

SCOMM

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AVAILABILITY - AFFORDABILITY

INSURANCE^{ed} PERCENTAGE

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enclosures
- 16) Fax: 11/14/1989 To: David Rogers From: Richard Ritter, enclosures
- 17) Letter: 01/12/1990 To: David Rogers From: Gail McGuill
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**AVAILABILITY-AFFORDABILITY
INSURED PERCENTAGE**

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE
November 8, 1989

STEVE COWPER, GOVERNOR

P.O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

Mr. David E. Rogers, Lawyer
P.O. Box 33932
Juneau, AK 99803

Dear David,

Re: Information Requested by Liability Insurance
Tort Reform Task Force

Attached please find the various pieces of information requested by the task force. The information that is included is unabridged so that you can see the detailed information. You may wish to provide extracts to the task force members.

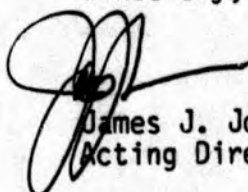
As you will note from the detailed information, the division was unable to discover any studies that quantified the impact on insurance rates due to legislative changes in the tort system. I've included in the information a copy of a memorandum dated January 25, 1989 that provides the results of a survey of insurers regarding the expected rate impact of Initiative #2. This may be of some assistance. Additionally, I'm aware of several "closed claim" studies which may be of interest (ISO study and State of Texas). I've been unable to locate those studies in my office, however, should you think these studies to be of interest to the task force, let me know, and I'll inquire as to getting replacement copies of those studies.

You will also note that the rate filings requested are quite voluminous. This, however, is the result of distilling your request down to a reasonable and representative number of filings. Should you have trouble in extracting the information you require, you may call upon Don Koch or Stan Garlington for interpretative assistance.

The list of items attached is as follows:

1. Division of Insurance - Overview of Justification;
2. Initiative #2 Survey;
3. Market Availability Information (Koch memorandum of October 13, 1989);
4. Example of Rate and Form Filing Activity; and
5. Rate Filing Compilation.

Sincerely,



James J. Jordan
Acting Director

Purchasing Group:

A group domiciled in any state composed of members whose businesses or activities are similar or related with respect to the liability to which they are exposed by virtue of related, similar, or common business, trade, product, service, premise, or operation; which has as one of its purposes the purchase of liability insurance on a group basis; and which purchases only liability insurance for the similar or related exposures for only its members.

TYPES OF INSURERS**Admitted Insurer:**

has submitted itself to regulation by the State of Alaska and received a Certificate of Authority. The Division of Insurance examines its financial condition and its conduct in the market place. The insurer must have prior approval to use forms or charge rates. The public has the protection of the Alaska Guaranty Association (all kinds of direct insurances except life, title, surety, disability, credit, mortgage guaranty, and ocean marine) if the insurer becomes insolvent.

Surplus Lines Insurer:

has not submitted itself to regulation by the State of Alaska and is not supervised by the Division of Insurance. The insurer may use any forms not in violation of Alaska law and may change any premium it wishes. The public has no protection of a guaranty fund if the insurer becomes insolvent.

Unadmitted Insurer:

has not submitted itself to regulation by the State of Alaska. Railroads or aircraft engaged in interstate or foreign commerce and wet marine and transportation insurance are risks allowed to be placed with unauthorized insurers.

MEMORANDUM

State of Alaska

TO: James Jordan
Acting Director
Division of Insurance

DATE: October 13, 1989

ALASKA DIVISION OF INSURANCE
ANCHORAGE OFFICE

FILE NO.:

TELEPHONE NO.: (907) 465-2577

THRU:

FROM: Don Koch
Chief of Market Surveillance
Division of Insurance
Department of Commerce and
and Economic Development

SUBJECT: Tort Reform
Legislative Inquiry
Research Report

The Following report is based on work done by Bob Sims, Karen Capp Ted Lehrbach and myself. I have again used our own printing capabilities since word processing is experiencing difficulties noted earlier. The research utilized a canvass approach in view of the need to gather and compile information quickly. I have also attached staff reports to me should you seek greater depth for review. This is by no means, exhaustive. A restatement of the components of the project follow with the findings or observations.

1. Do we have any information or studies done by any state which attempts to quantify the impact on or changes in insurance rates attributable to changes in legislation. The committee is especially interested in the methodology used by any such study.

I checked our resources here including the library of Rand studies on hand and find that we have nothing to add to the report concerning Initiative #2 prepared by Karen Capp and sent to you on October 11, 1989. I have also had several discussions with Jan Gindra, Documents Librarian at the Central Office of the National Association of Insurance Commissioners in Kansas City, Missouri. She has checked the files and is aware of no studies that fit our needs. She did say she will continue to look and send us anything she finds. This pretty much leaves the question open. Very few companies are gathering the kind of data necessary to do an appropriate study.

2. What is the current state of market availability for professional liability (all kinds) in Alaska? This includes admitted companies, non-admitted companies, RPG's, and RRG's.

This portion of the study was done primarily by Karen Capp and Ted Lehrbach. Karen made a telephone survey of the major brokers placing professional liability. These contacts are identified in Karen's memo. The general observations made are:

MEMORANDUM

James Jordan

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- ✓ The situation is improving which is to be expected in a soft market.
- ✓ Prices are coming down.
- ✓ Coverage is generally available but sometimes at high premium or with restrictive conditions. Non-availability appears to occur with home inspection services and any small unseasoned professional.
- ✓ Some insurers now writing as part of a package policy.
- ✓ Policies are usually "claims made" with defense within limits and adjustment cost included in any applicable deductible.
- ✓ Pollution usually has a \$25,000 deductible.
- ✓ Costs are perceived to be prohibitive for testing labs, structural engineers, attorneys doing SEC work, pollution and asbestos work, real estate/developer combinations, and computer programmers.

Companies writing by type are

ARCHITECTS/ENGINEERS

Company	Adm	SL	RRG	Comments
CNA Group	X	X		Thru V O Schinnerer
Evanston Ins Co		X		
Lexington Ins Co		X		
London/Lloyds		X		
National Union Fire Ins	X			
Progressive Casualty Co	X			Thru AEIC RPG
RLI Ins Co	X			Thru design prof RPG
Reliance Ins Co	X			
Security Ins Co	X			Thru various RPG's
Terra Ins RRG			X	engineers only

HOSPITALS

Company	Adm	SL	RRG	Comments
CNA Group	X	X		Clinics
Evanston Ins Co		X		???
London/Lloyds		X		
MICA	X			

MEMORANDUM

James Jordan
10/13/89

LAWYERS

Company	Adm	SL	RRG	Comments
Assoc of Trial Lawyers			X	
ALPS			X	
CNA Group	X	X		Clinics
Evanston Ins Co		X		???
London/Lloyds		X		
Lexington Ins Co		X		
National Union Fire Ins	X			Thru RBH

PHYSICIANS

Company	Adm	SL	RRG	Comments
American Continental	X			Thru AAPA RPG
American Psychiatric Asc			X	
Anesthesiologist' Prof.			X	
Centennial Ins Co	X			Thru AVMA RPG
Chicago Ins Co	X			Thru various RPG's
Evanston Ins Co		X		???
Harbor Ins Co	X			Thru various RPG's
Ins Co of State of Penna	X			Thru nurse practitioner RPG
Lexington Ins Co		X		
Medical Ins Exchange CA	X	(S)		
Mental Health			X	
MICA	X			
National Casualty	X			Thru orthodontist RPG
North American Physicians			X	
Ophthalmic Mutual Ins			X	
Osteopathic Mutual			X	
Pacific Ins Co		X		Thru various RPG's
Physicians National			X	
Podiatry Ins Co			X	
Reliance Ins Co	X			Thru ADA RPG
RLI Ins Co	X			Thru various RPG's
St Paul Fire & Marine	X			Thru AAOMS RPG
Transamerica Ins Co	X			Thru various RPG's
????				W F Poe & Assoc did place for dentists thru Alaska 100

MEMORANDUM

James Jordan
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MISCELLANEOUS

Company	Adm	SL	RPG	Comments
Admiral Ins Co		X		
Alaska National Ins Co	X			emergency medical services
Centennial Ins Co	X			home inspectors thru RPG
Chicago Ins Co	X			camp owners educators court reporters thru various RPG's
Chubb Custom Ins Co		X		D&O
CIGNA	X			emergency medical services nursing homes
Commerce & Industry Ins Co	X			real estate thru RPG
CNA	X	X		real estate social services advertising & travel agencies land survey
Constitution State Ins Co		X		real estate social services advertising & travel agencies land survey
Continental Casualty Co	X			clinics laboratories surgicenters hospices, etc
Crum & Forster Cos	X	X		
Employers Reins Corp	X			liable/slander for ins agencies
Evanston Ins Co		X		real estate social services advertising & travel agencies land survey
First State Ins Co		X		investment counselors
Fireman's Fund Ins Co	X			real estate social services advertising & travel agencies land survey
General Ins Co	X			credit bureaus collectors broadcasters newspapers thru various RPG's
Home Ins Co	X			real estate thru various RPG's
Illinois Ins Exchange		X		

MEMORANDUM

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Company	Adm	SL	RPG	Comments
Lexington Ins Co		X		clinics laboratories surgicenters hospices social services real estate advertising & travel agencies land survey
London/Lloyds		X		Thru F B Beattie & Preferred General Agency of Alaska
National Union Fire Ins	X			real estate social services advertising & travel agencies land survey
Nautilus Ins Co		X		alcohol/drug programs EMT/paramedics counseling services psychiatrists daycare animal groomers veterinarians health care providers health spas tanning salons home health care nursing homes
Northfield Ins Co		X		alcohol/drug programs EMT/paramedics counseling services psychiatrists daycare animal groomers veterinarians health care providers health spas tanning salons home health care nursing homes
Reliance Ins Co	X			clinics laboratories surgicenters hospices, etc
Safeco Surplus Lines Ins		X		real estate & insurance agents E&O

MEMORANDUM

James Jordan

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Company	Adm	SL	RPG	Comments
St Paul Fire & Marine Ins co	X			
Scottsdale Ins Co		X		thru J J Negley mental health centers psychiatrists
Travelers Indemnity Co	X			real estate social services advertising & travel agencies land survey
Tudor Ins Co		X		real estate social services advertising & travel agencies land survey
United Educators Ins RRG			X	educators
United National Ins Co		X		real estate social services advertising & travel agencies land survey

3. Quantify the cost and availability of Civil Rule 82 coverage for all liability lines. Particular interest in charge and offerings made for coverage above minimum.

The only insurer identified during the survey that was providing unlimited Civil Rule 82 coverage was Allstate on its personal lines offerings. No commercial offering was detected. Some persons contacted seemed to feel that if it were wanted, a market could be found. Apparently the demand is not there.

MEMORANDUM

State of Alaska

TO: Don Koch
Chief of Market Surveillance
Division of Insurance

DATE: October 13 1989

FILE NO.:

THRU:

TELEPHONE NO.: (907) 465-2564

SUBJECT: Tort Reform
Legislative Request

FROM: Karen Capp *KC*
Insurance Market Analyst III
Division of Insurance
Department of Commerce and
and Economic Development

I conducted a telephone survey of the following agencies:

Cathcart Ltd (Fairbanks & Anchorage)	Preferred General Agency of Ak
Corroon & Black (Seattle & Anchorage)	Professional Ins Consultants
F B Beattie & Co	Ribelin Lowell & Co
M J Hall & Co	Rollins Burdick & Hunter
Marsh & McLennan	

AIIB did not return my phone message.

The following is a summary of my questions and the responses received.

1. What markets are writing professional liability for the following groups?

ARCHITECTS/ENGINEERS

CNA (Thru V O Schinnerer)-Adm/SL
Evanston Ins Co-SL
Lexington Ins Co-SL
London/Lloyds-SL
National Union Fire Ins Co-Adm
Reliance Ins Co-Adm

HOSPITALS

CNA (Clinics)-Adm/SL
Evanston Ins Co (used to)-SL
London/Lloyds-SL
Associations/RRG
MICA-Adm

LAWYERS

ALPS-RRG
CNA-Adm/SL
Evanston Ins Co-SL
Lexington Ins Co-SL
London/Lloyds-SL
National Union Fire Ins Co-Adm
(thru RBH)

PHYSICIANS

Evanston Ins Co (maybe)-SL
Lexington Ins Co-SL
Medical Ins Exchange of CA-Adm
MICA-Adm
W F Poe & Assoc did place for
dentists thru Alaska 100

MEMORANDUM

Don Koch
10/13/89

MISCELLANEOUS

Admiral Ins Co-SL
Alaska National Ins Co-Adm - emergency medical services
Chubb Custom Ins Co-SL - D&O
CIGNA-Adm/SL - emergency medical services, nursing homes
CNA-Adm/SL - real estate, social services, advertising & travel agencies, land survey
Constitution State Ins Co-SL - real estate, social services, advertising & travel agencies, land survey
Continental Casualty Co-Adm - clinics, laboratories, surgicenters, hospices, etc
Crum & Forster Cos-Adm/SL
Employers Reinsurance Corp-Adm - liable/slander for ins agencies
Evanston Ins Co-SL - real estate, social services, advertising & travel agencies, land survey
First State Ins Co-SL - investment counselors
Fireman's Fund Ins Co-Adm - real estate, social services, advertising & travel agencies, land survey
Homestead Ins Co-Unauth (thru Media Professionals Ins Inc)-White List eligibility denied
Illinois Ins Exchange-SL
International Surplus Lines Ins Co-Unauth - Deleted from White List 5/5/89 - real estate
Lexington Ins Co-SL - clinics, laboratories, surgicenters, hospices, social services, real estate, advertising & travel agencies, land survey
London/Lloyds-SL (thru F B Beattie & Preferred General Agency of Alaska)
National Union Fire Ins Co-Adm - real estate, social services, advertising & travel agencies, land survey
Nautilus Ins Co-SL - alcohol/drug programs, EMT/paramedics, counseling services, psychiatrists, daycare, animal groomers, veterinarians, health care providers, health spas, tanning salons, home health care, nursing homes
Northfield Ins Co-SL - alcohol/drug programs, EMT/paramedics, counseling services, psychiatrists, daycare, animal groomers, veterinarians, health care providers, health spas, tanning salons, home health care, nursing homes
Reliance Ins Co-Adm - clinics, laboratories, surgicenters, hospices, etc
Safeco Surplus Lines Ins Co-SL - real estate & insurance agents E&O
St Paul Fire & Marine Ins Co-Adm
Scottsdale Ins Co-SL (thru J J Negley) - mental health centers/psychiatrists
Travelers Indemnity Co-Adm - real estate, social services, advertising & travel agencies, land survey
Tudor Ins Co-SL - real estate, social services, advertising & travel agencies, land survey
United National Ins Co-SL - real estate, social services, advertising & travel agencies, land survey

MEMORANDUM

Don Koch

10/13/89

2. Do the policies provide "Defense within or in addition to limits"?
All said policies are usually defense within limits, claims made, and adjustment cost included in deductible.

