

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1715 SCOMM 69: HOUSE LIABILITY INSURANCE TASK FORCE, 1989-1990 83



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Jim Butler

Signature of Camera Operator

12/14/83

Date

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SCOMM 69: HOUSE LIABILITY INSURANCE TASK FORCE, 1989-90

LEGISLATIVE MEMBERSHIP:

REPRESENTATIVE SAM COTTEN, CHAIR
REPRESENTATIVE RED BOUCHER
REPRESENTATIVE VIRGINIA COLLINS
REPRESENTATIVE DAVE DONLEY
REPRESENTATIVE JOHNNY ELLIS
REPRESENTATIVE PETER GOLL
REPRESENTATIVE MAX GRUENBERG
REPRESENTATIVE RON LARSON
REPRESENTATIVE LOREN LEMAN
REPRESENTATIVE MIKE NAVARRE

Established by HR 6, 1989 (HR 10).

Contents: 18" of files. 14 meeting tapes are also available.

LIST OF FILES (PAGE 1)

MICROFICHE #

- 0. LIST OF FILES AND INDEX
- A. TAPE LOGS
- B. SET OF 16 VOLUMES OF RESEARCH DATA:
 - 1. PEER REVIEW PANEL RESULTS, ETC.
 - 2. CHANGES IN INSURANCE SERVICES: HOW THE PUBLIC IS TREATED
 - 3. RAND "THREE LEVEL" STUDY AND OTHER REPORTS
 - 4. MISCELLANEOUS
 - 5. AVAILABILITY - AFFORDABILITY INSURED PERCENTAGE
 - 6. AVAILABILITY OF SERVICES
 - 7. ALTERNATIVE CLAIM RESOLUTION MECHANISMS
 - 8. ROLES AND MECHANISMS OF STATE AGENCIES
 - 9. CLAIMS INFORMATION PROFESSIONAL
 - 10. ANTI-TRUST SUIT STATUS

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LIST OF FILES (PAGE 2)

MICROFICHE #

- 11. IMPACTS OF U.S. TORT SYSTEM
CHANGES
- 12. RATES
- 13. SELF REGULATION MATERIALS
- 14. CHANGES IN TIME IN LAW OF LIABILITY
AND DAMAGES
- 15. COMPARISONS OF U.S. TORT SYSTEM
CHANGES
- 16. LEGISLATIVE RESEARCH AGENCY REPORTS
- C. MISCELLANEOUS HANDOUTS USED AT 1989
MEETINGS (SEE LIST AT BEGINNING OF FILE)
- D. MISCELLANEOUS PAPERS REGARDING 1990
HEARINGS (SEE LIST AT BEGINNING OF FILE)
- E. FINAL REPORT OF THE HOUSE LIABILITY
TASK FORCE (FIRST REVISED) MARCH 1990

ALASKA STATE LEGISLATURE

P. O. Box 770296
Eagle River, Alaska 99577
(907) 694-6683



P. O. Box V
Juneau, Alaska 99811
(907) 465-3720

SAM COTTEN SPEAKER OF THE HOUSE

MEMORANDUM

TO: Legislative Reference Library
FROM: Speaker Sam Cotten *SC*
DATE: January 2, 1991
RE: Liability Insurance Task Force

Enclosed in the box accompanying this letter are the records of the Liability Insurance Task Force from 1989 through 1990. I am forwarding these items to you for permanent filing.

A. Committee Tapes and Logs as follows:

1. Tapes for October 3-4, 1989, meeting (^{FIVE} ~~four~~ tapes)
2. Tapes and log for March 2, 1990 meeting (three tapes)
3. Tapes and log for March 3, 1990 meeting (five tapes)
4. Tape and log for March 16, 1990 meeting (one tape)

B. Set of 16 volumes of research data and index for same. Volumes are as follows:

1. Peer Review Panel Results, Etc.
2. Changes in Insurance Services: How the Public is Treated
3. Rand "Three Level" Study and Other Reports
4. Miscellaneous
5. Availability - Affordability Insurance Percentage
6. Availability of Services
7. Alternative Claim Resolution Mechanisms
8. Roles and Mechanisms of State Agencies
9. Claims Information Professional
10. Anti-Trust Suit Status
11. Impacts of U. S. Tort System Changes
12. Rates
13. Self-Regulation Materials
14. Changes in Time in Law of Liability and Damages

15. Comparisons of U. S. Tort System Changes
16. Legislative Research Agency Reports

C. Miscellaneous Handouts Used at 1989 Meetings as follows:

1. April 13, 1989 letter from Center for Study of Responsive Law.
2. MEDICAL ECONOMICS article "Tort Reform: What Works, and What Doesn't"
3. Copies of House Bill 166
4. February 17, 1989 memo from Michael F. Ford, Legislative Counsel, regarding Civil Action - HB 166
5. NATIONAL INSURANCE LAW REVIEW article "The Causes of the Medical Malpractice Crisis: An Analysis of Claims Data and Insurance Company Finances"
6. "New Ideas Concerning Organizations: The PIAA Proposal: Establishment of Fault by Either Administrative Review or Normal Adjudication Followed by Indemnification Using a Fixed Benefit Program."
7. August 5, 1988 letter from Milliman & Robertson, Inc.
8. "Who Should Be Liable? A Guide to Policy for Dealing with Risk."
9. "Insurance Rates, Regulation, Commissioner, Initiative Statute"
10. April 27, 1989 memo from Ginger Baim to David Rogers regarding House Bill 166 - pros.
11. September 15, 1989 memo from Rep. Cotten to Liability Insurance Task Force members
12. February 1986 report by the Citizens Coalition for Tort Reform entitled "Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability."
13. March 1987 report by the Tort Policy Working Group entitled "An Update on the Liability Crisis."
14. January 26, 1989 letter, James P. Lynn of Aetna from Ralph Nader and February 8, 1989 response from Aetna.
15. House Research Agency March 15, 1989 report on "Hawaii Court Annexed Arbitration Program."
16. October 1, 1985, "Report of the Governor's Medical Malpractice Insurance Commission."
17. April 25, 1989 statement from J. Robert Hunter, President, National Insurance Consumer Organization.

D. Miscellaneous papers regarding 1990 hearings:

1. March 9, 1990 list of Task Force members and alternates.
2. Memo from David Rogers regarding "Fact Finding Efforts" dated January 19, 1990.
3. Memo from David Rogers regarding "Summary of Data: Almost everything you ever wanted to know about liability issues (and were afraid to ask??)" dated February 22, 1990 and marked "draft".
4. March 2, 1990, Summary of Highlights - Discussion Draft. Prepared by David Rogers for Task Force members.

