

HJR

25

STATE OF ALASKA
THE LEGISLATURE

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

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May, 1988

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Mary Van Nimwegen

House LRC:

May 5, 1987

Alaska State Legislature

House of Representatives

P.O. BOX 783
GIRDWOOD, ALASKA 99587
(907) 783-2905

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-2693/2719

REPRESENTATIVE
JIM ZAWACKI
DISTRICT 7

MEMBER
COMMUNITY & REGIONAL
AFFAIRS COMMITTEE
LEGISLATIVE BUDGET &
AUDIT COMMITTEE
FINANCE SUBCOMMITTEE

MEMORANDUM

May 5, 1987

TO: Representative Dave Donley, Chairman
House Labor & Commerce Committee

FROM: Representative Jim Zawacki

SUBJ: HJR 25

The intent of HJR 25 is to support efforts in Congress to amend the McCarran-Ferguson Act enacted in 1945 which exempts the insurance industry from federal antitrust laws.

The broad antitrust immunity enjoyed by the insurance industry under the McCarran-Ferguson Act is both undesirable and unnecessary. The exemption is undesirable because, by blunting some forms of competitive behavior, it denies consumers the best array of insurance services at the lowest possible cost. The exemption is unnecessary because application of the antitrust laws is in no way inconsistent with either desirable industry cooperation or effective state regulation.

There have been two objections raised by the insurance industry to this resolution. One, it is argued that support of HJR 25 would remove or subordinate the primacy of states' regulatory role as regulator of the industry. This is not so. HJR 25 was drafted to address this concern. Senator Howard Metzenbaum, the original sponsor of the federal legislation, has testified that his intent was not to alter state regulatory primacy. The Senate Antitrust Committee in Washington, D.C. has made it clear that there is no intent to

alter the primacy of state regulatory authority over the industry. Two, is the assertion that the repeal of the antitrust exemption will restrict information pooling that assists the industry in accurately estimating how much they are likely to pay out in the future. Again, this is not so. HJR 25 specifically recognizes the need for the industry to pool and analyze the past claims they have paid; the more claims they can analyze, the more accurate their estimates of future payouts will be.

I was asked by the Citizens Coalition for Tort Reform to introduce this resolution. The Coalition has reviewed this issue closely and determined that it is in the consumers' best interests to repeal this special privilege to the insurance industry. The Coalition has found that there is strong bipartisan support to amend the McCarran-Ferguson Act and that the position of the insurance industry to retain this exemption is not logical or in the best interests of the consumer.

Thank you.

A handwritten signature in cursive script, reading "Jim Zawacki". The signature is written in dark ink and is positioned below the typed text.

6 APR 1987



STATEMENT
OF THE
NATIONAL INSURANCE CONSUMER ORGANIZATION

ON
REPEAL OF MCCARRAN-FERGUSON ANTITRUST IMMUNITY

BEFORE THE
SENATE JUDICIARY COMMITTEE

FEBRUARY 18, 1987

by

J. Robert Hunter, President
Jay Angoff, Counsel
National Insurance Consumer
Organization

121 N. Payne Street
Alexandria, Virginia 22314
(703) 549-8050

FACT SHEET ON McCARRAN-FERGUSON

I. The McCarran-Ferguson Act, enacted in 1945, exempts the insurance industry from the antitrust laws and thus allows insurance companies to fix prices. There is an exception to the exemption for boycotts, coercion and intimidation -- agreements among insurers to refuse to write insurance at any price therefore can be and have been prosecuted. See, e.g., State of West Virginia ex. rel. Brown v. St. Paul Fire and Marine Insurance Co., Civ. No. 86-C-1400, Kanawha Cty. Circ. Ct. (W. Va., filed Apr. 14, 1986); "Day care centers file insurance suit," The Denver Post, Jan. 17, 1986, at B-1. On the other hand, agreements among insurers to raise their rates in concert are not subject to antitrust prosecution. In other industries such agreements are felonies punishable by three years in jail.

