilty parties have to pay reduces a defendant's incentives for out of court settlements and will result in more cases on the court docket. Likewise, requiring higher standards of proof for victims will require the introduction of more evidence at trial and will result in more delay.

Finally, the industry-backed "tort packages" do nothing to address unjustified delays, which constitute the major inefficiency in the legal system. These delays are usually caused by defense lawyers who are paid by the hour and have a self-interest in prolonging litigation. According to the National Association of Independent Insurers, since 1956 fees paid to defense attorneys have risen about three times as fast as the amount insurers have paid to injured victims.

Reforms To Make the Civil Justice System More Efficient

The following reforms can improve the efficiency of the civil justice system without limiting the rights of innocent victims.

Create Alternative Dispute Resolution Mechanisms.

Mechanisms should be established to mediate claims before court-appointed mediators. If cases can not be settled through mediation, they can then be pursued within the civil court system. All cases not involving death, disfigurement, or permanent disability, in which damages do not exceed \$15,000 could be settled through arbitration panels established by the courts.

Establish Penalties for Frivolous Motions, Objections and Defenses.

Courts should be allowed to assess economic penalties against both the defendant and the plaintiff for filing frivolous claims, defenses or motions. Penalizing actions whose primary purpose is to delay proceedings would improve the efficiency of the civil justice system.

Prohibit Secrecy Agreements.

Defendants often settle cases only if the plaintiff agrees never to disclose information regarding a dangerous product or practice. These secrecy agreements can lead to other unnecessary injuries by the same product or practice, and require plaintiffs' lawyers to continually re-invent the wheel in future litigation.

Expand the Use of Offensive Collateral Estoppel.

Even when courts have already held a particular product to be defective, each plaintiff injured by that same product must often re-prove that the product was defective, creating unnecessary delays and tying up the courts. Expanding the use of collateral estoppel, that is, allowing the courts to accept the determination of previous findings in cases involving the same product (such as the Dalkon Shield), would improve the efficiency of the courts.

Create Public Interest Trust Funds for Punitive Damage Awards.

Where punitive damages are awarded to a plaintiff, a percentage of the award should be contributed to a charitable fund organized to engage in research and advocacy to reduce or eliminate the type of risk which caused the plaintiff's injury.