

OVERVIEW

DIV. OF

INSUR-

ANCE

4/8/02

Sec. 21.06.087. Insurance report.

(a) The director shall require reporting of and shall compile information necessary to evaluate the effect of the measures enacted in chapter 26, SLA 1997 on the availability and cost of insurance in the state.

(b) Information described in (a) of this section shall be provided by all insurers doing business in this state in the format specified by the director and must include factual information stating premiums, claims, losses, expenses, and solvency of the company as a whole. Information shall be compiled by the division in a way that protects the identity of individual insureds.

(c) The director shall adopt regulations to implement and interpret this section, including requiring insurers doing business in the state to provide information necessary for the division to carry out its responsibilities under (a) and (b) of this section. If there are indications of market disruption, the director may waive all or part of the reporting requirements in this section.

(d) Beginning June 1, 2000, the information compiled under (a) of this section shall be reported annually to the governor and the judiciary committees of both houses of the legislature.

(e) The division may consult with the Alaska Judicial Council when determining what information to require to be reported under (a) - (c) of this section and when implementing the compilation required under (a) of this section.

(§ 33 ch 26 SLA 1997)

Revisor's notes. Formerly AS 21.86.087. Renumbered in 1999 to correct a publishing error.

Cross references. For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Editor's notes. Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."



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**Impact of Tort Reform on Availability
and Cost of Insurance in Alaska**

Alaska Statute 21.06.087 requires the Alaska Division of Insurance (Division) to evaluate the effects of House Bill 58 on the availability and cost of insurance in Alaska. The Division held two public meetings, by teleconference, to discuss what data is currently available or could be collected by insurers to evaluate the effects of tort reform on the costs and availability of insurance. State Farm Insurance Company, AAA MountainWest Insurance Company/California State Automobile Association and Insurance Services Office, Inc. (ISO) participated in these meetings.

The first meeting focused primarily on data already available that could be used to evaluate the effects of tort reform. We considered various sources such as aggregate premium level data, the number of insureds in the residual markets, the number of complaints from consumers who cannot find coverage, the number of insurers in the market, rate changes in filings, and industry prepared reports that show premiums and losses. The group observed that while these items will provide general trends in insurance availability and cost, none of them will be effective in answering the question of what is causing the trend. The group identified the following reasons why the available data has limited value in identifying the effects of tort reform:

- The caps on damages are higher than most policy limits, particularly for the personal lines;
- Large claims are infrequent, so limited data is available for those claims that do exceed the caps;
- Countrywide data is used to price policies with high limits because of sparse data; and
- Insurance costs and availability are affected by many interrelated factors, not just tort reform.¹

The group also discussed the feasibility of collecting additional data, or changing the way data is coded by insurers, to capture information specific to the legislative reforms. The following items were identified as factors that may make it prohibitive to collect additional data:

- Changing claims handling practices may be expensive;
- Any data not used for ratemaking may not be accurately coded or reliable;
- It is difficult to identify and code the non-economic portion of a loss.

¹ Some of the other factors that affect insurance costs and availability are the cyclical nature of the insurance market, inflation, changes in medical costs, legislative changes, and changes in repair costs.

The participants in the first meeting were given assignments to gather additional information on some of the issues that were discussed.

The second conference call focused on identifying ways of compiling information to specifically address the effect of tort reform legislation, not just general trends in insurance costs and availability.

We looked at tort reform studies and reports from Louisiana, Texas and Pennsylvania. The Texas study used a focus group approach to obtain a qualitative impression of the effects of a cap on punitive damages. The Louisiana and Pennsylvania studies looked at historical claims data to evaluate the effect of specific cost containment measures. For example, the Pennsylvania reforms included medical cost containment provisions that limited the amount medical providers could charge auto insurers for medical services.

The Louisiana study divided the reforms into three categories based upon the effect the reforms were anticipated to have on automobile insurance costs. The first group included reforms that were expected to have a significant effect on insurance premiums and which could be easily measured. This included health care cost savings for auto medical claims, similar to those implemented in Pennsylvania, and restrictions on filing claims by individuals who are members of the insured's family. The second group included reforms that were anticipated to have savings potential, but no estimate of the savings was made due to lack of data. This second group included reforms such as allowing a jury trial when the claim is more than \$20,000 and claim cost reduction reforms to limit the cost of litigation.

The group did not find these reports and studies to be useful models for gathering data to measure the effects of the Alaska reforms.

We next looked at several industry studies prepared by Insurance Services Office, Inc. (ISO). Two tort reform studies were performed in the late 1980's. One study asked claim staff to evaluate typical, but hypothetical claims, under pre and post tort reform statutes to demonstrate claims costs differences. This report concludes "the study demonstrates the extreme complexity of any effort to estimate the value of a particular tort law change." The second study was an analysis of claim costs for states that had implemented tort reform. The study only looked at the impact tort reform had on claims and did not consider the impact on premium levels. This study notes that "the best a claim file study can do in measuring the impact of specific tort law changes is to ask claims professionals to offer a subjective estimate of how the outcome of a multifaceted negotiation might change if one or more elements of the law were different."

We also looked at the ISO Closed Claim Survey for Commercial General Liability. This study included a review of the influences of the tort system on the time to settle a claim and the amount of the final payment. This study found that 7% of the claims went to trial, but only 2% of the claims resulted in court verdicts. There were five Alaska claims included in this study, only one of which had a claim

amount large enough to be impacted by the current tort reform measures. Using a closed claim survey is of limited value because of the length of time needed for liability claims to close and because of the limited number of large claims.