II. Because of the McCarran-Ferguson Act, rates for workers compensation insurance are fixed: the National Council on Compensation Insurance, the rate making organization to which all workers compensation insurers belong, requires its member to adhere to the rates it issues. Constitution of National Council on Compensation Insurance, Art. VII (3)(c). The Insurance Services Office, the rate-making organization for liability insurers, does not expressly require its members to adhere to its rates but rather issues "advisory" rates. Yet, as a practical matter, this "advisory" rate is frequently adhered to. See National Underwriter, Sept. 6, 1985, at 82 ("what has occurred ... is a return to basic ISO rating")

III. There has traditionally been bi-partisan support for prohibiting price-fixing by insurance companies. For example, the Ford Administration exhaustively studied the insurance industry and concluded that price competition in the insurance industry, without McCarran Act antitrust protection, would be in the public interest. U.S. Dept. of Justice, The Pricing and Marketing of Insurance, at viii (1977). Similarly, in 1979 President Carter's National Commission for the Reform of Antitrust Laws and Procedures, composed of the nation's leading antitrust experts, concluded 18-2 that McCarran-Ferguson's broad antitrust immunity should be repealed. In its stead the Commission recommended narrowly drawn legislation to affirm the lawfulness of a limited number of essential collective activities. The Reagan administration also supports repeal of the broad McCarran-Ferguson antitrust exemption, as Federal Trade Commission Chairman Dan Oliver recently testified before the Senate Commerce Committee.

IV. Insurance companies could continue to pool data without McCarran-Ferguson protection.

Because most insurers have not paid enough claims in the past to accurately estimate how much they are likely to pay out in the future, they do need to get together to pool and analyze the past claims they have paid -- the more paid claims they can analyze, the more accurate their estimates of their future payouts will be. However, the joint collection and dissemination of past cost data does not violate the antitrust laws. See U.S. Dept. of Justice, The Pricing and Marketing of Insurance 91-118, and cases therein cited. And if insurers truly have doubts about the legality of pooling loss data under the antitrust laws Congress can expressly legalize such pooling without also legalizing price-fixing, as the McCarran Act does.

V. State regulation of insurance can - and should - be preserved with the McCarran-Ferguson Act repealed. In fact, the two leading organizations of state officials -- the National Conference of State Legislatures and the National Association of Attorneys-General -- have both passed resolutions calling for McCarran repeal. With McCarran-Ferguson repealed, the states would continue to regulate the insurance industry; the federal government would not regulate the insurance industry. As the NAAG put it, repealing McCarran-Ferguson would simply "subject insurance companies to the rules of the competitive marketplace applicable to other firms." NAAG Resolution I, Repealing the Insurance Industry's Exemption From the Antitrust Laws. (June 1986).

VI. Much of the insurance industry is willing to live without McCarran-Ferguson antitrust immunity. For example, the new president of the American Insurance Association, Robert Vagley, told the Journal of Commerce that the industry was willing to consider making changes in McCarran-Ferguson. And in 1979, State Farm Insurance Co. supported a bill that would substantially cut back on McCarran antitrust immunity,. Allstate and several other insurance companies have also indicated that they are willing to live without McCarran. In short, the industry's opposition to the McCarran-Ferguson exemption is probably based more on its traditional opposition to change than anything else.

February 23, 1987

Vol. 20 No. 8

FTC, JUSTICE DEPARTMENT HIT McCARRAN-FERGUSON ACT

At a Senate Judiciary Committee hearing on the McCarran-Ferguson Act last week, Sen. Howard Metzenbaum (D-Ohio), chairman of the Antitrust Subcommittee, found broad support for proposals to amend or repeal the 1945 statute which gives the insurance industry limited shelter from federal antitrust law and confirms the primacy of state regulation of insurance. Federal Trade Commissioner Daniel Oliver charged that the McCarran-Ferguson Act "protects price fixing" by insurers and said the statute's repeal is long overdue. Charles Rule, acting head of the Justice Department's Antitrust Division, affirmed the Department's basic support for ending the antitrust exemption "if certain uncertainties can be resolved." Metzenbaum expressed willingness to revise his bill (S.80) so that it would remove only the antitrust exemption while retaining language clarifying the role of state regulation. Joining the call for repeal or revision of McCarran were representatives of the National Conference of State Legislatures and the National Association of Attorneys General. Small business and consumer groups also called for changing the law.

