SB
211

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: SB 211
Publish Date:

Revision Date:
Title: An act relating to civil liability.
Sponsor: Faiks
Requestor: Senate Judiciary

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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:

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact,

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System
Phone: 264-8228
Date: 4-23-87

Stephanie J. Cole
Approved by: Stephanie J. Cole, Deputy Director
Agency: Alaska Court System
Date: 4-23-87

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

Alaska State Legislature

MAR 31 1987

PRESIDENT

907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

March 30, 1987

Beth
tort file
Bill

MEMORANDUM

TO: Senator Jay Kerttula, Chairman
Senate Judiciary Committee

FROM: Senator Jan Faiks
President of the Senate

Jan

SUBJECT: Background on Senate Bill 211
An Act relating to civil liability; and
amending Alaska Rule of Civil Procedure 82

Senate Bill 211 has been referred to your committee for consideration. The purpose of this bill is to improve the tort liability system in Alaska.

Specifically, this bill proposes the following:

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; SB 211 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. SB 211 provides that fraud, malice, gross negligence, or reckless misconduct 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 incurred while the person was engaged in the commission of a crime.

The present statute is limited to those persons who commit and are convicted of a felony which substantially contributes to the injury or death.

SB 211 replaces "felony" with "crime", and eliminates the requirement of substantial contribution to the injury or death. This has the additional effect of precluding persons convicted of a misdemeanor from recovering damages for personal injury or death if that crime contributed to the injury or death.

Section 4. 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 5. 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 6. COLLATERAL BENEFITS. Repeals and reenacts AS 09.17.070, replacing it with the language found in present statute AS 09.55.548(b) relating to collateral sources in malpractice actions.

This section of SB 211 provides that a person may only recover damages that exceed amounts that he/she has already received by a collateral source, whether it be a private, group, or governmental source, either contributory or noncontributory. The only exceptions are where the collateral source is from a federal program that by law 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 7. APPORTIONMENT OF DAMAGES. Amends AS 09.17.080(d) by eliminating the theory of joint and several liability and replacing it with 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.

SB 211 has the effect of making each party liable for only that percentage of fault which has been allocated to that party.

Section 8. DEFINITIONS. Amends AS 09.17.900 by adding new definitions for "economic losses" and "noneconomic losses".

Section 9. 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. 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 10. SECTIONS REPEALED BY THIS BILL.

1) By eliminating the concept of joint and several liability, SB 211 effectively repeals AS 09.16, relating to Contribution Among Joint Tortfeasors.

That chapter provides for a right of contribution among joint tortfeasors, even though judgment has not been recovered against all or any of them. Such a right exists only in favor of a tortfeasor who has paid more than that tortfeasor's pro rata share of the common liability.

Since SB 211 establishes several liability, each tortfeasor is only liable for that amount of fault that has been allocated to him, so there is no longer a need for the contribution provisions of AS 09.16.

2) AS 09.17.010(c) would also be repealed, as the new provision for noneconomic damages in Section 1 of SB 211 applies equally to all injuries.

Under the present statue, damages for disfigurement and severe physical impairment are excluded from the limit on noneconomic damages.

3) SB 211 repeals AS 09.17.040(c), which allows parties to agree to compute the award of future damages under the rule adopted in the case of 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 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.

Damage awards under SB 211 shall follow the provisions set out in AS 09.17.040(b).

4) As 09.55.548(b) is repealed by SB 211, since the language contained in that statute is incorporated in Section 6 of the bill. That section relates to collateral benefits. It would be repetitive to have this language in two sections of the same chapter, thus, it is repealed.

Section 11. ATTORNEYS FEES. AS 09.60.010, as amended by this bill, has the effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of attorney fees to the prevailing party in certain civil actions based on fault, unless allowed by statute or by agreement of the parties.

Section 12. This Act applies to all causes of action which accrue after the effective date.

Section 13. This Act takes effect immediately under AS 01.10 070(c), which provides that a statute will take effect the day after it is signed by the governor, or the day after the governor's veto is overridden, or the day after expiration of the period allowed for gubernatorial action by article II, section 17 of the Alaska Constitution.

As a further suggestion, I would ask that the committee consider the attached amendment relating to civil liability of zoos and zoo operators.

This amendment would prohibit persons from recovering damages for injuries incurred as a result of an inherent risk of attendance at a zoo, provided that notice of the inherent risk was posted, and the zoo operator exercised reasonable care to prevent the injury.

I would appreciate the committee's consideration of the legislation at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

Steven Pradell
941 West 16th Street
Anchorage, Alaska 99501

April 3, 1987

Senator Jalmar M. Kerttula
Post Office Box V
Juneau, Alaska 99811

APR 1987

Dear Senator Kerttula:

Eleven senators have co-sponsored a bill which drastically reduces the ability of Alaskans to recover for their injuries. Imagine if the breadwinner in your family became a quadrapalegic due to a drunk driver, or your child was negligently turned into a vegetable. Under Senate Bill 211, no jury can ever award more than $100,000 for constant pain and suffering. That's less than $4.00 per day for the rest of your baby's life.

The Wall Street Journal reported on March 24, 1987 that the insurance industry had a record net income in 1986 of $12.7 billion. There's no "insurance crisis" this year! In Florida, the only state where such detailed disclosure of insurance company financial information is required, both Aetna and St. Paul reported that "tort reform" bills had no effect on the cost of premiums. Insurance companies are not losing money because of high verdicts, for verdicts have not gone down after last year's reforms. These profits are proof of an insurance cycle, a result of interest rates insurance companies earn on their investments. The only effect of Bill 211 would be to limit victims' rights.

This should be the era of "insurance reform." This bill must be opposed, or tomorrow the injured victims will find the doors of justice locked. Please vote against Senate Bill 211. Otherwise, when you're negligently injured, no jury will be allowed to give you what your damages are worth. That job is best left to the jury, not the insurance industry.

Sincerely,

Steven Pradell

Steven Pradell

Alaska Women's Political Caucus

APR 10 1987

RESOLUTION NO. 87 - 01

ENTITLED: IN OPPOSITION TO SB 211

WHEREAS, the bill known as SB 211 proposes to limit the right of innocent victims to seek fair compensation for their injuries through the civil justice system, and

WHEREAS, this bill seeks to place a cap on so-called "non-economic damages" even lower than the one that now exists, and

WHEREAS, traditional non-wage earners such as women, children and senior citizens have no measurable "economic" value, and

WHEREAS, caps on non-economic damages, therefore, discriminate against women, children and senior citizens, and

WHEREAS, these caps only affect the most seriously injured victims, who have the most urgent need to be compensated, and

WHEREAS, injuries resulting in infertility or disfigurement cannot be measured in strictly economic terms, and

WHEREAS, SB 211 would make it almost impossible to punish corporations who knowingly continue to manufacture products which they know are unsafe (like the Dalkon Shield, asbestos, Ford Pintos), and

WHEREAS, passage of this bill would remove a powerful economic incentive for companies to manufacture safe products, and

WHEREAS, SB 211 would allow insurance companies, at their request, to compensate victims in periodic payments rather than in a lump sum, and

WHEREAS, these periodic payments would allow insurance companies to continue earning interest on money that might be better invested by the injured person, and

WHEREAS, insurance company profits nationwide are already up more than 650% over the previous year, and

WHEREAS, when legislation of this type has passed in other states, there has been virtually no impact on insurance rates paid by consumers, and

WHEREAS, the Alaska legislature has already limited victims' rights through passage of a tort "reform" bill last session, now, therefore, be it

RESOLVED: that the Alaska Women's Political Caucus (AWPC) urges all members of the Alaska State Legislature to abandon the attempt to further restrict victims' rights, as embodied in SB 211, and

BE IT FURTHER

RESOLVED: that the legislature spend its time, instead, looking into various types of Insurance Reform, which might result in reduced insurance rates for consumers.

Adopted this 6th day of April, 1987, by unanimous consent of members present at the monthly meeting of the general membership of the Alaska Women's Political Caucus, in Anchorage, Alaska.

P.O. Box 1571
Anchorage, Alaska
99510

Blue Cross
of Washington and Alaska

recv'D
4/13
Sen Jud.

3111 C Street, Suite 100
P.O. Box 10-2480
Anchorage, Alaska 99510-2480
(907) 561-5065

April 12, 1987

The Honorable Jalmar M. Kerttula
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

Blue Cross of Washington and Alaska is concerned about Section 6 on pages 2 and 3 of SB-211 that repeals and reenacts AS 09.17.070. This language would eliminate our ability to collect subrogation amounts, and I suggest its removal in the interest of cost containment.

Blue Cross of Washington and Alaska's inability to collect subrogation amounts will reflect unfavorably on premiumscharged our subscribers. Subrogation adjustment permits a more accurate experience level to be used in calculating premium. Total premium depends on experience.

In 1985, Blue Cross of Washington and Alaska's Alaska subrogation collection was $ 229,550, in 1986, $ 244,093 and to April 1, 1987, $ 41,277. In addition, we have subrogation actions to the sum of nearly $ 1,000,000. I believe these numbers demonstrate the benefit subrogation can have on premium.

I ask the consideration of the committee in removing the prohibition against subrogation. Subrogation is a very real cost containment measure and the beneficiary is the subscriber, not the health benefits carrier or the providers.

I am attaching an amendment for your consideration, and recommend its adoption. The amendment has been discussed with Mr. Evans, representative of the Health Insurance Association of America, who concurs with its content.

Your assistance will be appreciated.

Respectfully Submitted,

Martin E. Tirador

Martin E. Tirador,
Senior Representative, Corporate Relations

cc: Ric Davidge, Executive Director,
Citizens Coalition for Tort Reform.

Blue Cross
of Washington and Alaska

3111 C Street, Suite 100
P.O. Box 10-2480
Anchorage, Alaska 99510-2480
(907) 561-5065

Amendment No. _________ to SB 211

Page 2, Lines 21-29, and page 3, lines 1 and 2, repeal and reenact wording of the first two sentences to read:

Section 09.17.070. COLLATERAL BENEFITS. Except when the collateral source is (1) a federal program that by law must seek subrogation, (2) death benefits paid under life insurance, or (3) health care benefits paid under disability insurance or a medical or hospital service agreement, a person may only recover damages that exceed amounts received by that person as compensation for the injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than those listed in (1), (2) or (3) above, shall be considered by the trier of fact in determining the amount of an award, and shall be considered by the court in determining if an award is excessive.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 211
Publish Date:

REQUEST

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

Agency Affected:
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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	(306.0)	(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	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
TOTAL	0.0	(306.0)	(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 claims 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: April 14, 1987

Approved by Commissioner: Garrey Peska
Agency: Department of Administration
Date: 4/16/87

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

Rev. 9/16/86

8/9K1/0407-10 V1

FISCAL NOTE ANALYSIS
FOR SB 211

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

YEAR OF SAVING	YEAR OF OCCURRENCE 1987	1988	1989	1990	1991	1992	TOTAL
FY 87	-0-						
FY 88		306.0					306.0
FY 89		274.0	384.0				658.0
FY 90		360.0	342.0	480.0			1,182.0
FY 91		336.0	448.0	428.0	600.0		1,812.0
FY 92		252.0	420.0	558.0	534.0	750.0	2,514.0
FY 93			316.0	526.0	698.0	668.0	
FY 94				394.0	656.0	872.0	
FY 95					492.0	820.0	
FY 96						616.0	
Future		874.0	1,092.0	1,366.0	1,706.0	2,132.0	
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%

Charles Aarons, M.D.
Box 228
Dillingham, Alaska 99576
(907) 842-5459

April 21, 1987

Dear Senators,

I am writing you to support SB 211. I would come to Juneau to testify before your committee but due to plane schedules it would require 2½ days which I cannot spare due to prior family commitments and work.