3. Is cost prohibitive for any group?
Testing labs, structural engineers, attorneys doing SEC work, pollution & asbestos work, Real Estate/Developer combinations, computer programmers.

For example: Lloyds - testing lab - \$1/2 million coverage, \$50,000 premium last year: \$1 million coverage, \$25,000 premium this year

CNA - mechanical engineer doing some electrical & survey - \$3 million in billings- \$1 million coverage, \$25,000 deductible, \$129,000 premium.

Pollution usually has a \$25,000 minimum premium

4. Is coverage unavailable to any profession at any price?
Home Inspection services; any small, unseasoned professional
Basically all professional liability can now be placed but often with restrictive coverages and high premiums. Premiums are going down and insurers are now willing to write professional liability in a package.

5. Do any of your admitted insurers offer unlimited or extended Rule 82 coverage?

None that anyone knew of; however they felt any company would if the client wanted it. Generally no one wants to pay the higher premium.

There appear to be six major players:

CNA - Adm/SL
Evanston Insurance Company - SL
Lexington Insurance Company - SL
London/Lloyds - SL
MICA - Adm
National Union Fire Ins Co - Adm

MEMORANDUM

State of Alaska

TO: Don Koch
Chief of Market Surveillance

DATE: October 13, 1989

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: Special Project
Professional Liability

FROM: Ted Lehrbach *TL*
Insurance Market Analyst
Division of Insurance
Department of Commerce and
and Economic Development

Market Availability: Purchasing Groups

Currently, we have on file over 270 purchasing groups who have sent us a letter of intent. This figure distorts the actual availability of professional liability coverage from purchasing groups because of several factors.

First, the vast majority of the 270 purchasing groups are using unauthorized insurers, some with very questionable finances and short histories. About 20% are inactive due to the fact that their insurers have gone under and ceased operating, usually due to regulatory action by the state of domicile. About 60% of the 270 have either never activated or have simply withdrawn due to our strict notification and registration requirements which have been put in place over the last year.

The remaining 20%, (about 50), have properly registered with us, are using Admitted insurers or Eligible Surplus Lines insurers, and are active to varying degrees.

I attach quick summaries showing those purchasing groups who are active and in compliance with our registration requirements and who are using Admitted insurers, or in one case, an eligible surplus lines insurer.

All purchasing groups are listed in the computer and given a category number which corresponds to the type of liability insurance they provide for their members. I attach a "category list" to this report so that you can get an idea of the coverages provided by the purchasing groups on the "ALL OTHER" list.

MEMORANDUM

Medical/Dental/Related Health Care PG's (category 21):

This is one of the dominant categories with 51 total in the list. However, of the 51 in this category, only 21 are properly in compliance and, significantly, all of these are using ADMITTED insurers.

You will also note that 10 have reported written 1988 premiums totalling \$131,683.

Attorneys and Accountants PG's (category 02):

Within the 8 total in this group, none are in compliance with our registration requirements. Only one of the 8 used an admitted insurer. All of the groups are withdrawn, with the exception of one which is a new entry and which has been sent the necessary information and registration forms. It is in a pending status to allow it time to return the registration packet. It has selected an Eligible Surplus Lines Insurer, so they must designate the Alaska surplus lines broker it will be using or it will not be in compliance.

One wrote premium in 1988 of \$2,973. This purchasing group is inactive due to the fact that its insurer, New England International Surety Of America, is now insolvent out of LA. It was not providing coverage to Attorneys, but to CPA's. This is an example of the potential danger of abuse that exists in the Purchasing Group arena due to the confusion created by the federal law, especially during its inception. Fortunately, we now have a better handle on the situation and are now spelling out Alaska Law to all Purchasing Groups in the registration process. It is effective in weeding out most of the problem groups.

Architects & Engineers PG's (category 01):

There are only 4 groups in this category. Only one is active and in Compliance and it is relatively new, having properly complied with the registration requirements this spring. All 4 have listed an Admitted insurer. None have reported any written premium in 1988.

All Others:

I have listed only the remaining 49 purchasing groups which have listed Admitted insurers. The categories are mixed. There may be some which do not provide professional liability, but instead, provide a products liability or other form of commercial liability insurance.

MEMORANDUM

Out of this list of 49 "Admitted Insurer PG's", only 23 are actively in compliance, 5 are new, two are active but in a pending status which means they are missing a minor item on their registration, and 19 have withdrawn on their own accord.

Reported written premium in 1988 totals \$109,177.

Risk Retention Groups:

There are 46 Risk Retention Groups who have sent to us their notice of intent to do business in Alaska. However, most have chosen to be inactive at this time.

Risk Retention Groups are basically set up as captive or reciprocal insurers, domiciled in one state and given broad federal exemptions to cross state borders and do business outside their domiciled state without the need to obtain a certificate of authority in each state they choose to operate in.

Since most are new entities, many have little or minimum capital and surplus. My estimate is that some will survive and become viable entities in the market in the future, while others will fail.

Medical Related RRG's:

There are 10 RRG's in the Medical group. Most have a narrow scope of operation, choosing to stay only within a specific field like Osteopathic, Anesthesiology, Ophthalmic, Podiatry, and Psychiatric.

Out of the ten, 5 are in compliance, 3 are in pending status, and 2 have withdrawn.

Only two have reported written premium in Alaska for 1988, totalling \$33,766.

There are two recent arrivals which have expressed a desire to become active in Alaska's medical malpractice market. They are Physicians National Risk Retention Group and Anesthesiologists' Professional Assurance Company.

Physicians National has expressed a desire to look into insuring Alaskan clinics and hospitals as well as individual physicians. They have filed rates for most of the medical fields. They are reinsured and have current capital and surplus of 5.4 million. They seem to be fairly well managed and have experienced medical malpractice claims people on their staff.

Anesthesiologists' Professional Assurance has just started up this year and has only 2.7 million in capital and surplus.

MEMORANDUM

Attorney RRG's:

There are only two listed insuring Attorneys, both are in compliance.

Attorneys Liability Protection Society has reported written Alaskan premium for 1988 in the amount of \$372,052. They are by far the most dominant RRG in terms of written premium in Alaska.

I have written a status report to former director Roller, and Gloria has kept her eye on them as well. They are domiciled in Nevada, but their offices are in Montana. Nevada is currently in the process of conducting an examination of them.

The other RRG, Association of Trial Lawyers reported no written premium in Alaska in 1988.

Architects RRGs:

There are no RRGs that are registered with us that provide coverage for Architects Professional Liability. There is one insurer, Terra Insurance Company, which provides coverage to engineers, but not to Architects.

All Others:

There are only two other RRGs that are properly registered which provide Professional Liability coverage. They are both in the education field, insuring schools and school districts. Neither has reported any activity in Alaska.

Conclusion:

Insuring professional liability through purchasing groups or risk retention groups can be risky at best. However, there is a small core of groups which are attempting to do things correctly and can provide coverage in this field. They should be used cautiously, however, and our efforts to set up a system whereby we can obtain as much information through a registration process which can then be used to inform the public and agents and brokers seems to be working.

	<i>State</i>	<i>Insurer</i>	<i>type</i>	<i>Category</i>	<i>88 Premium</i>
HEALTH CARE PROFESSIONAL PROGRAM	AC/COM	HARBOR INS. CO. & PACIFIC	ADM &	21	\$0
INSURANCE SERVICES PROFESSIONAL PROGRAM	AC/COM	HARBOR INS. CO. & PACIFIC	ADM &	21	\$0
AAPA Professional Liability (RPG)	AC/COM	American Continental	ADMITTED	21	\$22,290
AVMA/Professional Liability Insurance Trust (RPG)	AC/COM	CENTENNIAL INS. CO.	ADMITTED	21	\$0
Allied Health Purchasing Group Association	AC/COM	Chicago Insurance Company	ADMITTED	21	\$21,338
American Physical Therapy Association Purchasing	AC/COM	Chicago Insurance Company	ADMITTED	21	\$1,221
Healthcare Purchasing Group Association	AC/COM	Chicago Insurance Company	ADMITTED	21	\$0
National Nurses Purchasing Group Association	AC/COM	Chicago Insurance Company	ADMITTED	21	\$0
Nursing Organizations Purchasing Group	AC/COM	Chicago Insurance Company	ADMITTED	21	\$0
Nursing Profession Purchasing Group Association	AC/COM	Chicago Insurance Company	ADMITTED	21	\$0
OUM Group Chiropractor Program (RPG)	AC/COM	Harbor Insurance Company	ADMITTED	21	\$0
OUM Group Podiatrist Program (RPG)	AC/COM	Harbor Insurance Company	ADMITTED	21	\$5,420
Nurse Practitioner Prof. Liability Purchasing Group	AC/COM	Insurance Company of	ADMITTED	21	\$3,209
American Association of Orthodontists (RPG)	AC/COM	NATIONAL CASUALTY	ADMITTED	21	\$0
ADA RISK PURCHASING GROUP, INC. (AMERICAN	AC/COM	RELIANCE INSURANCE	ADMITTED	21	\$0
American Association Counseling & Development	AC/COM	RLI Insurance Company	ADMITTED	21	\$5,200
Health Professionals Purchasing Group	AC/COM	RLI Insurance Company	ADMITTED	21	\$654
AAOMS Risk Purchasing Group	AC/COM	St. Paul Fire & Marine	ADMITTED	21	\$0
American Health Care Professions (RPG)	AC/COM	Transamerica Insurance Co.	ADMITTED	21	\$14,092
Health Care Professions Purchasing Group Assn.	AC/COM	Transamerica Insurance	ADMITTED	21	\$25,391
Professional Nursing Organizations (RPG)	AC/COM	Transamerica Insurance	ADMITTED	21	\$32,868

\$ 131,683

ATTORNEYS OR ACCOUNTANTS PG's

Accountants Professional Liability Group	WITHDR	Security Insurance	ADMITTED	02	\$0
AMERICAN SOCIETY OF ACCOUNTANTS, INC.	NEW/PEN	ILLINOIS INSURANCE	SURPLUS	02	
Lawyers Benefit Purchasing Group Inc.	W/D	Bel-Aire Insurance	UNAUTH	02	
National CPA Risk Purchasing Group Inc.	W/D	Commercial Casualty	UNAUTH	02	\$0
National Tax Preparers Association Purchasing	W/D	Laramie Insurance Company	UNAUTH	02	
National Legal Professional Liability Ins. (RPG) Ltd.	W/D	North Atlantic Casualty &	UNAUTH	02	\$0
American Lawyers Purchasing Group Inc.	WITHDR	American Insurance &	UNAUTH	02	\$0
Southeastern CPA R.P.G., Inc	WITHDR	New England Int'l Surety of	UNAUTH	02	\$2,973

ARCHITECTS & ENGINEERS PG's

DESIGN PROFESSIONALS PURCHASING GROUP	AC/COM	RLI INSURANCE CO.	ADMITTED	01	
AEIC Risk Purchasing Group	AC/PEN	Progressive Casualty Ins.	ADMITTED	01	
Design Professionals Risk Control Group (RPG)	AC/PEN	Security Insurance	ADMITTED	01	\$0
Structural Engineers Risk Management Council	WITHDR	Security Insurance	ADMITTED	01	\$0

ALL OTHER CATAGORIES OF PG's

National Assn. of Home Inspectors Inc. (RPG)	AC/COM	Centennial Ins Co (1988	ADMITTED	14	\$1,973
OSS/ACA Camp Owners Umbrella Program (RPG)	AC/COM	Chicago Ins. Co. & General	ADMITTED	26	\$0
Educators Purchasing Group Association	AC/COM	Chicago Insurance Cc.mpany	ADMITTED	11	\$325
Association Purchasing Group (RPG)	AC/COM	Chicago Insurance Company	ADMITTED	27	\$1,800
Shorthand Court Reporters Purchasing Group	AC/COM	Chicago Insurance Company	ADMITTED	27	\$1,819
Real Estate Professionals Rick Purchasing Group	AC/COM	Commerce & Industry	ADMITTED	25	\$0
Associated Credit Bureaus Inc. Purchasing Group	AC/COM	General Insurance Company	ADMITTED	13	\$2,676
American Collectors Association Enterprises Inc.	AC/COM	General Insurance Company	ADMITTED	20	\$8,484
National Assn. of Broadcasters (RPG)	AC/COM	General Insurance Company	ADMITTED	24	\$21,405
National Newspaper Association Purchasing Group	AC/COM	General Insurance Company	ADMITTED	24	\$1,095
Automatic Transmission Rebuilders Association	AC/COM	Heritage Indemnity	ADMITTED	22	
Century 21 Franchisee Purchasing Group	AC/COM	Home Insurance Company	ADMITTED	25	\$3,342
Electronic Realty Associates Inc. (RPG)	AC/COM	Home Insurance Company	ADMITTED	25	\$20,169
Real Estate Franchise Purchasing Group	AC/COM	Home Insurance Company	ADMITTED	25	\$1,950
National Limousine Association Purchasing Group	AC/COM	National Continental Ins.	ADMITTED	05	
RESORT HOTELS INSURANCE GROUP, INC. (RHIG)	AC/COM	PLANET INS CO	ADMITTED	18	
PROPANE GAS PURCHASING GROUP	AC/COM	RANGER INS. CO.	ADMITTED	23	\$0
APGA Insurance Group Inc. (RPG)	AC/COM	Ranger Insurance Company	ADMITTED	10	
American Contractors Risk Purchasing Group Inc.	AC/COM	THE FIDELITY & CASUALTY	ADMITTED	07	\$0
National Assn. of Independent Life Brokerage	AC/COM	Transamerica Insurance	ADMITTED	15	
National Assn. of Life Underwriters (RPG)	AC/COM	Transamerica Insurance	ADMITTED	15	
N/S Insurance Purchasing Group Inc.	AC/COM	Travelers Indemnity	ADMITTED	09	\$10,998
American Dealers Purchasing Group Ltd.	AC/COM	United Equitable Insurance	ADMITTED	20	
MOTORS INSURANCE PURCHASING GROUP, INC.	AC/NEW	MIC PROPERTY AND	ADM &	20	\$0
Select Establishment Purchasing Group Inc.	AC/PEN	National Union Fire	ADMITTED	18	\$30,825
National Assn. of Wholesaler/Distributors (RPG)	AC/PEN	Pacific Employers	ADMITTED	20	\$0