Insurance industry representatives told the panel that changes in the act would have had no effect on recent problems with commercial liability insurance. They also voiced concern about the costs and confusion that would come from the dual federal-state regulation of insurance that likely would follow repeal of the act. Similar concerns about repeal were voiced by representatives of the National Association of Insurance Commissioners (NAIC) and the Conference of Insurance Legislators. The NAIC came under pointed criticism from Metzenbaum for alleged financial ties and revolving door relationships with the insurance industry.

ABA ADOPTS POSITION PAPER ON TORT LIABILITY SYSTEM

The American Bar Association (ABA) adopted a position paper on the tort liability system which did not contain the significant tort reforms outlined in the draft report presented by a special ABA study commission at its annual meeting in New Orleans. The draft report called for limits on noneconomic damages in certain cases, but the House of Delegates rejected this suggestion and instead voted to go on record as opposing any caps on awards

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/25/87

FURTHER REFERRALS: Judiciary

DATE: 5/5/87

The Labor & Commerce Committee has considered HJR 25
Relating to federal regulation of the insurance industry.

RECOMMENDS:

- replace with HJR 25 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:

Robert Douglas

D. G. Thomas

Cliff Davidson

J. Ellis

SIGNING OTHER RECOMMENDATIONS:

W. L. ... NO REC.

... NO REC.

Robert Douglas

Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version : HJR 25
Publish Date : _____

REQUEST: _____

Revision Date: _____

Agency Affected : _____

Title: Relating to federal regulation of the insurance industry.

BRU: _____

Sponsor: Zawacki

Components : _____

Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	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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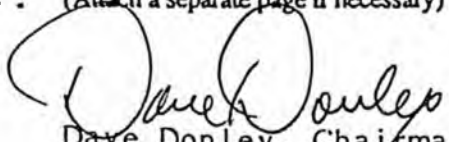
FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)


Dave Donley, Chairman

Prepared by: House Labor & Commerce
Division: _____

Phone: 465-3892
Date: 5/5/87

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by preparer):

- Legislative Finance
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- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

FROM National Conference of State Legislatures

NAME: Insurance Data Collection

NCSL

COMMITTEE: Government Operations & Regulation

TYPE OF POLICY: Consent

1 The adequacy and contents of property and casualty insurance data has
2 come under increasingly serious scrutiny as state legislatures have attempted
3 to resolve problems with affordable and available liability insurance.

4 To address this matter, several state legislatures have recently enacted
5 legislation substantially expanding the data which insurers must submit when
6 seeking rate changes. These actions demonstrate how insufficient the
7 information necessary to evaluate rate requests is and how uneven the
8 collection and utilization of appropriate data appears to be. Most annual
9 reports submitted to state insurance commissioners appear to be inadequate.

10 Many insurers operate on an interstate basis. State regulation ought to
11 ensure that rates are developed with sufficient and relevant background
12 information. Rates do affect availability. Appropriate data can demonstrate
13 relationships between the civil justice system and the costs for obtaining
14 property and casualty insurance.

15 To ensure that adequate and comprehensive data is made available
16 regularly, NCSL believes that Congress should enact legislation compelling the
17 annual submission, to the appropriate federal agency, of data that includes,
18 but is not limited to, the following: (a) premiums earned and written; (b)
19 total claims paid regarding judicial dispositions, settlements and
20 administrative/legal costs; (c) reserves; (d) individual classifications of
21 business where premiums have increased/decreased the previous year; and (e)
22 investment income. This data shall be submitted by classification of business
23 and be completed on a national aggregate and individual state aggregate basis.
24 State collection of insurance data and annual financial reporting requirements
25 shall not be prohibited by any federal legislation. All data collected
26 nationally by an appropriate federal agency shall be disseminated to the

August 7, 1986

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NCSL further urges Congress to repeal the antitrust exemption which the insurance industry has been granted, with limited exceptions, by the McCarran-Ferguson Act of 1945. Barring comprehensive repeal, Congress ought to clarify which federal antitrust laws shall or shall not be applicable to the conduct of the insurance industry and which types of data could be shared among insurers.