I have been working in Dillingham as an MD for almost 9 years. I was a commissioned officer in the PHS for 4 years and was stationed at Kanakanak Hospital (in Dillingham) from 1978 to 1982. In 1980 the Bristol Bay Area Health Corporation (BBAHC) assumed control of the hospital and presently manages it under contract from IHS. I went into private practice in fall 1982. I presently see about 4000 outpatients a year, about half of whom are Native and half non-Native. I do not receive any contract monies from the State, IHS, or BBAHC. The BBAHC clinic sees about 8000 outpatients a year plus about 4000 more in field visits, specialty clinics and pharmacy and xray visits generated by myself. Therefore, I feel that my practice is a significant component of the Bristol Bay health care picture.

When I started private practice malpractice insurance for family practice type doctors doing obstetrics (OB) was only \$2000-\$3000 per year. Since then it has skyrocketed to the \$30000-\$80000 range depending on coverage limits and insurance companies. Because of this I was forced to drop OB 2 years ago. The limited amount of deliveries that I was doing here (about 25% of the total) simply could not carry the high premiums. Now, not doing OB, insurance premiums have risen again. Depending on company and coverage limits, malpractice insurance for not doing OB is in the \$8000-\$13000 range. This represents about 15% of my takehome income and is double last year. In my opinion, with the high percentage of my practice that is either uninsured or on Medicare or Medicaid (whose reimbursements are fixed), my patient population will be unable to finance continuously and rapidly rising malpractice premiums.

The hospital here, administered by BBAHC, has had a provision in its bylaws requiring admitting physicians to have malpractice insurance. BBAHC is not covered by the Federal Tort Act or sovereign immunity and itself pays \$338,000 per year for \$1,000,000 coverage! Obviously, only an organization that is heavily subsidized can afford such high rates in such a small community. You are probably aware that the 2 large hospitals in Anchorage and several small rural hospitals do not require admitting MDs to carry malpractice insurance. In fact, the short term solution to the "affordability crisis" in Homer, Seward, Valdez, Cordova, Petersburg and Wrangell has been for all the MDs to "go bare". This is actually not terribly risky in these small communities, and I feel it would be not too risky for me.

However, BBAHC feels that it cannot afford the small increase in liability caused by a "bare" physician on its staff. I have been told by the administration of the corporation that this is an internal decision, and they are aware that neither IHS nor MICA (their insurance carrier) require me to carry insurance. I have also been told that if the "modified joint & several" liability doctrine were changed to pure "several" liability, I would have found no objection to "going bare".

Charles Aarons, M.D.
Box 228
Dillingham, Alaska 99576
(907) 842-5459

At this point some of you may be thinking that I have a political problem with BBAHC. This is certainly true, but let me assure you that my day-to-day relations with doctors, nurses and other hospital staff have been exemplary. In brief, I feel I am dealing with some administrative people who are trying to protect their organization from even a minimal increase in liability, although they are being very short sighted and are ignoring the obvious public interest in keeping a long-term physician in the community.

Finally, let me state that if I am forced to give up admitting privileges to the local hospital, I will be forced to leave the area. I do not feel that a physician can do justice to his patients if he cannot have free access to all the local resources available to him. Therefore, in the short term this issue of "several" liability addressed in SB 211 is a make-or-break issue as far as my medical practice in Dillingham is concerned. In my admittedly subjective opinion, I feel that my exit from the local health scene would be a great loss to the region. Furthermore, in the long view, with massive Federal deficits and dropping State revenues, the funding of public-health type enterprises such as BBAHC will suffer. All one has to do is look at the remote communities of Western Alaska and count the number of private medical practitioners (2 total west of the Alaska Range) to realize that it will be very difficult to attract MDs to such areas in the future. If IHS funds drop off these areas will be left without doctors.

Sincerely,

Charles Aarons

Charles Aarons MD

Health Corp. won't help —

Insurance rates may force doctor to close practice

by Bruce Baltar
BayTimes Staff

Local doctor Charles Aarons announced this week that he will quit practicing medicine locally unless medical malpractice insurance rates fall or the Bristol Bay Area Health Corporation changes its policy regarding his malpractice coverage.

"The cost has gone up about 200 to 300 percent in the last two years," Aarons said. "What I was paying $2,000 for two years ago now runs $8-10,000 a year."

Aarons, who gave up delivering babies more than a year ago when obstetric malpractice insurance rates soared to $40-50,000 per year, says that he can no longer afford even basic coverage for his general practice.

And while he is willing to "go bare," BBAHC will not grant him admitting privileges at Kanakanak Hospital unless he buys insurance.

"I may be forced to leave the area as a result since I do not feel that I can adequately practice medicine when I don't have access to the sole health care facility in the area," Aarons said.

He has asked BBAHC to pay all or part of his insurance premiums if it wants him covered, but so far the hospital administration has refused.

Part of the problem, as both Aarons and Kanakanak Hospital administrator Bob Appel explain, is that the the Medical Indemnity Corporation of Alaska (MICA) has tried to require hospitals to make all private doctors with admission privileges buy their own insurance as a condition for insuring the hospital. MICA is the primary medical malpractice insurer in the state.

Appel notes that malpractice insurance is a "crisis nationwide" and says that it's "kind of a Catch-22; you can't afford malpractice and you can't afford not to have it." BBAHC's insurance package costs more than $300,000 per year for $1,000,000 in coverage.

In regard to Aarons' situation, Appel says the hospital would suffer increased exposure to liability if it allowed Aarons to go uninsured and that the policy requiring physicians with admitting privileges at Kanakanak to be insured has always been part of the hospital by-laws.

But Aarons says that BBAHC is making the problem worse.

"I have been told that in very short order the Health Corp. will be establishing policy requirements in terms of dollar coverage which are higher than what I've been carrying," he says. The result will be to raise his premiums to $12,000 a year, he adds.

And Aarons also says that MICA will not require that he have his own insurance so long as the hospital pays a surcharge equal to 25 percent of what he would have to pay buy his own coverage. The cost to the hospital would be a few thousand a year.

Aarons would still be uninsured under the surcharge option, but the hospital would be insured against the additional liability exposure it faces by letting him practice there.

When asked hypothetically if the hospital

See DOC, page 2

DOC

from page 1

would go along with the surcharge option if Aarons paid for it, Appel said that he had only heard of the option from Aarons, and asked, "What benefit do we derive from it?"

"We pay malpractice insurance for our own physicians," Appel notes. "It seems to me only appropriate that Dr. Aarons provide his own malpractice coverage.

"The logic of our paying his malpractice coverage escapes me."

Aarons finds that logic partially in the fact that his malpractice premiums would be "a miniscule addition" to the Health Corp's existing premiums, much less its operating budget.

He also points to BBAHC's own charter, which he says establishes the goal of "furthering the health care of the Bristol Bay area."

"It's always good to have a diversity of health care options availible," Aarons says. "A little competition is good for the system.

"There is nothing in (BBAHC's) charter to say that it all has to be under the corporate framework," Aaron says. "But it appears that that corporate framework is indeed squeezing out any other health providers in the area."

Law Offices of

Warren C. Christianson

315 Seward or Box 798

Sitka, Alaska 99835-7524

747-5533

XXX-XXX-X681
XXXX-XXX-XXX2

APR 16 1987

Betts
pw Forgette
info Bocher

April 15, 1987

Senator Jay Kerttula
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Mail Stop 3100

Dear Senator Kerttula:

I am writing this letter in opposition to Senate Bill 211. It seems to me that this bill represents another case of the insurance companies taking a crack at the attorneys ~~and blaming the attorneys for some of the large awards.~~ I well realize that some reform is necessary which was amply taken care of the last session.

With regard to Senate Bill 211, I particularly object to Item B limiting the award of non-economic damages to $100,000 from the present limit of $500,000. I am thinking of a situation where small children are deprived of a mother or small children and a wife deprived of a father. There is no way that one can claim that the non-economic damages of lack of love and emotional security with accompanying psychological damage would not exceed $100,000 in such an instance.

At this point, I should say that the Sitka Bar Association has appointed another person to write letters concerning our objection to the passage of this bill; even though I am President of the Sitka Bar, I am writing this letter strictly on my own and expressing my own feelings.

I don't have any particular objections to the provisions of proposed Section 09.17.020, which in my book, very closely expresses the present law in any respect.

Also, concerning Section 5 of the bill, although I have no objection to a member of a Board of Directors of an electric or telephone cooperative being exempt from ordinary

Senator Jay Kerttula
April 15, 1987
Page Two

negligence according to the provisions of that sentence, I do feel that an officer who is, in a sense, conducting active operations, should be liable.

With regard to the collateral benefits, it seems to me absolutely unfair to have a insurance company take advantage of the coverage that a person has paid on his own private life insurance. In other words, if a man had a $100,000 policy that he had paid for on his life, and the jury were to award damages of $100,000, his heirs would get nothing by reason of the wrongful death and the wrongdoer or his insurance company would in a sense get a free ride because the victim had the foresight to provide life insurance. This cannot help but have an adverse effect upon safety regulations as well. In addition, I feel periodic payments, unless agreed to by the parties, are specifically unfair. Again, what is happening is that if a person is entitled to say $200,000, he should get the interest on that money and not the insurance company.

With regard to attorney's fees, at the present time, costs are not allowed for attorney's fees unless the action is contested without trial, or if fully contested is determined by the court. It appears to me that the proposed law cuts out attorney's fees completely, which particularly in the smaller civil cases, and this must constitute at least 80% of the total, it is the award of attorney's fees that allows a small claimant to pursue his claim in court. This also allows for full preparation and better advocacy in the larger cases - which is exactly what the insurance companies are afraid of.

In a more general matter, you probably have read some of the reports of the State that has severely limited recovery in which the insurance companies either have not reduced their at all, or have done so very, very minimally.

Thank you very much for your consideration.

Very truly yours,

Warren C. Christianson

Warren C. Christianson

PS – I don't mind paying an income tax if it means ~~funding~~ funding for things like Public Radio, Day Care centers, Safe homes for women, Legal Services etc –
& NOT capital projects
— W.C.C.

WCC/sr
cc: Dick Eliason
Jim Duncan
Joe Josephson

For me to answer

APR 23 1987

April 22, 1987

Good Lady & friend

SR B 7460-A
Palmer, Alaska 99645

Beth file pocket on torts

The Honorable Senator Rick Halford
Pouch V
Juneau, Alaska 99801

Re: SB 211

Dear Senator Halford,

I am writing ~~about SB 211,~~ related to civil liability. I would like to urge you very strongly NOT to pass this bill out of the Judiciary Committee. Please allow me to share with you the reasons for my interest in this bill and the concerns I have about the changes this bill would bring about.