In general, the group felt that these studies were of limited value in providing a model for evaluating the effects of tort reform in Alaska. The limitations deal with the lack of data, a small number of large claims, problems identifying economic, non-economic and punitive damages, and an inability to easily equate changes in claim costs with the cause of the change.

Next the group discussed a series of questions on the types of data that might be collected to specifically address the effect of the Alaska tort reform legislation, rather than just general trends. The following summarizes the group discussion.

1. *Can non-economic damages be coded separately from economic damages? Can losses be coded by type of injury, e.g., disfigurement or severe physical impairment?*

Insurers generally do not separately code non-economic and economic damages. ISO noted that only about 2% of the claims in the closed claim survey study even had an itemized verdict. A closed claim study in which each individual claim is reviewed would be needed to find the type of injury. Because of the limited number of claims for which this information exists, regardless of whether it is currently collected or coded by the insurer, the amount of work to identify the type of injury would be significant and provide a limited amount of information.

2. *For policies that cover punitive damages, is the amount of punitive damages separately coded? Are punitive damages included or excluded from ratemaking data? Can we track the reasons for punitive damages, e.g., was the defendant's action motivated by financial gain, was the damage related to unlawful employment practices?*

Insurers do not separately code punitive damages, but they would be the easiest to identify, if they are awarded, because they would be in the court judgment. However, even though the court may list the reasons for the award, this detail may not be included in an insurer's claims data.

3. *Historically, is prejudgment interest captured? Is it possible to measure the effect of excluding prejudgment interest for future economic damages, future non-economic damages, or punitive damages?*

If prejudgment interest is required, it is not separately coded but considered a part of the claim amount. Insurers do not generally identify this data.

4. *Can the effect of reducing the time to bring an action upon a contract from 6 years to 3 years be quantified? Is historical data available that would show average*

lengths of time in which action was brought upon a contract? What effect does this change have on insurance costs and availability?

This information is more likely to be available from the courts than from insurers. The ISO database associates each claim with the date the reserve is established. The statute of limitations does not apply to accident or reserve dates.

5. *What is the feasibility of collecting data on the number of policies with high limits and the number of claims that reach policy limits? If a claim reaches the policy limits, is it possible to record the full amount of the loss, even if it exceeds the policy limits?*

This is probably the easiest information to collect as it would not require an individual review of each claim as would be required for the other items, such as punitive damages or prejudgment interest. Large claim data might be able to be collected, but it would not include any loss amounts that exceed the policy limits. This information may be available for commercial claims, but most do not reach the caps, so the data would be sparse.

6. *Can trends in attorney costs assist in evaluating the effects of tort reform? If so, can these costs be evaluated by looking at allocated loss adjustment expenses or the new annual statement expense categories of defense and cost containment?*

Allocated loss adjustment expenses or defense and cost containment expense categories would not be an accurate gauge of the effects of tort reform as other expenses associated with adjusting losses are included in these categories, not just attorney fees.² Also, historical data may be distorted as different insurers coded internal and external counsel in different categories. Insurers may track when a claim is litigated, but this would only show frequency of litigated claims, not severity. Litigation data is not part of the ratemaking data and may not be reliable even if it is collected.

7. *Can trends in the number of claims settled prior to a court verdict vs. after a court verdict assist in evaluating the effects of tort reform?*

Most claims settle out of court. Removal of the threat of punitive damages probably affects settlement, but it is difficult to measure and the impact is indirect. However, it is likely that more claims would settle sooner.

² Allocated loss adjustment expense included costs related to settling claims that an insurer could allocate to a specific claim. This could include attorney fees, fees and expenses of adjusters or costs of engaging experts and any other claim settlement costs that the insurer could allocate to a specific claim. Defense and cost containment includes defense, litigation and medical cost containment expenses, including fees for appraisers, private investigators or costs of engaging experts when these costs are related to defense of a claim.

8. *The ISO general liability closed claim survey asks for a breakdown of the award if an itemized court verdict is available. This breakdown should include:*
- a. *Economic loss*
 1. *medical*
 2. *wage*
 3. *other economic*
 - b. *Non-economic damages*
 - c. *Punitive damages*
 - d. *Prejudgment interest*
 - e. *Postjudgment interest*
 - f. *Other expenses (court costs, etc.)*

For what percentage of claims is this type of information available?

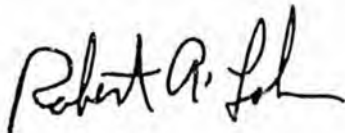
Even though the closed claim study asked for detailed information, there are few itemized verdicts, so the limited data is not credible for drawing conclusions. The data that is collected is not always complete and is only as good as the overall quality of the claim files.

The consensus of the group was that finding data to accurately measure the impact of tort reform on the costs and availability of insurance would be difficult. How should one measure things that did not happen? In addition, data that is collected only for this purpose may not be reliable since the insurer would have no other use, such as ratemaking, for this data.

The Division has attempted to find ways to measure the effects of tort reform on the costs and availability of insurance both by looking at data that is already collected and by considering the collection of additional types of data. We have not been able to identify specific types of information that will provide factual reliable estimates of the impact of tort reform. The primary issues that we have not been able to find a solution for are the limited number of large claims in general, the small number of claims that are settled with itemized verdicts, and cost and possible unreliability of collecting or coding data that is not used by the insurers for other purposes.

The Division welcomes your comments, questions or suggestions on this report.