August 7, 1986

From: William Pennington, Jr., Director, Federal Bureau of Investigation

NATIONAL INSURANCE
CONSUMER ORGANIZATION



March 25, 1987

Honorable Joseph R. Biden
Chairman
Senate Judiciary Committee
U. S. Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for your letter of February 25. Enclosed are the answers to the questions you pose.

Question 1. The tort policy working group reviewed a number of industries and found that insurance was becoming increasingly unavailable. For example, biotechnology companies are having a difficult time in the insurance market because they are new, small companies dealing mostly in research and development in a field largely unknown to insurers. Many of our basic industries, such as oil, gas drilling and heavy manufacturing are hard pressed to find insurance at a reasonable cost as well. Is this a manufactured crisis? If so, by whom?

Answer 1. The insurance crisis -- sudden, dramatic rate increases and refusals to deal by insurance companies -- is real. It is the insurance industry's explanation for the crisis -- a purported litigation explosion -- that is manufactured. See, e.g., National Center for State Courts, A Preliminary Examination of Available Civil and Criminal Trend Data in State Trial Courts for 1978, 1981 and 1984 (April 1986); "Focusing on the Facts of the Insurance Crisis," a Report to the House Subcommittee on Economic Stabilization, by Phillip J. Hermann, Chairman of the Board, Jury Verdict Research, Inc., August 6, 1986 (JVR studies "do not support any claim of recently escalating jury awards").

The true cause of the recent insurance crisis, and a similar crisis in 1975-76, is the cyclicity of the insurance industry. Insurance rates rose dramatically in 1985-86, just as they did in 1976-77, because the insurance industry's rate of return bottomed out at about 3% in 1984 just as it had in 1975.

1/

121 N. Payne Street
Alexandria, Virginia 22314
(703) 549-8050

Explanations for the cycle vary. The most frequently cited is that the profitability of the industry tracks interest rates. When interest rates are high insurers earn high returns on the premiums they collect, their profitability rises and they begin cutting prices; when interest rates are low they earn low returns on their premiums, their profitability falls and they must raise prices. 2/ Other factors also contribute to the insurance cycle: the inelastic nature of demand for insurance; statutory barriers to entry (e.g., laws prohibiting banks from entering the insurance industry); fluctuations in exchange rates, which substantially affect the supply of reinsurance -- insurance for insurance companies -- since the reinsurance market is dominated by foreign firms; and stock prices, since although most property/casualty insurance company funds are in bonds, about 20% is in common stocks. 3/

More important than all factors but the fluctuation in interest rates, however, is the insurance industry's exemption from the antitrust laws under the McCarran-Ferguson Act. The relationship between the antitrust exemption and the insurance cycle is explained in the answer to Question 2.

Question 2. Is the insurance crisis particularly related to the insurance industry's exemption from the federal antitrust laws or federal regulation in general?

Answer 2. The insurance crisis is related to the insurance industry's exemption from the antitrust laws.

First, the antitrust exemption allows insurance companies to suddenly and dramatically raise rates in concert at the bottom of each cycle. For example, in January 1985, the Insurance Services Office apparently decided that the price-cutting of the last few years had gone far enough: ISO President Dan McNamara called a joint industry conference with the Insurance Information Institute, the industry's public relations arm, at which he emphasized that "the need for significant premium increases, especially for commercial lines, is absolute for the next three years." 4/ Then, in May 1985, ISO distributed throughout the industry a major position paper, entitled "1985: A Critical Year," which proclaimed that "the brutal price war of the last six years is over," and that "significant premium increases are needed, especially for the current commercial lines products." 5/ And the next month William O. Bailey, President of Aetna, the nation's third largest commercial liability insurer, told the National Association of Insurance Brokers that "Clearly another round of price increases is absolutely necessary for the business." 6/ Then suddenly, in the summer of 1985, insurance companies that only a few months earlier had been competing on price and ignoring the ISO "advisory" rate were tripling and quadrupling their premiums, returning to the ISO rate. 7/