I am a victim of medical negligence. Six years ago, I went to see a specialist in Anchorage to check out a hearing loss. I was told that it was nerve damage, and nothing could be done. As a result of another medical concern in 1985, specialists at the University of Washington found a large tumor that had been growing in my brain for up to ten years. The removal of the tumor was a horrendous ordeal, and it left me with a permanent facial paralysis. Not only do I have distorted facial features, but I am totally deaf on the right side. A multitude of functional impairments followed, as well. Most importantly, I learned upon return to Alaska that the specialist in Anchorage had suspected a tumor, but FAILED TO TELL ME. My impairments could all have been prevented if diagnosis and treatment had occurred when I first sought help.

You can imagine that I was extremely angry at the lack of concern displayed by the Anchorage specialist. I am bringing suit for damages against this physician as a way to - partially - compensate for the way that my life has been turned upside down by his negligence. I will suffer the consequences of his lack of responsibility and be reminded of it every day, in everything I do.

I am including with my letter two articles for you information. They address the nature of the problem of "tort reform". I hope that you are aware of the facts regarding the insurance industry's claims that huge judgements against them are forcing premium rates sky high. This is a falsehood. Recent media examination of these claims have well exposed this to be a patent lie. Insurance industry profits have increased over 600% over last year, for a total of over 12 BILLION dollars!

Other articles in the Alaska Academy of Trial Lawyers publication I am sending you suggest that judgement cap legislation may be unconstitutional. I certainly feel that the decision to place a monetary value on an individual's impairment due to negligence should properly rest with a jury. The jury system is the ultimate safeguard of the idividual, and should not be abridged.

Finally, I would like to submit to you that the reason there are malpractice/negligence claims is that there are, unfortunately, persons who fail to perform responsibly. If there is a crisis, the cause of it is NOT the vicitm. If the legislature wishes to address "the problem," the appropriate direction would appear to be to put reins on the insurance industry, or to establish standards for the medical and other professions.

I have inquired about hearings on this bill, and was told that there are plans for a hearing in an upcoming Committee meeting, but that no teleconference testimony will be allowed. I believe that this proposed bill would seriously abridge the rights of the individual and should be opened for public input. I would appreciate your assistance in assuring this.

Thank you for your consideration. I hope that I was able to contribute to your understanding of this issue.

Sincerely yours,

K. Annely Germaine

K. Annely Germaine
745-6511/274-3658

SCOTT & WESLEY GERRISH MEMORIAL

MADD

ANCHORAGE, ALASKA CHAPTER

MAILING:
1100 E. Dowling Road
#130
Anchorage, Alaska 99518

OFFICE:
2205 E. Tudor Rd., Suite 38
Anchorage, Alaska 99504
(907) 561-MADD

MAY 04 1987

RESOLUTION

The Anchorage Chapter of MADD, Mothers Against Drunk Driving, is vehemently opposed to SB 211 entitled "An act relating to civil liability; amending Alaska Rule of Civil Procedure 82, and providing for an effective date." On April 30, 1987 the Chapter Board of Directors adopted the following resolution:

WHEREAS: SB 211 seeks to reduce the limit on noneconomic damages awarded by a court from $500,000 to $100,000.

WHEREAS: The limit on noneconomic damages would give little or no financial redress to the victims who are homemakers, children, or senior citizens.

WHEREAS: "Noneconomic losses" would be defined as "subjective, nonpecuniary damages" and include pain and suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, and all other nonpecuniary damages.

WHEREAS: That limit is unrealistic, unconstitutional and discriminates against the entire population of the State of Alaska.

WHEREAS: SB 211 would allow the people who injure others to request that compensation to those victims be made in payments over a period of years as opposed to a lump sum payment, even though victim's expenses may occur in a very short period of time.

WHEREAS: Such periodic payments would allow insurors to continue to earn interest on the victims' settlements.

WHEREAS: SB 211 is a step backwards for those who have fought so hard to gain rights for victims in criminal and civil court proceedings.

WHEREAS: The repeal of the provision for awarding attorney fees under Alaska Civil Rule 82 would further reduce victims' recovery in lawsuits.

SCOTT & WESLEY GERRISH
MEMORIAL

MADD

ANCHORAGE, ALASKA
CHAPTER

MAILING:
1100 E. Dowling Road
#130
Anchorage, Alaska 99518

OFFICE:
2205 E. Tudor Rd., Suite 38
Anchorage, Alaska 99504
(907) 561-MADD

BE IT THEREFORE RESOLVED: That the Anchorage Chapter of MADD adamantly opposes SB 211 as an attempt to decrease the rights of victims in favor of multibillion dollar insurance industry interests.

Be it further resolved that the 15th Session of the Alaska State Legislature should take notice of those who comprise the majority of electoral votes: Alaskan families whose members would be severely limited in compensation thru SB 211 not the highly paid "tort reform lobbyists".

ALLEN R. CHEEK
Suite 214-G
Northward Building
455 3rd Avenue
Fairbanks, AK 99701
456-8538

Allen R. Cheek
5/7/87

After the passage of tort reform legislation during the 1986 session, the Fairbanks Daily News-Miner carried an article on May 21, 1986, touting the benefits of the legislation as reported by the Tort Reform Coalition:

"Tort reformers are delighted with the bill setting limits on damage awards in liability lawsuits, but how the new legislation will affect cost and availability of insurance in still an open question.

"It was more than others had anticipated," said Gene Roguszka, vice-chairman of the Citizens Coalition for Tort Reform, ...The insurance industry told us we got a more restrictive statute than any other state was able to achieve in one session", he said.

"Roguszka stopped short of saying the bill would help skyrocketing premiums or insurance availability." 'We do not control that,' he said. 'That's a question for the insurance industry. We (tort reformers) never guaranteed lower rates.'

IF THE CIVIL JUSTICE SYSTEM WAS THE CAUSE OF THE ALLEGED INSURANCE CRISIS, AND THE TORT REFORMERS WERE ABLE TO LOBBY THROUGH SUCH EFFECTIVE LEGISLATION--WHY NO DECREASE IN INSURANCE PREMIUMS???

The answer is simple--there never was an insurance crisis--According to Donald DeMuth's report to Division of Insurance Director John George of March 17, 1986,

"Overall, in spite of all the tears that the insurance industry is shedding, it appears to me that the insurance industry is doing quite well for this line (Other liability). Unfortunately, accident year direct statistics are not available for Alaska, but I would guesstimate that if they were, they would reflect a loss ratio down around 50%."

Mr. DeMuth, the state's Chief Financial Examiner for insurance found that the top 13 insurance companies had an average "loss ratio" of 62.3%, compared to a national average for those companies of 73.4%, during 1985.

THE INSURANCE INDUSTRY REPORTED CONSOLIDATED NET INCOME AFTER TAXES OF $12.7 BILLION FOR 1986, A 665% INCREASE IN INSURANCE INDUSTRY PROFITS OVER 1985, ACCORDING TO THE INSURANCE SERVICES OFFICE AND THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, AND IF INSURANCE PROFITS ARE CALCULATED IN THE MANNER RECOMMENDED BY THE U.S. GENERAL ACCOUNTING OFFICE, (GAO) CONSUMER GROUPS CONTEND THAT INDUSTRY PROFITS ARE ACTUALLY $24.6 BILLION.

If the insurance industry is able to shirk its responsibilities to injured victims, the State of Alaska will surely have to bear the medical costs of its injured citizens, which is certainly against the wishes of the Alaskan public.

NATIONWIDE, STUDIES SHOW THAT TORT "REFORM" HAS NO IMPACT ON INSURANCE RATES. According to Aetna Life and Casualty, one of the nation's leading commercial liability insurers, which recently analyzed the impacts of Florida's tort-reform legislation: "While one limitation will reduce rates by a maximum of four-tenths of 1 percent, all other limitations will have no effect whatsoever on insurance rates."

Last year when tort reform was introduced one of the things that was supposed to happen was premiums were to go down. I have not seen this be the case. This year those pushing this bill to pass claim they are protecting victims rights. I have read and studied this bill closely and it does nothing for the victim in any way, shape or form.

The debate has shifted nation wide and the chant is now becoming INSURANCE REFORM. The Federal Trade Commission is now backing proposals that would repeal the McCarran Ferguson Act which exempts the insurance industry business from federal antitrust laws.

The insurance industry's profits after taxes for last year increased by over 600% from 1985.

The only thing that is going to reduce premiums and protect those with valid claims is REFORM OF THE INSURANCE INDUSTRY.

What I feel the insurance industry is saying to us now, is not only do we not want to pay for valid claims, we don't want you to be able to afford a lawyer to fight us, and we want 100 per cent profit.

I think we would all like a business like that.

I would like to see Alaska follow the movement nation wide to get into the movement for insurance reform and make that industry responsive to the consumers.

SB-211 does absolutely nothing for victims and injured people and will do nothing to lower premiums.

Our premiums continue to raise and there is no reason. It does not matter what business you are in, and that is what I am hearing here to day, my insurance keeps going up and I have few or no claims -- reform of the industry is the only thing that is going to bring down liability premiums -- making that industry tell us why the premiums are so high for those individuals and business with few or no claims. ~~XXXX XXXXXXXXXXXXXXXX~~ I'm in business too, and I know I could not get away with continuing to raise the cost of my services without justification, could you?

The bill that passed last year was bad enough. This adds insult to injury. What I can't understand is why even the insurance industry would want a limit of $100,000 -- can someone tell me why consumers would buy policies for a million dollars worth of liability if all they are going to be able to recover should they ever need to is "$100,000"? Or who will buy certain kinds of insurance that cover the matters addressed in SB211, if there is no recover under the policies available? If they aren't going to pay claims - who is going to need insurance?

As far as frivolous lawsuits, that's what we have a judicial system for. Maybe we need to train our judges to screen cases, but certainly tort reform is not going to rectify anything addressed in this bill.

I would like to add in closing, that I agree whole heartedly with Katie Hurley and what she attested to. I agree also with the gentleman that testified after David McGuire.

Barbara Gaston

Barbara Gaston
1825 Sheldon Avenue
Fairbanks, Alaska 99701-7348

451-8872

1

My name is Dennis W. Jeffers. I am a practicing oral & maxillofacial surgeon in the Fairbanks area and speakon behalf of the Alaska Dental Society and myself in favor of tort reform legislation on the basis of my ownpersonal experience with continued rising costs of liability insurance and thedirect effect on my ability to deliver health care to those in need. Without this insurance I could not practice aA ALL AND YET THE COSTS OF THIS INSURANCE COVERAGE CONTINUES TO BE THE MAJOR CAUSE OF FEE INCREASES in dentistry and surgery tothe point that patients are avoiding seekingtreatment because they an simply not affortd the care.