Respectfully submitted,



Robert A. Lohr
Director

cc: Bruce Botelho, Attorney General
Deborah Sedwick, Commissioner

APPENDIX

Alaska Experience

Every year all insurers provide an Annual Statement to the Division. The Annual Statement provides information that is used to monitor the solvency of insurers. The Annual Statement includes, among other information, premiums, losses, assets and surplus of the insurer. Some of the information is countrywide data and some of it is specific to the insurer's Alaska business. The exhibits attached to this report are taken from these Annual Statements. We have included this information because it is the most readily available factual information related to premiums, claims, losses and solvency of the company as a whole. These exhibits show overall trends and include all factors that influence an insurer's operations. The available information is not adequate to make any conclusions about the effects of tort reform on the costs and availability of insurance.

Solvency

To evaluate the solvency of the insurer as a whole, the attached Aggregate Assets and Surplus for Insurers Writing Business in Alaska exhibit shows how assets and surplus have changed over the period from 1996 to 2000. The average change is an average of the individual insurer asset and surplus levels. Because all of an insurer's surplus is available to support losses that occur in any state, it is difficult to make a meaningful allocation of surplus to a particular state. Therefore, aggregate totals for assets and surplus are shown by year for all insurers writing business in Alaska. Both assets and surplus have increased by approximately the same amount per year.

Alaska Premium and Loss Experience From 1990 - 2000

For the liability lines of business, the attached exhibits show

- Aggregate Alaska premium earned
- Losses incurred
- Number of insurers
- ISO rate level changes

Premium and loss information is generally available for the period from 1990 - 2000. This information is from Annual Statements submitted by insurers to the Division. Because this information is based on losses incurred and premiums earned during a calendar year, it is useful for showing trends but should not be used to make determinations about the adequacy or excessiveness of insurance

premiums.³ Aggregate expense information is not included in these exhibits as it is not readily available

Rate level change data is available through 2002 for lines of business for which ISO submits rate filings. ISO rate level changes are used as a proxy for the average rate level change by line of business. For the commercial lines, this is probably fairly accurate as many insurers rely upon ISO loss costs to develop their rates. For the personal lines, many insurers do not use ISO loss costs, so the ISO loss cost changes may not be entirely representative of the overall rate changes in the personal lines market. The loss cost changes filed and approved for use by insurers using ISO filings are shown in the last column of each exhibit.

The data in these exhibits include all factors that affect insurance premiums, not just the effects of tort reform.

COMMERCIAL LINES

Aircraft

Because the aircraft line includes both property and liability coverages, any effect of tort reform will be difficult to isolate from this data. The number of insurers has decreased from 47 to 40 from 1990 to 2000. Losses increased 8.35% annually for a total increase of 141.67% over the ten-year period. Premiums increased an average of 6.99% annually for a total increase of 110.36% over the ten-year period.

Commercial Auto

Between 1990 and 2000, the number of insurers offering commercial auto insurance grew from 162 to 197, for an annual increase of 1.64% or 19.65% for the ten-year period. Losses grew 4.42% annually or 60.87% over the ten-year period. Premium grew 1.76% annually or 21.15% over the ten-year period.

Based upon ISO rate filings from 1993 to 2000, commercial auto rates are approximately 12% lower than they were in 1993.

Commercial Multiperil

The liability and property coverages of commercial multiperil insurance (CMP) were first split in 1992, so the exhibit includes data on premiums and losses beginning in 1992. The number of insurers increased from 137 to 166, between 1992 and 2000 for an average annual change of 3.17% or an eight-year increase of 40.93%. During the same period, premium increased by approximately 0.25% annually or 2.80% overall. Losses decreased 1.77% annually for a total decrease of 17.83% from 1992 to 2000.

³ Calendar year data does not match losses with the premiums used to pay the losses. Some of the losses incurred in one calendar year may be from policies that were issued in prior years.

Medical Malpractice

Between 1990 and 2000, the number of companies writing medical malpractice insurance grew from 35 to 42, for an average annual increase of 2.03%, or 24.75% over the ten-year period from 1990 to 2000. During the same period, losses increased on average by 1.29% annually, for a total ten-year increase of 15.18%, and premium decreased by approximately 0.90% annually, for a total ten-year decrease of 9.48%.

Other Liability

The number of insurers writing other liability grew from 198 in 1990 to 243 in 2000 for an average annual increase of 2.44% or 30.31% for the ten-year period. Losses decreased 5.25% annually or approximately 44.75% over the ten-year period. Premium decreased by 0.86% annually, for a total ten-year decrease of 9.02%.

Product Liability

Between 1991 and 2000, the number of insurers providing product liability was stable, 107 in 1991 and 109 in 2000. Losses increased approximately 25% annually and premiums decreased 1.52% annually. Because of the volatility of the data for this line, it is difficult to summarize the trends by the average changes. This is one line of business for which the premium trend and the loss trend go in opposite directions.

Based upon ISO filings from 1990 to 2002, the current loss costs are approximately 4% lower than they were in 1990.

PERSONAL LINES

Homeowners

Because homeowners insurance is a package policy that includes both liability and property coverages, the effect of tort reform is especially difficult to isolate. The number of insurers writing homeowners insurance has decreased from 70 in 1990 to 57 in 2000. This is an average annual decrease of approximately 2.91% or a total decrease of about 27.72% over the 10-year period. During the same period, premium increased an average of 7.2% annually or approximately 114.82% for the ten-year period. Losses increased an average of 3.43% annually or by 44.9% for the ten-year period.

Based upon ISO loss cost filings, homeowners rates are approximately at the same level in 2002 as they were in 1992. Because most of the larger insurers do not use ISO filings, this rate level approximation may not be an accurate reflection of the entire homeowners market.