Because the courts have consistently prohibited trade associations from circulating "suggested" price lists, even if the list serves only as a guide or starting point for price determination, ISO could probably not issue an advisory rate absent antitrust immunity. See Northern California Pharmaceutical Ass'n v. U.S., 306 F.2d 379 (9th Cir. 1962), cert. denied., 371 U.S. 862; Plymouth Dealers Ass'n of Northern California v. U.S. 279 F.2d 379 (9th Cir. 1969); U.S. v. Nationwide Trailer Rental System, Inc., 156 F. Supp. 800 (D. Kan. 1957), aff'd per curiam, 355 U.S. 10 (1957); Esco Corp. v. U.S., 340 F.2d 1000 (9th Cir. 1965); Dept. of Justice, The Pricing and Marketing of Insurance 167-70 (1977). And absent antitrust immunity, ISO and insurance company executives would certainly be less likely to urge other insurance executives to raise their prices.

Second, the antitrust exemption encourages pricing below cost when interest rates are high. It is the knowledge on the part of insurance companies that, because of McCarran-Ferguson, they can get together, call a halt to price-cutting and suddenly raise their prices in concert to excessive price levels that permits their price cutting to go so far. Because of McCarran-Ferguson, they can get back in one year what they gave away in six.

The children's game of tag provides an instructive analogy. The McCarran-protected rate bureau rate functions as "home base" functions in tag. Insurers, during the competitive phase of the cycle, can ignore the bureau rate and seek market share by cutting price. The price-cuts are deeper and the duration of the price-cutting longer than would be the case in the free market because the price-cutters know that they can always return to the home base of the bureau rate. Because the bureau rate is set at a level at which the least efficient bureau member is profitable, the bureau rate will allow most insurers to earn excess profits. These excess profits attract capital, which sets the stage for the price-cutting to begin again.

If insurance companies competed in a free market subject to the antitrust laws, they would not be able to suddenly call a halt to price-cutting and to sharply raise their prices in concert. Moreover, the knowledge that they could not raise prices in concert after "cashflow" underwriting would prevent them from engaging in such underwriting in the first place, and force them to carefully evaluate risks at all points on the cycle. Because interest rates will continue to fluctuate and demand for insurance will remain relatively inelastic, the insurance cycle will not completely disappear if McCarran antitrust immunity is eliminated. But eliminating that immunity will smooth out the cycle, and should therefore put an end to the insurance "crises" that recur every nine years or so.

Question 3. A number of experts, including those who participated in both the 1977 and 1979 Justice Department studies, have concluded that this industry is competitively

structured, even if individual companies do not behave competitively in the context of the industry's regulatory environment. Why is repeal of McCarran-Ferguson so critical to enhanced competitiveness in the industry? Wouldn't it be enough if the states enacted tougher unfair trade or antitrust laws applicable to the industry?

Answer 3. Repeal of McCarran-Ferguson antitrust immunity is critical to enhanced competitiveness because it is the antitrust immunity which allows the competitively structured insurance industry to perform in an anticompetitive manner, as explained in the answer to question 2.

The states have not applied state antitrust laws to the insurance industry and in general have not enacted tough unfair trade laws that are applicable to the insurance industry. Moreover, as was evident from the testimony of the West Virginia Attorney-General, individual states simply do not have the resources to prosecute the insurance industry under "little FTC Acts" or "little Sherman Acts" even if they did apply to the insurance industry. As New Jersey Insurance Commissioner Ken Merin has put it, the states are simply "outmanned and outgunned" by the insurance industry. 8/ There are also those who argue, including the U.S. General Accounting Office, that state insurance commissioners often do not have what the GAO called an "arms-length relationship" with the insurance industry. 9/

Question 4. The consumer groups have testified that they favor the repeal of the exemption from the federal antitrust laws that the insurance industry enjoys under McCarran-Ferguson. However, such legislative action has often been linked with proposals for increased federal regulation of the insurance industry -- ideas such as the establishment of a federal insurance agency to review state regulation. That is a much more complicated position. Is such regulation necessary if McCarran-Ferguson is repealed?

Answer 4. No. We support repeal of the antitrust exemption for the insurance industry contained in the McCarran-Ferguson Act and the maintenance and strengthening of the national commitment to state regulation of the insurance industry.