Some facts that are based on my own experience I haVE SHARED IN THE PAST AND I will reiterate once again. In 1980 the insurance premiums were $1600 and in six years the rates have risen to $57,000.00. This accounts for the entire basis of all fee increases in our practice in the past four years and the fee increases still don't cover the rate increases. It is no wonder that we read edtorials in the newspapers on a near daily basis about the rising medical and dental fees. The general public is very frustrated about this problem and only you public officials can do something about it. Iexpect it to get worse. One insurance carrier that writes for oral surgeons in particular will increase 118% this summer and this will be passed on to the patient once again. There are those that do not believe that this tort reform legislation is the answer but we feelthat it is a start in the right direction. Thank you for your time.

Dennis W. Jeffers, D.D.S.
Speaking on behalf of
Alaska Dental Society
North Central District Soc.
3691 Cameron St. #103
Fairbanks, AK 99709
479-8854

STATEMENT OF

THE ALLIANCE OF AMERICAN INSURERS

BEFORE THE

ALASKA SENATE JUDICIARY COMMITTEE

MAY 14, 1987

Mr. Chairman, members of the Senate Judiciary Committee, my name is Jim Stickles, and I represent the Alliance of American Insurers. The Alliance of American Insurers is a national trade association representing 175 insurance companies, most of whom write property and casualty insurance throughout the United States.

It is my understanding, Mr. Chairman, that you would like me to discuss the financial condition of the insurance industry and how this relates to the availability and affordability of various lines of insurance.

Perhaps it would be most helpful if we approach this by discussing the following:

- How much did the insurance industry earn in the years 1983, 1984, 1985, and 1986?
- What caused the deterioration that is seen in the years 1984 and 1985, and how did this deterioration affect the availability and affordability of commercial insurance?
- Did 1986 results following rate increases mean that tort cases are no longer a problem?
- What can the buying public reasonably expect in 1987 and beyond?

There are several charts, attached to this statement, which will be referred to shortly, but before doing so, and particularly before looking at the first chart which sets forth the financial results of the industry, let me explain some basic terms that are used in these charts.

1. Underwriting Gain

Basically, underwriting gain is earned premium plus incurred losses and expenses. Earned premium is not the total amount of premium written by insurance company, but rather that amount which has actually been earned at the time the calculations are made. In other words, a policy written on July 1 for $1,000 premium would have earned only $500 of that by January 1. Incurred losses mean those losses which have been paid plus those reserves that are set aside for future payments. Underwriting gain or loss, therefore, is a pure insurance operation result.

2. Operating Income

This is the underwriting gain or loss just referred to, plus other income, such as investment income. This additional income, when added to the underwriting gain or loss, creates the total operating income.

3. Capital Gains

This is the amount realized from the increase in the value of stocks, bonds, etc., over the original purchase price. Capital gains, therefore, break down into both realized capital gains and unrealized capital gains. Realized capital gains are the dollars which are actually received when the stocks or bonds are sold. Unrealized capital gains, on the other hand, is the difference between the purchase price and the value of the bonds or the stocks at any given time. In effect, this is a paper profit since, obviously, the value can go up and down at any given time.

4. Income Tax Credit

This is a federal income tax credit that is allowed insurance companies based on previous years' losses.

5. Net Income

This, then, is the operating income (underwriting gain or loss plus investment income) plus any realized capital gains and any income tax credits.

6. Return on Equity

This is the percentage that the income bears to the surplus of the industry. Return on equity measures the percentage of income that is earned from the use of surplus and is very useful because it is the only way that the profitability of the insurance industry can be measured with other businesses.

Now let us refer to Chart A which sets forth the results in 1983, 1984, 1985, and 1986. First, note that unearned premium increased each year, with the biggest jump coming in 1986. It is easy to see that 1984 and 1985 were two of the worst years the industry has seen as far as underwriting loss is concerned. During those two years, even the investment income, which had increased, was not sufficient to offset the losses, and had it not been for realized capital gains and income tax credits, there would have been a net loss after taxes.

Chart B is significant because it shows, again, the effect of 1984, 1985, and 1986, as far as underwriting losses are concerned.

Chart C demonstrates the tremendous impact that investment income has in the insurance operation. There was an underwriting loss of $17 million, yet the $21 million in investment income produced an operating income of $4.5 million.

Chart D graphically demonstrates the growth of premium during the period from 1982 through 1986.

Chart E is a very important chart because it shows that while premium increased, losses increased also, so that there was an underwriting deficit even with the tremendous increase in premiums that were generated from the rate increases in 1986. This demonstrates the need for further tort reform.

Chart F sets forth the various lines of insurance and the relative loss ratios. It should be noted here that somewhere between 110 percent and 112 percent can be a profitable loss ratio when investment income is applied. Note, however, that it is the commercial lines of insurance that bring up the average loss ratio for all lines, while the personal lines, such as the automobile and fire insurance, tend to keep the averages down.

Again, Chart G shows how premiums soared in 1985 and 1986, but Chart H also indicates that during that same period of time, adjustment expenses tripled. Adjustment expenses include such things as the cost of defense counsel and the cost associated with defending cases. This involves depositions, etc., which have been extremely costly over the past few years.

Finally, Chart I has been included because there has been much discussion about the cyclical nature of the insurance industry. It is true that insurance does run in cycles primarily because of the competitive nature of the business. What is important here, however, is to compare the last cycle that the insurance industry was involved in 1975. At that time, operating losses were only $77 million compared to a $5 billion loss in the current cycle and the rate of return after taxes was 2.4 percent versus 1.7 percent in the current cycle. Also, the 1975 cycle involved only 25 insurance company insolvencies whereas the figure is much higher at the present time.

Now the question is, what caused this deterioration in 1984 and 1985 and how did it affect the availability and affordability of commercial insurance.

Actually, there were several factors involved. During the period of 1979 through 1984, the investment yields were extremely high. Realizing this, companies engaged in cash flow underwriting competing for the business in order to get the premium to invest at the high yields. This worked well until suddenly the investment picture changed dramatically in 1984, leaving the industry with lower rates and correspondingly lower premium dollars along with lower investment income. The result was that in 1984, 20 insurance companies became insolvent; in 1985, 21 other companies went under. In 1986, roughly 15 companies had become insolvent with about 215 that are being watched very carefully by the National Association of Insurance Commissioners.

It is important to know, however, that while this obviously created operating problems for the insurance industry, the consumer benefited during this period because premiums were depressed. However, when they were raised suddenly in 1986, it became a real problem for businesses because they were not able to build it into the cost of their product and had to resort to taking it from their surplus. As a sidelight, some years ago, Consumer Advocates were criticizing the insurance industry because they were not using, in their words, investment income in the rate making process. When the industry losses in 1984 and 1985 had created severe availability problems, the criticism was changed, and the cry became one of poor management on the part of insurers.

How then did these large industry losses create an availability problem?

Basically, the availability of insurance in the market is controlled by the capacity of the insurance industry to write new business. Capacity is based on the surplus of the industry. Surplus is needed to pay expenses when they exceed the premiums charged; to make up for an adequate reserves; to absorb decreases in assets; and finally, to support growth.

An insurance company has to meet certain tests set forth by the insurance department to keep them from insolvency. Basically, the rule of thumb that the insurance department uses is that an insurance company should not have more than three times their surplus involved in premiums written. Thus, if a company has a surplus of $1 million, their writings should not exceed much over $3 million. Obviously, this is a rule of thumb, but as the industry surplus was reduced during that period of time, their ability to write new business was curtailed accordingly.

Basically, the capacity of the insurance industry is reduced when surplus is lowered or when exposure is increased.

Obviously, when losses are more than income dollars, there will be an effect on surplus. Another factor, however, is the reinsurance that the insurance companies writing the primary risk purchased to protect themselves from unusually large losses.

During the period of time when the insurance industry was using cash flow underwriting and developing heavy losses, the reinsurance market was having the same problem. In order to correct their situation, they did one of three things. In some instances, they simply would not enter into a new reinsurance contract, thus the primary carrier had an increased exposure which automatically reduced their capacity to write new business. In other instances, the reinsurance contract was renegotiated, but at a much higher premium. This also tended to reduce the capacity of the primary insurer because that money, in some instances, came from their surplus. Finally, some reinsurers negotiated new treaties with the primary carriers and simply changed the retention amount so that the primary carrier had to retain more of the liability, thus again lowering their capacity to write more insurance.

When the capacity of the insurance industry is reduced so that they cannot write the insurance required in expanding markets, then obviously, the problem of availability arises for those lines of insurance that are higher risks than others. Simply put, if an insurance company can only write so much business, they are going to select the lines that are going to have the best chance of being profitable.

Also affecting the availability and affordability of certain lines of insurance is the unpredictability of what can be expected in the future. As an example, there are many lines of insurance that produce "long tail" claims. In other words, these are situations where claims will continue to be presented long after the policy has been cancelled. This is best demonstrated by an insurance company that wrote a doctor's program for medical malpractice in New York. They had been on the risk for 25 years when they finally decided not to renew in 1974. The annual premium for this group policy never exceeded $40 million, and for the entire 25 years totaled $225 million. However, payments for losses and related expenses had not yet reached $100 million when the program was terminated. That sounds good to this point, but in the ten years since 1974 with no additional premium, the company has paid over $300 million in claims and an additional $55 million in attorneys' fees and other claims expenses. Payments in 1984 alone were more than $30 million. Over 1,300 claims remain unsettled and new claims are still being reported at the rate of more than 200 per year.

But it is not just medical malpractice that creates this problem. Asbestos is known to have a tremendous exposure. A company that has been on a risk that involved construction with asbestos years ago that is being torn down today can be faced with claims now and in the future. Claims involving toxic waste fall into this category also, but here, there is a further problem which arose under the Jackson Township lawsuit. The insurance policy that was sold to the Jackson Township indicated that it would cover sudden and accidental damage. The court, however, held that seepage of toxic waste at any given time is a sudden and accidental situation. Therefore, claims can be made many years when a seepage occurs and damage results.

Another element that creates problems in predicting future losses is the public attitude. All too often, the reaction is: "if someone is hurt, then someone must pay for those damages." In many instances, it almost seems completely irrelevant as to whether it was the person's own fault or not.

What, then, will the future look like? Obviously, no one can really predict this with any accuracy, but we do know that 1986 rate increases have produced a significant improvement in the profitability of the insurance industry. The problem, however, is that insurers must still use income from other sources to augment the day-to-day insurance operations in order to get into the black. In this regard, investment income is certainly not a constant variable, nor can other income, such as realized capital gains and income tax credits, be relied upon in the future to increase the operating income of the industry. On the positive side, however, the industry is rebuilding its capital base and this increase will certainly ease the availability problem relative to various lines of insurance. And the large rate of increase in premiums has declined, and will probably continue along that trend. This does not mean that rates will necessarily drop, but neither should there be the rather severe and large increase that we witnessed in 1986.

