

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.31 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997

Hon. Fran Ulmer
Our File No. 663-96-0085

February 3, 1997
Page 7

A psychotherapist-patient privilege was recognized in Allred v. State, 554 P.2d 411 (Alaska 1976), although the supreme court divided on the source of the privilege and its scope. Since the court has power under the Alaska Constitution to create testimonial privileges, the source of power to create Rule 504 is beyond question. . . .

Evidence Rules Commentary to Rule 504. In Walstad v. State, 818 P.2d 695 (Alaska App. 1991), the Court of Appeals noted that the psychotherapist-patient privilege and the communications to clergy privilege had been promulgated by the Supreme Court, in Evidence Rules 504 and 506, "pursuant to its constitutional authority to 'make and promulgate rules governing practice and procedure in civil and criminal cases'" under art. IV, sec. 15. Id. at 697. See also, Galbraith v. State, 693 P.2d 880 (Alaska App. 1985) (sec. 40 of ch. 143 SLA 1982 invalid because it changed Evidence Rule 901- Requirement of Authentication or Identification).

Section 6:

Section 6 of the initiative also violates the prohibition against prescribing court rules by prescribing a new rule of evidence. Sec. 6 proposes to amend AS 09.17.070 by requiring that amounts received from so-called collateral sources be taken into account by the jury when it determines an award of damages. Under existing law, amounts recovered from collateral sources are deducted from the award by the court after the jury has determined the amount of the award without knowledge that there may be an additional recovery. The attempt to prescribe a new rule of evidence is found in proposed sec. 09.17.070(b) and (c) which provide:

(b) A person defending a claim may introduce into evidence an amount paid or payable as a benefit to the claimant as a result of the personal injury or death under Title 42 Chapter 7 of the United States Code (Social Security Act); a state or federal disability act; health, sickness, disability, accident, or income-disability insurance; insurance that provides health benefits or income-disability coverage; and a contract or agreement of a group, organization, partnership, or corporation, or other collateral source, to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services, disability, or lost wages. However, evidence of a collateral source that is a federally funded program that by law must seek subrogation or that has a right of subrogation under federal law, or evidence of death benefits paid under life insurance, or evidence of workers' compensation benefits received under AS 23.30, may not be introduced under this subsection. If a person defending a claim elects to introduce evidence described in this subsection, the claimant may introduce evidence of the amount that the claimant has paid or contributed to secure the claimant's right

<u>Name of Lobbyist</u>	<u>Contract/Salaried</u>	<u>Subject</u>	<u>Name of Client/Employer</u>	<u>Termination Date</u>
RINGSTAD, Ann 757 Illinois Street Fairbanks, AK 99701 907-456-4122	Contract Lobbyist	Education	University of Alaska	
RINGSTAD, John 119 Second Street #B Juneau, AK 99801 907-463-5242	Salaried Employee	Oil/Gas	BP Exploration (Alaska) Inc.	
RITCHIE, Kevin 217 Second Street #200 Juneau, AK 99801 907-586-1385	Salaried Employee	Local Government	AK Municipal League	
ROSE, Carl F.N. 316 W 11th Street Juneau, AK 99801 907-586-1083	Salaried Employee	Education	Assn. of Alaska School Boards	
ROSS, Kimberly S. 1117 E. 35th #102 Anchorage, AK 99508 907-277-0071	Salaried Employee	Transportation	AK Air Carriers Assn.	
ROWE, James 4341 B Street #304 Anchorage, AK 99503 907-563-4000	Salaried Employee	Telecommunications	AK Telephone Assn.	
SALERNO, Angela M. 525 Main Street Juneau, AK 99801 907-463-4502	Salaried Employee	Social Welfare	National Assn/Social Workers/AK	
SCHOEPHOESTER, Nancy N. PO Box 100360 Anchorage, AK 99510 907-263-4655	Salaried Employee	Oil/Gas	ARCO Alaska, Inc.	

Hon. Fran Ulmer
Our File No. 663-96-0085

February 3, 1997
Page 8

to the collateral benefit, including the cost to the claimant resulting from depleted or exhausted coverage.

(c) A person who provides a collateral benefit admissible under (b) of this section may not recover any amount against the claimant as reimbursement for those benefits and may not be subrogated to the rights of a claimant against a person defending a claim.

Sec. 6 of proposed initiative (emphasis added).

Subsection (b) provides that a person defending a claim for personal injury or death "may introduce into evidence" specified collateral benefits. The claimant, in turn, "may introduce evidence" of amounts paid or contributed to obtain the benefits. The first sentence in subsection (c), which refers to collateral benefits "admissible" under subsection (b), makes clear that subsection (b) provides for the introduction of such benefits into evidence during trial.

This represents a departure from the provisions of current AS 09.17.070. Existing AS 09.17.070 provides for the deduction of collateral benefits by the court at the conclusion of the case, after the fact finder has rendered its award, and after the court has awarded costs and attorneys fees.⁶

⁶ AS 09.17.070 provides:

Collateral benefits. (a) After the fact finder has rendered an award to a claimant, and after the court has awarded costs and attorney fees, a defendant may introduce evidence of amounts received or to be received by the claimant as compensation for the same injury from collateral sources that do not have a right of subrogation by law or contract.

(b) If the defendant elects to introduce evidence under (a) of this section, the claimant may introduce evidence of

(1) the amount that the actual attorney fees incurred by the claimant in obtaining the award exceed the amount of attorney fees awarded to the claimant by the court; and

(2) the amount that the claimant has paid or contributed to secure the right to an insurance benefit introduced by the defendant as evidence.

(c) If the total amount of collateral benefits introduced as evidence under (a) of this section exceeds the total amount that the claimant introduced as

(continued...)

Name of Lobbyist	Contract/Salaried	Subject	Name of Client/Employer	Termination Date
PADDOCK, Dean PO Box 21951 Juneau, AK 99802 907-463-4970	Salaried Employee	Fisheries	Bristol Bay Driftnetters Assn., Inc.	
PARISH, David PO Box 111861 Anchorage, AK 99511 907-522-2600	Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist	Public Broadcasting Transportation Oil/Gas Mining Resource Development Health Mining	AK Public Telecommunications, Inc. ERA Aviation Exxon Company USA Placer Dome US, Inc. Resource Development Council/AK American Heart Association USMX, Inc.	
PESKA, Garrey PO Box 240185 Douglas, AK 99824 907-364-2244	Contract Lobbyist	Health Care	AK State Hospital/Nursing Homes	
PHELPS, Jack E. 111 Stedman #200 Ketchikan, AK 99901 907-225-6114	Salaried Employee	Timber	AK Forest Association	
PORTMAN, Carl 121 Fireweed #250 Anchorage, AK 99503 907-276-0700	Salaried Employee	Resource Development	Resource Development Council/AK	
PUTNAM, Fate 319 Seward Street #3 Juneau, AK 99801 907-586-2813	Contract Lobbyist	Labor	AK State Employees Assn.	
QUESNEL, Paul 119 Second Street #B Juneau, AK 99801 907-463-5242	Salaried Employee	Oil/Gas	BP Exploration (Alaska) Inc.	

Hon. Fran Ulmer
Our File No. 663-96-0085

February 3, 1997
Page 9

Although existing AS 09.17.070 refers to the introduction of evidence of collateral benefits, it is clear from the context that it relates only to the submission of proof of collateral benefits to the court for deduction from the total award after trial, and after the fact finder has rendered its award.⁷

Section 6 appears to prescribe a new rule of evidence, a matter clearly within the scope of the Supreme Court's art. IV, sec. 15 rule-making power. By providing for the admissibility of evidence of collateral benefits during trial, the section falls within the Court's procedural rule-making power to govern the admissibility of evidence. See the discussion on this issue pertaining to sec.11 of the initiative at pp. 8 - 10 of this opinion.

There is an additional reason why the subject matter of sec. 6 comes within the restriction against prescribing a rule of court. Proposed sec.6 would specify the admissibility of evidence of a type that should be left to the sound discretion of a court. This kind of evidence may cause a jury to be more apt to find for the defendant in close cases if it is known that the plaintiff has, or will, recover from sources other than the defendant.⁸ We believe that this type of provision

⁶ (...continued)

evidence under (b) of this section, the court shall deduct from the total award the amount by which the value of the non-subrogated sum awarded under (a) of this section exceeds the amount of payments under (b) of this section . . .

AS 09.17.070 (emphasis added).

⁸ Evidence Rule 411 excludes evidence of liability insurance, in part for this reason. The Evidence Rules Commentary for Rule 411 states:

[T]he rule is designed to prevent a jury from deciding a close case on an improper basis— i.e., whether or not a party is insured. There is a danger that insurance evidence might skew the decision-making process of the jury by making it regret a possibly wrong decision against an uninsured person much more than a similar decision under identical facts against a person whose insurance status is unknown, or by making the jury regret any erroneous decision against an insured party less than it would an erroneous decision against a person whose insurance status is unknown. This is not to suggest that a jury will intentionally make a mistake. It suggests only that in close cases someone must bear the risk of error, that the presence or absence of insurance is not regarded as an appropriate guide for allocating the risk, and that it is possible that a jury will misuse insurance evidence . . .

(continued...)

Name of Lobbyist	Contract/Salaried	Subject	Name of Client/Employer	Termination Date
McCORCLE, James H. PO Box 22016 Juneau, AK 99802 907-586-2493	No Compensation	Senior Citizens	AARP	
McPHETRES, Stephen T. 326 4th Street #404 Juneau, AK 99801 907-586-9702	Salaried Employee	Education	AK Council of School Administrators	
McRAE, Jack C. PO Box 327, MS355 Seattle, WA 98111 907-670-5653	Salaried Employee	Insurance	Blue Cross of WA & AK	
MEINERS, Mary Lou 805 Goldbell Juneau, AK 99801 907-586-2568	No Compensation	Senior Citizens	AARP	
MENTZER, Beverly K. PO Box 2180 Houston, TX 77252 713-656-6145	Salaried Employee	Oil/Gas	Exxon Company USA	
MILLER, Alex 360 West Benson #200 Anchorage, AK 99503 907-562-2560	Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist	Insurance Oil/Gas Telecommunications Wholesale Business	AK National Insurance BP Exploration (Alaska) Inc. General Communication Inc. Odom Corporation	
MILLER, Berne C. 124 West 5th Street Juneau, AK 99801 907-463-3445	Salaried Employee	Transportation	Southeast Conference	
MILLER, Charlie PO Box 102286 Anchorage, AK 99510	Contract Lobbyist Contract Lobbyist Contract Lobbyist	Insurance Health Care Wholesale Business	AK National Insurance Columbia AK Network/AK Regional Hosp. Odom Corporation	

Hon. Fran Ulmer
Our File No. 663-96-0085

February 3, 1997
Page 10

comes within the stated purpose of the framers of the constitutional prohibition who desired to foreclose use of the initiative to prescribe court rules. They wanted to protect "sensitive or sophisticated areas of legislation" from "emotional electoral dialogue and impulsive enactment by the general public." Citizens Coalition v. McAlpine, supra, 810 P.2d at 170.

II. Special Legislation

Opponents of the initiative also claim that sec. 14 constitutes special legislation. Sec. 14 reads as follows:

This initiative applies to all causes of action accruing on or after the effective of this Act. This initiative does not apply to any action or recovery arising out of the "Exxon Valdez" oil spill of March 1989.

Art. XI, sec. 7 restricts the initiative from being used to "enact local or special legislation." It is the singling out of a specific action or recovery for exclusion from the law to be enacted that is objectionable.⁹ Unfortunately, there have been no Alaska Supreme Court cases applying the restriction against special legislation by initiative.

Another provision in the Alaska Constitution limits the power of the legislature to enact special or local legislation. The prohibition against local or special legislation provides:

The legislature shall pass no local or special act if a general act can be made applicable. whether a general act can be made applicable shall be subject to judicial determination.

Alaska Const. art. II, sec. 19.

Section 19 has not been recently applied by the Alaska Supreme Court. In 1975, sec.19 was applied to invalidate a statute that mandated the creation of an Eagle River-Chugiak Borough. Abrams v. State, 534 P.2d 91 (Alaska 1975). In Abrams, the court recognized that a statute may affect only one of a few areas and yet relate to a matter of statewide concern or common interest.

⁸ (...continued)

Evidence Rules Commentary to Rule 411.

⁹ We are not certain whether there are yet "unaccrued" claims related to the Exxon Valdez oil spill. Our uncertainty forces us to give credence to a claim that the restriction on special litigation must be applied to this section.

Name of Lobbyist	Contract/Salaried	Subject	Name of Client/Employer	Termination Date
KUBLEY, Don 15945 Glacier Highway Juneau, AK 99801 907-789-9273	No Compensation No Compensation Contract Lobbyist No Compensation Contract Lobbyist Contract Lobbyist	Environment Business Local Government Tourism Local Government Transportation	AK Environmental Technologies AK International Marketing City of Kodiak Club Pacific Kodiak Island Borough Sampson Tug & Barge	
KYLE, Joe Pacific Associates 234 Gold Street Juneau, AK 99801 907-586-3107	Contract Lobbyist	Fisheries	APICDA Joint Ventures, Inc.	
LAUBER, Mignon Diane 321 Highland Drive Juneau, AK 99801 907-586-6366	Contract Lobbyist	Alcohol	Anheuser-Busch Company, Inc.	
LAUBER, Richard B. 321 Highland Drive Juneau, AK 99801 907-586-6366	Contract Lobbyist Salaried Employee	Alcohol Fisheries	Anheuser-Busch Company, Inc. Pacific Seafood Processors Assn.	
LA BOLLE, Pamela 217 Second Street #201 Juneau, AK 99801 907-586-2323	Salaried Employee	Business	AK State Chamber of Commerce	
LESSMEIER & WINTERS LESSMEIER, Michael WINTERS, Sheldon One Sealaska Plaza #303 Juneau, AK 99801 907-586-5912	Contract Lobbyist	Insurance	State Farm Insurance Company	
LOESCHER, Robert W. One Sealaska Plaza #400 Juneau, AK 99801 907-586-1512	Salaried Employee	Native Issues	Sealaska Corporation	

Hon. Fran Ulmer
Our File No. 663-96-0085

February 3, 1997
Page 11

In 1977, sec. 19 was again applied to validate a statute authorizing a trade of land between the federal government, the state, and a Native regional corporation. State v. Lewis, 559 P.2d 630 (Alaska 1977), cert. denied 432 U.S. 901 (1977). The court found that the land trade was unique, but of statewide concern. The Lewis court propounded a test to be used in determining whether a statute violates the special or local prohibition. It was substantially the same as the test used to determine the validity of non-suspect classifications challenged as violative of equal protection. The State merely had to show a rational basis, a good reason, to justify the special treatment.

In 1978, the Court articulated a unified equal protection analysis that avoids distinguishing between suspect and non-suspect classifications by using a sliding scale to weigh the interests involved in any classification. State v. Erickson, 574 P.2d 1 (Alaska 1978). The Court applies a single test that is flexible, and dependent on the importance of the rights involved. The more fundamental the right involved, the more compelling the interest the state must have for preferring one classmember over another. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980).

There has not been a case involving the local or special legislation prohibition since the unified equal protection test was adopted by the court. It remains to be seen how the court will apply an equal protection analysis to a statute claimed to violate sec. 19. The Exxon Valdez oil spill action is matter that has drawn substantial interest from the public, but that does not mean that it is a matter of statewide concern. The parties to that action are the only persons or entities who may stand to benefit from the provisions of sec. 14. This presents a close question of law, which should be resolved in favor of allowing a vote on the matter. We cannot help observing that the sponsors could easily avoid this issue by substituting a more generally worded applicability provision, and we encourage them to do so.¹⁰

Conclusion

If you decide to reject the initiative, you must give notice to all interested persons and groups who may be aggrieved by your decision. AS 15.45.240. This notice will set in motion a thirty day appeal period during which these persons must contest your action or be forever barred. McAlpine v. University, 762 P.2d 81, 86 (Alaska, 1988). We recommend that the sponsors remedy the defects discussed above by severing the offending provisions and reapplying for certification of the amended initiative.

JLB:clh

¹⁰ An clause that made certain provisions of the initiative applicable only to actions filed after a specified date would effectively accomplish the intended purpose.

Name of Lobbyist	Contract/Salaried	SUBJECT	Name of Client/Employer	Termination Date
HAYES, Joe (Continued)	Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist	Oil/Gas Local Boundaries Energy/Utilities Estate Planning Health Care	ARCO Alaska Inc. Chugach Alaska Corporation The Energy Group DA Davidson Trust Co. - AK Providence Health System	
HAYS, Ann Ziesmer 2702 Denali Anchorage, AK 99503 907-272-6571	Salaried Employee	Labor	IBEW Local 1547	
HEESCH, Jack R. PO Box 201608 Anchorage, AK 99520 907-586-1163	Contract Lobbyist Contract Lobbyist	Licensure of Chemical Dependency Counsellors Health Care	AK Commission for Chemical Dependency Professionals Certification AK Nurses Association	
HICKEY, Mark S. Hickey & Associates 211 Fourth Street #108 Juneau, AK 99801 907-586-2263	Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist Contract Lobbyist	Business Local Government Local Government Local Government Tobacco Tax Local Government Alaska Native Issues Oil/Gas	3M - Alaska City of Atka City of Akutan City of King Cove Coalition of Citizens to Protect Kids from Tobacco Lake & Peninsula Borough TDX Corporation Harbor Enterprises, Inc.	
HOUSE, Ann B. PO Box 23152 Juneau, AK 99802 907-586-3688	Contract Lobbyist	Construction	Wright Services	
HUGONIN, Lauree 130 Seward Street #501 Juneau, AK 99801 907-586-3650	Salaried Employee	Domestic Violence & Sexual Assault	AK Network on Domestic Violence & Sexual Assault	

SCOMM

101A:30

~~SECRET~~

- went under State of Cold
Conservatorship in April 1991

3/9 → AM. Best 1990 (for 1989)
→ "B+" = Very Good (3rd highest)

5/8 → S + J : ① JAN Feb MAR 1991:
→ "BB-" = Secure but vulnerable

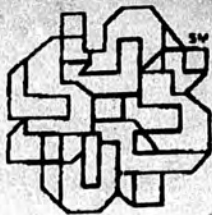
② April 1991: "B"

③ May 1991: "CC"

1.31.97

STAN
GARDINGTON
269-914

Make Brian a
Memo



STRUCTURED
FINANCIAL
ASSOCIATES, INC.®

NSSTA

National Structured
Settlements
Trade Association
Member

A. L. TAMAGNI, SR.

ANCHORAGE, ALASKA OFFICE
1205 EAST INTERNATIONAL AIRPORT ROAD
SUITE 205 • ANCHORAGE, ALASKA 99518
BUS: 907-562-7421 • HOME: 907-349-1736
FAX: 907-562-1366 • WITHIN AK: 800-478-1972

*Nice to
know
but*

FAX TRANSMITTAL COVER SHEET

DATE: 2.20.97

SENT FROM: (907) 562-1366

SENDER'S NAME: A.L. TAMAGNI, SR.