We applaud Senator Metzenbaum's public statement that he will amend S. 80 so that it would repeal only the anti-trust exemption while maintaining and strengthening state regulation. The debate must focus on the appropriate question -- do insurance companies need to be able to fix prices? -- rather than the red herring of state versus federal regulation. With the elimination of the antitrust exemption, states could choose to deregulate and would be assured that deregulation would not lead to anticompetitive behavior. On the other hand, states that chose to regulate prices would remain free to do so, under the state action doctrine.

Question 5. Would it be logical to subject insurance companies to liability under federal antitrust law without comprehensive federal regulation of the industry as a whole?

Answer 5. Yes. State-chartered banks, for example, are subject to antitrust law but are not federally regulated.

Question 6. The insurance industry argues that restricting or repealing McCarran-Ferguson would lead to great uncertainty as to what kinds of collective activities would be permissible. For example, what kinds of data would companies be able to share, or would they be able to do this at all? Would they be able to pool risks and establish joint ventures to obtain reinsurance? Aren't these legitimate concerns? How would you propose to establish some legal certainty without years of litigation?

Answer 6. The antitrust laws do not prohibit the pooling of past cost data. To the contrary, the cases clearly establish that the exchange of past cost data is lawful as long as the data are compiled and disseminated in composite form, deal exclusively with past and closed transactions, and are widely published and readily available to consumers. Maple Flooring Ass'n v. U.S., 268 U.S. 563 at 573-74, 586 (1925); U.S. v. FMC Corp., 317 F. Supp. 443, 446 (E.D. Pa. 1970); Department of Justice, The Pricing and Marketing of Insurance at 102, 116-17.

In contrast, the pooling of future pricing data clearly is prohibited by the antitrust laws.

The legality of the pooling of risks and the establishment of joint ventures to obtain reinsurance would be governed by the rule of reason. For example, an agreement among the only three insurers writing a line of business to pool that business would not normally be pro-competitive and thus would not pass muster under the rule of reason. On the other hand, a pooling agreement among several small insurers attempting to enter that same three-firm market would normally be pro-competitive, and thus legal under the rule of reason.

To the extent that insurers truly believe that the rule of reason gives them insufficient guidance as to which activities are lawful and which unlawful, Congress could write carefully drafted standards codifying the rule of reason into the law, as it did with the limited immunity for research and development joint ventures enacted in the 98th Congress.

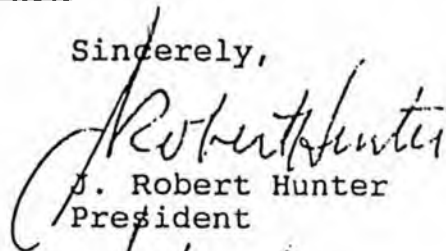
Question 7. If the Judiciary Committee were to act on this kind of legislation, wouldn't we be wiser to consider a more limited and well-defined immunity from the antitrust laws than an outright repeal of McCarran-Ferguson? Wouldn't the uncertainty that might otherwise be created actually harm consumers and make at least some kinds of insurance even harder and more expensive to obtain?

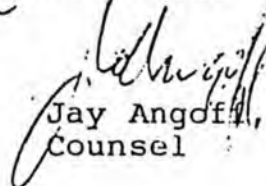
Answer 7. We support, and believe the Judiciary Committee should support, a repeal of the antitrust immunity granted by the McCarran-Ferguson Act rather than a repeal of the entire McCarran-Ferguson Act. To the extent Congress is concerned that repealing the antitrust exemption would create uncertainty that would harm consumers, Congress could write specific standards into the law. (We fail to see, however, how subjecting the insurance industry to the antitrust laws could harm consumers. We are certain that the current situation harms consumers by protecting inefficient anti-competitive behavior which costs consumers billions of dollars in inefficiencies.)

Question 8. What kinds of exceptions would consumer groups be willing to support?