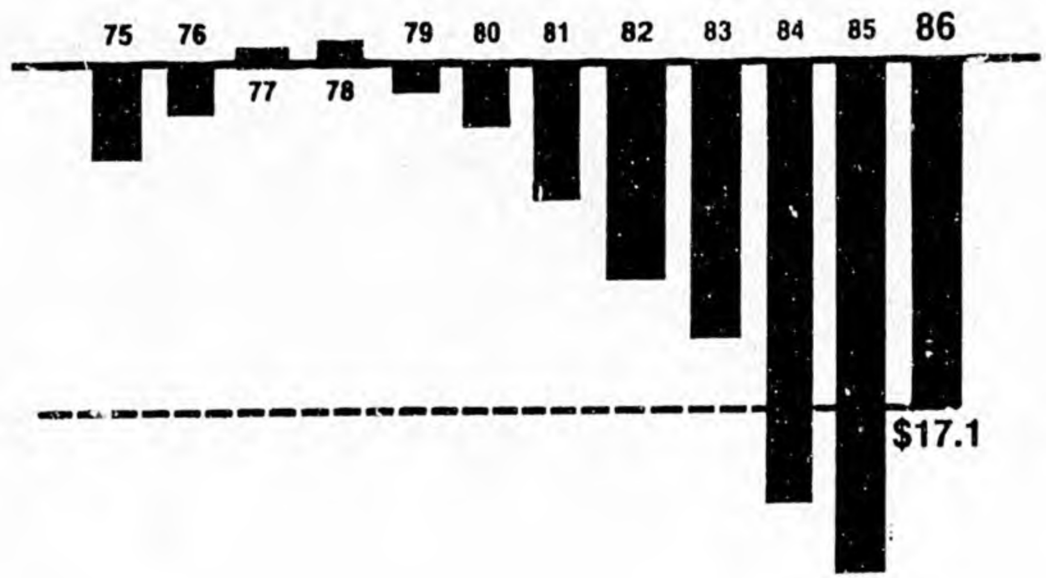
The problem we are facing is that while premium has increased and is increasing, losses are increasing right along with those increases in premium. This, therefore, seems to indicate that reasonable tort reform must continue, if we are to have predictability back into the rate making process, and if we are to continue to improve the industry situation so that insurance will become more available and affordable in the future.

Property/Casualty Insurance Industry
Financial Results—1983 through 1986
(All dollar figures in billions)

	1983	1984	1985	1986
Earned Premium	$107.2	$115.0	$133.3	$164.8
Claim Amounts Incurred	75.8	88.7	102.9	115.6
Claim Settlement Expenses Incurred	11.5	12.8	15.7	18.8
Other Underwriting Expenses	31.0	33.1	37.6	44.1
Policyholder Dividends	2.2	2.1	2.2	2.1
Underwriting Gain (Loss)	**(13.4)**	**(21.7)**	**(25.0)**	**(15.8)**
Investment Income	16.0	17.7	19.5	21.8
Other Income	(0.3)	0.0	(0.1)	(0.4)
Operating Income	**2.3**	**(4.0)**	**(5.6)**	**5.6**
Realized Capital Gains	2.1	3.1	5.5	6.5
Income Tax (Credit)	(1.2)	(1.7)	(2.0)	(0.6)
Net Income After Taxes	**5.6**	**0.8**	**1.9**	**12.7**
Surplus	65.8	63.8	75.5	92.4
Return on Net Worth (GAAP)	**8.3%**	**1.8%**	**3.9%**	**13.1%**

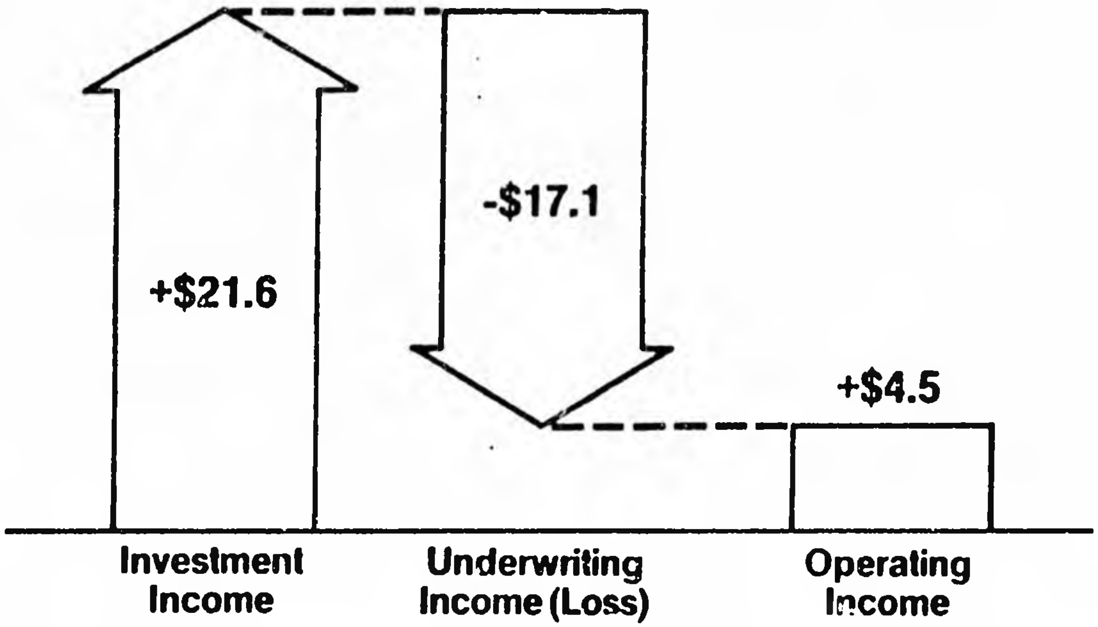
Large 1986 Underwriting Loss

Underwriting Income/Loss



Investment Income Offset Large Underwriting Loss

Operating Income ($ Billions)



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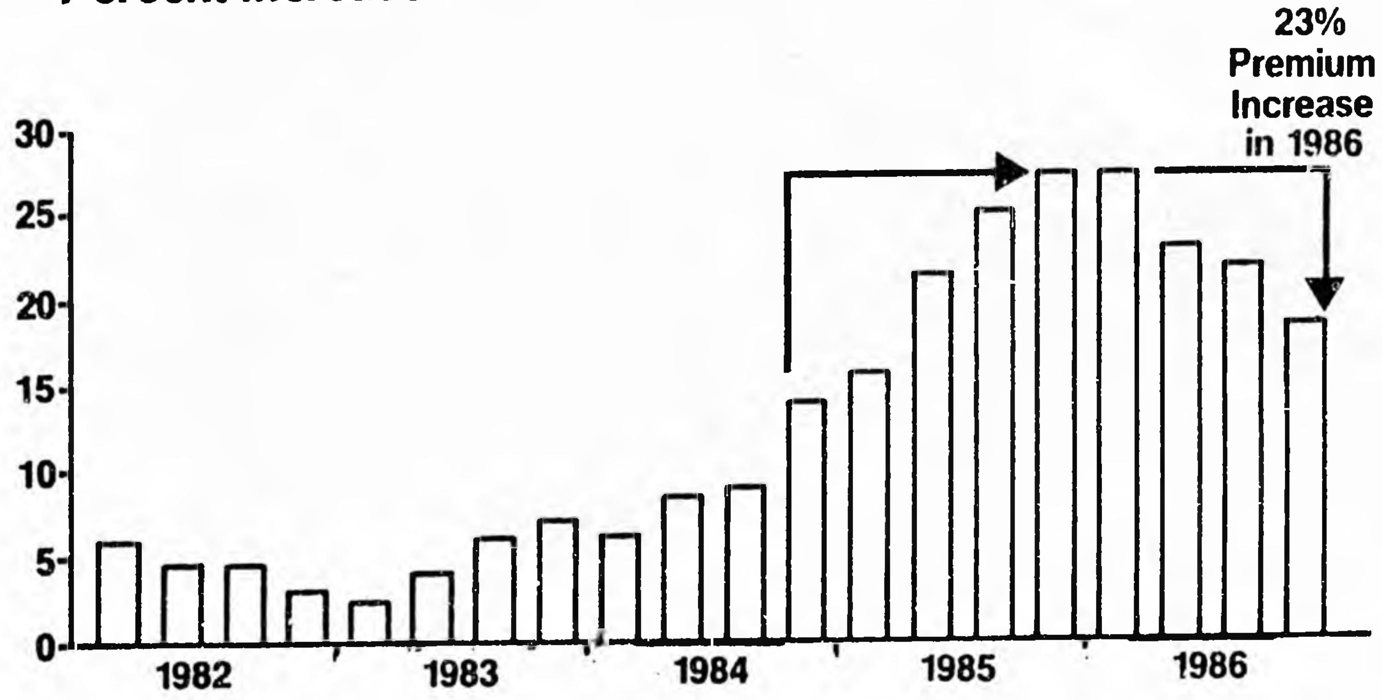
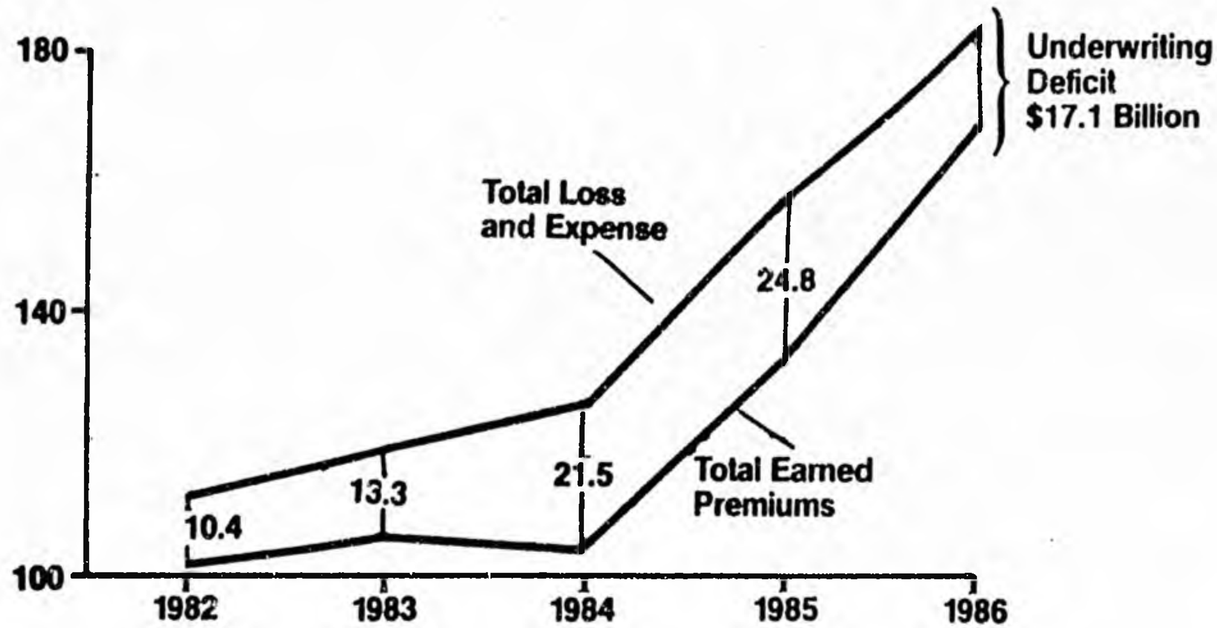
Strong 1985-86 Premium Growth