RECEIVER INFO:

NAME: JIM SOULANT @ REP PORTER

COMPANY: AT LEIS

FAX #: 1-907-465-3834

NUMBER OF PAGES, INCLUDING THIS COVER: 8

COMMENTS: THIS MAY BE OF SOME

USAGE

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT THIS OFFICE AS
SOON AS POSSIBLE.**

OFFICES: ANCHORAGE • ATLANTA • BALTIMORE • BOSTON • BUTTE • CHICAGO • COLUMBIA • COLUMBUS • DALLAS • DENVER
DETROIT • GRAND RAPIDS • HAWAII • KANSAS CITY • LOS ANGELES • NEW HAVEN • NEW YORK • ORLANDO • PHILADELPHIA
PHOENIX • PITTSBURGH • PORTLAND • SAGINAW • SAN DIEGO • SAN FRANCISCO • ST. LOUIS

STRUCTURED SETTLEMENTS: OBJECTION NOTED

by John M. Dangers

I. INTRODUCTION

The United States Congress, Treasury Department, Internal Revenue Service, National Association of Insurance Commissioners, Governmental Accounting Standards Board, and many state legislatures, have, as a matter of public policy, legislated and regulated to promote the use of structured settlements. However, in recent years, plaintiffs have generally responded negatively to structured settlement offers as a result of interest rate fluctuations, and high profile insurer insolvency. In the wake of this resistance, the defense community has become accustomed to the perception that structured settlements are a less viable option than in years past. While security and yield are legitimate, essential issues when contemplating a structured settlement offer, they can be achieved through due diligence. Thus structured settlements remain an appropriate and beneficial method of claim/suit resolution.

II. AN HISTORICAL PERSPECTIVE

When determining the economic advisability of a structured settlement, it is appropriate to consider the yield of a settlement annuity in the context of current market conditions. One yardstick against which to measure financial performance is return relative to the rate of inflation.

A structured settlement may have looked more attractive when double digit interest rates prevailed, and there is no disputing that as interest rates come down, so too does the return on a settlement annuity. However, current

interest rates and investment returns are very close to their long term historical averages.

It is important to realize that in the early 1980's, when settlement annuities were yielding 9 or 10 percent, the rate of inflation was 12 plus percent, resulting in a negative real return of minus 2 or 3 percent. Currently, a typical settlement annuity yields approximately 7 percent and, in relation to the moderate inflation rate (2.7 percent in 1993), produces a positive real return.

Over the last seventy years inflation has averaged 3 percent annually. In its effort to control future inflation, the Federal Reserve recently made a series of preemptive strikes, adjusting short term interest rates upwards. These increases have had a ripple effect into long term interest rates, improving structured settlement returns.

III. THE PRESENT PICTURE AND CRITICAL CONSIDERATIONS

Since 1926 long term interest rates have averaged five percent annually. From this standpoint current rates are actually above average. The perception that interest rates are too low for a structured settlement to be worthy of consideration begs the question: in comparison to what? It is appropriate to make comparisons only against alternative investment opportunities that are available to the plaintiff at the time of settlement.

It is not possible to secure the returns that existed in the past decade, when interest rates were abnormally inflated. The present decade's interest rate declines have had a similar or worse effect on the other investment

vehicles that vary with economic fluctuations, such as US Treasury obligations, municipal bonds, taxable bonds, certificates of deposit, passbook savings accounts, etc.

The critical question, regardless of the state of interest rates, is how can settlement proceeds be invested to achieve a comparable payment stream and the future security that are available in a structured settlement? The answer must take into account various factors, including the injured individual's future earning capacity, investment expertise, and tolerance for risk. Additionally, any such analysis should consider not only nominal returns but also should subtract the rate of inflation and the impact of taxes.

As a result of interest rate trends in recent years, large amounts of money have been transferred from typically conservative savings institutions, which are FDIC insured, into riskier investments, which hold prospects of higher returns. Only months ago, a one year certificate of deposit yielded approximately 3 percent. For a person in the 28 percent tax bracket the after tax yield is reduced to 2.16 percent prior to considering inflation.

Such returns prompted many to seek alternatives with the potential for a greater return, albeit with a proportional increase in risk. However, personal injury claimants typically need a secure payment stream in order to resume as normal a life as may be possible with the knowledge that future medical, personal, and family needs can be accounted for out of settlement proceeds. One way to accomplish this goal is to allocate a portion of the settlement funds to provide for periodic payments. As

STRUCTURED SETTLEMENTS: OBJECTION NOTED

such, these funds would not be subject to speculation, volatility or diminution.

While some sophisticated investors may be able to outperform the fixed return of a structured settlement by engaging in more speculative investments like equities, such gains are not guaranteed and require an individual to risk principal. Additionally, management fees, brokerage fees, taxes, and any other upfront, backend, or ongoing costs associated with an investment diminish investment capital and returns.

IV. DISSIPATION OF LUMP SUM AWARDS

From claimant representatives' and regulators' perspectives, a primary benefit of a structured settlement is that it produces a secure fixed income stream that is guaranteed for life and/or a period certain. As such, a structured settlement can prevent the hardship which often results when a claimant dissipates or outlives lump-sum settlement proceeds.

A study cited by the "Journal of Commerce" found that 90 percent of

the recipients of a substantial lump sum of money whether by settlement or lottery dissipate the entire lump sum within five years of receipt. According to the "California Practice Guide: Personal Injury" 25 to 30 percent of all accident victims dissipate their judgment or settlement within two months of recovery.

This phenomenon is widely recognized, and can be especially problematic in the context of a personal injury, workers compensation, and wrongful death settlements. Once compensatory damages have been squandered, the claimant may be forced to rely on tax-supported public assistance, such as welfare and Medicaid.

V. BENEFITS OF A STRUCTURED SETTLEMENT

A structured settlement provides the opportunity to secure a stable source of in-coming funds so that a claimant may plan a post-accident future. A periodic payment schedule can be specifically tailored to a claimant's individual needs and can be fashioned to replace lost income, provide for the care of

dependents, pay for future medical care, or set up a fund for rehabilitation, retraining, education, or even retirement and estate planning. The payments can be made monthly, quarterly, annually, or can coincide with a future event (e.g., a college fund, mortgage obligation, future surgery and/or rehabilitation, replacement of specialized transportation, etc.). The schedule of periodic payments agreed upon is not subject to inevitable interest rate variation, economic fluctuations, or stock market volatility. As such, the structured settlement's flexibility of design can be very appealing.

VI. TAX CONSIDERATIONS

A principle benefit of structuring a settlement is that the payments flow to the recipient completely tax free in accordance with Section 104(a)(2) of the Internal Revenue Code which states: "Gross income does not include the amount of any damages received (whether by suit or agreement and whether as lump sum or as periodic payments) on account of personal injury or sickness."

Simply stated, personal injury damages are tax exempt. However, Congress and the Internal Revenue Service have created a clear distinction, in the form of a tax exemption, between structured settlement proceeds and those derived from an investment owned or controlled by an individual. Thus, a properly configured structured settlement enables a claimant to enjoy the management-free time value of money without creating a taxable event. Whereas, if an individual accepts a lump sum in resolution of a claim or lawsuit, while that amount is excludable from gross income for tax purposes, any gain derived from investing that lump sum may be subject to federal, state, and local income taxes

INTERNAL RATE OF RETURN COMPARISONS

The chart below demonstrates how much interest the self investor would have to earn to equal the payout of a non-taxable structured settlement. The tax brackets refer to the recipient's federal income tax level. The figures do not include state income taxes, which would make the differences even greater.

Structure Return Rate	15% Tax Bracket	20% Tax Bracket	31% Tax Bracket	36% Tax Bracket
5.00%	5.88%	6.94%	7.25%	7.81%
6.00%	7.06%	8.33%	8.69%	9.38%
7.00%	8.23%	9.72%	10.14%	10.94%
8.00%	9.41%	11.11%	11.59%	12.50%
9.00%	10.60%	12.52%	13.12%	14.06%

STRUCTURED SETTLEMENTS: OBJECTION NOTED

thereby reducing the net return.

In measuring the impact taxes can have, it is important to compare the after tax yield of an alternative investment to that of a tax free structured settlement. Depending upon the applicable tax rate, an individual must obtain a taxable return of between 7.65 and 10.16 percent to match the tax free return from a settlement annuity yielding 6.5 percent.

Unfortunately such returns cannot be achieved by a claimant or any investor in today's marketplace without substantial and perhaps unacceptable exposure to risk.

In lieu of a taxable investment of settlement funds, a claimant may consider municipal bonds. However, like most speculative options, this area can present complications for an unskilled or risk averse investor. While municipal bonds are exempt from federal taxation, they are not necessarily tax free, nor are they risk free. Many municipal bond owners overlook that the interest (or dividends in the case of municipal bond mutual funds) is free from federal income tax, but that tax free status does not necessarily extend to other levies such as capital gains taxes, and state and local taxes.

Additionally, interest risk is inherent in bonds whether they are corporate, U.S., or municipal bonds. The market price of a bond varies inversely with the prevailing interest rates. Therefore, if interest rates increase, as is the current trend, the bond's value decreases. Regardless of market trends, a series of bonds must be purchased to produce a monthly payment stream. Such a portfolio requires management fees, and the exposure to risk, while diversified, is increased by the number of issues held. Also municipals are generally (1) callable within ten years of issuance, exposing investors to rein-

vestment risk, and (2) "downgradeable", potentially subjecting investors to diminished investment quality and security. With many state and local governments operating under fiscal constraints, the prospect of municipal default, while uncommon, is an additional issue of which investors must be aware.

VII. INSURER RELIABILITY

A. What Went Wrong?

Concerns regarding insurer reliability have naturally arisen in the wake of the Executive Life Insurance Company failure and other high profile insolvencies. All indications are that those insurance companies were troubled by imprudent asset management.

Investment practices, such as excessive holdings of non-investment grade ("junk") bonds and real estate holdings that were not geographically diversified, were largely responsible for individual insurer's difficulties.

The Executive Life insolvency occurred because rather than taking the course of steady growth, management opted for explosive uncontrolled asset expansion, creating a portfolio that exceeded 60 percent "junk" bonds. In an effort to continue to attract business prior to being seized by regulators, Executive Life kept its rates below competitive prices, offering greater yields than market conditions dictated. This debacle increased public awareness and scrutiny, and serves as indisputable evidence that cost and yield are not the only determinants of a "good deal".

B. The Solution

Settlement annuity issuers and obligors should be limited to life insurers that exhibit the highest level of security, solvency, and claims paying

ability. If there is any benefit to be derived from industry insolvencies, it is that it has become less difficult to differentiate financially strong from potentially problematic companies. Many insurers have restructured their portfolios in response to the pressure to reduce risk. Consistent with the National Association of Insurance Commissioner's recommendations, the majority of states, Massachusetts included, have passed measures limiting the maximum percentage of non-investment grade assets a licensed insurer may hold. In addition, companies that rate insurer solvency and claims paying ability, such as A.M. Best Company, Standard & Poor's, Moody's, Duff & Phelps, have increased their activity, providing comprehensive assessments of capital adequacy, investment risk, expected future profitability, liquidity, holding company financial leverage, and management on a more frequent basis.

In an effort to combat concerns associated with structuring a settlement, Congress enacted the Technical and Miscellaneous Revenue Act of 1988, repealing a provision of the IRC which provided that the settlement recipient did not have any greater rights against the entity obliged to make the future payments than did a general creditor. Thus, the recipient of periodic payments may exercise the option to perfect a security interest in the settlement annuity, and, in the event of failure, the annuity is pledged to the claimant and payments may not be diverted to the insurer's other creditors.

Implementation of this Act was slowed pending regulatory confirmation that it was truly Congress' intent to allow for secured creditor status without jeopardizing the tax free nature of the periodic payments. The IRS has now issued a pair of letter rulings

STRUCTURED SETTLEMENTS: OBJECTION NOTED

which hold that a plaintiff's possession of an annuity in order to perfect a security interest in the annuity, does not cause the plaintiff any adverse tax consequences. As an alternative, some individual settlement annuity issuers (obligors) offer a corporate guarantee of non-disrupted payments. Any such option should be evaluated by examining guarantee's language and the guarantor's strength.

Recent events have made other security maximization strategies more common. These include the use of U.S. Treasury obligations (alone or in conjunction with a settlement annuity) to fund structured settlement liabilities. Another tact is to divide the structure between two settlement annuity issuers so that a larger aggregate safety net from guaranty associations exist.

VIII. HOW TO OBTAIN A STRUCTURED SETTLEMENT

A structured settlement specialist's services are retained or authorized by the defense, however, objections raised by plaintiff's attorney must be adequately addressed or there will be no structured settlement. The role of the specialist or broker is that of a third-party intermediary and has become increasingly vital to the successful negotiation of a structured settlement. If the specialist cannot sufficiently answer concerns relating to periodic payment schedule design, tax consequences, release language, alternative investment comparison, obligor security and credit worthiness, attorney fee calculation, or any other aspect of a proposed structured settlement, the specialist may not be equipped to provide services in today's more complex mar-

ketplace, or a structured settlement may not be the appropriate solution for the case at hand.

IX. FEE CALCULATION AND DEFERRAL

Contingent fee calculation in the context of a structured settlement is based on the present value of the settlement amount, not the total payout over time. The overwhelming majority rule is that the present value of the current and future payments is the correct measure the settlement for purposes of calculating a contingent fee. In the past there had been some instances in which attorneys based their contingency fee on the settlement payout rather than reducing the settlement amount to its present value, thereby rendering the fee excessive. (Private Reprimand No. 90-34)



O'BRIEN & LEVINE

Established 1976

Court Reporting Services

- Statewide Coverage
- Discovery Zx-Authorized Dealer
- Expedited and Daily Copy
- Cassette Transcription Services
- Mini-U-Script w/Word Indexing
- IBM/PC Disk Conversions
- Videotaping Services
- Master Word Indexing
- Optical Disk Archiving
- Translation Services

TOTAL LITIGATION SUPPORT SERVICES

A Commitment To Professional Services To The Legal Community

617/254/2909

1287 Commonwealth Avenue • Boston, Massachusetts • 02134

STRUCTURED SETTLEMENTS: OBJECTION NOTED

Generally attorney fees are paid out of the up front or immediate cash portion of a structured settlement. There is however the option to structure all or a portion of the fee. By agreeing to accept periodic payments the attorney may be able to defer the tax liability until the year in which funds are received. For years it was somewhat common to structure attorney's fees in conjunction with personal injury settlements. It was widely believed that there was a tax consequence only when those funds were actually received. In 1991 an agent of the Internal Revenue Service during the course of a routine audit challenged the tax deferral of structured attorney fees. The agent argued that where a lawyer accepted a structured fee, he had to pay tax on the present value of the entire income stream in the year that it is earned. The Internal Revenue Service issued a technical advice

memorandum concurring with the agent's argument, resulting in the virtual cessation of structured attorney fees.

A recent case appears to make fee structures a good alternative once again. In *Richard A. Childs, et al. v. Commissioner*, No. 15639-92 (Tax Court, November 14, 1994), the Tax Court rejected the IRS challenge to structured fee arrangements. In the underlying case two settlements were made, both of which included a fee structure. In both, the attorneys' streams of payments were different in timing and amount from the plaintiffs' stream of payments. In neither settlement did the attorneys amend their fee agreements to incorporate periodic payments.

The IRS audited the attorneys for the year of the settlements and attempted to tax the attorneys on the present value of their future payments. The IRS argued that the promise to pay in the

future is "property" and thus currently taxable, if it is funded and secured. The Tax Court said the right of the attorneys to receive future payments was neither funded nor secured, as follows:

"[I]f the...policy is subject to the rights of general creditors of the obligor, funding has not occurred...Since petitioners [the attorneys] did not own the policies, the promises to pay petitioners under the structured agreement were not funded promises."

Additionally the court held that the promise was not secured because it was not backed by any specific fund or property. In a separate attempt to substantiate immediate taxation the IRS argued that the attorneys were in constructive receipt of the fees during the year of settlement. The Tax Court said no:

"it is clear that petitioners [the attorneys] did not constructively

MASSACHUSETTS ACADEMY OF TRIAL ATTORNEYS

Cut the Cost of Doing Business by Saving 25% or more on Long Distance

MATA Business Advantage offers rates lower than AT&T, MCI, and Sprint. Plus, you'll enjoy the quality of the nation's only 100% digital fiber optic network, 24-hour customer service, and more:

- Low flat rates based on usage, not distance; from 17.9¢/minute to as low as 13.9¢/minute.
- 6 second billing with no minimums.
- Calling cards using your own phone number as your card number with no surcharges. (Available 10/94).
- Guaranteed low international rates to the 40 most frequently called locations.
- Detailed management reports to monitor usage.
- No installation/transfer hassles or fees.



Provided and Administered by
TRANS NATIONAL
COMMUNICATIONS, INC.

Phone Code 08711006 8-2000

Call today: 1-800-435-6235

STRUCTURED SETTLEMENTS: OBJECTION NOTED

receive their attorney's fees for each case in the year that case was settled. In the year each structured fee agreement was entered into, there was no money or property available at petitioners' unfettered demand from that structured fee agreement. We hold that petitioners did not constructively receive the fees which were the subject of the structured fee agreements until payments of the amounts in accordance with those agreements."

The IRS has not announced whether it will appeal the Tax Court's ruling. In the interim the following guidelines relative to structured fees for the purpose of tax deferral are advisable. The attorney can be named as the annuitant, but the rights of ownership must be vested in the defendant or the casualty insurer. Additionally, the vehicle which provides for the future payments must not be within the control of

the attorney. This logic is similar to that applied to the plaintiff in that certain restrictions are placed upon the recipient of a structured settlement in order to maintain the tax free nature of personal injury damages paid in the form of periodic payments. Additionally, when the plaintiff's structure is done with a secured-creditor right, attorneys fees should be structured separately without that right.