Aggregate Assets and Surplus for Insurers Writing Business in Alaska

<u>Year</u>	<u>Assets</u>	<u>Average Change</u>	<u>Surplus</u>	<u>Average Change</u>
1996	\$661,393,007		\$219,179,535	
1997	\$749,194,654	21.24%	\$272,838,734	25.31%
1998	\$762,824,973	7.04%	\$296,359,655	9.14%
1999	\$779,096,896	1.46%	\$307,798,191	2.68%
2000	\$772,868,467	6.58%	\$280,096,626	7.95%

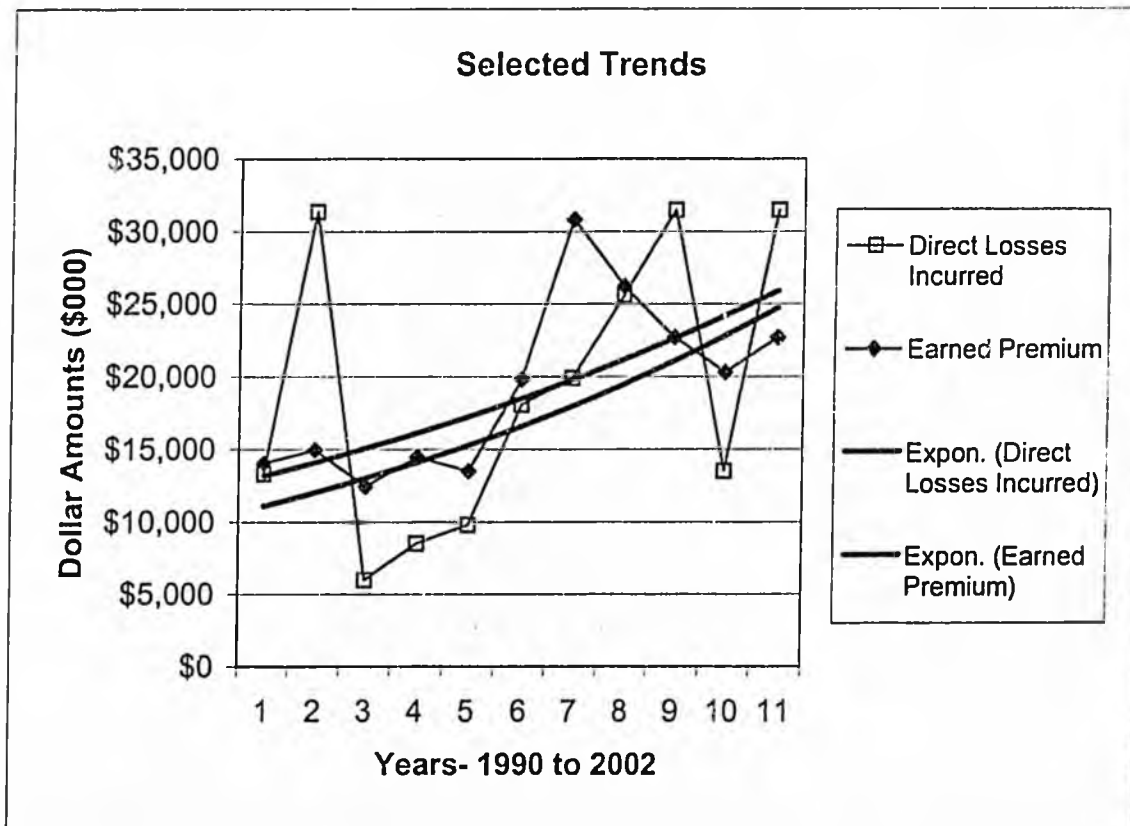
The average change is calculated by company.

The assets and surplus are countrywide amounts and do not represent an allocation to Alaska business only.

Aircraft

Calendar Year	Number of Companies	Direct Losses Incurred	Earned Premium
1990	47	\$13,304	\$14,034
1991	44	\$31,341	\$14,929
1992	42	\$5,976	\$12,433
1993	45	\$8,513	\$14,465
1994	45	\$9,797	\$13,488
1995	48	\$18,045	\$19,790
1996	47	\$19,868	\$30,799
1997	46	\$25,588	\$26,195
1998	39	\$31,455	\$22,681
1999	40	\$13,500	\$20,263
2000	40	\$31,455	\$22,669
2001	xxx	xxx	xxx
2002	xxx	xxx	xxx
Average Annual % Change		-1.20%	8.35%
1990 to 2000 % change		-12.39%	110.36%