Net Premiums Written (All Lines)
Percent Increase



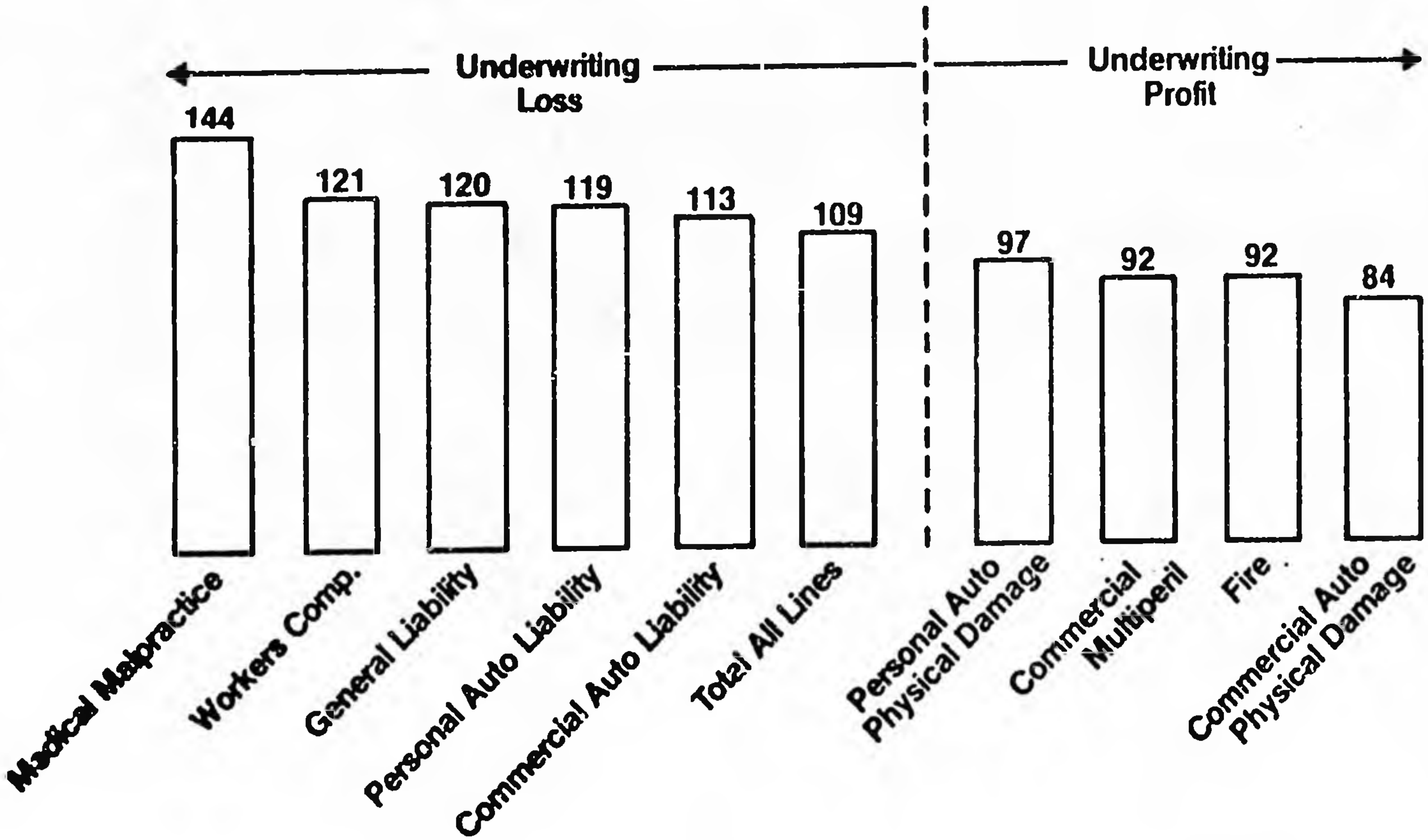
Premium Growth
Narrowed Underwriting Deficit

$ Billions



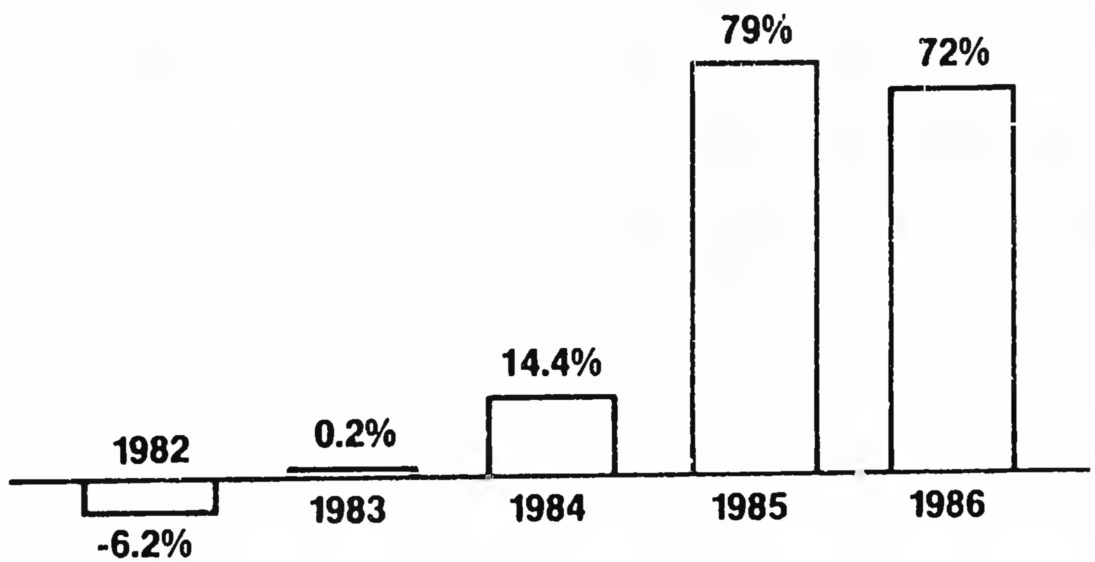
Liability Lines in Crisis

Estimated Combined Ratios (1986)



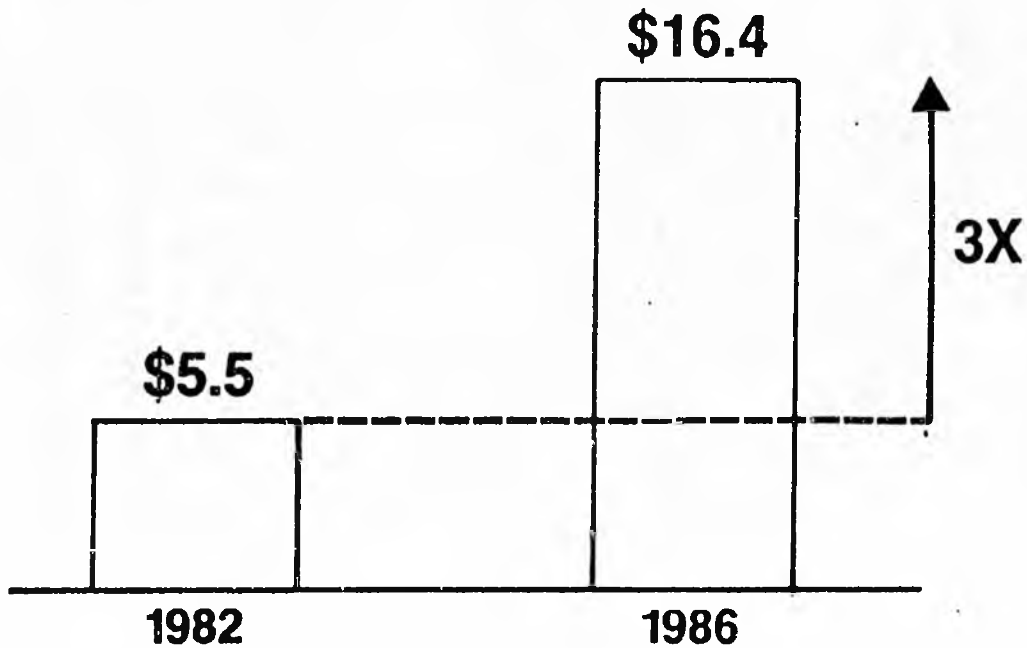
General Liability Premiums Soared . . .

Annual Percent Increases



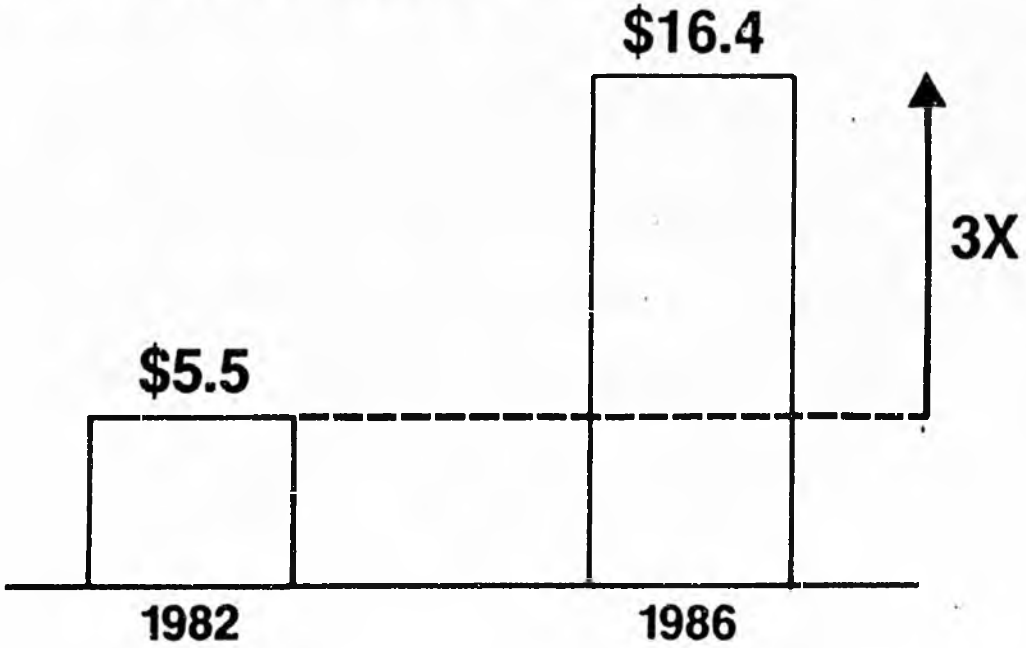
. . . But Loss & Loss Adjustment Expenses Tripled

General Liability 1982-1986 ($ Billions)



. . . But Loss & Loss Adjustment Expenses Tripled

General Liability 1982-1986 ($ Billions)



Record 1984-85 Downturn

Recent Cycle vs. 1975 Cycle

Performance Measure	1975 Cyclical Low	Recent Cyclical Low
Operating Losses	-$77 Million	-$5.6 Billion
After-tax ROE	2.4%	1.7%
Underwriting Losses	-$4.2 Billion	-$24.8 Billion
Length of Cycle	6 Years	9 Years
Insolvencies	25	40
Companies Rated Below A+	61%	76%

Maynard and Partch

Memorandum

An Alaskan Corporation
800 F Street
Anchorage, Alaska 99501
907/276-4218

Haydon Read

MAY 12 1987

Date: May 6 1987	Job No./File:
To: Senator Jalmar Kerttula	Job Name:
From: Howard A Partch	Subject: SB 211/HB 250

Senator Kerttula:

My partner and I have been paying in excess of $100,000 per year for professional liability insurance for the past several years. This year our premium is close to $150,000. The burden is so great it takes 9 months just to pay off the premium.