COMMON INTEREST COMMUNITY UNDERWRITING	NEW/PEN CITY INSURANCE CO.	ADMITTED	10	\$0
PROMOTER'S INSURANCE PURCHASING GROUP, INC.	NEW/PEN CONNECTICUT INDEMNITY	ADMITTED		\$0
INTERIOR DESIGNERS PURCHASING GROUP, INC.	NEW/PEN GULF INS. CO., UNITED	ADM &	22	\$0
PREFERRED HOTEL INSURANCE GROUP (RPG)	NEW/PEN PLANET, NATL UNION FIRE,	ADM &	18	\$0
Sweeps Risk Purchasing Group Inc.	W/D Chicago Insurance Company	ADMITTED	22	
Financial Planners Professional Liab. Assn. (RFG)	W/D Clarendon National	ADMITTED	13	\$0
SFIP Purchasing Group Inc.	W/D Continental insurance	ADMITTED	18	\$0
Coca-Cola Bottlers Association Inc. (RPG)	W/D General Star National	ADMITTED	20	\$1,500
North American Travel Professionals (RPG)	W/D Home Insurance Company	ADMITTED	28	\$0
Law Enforcement Professional Liability Insurance	W/D Insurance Company of	ADMITTED	11	
Appraisers Liability Insurance Program Assn. (RPG)	W/D International Insurance	ADMITTED	25	
Superdealer Insurance Purchasing Group Ltd.	W/D National Union Fire	ADMITTED	22	
Actuaries & Pension Administrators (RPG)	W/D Planet Insurance Company	ADMITTED	10	\$0
BRC Franchiseholders Insurance Purchasing Group	W/D Travelers Indemnity	ADMITTED	05	\$0
Association of Water Park Owners & Operators	W/D United Nat'l Ins. & Assoc.	SUR/ADM	26	
USL Purchasing Group Association	W/D Virginia Surety Company,	ADMITTED	13	
Realty Purchasing Group Association	WITHDR Chicago Insurance Company	ADMITTED	25	\$0
American Home Shield Purchasing Group	WITHDR HOME INSURANCE CO.	ADMITTED	25	\$0
Better Homes & Gardens Real Estate Services (RPG)	WITHDR Home Insurance Company	ADMITTED	25	\$816
Realty World Purchasing Group Association	WITHDR Home Insurance Company	ADMITTED	25	\$0
Fraternity Insurance Purchasing Group Inc.	WITHDR New Hampshire Insurance	ADMITTED	22	
American Bankers Association Purchasing Group	WITHDR Progressice Casualty Ins.	ADMITTED	10	\$0
Chimmney Sweep Purchasing Group Association,	WITHDR RLI INSURANCE COMPANY	ADMITTED		

49 us. by Adm -

23 in Capline 5 new -

\$109,177.

RISK RETENTION GROUPS, ATTORNEYS/CPA

Association of Trial Lawyers	AC/COM	\$1,867,355	IL	2	\$0
Attorneys Liability Protection Society	AC/COM	\$2,636,000	NV	2	\$372,052
~~CPA Mutual Insurance Company of~~	~~AC/PEN~~	~~\$4,308,607~~	~~VT~~	~~2~~	~~\$27,822~~

engineer's only
↓

RISK RETENTION GROUPS, ARCHITECTS/ENGINEERS

Terra Insurance Company (RRG) Inc.

AC/PEN

\$2,115,116

VT 1

\$103,518

RISK RETENTION GROUPS, ALL OTHER PROFESSIONAL LIABILITY

States Self-Insurers (RRG) Inc.	AC/COM	\$9,980,782	GA	11	\$0
United <u>Educators</u> Insurance (RRG) Inc.	AC/PEN	\$426,741	VT	11	\$0

RISK RETENTION GROUPS, MEDICAL/DENTAL

~~AAOMS Mutual Insurance Company~~	AC/COM	\$2,464,547	IL	21	\$0
~~National Dental Mutual Insurance~~	AC/COM	\$1,208,804	CO	21	\$0
✓ North American Physicians Ins. RRG	AC/COM	\$2,678,059	AZ	21	\$0
✓ Ophthalmic Mutual Insurance Company	AC/COM	\$3,426,767	CO	21	\$0
✓ Physicians National Risk Retention	AC/COM	\$5,450,254	LA	21	\$0
✓ Podiatry Ins. Co. of America (RRG), A	AC/COM	\$7,267,649	TN	21	\$0
✓ American Psychiatric Association RRG,	AC/PEN	\$5,000,000	TN	21	\$29,723
✓ Mental Health (RRG) Inc.	AC/PEN	\$1,245,449	VT	21	\$0
✓ OSTEOPATHIC MUTUAL INSURANCE	AC/PEN	\$2,772,757	OK	21	\$4,043
✓ ANESTHESIOLOGISTS' PROFESSIONAL	NEW/COM	\$2,581,693	TN	21	\$0
✓ Preferred Physicians Mutual (RRG)	WD	\$992,958	MD	21	\$0
✓ Professional Mutual Insurance Company	WITHDR	\$9,088,257	MD	21	\$0

MEMORANDUM

State of Alaska

TO: Don Koch
Chief of Market Surveillance
Division of Insurance

DATE: October 12, 1989

FILE NO.:

THRU:

TELEPHONE NO.: (907) 465-2577

SUBJECT: Cost & Availability of
Civil Rule Coverage

FROM: Bob Sims *BS*
Insurance Market Analyst II
Division of Insurance
Department of Commerce
and Economic Development

The following companies have been contacted concerning the availability and cost of Alaska Civil Rule coverage beyond the minimum required by regulation for personal lines automobile insurance and homeowners coverage.

Allstate Insurance Company offers unlimited coverage at \$1.50 per 6 months.

The following companies offer only the minimum coverage required by regulation:

State Farm Companies, USAA Companies, Nationwide Insurance Companies, GEICO Insurance, Criterion Casualty Company, Government Employees Insurance Company, Fireman's Fund Companies, USF&G Companies, Continental Insurance Company, Colonial Insurance Company of California, Progressive Casualty Company, the Assigned Risk Pool, Industrial Indemnity Companies, and the CIGNA Companies.

MEMORANDUM

State of Alaska

TO: Paul Roller, Director
Division of Insurance

DATE: January 25, 1989

FILE NO:

TELEPHONE NO:

THRU: Don Koch
Chief of Market Surveillance
Division of Insurance

SUBJECT: Survey of Initiative 2

FROM: Karen Capp
Insurance Market Analyst
Division of Insurance

On December 2, 1988 I sent 470 of the attached survey to admitted property and casualty insurers. There was only a 17% response to the survey (84 companies). Most had a "wait & see" reaction and felt more tort reform was needed. Most felt other rating factors would offset any decrease this one measure would have.

SUMMARY OF RESULTS

Increase Rates: No responses

No Change: 2 responses

First party coverages
Private passenger auto liability
Commercial auto liability

Decrease Rates: 7 responses

Can't predict amount as it will depend on the courts
Commercial multiple peril
General liability
Private passenger auto liability
Commercial auto liability
Other liability

Not Applicable or Response Blank: 29 responses

Not writing in Alaska
Not writing liability lines
Reinsurers only
Support the amendment - expect rates to decrease but will depend on the courts.

January 25, 1989

Cannot Determine: 46 responses

Need statistical data to measure impact - will take 3 to five years
Impact will depend upon the courts/jury awards.
Impact will vary by line
Expect decrease over time if other rate factors remain constant
Good start - need more reform

Suggested Reforms:

Lower prejudgment interest rate and period
Eliminate Rule 82
Cap noneconomic damages to \$250,000

Do you want me to prepare anything further on this survey?

KFC/djd9562W
012589a
Attachment

Later:

6 more responses

19% responding

cannot determine:
for all 6 (5a)

"Little effect as
it applies to infrequent
cases

SURVEY OF INITIATIVE 2

1. Company Name (optional) _____

2. Will Initiative 2 increase or decrease rates?

_____ Increase _____ Decrease _____ Cannot Determine

3. If you answered that Initiative 2 will increase rates, please state the expected rate increase for each line of insurance.

Line

Rate Increase

4. If you answered that Initiative 2 will decrease rates, please state the expected rate decrease for each line of insurance.

Line

Rate Decrease

5. Additional comments concerning Initiative 2 (optional):

Dated: _____, 198__.

Thank you.

mm0345t
112588a

INITIATIVE PETITION

ENTITLED "An Act relating to civil liability."

INITIATIVE #87-TOR2

The bill amends the way liability for money damages can be spread among parties to a lawsuit when those parties share the fault for an injury to a person or property. The bill repeals existing law, which provides that a responsible party is liable to pay a share of the damages up to twice that party's percentage of fault and which gives a party that pays more than its share of damages a right to reimbursement from other responsible parties. The bill amends the law to make a responsible party liable to pay a share of the damages equal to that party's percentage of fault.

A BILL

For an Act entitled: "An Act relating to civil liability."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

* Section 1. AS 09.17.080(d) is amended to read:

(d) The court shall enter judgment against each party liable on the basis of [JOINT AND] several liability [, EXCEPT THAT A PARTY WHO IS ALLOCATED LESS THAN 50 PERCENT OF THE TOTAL FAULT ALLOCATED TO ALL THE PARTIES MAY NOT BE JOINTLY LIABLE FOR MORE THAN TWICE THE PERCENTAGE OF FAULT ALLOCATED TO THAT PARTY] in accordance with that party's percentage of fault.

* Sec. 2. AS 09.16 is repealed.

* Sec. 3. Underlined material in this Act indicates text that is being added to the law, and bracketed material in capital letters in this Act indicates deletions from the law.

* Sec. 4. Sections 1 - 2 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 5. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.

tinued efforts to reform product liability laws both in state legislatures and in Congress.

Deep Pockets Confirmed

That is also the aim of the American Tort Reform Association. ATRA responded to a recent study by the Insurance Services Office that shows that a small minority of claims account for the majority of compensation paid out under liability insurance.

Blair Childs, executive director of the ATRA, said "the report confirmed that defendants often paid in excess of their actual degree of fault confirming the deep-pocket tendencies of our legal system, which encourages multiple defendants, frivolous claims and unfair judgments."

The ISO study found that less than 3% of claims resulted in 54% of compensation paid.

The study found that "over 90% of claimants were compensated for at least their fault adjusted economic loss."

The closed claim analysis conducted by ISO found that, on average, "claimants received more than three times their fault-adjusted economic loss. Even when not fault-adjusted, claimants received an average of 2.5 times their economic loss."

ISO was careful to note that the findings show that "many claimants received substantial compensation for noneconomic damages, including such intangible injuries as pain and suffering, mental distress and loss of consortium."

These types of damages cannot be charted as adequate or inadequate by quantitative analysis, the ISO report said. Therefore the report confined itself to whether claimants received compensation that was greater or less than economic losses.

Under this standard, the ISO study found that "the tendency toward compensation exceeding economic loss declined as the level of economic loss increased."

The study said that real compensation is overstated because of legal fees, but total recovery is often understated because payments from collateral sources such as health insurance or workers' compensation is not added into the total.

ISO found that in their study of claims of more than \$25,000 "claimants received a total average recovery of 2.5 to three times their fault-adjusted economic loss."

In the closed claims study which reflected all claim sizes, "the average multiplier was about four times the fault-adjusted economic loss."

Maintaining Pressure

But while groups such as ATRA are seeking tort reform as a means of holding down insurance and manufacturing costs and to lessen the impact of liability on the availability of goods and services, the Institute for Injury Reduction, founded by plaintiffs' attorneys, warns that weakening the tort rights of people injured in automobile accidents will remove the remaining pressure on auto companies to make safer products. The institute notes that the federal government is providing less and less safety regulation.

Benjamin Kelly, president of the Institute for Injury Reduction, pointed out that "federal regulatory pressure to make cars safer has practically evaporated. The tort system is the only remaining line of defense against unsafe cars."

Like it or not, he said, "the tort system today is the principal way to force manufacturers to do their testing and make their safety improvements before people become needlessly injured in real world crashes, not after."

The institute is trying to pressure the federal government to recall lap-only rear seat belts and have them replaced with much safer rear seat lap-shoulder combinations, which have been standard in Europe for years. Mr. Kelly also wants elimination of so-called "windowshade" front-seat

shoulder belt devices which allow excessive slack in the seat belt.

The Transportation Department has issued a proposal to require lap-shoulder belt combinations in the rear seats of new cars for the outboard positions.

The department is proposing that cars manufactured beginning next September be equipped with these rear seat lap-shoulder belt combinations. Beginning on September 1, 1991 the requirement would be extended to new convertibles, light trucks, vans, utility vehicles and small buses.

Diane K. Steed, administrator of the National Highway Traffic Safety Administration, explained that the department concentrated first on front seat occupant safety. "Now that safety belt use is on the rise for both front and rear seat passengers, there's a new opportunity to save even more lives and reduce injuries with the lap-shoulder belt in the rear," she said.