IX. CONCLUSION

Gone are the days when claims and defense professionals considered structured settlements as "selling themselves". Nevertheless, such settlements have proven and continue to be a viable method of disposition that provide claimants with secure, fixed, management free, tax exempt, appropriately designed compensation. They are an option by which parties can negotiate

an appropriate and mutually satisfactory resolution of claims and lawsuits. ■ *John M. Dangora has been in the structured settlement industry since 1986 and is the founder of Periodic Payment Professionals of Boston which has merged into Niemi Associates, Inc. a national organization of structural settlement professionals. He specializes in addressing concerns and clarifying misunderstandings of the structured settlement concept and has participated in the successful resolution of hundreds of claims/suits nationwide via structured settlement. He instructs a seminar on the subject at the Insurance Library Association of Boston and is currently producing a text book on the structured settlement concept and industry for The Rough Notes Publishing Company. John received his B.A. Economics and B.A. Organizational Behavior and Management at Brown University.*

Gorilla Tracking Safari
plus the best of Kenya & Tanzania
 You and only eight others are escorted by award winning wildlife artist/photographer **BILL VELMURE**



Brochure **Velmure Safaris**, (617)-246-2908
 P.O. Box 226, Wakefield, MA 01880



MAGNA BUREAU OF INVESTIGATION INC.
 P.O. BOX 5160
 ANDOVER, MA 01810

TEL 8508-474-4499 FAX 8508-474-4774

INVESTIGATORS
 FORENSIC SPECIALISTS
 ALL CIVIL AND CRIMINAL MATTERS

Partial Summary of Forensic Services

- BIOMECHANICS
- MEDICAL IMAGING
- FINITE ELEMENT ANALYSIS
- ACCIDENT AND CRIME SCENE RECONSTRUCTION
- GUN POWDER AND EXPLOSIVES CHEMISTRY
- COMPUTER AIDED DESIGN, ENGINEERING AND ANIMATION
- ADVANCED ANALYTICAL AND SPECTROSCOPIC TECHNIQUES
- GUN SHOT RESIDUE PROCEDURES
- INTERPRETATION OF BLOOD STAIN EVIDENCE
- FINGERPRINT DEVELOPMENT AND IDENTIFICATION
- FIREARMS, CARTRIDGE CASE AND EDGED WEAPONS IDENTIFICATION

CONTACT: DAVID J. LAMAGNA

SCOMM

101A:31

| Text of Proposed Law | This - 213 | Argument in Favor |

Analysis of Proposition 213

by the Legislative Analyst

PROPOSAL

This measure would limit the ability of certain people to sue to recover losses suffered in accidents.

Limits on Uninsured Motorists and Drunk Drivers

Under existing law, someone who has suffered an injury in a car accident may sue the person, business, or government at fault for the injury in order to recover related losses. These losses can include both *economic* losses (such as lost wages, medical expenses, and property damage) and *noneconomic* losses (such as pain and suffering).

This measure would prohibit the recovery of *noneconomic* losses in certain car accidents. Specifically, an uninsured driver or a driver subsequently convicted of driving under the influence of alcohol or drugs ("drunk drivers") at the time of an accident could not sue someone at fault for the accident for noneconomic losses. (These drivers could still sue for economic losses.) If, however, an uninsured motorist is injured by a drunk driver in an accident, the uninsured motorist could still sue to recover noneconomic losses from the drunk driver.

Limits on Convicted Felons

Currently, in certain cases a person who is injured while breaking the law may sue on the basis of another person's negligence to recover any losses resulting from the injury. For example, a person convicted of a robbery who was injured because he or she slipped and fell while fleeing the scene of the crime can sue to recover losses resulting from the injury.

This measure prohibits a person convicted of a felony from suing to recover any losses suffered while committing the crime or fleeing from the crime scene *if* these losses resulted from another person's negligence. Convicted felons, however, would still be able to sue to recover losses for some injuries suffered while committing or fleeing a crime--for instance those resulting from the use of "excessive force" during an arrest.

FISCAL EFFECT

Restricting the ability of people to sue for injury losses in the above situations would reduce the number of lawsuits handled by the courts. This would reduce annual court-related costs to state and local governments by an unknown but probably minor amount. These restrictions would also result in fewer lawsuits filed against state and local governments. Thus, there would be an unknown savings to state and local governments as a result of avoiding these lawsuits.

In addition, the restrictions placed on uninsured motorists and drunk drivers could result in somewhat lower costs, or "premiums," for auto insurance. Under current law, insurance companies doing business in California pay a tax of 2.35 percent of "gross premiums." This tax is called the gross premiums tax and its revenues are deposited in the state's General Fund. Any reduction in insurance premiums would also reduce gross premiums tax revenue to the state. We estimate that any revenue loss would probably be less than \$5 million annually.

CHART 2

AB 432

Impact of Disallowing Uninsured Motorists from
Collecting Pain & Suffering Payments on Auto
Liability Policy in the 10 Largest Cities
in California

City	Average Premium (all Liability) ¹	AB 432 % Savings ²	AB 432 \$ Savings ³
Anaheim	641	7.25%	46
Fresno	501	6.54%	33
Long Beach	701	6.45%	45
Los Angeles	1010	8.32%	84
Oakland	624	6.92%	43
Sacramento	511	3.18%	16
San Diego	495	4.72%	23
San Francisco	664	8.34%	55
San Jose	489	4.73%	23
Santa Anna	670	7.82%	52
California	549	6.86%	38

¹ This is an average premium for Bodily Injury, Property Damage, Medical Payment, and Uninsured Motorist Coverages per vehicle insured. Source: Auto Liability Data Base.

² This figure reflects percent savings on the combined liability claims (BI, PD, UM, and med Pay).

³ Actual savings to individual policyholders may vary depending on the risk characteristics, policy limits, garaging area, and company's rate making formula.

AB 432

**Impact of Disallowing Uninsured Motorists from collecting
Pain & Suffering Payments on Auto Liability Policy
in CALIFORNIA**

(1) Uninsured Vehicles:	0.28
(2) Insured Vehicles:	0.72
(3) Probability of a claim involves insured and Uninsured vehicle :	0.4032
(4) 1992 Incurred Losses for Bodily Injury:	2,614,046,463
(5) Pain & Suffering (31% of Bodily Injury):	810,354,404
(6) Estimated Pain & Suffering Claimed by Uninsured Motorist:	326,734,890
(7) Savings on Bodily Injury Coverage* :	12.50%
(8) 1992 Incurred Losses for All Liability Coverages:	4,759,792,277
(9) Savings on Losses of all Liability Coverages** :	6.86%

* While this figure may indicate savings on Bodily Injury Coverage losses, companies do not sell this coverage alone.

** We estimate that 85% of the insured vehicles are covered with all liability coverages. Therefore the 6.86% may be considered an estimate of the savings which an average auto liability policyholder may realize on their annual premium. Actual savings to individual policyholder may vary depending on the risk characteristics, policy limits, garaging area, and company rate making formula.

(1) & (2): DOI estimates of Uninsured Vehicles.

(3) is (1) X (2) X2

(4) is from 1992 Annual Statements & Auto Liability Data Base

(5) is (4) X 0.31. See "Automobile Claims, A Study of Closed Claims Patterns in California." by Al-Faris, Boushehri, and Gillespie.

(6) is (3) X (5)

(7) is (6)/(4)

(8) is from 1992 Annual Statement, page 14, Line 19.2

(9) is (6)/(8)

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

First Regular Session

Sixty-first General Assembly

LLS NO. 97-0222.01 EBD HOUSE BILL 97-1197

STATE OF COLORADO

BY REPRESENTATIVES Swenson, Agler, Allen, Dean, Dyer, June, May, Owen, Pfiffner, Schauer, and Schwarz;

also SENATOR Coffman.

TRANSPORTATION & ENERGY

A BILL FOR AN ACT

CONCERNING LIMITATIONS ON RECOVERY OF DAMAGES ARISING OUT OF A MOTOR VEHICLE ACCIDENT, AND, IN CONNECTION THEREWITH, LIMITING RECOVERY OF NONECONOMIC DAMAGES BY CONVICTED FELONS, UNINSURED MOTORISTS, OWNERS OF MOTOR VEHICLES THAT ARE NOT INSURED, PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE AT THE TIME OF AN ACCIDENT, AND PERSONS DRIVING WITH A LICENSE THAT IS UNDER RESTRAINT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

In actions arising out of the operation or use of a motor vehicle bars recovery of noneconomic damages by persons committing or fleeing from the scene of a felony, convicted of driving while under the influence during an accident, uninsured motorists, owners of motor vehicles that are not insured, and persons driving with a license that is under restraint. Specifies that insurers are not liable to the above persons for noneconomic damages. Continues to allow recovery by uninsured motorists who are injured by a person convicted of driving under the influence or injured by a person engaged in the commission of, or flight from, a felony.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 7 of article 4 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

10-4-712.5. Limitation of recovery to convicted felons, uninsured motorists, persons convicted of driving under the influence, and persons driving with a license under

restraint. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) IN 1973 THE GENERAL ASSEMBLY ADOPTED A SYSTEM OF COMPULSORY AUTOMOBILE INSURANCE CONSISTING OF LIABILITY INSURANCE AND A COMPREHENSIVE PACKAGE OF PERSONAL INJURY PROTECTION BENEFITS PAID ON A NO-FAULT BASIS.

(b) COLORADO LAW PREVENTS INSURED MOTORISTS FROM COLLECTING IN TORT ANY ECONOMIC DAMAGES UNDER THE COLORADO AUTOMOBILE ACCIDENT REPARATIONS ACT, SUCH AS MEDICAL EXPENSES OR LOST WAGES, BECAUSE SUCH DAMAGES ARE PAID UNDER A COMPLYING POLICY AND IF A MOTORIST IS UNINSURED, SUCH MOTORIST IS, IN EFFECT, SELF-INSURED AND THEREFORE PREVENTED FROM COLLECTING IN TORT SUCH ECONOMIC DAMAGES.

(c) THE GENERAL ASSEMBLY RECOGNIZES THAT A SIGNIFICANT NUMBER OF MOTORISTS BREAK THE LAW BY DRIVING UNINSURED, COMMITTING OR FLEEING FROM A FELONY, DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, OR DRIVING UNDER A REVOKED OR SUSPENDED LICENSE AND YET ARE PERMITTED TO RECOVER NONECONOMIC DAMAGES, SUCH AS PAIN AND SUFFERING, UNDER LIABILITY INSURANCE POLICIES.

(d) BY ENACTMENT OF THIS STATUTE, THE GENERAL ASSEMBLY INTENDS TO STATE THAT THE PUBLIC POLICY OF COLORADO IS TO NO LONGER TOLERATE THE ABUSE OF THE PRESENT LIABILITY INSURANCE SYSTEM BY THOSE WHO FAIL TO HAVE IN EFFECT A COMPLYING POLICY AS REQUIRED UNDER SECTION 10-4-705 OR 10-4-706 OR BY THOSE WHO BREAK THE LAW AS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (1).

(e) THE GENERAL ASSEMBLY, BY PASSING THIS SECTION, DOES NOT ALTER THE RIGHT OF ANY PERSON TO RECOVER ECONOMIC LOSSES IN A TORT ACTION AS CURRENTLY ALLOWED BY LAW.

(2) EXCEPT AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, IN ANY ACTION, BASED ON NEGLIGENCE, TO RECOVER DAMAGES RELATED TO THE OPERATION OR USE OF A MOTOR VEHICLE, AN INJURED PERSON SHALL NOT RECOVER NONECONOMIC DAMAGES TO COMPENSATE FOR

THE INFLUENCE AT THE TIME OF THE ACCIDENT IN VIOLATION OF SECTION 42-4-1301, C.R.S.;

(c) SUCH INJURED PERSON WAS THE OPERATOR OF, OR A PASSENGER IN, AND WAS THE OWNER OF A MOTOR VEHICLE INVOLVED IN THE ACCIDENT AND SUCH MOTOR VEHICLE WAS NOT INSURED AS REQUIRED BY SECTION 10-4-705 OR 10-4-716;

(d) SUCH INJURED PERSON WAS A NONOWNER OPERATOR OF A MOTOR VEHICLE INVOLVED IN THE ACCIDENT AND CANNOT ESTABLISH HIS OR HER FINANCIAL RESPONSIBILITY AS REQUIRED PURSUANT TO SECTION 10-4-705 OR 10-4-716; OR

(e) SUCH INJURED PERSON WAS OPERATING A MOTOR VEHICLE WHILE SUCH PERSON'S LICENSE WAS UNDER RESTRAINT IN VIOLATION OF SECTION 42-2-138, C.R.S.

(3) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN INSURER SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, UNDER A POLICY OF LIABILITY OR UNINSURED OR UNDERINSURED MOTORIST INSURANCE TO INDEMNIFY FOR NONECONOMIC DAMAGES OF A PERSON INJURED AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

(4) SUBSECTION (2) OF THIS SECTION SHALL NOT APPLY IN THE EVENT A PERSON DESCRIBED IN PARAGRAPH (c) OR (d) OF SUBSECTION (2) OF THIS SECTION SUSTAINED INJURIES CAUSED BY A PERSON WHO, AT THE TIME OF THE ACCIDENT, WAS OPERATING HIS OR HER MOTOR VEHICLE WHILE UNDER THE INFLUENCE IN VIOLATION OF SECTION 42-4-1301, C.R.S., AND WAS CONVICTED OF THAT OFFENSE, OR IF THE INJURIES WERE IN ANY WAY CAUSED BY A MOTOR VEHICLE ACCIDENT IN WHICH THE NEGLIGENT DRIVER WAS ENGAGED IN THE COMMISSION OF, OR FLIGHT FROM, A FELONY.

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to causes of action filed, and insurance policies issued or renewed, on or after the effective date of this act.

Research Brief

RAND

✧ Institute for Civil Justice

MAY 1995

15TH Anniversary Year

How Big Is the Price Tag for Excess Auto Injury Claims?

Although the nationwide accident rate has been falling steadily, the cost of personal injury automobile insurance has grown at a breathtaking rate over the last two decades, leaving the average driver with a bill for basic coverage in 1990 that was two and a half times higher than the bill for the same coverage in 1980. Because every state requires some form of personal injury insurance, these stiff increases are burdensome for everyone, and especially so for low-income populations. The high costs of coverage also probably swell the ranks of those who drive without coverage.

Many believe that excess claims are a major contributor to rising insurance costs, but to date there has been no comprehensive evidence to support or refute this view. A recent Institute for Civil Justice study, *The Costs of Excess Medical Claims for Automobile Personal Injuries*, takes the first rigorous look at the pattern and cost of excess automobile medical claiming across the states. Authors Steve Carroll, Allan Abrahamse, and Mary Vaiana found that about one-third of the automobile injury medical costs submitted to insurers appear to be excess.

ACCESS TO GENERAL DAMAGES PROVIDES INCENTIVE TO EXCESS CLAIMING

In the study, the term *excess medical claiming* includes claims based on staged or nonexistent accidents, claims by people involved in real accidents for nonexistent injuries,

and buildup of claims for real injuries. To develop an estimate of how much excess claiming occurs nationwide—in contrast to individual instances of fraud identified in a sting operation—the researchers take an indirect approach.

First, they analyze the incentives to submit inflated or invented claims for various types of injuries provided by different insurance systems:

- Under the tort liability system—the set of legal rules governing compensation for automobile injuries in about three-quarters of the states—an injured individual may seek compensation for both the economic loss incurred as a result of that injury (e.g., medical costs) and for noneconomic losses or general damages—hurts such as “pain and suffering” not directly measured in dollars.
- In 1988, when the data used in this study were collected, eleven states had adopted dollar threshold no-fault insurance systems, under which an automobile accident victim is allowed to seek compensation for general damages only if his or her medical costs exceed a specified amount.
- Florida, Michigan, and New York had adopted verbal no-fault systems. In these states the law contains an explicit list of injuries—usually quite serious—for

RAND research briefs summarize research that has been more fully documented elsewhere. This research brief describes work done in the Institute for Civil Justice and published as RAND DB-139-ICJ, The Costs of Excess Medical Claims for Automobile Personal Injuries, by Stephen Carroll, Allan Abrahamse, and Mary Vaiana, 25 pp., \$6.00, which is available from National Book Network, Telephone: 800-462-6420; FAX: 301-459-2118; or from RAND on the Internet: order@rand.org. RAND is a nonprofit institution that helps improve public policy through research and analysis. RAND's publications do not necessarily reflect the opinions or policies of its research sponsors.

which an accident victim is allowed to seek general damages.

The availability of general damages and the fact that they are usually calculated as some multiple of economic losses provide the incentive to submit claims for nonexistent injuries and to build medical costs.

CHARACTERISTICS OF INJURIES ALSO AFFECT ABILITY TO EXAGGERATE CLAIMS

The opportunity for exaggeration is also influenced by the nature of the injuries themselves. The researchers distinguish soft injuries, such as sprains and strains, from hard or objectively verifiable injuries, such as fractures and loss of limbs. Examining the incentives embedded in the insurance systems and the ease or difficulty of exaggerating injuries, they predicted what patterns of excess claiming for injuries might occur.

TESTING ANALYTIC PREDICTIONS

The authors draw on a large database of individual closed claims developed in previous ICJ research to test these analytical predictions. Their results support the predictions about the extent of excess claiming that will occur in certain insurance environments.

Figure 1 illustrates their findings. It shows the number of soft injury claims per hard injury claim in every state. The horizontal black line indicates the average value for Michigan and New York, which is used as a baseline in the study. (Certain features of Florida's verbal no-fault system precluded its inclusion in the baseline.)

Claims for nonexistent soft injuries in the verbal threshold no-fault states should be rare because this insurance system provides no access to general damages unless the injury is one of those explicitly specified by the law. In addition, the economic barriers to an accident victim's access to medical care in these states are as low as, or lower than, in any other. Michigan and New York offer first-party auto insurance with no deductible or coinsurance, very high benefit levels, and prohibitions on rate increases based on claiming. Thus, more than in other insurance environments, accident victims are likely to claim whatever medical care they need. Assuming that hard claims are almost always valid, the ratio of soft to hard claims in Michigan and New York suggests the relative frequency of these injuries in automobile accidents.

Soft injury claimants will obtain general damages in dollar no-fault states if the medical claim can be pushed over the threshold; thus the possibility of general damages offers an incentive to claim nonexistent soft injuries in these states. The eleven dollar no-fault states in Figure 1 are scattered, and ten have ratios above the baseline. But all cluster toward the lower end of the distribution.

Because general damages can be obtained for even a small medical claim in the tort states, the study predicted that comparatively more claims for nonexistent soft injuries would occur in these states. The result: Only one of the 36 tort states falls below the baseline. And the 35 tort states that have comparatively high ratios of soft to hard injury claims tend to cluster toward the high end of the distribution. All of the highest 18 states in Figure 1 are tort states.