5. Letters and articles discussed at March hearings:

- a. January 26, 1990 letter from Scott Wetzel Services
- b. January 26, 1990 letter from Nabors Alaska Petroleum Services
- c. January 8, 1990 letter from David E. Rogers
- d. January 31, 1990 letter from Phillips Petroleum Company
- e. January 31, 1990 letter from NANA Regional Corporation, Inc.
- f. February 16, 1990 letter from City/Borough of Juneau
- g. February 16, 1990 letters from Wilton Adjustment Service
- h. March 1990 letter from Alaska Bar Association
- i. NEW YORK TIMES articles concerning medical profession
- j. December 1, 1989 memo from John B. Gaguine, Legislative Counsel, concerning civil jury trials in other countries.
- k. February 23, 1990 letter from MICA
- l. February 27, 1990 letter from National Society of Professional Engineers

6. March 19, 1990 note and draft memo from David Rogers concerning tentative summary of claims experience information.

7. April 2, 1990 memo from Rep. Cotten to Task Force regarding MacNeil Lehrer Report and Harvard Study.

8. April 12, 1990 memo from Rep. Cotten to Task Force concerning Harvard Study materials.

9. June 17, 1990 draft final report.

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COMMITTEE TAPE LOG

COMMITTEE: Liability Insurance Task Force DATE: Mar 2, 1990

TIME: _____

SUBJECT: Liability Insurance

MEMBERS:

David Rogers, Rep Navarre, Rep Leman, Rep Cotten, Dr. Huffman, Dr. McGuire, Bill Brock, Nana, Lord, Jeff Jefferson, Richard Dan Kinsley, Bill Brock, Rep Ellis, Rep Doolay, Rep Hoffman, Mary Fye, Rep Baucke, Rep Shuenburg

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Cotten	1A	1:30pm - welcoming remarks
Lord		1:40pm - question on final product
Fye		1:42pm - comments
Huffman		1:44pm - comments
Jefferson		1:46pm - comments
McGuire		1:50pm - comments
Navarre		1:52pm - comments
Rogers		1:58pm - presentation
		availability + affordability of insurance
Don Koch, Division of Insurance		2:02pm
Mary Fye		2:05pm
Dave Walsh		2:15pm discussion re rates
Fye		2:16pm comments
	1B	2:20pm
Leman		discussion of profit level + rates
Ritter		2:23pm ✓
Shuenburg		2:25pm - business expense / per-tax dollars + insurance
Jefferson		2:26pm - medical association survey
		percentage of uninsured
Rogers		2:28pm -
Huffman		2:45pm - survey by Alaska State Medical Assoc.
Jefferson		NUT- 3 part series on medicine in U.S. <i>2 weeks ago Jan.</i>
		2:50pm - Availability of Services

COMMITTEE: _____ DATE: _____ TIME: _____

SUBJECT: _____

MEMBERS: _____

March 2, 1990

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SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	1B	~~to~~
		James Johnson - MICA
		3:10 pm - Recess
Jefferson	2A	3:26 pm - Reconvene - James Johnson - MICA
Densley		shortcuts regarding panels
McQuire		panel appointments
Fry		questions on panel system
Huffman		adverse decisions
McQuire		panel work
Jefferson		panel work
Johnson		panel process
Huffman		panel work
Jefferson		✓
Densley		panel system uniqueness
Cotton/Densley		panel - immunity question
		Self Regulation
Rogers		3:50 pm
		Rep Collins joined at 3:50 pm.
Jefferson		Harvard study re repeat offenders.
Densley		repeat offenders
Cotton		self-regulation
McQuire		confusion
Cotton		self-regulation

COMMITTEE: _____

DATE: _____

TIME: _____

SUBJECT: _____

MEMBERS: _____

March 2, 1990

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SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Rogus		Public Citizens report on self regulation
		3:55pm State & Federal Legislative Activity
		Rep call in around 3:56pm.
Rogus		Attorneys Services
Rogus		
Catta		Gov's Spman Substitute proposal
		4:00pm Bond Trust Level Study
Rogus		discussion
Brock		MTCA breakdown of defense
Jackson		MTCA statistics Langdon v. Champion
McGuire		MTCA procedure
Hensley		Case records
McBum		comment
Faye		insurance company & way to business comments
	2 B	El Pasoed joins
Holl		Question on case
McGuire		
Huffman		comments
Johnson		MTCA
Hensley		question on costs

COMMITTEE: _____ DATE: _____ TIME: _____

SUBJECT: _____

MEMBERS: _____

March 2, 1990

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SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Jefferson Fye	2B	privileged information question claims handling
		Impacts of Tool System Changes
Rogus		4:23 p.m.
Hensley		legislative reforms
McBuire		✓
Brock		✓
Fye		✓
Hensley		✓
Jefferson		1100 of annexes
Brock		structured settlements
McBuire		✓
Fye		✓
		What Should Legislature Do?
Rogus		4:35pm
McBuire		comments 4:40p.m.
Jefferson		comments
	3A	Discussion on what happens

COMMITTEE: Liability Insurance Task Force DATE: 3/3/90 TIME: 9:00 a.m.

SUBJECT: Rep Cotton, Rep. Ullmer, Dr. Huffman, Dr. McGuire, Sen Brock,
Dr McGuire, Sen Hensley, Jff Jefferson, Rich Roth, Gary Fye, Maxey

MEMBERS: Ind, Rep Leman, Daniel Rogers, Rep Ellis, Rep. Collins, Rep Boucher
Genes Bain, Rep Navarro, Rep Bell, Rep Hunsberger, Rep Larson

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	1A	9:10am - opening comments
Huffman		opening comments
Ullmer		comments
Fye		comments
McGuire		comments
Lord		comments
Boucher		comments
Cotton		comments
Leman		comment
Collins		comments
Rogers		bill comment
	1B	bill comments
2315 / 304-2531 Dave Walsh		questions answered re Division of Insurance
Gale		MICA questions
Brock		response as to MICA
Fye		rate structures/marketing/actuarial
Jefferson		MICA assumptions
Bain		bill review
Boucher		question on CS 16146(L+C)
Jefferson		✓
McGuire		✓
Cotton		✓
Jefferson		✓
Roth		✓

COMMITTEE:

Subcommittee on Int. Force

DATE:

Mar 3, 1990

TIME:

SUBJECT:

MEMBERS:

March 3, 1990Page 2

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Hensley	2A	self-regulation state
Navarro		examples 10:35 a.m.
McGuire		licensing board/court action
Huenberg		interstate informational compacts
McGuire		mechanism to get information out
Jefferson		reports on impairment
McGuire		✓
Huffman		tugger mechanisms on reporting to Board
Huenberg		
Bain		HB 166 - go on w/ other bills
Bain		HB 295 + others
		hb 333, hb 334
Hensley		hb 334 question
McGuire		✓
Guenberg		✓
Fye		✓
Cotter		✓
Huenberg		✓
Fye		✓
Jefferson		due process
Brook		problems on obtaining malpractice insurance
Hall		hb 334
McGuire		✓

COMMITTEE: Liability Ins. Task ForceDATE: Mar 3, 1990

TIME: _____

SUBJECT: _____

MEMBERS: _____

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SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Fye		hb 334 answer to Rep. Bell
Bain		hb 335
Huffman		strategy on hb 166
Coelene		comments
	2B	
McGuire		Rule 82 11:25 a.m.
Navarre		✓ comprehensive vs piecemeal approach
Jefferson		favor of hb 335
Brock		Impact of Rule 82 & collection of same
Rogers		✓
Jefferson		✓
Fye		prevailing in litigation, Rule 82
Hensley		✓
Huffman		-
McGuire		-
Jefferson		Use of Rule 82 awards
Brock		-
Huffman		
Navarre		Rule 82
Bain		hb 336
Cotton		findings to court?
Jefferson		hb 336
Shuenberg		jury instructions
McGuire		comments on panels