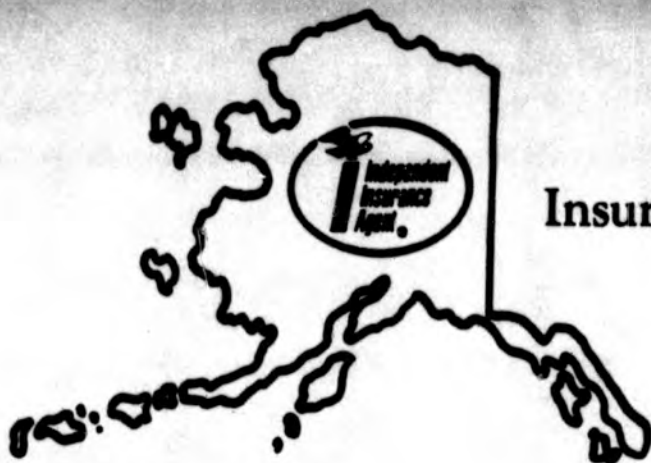
But the Transportation Department refused to take a second step for safety at the same time. The department refused demands by the Insurance Institute for Highway Safety, GEICO Insurance Co., the National Safety Council, the International Association of Chiefs of Police, the National Association of Independent Insurers, the American Driver and Traffic Safety Education Association, the American Trucking Association and the American Automobile Association that radar detectors be banned from the roads.

The Federal Highway Administration insists that possession and use of radar detectors should be a state matter.

The Insurance Institute for Highway Safety released a survey last month showing that "more than half of the drivers who use radar detectors say they drive faster than they would without their fuzz busters." □

—Washington Correspondent





**Alaska Independent
Insurance Agents & Brokers, Inc.**

December 10, 1989

Mr. David Rogers
P.O. Box 33932
Juneau, Alaska 99803

Dear Mr. Rogers:

In response to your letter of October 25, 1989, regarding availability of liability insurance coverages in Alaska, I contacted several of our members from different areas of the state. Our organizations represents over 50 independent agencies from all areas of the state.

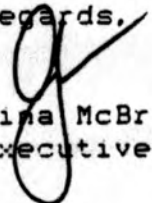
Following is a list of those classes of business that were mentioned by different members:

- Day Care Centers
- Liquor Liability
- Small specialty and general contractors
- Pollution
- Any small business that requires liability coverage only (no supporting property or auto)

The comments regarding these classes were both regarding unavailability in the admitted marketplace, as well as high pricing of the coverages.

I hope this is of assistance to you, and I look forward to hearing the recommendations of the Task Force. If I may be of further assistance, please feel free to give me a call.

Regards,


Gina McBride, AAI, CIC
Executive Director

PROFILE OF THE ALASKA MARKET
MEDICAL MALPRACTICE INSURANCE

Hospitals

<u>Name</u>	<u>Location</u>	<u>No. Beds</u>	<u>Ownership</u>
**Providence	Anchorage	303	Sisters of Providence Non-profit
**Humana	Anchorage	238	Humana For Profit
**Charter North (psychiatric only)	Anchorage	80	Charter Hospitals For Profit
**Fairbanks Memorial	Fairbanks	177	Lutheran Hospital & Homes Society ("LHHS") Non-Profit
*Valley	Palmer	36	Local Government
Norton Sound	Nome	30	Native Corporation Federal Government
Bristol Bay	Dillingham	15	Native Corporation Federal Government
Maniilaq	Kotzebue	31	Native Corporation Federal Government
*Central Peninsula	Soldotna	46	Local Government Managed by LHHS
*Seward General	Seward	32	Local Government
*South Peninsula	Homer	38	Local Government
*Kodiak Island	Kodiak	44	Local Government Managed by LHHS

Continued

NOTE: See insurance key on next page.

*Valdez Community	Valdez	15	Local Government Managed by LHHS
***Cordova Community	Cordova	23	Local Government
*Wrangell General	Wrangell	23	Local Government
***Petersburg General	Petersburg	25	Local Government
*Bartlett Memorial	Juneau	51	Local Government Managed by HCA
*Sitka Community	Sitka	24	Local Government
**Ketchikan General	Ketchikan	92	Sisters of St. Joseph Non-Profit

* Insured by MICA (primary coverage)

** Insured through affiliation with national chain

*** Uninsured

NOTE: For purposes of the Medicare prospective payment system, all the hospitals listed above that have fewer than fifty beds are "rural hospitals." See 42 U.S.C. § 1395ww(a)(3).

Physicians

<u>Source of Insurance</u>	<u>Approximate Percentage</u>
Insured by MICA	55 %
Insured by MIEC*	28 %
Insured by CNA**	7 %
Uninsured	10 %

*Medical Insurance Exchange of California, a physician-owned insurance company based in California

**Insures only group practices that meet CNA criteria

NOTE: In addition to the above-referenced hospitals and physicians, MICA also insures twelve related health care facilities, many of which are "rural." They include, for example, a skilled nursing facility, clinics, intermediate care facilities, and home health services.

health association of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

FAX (907) 463-3573

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

Chairman of the Board
C. Keith Campbell
Seward General Hospital

Chairman-Elect
Ed Malewski
Sitka Community Hospital

Immediate Past Chairman
Jim Gingerich
Fairbanks Memorial
Hospital

Secretary/Treasurer
Sister Dona Taylor
Providence Hospital
Anchorage

Delegate to the American
Hospital Association
Charles Stokes
Humana Hospital-Alaska
Anchorage

Alternate Delegate to the
American Hospital Assoc.
Ed Zeine
Cordova Community
Hospital

Delegate to the American
Health Care Association
Tom Boling
Lady of Compassion
Care Center
Anchorage

Alternate Delegate to the
American Health Care
Mark Bertilrud
Denali Center
Fairbanks

Delegate to the Healthcare
Forum
John Vowell
Wrangell General Hospital

Delegate to Congress of
Hospital Trustees
Jan Trettner
Seward General Hospital

Government Institutions
Representative
Frank Sutton
Mt. Edgecumbe Hospital
Sitka

Outpatient Facilities
Representative
John J. Conway
Veterans Administration
Anchorage

Executive Director
Harlan R. Knudson

January 18, 1990

David E. Rogers
Chief Counsel
Liability Insurance Task Force
P. O. Box 33932
Juneau, AK 99801

Dear David:

This letter is in response to your questions on:

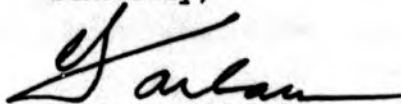
1) the availability of liability insurance for hospitals in the state of Alaska, and 2) the impact the liability crisis is having on access to medical care.

MICA, the Medical Indemnity Insurance Corporation of Alaska provides liability insurance for Alaska hospitals. Without MICA, more than half of Alaska hospitals would not have insurance. The hospitals that are part of multi-hospital systems purchase liability insurance through their corporate offices. Native Health Service hospital are covered under a federal program.

Enclosed is my memo of October 17 wherein I outlined the impact of liability insurance costs on access to medical care. Hospitals do not turn patients away because of the liability crisis, but physicians are being forced to be selective with patients.

It must be remembered that the physician is the key to medical care, and more and more in communities across Alaska, physicians are being forced to limit care because of the liability crisis.

Sincerely,


Harlan R. Knudson
President/CEO

HK/ma
Enclosure



ALASKA STATE MEDICAL ASSOCIATION

2401 E. 42nd • Suite 104 • Anchorage, Alaska 99508 • (907)562-2662

January 7, 1990

David Rogers, Esq.
Special Counsel
P.O. Box 33932
Juneau, Alaska 99803

Dear Dave:

I apologize for the delay in responding to your request for information as to the number of uninsured physicians in Alaska. Although most malpractice insurance companies cooperated in our study, we had to call a small group of physicians individually to get the data needed which I have enclosed.

In addition, we have the study by percentage of each specialty. As we suspected, OB, Family Practice, and Orthopedics has the largest block of uninsured.

In addition, I have sent you under separate cover the American Medical Association Model Medical Liability and Patient Protection Act which is a result of the AMA Medical Liability Project.

This concludes the data you requested and frankly, is all the data available on this issue. As we have discussed, the discipline within the medical community is second to none in continuing education, impairment investigations, risk management activity, and hospital credentials. I challenge any profession to match the depth of activity and discipline required by the medical profession in Alaska.

Thank you for your professionalism throughout these past months.

Sincerely,



Ray Schalow
Executive Director

UNINSURED PHYSICIANS
January 1, 1990

This study was done with the cooperation of the malpractice insurance companies along with telephone calls to individual physicians. We believe this to be the most comprehensive study of this issue.

TOTAL PRIVATE PRACTICE PHYSICIANS:614

Percent of uninsured physicians - cities	24%
Percent of uninsured physicians - towns	12%
Percent of uninsured physicians - bush	56%

The criteria for determining size of cities were determined by size. Obviously Anchorage and Fairbanks are classified as the cities and bush communities were generally considered less than 1000.

CHARLES HAGANS
KEITH E. BROWN
SANFORD M. GIBBS
LIAM J. MORAN
MEREDITH A. AHEARN
LINDA ANNA WEBB

LAW OFFICES
HAGANS, BROWN, GIBBS & MORAN
A PROFESSIONAL CORPORATION
310 K STREET, SUITE 704
ANCHORAGE, ALASKA 99501

TELEPHONE 276-5294
AREA CODE 907
TELECOPIER/FAX NO. (907) 276-8732
ABA/NET NO. ABA1782

January 8, 1990

David E. Rogers
P.O. Box 33932
Juneau, Alaska 99803

Re: Legal Malpractice Insurance

Dear David:

In my capacity as former chairman of the Alaska Bar Association's Professional Liability Insurance Committee, you have asked for my thoughts as to whether there are any current availability or affordability problems. I'm pleased to report that speaking very generally, availability and affordability are not the problems they were in 1985-1986. In my judgment, the biggest single factor leading to the decline in premiums charged for lawyer malpractice insurance in Alaska is increased competition in the marketplace which was occasioned by the creation of the Attorney's Liability Protection Society and its entry into the Alaska market. As you know, ALPS is a multistate risk retention group owned by its subscribers. The entry of ALPS into the Alaska marketplace apparently spurred other carriers to lower rates. Lower rates were accompanied by greater availability of this type of coverage. In short, competition appears to have flourished with the state's lawyer population (and their clients) being the beneficiaries of this state of affairs.

You should be aware that affordability is a relative term; what is affordable for one lawyer may not be for another. I recall being questioned closely by one attorney of some year's experience who told me that he was interested in a policy with very low limits which cost less than \$1000 per year. He could not afford more. That lawyer ultimately left the state because of his financial situation.

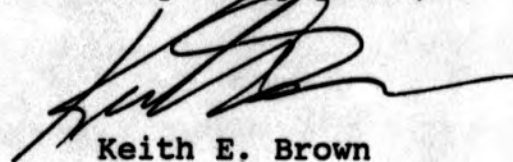
I must admit that the softening of the market worldwide has had some effect upon the decision of lawyer malpractice carriers to reduce rates within this state. Alaska's rates will continue to be impacted by events beyond our control such as the international reduction in excess insurance capacity which precipitated our decision to participate in the ALPS program.

David E. Rogers
January 8, 1990
Page 2

Moreover, our reputation as a wild and woolly place in which to do business has caused more than one raised eyebrow. When the ALPS program was first established, Alaska's efforts to join such states as South Dakota, North Dakota and West Virginia caused more than one underwriter to question our participation. In the short run, market considerations aside, the most significant factors in terms of availability and affordability will probably continue to be claims frequency and claims severity. A combination of a claims frequency problem with one or more "large hits" might well be disastrous to any insurance program.

Please let me know if there are any other issues which need to be addressed.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'Keith E. Brown', written in a cursive style with a long horizontal flourish extending to the right.

Keith E. Brown

Alaska Bar Association Alaska Legal Malpractice Survey

INTRODUCTION

The Supreme Court has issued an Order directing each attorney and law firm to participate in this confidential questionnaire. Your cooperation will help the Bar Association to develop errors and omissions insurance options that are both affordable and available to all attorneys in this State.

DEFINITIONS AND INSTRUCTIONS

E & O: References made are to Errors & Omissions, "malpractice" insurance.

CLAIM: As used herein, the word "claim" means a demand to you, your firm, or your insurance carrier for the payment of money. It also includes the more obvious situation where a complaint has been filed by a claimant against you or your firm or where arbitration (other than fee arbitration) has been demanded as a result of a claim of professional negligence or misconduct. It includes a situation where amounts have been paid by your firm, by you, or by an insurance company for legal fees, defense costs, settlements or judgments. As used herein, the word "claim" does not include forbearance of client fees.

SECTIONS I, II, III, AND V: One individual from each firm (and the managing partner as to Section V) should answer the questions in these sections. Section III should be read carefully and answered only if the conditions set forth at the beginning of that section are applicable. SALARIED ATTORNEYS EMPLOYED BY GOVERNMENTAL AGENCIES, CORPORATIONS (AS IN-HOUSE COUNSEL, ETC.), AND JUDGES OR INACTIVE MEMBERS need not answer the questions in Sections I, II and V. They must answer the questions in Section IV and, if applicable, in Section III.

SECTION III: Any attorney who has been previously self-employed or employed by a different firm and whose prior employer no longer exists must answer the questions in this section or have same answered on his behalf.

SECTION IV: This section is to be completed by salaried attorneys employed by governmental agencies, corporations (as in-house counsel, etc.) and judges or inactive members. These individuals need not answer the questions in Sections I, II, and V. These same individuals must answer the questions in Section III if applicable.

MULTI-OFFICE FIRMS: Law firms with more than one office in the State of Alaska should submit one (1) form from the principal office of the firm.

MULTI-STATE FIRMS THAT PRACTICE IN ALASKA: Such firms should report claims and statistics arising out of their ALASKA PRACTICE ONLY.

Section I

ONLY ONE MEMBER OF EACH LAW FIRM
SHOULD ANSWER QUESTIONS IN SECTION I

1. Is your firm presently covered by E & O Insurance?
Yes 275 No 120

If yes, answer a-g:

- (a) Please indicate the name of your E & O Carrier: Eximbas
(b) What are the present limits of primary coverage? 3,000,000
(c) What is the total annual premium for your firm's primary coverage? 24,095
(d) What are the present limits of excess coverage? 2,500,000
(e) What is the total annual premium for your firm's excess coverage? 18,345
(f) What is the deductible, if any? 13,216
(g) YES Expiration date.

2. The professional staff of the firm (office) includes:

- Number
(a) 263 Sole Practitioner
(b) 369 Partners, or shareholders in a P.C. } 793
(c) 424 Associates or employed lawyers
(d) 42 Law clerks
(e) 8 Investigators
(f) 139 Paralegal professionals (exclude clerical)

3. Assuming that your answer to Question 1 was yes, does the E & O insurance described in Question 1 fail to cover any person or any of the people on the professional staff of your firm as described in Question 2?
Yes 16 No 256

If the answer is yes, please explain which professional staff categories are not covered by your policy.