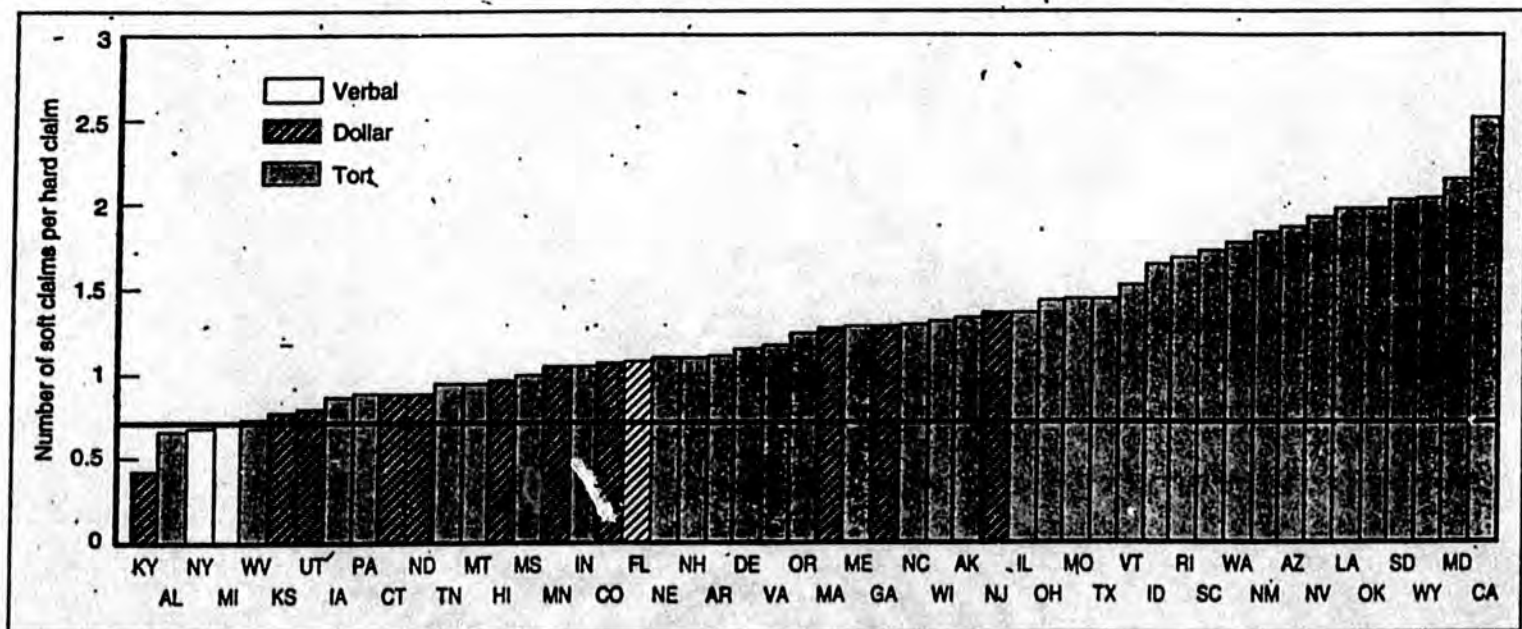


Figure 1—Claims Above Michigan/New York Baseline Suggest Extent of Claims for Nonexistent Soft Injuries

The study uses the extent to which the ratio of soft claims to hard claims in each state exceeds the corresponding ratio for Michigan and New York as the measure of the degree to which claims are being submitted for nonexistent soft injuries in that state.

The study goes on to analyze the amount of medical costs claimed on either soft or hard claims, using methods similar to those described above to estimate the degree to which accident victims are building costs on real injury claims to leverage larger insurance settlements.

Figure 2 provides an example of the analysis. It shows the distributions of medical costs for soft injury claims in Hawaii, a dollar threshold state, and New York. Dollar threshold states provide strong incentives to build costs on soft injury claims because pushing the claim over the threshold allows access to general damages. The vertical line in the figure shows Hawaii's threshold. The average cost of a soft injury claim in each state is adjusted for interstate differences in medical costs and treatment patterns. The horizontal axis in the figure is a logarithmic scale so that equal intervals show equal percentage differences.

The distribution of medical costs in New York rises quickly, peaks, and then drops off sharply to the right. The large majority of soft injury claims are for relatively small medical costs. New York has very few soft injury claims for medical costs that exceed Hawaii's threshold.

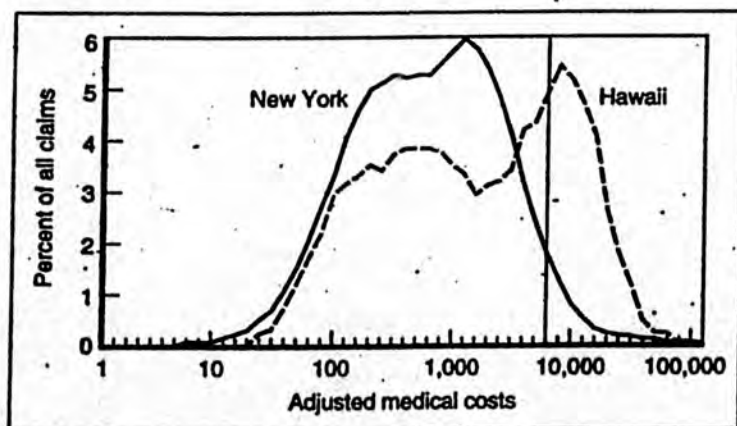


Figure 2—Hawaii's Distribution of Medical Costs for Soft Injury Claims Peaks Just Past Dollar Threshold

Hawaii's distribution also rises sharply, then flattens out. It begins to decline at a relatively low level of medical costs, then turns up again and rises sharply through the threshold. The Hawaii distribution peaks above the threshold, and finally falls off.

A substantial fraction of Hawaii's soft injury claims are for medical costs above the threshold. Compared with New York, the distribution of adjusted medical costs in Hawaii is shifted substantially to the right, as one would predict given the incentives built into the state's insurance system.

THE PRICE TAG FOR EXCESS CLAIMING

The researchers use their empirical analysis of the extent of excess claiming to estimate that between 35 and 42 percent of the automobile injury medical costs submitted to insurers appear to be excess. In 1993, these questionable medical claims would have added roughly \$13 to \$18 billion to the nation's total automobile insurance bill, or about \$100 to \$130, on average, per policy. These excess claims also stimulated \$4 billion in excess health care consumption.

POLICY DIRECTION

There are no easy solutions to the problem of excess claiming, but the study suggests one possible policy direction: Break the connection between medical costs and general damages. Ways to accomplish this include

- Modifying our insurance systems. (Verbal no-fault systems appear to eliminate the incentives that drive excess claiming for soft injuries, while dollar no-fault systems appear to exacerbate them.)
- Establishing a schedule for general damages based on the nature of the injury, as in disability policies.
- Changing the rule governing admissibility of medical cost information in courts. Modifying this rule could reduce the incentive to inflate that figure.

DB-139-ICJ

The Costs of Excess Medical Claims for Automobile Personal Injuries

Stephen Carroll, Allan Abrahamse, Mary Vaiana

The Institute for Civil Justice

RAND

THE INSTITUTE FOR CIVIL JUSTICE

The mission of the Institute for Civil Justice is to help make the civil justice system more efficient and more equitable by supplying policymakers and the public with the results of objective, empirically based, analytic research. The ICJ facilitates change in the civil justice system by analyzing trends and outcomes, identifying and evaluating policy options, and bringing together representatives of different interests to debate alternative solutions to policy problems. The Institute builds on a long tradition of RAND research characterized by an interdisciplinary, empirical approach to public policy issues and rigorous standards of quality, objectivity, and independence.

ICJ research is supported by pooled grants from corporations, trade and professional associations, and individuals; by government grants and contracts; and by private foundations. The Institute disseminates its work widely to the legal, business, and research communities, and to the general public. In accordance with RAND policy, all Institute research products are subject to peer review before publication. ICJ publications do not necessarily reflect the opinions or policies of the research sponsors or of the ICJ Board of Overseers.

PREFACE

Escalating auto insurance premiums have become an issue in many states. It is often suggested that excess claims are contributing to these increases. This study is the first systematic attempt to estimate the costs of excess claiming. It focuses on a single aspect of this phenomenon—excess claims for medical care. The results have implications reaching far beyond auto insurance systems to the national consumption of health care resources.

The Institute for Civil Justice has been conducting research on auto insurance issues since its inception in 1979. This study will be of interest to policymakers in each state concerned with insurance matters, to insurers, and to consumers.

For information about the Institute for Civil Justice, contact

Dr. Deborah Hensler, Director
Institute for Civil Justice
RAND
1700 Main Street, P.O. Box 2138
Santa Monica, CA 90407-2138
TEL: (310) 393-0411 x7803
Internet: Deborah_Hensler@rand.org

A profile of the ICJ, abstracts of its publications, and ordering information can also be found on RAND's home page on the World Wide Web at <http://www.rand.org/> and on RAND's gopher server at info.rand.org.

**The Costs of Excess Medical
Claims for Automobile
Personal Injuries**

**Stephen Carroll
Allan Abrahamse
Mary Vaiana**

March 1995

Policy Debate

- **Widespread concern about auto insurance premiums**
 - Growing rapidly
 - Particularly burdensome for low-income groups
 - Provide incentives to drive uninsured
- **Debate over causes of premium growth**
- **How much does excess claiming contribute to high costs?**

Over the past decade and a half, automobile insurance premiums, particularly for personal injury coverages, have grown rapidly across the country. Stiff increases in auto insurance premiums are burdensome for everyone, and especially so for low-income populations. Moreover, high insurance premiums are an incentive to drive uninsured, thus exacerbating the uninsured motorist problem.

Escalating auto insurance premiums have touched off heated policy debates in most states: Why have insurance premiums been growing so rapidly? Insurers claim they have to raise premiums to keep pace with the growing costs of compensating auto accident victims. Are compensation costs growing? And, if so, why? Are American drivers having more accidents? How much do increasing health care costs contribute to the problem? Is there some truth to the claim that we are becoming a more litigious society, increasingly prone to seek compensation for injuries, real or imagined?

Debates over auto insurance costs generally feature a variety of clashing perspectives. But nearly everyone involved in the debates shares one common concern: the fear that excess claims may be a major contributor to auto insurance costs. When insurance companies pay compensation for nonexistent or exaggerated injuries, the costs are inevitably reflected in higher insurance bills for everyone. But are these fears justified: How much excess claiming is there? How much does it cost?

The study described in this briefing analyzes the pattern of excess medical claiming across the states to estimate the extent of excess medical claiming and the costs of excess claims to consumers.

Context: Findings from Other ICJ Studies

- **Costs of compensating auto accident victims increased 167% since 1980**
- **Frequency of accidents isn't changing**
- **Inflation, particularly in health care costs, accounts for 60 percent of growth in compensation costs**
- **Increases in number and size of claims account for remaining 40 percent of compensation cost growth**

This analysis builds on research that the Institute of Civil Justice has been conducting on automobile insurance issues since 1985. A series of studies completed in the past several years examined the costs of compensation. These analyses provided an empirical basis for exploring various hypotheses about premium growth.

We found that the costs insurers incurred in compensating auto accident victims on behalf of Bodily Injury (BI) policyholders increased about 167% between 1980 and 1991, the most recent year for which complete data on compensation costs are available. (BI insurance pays the compensation an insured driver owes someone he or she injured.) These rapid increases in compensation costs are a primary, if not the only, factor driving increases in auto insurance premiums.

Why are compensation costs going up so fast?

- American drivers are *not* having more frequent accidents—in fact, the accident rate is actually falling nationwide;
- Inflation, particularly in health care costs, accounts for 60 percent of the growth;
- Increases in the number and size of claims account for the remaining 40 percent of premium growth.

Thus 60 percent of the increase in auto compensation costs is outside the insurance system and cannot be affected by policies that focus on that system. However, 40 percent of the increase stems from activities within the system: Drivers who have accidents are more prone to submit claims, and the claims have been growing in size over time, per auto accident.

Preview of Findings

- **35-42 percent of claimed medical costs appear to be excess**
- **In 1993, this excess claiming**
 - **Consumed approximately \$4 billion of health care resources**
 - **Cost Insurers \$9-13 billion in compensation for noneconomic losses and other costs**
 - **May have cost consumers \$13-18 billion in auto insurance premiums**

What is the role of excess claiming in this significant change in claiming behavior? To date, we have had no comprehensive evidence to answer that question. Sting operations conducted by various law enforcement agencies, private organizations, and investigative reporters have uncovered numerous examples of excess claiming ranging from fraud rings to medical personnel and lawyers who encouraged drivers to claim injuries that weren't real or to pad claims. But these are isolated incidents and do not support conclusions about what fraction of the million or so auto injury claims per year submitted to insurance companies involve excess claims.

Our research has taken a systematic approach to estimating the costs of excess medical claiming. To preview our key findings:

- **35-42 percent of medical costs claimed by auto accident victims appear to be excess;**
- **About \$4 billion in unnecessary health care costs were incurred as a consequence of excess claims;**
- **These excess claims also cost insurers an additional \$9-13 billion in compensation for noneconomic losses and other costs;**
- **If insurers pass these increased costs on to consumers in the form of proportional increases in premiums, then in 1993 excess medical claims cost auto insurance purchasers across the country anywhere from \$13-18 billion.**

In the remainder of this briefing, we describe the analysis that underlies these findings. We begin by describing the analytic framework that shaped our work. Then we discuss our research findings in detail. Finally, we briefly discuss some policy directions suggested by our findings.

Research Approach

- Use indirect approach to estimate extent of excess medical claiming
 - What would claiming pattern be if there were no exaggeration?
 - How would exaggeration change the claiming pattern?
 - Do we observe those kind of changes?
- Estimate cost implications of excess medical claiming

In our analysis, we use the term *excess medical claiming* to cover a broad range of activities including claims based on staged or nonexistent accidents, claims for nonexistent injuries when the accidents were real, and buildup of claims for real injuries to leverage a settlement from the insurance company.

We focus on medical claims because virtually all auto personal injury claims include some kind of medical costs. Overall, medical costs account for about three-quarters of accident victims' claimed economic losses. About one-third of accident victims also claim other kinds of economic loss—for example, lost wages. We have deferred attention to these losses for the present; hence, our estimates of the costs of excess claiming are conservative because they ignore the costs generated by excess claims for lost wages.

We cannot directly observe excess claiming globally—we can only observe specific instances of it when it is detected by investigation or undercover activities. Therefore, we have taken an indirect approach to estimating the extent of excess medical claiming across the states. (1) We draw on a large database of individual claims to identify what the claiming patterns would be if there were no exaggeration of claims.* (2) We predict how excess claiming would change the claiming patterns. (3) We use the database to see if we observe those kinds of changes. (4) Finally, we estimate the cost implications of the excess claims.

*This database is described in detail in *No-Fault Approaches to Compensating People Injured in Automobile Accidents*, S. J. Carroll, J. S. Kakalik, N. M. Pace, J. Adams, R-4019-ICJ, RAND: Santa Monica, CA, 1991.

Access to General Damages Provides Incentive for Excess Claiming

	Medical Claim = \$700		Medical Claim = \$1,100	
	Compensation		Compensation	
	Medical costs	General damages	Medical costs	General damages
Tort	\$700	\$1,400	\$1,100	\$2,200

The incentives for excess medical claiming and the ability to exaggerate claims depend, in large measure, on the type of insurance systems in place in a given state and on the characteristics of injuries.

Incentives under the tort system. The tort liability system is the set of legal rules that governs compensation for injuries in all states and directly governs compensation for automobile injuries in about three-quarters of the states. Under the tort system, an individual who is injured is entitled to seek compensation for both the economic loss incurred as a result of that injury (medical costs, for example) and for noneconomic losses, termed *general damages*. These are hurts the individual has suffered that are not directly measured in dollars—"pain and suffering," for example. Because there is no objective measure of the magnitude of an accident victim's general damages, compensation for general damages is typically thought to be a multiple of the victim's economic loss.

This relationship between economic loss and general damages provides incentives for excess claiming.

Suppose an individual is injured in an accident and submits a claim for medical costs in the amount of \$700. Under the tort system, that individual might reasonably expect to receive \$700 as compensation for medical costs. (The amount of compensation would be reduced if the injured party was partially negligent. For simplicity, we neglect that concern; it has no bearing on the main point of the argument.) The injured party might also reasonably expect some amount of general damages. For purposes of this example, let us assume that general damages are twice the medical costs—in this case, \$1,400.

This relationship between medical costs and general damages provides the incentive to bring a claim for nonexistent injuries. For example, driver A hits driver B's car. B is not injured but claims to be injured, and finds a doctor who provides treatment and runs up \$700 worth of medical bills. B can pursue a claim with A's insurance company and reasonably expect to be reimbursed for medical costs *and* to receive \$1,400 in general damages, which B can pocket. By a similar argument, if B submitted a medical claim of \$1,100, B could get paid \$1,100 for medical costs and \$2,200 in general damages.

The link between medical costs and general damages also provides the incentive to build costs. For example, someone with a real injury, for which appropriate medical treatment would have cost \$700, who manages to run up medical bills totaling \$1,100, will end up with an extra \$800 in his or her pocket.

Dollar No-Fault Systems Enhance Incentive to Pad Claims

		Medical Claim = \$700		Medical Claim = \$1,100	
		Compensation		Compensation	
		Medical costs	General damages	Medical costs	General damages
Tort		\$700	\$1,400	\$1,100	\$2,200
Dollar no-fault (\$1,000 threshold)		\$700	—	\$1,100	\$2,200

Incentives under a dollar no-fault system. About a quarter of the states have changed the rules for compensating people injured in auto accidents by introducing what are called dollar threshold no-fault systems. In these systems, a person injured in an automobile accident is not allowed to seek compensation for general damages from the other driver unless his or her medical costs exceed a specified dollar amount.

As the table shows, the dollar no-fault system changes the incentives facing claimants.

Suppose the driver we were considering in the previous example was in a no-fault state in which the dollar threshold was \$1,000. If the individual makes a claim for \$700, he or she would receive reimbursement for that amount. But there will be no payment for general damages because the medical costs are under the threshold. On the other hand, making a claim for \$1,100 (perhaps by building the medical costs) yields not only \$1,100 in medical compensation, but because the dollar threshold has been exceeded, general damages as well. In sum, building the claim to get over the threshold in the dollar no-fault system has a substantial marginal effect on the amount of general damages someone might receive as a result of an auto accident.

Verbal No-Fault Systems Weaken Incentives

		Medical Claim = \$700		Medical Claim = \$1,100	
		Compensation		Compensation	
		Medical costs	General damages	Medical costs	General damages
Tort		\$700	\$1,400	\$1,100	\$2,200
Dollar no-fault (\$1,000 threshold)		\$700	—	\$1,100	\$2,200
Verbal no-fault		\$700	—	\$1,100	—

Incentives under a verbal no-fault system. In 1988, when our data were collected, three states had adopted what are called verbal no-fault systems. In these systems, the law contains an explicit list of injuries for which one is allowed to seek general damages. If an injury is not on that list, the injured party may not seek general damages, no matter how high the medical bills are. The listed injuries tend to be serious: death, dismemberment, loss of a bodily part or sense, fracture.

The table illustrates how the verbal no-fault system weakens the incentives to submit excess medical claims.

The traditional tort system governed compensation for auto injuries in 36 states. Eleven states had adopted dollar no-fault systems.