Answer 8. While we do not believe that exceptions are necessary, neither do we believe that expressly permitting insurance companies to jointly collect, compile and disseminate past cost data is harmful. In addition, we believe Congress should give the insurance industry every opportunity to make its case that additional exemptions are needed, and we would welcome the opportunity to discuss with your Committee and the industry the need for any specific exemptions for which your Committee felt the industry had made a prima facie case.

Sincerely,


J. Robert Hunter
President


Jay Angoff,
Counsel

FOOTNOTES

1/ Insurance Information Institute, Insurance Facts: 1986-87 Property/Casualty Fact Book, at 22; Insurance Information Institute, Insurance Facts: 1982-83 Edition, at 19.

2/ E. G., "Insurers Must Take Part of the Rap," Business Week, March 10, 1986.

3/ Insurance Information Institute, Insurance Facts: 1986-87 Property/Casualty Fact Book, at 23.

4/ Business Insurance, Feb. 4, 1986, at 16.

5/ ISO and NAII, "1985: A Critical Year," at 5.

6/ Business Insurance, June 10, 1985 at 3.

7/ National Underwriter, Sept. 6, 1985, at 8, 82 ("The quick reversal in underwriting standards has been shocking What has occurred is a return to the basic ISO rating subject to a minimum 20 percent surcharge.")

8/ Journal of Commerce, July 8, 1986, at 1.

9/ See U. S. General Accounting Office, Issues and Needed Improvements in State Regulation of the Insurance Business (Oct. 1979).

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Nat'l-G-

Summer Meeting
Seattle, Washington
June 9-12, 1986

5 APR 1987

I.

REPEALING THE INSURANCE INDUSTRY'S
EXEMPTION FROM THE ANTITRUST LAWS

WHEREAS, The Sherman Act, the Clayton Act, and decisional law prescribe the appropriate standards of conduct for competing businesses and for individual firms acquiring and exercising market power in the United States; and

WHEREAS, those laws prohibit activities in restraint of trade that have repeatedly been shown to be harmful to the economy and injurious to consumers; and

WHEREAS, in 1944, the Supreme Court determined, in United States v. South-Eastern Underwriters Association, 322 U.S. 533, that the business of insurance constitutes commerce within the scope of the antitrust laws; and

WHEREAS, in 1945, Congress, apprehensive about the effect of South-Eastern Underwriters on the powers of states to tax and regulate insurance, adopted the McCarran-Ferguson Act (15 U.S.C. sections 1011-1015), granting the insurance industry broad exemption from most provisions of the Sherman and Clayton Acts, including the proscriptions against such anticompetitive practices as price-fixing, agreements not to compete, monopolization, mergers of dominant firms, tying agreements, and a wide range of other conduct that is unlawful for nearly every firm outside the insurance industry; and

WHEREAS, subsequent developments in antitrust law, particularly evolution of the state-action doctrine, have made it clear that nothing in the Sherman and Clayton Acts would hinder the exercise of traditional state powers of taxation and regulation, including price-regulation, making the antitrust immunity of the McCarran-Ferguson Act unnecessary for the purposes that originally motivated Congress to enact it; and

WHEREAS, it is also clear that nothing in the antitrust laws prohibits insurers from sharing information on losses in order to price their product, or from engaging in reinsurance and other risk-sharing arrangements common to the industry, making the antitrust immunity of the McCarran-Ferguson Act unnecessary to the legitimate needs of the insurance industry; and

WHEREAS, the insurance industry is critical to the national economy, with Americans paying over \$140 billion per year in premiums on property/casualty insurance alone, and with insurance being a necessity for many enterprises; and

WHEREAS, serious questions have been raised about the current crisis in liability insurance and whether it may have been fostered by the industry's antitrust exemption;

NOW, THEREFORE, BE IT RESOLVED, that the National Association of Attorneys General, reaffirming its commitment to the historic right of the states to regulate and to tax insurance and its commitment to the importance of the antitrust laws to free and competitive markets, urges the Congress of the United States to repeal the special immunity from the antitrust laws granted to the insurance industry and to subject insurance companies to the rules of the competitive marketplace applicable to other firms; and

BE IT FURTHER RESOLVED, that the Association authorizes its Executive Director and General Counsel to make these views known to the Congress, the Administration, and other interested parties.