4. Since January 1, 1981, has any E & O claim been made against you, your firm, or any of its past or present employees?
Yes 98 No 302 (+130 claims)

5. If the answer to the last question is yes, please state, for each such claim made against you, this firm, OR ANY OF ITS PAST OR PRESENT EMPLOYEES, the following:

- (a) YES The approximate date of the claim(s).

- (c) The first 4 letters of the last name of the claimant in each such claim(s).

- (d) Disposition or present status of the claim(s).

- (1) 3 Defense Verdict
(2) 1 Plaintiff Verdict
(3) 1 Settled
(4) 2 Pending
(5) 26 Dismissed without payment

- (e) \$120,877 Total amount paid if known (including payments by your firm or insurer of any legal fees, defense costs, settlement monies or a judgment to the plaintiff(s)).

(While preserving the confidentiality of the information requested, question "e" above will assist us in avoiding duplication in the claims reporting process).

6. If the answer to Question No. 4 is yes, please check the description of the allegations made.

- (a) 20 Personal injury - Plaintiff
(b) 10 Real Estate
(c) 1 Collections/Bankruptcy
(d) 1 Estate Planning
(e) 1 Corporations/Business
(f) 1 Domestic Relations
(g) 1 Criminal Law
(h) 1 Tax
(i) 1 Other

- (1) Describe the nature of the allegation (e.g., alleged statute of limitation, failure to communicate).

7. Do you maintain and use a dual controlled docket system for limitation and diary reminders (i.e., two people keep completely separate calendars for all dates applicable to the legal matters you handle)?
Yes 259 No 123

8. Who does title searches for you when required (check below each that applies)?

- 40 You personally
1 An investigator
1 Your secretary
1 A paralegal
27 A professional title company
1 Others

9. Do you or any of the attorneys in your firm practice primarily in a jurisdiction other than Alaska?
Yes 4 No 336

10. If the answer to the last question was yes, for each such attorney please indicate the percentage of Alaska practice for each such attorney.

- 1 Attorney One
1 Attorney Two
1 Attorney Three
1 Attorney Four

Section II

NATURE OF PRACTICE

ONLY ONE MEMBER OF EACH LAW FIRM
SHOULD ANSWER QUESTIONS IN SECTION II

(MULTI-STATE FIRMS SHOULD ANSWER
REGARDING THEIR ALASKA PRACTICE ONLY)

1. The practice specialties of this firm (if my sole practice) are as follows (please indicate percentage):

- (a) Administrative Law
(b) Admiralty/Maritime
(c) Antitrust
(d) Bankruptcy
(e) Commercial Law
(f) Copyright/Patent/TM
(g) Corporate
(h) Criminal
(i) Domestic Relations
(j) Estate/Probate/Trust
(k) Labor Law
(l) Litigation-Personal Injury Plaintiff
(m) Litigation-Other
(n) Domestic Relations
(o) Real Estate
(p) Real Estate Syndication
(q) SEC
(r) Taxation
(s) Other

TOTAL 100%

2. My practice is located in an area of population size indicated below (Circle appropriate letter). Please indicate Judicial District and City.

- | | Judicial District | CITY |
|------------------------|-------------------|---------------|
| (a) Under 10,000 | <u> </u> | <u> </u> |
| (b) 10,000 to 25,000 | <u> </u> | <u> </u> |
| (c) 25,000 to 50,000 | <u> </u> | <u> </u> |
| (d) 50,000 to 100,000 | <u> </u> | <u> </u> |
| (e) 100,000 or greater | <u> </u> | <u> </u> |

3. Do you, or any of the attorneys in your firm, devote less than 100% of your (their) working time to the practice of law?
Yes 128 No 19

- (a) If the answer to this question is yes, please indicate the percent of time spent practicing law by each such attorney:

- 1 Attorney One
1 Attorney Two
1 Attorney Three

4. Does your firm have branches (or is it associated with firms) outside of the State of Alaska?
Yes 4 No 337

SECTION III

SECTION III IS TO BE COMPLETED FOR EACH ATTORNEY EMPLOYED BY A GOVERNMENTAL AGENCY, BY A CORPORATION (IN-HOUSE), BY JUDGES, BY INACTIVE MEMBERS, AND FOR EACH ATTORNEY AND/OR PARAPROFESSIONAL IN YOUR FIRM

Section III only applies to those attorneys and/or parapprofessionals who:

- have been previously self-employed or employed by a different firm AND
- whose prior employer no longer exists (e.g., Rev. Mo., & Co., P.C. are now Rev. P.C., Mo., P.C., and Co., P.C.; principals in Rev. Mo., & Co., P.C. now employed with different firms, etc.).

1. Since January 1, 1981, has any E & O claim been made against you or a parapprofessional now in your firm but who, at the time the claim was made, was employed by a firm or entity that no longer exists?
Yes 12 No

2. If the answer to the previous question was yes, for each such individual and each such claim, please state:

(a) 12/81 The approximate date of the claim(s).

(b) The carrier(s), if any, which were involved.

(c) The first 4 letters of the last name of the claimant in each such claim(s).

(d) Disposition or present status of the claim.

- Defense Verdict
- Plaintiff Verdict
- Settled
- Pending
- Dismissed without payment

(e) \$ 36,750 Total amount paid if known (including payments by your firm or insurer of any legal fees, defense costs, settlement monies, or a judgment to the plaintiff(s)).

(While preserving the confidentiality of the information requested, question "c" above will assist us in avoiding duplication in the claims reporting process).

3. If the answer to Question No. 1 was yes, please check the description of the allegations made.

- Personal Injury - Plaintiff
- Real Estate
- Collections/Bankruptcy
- Estate Planning
- Corporations/Business
- Domestic Relations
- Criminal Law
- Tax
- Other

(1) Describe the nature of the allegation (e.g., missed statute of limitation, failure to communicate).

Section IV

TO BE ANSWERED ONLY BY SALARIED ATTORNEYS EMPLOYED BY GOVERNMENTAL AGENCIES, CORPORATIONS (IN-HOUSE), AND JUDGES OR INACTIVE MEMBERS

1. Are you employed full time in your present position?
Yes 278 No 36

(a) If the answer to this question is no, please state the percentage of your employment in the practice of law and describe briefly your other employment, if any.

2. Are you fully retired from the practice of law?
Yes 33 No 276

If you are not fully retired or, stated otherwise, if you are only partially active in the practice of law, please indicate the percent of your time spent practicing law in the following categories:

- Governmental Agency
- Corporate In-House Counsel
- As a Judge
- As a Magistrate

3. Do you perform any other outside work in an attorney/client relationship regardless of whether you receive compensation for your services (e.g., for friends, family, church, charitable, community councils, indigent persons, etc.)?
Yes 269 No 266

4. Were you in private practice at any time since January 1, 1981?
Yes 25 No 193

5. If the answer to the question immediately above is yes, since you left that private practice, has any E & O claim been made against you as a result?
Yes 4 No 131

6. If the answer to the preceding question was yes, please state, for each such claim:

(a) 12/81 The approximate date of the claim(s).

(b) The carrier(s), if any, which were involved.

(c) The first 4 letters of the last name of the claimant in each such claim(s).

(d) Disposition or present status of the claim(s).

- Defense Verdict
- Plaintiff Verdict
- Settled
- Pending
- Dismissed without payment

(e) \$ 19,000 Total amount paid if known (including payments by your firm or insurer of any legal fees, defense costs, settlement monies, or a judgment to the plaintiff(s)).

(While preserving the confidentiality of the information requested, question "c" above will assist us in avoiding duplication in the claims reporting process).

7. If the answer to Question No. 3 was yes, please check the description of the allegations made.

- Personal Injury - Plaintiff
- Real Estate
- Collections/Bankruptcy
- Estate Planning
- Corporations/Business
- Domestic Relations
- Criminal Law
- Tax
- Other

(1) Describe the nature of the allegation (e.g., missed statute of limitation, failure to communicate).

8. If you are a judge or magistrate, have any suits been brought against you for your professional conduct while acting in the capacity of judge or magistrate?
Yes 11 No

9. If the answer to the preceding question was yes, please indicate for each claim:

(a) 12/81 The approximate date of the claim(s).

(b) The carrier(s), if any, which were involved.

(c) The first 4 letters of the last name of the claimant in each such claim(s).

(d) Disposition or present status of the claim.

- Defense Verdict
- Plaintiff Verdict
- Settled
- Pending
- Dismissed without payment

(e) \$ 13,000 Total amount paid if known (including payments by your firm or insurer of any legal fees, defense costs, settlement monies, or a judgment to the plaintiff(s)).

(While preserving the confidentiality of the information requested, question "c" above will assist us in avoiding duplication in the claims reporting process).

10. If the answer to Question No. 4 was yes, please check the description of the allegations made.

- Personal Injury - Plaintiff
- Real Estate
- Collections/Bankruptcy
- Estate Planning
- Corporations/Business
- Domestic Relations
- Criminal Law
- Tax
- Other

(1) Describe the nature of the allegation (e.g., missed statute of limitation, failure to communicate).

11. Are you presently covered by E & O insurance?
Yes No

If the answer is yes, complete a-g.

(a) Please indicate the name of your E & O carrier:

(b) What are your present limits of primary coverage?
1,300,000

(c) What is the total annual premium for your individual primary coverage?
7,033

(d) What are your present limits of excess coverage?
2,000,000

(e) What is the total annual premium for your individual excess coverage?
18,033

(f) What is the deductible, if any? 3,650

(g) 12/81 Expiration date.

Section V

TO BE ANSWERED BY MANAGING ATTORNEY(S)

1. Do you favor the State Bar participating in the formation of a multi-state insurance company to provide professional liability coverage for members of the State Bar?
Yes 267 No 33

2. Do you favor professional liability policy premiums being determined by the type of practice (or specialty) of the policyholder?
Yes 262 No 17

3. Would you invest in a lawyer-owned and operated insurance organization whose purpose is to provide professional liability coverage for members of the participating State Bar?
Yes 264 No 17

4. If your answer to the preceding question was yes, would you be willing to invest \$1,000.00 (per lawyer) if the investment were a prerequisite for the purchase of insurance from such a company?
Yes 24 No 53

RETURN TO:
ALASKA BAR ASSOCIATION
P.O. Box 100279
ANCHORAGE, ALASKA 99510

Thank you!

By May 21



**ALASKA CHAPTER
THE AMERICAN INSTITUTE OF ARCHITECTS
P.O. BOX 10-3563 • ANCHORAGE, ALASKA 99510**

January 9, 1990

David E. Rogers, Lawyer
P.O. Box 33932
Juneau, AK 99803

Sent Via FAX: 586-6959

Dear David:

As we have discussed, several of the questions you have asked concerning Errors and Omissions Insurance would require a formal survey to answer conclusively. The most recent survey was conducted in 1985, and it is doubtful that a new survey will be conducted in the near future because of the excessive effort and cost required. This being the case, I can offer the following personal observations concerning the questions you have raised:

1. "The availability (or unavailability) of liability insurance for architects, engineers, and surveyors":

In the December, 1989 issue of the American Institute of Architects "Memo", it was reported that the amount of insurance available to architects and other insureds nationally has increased since 1988. This is because reduced claims frequency and favorable interest rates have relaxed economic conditions, increasing investment in insurance companies. "Unlike 1985-87, when insurance companies were searching for the financial capacity to issue policies, in 1988-89 there has been market pressure for insurance companies to fully use extra financial capacity. That means some insurance carriers are promising architects more coverage at lower costs, simply to get policies in place".

2. "The availability of those services in Alaska":

In my conversations with a number of architects and engineers in Alaska, it appears that errors and omissions insurance is still generally available. However, it should be noted that of the ten major carriers, only one, CNA/Shinnerer, is selling insurance in Alaska on an admitted basis. Three companies, Shand Morahand, PMI, and Illinois R.B. Jones sell on a surplus lines basis.

3. "The percentage of insured in each profession and the current premium structure for the major carriers":

In a recent 1989 issue of the "Project Services Management Journal", it was reported that 49 percent of architectural firms nationally do not carry professional liability insurance.

I contacted Robert Waffle with American Institute of Architects Government Affairs in Washington D.C. concerning the second part of your question. He did not have information concerning premium structure for the major carriers, and indicated that this information would be very difficult to get. It may be that the HR 10 Task Force has enough political influence to procure this information directly.

4. "The allegation that a relatively small percentage of professionals cause a large percentage of the problems":

In the December, 1989 issue of the American Institute of Architects "Memo", it was reported that 87 percent of architectural firms nationally went without claims in 1988. I might add that in the December, 1985 issue of "Memo", it was reported by Victor O. Shinnerer Co. that in only 20 percent of claims had the insurance company paid the plaintiff. It can be approximated then that only $.20 \times 13$ or 2.6 percent of firms actually have claims in which payment is made to the plaintiff.

I hope this information will be useful to you. Please contact me directly in Juneau if I can be of further help.

Sincerely,



Richard Ritter AIA
Chairman, Alaska Chapter/AIA Legislative Affairs Committee

MEMORANDUM

TO: David E. Rogers, Lawyer
cc: Rich Ritter, A/E/LS Legis. Liaison Committee
FROM: Dan M. Rowley, CH2M HILL
DATE: November 1, 1989
SUBJECT: A/E Liability

Save
Enclosed are copies of A/E liability studies conducted by the American Consulting Engineers Council. Hopefully, they provide some information that will be of use to the House Liability Task Force.