9

Characteristics of Injuries Affect Ability to Exaggerate Claims

	Hard injuries	Soft injuries
Examples	Death, loss of limb or sense, fracture, lacerations	Sprains or strains
Objectively verifiable?	Yes	Usually not
Costly/serious?	Usually	Often not

We have seen that the type of insurance system in place shapes the incentives to exaggerate medical claims. The opportunity for exaggeration is also influenced by the nature of the injuries themselves. This table presents a categorization of injuries that is useful for exploring the ability to exaggerate claims.

Hard injuries are injuries that are objectively verifiable. For example, there is no debate about the loss of a limb or a fracture detected by x-ray. Hard injuries are usually relatively costly; hence, they probably attract attention from claims agents who may pay some attention to the evidence submitted in support of a claim for compensation.

Soft injuries are sprains and strains. They are not usually objectively verifiable; hence, they present an opportunity to exaggerate their existence or seriousness. And because they are often not costly injuries, claims based on them may not attract scrutiny.

Where Do We Expect to See What Kinds of Exaggeration?

		Insurance System		
		Verbal no-fault	Dollar no-fault	Tort
Claims for nonexistent	Hard injuries	---	---	---
	Soft injuries	---	+	++
Cost buildup	Hard injury claims	+	++	+
	Soft injury claims	---	++	+

If we combine the incentives embedded in the different insurance systems with the potential for exaggeration inherent in injury types, we can construct hypotheses about what kinds of exaggeration we would expect to see and under what conditions. The table summarizes these hypotheses.

The first row of the table shows blanks—no claims for nonexistent hard injuries—under all three insurance systems. Since hard injuries are objectively verifiable, it is very difficult to fake a claim for one. Thus we would not expect to see claims for nonexistent hard injuries anywhere.

Soft injuries present some opportunities for nonexistent claiming. We would not expect to see claims for nonexistent soft injuries in a verbal threshold no-fault state since this insurance system provides no access to general damages unless the injury is one of those explicitly specified by the law. But we can anticipate some claims for nonexistent soft injuries in dollar no-fault states if the medical claim can be pushed over the threshold, thus providing the potential for general damages. Of course, in tort states, where general damages can flow from the first dollar of one's medical claim, we expect to see comparatively more claims for nonexistent soft injuries.

Where do we expect to see cost buildup on true claims? Many hard injuries are the kinds of injuries that exceed a verbal threshold, so we can anticipate some building of claims for hard injuries in that insurance environment. We can expect even more cost buildup on hard injuries in dollar no-fault states because some hard injuries that normally would not exceed the threshold can be built to exceed a dollar threshold, thus providing the claimant with general damages. Tort states should have levels of cost buildup on hard injuries comparable to verbal no-fault states.

Finally, what about soft injury claims? It makes no sense to build medical claims for soft injuries in a verbal no-fault state because doing so does not provide access to general damages. Dollar threshold states offer the same strong incentive to build medical claims for soft injuries as they do to build claims for hard injuries. The tort system also offers incentives to build medical claims for soft injuries, but these incentives are less strong than in dollar threshold systems.

Estimating Frequency of Claims for Nonexistent Injuries

- Assume hard injury claims generally real
- Soft injury claims may be for nonexistent injuries
 - Rarely in Michigan and New York
 - Sometimes in dollar states
 - More often in tort states
- Number of soft claims per hard claim indicates extent of claims for nonexistent injuries

Example:	MI/NY (verbal)	Hawaii (dollar)	California (tort)
Number of soft claims/ hard claim	0.7	0.9	2.5

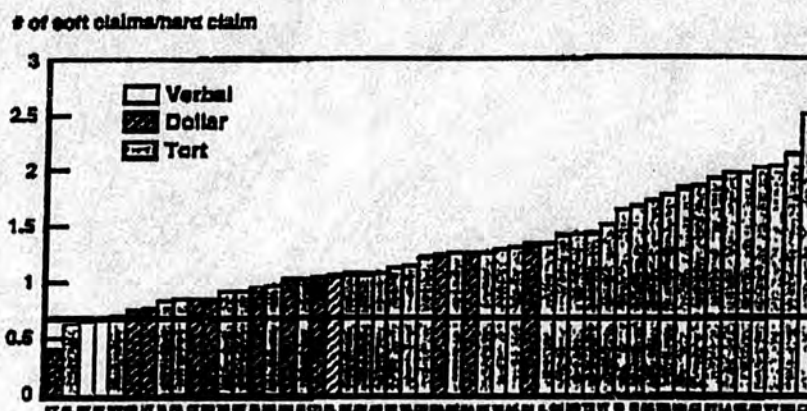
Having stated our expectations about where nonexistent or exaggerated claiming will occur, we now examine the data to see if they support our hypotheses.

To recap: We assumed that hard injury claims were generally real, and that claims for nonexistent soft injuries would be rare in Michigan and New York (the strong verbal threshold states), occasional in dollar threshold states, and more frequent in tort states. Using these assumptions, we have created an index to measure the frequency of claims for nonexistent injuries:

Index: Number of soft claims per hard claim

Based on this definition, Michigan and New York have an index of 0.7. That is, in these states there are 7 soft injury claims for every 10 hard injury claims. In Hawaii, a dollar threshold state, we see 9 soft injury claims for every 10 hard injury claims—an index value of 0.9. That's 25% more than in the verbal threshold states, but much less than in California, a tort state, where we expect to see, and indeed find, evidence of many claims for nonexistent injuries. California's index is 2.5—that is, 25 soft claims for every 10 hard claims.

Pattern Consistent with Many Claims for Nonexistent Injuries



This figure shows the value of the index for all fifty states. The horizontal black line shows the average value for Michigan and New York, which we use as our "baseline." We expect few claims for nonexistent injuries in these states, and the economic barriers to an accident victim's access to medical care are as low or lower than in any other state.

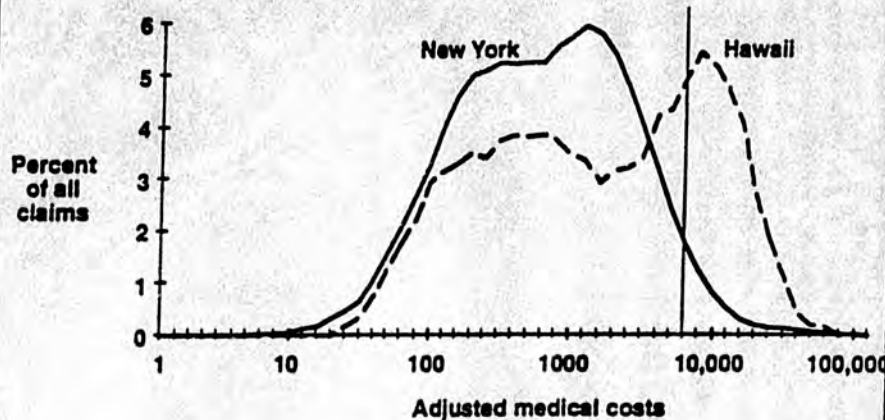
The pattern of the data across all states is consistent with our predictions about where claims for nonexistent injuries would occur. Michigan and New York are at the bottom of the claiming distribution. The dollar threshold states are scattered, but by and large they cluster toward the lower end of the distribution. All of the top 18 states are tort states. Formally stated, a state's insurance system has a statistically significant effect on the distribution of states.

We have explored the possibility that other factors—for example, demographics (percent of population that is rural, over 65, low income) or characteristics of a state's highway system—account for the distribution of states. Only the percent of the population that is rural had a significant effect: The ratio of soft injury claims to hard injury claims declines as the percent of rural population increases. If we adjusted for this relationship, the results would be even stronger than as stated above. To be conservative, we made no adjustments.

We interpret the extent to which the ratio of soft claims to hard claims in each state exceeds the corresponding ratio for Michigan and New York as our measure of the degree to which claims are being submitted for nonexistent soft injuries in that state.*

*Michigan and New York offer first party auto insurance with no deductible or coinsurance, very high benefit levels, and prohibitions on rate increases based on claiming. Thus, more than in other insurance environments, accident victims are likely to claim whatever medical care they need.

Distribution of Adjusted Medical Costs for Soft Injury Claims in Hawaii and New York



We now turn to estimating the extent of cost buildup on soft injury claims. Recall that there is no incentive to build costs on soft injury claims in Michigan and New York. However, there are incentives to build them in other states, especially in dollar threshold states, as claimants inflate claims to get over the threshold and gain access to general damages. The figure, for example, shows the distributions of medical costs for soft injury claims in Hawaii, a dollar threshold state, and New York. (The distribution of medical costs for soft injury claims in New York is nearly identical to that of Michigan.) The vertical line in the figure shows Hawaii's threshold. (To put these two states on a comparable basis, we adjusted the average cost of a soft injury claim in each state for interstate differences in medical costs and treatment patterns.)

The distribution for New York is exactly what we expected: The distribution rises sharply, peaks, and then tails off sharply to the right. The large majority of claims are for relatively small medical costs. (Note that the horizontal axis in the figure is a logarithmic scale: Equal intervals show equal percentage differences.)

The distribution begins to decline well below the Hawaii threshold and continues to fall, without interruption, past the threshold. New York had very few claims for medical costs that exceeded Hawaii's threshold.

Hawaii's distribution also rises sharply, but then flattens out. It actually begins to decline at a relatively low level of medical costs, then turns up again and rises sharply through the threshold. The Hawaii distribution peaks above the threshold, and finally, falls off. The distribution is clearly bimodal: There are many smaller claims, but there are also many larger claims. A substantial fraction of Hawaii's claims are for medical costs above the threshold.

Estimated Costs of Excess Claiming

Excess medical costs

- Hard Injury claims: 19-31%
- Soft Injury claims: 58%
- Overall: 35-42%

Cost of excess health care consumption (1993)

- \$4 billion

Additional insurer costs

- \$9-13 billion

If premiums vary in proportion to costs (1993), excess claiming adds

- \$13-18 billion to total premiums
- \$100-130 per policy

Hard Injury Claims: We assume that average adjusted medical expenditures per hard injury claim in the 25th lowest spending state is an index of appropriate average medical expenditures on hard injury claims. Given this assumption, we calculate how much is spent in excess of that index on hard injury claims in the 25 states in which average expenditures per hard injury claim are greater than that index. Adding over those states and dividing by total medical expenditures on hard injury claims in all 50 states, we find that 19% of all the dollars spent for medical costs on hard injury claims are in excess. If we use the 10th lowest spending state as the *numeraire*, our estimate goes up to 31%. The difference between these estimates has two sources. First, the 10th lowest state assumption allows for excess claiming in 15 more states than the more conservative assumption permits. Second, the 10th lowest state assumption results in a lower standard.

Soft Injury Claims: We assume that the Michigan/New York ratio of soft injury claims to hard injury claims is an index of the appropriate number of soft injury claims per hard injury claim. Given this assumption, we multiply the Michigan/New York ratio times the number of hard injury claims in each state and subtract the result from the number of soft injury claims in that state. This difference is our estimate of the number of excess soft injury claims in each state.

We then assume that the average adjusted medical expenditure per soft injury claim in Michigan and New York is an index of the appropriate average medical expenditure on soft injury claims. Given this assumption, we calculate how much is spent in excess of that index on soft injury claims in each of the other states.

Adjusting for interstate cost differences, the fraction of Hawaii claims that is above the Hawaii threshold is much greater than the fraction of New York claims that exceeds that number. It is clear that, compared to New York, the distribution of adjusted medical costs in Hawaii is shifted substantially to the right, exactly as we predicted, given the incentives built into the state's insurance system.

We compared the distribution of adjusted medical costs for soft injury claims in each of the dollar threshold states to the corresponding distribution for Michigan and New York, combined. All the dollar threshold states were "right-shifted" relative to the reference states; the magnitude of the shift was statistically significant in eight of the eleven dollar threshold states. (The exceptions were Kansas, North Dakota, and Utah.)

We also expect to see some exaggeration of soft injury claims in the tort states although we would not expect to see the bimodal distribution of claims driven by the thresholds in dollar threshold states. To investigate this hypothesis, we compared the distribution of adjusted medical costs for soft injury claims in each of the tort states to the combined distribution for Michigan and New York. The distributions were significantly "right-shifted" in twenty of the thirty-six tort states. There were no tort states in which the distribution of adjusted medical costs was shifted to the left of the combined Michigan/New York distribution.

1
21
11
11
1
1

Estimating Cost Buildup on Soft Injury Claims

- Assume costs of soft injury claims generally valid in Michigan and New York
- Costs of soft injury claims may be built up elsewhere, particularly in dollar threshold states
- Difference from Michigan and New York indicates extent of cost buildup
- Example:

	MI/NY (verbal)	Hawaii (dollar)	California (tort)
Adjusted medical costs/soft injury (MI/NY = 1.0)	1.0	2.6	1.5

To estimate the extent of cost buildup on soft injury claims, we adjust the average cost of a soft injury claim in each state for interstate differences in medical costs and practice patterns.

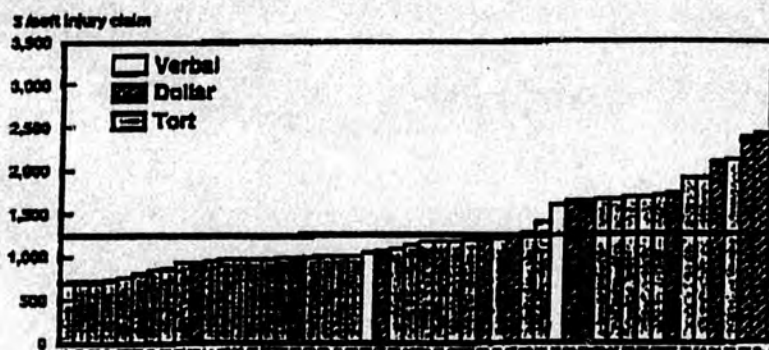
We then set Michigan and New York at a level of 1, and index the other state averages by a ratio to Michigan and New York.* Using these assumptions, we have created an index to measure the extent of cost buildup on soft injury claims:

Index: Average adjusted medical costs per soft injury relative to Michigan and New York

If we apply this index to Hawaii and California, the two example states we discussed above, we would assign a value of 2.6 to Hawaii, where the dollar threshold provides strong incentives to build medical claims, and 1.5 to California, a tort state where we expected to find less buildup.

*In indexing the other state averages to the average cost of a soft injury claim in Michigan and New York, we are not asserting that the medical care that accident victims in these two states receive is medically appropriate. We have no information about the appropriateness of their care.

Pattern Consistent with Cost Buildup on Soft Injury Claims in Some States



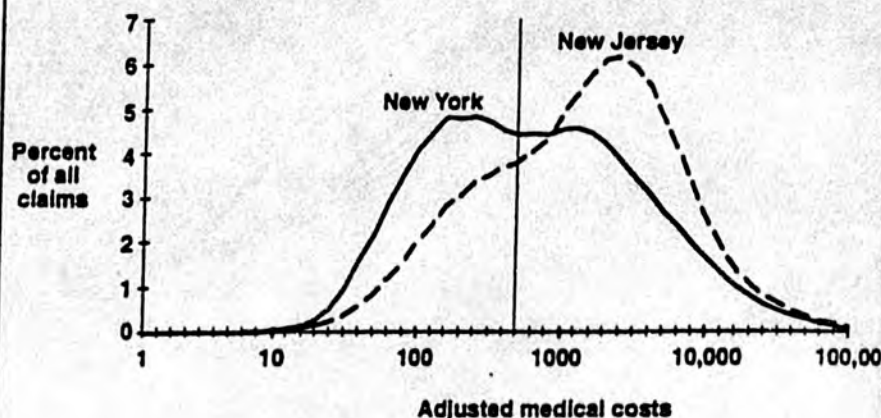
This figure shows the average costs per soft injury claim across all states.

Again we see a pattern consistent with our hypotheses. The strong verbal threshold states, Michigan and New York, bracket the center of the distribution. Very few dollar threshold states appear at the left of the distribution. Eighteen of the 20 states in which the average adjusted medical costs per soft injury claim are below New York are tort states. Of the 14 states in which average adjusted medical costs per claim fall between New York and Michigan, only three are dollar threshold states. The other 11 are all tort states.

In contrast, a high proportion of the states at the far right of the distribution are dollar threshold states. Aside from Florida, five of the 12 highest spending per claim states are those in which there is an incentive to inflate soft claims to exceed a dollar threshold.

Note that the average adjusted costs of soft injury claims in Hawaii were the highest in the nation. Hawaii had the nation's highest dollar threshold, \$6,400; someone interested in padding a soft claim to get over the threshold would have to exaggerate more, on average, in Hawaii than anywhere else. The second and fourth highest threshold states, Minnesota at \$4,000 and Colorado at \$2,500, were close behind Hawaii. Among the five highest threshold states, only Utah and North Dakota were not at the far right of the distribution; and both of them fell in the upper half of the states.

Distribution of Adjusted Medical Costs for Hard Injury Claims in New Jersey and New York

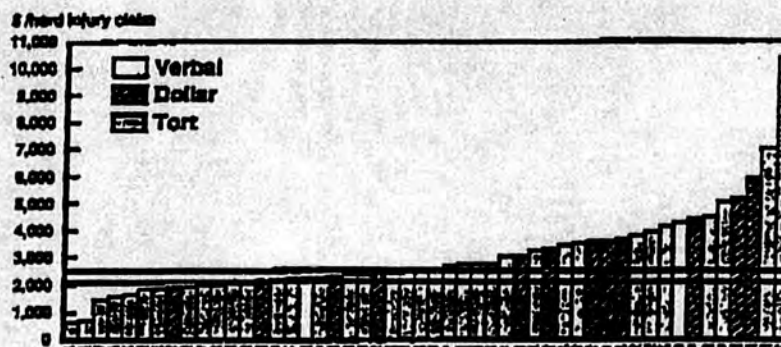


Finally, we estimate the extent of cost buildup on hard injury claims. There are incentives to build costs on hard injury claims everywhere. These incentives are particularly strong in dollar threshold states, as claimants are induced to inflate claims to get over the threshold and gain access to general damages. The figure, for example, shows the distributions of adjusted medical costs for hard injury claims in New Jersey, a dollar threshold state, and New York. The vertical line in the figure shows New Jersey's threshold.

As was the case for soft injury claims, the distributions are exactly as expected. New York's distribution rises sharply, flattens out, and then tails off to the right. New Jersey's distribution is distinctly right-shifted, compared to New York's. The fraction of New Jersey claims that are above the New Jersey threshold is much greater than the fraction of New York claims that exceed that number.

We compared the distribution of adjusted medical costs for hard injury claims in each of the states to the corresponding distribution for Michigan and New York combined. Four of the dollar threshold states—Hawaii, Massachusetts, New Jersey, and North Dakota—were significantly right-shifted relative to the reference states. The distribution of adjusted medical costs for hard injury claims in Florida and in eleven of the tort states was significantly right-shifted compared to the combined Michigan/New York distribution.