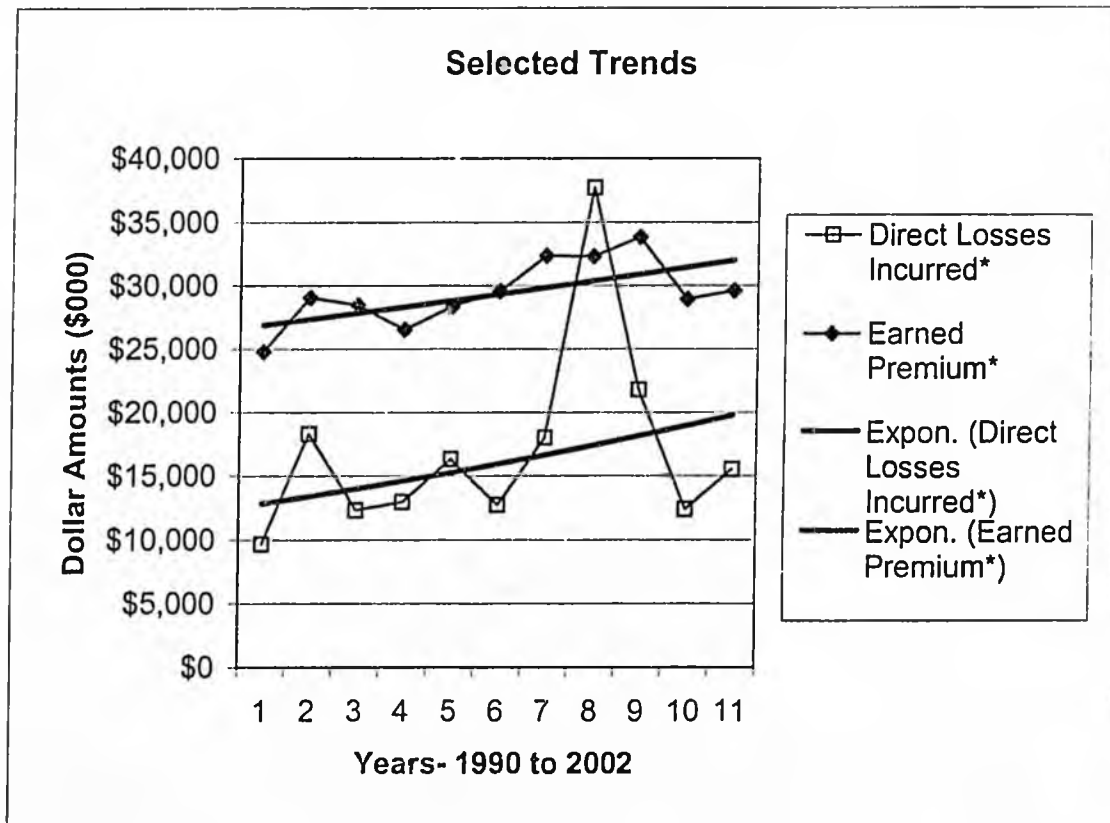
*Dollar amounts are in (\$000)



Commercial Auto

Calander Year	Number of Companies	Direct Losses Incurred*	Earned Premium*	ISO Recommended Rate Change
1990	162	\$9,660	\$24,752	xxx
1991	171	\$18,286	\$29,042	xxx
1992	175	\$12,307	\$28,435	xxx
1993	168	\$12,956	\$26,529	-5.6%
1994	180	\$16,279	\$28,361	-1.5%
1995	191	\$12,723	\$29,536	-2.5%
1996	175	\$17,988	\$32,333	-2.9%
1997	183	\$37,682	\$32,277	0.0%
1998	189	\$21,775	\$33,818	-5.1%
1999	191	\$12,384	\$28,904	0.6%
2000	197	\$15,506	\$29,598	4.4%
2001	xxx	xxx	xxx	xxx
2002	xxx	xxx	xxx	xxx
Average Annual % Change	1.64%	4.42%	1.76%	
1990 to 2000 % change	19.65%	60.87%	21.15%	
1992 to 2002 cumulative effect of rate adjustments				-12.26%

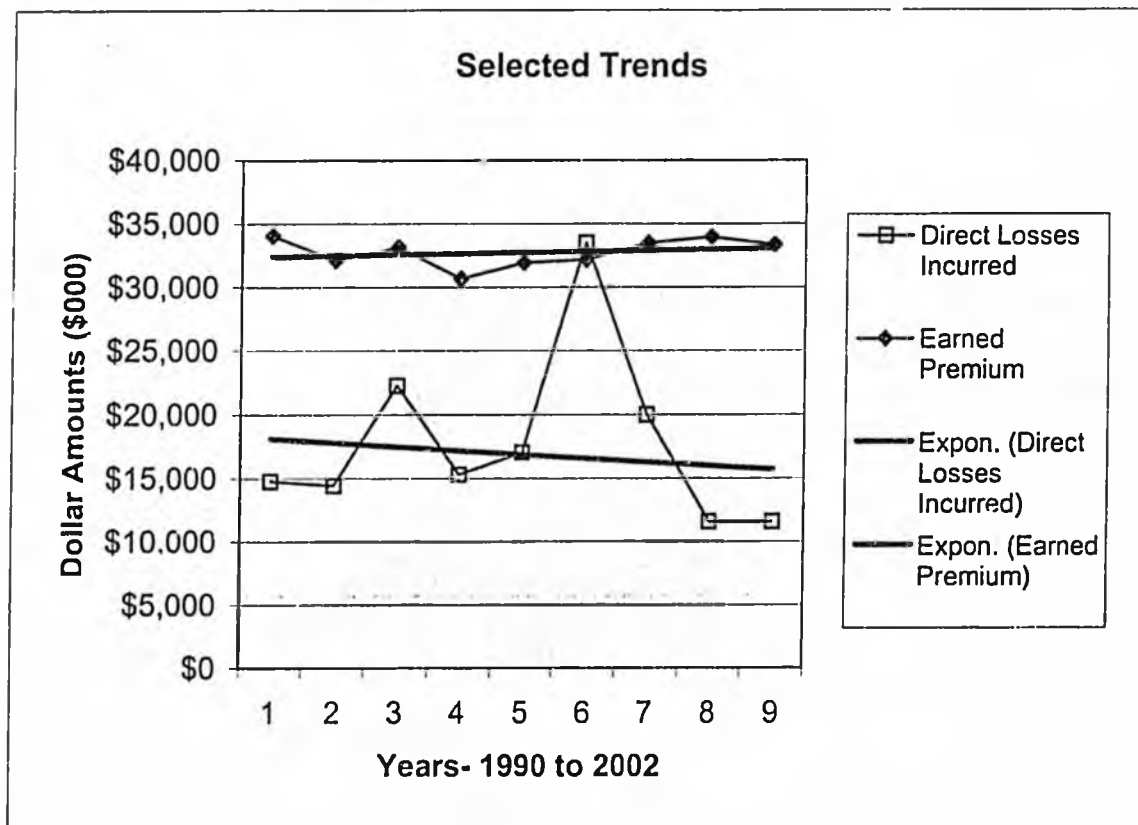
*Dollar amounts are in (\$000)