COMMITTEE:

Lieber, Mr. Jack Foa

DATE: Mar 3, 1990

TIME:

SUBJECT:

MEMBERS:

March 3, 1990

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SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Brock		panel comment
Navare		panel
Rogers		✓
McGuire		✓
Cotton		Huffman, Mr. Shue, Brock, Henaley, Coelen, Jefferson, Ritten, Lord, Fye, Herman, Navare, Rogers, Cotton, Shuenberg, Almes
	3A	11:25pm Resume
Shari Kochman		Bela Kerttula re hb 345
Kochman		hb 345
Cotton, Rogers		
Kerttula		
Fye		safeguards - no fault scheme
Rogers,		
Kerttula		overview
Shuenberg		repatriate, awards + constitutional
Kochman/Jefferson		
Rogers		fault alternation
Jefferson		questions
Navare		questions
Kochman		comments
	3B	2:04 pm - continuation on hb 345
Bain		2:10 hb 349
		2:37pm hb 349 + 350

COMMITTEE: Rebelst, Mr. Jack Force DATE: Mar 3, 1990

TIME: _____

SUBJECT: _____

MEMBERS: _____

March 3, 1990

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SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Bain	4A	~~At~~ 3:05pm - bill discussion, hb 355, hb 429, hb 434
Bain		hb 166 3:20 p.m. discussion on various aspects of the bill by various individuals
	4B	continuing discussion on hb 166 3:49 p.m.
Bain		
McGuire / James Johnson		4pm - MICA question, answers & requests
		Requested Johnson's letter: McGuire, Moore, Greenberg, Hensley, Collins, Rogers
		4:09pm Back to hb 166
Jefferson		4:25pm - question on James + applicability of ^{provisions} question on aspects of hb 166 - sub interest
McGuire		double recovery
Hensley		collateral source rules
Faye		clones handling nightmare
McGuire	5A	collateral source Justice Humana 4:39 p.m.
Jefferson		✓
Cotton		4:41pm - Rogers, Ulmer & Cotton - correspondence
		1) List problems
		2) poll
		3) identify potential solutions
Teleconference	March 16 12-1:30pm	4) future meeting - ^{judicial request} hb 166, 337, panels, rule 68, ins for professionals Hess 146 now & then

COMMITTEE: LIABILITY INS TASK FORCE DATE: MARCH 15, 1990TIME: NOON

SUBJECT: _____

MEMBERS: Cotton, Rogers Brock, Huffman, Hensley, Jefferson,
Fry, Mary Pierce, Larry ^{B. Humphrey} for Rep. Larson, Navare, Ritter, Collins, Hall, ^{Goel} Humby,
Lord

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	1A	Check in w/telephone lines
Cotton	12:05	
Rogers		
Cotton		open to comments on list - problem / solution
Huffman	12:07	
Rogers		
Cotton		Problem I - High Costs / Solutions
Huffman		"
Hensley		"
Jefferson		"
Fry		"
^{Goel} Pierce		"
Ritter		"
Brock		"
Lord		"
Leman		"
Hall		question on statute of repose
Jefferson		
Navare		back to Problem I
Rogers		
Cotton		Problem II + III - medical services
Hensley		add HB 10 to list of solutions

COMMITTEE: ITFDATE: March 15, 1990

TIME: _____

SUBJECT: _____

MEMBERS: _____

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SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Noonan	12:36	rural areas delivery & healthcare, nursing shortage
Huenburg		prevailing good mentality expanded
Reagus		
Fye		VIII + IX question on focus & good mentality + IV
Lord	12:45pm	reinsurance
	1B	
Hensley	12:47pm	
Jefferson		foundation facts, need to be renewed.
Block		
Ritter		spread risk - ins co. saving after payment
Huffman		what exactly does Jefferson need to know
Jefferson		loss of ins by special & what % to income & asset cost
Pierce		add information
Reagus		
Cotton		comments & where do we go from here
Noonan		doesn't feel job is done yet
Huenburg		
Collins		system failure
Huffman		
Hensley		nothing else to add
Jefferson		
Fye		comments - adopt format of areas of comment
Cotton/Fye		

COMMITTEE: LETF

DATE: March 15, 1997 TIME:

SUBJECT:

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PEER REVIEW PANEL RESULTS, ETC.

- 1) Letter: 10/24/1989 To: David Rogers From: William Cotton
- 2) Civil Rules 72-74
- 3) Alaska Rules of Court, Rules 7-9
- 4) Letter: 11/15/1989 To: David Rogers From: William Cotton
- 5) Letter: 11/17/1989 To: David Rogers From: William Cotton,
enclosures

SET 1 #1

PEER REVIEW PANEL RESULTS, ETC.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

WILLIAM T. COTTON
Court Rules Attorney

303 K Street
Anchorage, Alaska 99501

(907) 264-8239

October 24, 1989

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

Dear Mr. Rogers:

Arthur Snowden asked me to answer your October 9, 1989 letter to him concerning statistics in medical malpractice cases. We hope to acquire a computer system in the next few years which would allow us to compile this type of information. Unfortunately, the court system simply does not now have the information you requested. The Alaska Medical Association may have some statistics since their organization has worked with the courts in selecting panel members. I have attached copies of the two court rules adopted by the supreme court for the purpose of implementing the medical malpractice expert advisory panel statute.

I also thought I would pass on some very subjective impressions from the trial courts. There is an occasional case, either when the panel finds there is or is not malpractice, which seems to be knocked out of court because of the panel's report. However, there seems to be substantial dissatisfaction with the procedure generally and it seems to have little effect on litigation. In addition the procedure can be expensive and time-consuming. There have in many cases been problems with finding experts willing to serve on the panel.

Please feel free to give me a call if you have any questions.

Very truly yours,

William T. Cotton
Court Rules Attorney

cc: Arthur H. Snowden, II
Presiding Judge Brian Shortell

Costs incurred by the owner in a defense to a condemnation proceeding are compensable under this rule only to the extent they are reasonable, i.e. necessarily incurred. *Badger Construction Co. v. State*, Op. No. 2365, 628 P2d 921 (Alaska 1981).

Only costs which are necessarily incurred should be awarded under the "10 percent" rule of Civil Rule 72(k)(2), although only Civil Rule 72(k)(4) expressly requires that the award appear necessary for just compensation. *State v. Alaska Continental Develop. Corp.*, Op. No. 2254, 630 P2d 977 (Alaska 1980).

While full attorney's fees are the norm under Civil Rule 72(k), fees awarded under Civil Rule 72(k)(2) must be reasonable as well as necessary. *Triangle, Inc. v. State*, Op. No. 2405, 632 P2d 965 (Alaska 1981).