Pattern Suggests Cost Buildup on Hard Injury Claims in Some States



We believe that the cost of hard injury claims can be built up everywhere, and we expect the buildup to be greatest in dollar threshold no-fault states. However, because we expect some buildup under any insurance system, we do not have a readily available baseline against which to measure buildup. Consequently, we consider two alternative indexes for assessing the amount of cost buildup on hard injury claims:

Index 1: Average adjusted medical costs per hard injury relative to the 10th lowest spending state

In using this index, we assume that there is no exaggeration in the costs of hard injury claims in the 10 states having the lowest average adjusted costs per hard injury claim.

Index 2: Average adjusted medical costs per hard injury relative to the 25th lowest spending state

The second index is based on a more conservative assumption: that there is no exaggeration in any of the hard injury claims submitted in the 25 states having the lowest average adjusted costs per hard injury claim.

The figure shows average adjusted expenditures per hard claim across all states.

The two lines drawn across the distribution reflect the two comparison points. That part of the bar for any state that extends above a given line represents cost buildup on hard injury claims in that state. Even under the more conservative assumption, the pattern of the data suggests significant amounts of cost buildup, particularly, as we hypothesized, in the dollar threshold states.

Research Approach

- **Use indirect approach to estimate extent of excess medical claiming**
 - What would claiming pattern be if there were no exaggeration?
 - How would exaggeration change the claiming pattern?
 - Do we observe those kind of changes?

- **Estimate cost implications of excess medical claiming**

To recap the argument so far: We have

- Distinguished among insurance systems in terms of the incentives they provide to submit claims for nonexistent injuries and to build costs on real injuries;
- Predicted where, given these incentives and the nature of injuries, we would expect to see exaggeration;
- Tested our hypotheses using a large database of individual closed claims;
- Concluded that the data support our hypotheses about the types and extent of exaggeration that will occur in a particular auto insurance environment.

We now consider the cost implications of excess medical claiming.

Finally, we combine our estimates of the number of excess soft claims and the extent of excess spending on the valid soft claims for each state, add over all states, and divide by total medical expenditures on soft injury claims in all 50 states. We estimate that 59% of the costs submitted in support of soft injury claims is excess. This includes both claims for nonexistent soft injuries, and cost buildup on real soft injuries.

Overall: We estimate that 35-42% of all medical costs submitted in support of auto injury claims are excess.

Effects on Consumption of Health Care: We estimate that excess consumption of health care in the auto arena in response to tort liability incentives accounted for about \$4 billion of health care resources in 1993.

Effects on Insurer Costs: We estimate that these excess claims would also cost insurers an additional \$9-13 billion in compensation for noneconomic losses and other costs.

Effects on Auto Insurance Premiums: If insurers pass these increased costs on to consumers in the form of proportional increases in premiums, in 1993 excess medical claims cost auto insurance purchasers across the country \$13-18 billion dollars. Put another way, the costs generated by excess medical claiming add \$100-130 to every auto insurance policy.*

*These estimates are for 1993 because that is the last year for which we have the appropriate data.

Conclusions

- Tort liability system offers significant incentives to submit excess claims for auto injuries
- Different auto insurance systems modify incentives
- Costs of excess claiming can be very large
- Our estimates are conservative
- Excess claiming has implications for health care costs

The tort liability system in the United States has been widely accused of providing incentives to submit excess claims for auto injuries. Although that accusation is well known, and numerous investigators have documented specific examples of excess claiming practices, there has been little empirical evidence regarding the overall extent and magnitude of excess claims for auto injuries. This study provides evidence that the assertions are correct and empirically based estimates of how much exaggeration exists.

The study also shows that different insurance systems modify those incentives. Dollar no-fault systems reduce incentives to submit claims for minor nonexistent injuries. But, at the same time, they provide very strong incentives to build claims on either real or imaginary injuries. Verbal threshold systems appear to eliminate these incentives.

The estimated costs of excess claiming are very large, amounting to perhaps one-third to 40% of all medical bills submitted in support of auto injury claims. We believe that these estimates are conservative. For example, we have assumed no exaggeration for Michigan and New York, but we must assume that some exaggeration occurs. We have not attempted to capture transaction costs or whatever exaggeration might be done by physicians. Nor have we accounted for the costs involved in lost wages.

The implications of this analysis reach far beyond auto insurance premiums. Our data clearly suggest that large amounts of medical resource are being unnecessarily consumed.

Possible Policy Directions

- **Modify Insurance systems**
 - Adopt verbal no-fault
 - Review Incentives embedded in dollar no-fault
- **Break connection between medical costs and general damages—e.g., schedule general damages**
- **Change rules governing admissibility of medical cost information**

There are no easy solutions to the problem we have identified, but three policy directions appear promising.

(1) *Examine our insurance systems.* In particular, verbal no-fault systems appear to eliminate the incentives driving excess claiming while dollar no-fault systems appear to exacerbate them.

(2) *Break the connection between medical costs and general damages.* For example, establishing a schedule for general damages based on the nature of the injury—similar to the schedule embedded in disability policies—would eliminate the incentive to inflate medical costs in order to leverage general damages.

(3) *Change the rules governing admissibility of medical cost information in courts.* Currently, juries may be told the cost of a claimant's medical treatment. Several participants in an earlier ICJ conference on interactions between our health care and liability systems argued that claimants inflate costs to impress the jury or to stimulate a favorable settlement in the shadow of the jury. Modifying admissibility rules about medical costs could eliminate the incentive to build medical costs.

Arizona Insurance Information Association

11801 N. Tatum Blvd., Suite 222

Phoenix, AZ 85028

Phone (602)996 7009

Fax (602)996-7016



Executive Director
James M. Frederikson

President
Russell D. Carlton
Nationwide Insurance

Vice President
Kerry J. Hasdai
Farmers Insurance Group

Secretary
Hest Blackhurst
Scottsdale Insurance Co

Treasurer
George P. Mang
Phoenix Indemnity Ins. Co

Directors
Andrea M. Coxell
GEICO

Christopher J. Carmack
Liberty Mutual Group

Peter Gorman
Alliance of American Insurers

Michele Strub-Hier
Progressive Insurance

Gary Hunter
American Family Insurance

Suzanne J. Reade
CNA Insurance Cos

Richard A. Scholl
Allstate Insurance

G. Michael Sloane
American Reliable Insurance

Timothy Smith
Country Cos

John C. Spears
State Farm Insurance

Emilee Stults
Titan Insurance Company

Jack Yorgley
USAA

To: Jim Jenks
USAA

From: Jim Frederikson

Re: Data you requested

Date: Feb. 26, 1997

Jim:

Attached is:

1. An overview of the latest IRC study published in 1996.
2. Injury and Property Damage Costs, Countrywide and for Alaska. (I don't believe this information is published yet, but Beth Sprinkle gave me an advance copy).
3. A news release which discusses some of the issues you're concerned about. I think this was released in 1994.
4. Another IRC news release (released in 1995, I think) that talks about the relationship between injury claims, attorneys and insurance costs.

Hope this helps.

Jim



TRENDS IN AUTO INJURY CLAIMS

PART TWO: ANALYSIS OF CLAIM COSTS

Executive Summary

The cost of auto insurance is a concern to many consumers. About one in three Americans said being able to purchase automobile insurance at an affordable price is a major concern (34%), and another 27% said it is a moderate concern in a recent national survey.¹ As a result, there is a desire by many public officials, consumer groups, and insurers to reduce the cost of insurance. In fact, reform measures have been considered and/or adopted in many states in an effort to reduce the cost of auto insurance.

This report highlights the trends in costs associated with auto injuries and the impact on auto insurance costs. This study is part of a series of reports by the Insurance Research Council (IRC) on auto injuries and their reimbursement. IRC has been examining this issue since 1977 with a series of consumer panel surveys, studies of insurance companies' closed injury claim files, and studies of industry trends in auto insurance claiming behavior.²

Four major trends are apparent from these previous studies. More people involved in auto accidents are making claims for injuries, even though accident rates have been declining. Many of these additional claims are for relatively minor injuries, such as strains and sprains of the back and neck. Medical expenses and insurance payments for auto injuries are climbing rapidly. People are more likely to hire an attorney for help with an auto insurance claim. All of these trends have put upward pressure on insurance costs.

This report focuses on the cost of private passenger automobile insurance injury compensation systems in all 50 states and the District of Columbia between 1987 and 1993. It details the average amount of injury claim payments per insured car by state and relates injury costs to property damage liability costs within each state. The study uses data from the National Association of Insurance Commissioners, BEST's Database Services, Fast Track Monitoring System, and Automobile Insurers Bureau of Massachusetts.

Injuries from auto accidents are compensated under the following auto insurance coverages: bodily injury liability (BI), uninsured motorist (UM), underinsured motorist (UIM), personal injury protection (PIP) and medical payment (MP). Bodily injury liability claims are filed by persons hurt in an accident against the insurance of the driver who caused the accident. Uninsured motorist or underinsured motorist claims are paid by the injured person's own insurance when the at-fault driver has no insurance or not enough insurance. No-fault personal injury protection claims or medical payment claims are paid to an injured person, regardless of whether he or she caused the accident. When claims are made under the personal injury protection and medical payment coverages, claimants are reimbursed for their losses but not reimbursed for non-economic damages (pain and suffering). Bodily injury liability claims commonly include an amount to cover non-economic damages.³ Property damage liability (PD) coverage pays for damage to another person's vehicle and other property when the insured vehicle's driver is legally at fault.

¹ Insurance Research Council, *Public Attitude Monitor 1995*, 1995.

² Insurance Research Council, (formerly All Industry Research Advisory Council), *Automobile Injuries and Their Compensation in the United States, 1979; Attorney Involvement in Auto Injury Claims, 1988; Compensation for Automobile Injuries in the United States, 1989; Trends in Auto Bodily Injury Claims, 1990; Paying for Auto Injuries, 1994; Auto Injuries: Claiming Behavior and Its Impact on Insurance Costs, 1994; and Trends in Auto Injury Claims: Part One: Analysis of Claim Frequency, 1995.*

³ For more complete definitions, see the descriptions of auto insurance coverages in the full report.

Consumers can purchase bodily injury liability, uninsured motorist and underinsured motorist coverages in all states. Either medical payment or personal injury protection coverage is available depending on state statutes. Some states have no restrictions on bodily injury liability claims (tort liability system), other states have no-fault personal injury protection benefits "added on" to the existing tort liability system (add-on system), and some states with no-fault auto insurance laws limit bodily injury claims to claimants with serious injuries.⁴ In these states, bodily injury claims are restricted to those claimants whose medical costs exceed a certain dollar amount (monetary threshold no-fault system) or whose injury meets some verbal description, such as a broken bone, serious scarring, etc., (verbal threshold no-fault system). Three states offer consumers a choice between a tort or no-fault system (choice system). Because this study combines data for all of the auto insurance injury coverages, the five different auto injury compensation systems in the United States can be compared.

Figure 1
Injury Costs Vary
Across States

Average injury loss costs, 1993

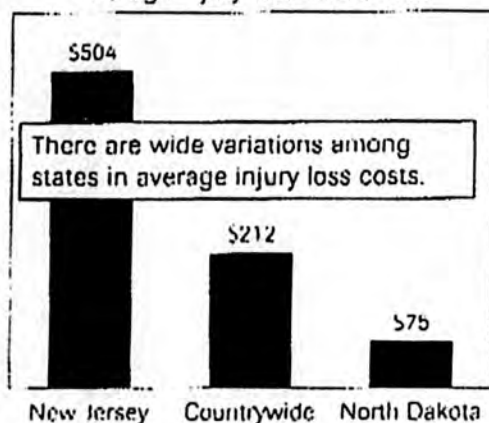
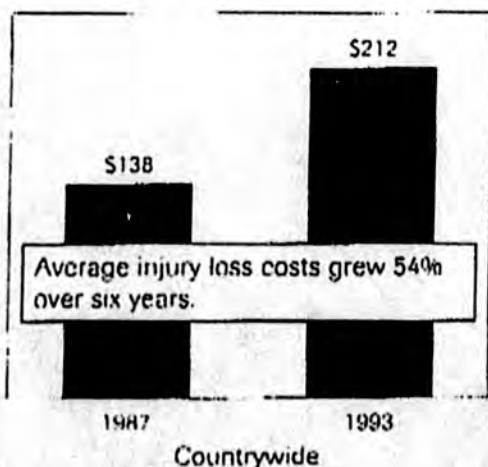


Figure 3
Growth in Injury Costs
1987-1993



Major Findings

Variations in Injury Costs

- The cost of auto injuries varies dramatically by state. In 1993, the average value of injury claim payments per insured car (average injury loss cost) ranged from \$504⁵ in New Jersey to \$75 in North Dakota (Figure 1). Other states with relatively high injury costs included: Hawaii at \$380, Connecticut at \$366, District of Columbia at \$347, Delaware at \$316, Nevada at \$294, New York at \$292, California at \$292, Rhode Island at \$278, and Florida at \$268. In contrast, other states with relatively low injury costs were: Nebraska at \$96, Iowa at \$98, Kansas at \$99, and Wyoming at \$106. Nationally, injury costs per car averaged \$212 (Figure 2).

Growth in Injury Costs

- Between 1987 and 1993, the national average injury loss cost per insured car increased \$74, from \$138 to \$212 (Figure 3). Over the period, injury costs increased at an average annual rate of 7.4%. The growth in injury costs also varies dramatically by state. States with relatively high increases in dollars of injury costs over the six-year period were Connecticut with a \$192 increase, Hawaii with \$187, District of Columbia with \$159, New York with \$144, Rhode Island with \$131, Texas with \$130, West Virginia with \$128, Delaware with \$126, Massachusetts with \$121, and Alaska with \$111. Of these top ten growth states, six are tort or add-on states, three are monetary threshold no-fault states, and one is a verbal threshold no-fault state.
- Five states—West Virginia, Texas, South Dakota, Kentucky, and Connecticut—had injury costs per car that more than doubled in just six years. Countrywide, the injury cost per car increased 54% between 1987 and 1993.
- In sharp contrast, the bottom five states in terms of six-year growth in injury cost dollars were North Dakota with a \$21 increase, Georgia with \$26, Montana with \$29, Kansas with \$30, and Idaho with \$31. Of these five states, three are now tort states and two are monetary threshold no-fault states.

⁴For more complete information on the types of state laws, see the full report.

⁵See cautionary notes on interpreting New Jersey data in the Technical Notes at end of the full report.

Figure 2.
Injury Loss Costs by State
1993

Tort and Add-On States			No-Fault States		
Rank	State	Average Injury Loss Cost	Rank	State	Average Injury Loss Cost
1	District of Columbia	\$ 347.00	1	Hawaii	\$ 379.92
2	Delaware	315.67	2	Connecticut	365.72
3	Nevada	293.79	3	New York	292.36
4	California	291.78	4	Florida	268.32
5	Rhode Island	278.15	5	Massachusetts	264.04
6	Louisiana	247.43	6	Colorado	236.85
7	Maryland	246.94	7	Minnesota	206.15
8	Arizona	241.36	8	Michigan	176.98
9	South Carolina	238.32	9	Utah	147.34
10	Alaska	231.26	10	Kansas	99.17
11	Texas	227.71	11	North Dakota	75.48
12	West Virginia	222.74			
13	Washington	221.65			
14	New Mexico	211.51			
15	New Hampshire	204.80			
16	Virginia	171.68			
17	Oregon	158.53			
18	Georgia	158.11			
19	Illinois	155.72			
20	Mississippi	148.15			
21	Oklahoma	147.21			
22	North Carolina	145.36			
23	Vermont	143.82			
24	Missouri	139.02			
25	Ohio	136.80			
26	Wisconsin	133.61			
27	Indiana	129.80			
28	Maine	128.27			
29	Alabama	126.07			
30	Montana	124.37			
31	Tennessee	121.47			
32	Arkansas	119.98			
33	Idaho	114.03			
34	South Dakota	105.77			
35	Wyoming	105.65			
36	Iowa	97.68			
37	Nebraska	96.36			

Choice States		
Rank	State	Average Injury Loss Cost
1	New Jersey	\$ 504.34
2	Pennsylvania	254.48
3	Kentucky	183.80

Countrywide		\$ 212.48
--------------------	--	------------------

Property Damage Costs

- The average value of property damage claim payments per insured car (average property damage loss cost) ranged from \$100 in Massachusetts to \$36 in North Dakota. Unlike the injury costs per insured car, 61% of the states were clustered within \$10 of the countrywide property damage average of \$63 in 1993. Average property damage loss cost is growing more slowly than injury costs. Average property damage loss cost rose from \$54 in 1987 to \$63 in 1993, for an average annual growth rate of 2.7%.

Injury Cost Index

Population and vehicle density play a large part in determining the overall costs of the automobile injury system. For example, a low population density leads to a low property damage accident frequency and low property damage costs. As density increases, more accidents result per car and costs increase. In order to remove the effects of population and vehicle density and to allow for more meaningful comparisons between states, the ratio of injury costs to property damage costs (injury cost index) is calculated.

The injury cost index allows comparisons between states since it measures the relative richness of each state's injury system relative to its property damage costs. A factor of 2.0 means the injury system is twice as costly as the property damage liability cost in a given state. A factor of 4.0 means the injury system is four times the property damage liability cost.

- Countrywide, \$336 in injury coverage benefits were paid for every \$100 in property damage benefits in 1993, up from \$257 in injury claim costs per \$100 in property damage costs in 1987.

State Variations in the Injury Cost Index

- Even when injury costs are indexed, there are wide variations among states. For example, among tort states, the injury systems in Delaware, Nevada, South Carolina, California, District of Columbia, Washington, West Virginia, and Louisiana cost more than four times the property damage coverage in each of these states. Not surprisingly, consumers have often complained about high automobile premiums in many of the high index states. Conversely, the tort states

of Nebraska, Iowa, Arkansas, Missouri, Tennessee, Indiana, Illinois, Alabama and Idaho ran their injury systems at a cost of less than 2.5 times the property damage.

- Among no-fault states with monetary thresholds, Hawaii (5.73), Connecticut (5.22), Colorado (4.51), and Minnesota (4.06) were the most costly. On the other end of the monetary threshold spectrum, Kansas (1.81), North Dakota (2.11), and Utah (2.52) appeared to have a reasonable balance between benefits offered and the cost of the system (Figures 4 and 5).