Commercial Multiperil

Calendar Year	Number of Companies	*Direct Losses Incurred	*Earned Premium
1990	xxx	xxx	xxx
1991	xxx	xxx	xxx
1992	137	\$14,756	\$34,036
1993	131	\$14,422	\$32,099
1994	140	\$22,233	\$33,107
1995	140	\$15,281	\$30,661
1996	151	\$17,021	\$31,898
1997	153	\$33,483	\$32,149
1998	163	\$19,960	\$33,461
1999	166	\$11,560	\$33,920
2000	166	\$11,560	\$33,334
2001	xxx	xxx	xxx
2002	xxx	xxx	xxx
Average Annual % Change	3.17%	-1.77%	0.25%
1992 to 2000 % change	40.93%	-17.83%	2.80%

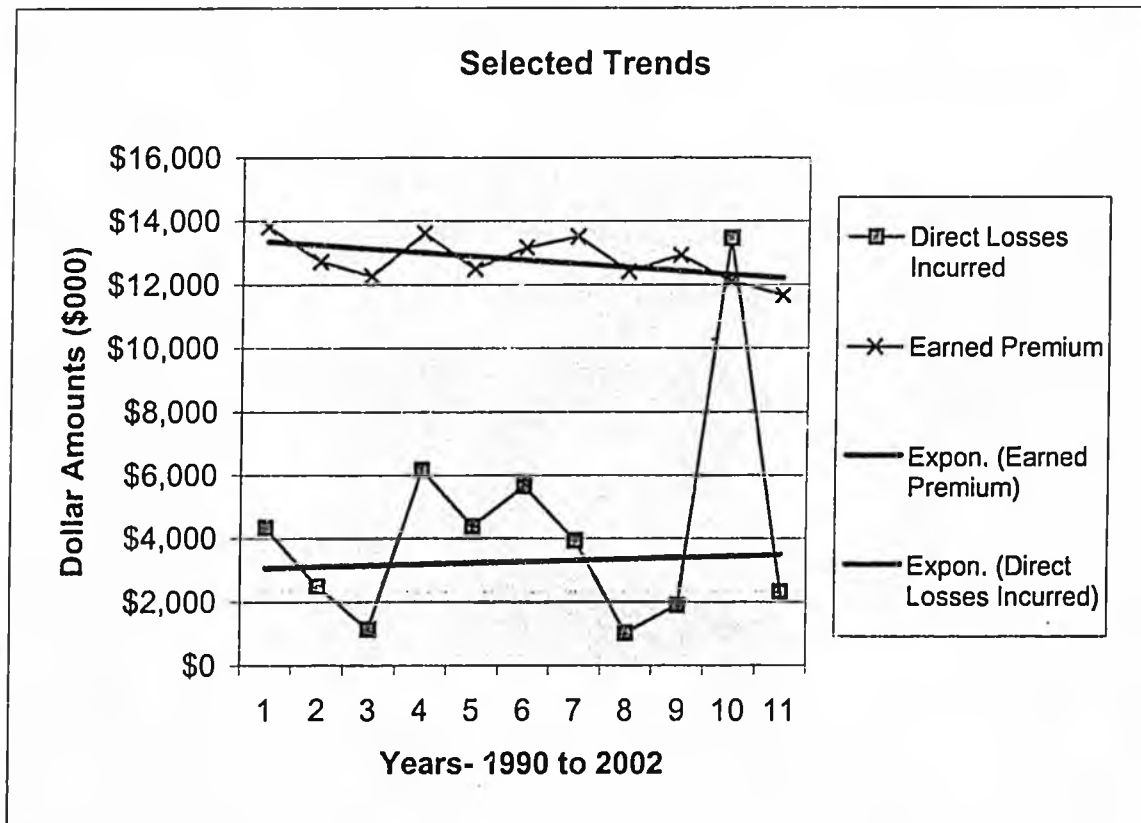
*Dollar amounts are in (\$000)



Medical Malpractice

Calander Year	Number of Companies	Direct Losses Incurred	Earned Premium
1990	35	\$4,336	\$13,812
1991	35	\$2,470	\$12,707
1992	38	\$1,150	\$12,264
1993	37	\$6,165	\$13,604
1994	38	\$4,377	\$12,488
1995	39	\$5,656	\$13,156
1996	40	\$3,933	\$13,500
1997	39	\$1,019	\$12,411
1998	41	\$1,886	\$12,911
1999	44	\$13,461	\$12,106
2000	42	\$2,311	\$11,652
2001	xxx	xxx	xxx
2002	xxx	xxx	xxx
Average Annual % Change	2.03%	1.29%	-0.90%
1990 to 2000 % change	24.75%	15.18%	-9.48%