If there is a reduction from actual attorney's fees in the amount awarded under this rule, it is incumbent upon the court to state the reasons for the reduction. *Triangle, Inc. v. State*, Op. No. 2405, 632 P2d 965 (Alaska 1981).

Trial court did not abuse its discretion in awarding attorney's fees under this rule which were less than the property owner's actual fees. *Resource Investments v. State, Dept. of Transportation*, Op. No. 2853, 687 P2d 280 (Alaska 1984).

Civil rule authorizing attorney's fees and costs in condemnation actions is limited to situations in which the defendant prevails. *Stewart v. State, Dept. of Transportation*, Op. No. 2895, 693 P2d 827 (Alaska 1984).

Although property owners were entitled to fees and costs incurred prior to State's agreement to dismiss condemnation action, they were not entitled to attorney fees and costs incurred thereafter with respect to their unsuccessful attempt to prevent the State from removing trees and from building a retaining wall on the State's own property, since those fees and costs were not incurred in seeking dismissal of the condemnation action. *Stewart v. State, Dept. of Transportation*, Op. No. 2895, 693 P2d 827 (Alaska 1984).

Although full attorney's fees are the norm under this rule, those fees must be both reasonable and necessarily incurred to obtain just compensation; thus the trial court may award less than the full amount of the charges when it finds the amount unreasonable in view of the nature and extent of the services rendered. *State v. Doyle*, Op. No. 3167, 735 P2d 733 (Alaska 1987).

Considering the issues involved and the length of trial, as well as the fact that the compensation awarded to plaintiff's in their inverse condemnation action was \$715,000.22, the trial court did not abuse its discretion in awarding plaintiff's less than the actual \$357,500.10 in attorney's fees owed under a negotiated fee agreement, awarding instead an amount commensurate with the time committed by counsel. *State v. Doyle*, Op. No. 3167, 735 P2d 733 (Alaska 1987).

Attorney's fees are awarded in condemnation actions to compensate the landowner for expenses incurred in connection with the condemnation of his property, since the landowner, without compensation, would pay an unfairly large portion of the costs of a public project; attorney's fees are not compensation for lost future earning capacity. *Bocek Bros. v. Anchorage*, Op. No. 3270, 750 P2d 335 (Alaska 1988).

Trial court was not required to award prejudgment interest on award of attorney's fees in condemnation action. *Bocek Bros. v. Anchorage*, Op. No. 3270, 750 P2d 335 (Alaska 1988).

In determining whether attorney's fees were necessarily incurred by the landowner in an eminent domain action, the trial court should have taken into consideration the landowner's rejection of the state's offer of settlement. *State, Dept. of Transp. v. 4.085 Acres*, Op. No. 3292, 752 P2d 1008 (Alaska 1988).

In an eminent domain proceeding, if the condemning authority appeals and the landowner does not, then, ordinarily, the landowner's reasonable expenses are necessarily incurred and therefore are awardable. *State, Dept. of Transp. v. 4.085 Acres*, Op. No. 3292, 752 P2d 1008 (Alaska 1988).

Rule 72.1. Expert Advisory Panels in Health Care Provider Malpractice Actions.

(a) **Identification of Action.** Either party in a health care malpractice action subject to AS 09.55.536 may request that the court appoint an expert advisory panel to evaluate the claim. The request should identify the specialty of the health care provider named as defendant. Either party may recommend that the court appoint specific professions or specialties to the expert advisory panel.

(b) Appointment of Panel.

(1) After the case is at issue and a party has requested the appointment of an expert advisory panel (or the court has raised the issue), the court shall nominate a three person panel and notify the parties of the names, professions and specialties of the persons so nominated. The court may initially nominate alternate panel members if it believes nominees may be disqualified. Within 10 days after service of this notice, either party may move to disqualify a nominee, citing the reasons for the motion. The other party may submit an opposition within five days after service of the motion for disqualification. No reply may be filed.

(2) The nominated panel members must inform the court within 10 days of the notice of appointment of any financial relationship with a party or party's attorney, of any other reason which would cause the nominee to be biased in the case or present an appearance of bias, and of any other reason why the nominee cannot serve on the panel. The court shall disqualify a nominee if the nominee is biased for or against a party or if a conflict of interest raises a substantial appearance of bias.

(3) If additional nominees are required, the parties must be given the opportunity to recommend nominees' professions or specialties and move to disqualify as provided above.

(c) Submission of Medical Records.

(1) Within 30 days after service of the court's initial panel nominations, the plaintiff and each health care provider defendant shall serve on other parties one legible copy of all discoverable medical records in such party's possession, custody, or control. Original exhibits which are impractical or impossible to copy must be made available to all parties for review. Medical reports of consultants retained by a party for the advancement or defense of the case and medical literature must also be served on other parties if such literature or reports is to be submitted to the panel.

(2) Each party shall file with the Clerk and serve on each other party a list of all medical records, medical reports and medical literature which the party will transmit or make available to the panel.

(3) Medical records include medical records of hospitals, physicians, or other health care providers, addressing an issue of health relevant to the plaintiffs' complaint, whether generated before or subsequent to the event giving rise to the claim and whether generated by the health care provider named in the complaint or by other health care providers. Medical records also include autopsy reports and exhibits such as x-rays and slides.

(4) Upon agreement of the parties or order of the court, and after a reasonable time for inspection, each party shall submit to each member of the panel one legible copy of such party's medical records, medical reports and medical literature, and notify the panel members of the availability and location of original exhibits for which submission to the panel is impractical or impossible. If the plaintiff serves the defendant with medical reports of consultants, the defendant has 30 days to serve medical reports of its consultants on the plaintiff. Thereafter, the reports may be submitted to the panel. Any additional reports may be submitted only with leave of the court.

(5) A party may file and serve on each member of the panel a notice advising the panel of further relevant medical records of which the noticing party does not have possession, custody or control.

(6) In the event a party fails or is unable to submit relevant medical records to the panel, and the panel is unable to obtain access to such records by reason thereof, any party or the panel may apply to the court for leave to obtain such records by court order. The court may delay further proceedings until the panel is provided with the additional medical records.

(d) **Preliminary Findings of Fact and Conclusions of Law.** A party may move the court to resolve issues of fact or law prior to submission of the case to the panel, or to furnish instructions of fact or law to the panel. Submission of the case to the panel will be deferred pending determination of the motion by the court.

(e) **Instructions to Panel.** The court shall provide the panel with a written order which states:

(1) The questions listed in AS 09.55.536, clarified or changed as the court deems appropriate to the case.

(2) That the panel is to prepare and submit to the court a list of all persons interviewed, a list of treatises or medical literature used by the panel in its deliberations, and a list of exhibits it examined (such as X-rays, slides, and other items which are not reproducible on paper).

(3) The general nature of the allegations made against each health care provider and of the answer

to those allegations. Alternately, the court may submit a copy of the complaint and the answer and advise the panel that they are to address only the medical issues.