Our practice of architecture has been in the public sector which demands coverage. Our standard coverage requirement is $1,000,000 for a claims made policy. We carry $50,000 deductible.

The way I see it, the excessive costs for just professional liability insurance has eliminated our ability to make a profit. One does not assume the responsibilities of a business just to meet expenses. The conclusion is obvious.

Several final items for your information

C.C.:

Maynard and Partch

Memorandum

An Alaskan Corporation
800 F Street
Anchorage, Alaska 99501
907/276-4218

Date:

Job No./File:

To:

Job Name:

From: Page 2

Subject:

Our profit margin is 2-5% of net revenues. Five years ago our insurance costs for professional liability coverage was $1\frac{1}{2}$-2% of net revenues. Today professional liability insurance is 11% of net revenues.

Another way of looking at it is professional liability insurance five years ago cost $1.11 per revenue hour. Today it is over $10.00 per revenue hour.

C.C.:

LAW OFFICES
L. Ames Luce
A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501

L. AMES LUCE
DAN A. HENSLEY

TELEPHONE
(907) 276-1191

MAY 13 1987

Xerox'd 5 - take to prelim incl all Tort files letter for give copy to HK to being reviewed Betty H.K write to MIEC) info before leave.

May 7, 1987

Senator Jay Kerttula
Alaska State Senate
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Kerttula:

I was one of a number of individuals who attempted to testify at the teleconference today, and unfortunately was unable to do so because of time constraints.

One of the witnesses who appeared in person, in Juneau, was from MIEC of California, who testified that rate increases for doctors over the past five years in California had been 5.6%, as opposed to 19% in Alaska. I am one of the few attorneys in the state that has been willing to actively represent injured plaintiffs in medical negligence claims, and I have been appalled in recent years at the number and severity of losses which are occurring in Alaska. In almost every instance, these injuries have been the result of long-standing medical problems and procedures which our medical profession has repeatedly failed to police and correct. From my standpoint it would appear that the frequency and severity of claims in Alaska far exceed that in California and that is the issue that must be addressed.

You are in a unique position to be able to obtain data, by demanding it from MIEC, to show, by claim, the frequency of claims for their insureds in states such as Idaho and California as compared to Alaska, and the severity of those claims. As I am sure you are aware and as was testified to by Beryl Lamb, she has been the only successful plaintiff to receive a jury verdict in the Third Judicial District in 10 years. The rest of the claims have been resolved by way of settlement because they were the result of essentially undefendable negligence. It is my belief that if you obtain the information that I have suggested from MIEC, you too will be convinced that with regard to the specific problems being faced by our medical community, that no relief, short of totally depriving victims of their rights, will be effective until there is a commitment by the medical community to substantially improve the quality of health care. Until such a commitment is undertaken and pursued and the results ascertained, I would hope that the legislature would not grant the type of special interest legislation sought by the Alaska medical community.

One further matter which I bring to you attention and which has been appalling to me is the case of Megan Dunnagan, the daughter of one of your constituents, who was born without kidneys as the result of unconscionably medical care at the Ketchikan General Hospital. Her mother was abandoned by her obstetrician, who had a history of alcoholism and abandonment of patients, of which the hospital and medical community was aware and failed to police, and with the problem being further complicated by the hospital's failure to have even rudimentary labor monitoring procedures implemented. Megan has become the first infant to have survived the loss of both kidneys and to have received a successful kidney transplant, which has occurred within the last few weeks. She is now two years old.

The past and future ordeals that Megan and her family face are difficult to imagine. I have included a short 20 minute tape, which was done for legal purposes, but which clearly depicts the type of damages to which I am referring. The settlement of part of Megan Dunnagan's case for $2.2 million was not the result of a run-away tort system, but rather a result of a case that was medically and socially undefendable.

I am sure you can understand my consternation in reviewing the memorandum prepared by Art Stanford of MICA and forwarded to David Frazer, in which this case was referenced. Much of the information contained in that memorandum by Art Stanford is patently false, but I was incensed that I and my clients were required to maintain the terms of the settlement in confidence, and yet MICA and Dr. David McQuire felt free to publish the same at the legislature for their imagined ends.

I do not intend to address SB211 in detail because most of the points I wished to raise were testified to by other witnesses. I would, however, specifically point out to you that the $100,000 cap as proposed in this bill is highly discriminatory against the rights of retired people, homemakers, and subsistence Natives who cannot show monetary income from their activities. It would further be devastating to individuals such as your constituent, Megan Dunnagan and other seriously injured victims.

I would hope that you would have additional hearings on SB211 to permit all persons to have an opportunity to fully express their views and have the matter carefully studied. I would be glad to discuss the medical negligence issue with you and to participate in any special study committee concerning that subject. Some years ago, at the request of Governor Hammond, I participated in such a fact-finding committee, and would be willing to volunteer my time to serve on such a committee.

Yours truly,

LAW OFFICES OF L. AMES LUCE

L. AMES LUCE

LAL/CB

cc Senate Judiciary Committee

RECEIVED MAY 07 1987

CITIZENS COALITION FOR TORT REFORM

907-561-6250

May 6, 1987

Senator Jan Faiks
Alaska State Legislature
Box V
Juneau, AK 99811

Dear Senator Faiks:

We are writing the following to you to point out some errors and inconsistencies of factual material in the dissertation provided you by Wayne Anthony Ross et al regarding SB 211 and its House companion HB 250.

On page 2 of his dissertation, Mr. Ross gives the example of a horribly burned quadriplegic, etc. He then attempts to reduce human suffering to a per hour cost. It would seem that such an effort begs the very point of the issue. No amount of money can compensate anyone for pain and suffering. Given that same horribly burned quadriplegic, we may well ask, "Is two million enough, or should it be ten million, or is it a hundred million?" We suspect that under any circumstance, the "horribly burned quadriplegic" would very much prefer to be returned to his unburned neurologically intact state. The point of the bill is that recoveries under non-economic damages have become so huge as to threaten the very fabric of our insurance mechanisms. There are already instances in which physicians, practicing in the State of Alaska, are unable to be insured even under the State-sponsored program called MICA which came into being some ten years ago in response to this same problem. What is needed, rather, is a system that reasonably compensates individuals for those things which society has the ability to compensate. Specifically, economic losses can be compensated in their entirety, and in so doing, we will treat the injured victim fairly and preserve the mechanism of compensation known as insurance or mutual risk sharing. What Mr. Ross fails to point out to you is that somewhere between 25 and 40% of this non-economic recovery goes immediately to the attorney on a contingency fee basis. He also fails to point out to you that under our present tort system, of all the dollars paid in, only 30 to 40% of these dollars in fact end in the hands of the injured, innocent victim. It is therefore important to remember precisely who it is that's being protected by Mr. Ross's arguments.

P.O. Box 201668 • Anchorage, Alaska 99520

On page 3, Mr. Ross raises objections to limiting punitive damages to cases involving fraud, malice, gross negligence, or reckless misconduct. He then goes on to point out that there is no definition of gross negligence. Finally, he gives the example of an injured rape victim. We would argue that the injured rape victim did have a cause of action, because certainly rape is an act of malice. I think there is very little question about that. The reason for the legislation is that the request for punitive damages has become abused. It is the contention of the Citizens Coalition for Tort Reform that this amounts to criminal prosecution of the defendant. If that be the case then certainly the standard of proof ought to be the same as for any other criminal prosecution. Last year's statute, which requires clear and convincing evidence, is deficient, in our opinion, because it fails to specify the actions for which there should be clear and convincing evidence. If there be legitimate disputes about gross negligence, then let us define it to Mr. Ross's satisfaction, but let us no longer leave this an open-ended statute in which anybody at any time can make a claim for punitive damages in a vigilante fashion.

The claim for punitive damages is frequently used as a not-so-subtle incentive to induce innocent defendants to settle when they might not otherwise settle. The defendant is shown that punitive damages are not insurable, and that therefore he, the defendant, will be held liable in the event that punitive damages are upheld. That certainly is fine so far as it goes. Such an inducement to settle, however, should only exist in the case in which the defendant deserves to be punished for his intentional or grossly negligent actions.

If Mr. Ross would have us believe that punitive damages are only allowed in the instances in which "actions shock the conscience of the Court", or are "outrageous", why is it, then, that of all the malpractice suits filed in the State of Alaska fully two thirds contain a claim for punitive damages. We would submit to you that this claim is used arbitrarily and capriciously because there is no adequate definition of the circumstances under which a claim for punitive damages may be made. I would repeat to you that punitive damages are in fact a form of punishment which very closely equates a criminal charge. If that is the case then the circumstances and standards of proof for a claim of punitive damages should be subject to a standard no less stringent than that for criminal actions.

Mr. Ross then refers to Section 3, in which he objects to the inclusion of commission of a crime as a bar to recovery in tort actions.

It is the contention of the Citizens Coalition for Tort Reform that people who are engaging in illegal activities should not be able to sue innocent persons for their injury. Mr. Ross uses the example of a person who is jaywalking and is hit by a "drunk driver, a speeder or a bank robber fleeing the scene of his crime". The purpose of this legislation is to prevent the injured bank robber from suing someone else for his injuries while he was in the course of committing a crime. He then goes on to the cite another example of teenagers toilet-papering a house as a prank and being shot at with civil impunity. The point, I think, is clear. If the individual in this instance shot at them then certain criminal standards apply, and the appropriate punishment is criminal, not civil.

It is exceedingly important to recognize that Mr. Ross implies by innuendo that there would be no penalty to inappropriate action were criminals prevented from suing other people for their injuries. Under the present circumstance wary or unwary trespassers are permitted to sue land owners, whether or not the land owner had any knowledge of the trespassing activity. There is already the famous O'Brien case in New Jersey, in which a home owner was successfully sued because of an injury sustained by a trespasser diving into a swimming pool, in spite of adequate signs which posted the danger, and in spite of the fact that the trespasser had to climb a fence in order to get into the swimming pool. Finally, it is our opinion that a person who is injured in the commission of a felony shouldn't be allowed to recover from innocent citizens; period.

Mr. Ross goes on to criticize Section 4 of the bill, which proposes mandatory periodic payments. In our judgement the motivation was first of all not on behalf of any insurance companies but rather on behalf of the citizens who are concerned with this issue. Secondly, this does not provide for "speculation with the victim's money". We have made and continue to make the argument that future damages are not incurred until the future in fact arrives. As to the administration of the contingent fee we have already noted that in our present system somewhere between 60 and 70% of all the dollars paid in in fact end up in the hands of the attorneys. The contingent fee is a separate issue and is not addressed in this section.