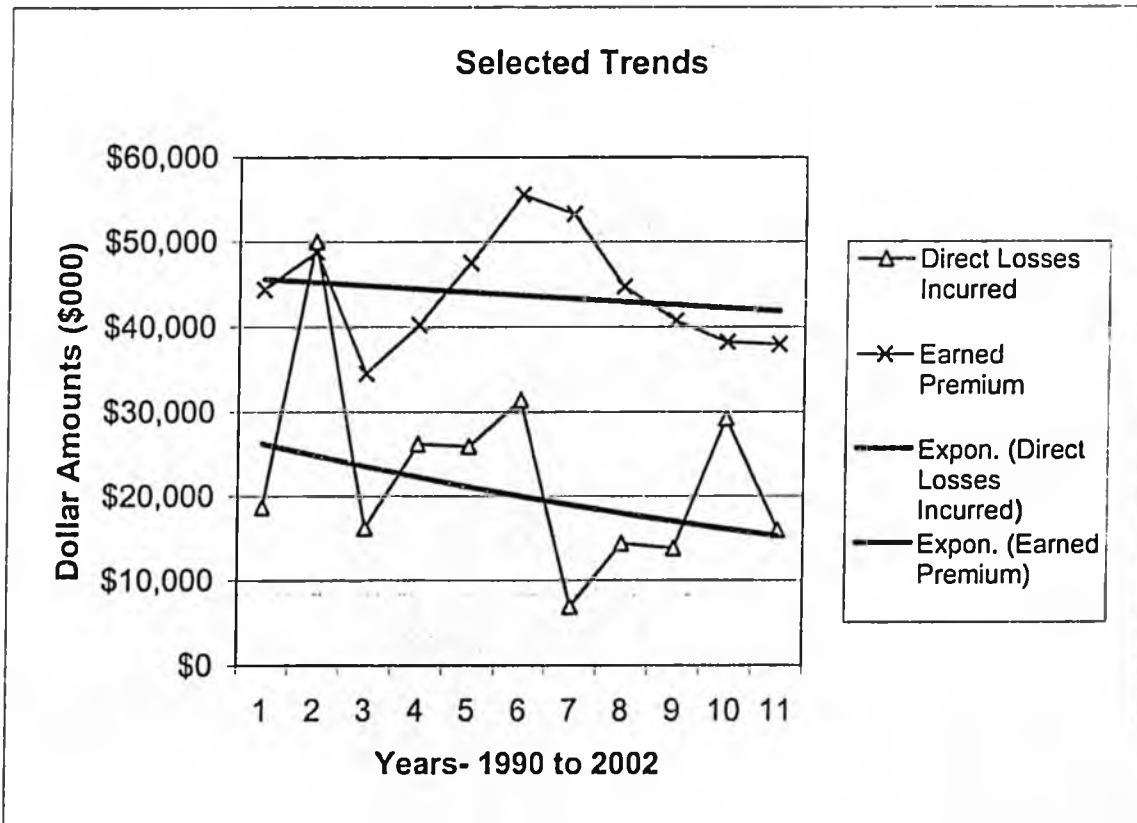
*Dollar amounts are in (\$000)



Other

Calander Year	Number of Companies	Direct Losses Incurred	Earned Premium
1990	198	\$18,658	\$44,363
1991	204	\$49,953	\$48,725
1992	202	\$16,189	\$34,482
1993	201	\$26,144	\$40,199
1994	212	\$25,868	\$47,464
1995	225	\$31,360	\$55,499
1996	232	\$6,901	\$53,219
1997	234	\$14,393	\$44,679
1998	241	\$13,793	\$40,694
1999	243	\$29,200	\$38,156
2000	243	\$15,940	\$37,880
2001	xxx	xxx	xxx
2002	xxx	xxx	xxx
Average Annual % Change		2.44%	-5.25%
1990 to 2000 % change		30.31%	-44.74%
			-9.02%

*Dollar amounts are in (\$000)



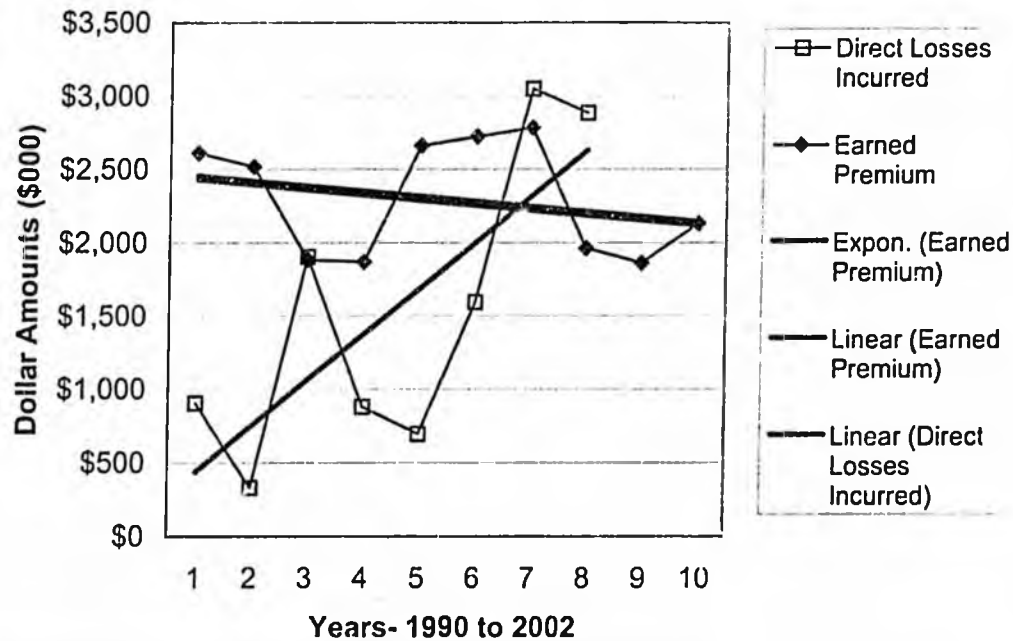
Product Liability

Calendar Year	Number of Companies	Direct Losses Incurred*⊗	Earned Premium*	ISO Recommended Rate Change
1990	xxx	xxx	xxx	6.1%
1991	107	-\$429	\$2,610	14.0%
1992	94	\$904	\$2,516	0.0%
1993	99	\$331	\$1,882	0.0%
1994	101	\$1,902	\$1,869	0.4%
1995	105	\$879	\$2,660	-10.4%
1996	102	\$696	\$2,721	1.2%
1997	103	\$1,595	\$2,782	-1.6%
1998	111	\$3,047	\$1,961	0.0%
1999	116	\$2,883	\$1,861	-5.7%
2000	109	-\$151	\$2,129	-6.3%
2001	xxx	xxx	xxx	4.5%
2002	xxx	xxx	xxx	xxx
Average Annual % Change	1.37%	24.57%	-1.52%	
1991 to 2000 % change	14.54%	479.90%	-14.18%	
<i>1992 to 2002 cumulative effect of rate adjustments</i>				-4.26%

*Dollar amounts are in (\$000)

⊗ Dollar amounts for 1991 and 2000 are not included in average change totals.