(4) That the panel or the Alaska State Medical Association is to retain copies of medical records submitted to them until further notice from the court. The court may make special provision for the safekeeping or retention by the Clerk of Court of X-rays or other original exhibits.

(5) That the panel must maintain a record of any testimony or oral statements of witnesses and shall keep copies of all written statements the panel may receive or take, whether from witnesses, consultants, or other sources.

(6) That the panel is to review the case of each health care provider individually and render an individual, separate opinion with regard to the allegations against each health care provider.

(7) The name and location of the court personnel who might assist the panel, and that the panel may communicate with the court concerning any questions it may have, or make any requests for assistance.

(8) Any matters of fact or law on which the court has ruled, and that the panel is to review the matter in light of the court's finding and instructions on the law.

(9) That in the event parties are named as defendants who are not health care providers, the panel's consideration is to be directed to the health care providers only.

(10) That the panel is not to communicate with the parties or their attorneys, except to arrange to obtain or review an original exhibit in the possession of one of the parties, or to arrange an examination of the plaintiff, or to arrange an interview with the plaintiff or health care provider, or to arrange the scheduling of the testimony of a panel member at a deposition or at trial.

(f) Interviews by the Panel.

(1) If an attorney desires to be present at an interview of his or her client by the panel, the attorney must give reasonable notice of an intent to do so to the other parties so they may also appear at the interview. If the attorney for the person being interviewed does not appear, no other attorney or party may appear. An attorney appearing before the panel may not question his or her client or any other persons appearing before the panel, nor may an attorney or party cross-examine witnesses or ask questions of the panel. A person being interviewed by the panel may not be accompanied by any representative other than the person's attorney.

(2) Any party may request the panel to interview any person or party.

(g) Discovery may be taken from the defendant's cause by order of the court.

PAR

Rule 73

(a) When the court is to be open for judicial holidays.

(b) Order of the court with respect to the court with respect to the court.

(1) Order of the court with respect to the court.

(2) Order of the court with respect to the court.

(3) Order of the court with respect to the court.

(4) Order of the court with respect to the court.

(5) Any order of the court.

The clerk of the court shall be responsible for the entry of any such order pending, altered or shown.

(c) Judgment of the court to enter the final judgment of the court.

(1) Default judgment of the court following process served on the defendant and the defendant's failure to appear and answer the complaint, or the defendant's failure to appear and answer the complaint, or the defendant's failure to appear and answer the complaint.

(2) Judgment of the court with respect to the court.

(d) Notice of the court to the court.

CIVIL RULES

Rule 72.1

(g) **Discovery.** Except by leave of court, no discovery may be conducted until the report of the panel has been filed or until 80 days have elapsed from the date the case is at issue, whichever is first to occur, unless discovery is further stayed for good cause by order of the court.

(Added by SCO 837 effective August 1, 1987)

PART XI. SUPERIOR COURT AND CLERKS

Rule 73. The Clerk.

(a) **When Clerk's Office Is Open.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except judicial holidays and Saturdays.

(b) **Orders by Clerk.** The clerk is authorized to enter the following orders of the superior or district court without further direction by the court:

(1) Orders on consent for the substitution of attorneys.

(2) Orders on consent satisfying a judgment or an order for the payment of money, withdrawing stipulations, annulling bonds and exonerating sureties.

(3) Orders entering default for failure to plead or otherwise defend as provided in Rule 55(a).

(4) Orders upon motions and applications for issuing mesne process and issuing final process to enforce and execute judgments.

(5) Any other orders which do not require allowance or order of the court.

The clerk must forthwith notify the judge before whom the action is pending of his action in entering any such order. Any order so entered may be suspended, altered or rescinded by the court for cause shown.

(c) **Judgments by Clerk.** The clerk is authorized to enter the following judgments of the superior or district court forthwith without further direction from the court.

(1) Default judgments under Rule 55(b) upon the following proof: an affidavit that the person against whom judgment is sought is not an infant or an incompetent person, and an affidavit under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, that defendant is not in the armed forces of the United States.

(2) Judgments on offers of judgment in the circumstances set forth in Rule 68.

(d) **Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment, the clerk shall give notice by distributing a copy to each party

who is not in default for failure to appear.

(Adopted by SCO 5 October 9, 1959; amended by SCO 77 effective July 30, 1965; by SCO 258 effective November 15, 1976; by SCO 289 effective January 15, 1978; by SCO 447 effective November 24, 1980; by SCO 499 effective January 18, 1982; by SCO 500 effective January 18, 1982; and by SCO 554 effective April 4, 1983)

Note: AS 10.06.658, as enacted by ch. 166, § 1, SLA 1988, amended Civil Rule 73 by requiring the clerk of the superior court to send a copy of an order dissolving a corporation to the commissioner of commerce and economic development.

Annotations

Cases

Notice mailed by the clerk to all counsel of the entry of judgment constituted timely notice to parties. *Whitney Bros. Plumbing & Heating, Inc. v. Industrial & Commercial Const., Inc.*, Op. No. 438, 432 P2d 533 (Alaska 1967).

Rule 74. Books and Records Kept by Clerk and Entries Therein.

(a) **Civil Case File and Index.** All papers filed with the clerk shall be marked with the case number and the date of filing and shall be placed in the case file in chronological order. The clerk shall maintain an alphabetical index of every civil case filed. All parties in each case shall be included in the index.

(b) **Civil Judgments and Orders.** The clerk shall keep, in such form and manner as the administrative director of courts may prescribe, a record of every final judgment or order.

(c) **Civil Calendar.** The clerk shall prepare a calendar listing all cases scheduled for hearings and trials. The calendar shall indicate the type of proceeding and shall distinguish jury actions from nonjury actions. A copy of the calendar shall be posted in a public place within the court building.

(d) **Other Books and Records of the Clerk.** The clerk shall also keep such other books and records as may be required from time to time by the administrative director of the courts.

(e) **Records to Remain in Custody of Clerk.** Except as otherwise provided by these rules or by order of the court, no record or paper belonging to the files of the court may be taken from the office or custody of the clerk.

(f) **Use of Records by Court Officers.** If it is necessary for a judge, master, examiner, magistrate or court reporter to use pleadings or other papers for purposes of the action or proceeding, at places other than the clerk's office, courtroom or judge's chambers, the same may be taken from the office of the clerk upon the delivery to him of a receipt signed by the officer who desires the use of said papers.

(g) **Records After Final Determination.**

Rule 7

ALASKA RULES OF COURT

point so far removed from his residence as to necessarily prohibit return thereto from day-to-day shall receive per diem at the rate allowed for state employees.

(b) **Travel Expense.** Every witness who is required to travel in excess of 30 miles from his residence is entitled to receive reimbursement for round-trip travel from the witness' residence to the place of court at the rate allowed for state employees.

(c) **Expert Witnesses.** Recovery of costs for a witness called to testify as an expert is limited to the time when the expert is employed and testifying and shall not exceed \$50.00 per hour, except as otherwise provided in these rules. A party may not recover costs for more than three expert witnesses as to the same issue in any given case, unless the judge permits recovery for an additional number of expert witnesses.