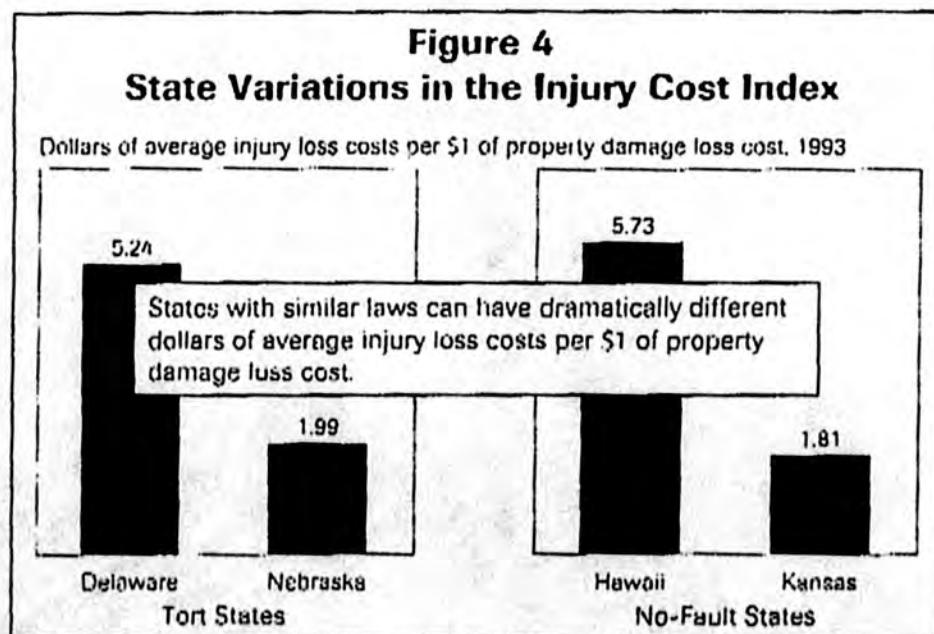
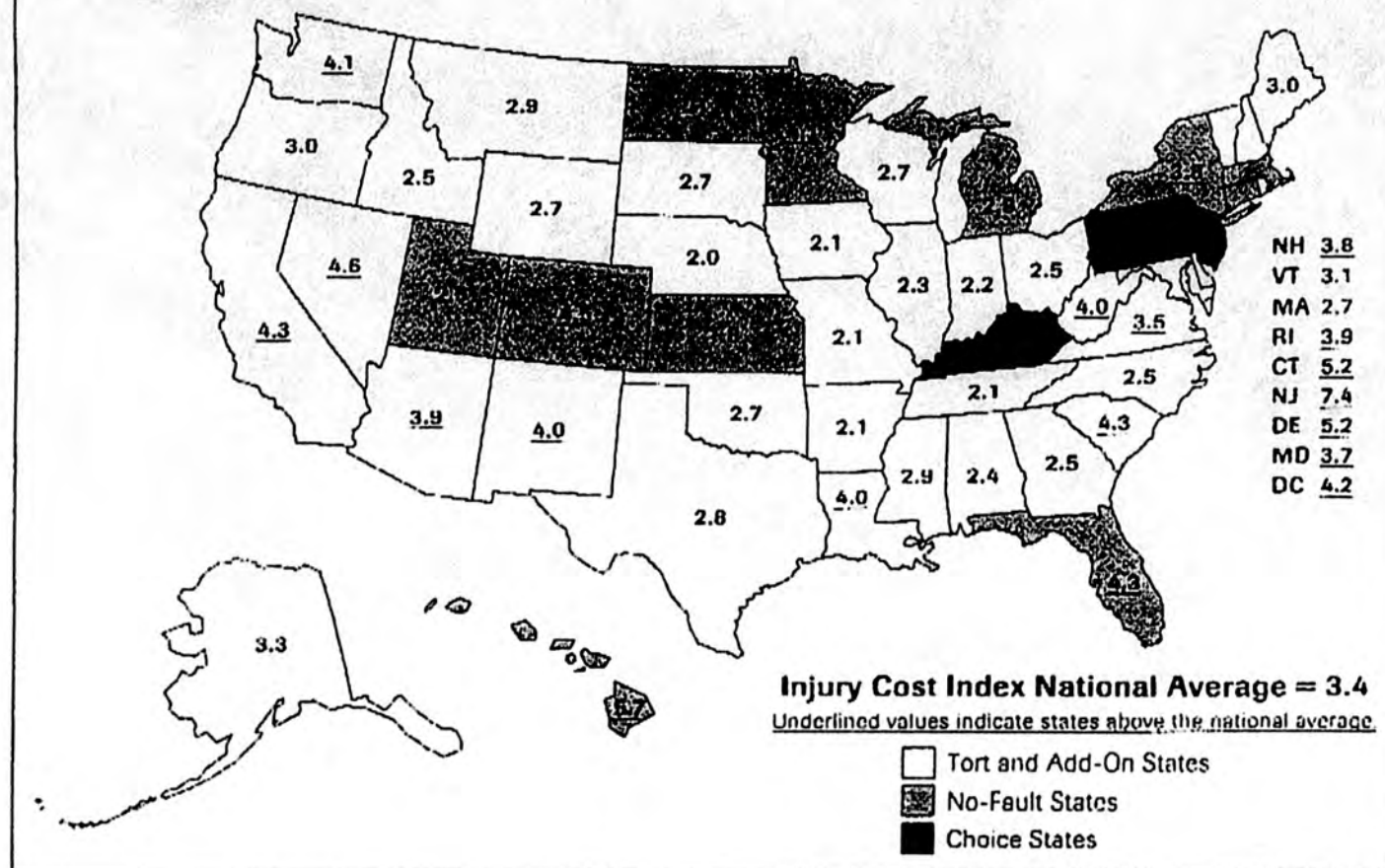


Figure 5
State Variations in the Injury Cost Index



- Within the verbal threshold category, Florida (4.30) with only \$10,000 in PIP medical benefits was substantially more expensive than either New York (3.83) or Michigan (2.86). Both New York and Michigan have greater PIP benefits. When New York and Michigan are compared to the other industrialized tort states and add-on tort states, the results are favorable. Both New York and Michigan were running compensation systems with substantial no-fault benefits at a cost below Delaware, California, and Rhode Island.
- In the choice category, New Jersey ranked the highest in the U.S. at 7.44. At 4.20, Pennsylvania was comparable to the more expensive tort/add-on states and Kentucky was below the national average at 3.27. It is important to note that New Jersey and Pennsylvania results cover payments from a mixture of systems that at one time or another covered unlimited medical benefits, and both tort and no fault systems with changing thresholds.

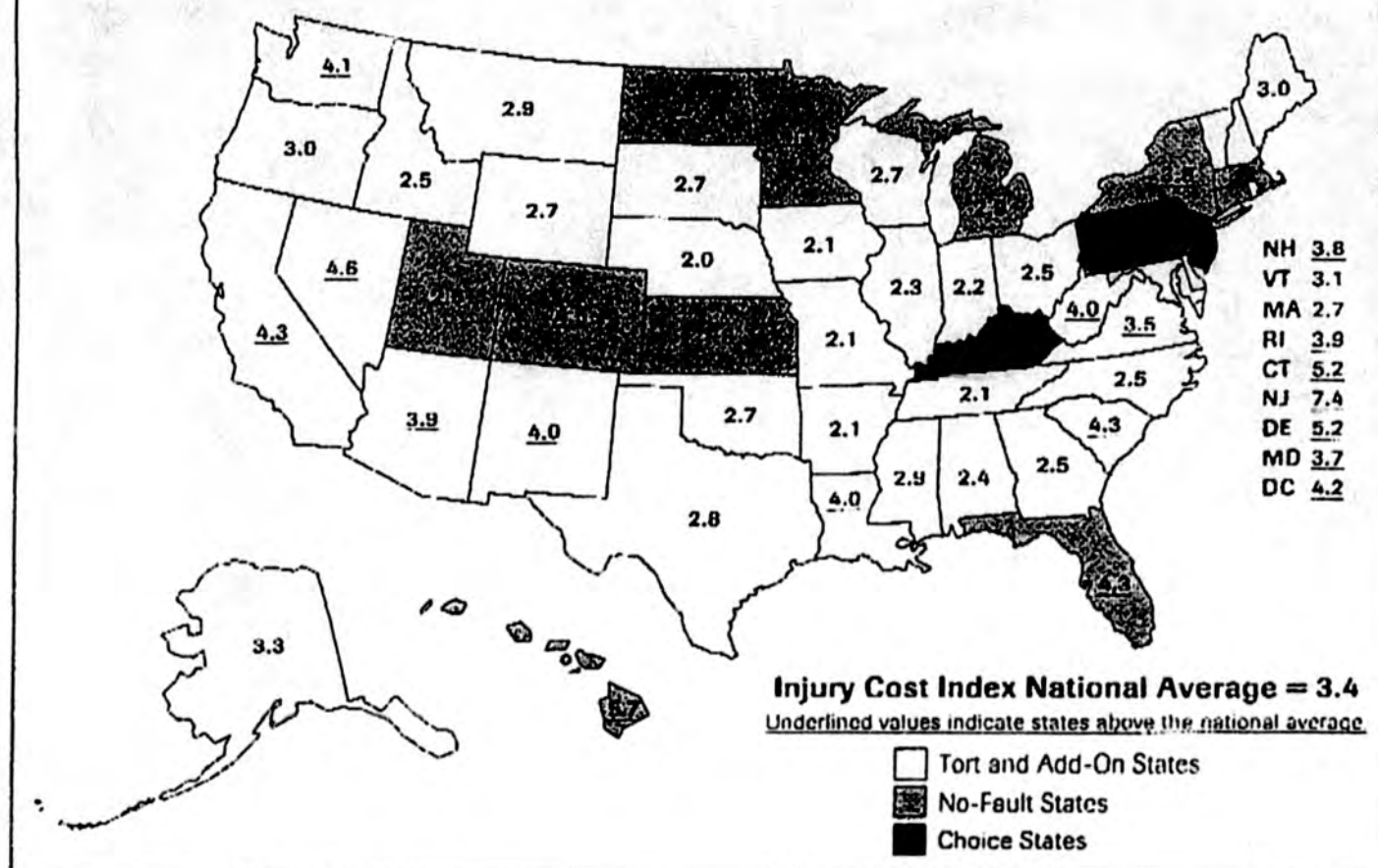
CORRECTION

**THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION**



Central Microfilm Services
Department of Education & Early Development
State of Alaska

Figure 5
State Variations in the Injury Cost Index



- Within the verbal threshold category, Florida (4.30) with only \$10,000 in PIP medical benefits was substantially more expensive than either New York (3.83) or Michigan (2.86). Both New York and Michigan have greater PIP benefits. When New York and Michigan are compared to the other industrialized tort states and add-on tort states, the results are favorable. Both New York and Michigan were running compensation systems with substantial no-fault benefits at a cost below Delaware, California, and Rhode Island.
- In the choice category, New Jersey ranked the highest in the U.S. at 7.44. At 4.20, Pennsylvania was comparable to the more expensive tort/add-on states and Kentucky was below the national average at 3.27. It is important to note that New Jersey and Pennsylvania results cover payments from a mixture of systems that at one time or another covered unlimited medical benefits, and both tort and no fault systems with changing thresholds.

Changes in the Injury Cost Index Over Time

- In almost all states, the injury cost index has increased each year from 1987 to 1993. Measuring the percentage change in this index indicates how injury costs are changing relative to property damage costs. The percentage change from 1987 to 1993 in the injury cost index varies substantially from state to state. Connecticut's cost index more than doubled in six years. Three other states—New Hampshire, West Virginia, and Massachusetts—had index growth in excess of 90%, meaning that their injury compensation systems almost doubled in cost relative to their property damage.
- Countrywide, the injury cost index increased 31% from 1987 to 1993, from 2.57 to 3.36. There were 26 states with six-year cost index growth above the national average. Montana and Idaho were the only states with negative growth, and there were eight other states—Mississippi, Illinois, Georgia, North Dakota, Kansas, Louisiana, Pennsylvania, and Oregon—with growth rates below 10%.

This study contributes to the understanding of the auto injury system in three ways:

1. This is the first study where the total cost of injuries paid by automobile insurance is quantified by state. Previous industry studies have focused only on BI liability payments in tort states and BI liability and no-fault payments in no-fault states. The medical payment coverage in tort states and the uninsured motorist and underinsured motorist coverages in both tort and no-fault states were ignored. Now, comparisons of the total cost of the injury system by state can be made. For example, in 1993, the total injury payments per insured car were \$292 in both New York and California, even though New York has no fault benefits of at least \$50,000 while California only has a much smaller medical payment coverage available.
2. The report details both the injury costs and the property damage liability costs by state. Property damage liability systems are largely uniform by state, and cost differences by state tend to reflect accident frequencies and cost of living differences. By looking at the cost of injury coverage relative to the cost of property damage liability coverage, the differences in the cost of the injury systems are revealed. For example, the following table compares 1993 PD liability costs, injury costs, and a calculated "injury cost index:"

	PD Loss Costs	Injury Loss Costs	Injury Cost Index
New York	\$76.32	\$292.36	3.83
California	68.71	291.78	4.25
Illinois	67.51	155.72	2.31

Even though PD costs are almost identical in California and Illinois, the operation of the injury system in California is substantially costlier than in Illinois, as reflected in both the injury cost and the injury cost index. The index facilitates comparisons between states with differing PD costs, such as New York and California.

3. Finally, this report provides the PD costs and injury costs from 1987 to 1993 by state. The actual increases in paid losses will drive premium increases in states. Thus, in states where the increases are substantial, need for substantial premium

increases will be indicated. In states with only moderate cost increases, more moderate premium increases will suffice. Through this report, the connection between cost increases and premium increases becomes more apparent.

The report allows consumers, insurers, regulators, and public policy makers to compare the costs associated with the various automobile insurance compensation systems. It identifies the more expensive and less expensive states and the characteristics and coverages of each. It is hoped this report will add to the understanding of the various auto insurance injury compensation systems in the United States.

Insurance Research Council

The Insurance Research Council, Inc. is a nonprofit organization founded by the property-casualty insurance industry. The Council's purpose is to provide timely and reliable research to all parties involved in public policy issues affecting risk and insurance, but the Council does not lobby nor take legislative positions.

1995 Members

Aetna Life and Casualty Company
Alliance of American Insurers
Allstate Insurance Company
American Family Insurance Group
CNA Insurance Companies
Farmers Insurance Group
GEICO
Kemper National Insurance Companies
Liberty Mutual Group
Nationwide Insurance Enterprise
National Association of Independent Insurers
Prudential Property & Casualty Insurance Company
SAFECO Insurance Companies
State Farm Insurance Companies
United Services Automobile Association

©Copyright 1995, Insurance Research Council, Inc. The complete report, *Trends in Auto Injury Claims, 2nd Edition, Part Two: Analysis of Claim Costs*, as well as a list of publications and price list are available from the Insurance Research Council, 211 South Wheaton Avenue, Suite 410, Wheaton, Illinois 60187, telephone 708.871.0255.

AZ AIA
1996 report

Table C-1
Injury and Property Damage Costs

Countrywide

Year	Average Written Liability Premium	Average Injury Loss Cost	Average Property Damage Loss Cost	Injury to Property Damage Cost Index	Number of BI Claims Per 100 PD Claims
1994	419.74	210.42	68.29	3.08	29.1
1993	412.70	212.48	63.20	3.36	29.3
1992	389.42	201.42	59.76	3.37	29.4
1991	374.27	200.83	59.68	3.37	27.7
1990	349.59	185.85	62.71	2.96	26.4
1989	334.46	173.84	60.52	2.87	24.9
1988	314.58	155.33	57.33	2.71	23.6
1987	292.55	138.38	53.83	2.57	22.2
Percent Change '87-'94	43.5%	52.1%	26.9%	19.8%	31.1%
Annual Growth '87-'94	5.3%	6.2%	3.5%	2.6%	3.9%

- Notes:
- (1) Average written liability premium is the average premium per insured car.
 - (2) Average injury loss cost is the average amount of loss paid per year under the Bodily Injury, Personal Injury Protection, Medical Payments, Uninsured Motorists, and Underinsured Motorists coverages (as available in each state) per insured car, including cars not involved in accidents.
 - (3) Average property damage loss cost is the average amount of loss paid per year under the Property Damage coverage per insured car, including cars not involved in accidents.
 - (4) The injury to property damage cost index measures the number of injury claim dollars paid for every paid property damage claim dollar. Column (3) divided by column (4).
 - (5) Since Michigan does not have conventional Property Damage coverage, Countrywide PD data as reported in Fast Track are used for Michigan.

Source: National Association of Insurance Commissioners, Best's Database Services, Fast Track Monitoring System and Automobile Insurers Bureau of Massachusetts.

DRAFT

NOT YET RELEASED
FOR INTERNAL USE ONLY

Table C-3
Injury and Property Damage Costs

Alaska

<u>Year</u>	<u>Average Written Liability Premium</u>	<u>Average Injury Loss Cost</u>	<u>Average Property Damage Loss Cost</u>	<u>Injury to Property Damage Cost Index</u>	<u>Number of BI Claims Per 100 PD Claims</u>
1994	452.40	223.34	72.98	3.06	23.4
1993	443.38	231.26	69.35	3.34	21.3
1992	424.48	181.67	69.61	2.61	21.3
1991	376.03	195.56	72.17	2.71	19.2
1990	345.83	179.29	72.82	2.46	19.8
1989	330.64	169.17	60.62	2.79	20.3
1988	331.38	148.00	55.47	2.67	19.4
1987	290.63	120.32	50.28	2.39	19.6
Percent Change '87-'94	55.7%	85.6%	45.1%	28.0%	19.4%
Annual Growth '87-'94	6.5%	9.2%	5.5%	3.6%	2.6%

- Notes:
- (1) Average written liability premium is the average premium per insured car.
 - (2) Average injury loss cost is the average amount of loss paid per year under the Bodily Injury, Personal Injury Protection, Medical Payments, Uninsured Motorists, and Underinsured Motorists coverages (as available in each state) per insured car, including cars not involved in accidents.
 - (3) Average property damage loss cost is the average amount of loss paid per year under the Property Damage coverage per insured car, including cars not involved in accidents.
 - (4) The injury to property damage cost index measures the number of injury claim dollars paid for every paid property damage claim dollar. Column (3) divided by column (4).

Source: National Association of Insurance Commissioners, Best's Database Services and Fast Track Monitoring System.



For Immediate Release

~~1995~~
1980 -

1993
Study

NEWS RELEASE

For more information contact:

Terrie E. Troxel
Elizabeth A. Sprinkel
708.871.0255

**AUTO INJURY CLAIMS CLIMB,
WHILE ACCIDENT RATES DECLINE**

American consumers today are far more likely to claim auto injuries than in 1980, even though accident rates have declined during that same period.

Paid injury liability claims for every 100 auto crashes serious enough to produce vehicle damage claims increased by 64% from 1980 to 1993. On average, there were 29 paid injury claims per 100 vehicle damage claims in 1993, compared to 18 in 1980.

"This changing claiming behavior, coupled with increasing medical costs, has put substantial upward pressure on auto insurance costs," according to Terrie Troxel, executive director of the Insurance Research Council, Inc. (IRC).

Surprisingly, this rise in injury claiming behavior occurred during a time of increased focus on auto passenger safety, Troxel noted. Since 1980, nearly all the states passed seat belt laws, the number of drunken drivers has declined, vehicle safety standards were strengthened to make cars safer for occupants, and auto fatalities have gone down by 27%.