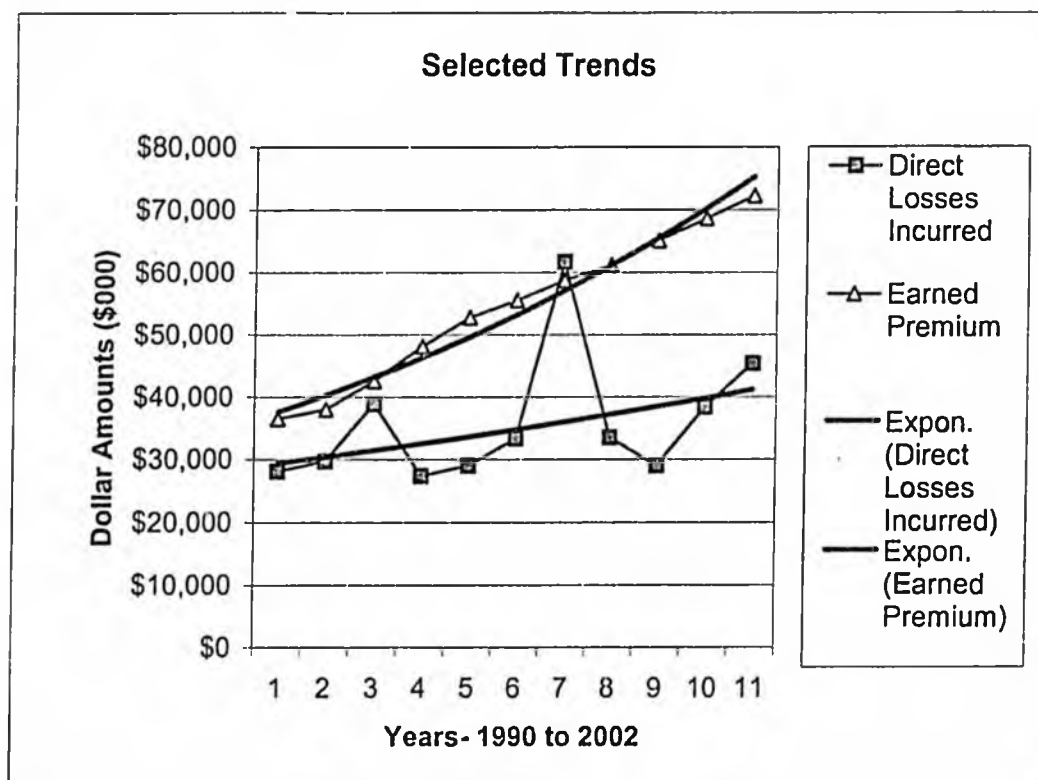
Selected Trends



Homeowners

Calander Year	Number of Companies	Direct Losses Incurred	Earned Premium	ISO Recommended Rate Change
1990	70	\$28,070	\$36,489	xxx
1991	71	\$29,695	\$37,949	xxx
1992	65	\$38,812	\$42,501	-6.7%
1993	64	\$27,334	\$48,079	14.5%
1994	59	\$28,973	\$52,736	12.9%
1995	56	\$33,321	\$55,502	0.0%
1996	55	\$61,628	\$58,660	-2.4%
1997	54	\$33,483	\$61,151	1.3%
1998	50	\$28,987	\$65,054	0.0%
1999	55	\$38,367	\$68,628	0.0%
2000	57	\$45,353	\$72,198	-5.1%
2001	xxx	xxx	xxx	-5.0%
2002	xxx	xxx	xxx	-5.7%
Average Annual % Change	-2.91%	3.43%	7.20%	
1990 to 2000 % change	-27.72%	44.90%	114.82%	
1992 to 2002 cumulative effect of rate adjustments				0.04%

*Dollar amounts are in (\$000)



Private Passenger Auto

Calander Year	Number of Companies	Direct Losses Incurred	Earned Premium	ISO Recommended Rate Change
1990	111	\$73,323	\$88,766	xxx
1991	110	\$80,894	\$98,587	xxx
1992	115	\$81,067	\$118,981	-7.7%
1993	102	\$94,989	\$122,877	8.4%
1994	105	\$91,594	\$128,603	0.7%
1995	88	\$103,152	\$131,694	-3.4%
1996	90	\$79,946	\$136,792	-4.3%
1997	88	\$81,614	\$145,589	5.6%
1998	92	\$133,761	\$146,990	7.0%
1999	95	\$112,524	\$145,426	-1.3%
2000	97	\$127,827	\$150,060	-2.6%
2001	xxx	xxx	xxx	-10.2%
2002	xxx	xxx	xxx	5.1%
Average Annual % Change		-2.14%	4.80%	4.86%
1990 to 2000 % change		-21.17%	67.56%	68.46%
1992 to 2002 cumulative effect of rate adjustments				-7.65%

*Dollar amounts are in (\$000)