CITIZENS COALITION FOR TORT REFORM

907-561-6250

March 24, 1987

Representative Jim Zawacki
PO Box V
Juneau, Alaska 99811

Representative Zawacki,

This is to confirm our request that you cause to have introduced a House Joint Resolution in support of efforts by Congress to amend the McCarran-Ferguson Act, which exempts the insurance industry from federal antitrust laws.

As we have discussed not only have the past three Presidents of the United States supported such amendments, but a host of national organizations have recently passed resolutions supporting this action. The National Conference of State legislatures and the National Association of Attorneys General are just two examples of national groups that support amendment of the law.

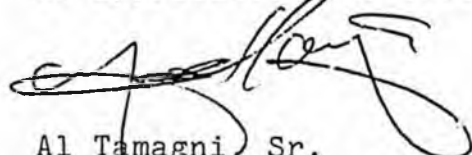
Two concerns have been raised by the insurance industry that must be addressed in the body of a resolution.

1. Individual states must be able to continue their regulatory role of the industry.
2. The insurance industry must still be allowed to exchange past cost data and allow accurate forecasting of future claims.

Additional information on the efforts in Washington, D.C. will be forwarded to you upon receipt, including a new Senate bill that specifies the amendments, that is now in final draft.

We believe the insurance industry, except for the two exceptions we have noted, should be subject to the same laws as other businesses. We believe the insurance consumer and all consumers will benefit from this action and that there will be greater competition in the industry.

We appreciate your efforts in this area of reform.



Al Tamagni, Sr.
Chairman of the Board

The Informer

Citizens Coalition for Tort Reform

Weekly Update

April 10, 1987

RESOLUTION CALLS FOR AMENDMENTS TO FEDERAL ANTITRUST LAW

HOUSE JOINT RESOLUTION 25

Bipartisan group sponsors reform of federal regulation of insurance industry

HJR 25 was introduced by a bipartisan group of House members concerned with insurance reform. Representatives Zawacki, Navarre, Gruenberg, Martin, Shultz and Taylor introduced HJR 25 at the request of the Coalition.

The intent of HJR 25 is to support efforts in Congress to amend the McCarran-Ferguson Act (1945) which exempts the insurance industry from federal antitrust laws.

Two objections have been raised by the insurance industry to this Joint Resolution, they are:

1. Support of HJR 25 to repeal or amend the McCarran-Ferguson Act would remove or subordinate the primacy of states regulatory roll over the insurance industry.

Not so. HJR 25 has been specifically drafted to address this concern. Already the Senate Antitrust Committee in Washington, D.C. has made it clear that there is no intent to alter the primacy of state regulatory authority over the industry. Senator Howard Metzenbaum, the original sponsor of the federal legislation has testified that his intent was not to alter state regulatory primacy and has asked the committee to adjust the original bill to ensure that this is clear. Support for HJR 25 does not alter the primacy of state regulatory authority.

2. Repeal of the antitrust exemption will restrict information pooling that assists the industry in accurately estimating how much they are likely to pay out in the future.

Again, Not so. HJR 25 specifically recognizes the need for the industry to pool and analyze the past claims they have paid - the more claims they can analyze the more accurate their estimates of future payouts will be.

Why is the Coalition calling for repeal of the antitrust exemption and support of House Joint Resolution 25?

Last year, during debate on tort reform legislation, the issue of the McCarran-Ferguson exemption from antitrust was raised by the opposition. The Coalition has reviewed this issue closely and determined that it is in the consumers best interest to repeal this special privilege to the insurance industry. The Coalition found strong bipartisan support for amendment to the McCarran-Ferguson act and that the position of the insurance industry to retain this exemption was not logical or in the best interests of the consumer.

The Coalition has extensive materials in support of and in opposition to the proposed amendment of the McCarran-Ferguson Act. This information, including copies of resolutions by the NFIB, The National Conference of State Legislatures, The National Association of Attorneys General and statements by the Chairman of the Federal Trade Commission, is available upon request. Just call the Executive Director at 561-6250.

907-561-6250

P.O. Box 201668 • Anchorage, Alaska 99520