(d) **Payment.** Witness fees, travel expense and per diem shall be paid from the appropriation to the judiciary only for witnesses called or appointed by the court or in coronor's cases. In all other cases, these fees and expenses shall be paid by the parties, and in civil cases, shall be taxed and collected as other costs.

(e) **Demand of Payment in Advance in Civil Cases.** Witnesses in civil cases, except when subpoenaed by the state, a municipality, a borough, a city, or an officer or agency thereof, may demand the payment in advance of their travel expense and their per diem fee for one day, and when so demanded shall not be compelled to attend until the allowances are paid.

(f) **Parties and Attorneys as Witnesses.** A party to the action or hearing, if a witness, is entitled to receive the same witness fees, per diem and travel expense as any other witness. A person appearing as an attorney for any party to an action or hearing, who also testifies as a witness therein, is not entitled to receive any witness fee, per diem or travel expenses.

(Amended by SCO 559 effective May 2, 1983; and by SCO 791 effective March 15, 1987)

Annotations

Cases

Court erred in basing award of expert witness fees on the time the expert spent in court observing and testifying rather than only on the time the expert was actually testifying. *Eagle Air v. Corroon, Etc.*, Op. No. 2538, 648 P2d 1000 (Alaska 1982).

Trial judge did not abuse his discretion in denying fees for one of prevailing party's expert witnesses on ground that no timesheet was submitted for the witness. *Truckweld Equipment Co. v. Swenson Trucking*, Op. No. 2545 649 P2d 234 (Alaska 1982).

The taxing of costs for witness fees is governed by Civil Rule 83 and Administrative Rule 7(c) rather than the general provisions of Civil Rule 79(b). *Miller v. Sears*, Op. No. 2447, 636 P2d 1183 (Alaska 1981).

Expert witness fees in excess of state limits were proper where awarded pursuant to a federal act, 15 U.S.C. § 2310, rather than state law. *Universal Motors, Inc. v. Waldeck*, Op. No. 3060, 719 P2d 254 (Alaska 1986).

Trial court's finding that losing party acted in bad faith was clearly erroneous, thus award of expert witness fees to prevailing party in excess of the twenty-five dollars per hour limit of this rule was invalid. *Fairbanks North Star Borough v. Tundra Tours*, Op. No. 3052, 719 P2d 1020 (Alaska 1986).

A party may not recover costs for experts' preparation time nor any costs associated with the experts if they do not testify. *Atlantic Richfield Co. v. State*, Op. No. 3096, 723 P2d 1249 (Alaska 1986).

Trial court could award prevailing defendant expert witness fees, not to exceed \$25.00 per hour, for the time the expert actually spent testifying, but not for time spent in trial preparation. *Hutchins v. Schwartz*, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

Where experts testified by deposition at trial, prevailing party was entitled to recover only fees for the time spent actually reading the depositions in court, since the depositions were taken prior to previewing party's offer of judgment. *Hutchins v. Schwartz*, Op. No. 3110, 724 P2d 1194 (Alaska 1986).

Rule 8. Physicians' Fees.

Physicians shall be allowed a reasonable fee for performing the following services:

(a) An examination under order of court pursuant to AS 47.30.700 or such other examination as may be ordered by the court upon its own motion;

(b) Giving medical expert testimony at a hearing when ordered by the court in relation to such examination or in relation to an autopsy or post mortem examination ordered pursuant to AS 12.65.020.

Fees for such services shall be paid from funds appropriated to the judiciary. Claims for compensation shall be submitted for approval to the judicial officer ordering the examination or testimony, subject to final approval by the administrative director. In all other cases, physicians' fees shall be paid by the requesting party or parties.

The administrative director may authorize a fee under (a) of this rule to be computed other than on an hourly basis, provided that such computation results in a fee that is substantially the same as if computed hourly.

(Amended by SCO 813 effective August 1, 1987)

Annotations

Cases

Admin. Director Instructions 60-2 (Fee Schedule)

Rule 8.1. Health Care Provider Expert Advisory Panel Fees.

(a) **Compensation by Court.** Expert advisory panel members appointed pursuant to AS 09.55.536 will be reimbursed by the court for the reasonable expenses of transportation outside the panel member's city of residence which are necessary for the preparation of the panel's report. Panel members

ADMINISTRATIVE RULES

Rule 8.1

will be reimbursed for other expenses of preparing their report at the rate of \$18.00 per hour, not to exceed \$90.00 per day. If the panel member's reasonable and necessary actual expenses other than transportation expenses exceed this hourly rate, the panel member will be compensated for reasonable and necessary actual expenses in lieu of the hourly compensation. Panel members are not entitled to compensation from the court for any professional fees for service on the panel.

(b) **Request for Compensation.** In order to qualify for reimbursement, a panel member must submit to the trial court within thirty days after the submission of the expert report a written request for reimbursement which specifies by date and by nature of the item any transportation expenses, time spent preparing the report, and, if reimbursement for actual expenses is sought, all expenses. Claims for reimbursement must be submitted for approval to the assigned judge and are subject to final approval by the administrative director.

(SCO 814 effective August 1, 1987)

Rule 9. Fee Schedule.

The fees specified in this rule shall be charged for the services designated herein:

(a) In the Supreme Court and the Court of Appeals:

(1) Filing Fees:

- (i) Upon filing a written notice of appeal or cross-appeal (Appellate Rule 204(b) or Rule 215(b)) \$70.00 100.00
- (ii) Upon filing a petition for review or cross-petition for review (Appellate Rule 403(a)) 70.00 100.00
- (iii) Upon filing original proceedings (Appellate Rule 404) 70.00 100.00

(2) Miscellaneous Fees:

- (i) For preparation of case record for review by the Supreme Court of the United States 70.00
- (ii) For copies of documents on file with the supreme court or the court of appeals, whether or not certified: Each page or fraction thereof 20
- (iii) For copies of court opinions, per opinion 1.00
- (iv) Subparagraphs (c)(2) and (e)(6) of this rule apply to certification and notary public services in the appellate courts.

- (3) No person shall be charged a filing fee upon filing a written notice of appeal or a petition for review of a decision involving a claim for benefits under AS 23.20 (Employment Security Act).