Following are some editorial thoughts to supplement this information:

1. The Jan/Feb 1988 report identifies 11 commercial carriers of professional liability insurance. Seven of those carriers have a maximum limit of \$1 million. As you well know, \$1 million doesn't go very far in today's legal environment. I think it is debatable to say that carriers who limit their coverage to \$1 million are in the real world marketplace. It really isn't in the public's interest (in most situations) to only expect that much insurance.
2. Note that, of the 11 listed commercial carriers of professional liability insurance, 6 of them exclude Alaska. I suggest that this exclusion reflects Alaska's notoriety in the insurance industry as a high risk state.
3. The 1989 Liability Report cites an average insurance cost of 4.2 percent of annual gross billings. More pertinent to Alaska, however, is the comment in the text that, "Small engineering firms, with one-to-five employees, fared worse, paying nearly seven percent of their gross billings for insurance." Two years ago, I did a check on Anchorage A/E firms in conjunction with the United Way campaign and determined that the median size A/E firm here was 7+ people. If that statistic were updated and broadened to include A/E firms throughout the entire state, I would guess the median size A/E firm is less than 7. This would suggest that insurance premiums for Alaska A/E firms are probably closer to

MEMORANDUM

November 1, 1989

Page 2

7 percent than 4.2 percent. What would be equally revealing, though, (if we knew it) would be the number of firms who are going bare because they can't afford the insurance premium

I hope this is of some help. Call 278-2551 if I can be of more assistance.

Regards

Jan



**ALASKA CHAPTER
THE AMERICAN INSTITUTE OF ARCHITECTS
P.O. BOX 10-3563 • ANCHORAGE, ALASKA 99510**

January 20, 1990

David E. Rogers, Lawyer
P.O. Box 33932
Juneau, AK 99803

Sent Via FAX: 586-6959

Dear David,

Per your request last week, I can offer the following additional observations concerning the percentage of insured architects and engineers in the State of Alaska.

In my letter to you dated January 9, 1990, I noted a statistic from the "Project Services Management Journal" that 49 percent of architectural firms nationally do not carry professional liability insurance. This same article indicated that 74 percent of one-person architectural firms nationally are going without E&O insurance.

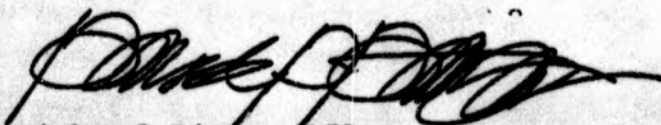
In another article from a 1989 issue of the "Consulting Engineers Council Liability Report", it indicated that 42 percent of 1-5 person, 17 percent of 6-10 person, and 15 percent of 11-25 person engineering firms nationally are going without professional liability insurance.

The trend nationally then is that as firms become smaller they are less likely to carry professional liability insurance. However, because the State of Alaska and, to the best of my knowledge, most municipalities and school districts, require that architects and engineers carry professional liability insurance to do work, it is likely that more Alaskan firms carry insurance than the national averages. As I have stated before, it is not possible to know this conclusively without conducting a formal statewide survey.

A few personal observations may help here. I would estimate that in excess of 70 percent of the architectural and engineering firms that I have contact with, either through business or professional societies, carry professional liability insurance. I also heard recently that a long time Anchorage architectural firm, a firm responsible for millions of dollars of significant construction in the state during the last decade, has been forced to go bare because of the high cost of insurance.

Please contact me directly in Juneau if I can provide additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Richard Ritter', with a stylized flourish at the end.

Richard Ritter AIA
Chairman, Legislative Affairs Committee

cc: Paul Voelckers AIA, President

ACEC

Liability & Litigation

REPORT

AMERICAN CONSULTING ENGINEERS COUNCIL

Vol. 2, No. 1—January/February 1988

Liability Insurers Surveyed

A recent ACEC survey has identified 11 commercial carriers of standard practice policies for professional liability ("errors and omissions") insurance, three offshore captive companies offering certain coverages to select groups, and one new A-E risk retention group. The results of the study, conducted to aid ACEC members, are shown on pages 2 and 3.

In addition to the usual name, address and phone number, the ACEC list identifies the year in which the underwriter began writing policies, states in which policies are offered, disciplines for which coverage is not available, and availability of project insurance. A separate chart shows maximum and minimum limits of coverage, minimum deductibles, and minimum premiums.

Recent experience has made engineers more concerned about the financial stability of their insurers. When choosing a professional liability insurance carrier, inquiry into its financial strength is well advised. The most convenient source for such information is an insurance broker or agent. Other, more impartial sources, include state insurance commissioners and services which rate insurance companies.

The most commonly used independent rating service is A. M. Best, publisher of the *Best Rating System*. The Best system evaluates an insurer's relative financial strength and ability to meet its contractual obligations—its "claims paying" ability. After Best analyzes an insurance company it assigns a letter code as follows: A+ (Superior); A and A- (Excellent); B+ (Very Good); B and B- (Good); C+ (Fairly Good); and C and C- (Fair). Insurers not qualifying for a Best rating are classified as "Not Assigned."

If you would like to know a particular insurer's Best rating, ask one or more of the previously mentioned sources or check your public library. Remember,

INSURERS—Cont'd page 2

SEE INSIDE

California Law Cuts A-E Lawsuits

A statute originally enacted in 1979 and modified in 1983, has sparked a significant reduction in malpractice suits being filed against design professionals in California. Further, it is seen as helping to increase A-E dismissal judgments, cut the number of jury trials and reduce overall court costs.

This is the gist of a just-released, 86-page survey and analysis by Ralph Andersen and Associates, a Sacramento public opinion firm. Subject of the study was California's "Certificate of Merit Law" (CCP 411.35)—a law enacted to discourage frivolous or capricious malpractice suits against design professionals.

The Certificate of Merit statute requires that attorneys for a plaintiff, prior to filing a suit, certify that an impartial design professional (practicing in the same discipline as the defendant) has been consulted and has agreed there is "reasonable and meritorious" cause for the complaint. Failure to file such a certificate, with two exceptions, constitutes grounds for a judge to strike the case.

This is exactly what happened in a recently-adjudicated dispute involving a 1983 suit against an engineering firm for design negligence in the specification of a metal drain grate. The plaintiff's bicycle tire had become wedged in the drain grate causing him to fall and sustain various injuries. However, the suit was filed without another professional engineer certifying that the case was reasonable and meritorious. The trial court judge dismissed the suit and his decision was upheld by the Court of Appeals.

Because the California Merit Law is due to expire in 1989, the legislature has directed that a study be made of its effectiveness and accomplishments, if any. As it turns out, there were many.

The Andersen study found there is general compliance with the law. In addition consultations are readily available, costs of reviews are moderate to insignificant; and all parties (including nearly half the

plaintiffs' counsel respondents) believe the type of consultation envisioned by the statute is important and should be continued.

Surveying almost 1300 architects, engineers and land surveyors (plus another 80 defense lawyers, plaintiffs' attorneys and insurance companies), Andersen analysts determined the Certificate of Merit requirement has had a "damping" effect on filings by potential plaintiffs. Insurance company figures show that during the period 1976 to 1979, 51% of A-E malpractice cases were dismissed, and only 3.2% ended with a court or jury verdict. For cases since 1980, the percent of dismissals rose to 56% and court and jury trials have dropped to 2.6%.



My client contends the Wright brothers stole his idea 50 years before he was born.

Thirty-eight percent of the defense attorneys polled by the Andersen group indicated the merit law has contributed to a reduction in the number of jury trials in California. Several plaintiffs' attorneys admitted that the certificate requirement had been instrumental in their decisions to drop defendant design professionals from malpractice actions. One insurance company wrote, "...in the last few years we have seen a slight lessening of the

CALIF. LAW—Cont'd page 2

Mediation Incentive Offered

In an effort to encourage the use of mediation in resolving disputes, the Design Professionals Insurance Company (DPIC) has advised its insureds that "Beginning February 1, 1988, any DPIC policyholder whose claim is successfully concluded by mediation will receive a 50% reduction in his out-of-pocket deductible expense for that claim, up to a maximum of one half of \$25,000." The only exception to this offer will be in those rare cases where the settlement reaches or exceeds the insured's policy limits.

According to DPIC Companies' Senior Vice President, Bernard Engels, "Mediation reduces claims costs and we are go-

ing to begin passing those savings back to our insureds." Speaking at a January AIA/ACEC/ASCE-sponsored seminar, Engels reported that, "To date, over 500 DPIC cases have been placed into mediation. Of those which have completed the process, 74% have been successfully mediated, saving DPIC and its policyholders money, valuable time, and needless frustration."

Applicability of the shared deductible savings to mediations already scheduled, and other details of the new program, are still being worked out. For further information, DPIC insureds may call Mr. Engels at (408) 640-5522. ■

COMMERCIAL CARRIERS OF S1

(in alphab

*Year in which insurer began writi

DPIC Companies

P.O. Box DPIC
Monterey, CA 93942
(800) 227-4284
Contact: Bernard P. Engels
(DPIC writes insurance under its own name)

Engineers Liability Insurance Co. Ltd.

P.O. Box HM1760
Hamilton, Bermuda HM HX
(809) 295-3688
Contact: David Ezekiel
(ELIC writes insurance under its own name. Becu not solicit business in the U.S., but firms may a)

Illinois R.B. Jones

250 S. Wacker
Chicago, IL 60606
(312) 993-0505
Contact: M. Linda Deiss
(Illinois R.B. Jones is Underwriting Manager for

Insurance Management, Inc.

55 E. Monroe Street
Chicago, IL 60603
(805) 688-7767 (California)
Contact: Richard O'Gorman
(IMI writes insurance under its own name)

PCM Intermediaries, Ltd.

130 William Street
New York, NY 10038
(212) 619-4900
Contact: Bob Myer
(PCM is Underwriting Manager for Crum & Fors insurance companies.)

Professional Managers Incorporated

2 North Riverside Plaza, Suite 1460
Chicago, IL 60606
(312) 559-0101
Contact: John Van Cleave, Guy Calhoun or Rich
(PMI is Managing General Agent for Lexington I

RA&MCO Insurance Services

1801 Oakland Boulevard, Suite 320
Walnut Creek, CA 94546
(415) 943-7200
Contact: Grant Weaver
(RA&MCO is Branch Manager for Associated In

Victor O. Schinnerer & Company, Inc.

5028 Wisconsin Avenue, N.W.
Washington, DC 20016
(202) 885-9500
Contact: Richard J. Walk
(Schinnerer is Underwriting Manager for CNA In

Shand, Morahan & Company, Inc.

Shand Morahan Plaza
Evanston, IL 60201
(312) 866-2800
Contact: Edward Zahn or Brenda Phillips
(Shand Morahan is Underwriting Manager for Ev

INSURERS SURVEYED—Cont'd from page 1

ratings are always subject to change, so the more recent the data the better its accuracy.

Since not all insurance companies operate on an "admitted" basis in every state, insurance commissioners may not have information on a particular insurer's financial condition even though it writes professional liability insurance for consulting engineers. Some insurance companies choose not to be admitted in every

state in which they offer insurance. This is called operating on a "non-admitted" basis, or offering insurance on a "surplus or excess lines" basis. The primary distinction between the two methods of operation is that "admitted" carriers are subject to more strict state regulations than are "non-admitted" carriers. Your insurance commissioner, agent or broker can tell you on what basis different companies operate in your state.

The American Consulting Engineers Council does not endorse any one professional liability insurance company. This listing of carriers has been compiled as an information resource for Council member firms. It is based on data furnished by each insurer and has not otherwise been verified by ACEC. Further, nuances of each insurer's underwriting guidelines may exclude certain consulting engineers while accepting others. It is impossible to list the many (and often confidential) criteria that may or may not qualify your firm for coverage.

CALIFORNIA LAW—Cont'd from page 1

'shotgun' blast of lawsuits against A-Es and I attribute it to the plaintiff bars' increasing awareness of the law's existence."

In examining costs of obtaining certificate of merit reviews, the California study found that 64% of the consultations required no more than eight hours. Only 11% reported consultations of 40 or more hours. The average hourly rate for such services was \$66.

Both Colorado and Hawaii have statutes similar to California. In Colorado, CRS 13-20-501 provides for dismissal of a professional negligence claim against a design professional in the absence of a Certificate of Review filed by plaintiffs' counsel. Hawaii mandates an informal pre-trial screening procedure before a Design Professional Conciliation Panel and the execution by that panel of a "Certificate of

Consultation." A 1987 Kansas law also requires pre-trial reviews by professional malpractice screening panels.

The concepts of "Certificates of Review" and/or "Pre-Trial Review Panels" are heartily endorsed by the American Consulting Engineers Council as a means of nipping questionable claims against engineers before they reach court. Proposed legislation reflecting this concept has been drafted by ACEC and copies furnished to Member Organizations for their use in pursuing similar legislation.

Persons interested in reviewing the entire Andersen and Associates report on California's "Certificate of Merit Law" may obtain a copy by sending \$24.00 prepaid to ACEC. Include self-addressed return label. Ask for CALCRL-1087. ■

PROFESSIONAL LIABILITY INSURERS

STANDARD PRACTICE POLICIES
(in alphabetical order)
of policies for design professionals.

1971*
All states except AK
No geotechs
Project insurance available

1987*
All states

Thomas F. Sheehan, Inc.
801 North Plaza Drive
Schaumburg, IL 60195
(312) 490-1400
Contact: Thomas F. Sheehan
(Sheehan is Managing Agent for Imperial Casualty & Indemnity Company)

1970*
All states except AK, FL, HI, NY

William B. Turner & Associates
35 East Wacker Drive, Ste. 1934
Chicago, IL 60601
(312) 346-5116
Contact: William B. Turner or Dennis Constant
(Turner is Underwriting Manager for Homestead Insurance Cos. and Rockwood Insurance Cos.)

1986*
All states except AK, CA, HI, IL,
ME, MA, MI, NH, NJ, NY, RI, VT, VA
No geotechs
Project insurance available

use it is not a licensed U.S. insurer ELIC may
apply for and receive coverage.)

1970*
All states except CA, CT, NJ, PA
No geotechs

Lloyd's of London)

1978*
All states except AK, ME
No geotechs, structurals

Insurer	Maximum Limit*	Minimum Limit	Minimum Deductible	Minimum Premium
DPIC	\$ 5,000,000	\$250,000	\$ 5,000	\$ 3,000
ELIC	1,000,000	100,000	10,000	5,000
Illinois R.B. Jones	1,000,000	100,000	5,000	2,500
IMI	1,000,000	100,000	5,000	3,500
PCM	2,000,000	250,000	5,000	**
PMI	1,000,000	100,000	2,500	5,000
RA&MCO	500,000	250,000	10,000	10,000
Schinnerer	15,000,000	100,000	2,000	1,000
Shand Morahan	3,000,000	100,000	5,000	4,000
Sheehan	1,000,000	100,000	2,500	1,500
Turner	1,000,000	100,000	5,000	5,000

*Primary in-house limit. Higher limits may be available; check with your agent or broker.
**Determined by territory.