The findings are based on an IRC review of the accident and injury claim patterns in every state and the District of Columbia from 1980 to 1993.

Claim patterns vary across the country. "The number of injury claims per 100 vehicle damage claims in California, Louisiana, South Carolina,

*Released
w 1994*

211 S. Wheaton Ave.

Suite 410

Wheaton, IL 60187

Phone: 708 871 0255

Fax: 708 871 0260

Nevada and Arizona is high," said Troxel.

In California, for example, there were 61 injury claims for every 100 property damage claims in 1993, nearly twice the 1980 level of 31 injury claims. Louisiana residents generated 49 injury claims per 100 vehicle damage claims, followed by South Carolina with 47 injury claims, and Nevada and Arizona with 45 injury claims.

Injury liability claims rose in these states even though liability claims for property damage declined. Property damage claims since 1980 dropped by 17% in Arizona and Nevada, 22% in Louisiana, 24% in South Carolina, and 28% in California.

Because vehicle damage claims are a good indicator of the actual number of serious accidents, the trends suggest a major change in injury claiming behavior in the United States, Troxel said.

The change in injury claiming behavior is more apparent in some states than others. Illinois and Ohio residents were far less likely to claim an injury compared to Californians, despite the fact that all three states have large populations and rely on fault-based auto insurance laws.

There were 30 injury claims in Illinois and 28 in Ohio for every 100 property damage claims in 1993, less than one-half the 61 injury claims in California. States with no-fault auto insurance laws had even fewer injury claims, including Michigan (8 injury claims per 100 property damage accidents), Kansas (9), Minnesota (12), and New York (16). No-fault laws prohibit liability claims and lawsuits unless the injury is serious, but assure automatic payments for the accident victim's medical and wage losses.

Even within states, the number of injury claims can vary dramatically among cities. In Los Angeles, there were 99 injury liability claims for every 100 property damage claims. That is astounding, Troxel noted. Nearly every property damage accident had a corresponding injury claim. By comparison, San Diego and San Francisco had 40 injury claims per 100 accidents. Philadelphia had 79 injury claims per 100 accidents, compared to only 18 in Pittsburgh. Cleveland recorded 41 injury claims per 100 accidents, compared to 26 in both Columbus and

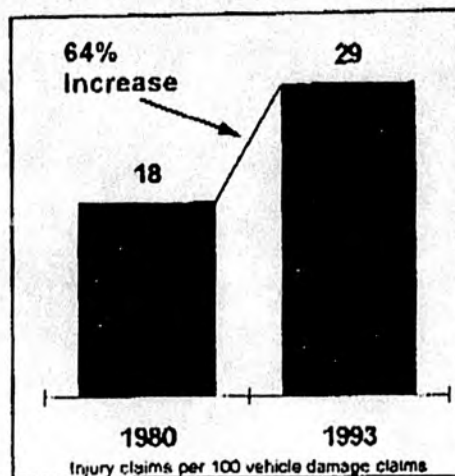
Cincinnati.

Other IRC research indicates that claimants in high-claim areas are less seriously injured than other claimants and more likely to hire a lawyer. "What we see is more claimants with sprains and strains, more claimants hiring attorneys, and more non-emergency treatment of injuries with chiropractors and physical therapists," Troxol said. "The data suggest people who previously would not have filed injury liability claims for minor injuries are now becoming claimants."

Copies of *Trends in Auto Injury Claims* are available for purchase from the Insurance Research Council, 211 S. Wheaton Avenue, Wheaton, IL 60187, telephone 708.871.0255.

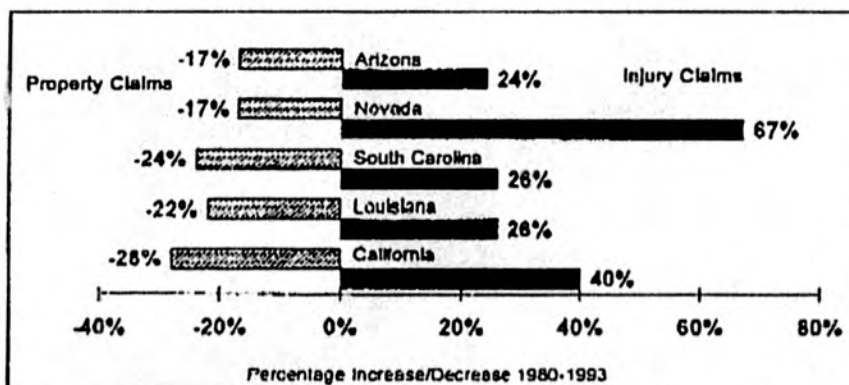
###

Americans are 64% more likely to claim auto injuries

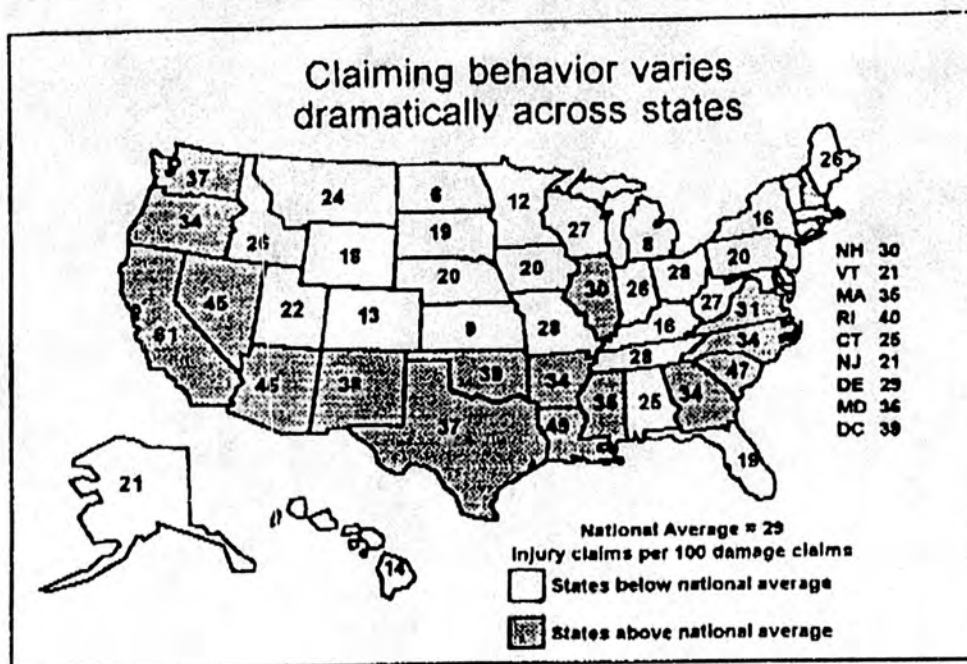


Source: Insurance Research Council

Injury claims have increased, even though property damage claims have decreased

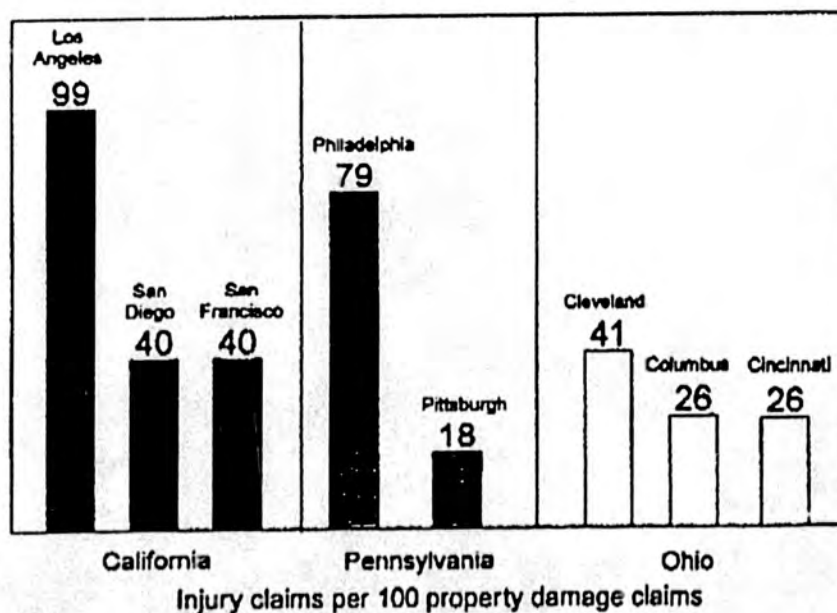


Source: Insurance Research Council



Source: Insurance Research Council

Even within states, claiming behavior varies



Source: Insurance Research Council

Insurance Research Council

1200 I larger Road, Suite 310, Oak Brook, IL 60521
(708) 572-1177

News Release

*Released
in 1995*

For more information contact:

Terrie Troxel
Elizabeth Sprinkel
Phone: (708) 572-1177

ACCIDENT RATES DOWN, BUT SPRAINS AND STRAINS DRIVING UP AUTO INSURANCE COSTS, ACCORDING TO NEW STUDY

Oak Brook, IL, Nov. 15 -- At a time when the number of insurance claims for car damage is decreasing, the number of claims for hard-to-verify sprains and strains is skyrocketing, according to a study released today by the Insurance Research Council (IRC).

"Clearly more people are going after the other driver to collect for injuries," said Terrie Troxel, executive director of IRC, "and they're reporting more soft-tissue injuries than in previous years."

Troxel cited what he called "very curious" auto insurance claiming patterns uncovered by the study:

- ◆ Claim costs for injured parties are about four times higher, on average, than they were 15 years ago; and,
- ◆ In the past five years, the cost of medical treatment paid by auto insurance has increased dramatically, even though the claims studied by the IRC showed less serious injuries, fewer hospital stays, and fewer disabilities.

The study is based on 62,000 claims settled by insurance companies during a two-week period in 1992.

Researchers say that there is a correlation between higher costs and attorney representation of accident victims.

"Injured people represented by plaintiff lawyers report more types of injuries, especially hard-to-verify sprains and strains, than others," Troxel said.

"They visit chiropractors, physical therapists and doctors more often. They submit much higher medical bills even for similar types of injuries," he added.

Troxel said although dollars paid by insurance companies increase dramatically -- on average nearly \$8,700 more -- when an attorney represents a car accident victim's liability claim, those injured net only about \$100 more. Nearly all of the \$8,700 goes to health care providers and lawyers, people who make their living off the system," Troxel explained.

Nevada and Arizona is high," said Troxel.

In California, for example, there were 61 injury claims for every 100 property damage claims in 1993, nearly twice the 1980 level of 31 injury claims. Louisiana residents generated 49 injury claims per 100 vehicle damage claims, followed by South Carolina with 47 injury claims, and Nevada and Arizona with 45 injury claims.

Injury liability claims rose in these states even though liability claims for property damage declined. Property damage claims since 1980 dropped by 17% in Arizona and Nevada, 22% in Louisiana, 24% in South Carolina, and 28% in California.

Because vehicle damage claims are a good indicator of the actual number of serious accidents, the trends suggest a major change in injury claiming behavior in the United States, Troxel said.

The change in injury claiming behavior is more apparent in some states than others. Illinois and Ohio residents were far less likely to claim an injury compared to Californians, despite the fact that all three states have large populations and rely on fault-based auto insurance laws.

There were 30 injury claims in Illinois and 28 in Ohio for every 100 property damage claims in 1993, less than one-half the 61 injury claims in California. States with no-fault auto insurance laws had even fewer injury claims, including Michigan (8 injury claims per 100 property damage accidents), Kansas (9), Minnesota (12), and New York (16). No-fault laws prohibit liability claims and lawsuits unless the injury is serious, but assure automatic payments for the accident victim's medical and wage losses.

Even within states, the number of injury claims can vary dramatically among cities. In Los Angeles, there were 99 injury liability claims for every 100 property damage claims. That is astounding, Troxel noted. Nearly every property damage accident had a corresponding injury claim. By comparison, San Diego and San Francisco had 40 injury claims per 100 accidents. Philadelphia had 79 injury claims per 100 accidents, compared to only 18 in Pittsburgh. Cleveland recorded 41 injury claims per 100 accidents, compared to 26 in both Columbus and

Some major findings of the study include:

- ◆ Average medical expenses and other verifiable out-of-pocket costs to victims of at-fault drivers increased dramatically from \$1,162 in 1977 to \$4,532 in 1992.
- ◆ Claims for sprains and strains of the neck, back and other parts of the body, were filed by 83 percent of all claimants in at-fault accidents in 1992, up from 75 percent five years earlier.
- ◆ When attorneys are involved, accident victims wait much longer for payment. After three months, 63 percent of victims without attorneys had received final payment. That compares with only 8 percent of victims with attorneys.
- ◆ The extent of attorney involvement in auto accident injury claims varies dramatically by city and state.

Troxel said the study shows that, in Los Angeles, for example, attorneys are involved in 92 percent of bodily injury claims. The California average is 67 percent. Other states are lower: Indiana (32 percent); Alabama (27 percent); and Iowa (24 percent). Nationally, the average is 57 percent.

Troxel said a parallel study of claimants found that, in nearly 2 of 10 cases the attorney advised the injured person which clinics and which medical providers to visit.

People injured in auto accidents can receive payment from the driver responsible for their "pain and suffering" in addition to payments for actual medical costs and other verified out-of-pocket costs.

Because there are no objective means of measuring "pain-and-suffering," settlements usually are set at a multiple of verified economic losses, typically two or three times those objectively measured losses.

"That creates an incentive to build up verified losses to increase 'pain-and-suffering' awards," Troxel said. Lawyers are paid a portion of the total settlement.

"But these studies demonstrate that people, on average, do almost as well for themselves financially -- and get paid sooner -- by working on claims directly with insurance companies."

"The latest studies," Troxel said, "raise serious questions of ethics and standards of practice that leaders of the health care professions and the trial bar need to address."

The Insurance Research Council, Inc., is a non-profit research organization that studies issues related to risk and insurance. Copies of *Auto Injuries: Claiming Behavior and Its Impact on Insurance Costs*, and *Paying for Auto Injuries* are available for purchase by contacting the Council at (708) 572-1177, or sending your request to Insurance Research Council, 1200 Harger Road, Suite 310, Oak Brook, IL 60521.



USAA®
STATE LEGISLATIVE AFFAIRS

915 "L" Street, Suite 1100
Sacramento, CA 95814

FAX

Date: 03/11/97 10:18 AM

Number of pages to follow: 4

To:

Rep. Brian Porter

Fax: **907/465-3834**

:

:

From:

James R. Jinks, AVP

**Senior Legislative
Counsel**

Phone: **916/552-6715**

Fax: **916/442-1328**

REMARKS:

☐

Urgent

☒

FYI/Review

☐

As Requested

☐

Please comment

Please see attached. This is a very insightful analysis of the actual experience under the Utah Uninsured Motorist Database Program. I believe Mr. Imlig is correct in his observation that if uninsured motorists claims are increasing, there must be strong doubt as to whether the number of uninsured motorists are decreasing as claimed by the DMV and other Insure-Rite supporters.

CONFIDENTIALITY NOTICE

The information contained in this facsimile transmission is a CONFIDENTIAL COMMUNICATION. It is intended solely for the use of the recipient identified above. If you are not the intended recipient, you are hereby notified that reading, copying, or distributing this transmission is STRICTLY PROHIBITED. The sender has not waived any applicable privilege by sending the accompanying transmission. If you have received this transmission in error, please notify the sender immediately by phone.

WILLIAM G. IMIG
ATTORNEY AT LAW
GOVERNMENT RELATIONS
1795 Monaco Parkway
Denver, Colorado 80220

Telephone 303 321-7150
Telecopier 303 321-9521
Pager 303 461-8184

Analysis of the Utah program, and the HB 1209 mechanisms

Reasonable information is presently available as to the numbers of Colorado uninsured motorists. DMV records for calendar year 1996 show that less than 10% of drivers involved in accidents were unable to prove financial responsibility.

THE UTAH PROGRAM ISN'T WORKING

Utah's database program has not shown positive results. It is presently the subject of a performance audit which has not been completed. As you can see from the attached sheet, actual sampled uninsured motorist claims in Utah are substantially up since the program went into effect - up 5.8% from 1994 to 1995, and up 11.6% from 1995 to 1996. If the program were working, the number of uninsured drivers would be down. The only conclusion that can be reached to date is that it is a waste of money.

SIMILAR PROGRAMS HAVE FAILED

Nevada's database program is the subject of a repeal effort. According to the January 26, 1997 Sacramento Bee, "Assemblyman John Carpenter has introduced a bill to suspend a much-criticized Nevada auto insurance verification program that is socking many innocent motorists with a \$50 penalty. Carpenter said he has been getting two to three calls a day from motorists irate because their registration has been canceled due to a lack of insurance... Up to 10,000 notices a month are sent to registered car owners warning them the department cannot verify their insurance coverage. Even if drivers have coverage, they still get charged \$50 if they don't respond or if there's a foul-up." According to the January 26, 1996 Salt Lake City Tribune, "Since it began operation, the database has led to large numbers of Utahns receiving false notifications that their policies have lapsed...."

THERE ARE POTENTIAL, SERIOUS PROBLEMS WITH THE HB 1209 ENFORCEMENT MECHANISMS

- It will allow an uninsured driver to drive uninsured for 4 months and 15 days (bill, p. 9, lines 1-6). At that point such an owner only need purchase a short term policy, cancel it immediately, and then drive uninsured for another 4 months and 15 days.
- Bounty hunters are prohibited from seizing plates on private residential property (bill, p. 9, lines 15-17). This limitation will make it exceedingly difficult to seize such plates.
- A faxed or mailed letter from an insurer or agent will be considered proof of financial responsibility (bill, p. 6, lines 11-15). What is to prevent forgeries and fraud in connection with such letters?

- Seizure of plates may lead to many more stolen plates, particularly of out of state vehicles which are less easily checked.

THE DESIGNATED AGENT IS EXEMPTED FROM LIABILITY FOR HIS NEGLIGENCE

The "designated agent" will be given current lists of all insureds of every insurer every month. This information is invaluable proprietary information. The bill exempts the agent from any civil liability for damages for negligently releasing or using this information (bill, p. 12, lines 1-3). The same section exempts the agent from liability to those persons whose vehicles are wrongly listed as uninsured by the database.

UTAH UNINSURED MOTORIST CLAIMS

GUARANTY NATIONAL

<u>Month</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
January	7	11	8
February	4	6	18
March	6	7	11
April	9	7	10
May	10	5	12
June	7	12	15
July	9	10	12
August	11	12	7
September	8	13	15
October	8	20	14
November	9	14	9
December	8	15	2
Totals	96	132	133

FARMERS INSURANCE GROUP

<u>Month</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
January	78	106	74
February	180	60	171
March	224	178	236
April	286	236	296
May	334	320	352
June	402	346	430
July	454	434	476
August	506	520	522