(b) Filing Fees — Superior Court:

- (1) Upon filing any civil case, including a petition for deposition before action ... \$70.00 100.00
- (2) For probate matters:
 - (i) Initial filing fee 70.00 100.00
 - (ii) For depositing a will with the court for safe keeping 15.00
 - (iii) For registration of a trust document 15.00
 - (iv) Upon filing a petition for court approval of a minor's settlement, when it involves opening a new file 45.00 100.00
- (3) Upon filing of an adoption proceeding, without regard to the number of minors involved 45.00
- (4) Upon filing any guardianship, conservatorship or other protective proceedings to include all services in the first year 45.00
- (5) Upon filing annual guardianship reports in each succeeding year 15.00 25.00
- (6) Upon filing an appeal, including a sentence appeal, or petition for review from district court, except in forma pauperis cases 20.00
- (7) Upon filing an action to enjoin or enforce orders of the Alaska Workmen's Compensation Board 70.00
- (8) Upon filing an action for review of a decision by the Department of Labor under AS 23.20 (Employment Security Act) no fee
- (9) Upon filing an appeal or petition for review from an administrative order (AS 44.62.560) 70.00 100.00
- (10) In cases arising under the Uniform Reciprocal Enforcement of Support Act, all ordinary fees shall be charged, subject to the waiver provisions of Supreme Court Order No. 19^a
- (11) Upon filing a petition for injunctive relief from domestic violence 15.00 25.00

(c) Filing Fees — District Court:

- (1) Filing fees, district court jurisdiction \$35.00 50.00
 - (2) Filing fees, small claims actions 15.00
- No additional filing fee is due when a small claims case is removed to district or superior court.
- (3) Filing fees where magistrates accept for filing civil cases beyond their jurisdiction, but within the jurisdiction of the district court (Rule 30(a) Administrative Rules) 35.00 50.00
 - (4) Filing fees, petitions for injunctive relief from domestic violence 15.00
 - (5) There shall be no fee for filing a presumptive death petition.

(d) Transcript and Related Fees:



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

WILLIAM T. COTTON
Court Rules Attorney

303 K Street
Anchorage, Alaska 99501

(907) 264-8239

November 15, 1989

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

Dear Mr. Rogers:

You asked whether the court system has information regarding the number and result of actions in state court under Civil Rule 11. Unfortunately, we do not have any such statistics.

I have referred your followup request for information on medical malpractice actions to Dick Delaplain, the court administrator in charge of statistics. I will be getting back to you on this request as soon as I hear from him.

Very truly yours,

William T. Cotton
Court Rules Attorney

WTC:pjs



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

WILLIAM T. COTTON
Court Rules Attorney

303 K Street
Anchorage, Alaska 99501

(907) 264-8239

November 17, 1989

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

Dear Mr. Rogers:

As it turns out, Dick Delaplain was able to come up with some statistics concerning medical and other malpractice actions filed since 1987. I have attached the reports that he gave me. The first page explains the initials and the remaining pages list the malpractice actions in the various court locations.

Please feel free to give me a call if you have any questions.

Very truly yours,

William T. Cotton
Court Rules Attorney

WTC:pjs

Attachment

Judge	Initials	Location
Anderson	GCA	3AN
Andrews	EMA	3AN
Ashman	PZA	3PA
Asper	LZA	1JU 1HA
Beckwith	MZB	3AN
Bosshard	JZB JxB	3VA
Brown	AZB	3AN
Carlson	VDC	3AN
Carpeneti	WLC	1JU
Christensen	LHC	3KN
Cranston	CKC	3KN
Craske	DKC	1SI
Crutchfield	HEC	4FA
Cutler	BWC	3PA
Engle	MZE	3HO
Fabe	DAF	3AN
Finn	NKF	3AN
Fuld	VHF	3AN
Gater	BAG	2NO
Gonzalez	RJG	3AN
Greene	MEG	4FA
Gucker	GLG	1KE
Hanson	JAH	3KN
Harrington	KZH	3AN
Hitchcock	WZH	3AN
Hodges	JZH FTH	4FA
Hunt	KLH	3AN
Jahnke	TMJ	1PE
Jeffery	MIJ	2BA
Johnstone	KSJ	3AN
Jones	PBJ	2KB
Katz	JMK	3AN
Kauvar	JZK	4FA
Madsen	RHM	3KO
Mason	JDM	3AN
McBurney	LZM	3AN
Michalski	PAM	3AN
Paterson	SZP	4FA
Peques	RZP	1JU
Reese	JER	3AN
Ripley	JJR	3AN
Rowland	MCR	3AN
Savell	RDS	4FA
Schulz	TES	1KE
Shortell	BCS	3AN
Souter	MZS mms	3AN
Steinkruger	NJS	4FA
Stemp	RRS	3AN
Stewart	DCS	3AN
Tunley	CRT	2NO
Wielkopolski	RZW	3AN
Wolverton	MLW	3AN
Zervos	LCZ	4FA
Zimmerman	CEZ	4FA

STAGE CODES

BA - Before Answer
 PT - Pre Trial
 NJ - Non Jury Trial
 JU - Jury Trial

Dispo Codes

DS - Dismissed
 DJ - Default Judgment
 ST - Settled -
 OT/OS - OTHER
 CU - change of Venue
 JV - Jury verdict -

Gone:

Fraties	GRF	4BE
Funk	RMF	4FA
Hornaday	JCH	3HO
Sevelsky	DJS	3AN

ANCHORAGE cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Dispo
3AN-87-00162CV	MMP	01/08/87	DJS	07/13/88	ST
3AN-87-00377CV	MMP	01/15/87	RJG	01/20/89	JU
3AN-87-01055CV	MMP	02/03/87	BCS	02/23/89	JU
3AN-87-01408CV	OMP	02/13/87	BCS	05/04/88	ST
3AN-87-04065CV	MMP	05/04/87	KLH	04/18/89	ST
3AN-87-04307CV	MMP	05/12/87	DJS	09/12/88	ST
3AN-87-04723CV	MMP	05/22/87	MMS	05/09/89	OT
3AN-87-04832CV	LMP	05/27/87	Z	03/17/88	ST
3AN-87-04933CV	OMP	05/29/87	JJR	08/24/88	ST
3AN-87-05119CV	LMP	06/04/87	DJS	01/17/89	ST
3AN-87-06352CV	LMP	06/30/87	DJS	08/26/87	DS
3AN-87-07011CV	OMP	07/27/87	KLH	02/24/88	ST
3AN-87-07945CV	OMP	08/06/87	BCS	05/31/89	ST
3AN-87-08096CV	OMP	08/11/87	RJG	03/13/89	JU
3AN-87-08256CV	OMP	08/17/87	KLH		
3AN-87-08304CV	MMP	08/18/87	BCS		
3AN-87-08419CV	MMP	08/21/87	JJR	05/24/88	DS
3AN-87-08423CV	MMP	08/21/87	RJG	11/30/88	DS
3AN-87-08438CV	LMP	08/21/87	KLH		
3AN-87-08517CV	MMP	08/25/87	BCS	09/14/88	DS
3AN-87-08818CV	MMP	09/03/87	DJS		
3AN-87-08935CV	LMP	09/09/87			
3AN-87-08936CV	OMP	09/09/87	DJS	05/26/88	DS
3AN-87-09264CV	MMP	09/18/87	KLH		
3AN-87-09611CV	OMP	09/30/87	BCS		
3AN-87-10037CV	MMP	10/12/87	BCS		
3AN-87-10095CV	OMP	10/13/87	BCS		
3AN-87-10122CV	OMP	10/14/87	KLH		
3AN-87-10460CV	LMP	10/22/87			
3AN-87-11079CV	OMP	11/10/87	RJG		
3AN-87-11192CV	MMP	11/13/87	DJS	12/22/87	OT
3AN-87-11779CV	MMP	12/07/87	MMS		
3AN-88-00130CV	MMP	01/08/88	KLH		
3AN-88-00237CV	OMP	01/13/88	BCS	10/14/88	ST
3AN-88-00414CV	LMP	01/20/88	BCS		
3AN-88-00417CV	MMP	01/20/88	DJS		
3AN-88-00604CV	LMP	01/25/88	RJG		
3AN-88-00665CV	LMP	01/27/88	KLH	06/16/89	ST
3AN-88-00937CV	OMP	02/01/88	KLH		
3AN-88-01072CV	LMP	02/04/88	RJG		
3AN-88-01335CV	MMP	02/09/88	DJS		
3AN-88-02685CV	OMP	03/08/88	DJS		
3AN-88-02827CV	MMP	03/14/88	DJS		
3AN-88-03082CV	MMP	03/21/88	BCS		
3AN-88-03406CV	LMP	03/30/88	DJS		
3AN-88-03691CV	LMP	04/07/88	KLH		
3AN-88-03692CV	MMP	04/07/88	BCS		
3AN-88-03986CV	MMP	04/12/88	KLH		
3AN-88-04010CV	LMP	04/12/88			