There are instances, which are documented and have occurred within the State of Alaska, in which individuals who have been given lump sums for injuries find themselves without any of the money some four to five years later. These individuals have a problem as well. They ultimately do come back as a burden to the State because they still have the medical or physical problem for which they were compensated. A mandatory periodic payment would preclude the premature depletion of their award and would reasonably compensate the individual for his future economic and non-economic losses: this is the very intent of the periodic payment. On page six Mr. Ross either is grossly mistaken or deliberately misleading in his conclusions. He says, "in fact, as written, this section would require the Court to provide for periodic payments, leaving the Court with no discretion even in cases in which the injured plaintiff has already incurred medical expenses totaling hundreds of thousands of dollars!" We can only respond that this represents a serious misunderstanding of the proposed legislation. The legislation clearly says that individuals will be compensated fully for economic losses, both present and future. It is the future losses which are to be paid periodically. It is absolutely erroneous and misleading to say further that "even the medical profession should be against this provision because it would place them in a position of trying to collect huge medical bills from people who are receiving only modest periodic payments from defendants or their insurance companies". Clearly, the legislation intends that all economic losses will be paid in full as incurred. Mr. Ross's statements are an outright distortion of the intent of the language. It is absolutely erroneous to state that "mandatory periodic payments rather than a lump-sum payment" would keep the victim "in the hole" or "on the dole", but certainly wouldn't help to "make him whole". Clearly the intent is to provide the award to the individual in a fashion similar to that in which he would have otherwise obtained economic benefit. The present system is unduly expensive and is ineffective for the many individuals who end up without resources after their lump sum is gone. It does lend itself well to the contingent fee because at least one third or more of this lump sum award goes to the plaintiff's attorney.

Section 5, page 6: If Mr. Ross's legitimate objection is that gross negligence is not defined then I suggest that we define it.

Section 6, page 6: Mr. Ross purports not to understand the meaning of the collateral source language. The bare facts of the matter are that in the present circumstance an individual is permitted to sue another individual and the jury is not permitted to hear that most if not all the medical expenses or other costs have already been paid for by another party. The attorneys argue that the individual has a right to this compensation because he or she may have already paid the premiums for the health insurance. We must understand that these are resources of society that we are considering. The only reason health insurance works is because more people stay healthy than sick at any given time. Therefore the individual only has a right to this coverage, to this utilization of societal resources, in the event of a legitimate injury or illness. For that individual to doubly profit by the tort system and the mutual insurance mechanism of health insurance, is inefficient and inappropriate. We must rid ourselves of the concept that injury and adversity are a potential source of profit. Rather, we should continue to believe that injury and adversity are to be avoided, but in the instance in which they are unavoidable, they should be reasonably compensated. No one ~~should expect to~~ become wealthy as a result of adversity.

The tax implications are very important to the individual because if a periodic payment or other kind of payment is not properly structured the income tax can be burdensome. It is for this reason that the trier of fact must be made aware of the implications of their decision relative to periodic payments. Mr. Ross goes on to draw a number of erroneous conclusions relative to the collateral sources law. There is, in fact, consideration given to the idea that the victim's medical insurance is to be used up. That is precisely what the language "the Court may take into account the value of the person's rights to coverage exhausted or depleted by payments of these collateral benefits by adding back a reasonable estimate of their probable value". Clearly if the individual is no longer insurable as a result of this injury, that has a value and it can be determined with reasonable certainty. This is precisely the opposite of what Mr. Ross would have you believe. Mr. Ross then goes on to state "the bill places an unreasonable burden on the trier of fact to attempt to determine tax implications and to 'try and guess' the future medical insurance needs of an injured victim". In point of fact the jury is asked to "guess" as to the future economic and non-economic losses under the present circumstances, and further, the jury is then asked to award this in a lump sum exclusive of any other benefits which may have been obtained. It is to this that the citizens are objecting and it is not the insurance companies, as Mr. Ross would have us believe, who are raising the voice of objection.

Mr. Ross then reviews Section 7, and goes on to say, in simple language, that we should continue the doctrine of joint and several liability. He then cites an example in which an individual is not allowed to be fully compensated for loss because of the insolvency of a given tort-feasor. Mr. Ross fails to take into account a number of issues. First of all, under the present circumstance in which an individual may be made to pay the largest portion of the damage, even though his fault was the smallest, it makes risk taking impossible to predict. The Municipality of Anchorage, or any other city for that matter, really doesn't know the full extent of its liability as the result of the joint and several doctrine. We have long held that individual responsibility is to be encouraged. Put another way, one ought to be responsible for one's actions. One should not be held liable for someone else's misconduct.

Finally, Mr. Ross purports in this instance to represent the injured, innocent victim. The difficulty is, of course, that we all know by now that only those innocent injured victims who have a deep pocket to sue will be represented by an attorney. If there is no chance of recovery because of insolvency or the inability to prove liability this injured, innocent victim will not be represented by the trial attorneys. Nevertheless, this injured innocent victim will still continue to have pain and suffering, to have medical expenses, to have the need of the services otherwise provided to citizens in our state who are subject to adversity. What provision does Mr. Ross and the present tort system make for these innocent injured victims? Suppose we consider an example of two individuals both of whom are quadriplegic. One is quadriplegic as a result of a trucking accident in which there is an insured deep pocket to sue. The other is a quadriplegic as the result of being inadvertently shot in the course of a hold-up at a grocery store. Certainly they both have pain and suffering of equal degree. Certainly they both have medical expenses and loss of economic resources to equal degree. Yet under our present system, one may well end being a millionaire and his representatives from the trial attorneys would share in that wealth. The other individual, however, will have to fall back on the resources of society. So far we haven't said it's the fault of the grocery store that they were held up and that therefore they should be held liable as a deep pocket.

We do have some compensation for victims of violent crimes, however it's clearly not to the degree that Mr. Ross would have us believe must be paid in order to "make the victim whole". Nevertheless we do provide for these victims. Nevertheless we do take care of their injuries even though we may not be compensated handsomely in the range of hundreds of thousands of dollars. We need to ask whether or not the present system compensates all victims fairly or whether in fact it compensates only the fortunate unfortunate few for whom there is a deep pocket for them and their attorneys to plunder.

As to Section 8, page 10, it appears that the definition of economic loss is adequate. However if Mr. Ross has precise terminology which would be better, I'm certain that everyone would thank him for the language. Mr. Ross continually misrepresents the difference between non-economic and economic. Throughout this analysis there are repeated references to capping awards which would not compensate individuals for their economic losses. There have been repeated allegations that a cap on non-economic awards would completely disenfranchise old people, young people and housewives. This is absolutely ludicrous. Under the present system, the value of a housewife is indeed computed by what is required to replace the services which she provided. The same can be said for an individual who is injured in extreme youth or an individual who is injured while in the course of employment or other activities for which they are obviously over-qualified.

Mr. Ross then goes on to defend Rule 82 in his discussion of Section 9 and 11. "Such a provision helps discourage phony claims. When plaintiffs know that they may have to pay the other side's costs and attorney's fees if they lose, they may, (and do!) think twice before filing a lawsuit or pursuing unreasonable claims." The difficulty, of course, is that not all plaintiffs are able to pay anything at all. Mr. Ross argues that that is the very reason for the existence of the contingency fee. We have asked and have not yet been answered by the trial attorneys how one is compensated when he is unjustly accused by an impecunious plaintiff and then the innocent defendant asks for and is awarded attorney's fees. Who pays these attorney's fees? If Rule 82 were applied equally across the board there might be some truth to the argument that Mr. Ross advances. The difficulty, of course, is that its not applied equally across the board. It therefore functions only to inflate the award when there is a deep pocket to pay for the additional 10% requested by Rule 82. Furthermore, Rule 82 is requested even in the instance in which there is no trial. Rule 82 is requested if the attorney so much as writes a letter. The amount of effort expended is not proportionate to the fee generated by the application of Rule 82 in many instances. If there were a requirement to place a bond, to provide some evidence of the ability to pay in the event that the plaintiff was unsuccessful in their lawsuit, then Rule 82 may very well have the intent that is ascribed to it by the attorneys. Until or unless such an event occurs Rule 82 will continue to inflate the awards in Alaska. Rule 82 is unique to Alaska, and Alaskans pay a specific premium surcharge as the result of the existence of Rule 82. He then goes on to argue, "The proposed bill would allow insurance companies to wage a 'war of attrition' against an injured victim." How ridding us of Rule 82 would allow an insurance company to wage a war of attrition is beyond us. The bill does not address contingent fees, and it is the contingent fee which certainly provides the bulk of the attorney's return.

Finally, on page 12, Mr. Ross concludes: "Ralph Nader, no friend of the attorneys, (although he is one) calls tort reform a phony issue raised by the insurance companies to increase their already substantial profits." What Mr. Ross does not tell you is that at a press conference Mr. Nader was asked by Mr.

James Coyne, President of the American Tort Reform Association, to disclose his relationship with the American Trial Lawyers' Association. Mr. Nader steadfastly refused to divulge the sources of his income for the lobbying efforts that he provides on behalf of the American Trial Lawyers' Association. Mr. Coyne pressed the issue by saying, "Mr. Nader, is it not a fact that you are paid a retainer of $300,000 per year plus $5,000 per appearance by the American Trial Lawyers' Association?" Mr. Nader responded that the press conference was closed and he wasn't there to answer such questions. Mr. Nader's attorney then dismounted the platform and proceeded to assault Mr. Coyne by punching him in the eye and knocking him to the floor. To argue that Ralph Nader is an unbiased individual on this issue is completely a misrepresentation. This incident was reported on national news and was featured in Jack Anderson's column and copies of it can be provided should you be interested.

In summary, it would appear that the arguments of Wayne Anthony Ross are self-serving at best. He is a trial attorney who benefits immensely from the system as it is currently structured. A simple Alaskan example may best illustrate the point. Recently in Alaska a baby was delivered. The baby suffered significant neurologic problems. The baby will never be normal. Let us assume that the obstetrician was negligent. Let us assume that the obstetrician did virtually everything wrong. The insurance company then attempts to settle the claim. The claim is then settled for $2,200.000. Two million are for actual and future damages, two hundred thousand is for the addition of Alaska Civil Rule 82. The population of Alaska at the present time numbers less than 600,000 people. If Alaskans charged themselves $1,000 per healthy delivery for insurance costs, then 2,200 babies must be delivered without a single complication of any kind in order to compensate this one child for its losses and its attorney's fees under the present tort system. Does this mean that we want every Alaskan family who has a child to pay $1,000 into a fund to provide this kind of return for a given individual? If we charge less than $1,000 per delivery obviously the number of normal deliveries that must ensue is considerably greater. The point is that the present system is in fact breaking the system, and like the physicians in Cordova, many of us will soon be without insurance at all. When that happens there will be no deep pocket at all.

Consider further the use of the contingency system. In the case previously cited, the attorney's fee will be 40%. That amounts to $880,000. That amount will be payable in a lump sum under the present tort law. That means that 880 parents will have to have 880 babies, and pay $1,000 a copy for the attorney's fees in this one single case. Please note that this is a settled case, it did not go to trial. It should be clear to all concerned that the innocent injured victims are in fact as much a victim as anyone else in our present tort system, and that the people who argue most vociferously to maintain it are in fact its greatest benefactors.

Sincerely,

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

DM:lmf