1969*
All states except AK, CT, HI
No geotechs

ter Managers Corporation and its subsidiary

1986*
All states except DE
No geotechs, structurals

ard Gundlach
Insurance Company)

1987*
All states except ME, NJ, RI, TN
No geotechs

ernational Insurance Company)

1957*
All states
Project insurance available

Insurance Companies)

1970*
All states except AK, CT, HI
No structurals
Project insurance available

anston Insurance Company)

CAPTIVE INSURANCE COMPANIES

Demeter Ltd.
B.F. & M. Management Company/Bermuda/(809) 292-6396
Contact: Elizabeth Durrant
(Demeter is an offshore association captive insurance company cofounded by ACEC's Hazardous Waste Action Coalition. It provides insurance to environmental engineering firms exclusively for environmental impairment liability. Several qualifications must be met by firms insured by Demeter, including that they carry standard practice professional liability insurance.)

Structural Engineers Insurance, Ltd.
P.O. Box HM1760/Hamilton, Bermuda HM HX/(809) 295-3688
Contact: David Ezekiel
(SEIL is an offshore captive insurance company for firms whose structural fees are at least 60% of total revenue. SEIL began offering policies in 1985.)

Terra Insurance Ltd.
c/o Engineers Risk Services/100 Shoreline Highway, Suite 200/Mill Valley, CA 94941/(800) 645-6688
Contact: Sandra Nelson
(Terra is an offshore association captive insurance company started by ASFE in 1968. It provides standard practice policies for most engineering disciplines provided that the firm is a member of ASFE and meets underwriting criteria.)

RISK RETENTION GROUPS

Architects and Engineers Insurance Company
1011 E. Touhy, Suite 321/Des Plaines, IL 60018/(312) 699-4151
Contact: C. Roy Vince
(AEIC is a new risk retention group offering standard practice policies to engineers and architects. All policyholders are required to make a minimum capital contribution to AEIC of \$50,000 and up depending on the firm's gross revenue. The first policies are expected to be written in early 1988.)

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DATE	11-14-89	MRF NO.
ATTN:		
RE:	HB 166	

TO DAVID ROGERS
C/O JUNEAU LEG. INFO. OFFICE
FAX 463-5661

WE TRANSMIT ☒ Attached☐ Under Separate Cover

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1		PAGE FROM 1989 PSM JOURNAL
1		1989 LIABILITY REPORT PREPARED BY
		AMERICAN CONSULTING ENGINEERS
		COUNCIL.

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BY: <u>RICHARD RITTER</u>			

Did You Know That?

- ✓ It's a sellers market. According to the Bureau of Labor Statistics, unemployment in design professions was 1.5% in 1988. That's down from approximately 2.0% in 1987.
- ✓ Many receptionists don't know who's in charge of what in their firms. Make sure the people answering your phone know who marketing directors, principals, etc., are. Also, keep an updated list of projects and project managers by the phone. You're not providing clients with a high level of service if the receptionist keeps transferring them to the wrong person.
- ✓ Now is the time to sell your firm. Many European firms are investing in American design firms to strengthen their position in the "United States of Europe."
- ✓ Fortynine percent of all architecture firms don't carry professional liability insurance. The largest percentage going without insurance is one-person firms (74%). Also, 20% of firms with 20 or more employees report two or more claims. (AIA Architecture Fact Book, 202/626-7300)
- ✓ In 2000, there will be 1,815,000 engineers and 108,000 architects. Compare that to 1,371,000 engineers and 84,000 architects in 1986. (Bureau of Labor Statistics) PSMJ

Surviving the 1990s

Experts are predicting the demise of mid-sized design firms because of spiralling overhead costs and declining profits. To ensure your firm's continued success and profitability, attend PSMJ's Profit Strategies for the Mid-Sized Design Firm, Sept. 10-13, 1989, at the Four Seasons Biltmore in Santa Barbara, CA. You'll find out what built-in motivational factors and fringe benefits attract and keep good personnel; what profit is "right" for your firm; and how you can measure the effectiveness of marketing expenditures, among other things. For more information, contact Jennifer Terminesi, (800) 537-PSMJ. PSMJ

Recommended Reading

If you're considering setting up branch offices in other geographic regions, a "must read" according to Laurin McCracken, AIA, principal/vice president of RTKL Associates and SMPS president, is Nine Nations of North America, by Joel Garreau. (Published by Avon Books, you can order the \$8.95 book by calling (800) 238-0658). PSMJ

Sexual Harassment Policy

According to a recent ruling, a firm will be presumed guilty on a sexual harassment claim if that firm doesn't have a written policy prohibiting sexual harassment or a formal procedure for handling complaints. Add such a policy and procedure to your employee manual today. PSMJ

Professional Services Management Journal

PSMJ

Professional Services Management Journal (PSMJ) is the monthly management bible for design professionals published by Practice Management Associates, Ltd. Publisher: Frank A. Stasiowski
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OCT 10 1989

LIABILITY REPORT

Eleventh Annual Professional Liability Survey Results

1989

Frivolous Lawsuits Assail America's Consulting Engineers

The sum American consulting engineering firm's pay for professional liability insurance premiums tempered slightly since last year, according to the American Consulting Engineers Council's 11th annual Professional Liability Survey. But litigiousness rages on in the profession, with nearly half of all claims made being frivolous.

Overall, consulting engineers paid 4.2 percent of their annual gross billings for professional liability insurance, compared with the 4.3 percent reported in last year's survey. ACEC members paid a total of \$254 million for liability insurance in 1988.

The number of claims brought against consulting engineers actually dropped slightly in 1988; from 47 per 100 firms to 43 per 100. However, the number of claims resulting in no payment to the claimant increased from 33 percent to 45 percent. The average cost paid per claim, half of which were frivolous, was \$15,500. On average, firms spent 138 hours per claim preparing its defense.

"We are heartened that professional liability insurance is becoming more affordable, but angered that we are still being unjustly sued. Nearly half the suits filed were unfounded, but ACEC firms, the majority of which have less than 20 employees, still had to pay thousands of dollars and hours to defend them," said ACEC President James W. Poirot.

By discipline, structural engineering firms suffered the most, paying nearly eight percent of their gross annual billings for professional liability insurance.

Small engineering firms, with one-to-five employees, fared worse, paying nearly seven percent of their gross billings for insurance. The larger the firm, the lesser the insurance premium paid, the survey showed. Largest firms, with staffs of over 500, paid two percent of their gross billings for liability coverage.

It is also apparent from the survey that the number of claims being settled out of court by various forms of negotiation has

risen markedly. Last year's survey showed 26 percent of claims were resolved by court award. This year, that number dropped to 7.5 percent. The number of firms carrying no liability insurance at all decreased slightly in 1988; from 21 percent to 19 percent.

ACEC is a Washington, D.C.-based national professional association that represents some 3,000 private practice consulting engineering firms. For more information, contact Jeanne Quick at 202-347-7474.

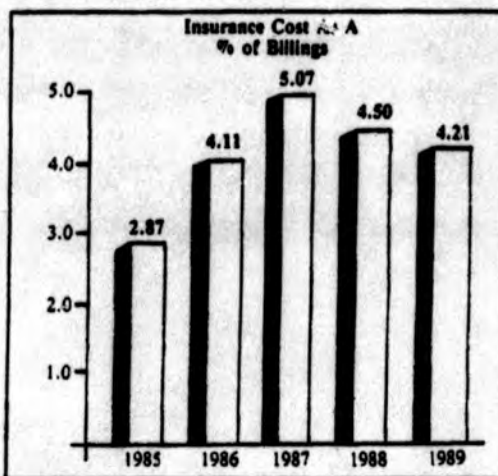


Table 1: Insurance Trends

All Firms: 1985-1989					
Year	Insurance Cost As A % Of Billings	Percent Of Firms Uninsured	DPIC	Percent Of Firms Insured By: CNA	Other
1989	4.21%	19%	38%	24%	19%
1988	4.50	21	35	27	17
1987	5.07	24	33	28	15
1986	4.11	19	34	27	20
1985	2.87	13	37	19	31

1989					
Firm Size By Number Of Employees	Insurance Cost As A % Of Billings	Percent Of Firms Uninsured	DPIC	Percent Of Firms Insured By: CNA	Other
1-5	6.44%	42%	27%	20%	11%
6-10	5.15	17	45	23	15
11-25	3.82	15	43	22	20
26-100	2.98	8	43	27	22
101-500	2.79	6	24	35	35
Over 500	2.36	0	19	33	48

Firm Discipline					
Discipline	Insurance Cost As A % Of Billings	Percent Of Firms Uninsured	DPIC	Percent Of Firms Insured By: CNA	Other
Structural	7.46%	12%	57%	11%	20%
Mech/Elec	3.62	12	40	30	18
Civil	3.64	24	35	25	16
Arch/Eng	3.54	8	40	32	20
Geotech	4.20	26	0	5	69
Other	3.06	52	24	11	13

Table 2: Deductibles

Number Of Employees	By Size Of Firm 1989				
	\$5,000 Or Less	\$5,001-\$10,000	\$10,001-\$25,000	\$25,001-\$100,000	OVER \$100,000
1-5	70%	26%	4%	0%	0%
6-10	35	41	22	2	0
11-25	13	31	46	10	0
26-100	2	8	40	46	4
101-500	0	0	12	53	35
Over 500	0	0	0	19	81

All Firms: 1985-1989					
Year	1989	1988	1987	1986	1985
	23%	24%	29%	19%	5%
	24	25	28	18	5
	27	25	28	17	3
	28	31	23	15	3
	30	36	21	11	2

Table 3: Limits of Coverage

By Size Of Firm 1989						
Number Of Employees	Under \$250,000	\$250,000-\$499,999	\$500,000-\$999,999	\$1,000,000-\$2,499,999	\$2,500,000-\$9,999,999	Over \$10,000,000
1-5	17%	39%	27%	16%	1%	0%
6-10	6	40	31	22	1	0
11-25	3	26	31	40	0	0
26-100	2	5	20	72	1	0
101-500	2	0	3	69	25	1
Over 500	10	0	0	15	65	10

All Firms: 1985-1989						
Year	1989	1988	1987	1986	1985	
1989	6%	23%	25%	42%	4	0%
1988	7	26	22	41	4	0
1987	8	25	23	40	3	1
1986	7	23	24	41	4	1
1985	8	20	22	42	6	2

Table 4: Claims

Year	Claims Made Per 100 Firms		Claims Pending Per 100 Firms		Methods of Resolution: 1989	
	1989	1988	1987	1986	Method	Percent
1989	43	79			Negotiation	44.5%
1988	47	84			ADR: Mediation	5.0
1987	46	75			Arbitration	1.1
1986	33	71			Other ADR	2.8
1985	39	64			Litigation:	
					—Settled Prior To Court Award	39.1
					—Settled By Court Award	7.5
						100.0%

Table 5: Source and Nature of Claims**% Of Claims Brought By:**

Owner:	
Local Govt	14%
State Govt	2
Federal Govt	2
Comm/Industrial	14
Other Type Owner	16
Total, Owner	48%
Other Party:	
Contractor	15%
Subcontractor	5
Equipment Supplier	0
A/E	3
Other Third Party	29
Total, Other Party	52%
Grand Total	100%

% Of Claims Occurring In Disciplines:

Foundation	8%
Structural	14
Mechanical	13
Electrical	4
Architectural	5
Civil	37
Environmental	6
Other	13
	100%

% Of Claims Attributed To Error By:

Your Firm	23%
Owner	13
Other Design Pro	11
Contractor	32
Subcontractor	10
Equipment Supplier	3
Other	8
	100%

Table 6: Cost of Claims

	Defense	Award/Settlement
By Firm	\$9,841	\$12,663
By Insurer	\$5,601	\$22,848

Percentage of Claims Settled Without Any Payment To Claimant: 45%

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

7TH FLOOR FRONTIER BLDG.
3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503
PHONE: (907) 561-2878

January 12, 1990

David Rogers
Box 33932
Juneau, AK 99803

Dear Mr. Rogers,

This letter is in response to your telephone request yesterday for any information related to nurse's liability insurance, the supply of nurses in Alaska and disciplinary statistics.

I will begin with the disciplinary information. The Alaska Board of Nursing has made disciplinary concerns one of its major objectives for the past five years. Regulations pertaining to nursing 12 AAC 44.770(1-25) outline specific actions which are considered unprofessional conduct. Regulations 12 AAC 44.700-785 go a step further and specify disciplinary sanctions for such actions. These regulations serve to provide guidelines to nurses, nurse employers and consumers regarding nursing practice expectations and the penalties for violating the Nurse Practice Act.

About 1985, the Board of Nursing began using terms of probation which allowed nurses who had violated the law to continue to work with restrictions. Since that time, 20 nurses have been on probation with multiple terms of probation lasting from three to five years. Four nurses have completed probation and were reinstated. One registered nurse violated probation and subsequently surrendered his license. Currently, of the fifteen nurses on probation, only one is serving a term related to professional practice problems. The remainder are in recovery from chemical dependency.

In addition to the above disciplinary cases, the Board of Nursing has revoked nine RN and four LPN licenses since FY '85. The statistics for FY '89 related to investigative activity indicate twenty cases were opened and thirteen cases closed. Accusations or Statement of Issues were filed on six nurses and seven cases were litigated.

With regard to the supply of nurses in Alaska, I have enclosed copies of the Board of Nursing Annual Report, "Notes from the Board of Nursing" from the Alaska Nurse, "Is There a Nurse in the House" from Trends and a transcript of "Nursing Shortage: Related Problems and Possible Solutions" by Barbara Bathony, Director Pioneer Benefits. As these documents relate, we have experienced the nursing shortage in Alaska. It has recently been more severe than the cyclical shortages in rural communities and in certain specialty areas of practice. Almost all acute care and long term care facilities in the state have had to utilize "traveling nurses", nurses retained through agencies for short term periods of employment. Further information on the effects of the shortage in Alaska is available from the Health Association of Alaska.

Lastly, I can tell you that professional liability insurance for nurses is available from several companies. The most commonly used is McGinnis and Associates through the American Nurses Association. The yearly rates run from \$57.00 for a general duty nurse at the lower limits of coverage (200,000/600,000) to a maximum of \$800.00 for an OB-GYN nurse practitioner for maximum coverage (1,000,000/3,000,000). This particular group policy is available to members only. Another group policy is available through the Nurses Service Organization. State Farm also has an endorsement for professional liability to a homeowner's policy.

Certified Nurse Midwives are not included in the above groups but can obtain coverage through CNA Insurance in Chicago. Their coverage ranges from 250,000/250,000 to 1,000,000/1,000,000 with rates from \$2,556.00 to \$3,407.00.

I am not aware of the percent of nurses who are uninsured. Generally, nurses are covered by the policies of their employer, however, increasing numbers of nurses are seeking to protect themselves further by purchasing policies of their own.

Claims information for nurses nationally and in Alaska is hard to find. Nationally, data collected on nurses indicate nurses are an excellent risk. Claims data published in American Nurses Association reports in 1987 showed for 1976 to 1982 for the ANA program, the average loss per nurse was \$8.20 or an 18% loss ratio. In 1984, the average loss per nurse was \$12.97 or a 30% loss ratio.

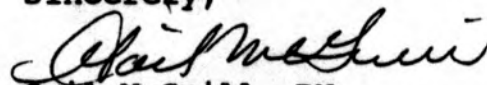
In 1987, when I researched Alaska claims information, MICA showed that from 1984 to 1987 they paid claims on care provided by two Advanced Nurse Practitioners. Both of these nurses were employed by physicians who were covered by MICA. I am attempting to update my information on nurse claims in Alaska at this time.

Of the four main issues discussed in this letter, I view the nursing shortage and the problems it has caused for the health care industry in our state to be the most crucial one. Although

a concentrated effort of agencies in Alaska working together to remedy the shortage has not occurred, individual agencies and organizations have been attempting to alleviate the problem with the resources available to them.

If there is further information I can provide, do not hesitate to contact me again.

Sincerely,



Gail McGuill, RN
Executive Secretary
Alaska Board of Nursing

enclosures

1006n/tb

DATE : January 13, 1990

SEND TO: David Rogers
COMPANY: Liability Ins Task Force
FAX # : 586-6959

TOTAL NUMBER OF PAGES, INCLUDING THIS PAGE: 7

=====

MESSAGE: Mr. Rogers, under cover the promised response. I will be forwarding first of week some statistical materials from the American Dental Association on peer review and the tort system.

We can also provide much more on the actual workings of peer review and mediation should same be desired.

If there is further info we can provide, please let me know.

The Alaska Dental Society president, Phillip Moritz, lives in Juneau. He is also the past insurance chairman and is very knowledgeable on insurance and peer review. Please feel free to call and talk with Phil at 586-1385.

=====

FROM: FRANK THOMAS-MEARS
WITH: MULTIPLE RISK MANAGERS, INC.
POB 112063
ANCHORAGE, ALASKA 99511-2063

PHONE: 907-345-7181
FAX : 907-345-1982

Multiple Risk Managers, Inc.

POB 112063
Anchorage, Alaska 99511-2063
Local Number - 907-345-7181
Toll Free (In-State) - 800-478-7181

Insurance Services for Trade and Professional Associations

January 13, 1990

Mr. David Rogers
POB 33932
Juneau, Alaska 99803

Re: Liability Insurance Task Force

Dear Mr. Rogers:

Following our conversation yesterday, the Alaska Dental Society executive council, following my report to them this morning, has asked me to respond.

1) **WHAT IS THE AVAILABILITY OF PROFESSIONAL LIABILITY INSURANCE?**

Professional liability insurance in Alaska for dental practitioners is readily available. The large majority of dentists are insured by CNA Insurance Company.

St. Paul provides coverage for about half of the oral surgeons; Scottsdale insures about half of the orthodontists. Both the St. Paul and Scottsdale provide coverage through an arrangement with the American Association of Oral and Maxillo Facial Surgeons and American Association of Orthodontists, respectively.

2) **WHAT IS THE AFFORDABILITY OF PROFESSIONAL LIABILITY INSURANCE?**

I am unable to comment specifically as regards pricing for the St. Paul and Scottsdale.

Regarding CNA, following are the three categories, and average annual premiums for professional liability limits of \$1,000,000 per claim; \$3,000,000 in the aggregate.

CLASS I; General Practitioners
Local Anesthesia or Inhalation Sedation (Nitrous Oxide).
Average annual premium: \$1,611. (Ortho/Scottsdale, \$2,000)

CLASS II; Antagonists, Periodontists (primarily).
Intravenous or Intramuscular Agent, plus Local and Nitrous.
Average premium: \$2,895.

CLASS III; Oral Surgeons
General Anesthesia (Conscious Sedation).
Average premium: \$7,132

CNA discounted the premiums nationally and in Alaska by 20% in 1988. In 1989, CNA reduced premiums for Oral Surgeons in Alaska by 35%. In 1989, CNA also presented an 8 hour Risk Management Seminar. Dental practitioners who participated receive a further 7.5% discount for three consecutive years. A revised course will be offered again in 1992.

As a last comment, in the early 1970's in Alaska, the average Class I premium was less than \$50. Today's average of \$1,611 has grown by 3222% in the last fifteen years.

3) **WHAT PERCENT OF THE DENTISTS ARE UNINSURED - AND WHY?**

Our office insures roughly 90% of Alaska's dental practitioners. Approximately 8% are insured by companies mentioned above. This leaves about 2% of the Alaskan dental practitioners uninsured.

4) **IS DENTAL SERVICE IN OUTLYING AREAS OF THE STATE IMPACTED BY AFFORDABILITY AND AVAILABILITY OF LIABILITY INSURANCE - AND IF SO, WHY?**

No. In bush Alaska, the majority of the dental practitioners are employed by the Public Health Service. These practitioners are protected by the Federal Tort Claims Act. Of those private practice dentists which either contract with the PHS or native corporations, most are insured. Locality has no bearing on rates.

5) **HOW DOES THE CLAIMS-MADE RATING STRUCTURE WORK?**

Under CNA's claims-made policy, professional liability premiums increase annually for the first five years. These increases are known as Step Rates and reflect the increasing "exposure to loss" which first begins on the prior acts date - the first date of coverage under claims-made policy.

Claims-made step rates are based upon "occurrence rates" (addressed later). Since the policy provides no coverage for claims which arose before the prior acts date, rates for the first year of coverage - or Step 1 - are approximately 29% of the occurrence premium. Step 2, 54%; Step 3, 73%; Step 4, 81%; Step 5, 90%. The claims-made rate is considered to be "mature" in the fifth and subsequent years.

The claims-made policy covers claims which "both occur and are reported to the company during the policy period".

The "policy period" begins on the prior acts date and terminates on the last day of coverage. Each year the policy renews, the policy period is successively lengthened.

At termination of the policy, to cover claims which may have occurred but were not reported during the policy period, the practitioner must purchase an Extended Reporting Period Endorsement, more commonly referred to as a "tail".

The cost of the tail increases each year for the first four years and remains level thereafter. Under CNA's policy, the tail is provided free in the event of total disability, death or retirement at age 60. Please note current average tail costs for CNA's three classes of dentists, at the \$1,000,000/\$3,000,000 level:

Class I = \$2,777 Class II = \$2,869 Class III = \$12,624

Under the occurrence policy, as long as the claim occurred while the policy was in effect, you can report the claim at any time in the future and be covered; there is no need to purchase a tail since the occurrence premium includes the cost of the tail.

6) **WHAT ROLE HAS PROFESSIONAL PEER REVIEW PLAYED IN RELATION TO PROFESSIONAL LIABILITY INSURANCE CLAIMS AGAINST DENTISTS? ON A PROFORMA BASIS, WHAT ROLE DO DENTISTS THINK MEDIATION WILL PLAY.**

Obviously the question is hard to quantify. In Alaska, 90% of the disputes that are heard by peer review are settled. Only 10% eventually turn into a professional liability claim. Of this 10%, about half are closed without payment, and the other half are settled in varying amounts.

I will be forwarding under separate cover some national statistics and survey results being provided by the American Dental Association.

It may be helpful to understand the philosophy behind dental peer review.

Peer review is expert because men and women with appropriate professional credentials help conduct the hearings, review the evidence and make objective decisions based on the findings. The same level of expertise is rarely found within a jury of peers in the court system.

The system is credible because its rules and procedures are clearly set forth and afford an equal opportunity for each participant, patient and provider, to be fully heard. Generally a peer review body also includes a layman to assist with impartiality. Lay representatives serve in an advisory capacity in the evaluation of procedures and mechanism for fair and equitable resolution of disagreements.

There are a few things that peer review is not. It is not a court of law. Neither an adversary proceeding nor a punitive expedition. Its main functions are to educate, adjudicate, clarify and make corrections where necessary.

The Alaska Dental Society, to their credit (and it is not always a popular position with its members) has made cooperation with peer review a condition of membership. (About two-thirds of Alaskan dentists are members of the Society).

The Alaska Dental Society peer review committee members share an opinion that the peer review committee has an equal responsibility to patients, dentists and insurance carriers. Consistent with other peer review committees, Alaskan members are composed of general practitioners and not specialists.

Generally, peer review confines itself to three areas of review:

APPROPRIATENESS OF CARE: The committee determines the professional acceptability of planned or completed treatments, including necessity of treatment and consistency of treatment against diagnosis.

QUALITY OF TREATMENT: An evaluation of the skill with which a treatment is provided in light of the standards which generally prevail within the profession by those who routinely perform the treatment in question, as judged by competent practitioners who are qualified to perform the procedure. Peer review committees routinely ask a local expert or specialist to sit as an ad hoc member of the committee for a particular case.

FEES: The committee may determine from the evidence made available to it whether the fee in question is the dentist's usual fee for a given procedure. If the fee being charged appears not to be the dentist's usual fee, the committee then can determine whether the fee is reasonable considering the degree of difficulty or complexity of the dental procedure employed. The committee does not use a fee schedule or survey, nor does it make any findings respecting what the customary fee in the geographic area may be for any particular procedure since such activity could have antitrust implications.

According to members of the South Central District Peer Review Committee, the main reason for peer review is to defuse a patient complaint. Many times the problem is one of communication between a patient and dentist. A first step in peer review is always to listen to the patient, identify their problem and provide some perspective on the problem. The American Dental Association says that peer review is intended to maintain good patient relations and avoid litigation.

This weekend, January 13th and 14th, twenty five members of the Alaska Dental Society peer review committees will be attending their first 20 hours of mediation training. Training will continue in regular cycles.

Mediation, vs. peer review which is arbitration, will be used as a first step, whenever a peer review request is received, to mediate the dispute between the patient and dentist, and assist the patient and dentist to jointly craft their own solution to an impasse.

Most certainly as peer review members become skilled at mediation, and as the public and dental community are educated as to the benefits of mediation, the number of cases referred for peer review will increase. This is view as positive since it means more disputes are being mediated and settled at an early stage of conflict, rather than being allowed to fester into a lawsuit.

We all feel that mediation will have a positive impact upon the affordability and availability of professional liability insurance, but of course it is too soon to tell.

7) STATISTICS ON DENTAL CLAIMS.

The following statistics, prepared by CNA Insurance Company, reflect claims activity in Alaska from April 1, 1984 to June 30, 1989. We have changed dollar amounts into percentages for the purpose of this report.

CLAIMS BY NATURE OF INJURY	Claim Count			TOTAL CLAIMS	%%%
	PAID CLAIMS	PEND- ING	CLOSED NO PMT		
ADD'T TREATMENT REQUIRED	3	4	16	23	26.65%
ADVERSE DRUG REACTION	0	1	2	3	.79%
BITE DIFFICULTY	1	1	3	5	6.94%
BROKEN/FRACTURED BONE	2	0	0	2	6.37%
BROKER/FRACTURED TOOTH	1	3	3	7	4.13%
BURNS	1	0	1	2	6.12%
INFECTION	3	1	10	14	2.33%
INFLAMMATION OF NERVES	1	1	4	6	8.64%
LACERATION	0	0	3	3	.00%
LOST TOOTH	0	0	2	2	.00%
MENTAL ANGUISH	0	0	7	7	.00%
NOT OTHERWISE CLASSIFIED	2	1	5	8	4.87%
NOT AVAILABLE	0	0	2	2	1.09%
PARASTHESIA	0	1	2	3	4.37%
PERIODONTAL DISEASE	0	1	0	1	3.63%
REMAINING ROOT TIP	1	0	1	2	.03%
SWALLOWED OBJECT	2	0	1	3	.03%
TMJ PROBLEM	0	2	2	4	10.36%
TOOTH MOVEMENT	1	0	0	1	12.96%
WRONG TOOTH	1	0	3	4	.70%
TOTALS	19	16	67	102	100.00%

To summarize, from April 1984 to June 1989, 19 claims have been paid, 16 are pending, and 67 have been closed without payment.

Claims frequency has increased somewhat from 1987 to 1989. CNA claims maintains these claims have been economically driven. Folks have lost their jobs or have seen a reduction in family income; many have lost their dental insurance protection.

Some of these folks, when faced with a large - and uninsured - dental bill, have use the not so novel approach of refusing to pay. When the dental practitioner them over for collection, a relatively predictable 10% counter sue on grounds of medical malpractice.

A high number of these claims are dismissed. It is believed the mediation process will be helpful in defraying most of the balance.

The largest settlement in Alaska (1988) was for \$350,000 against a referring and specialist dentist. Previously there were two settlements for \$50,000 each. Most settlements have averaged less than \$25,000.

I thought I would throw in several observations received by peer review members today.

One reason that dentists are not sued as frequently as medical doctors is because most dentists and their patients become friends. On average, a dentist sees their patient for at least an hour, in very close quarters. Over a year's time, the dentist and patient may see each other for four or five hours (significantly more in some cases). Because of this relationship, a patient is less inclined to sue.

Another reason is certainly that a dental malpractice claims, which average less than \$25,000, are generally much less serious in nature than a malpractice claim against a medical doctor. Because of the small average size, plaintiff attorney's are not as economically motivated.

The Alaska Dental Society wishes to extend their thanks for this opportunity to demonstrate their commitment to alternative dispute resolution through peer review, and their commitment to controlling loss through risk management education.

Warmest Regards,
MULTIPLE RISK MANAGERS, INC.

Frank Thomas-Mears
President