ANCHORAGE cases filed between 1/1/87 - 7/1/89 where clerks identified (2) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Dispo
3AN-88-04296CV	MMP	04/20/88	DAF		
3AN-88-04321CV	LMP	04/21/88	BCS	12/27/88	DS
3AN-88-04560CV	MMP	04/27/88	JJR	05/16/88	CV
3AN-88-04645CV	LMP	04/29/88	RJG		
3AN-88-04646CV	LMP	04/29/88	RJG		
3AN-88-04740CV	LMP	05/03/88	BCS	08/11/88	SJ
3AN-88-04817CV	MMP	05/05/88	KLH		
3AN-88-04825CV	MMP	05/05/88	KLH		
3AN-88-04844CV	OMP	05/05/88	BCS		
3AN-88-05102CV	MMP	05/12/88	RJG		
3AN-88-05343CV	LMP	05/19/88	RJG		
3AN-88-05523CV	OMP	05/24/88	RJG		
3AN-88-05558CV	MMP	06/15/88	RJG		
3AN-88-05774CV	LMP	06/02/88	RJG		
3AN-88-05784CV	OMP	06/02/88	DJS	08/10/88	DS
3AN-88-06069CV	LMP	06/08/88	RJG		
3AN-88-06085CV	LMP	06/08/88			
3AN-88-06241CV	MMP	06/13/88	KLH	01/30/89	ST
3AN-88-06370CV	MMP	06/17/88	DJS		
3AN-88-06637CV	MMP	06/24/88	DJS		
3AN-88-07121CV	LMP	07/13/88	DJS		
3AN-88-07172CV	LMP	07/13/88	DJS		
3AN-88-07208CV	MMP	07/14/88	RJG		
3AN-88-07352CV	LMP	07/19/88	DJS		
3AN-88-07730CV	MMP	08/01/88	RJG		
3AN-88-07895CV	OMP	08/04/88	KLH		
3AN-88-08061CV	MMP	08/09/88	DJS	12/02/88	ST
3AN-88-08648CV	LMP	08/29/88	JJR		
3AN-88-08687CV	MMP	08/30/88	RJG		
3AN-88-08735CV	OMP	08/31/88	KLH		
3AN-88-08864CV	LMP	09/02/88	MMS		
3AN-88-09141CV	MMP	09/14/88	BCS		
3AN-88-09546CV	LMP	09/26/88	RJG		
3AN-88-09871CV	MMP	10/05/88	KLH		
3AN-88-09894CV	LMP	10/05/88	RJG		
3AN-88-09961CV	MMP	10/07/88	DJS		
3AN-88-09977CV	MMP	10/07/88	RJG		
3AN-88-10478CV	LMP	10/25/88	BCS		
3AN-88-10613CV	OMP	10/26/88	DJS		
3AN-88-10893CV	LMP	11/03/88	DJS		
3AN-88-11324CV	LMP	11/17/88	BCS		
3AN-88-11394CV	LMP	11/18/88	DJS		
3AN-88-11454CV	OMP	11/22/88	DJS		
3AN-88-11541CV	LMP	11/25/88	KLH		
3AN-88-11742CV	LMP	12/02/88	RJG		
3AN-88-12156CV	MMP	12/15/88	KLH		
3AN-88-12361CV	MMP	12/23/88	BCS		
3AN-88-12398CV	MMP	12/23/88	DJS		
3AN-88-12538CV	LMP	12/30/88	KLH		

ANCHORAGE cases filed between 1/1/87 - 7/1/89 where clerks identified (3) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Dispo
3AN-89-00333CV	MMP	01/17/89	RJG		
3AN-89-00741CV	MMP	01/27/89	BCS		
3AN-89-00985CV	MMP	02/07/89	RJG		
3AN-89-01106CV	LMP	02/08/89	RJG		
3AN-89-01201CV	OMP	02/10/89	JJR		
3AN-89-01262CV	MMP	02/14/89	BCS		
3AN-89-01525CV	OMP	02/23/89	JJR		
3AN-89-01690CV	MMP	03/01/89	KLH		
3AN-89-01763CV	MMP	03/03/89	RJG		
3AN-89-01907CV	LMP	03/08/89	BCS		
3AN-89-02003CV	OMP	03/10/89	RJG		
3AN-89-02119CV	OMP	03/15/89	RJG		
3AN-89-02265CV	MMP	03/20/89	RJG		
3AN-89-02354CV	MMP	03/21/89	KLH		
3AN-89-02636CV	MMP	03/30/89	BCS		
3AN-89-03081CV	MMP	04/14/89	RJG		
3AN-89-03205CV	OMP	04/19/89	BCS		
3AN-89-03267CV	LMP	04/21/89	KLH	05/15/89	OT
3AN-89-03617CV	LMP	05/02/89	KLH		
3AN-89-03706CV	MMP	05/04/89	KLH		
3AN-89-03903CV	MMP	05/11/89	BCS		
3AN-89-03950CV	LMP	05/12/89	RJG		
3AN-89-04403CV	MMP	05/25/89	KLH		
3AN-89-04605CV	MMP	06/02/89	KLH		
3AN-89-04790CV	LMP	06/08/89	KLH		
3AN-89-04793CV	MMP	06/07/89	RJG		
3AN-89-04924CV	MMP	06/13/89	RJG		

Total Records Reported By Anchorage Clerks During Period = 125

BARROW cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By BARROW Clerks During Period = 0

BETHEL cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By BETHEL Clerks During Period = 0

FAIRBANK cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
4FA-87-00241CI	MMP	02/06/87	FJH	04/08/87	BA	DS
	KIRCHER HEATHER V DENALI MED					
4FA-87-00304CI	OMP	02/17/87	CEZ	06/22/87	PT	DS
	OSBORN PAT V MONETTI					
4FA-87-00376CI	LMP	02/27/87	MEG	12/27/88	JU	OJ
	OK LUMBER V BELLAND					
4FA-87-00519CI	LMP	03/23/87	RDS	09/07/88	PT	SJ
	CARLSON V ROBSON					
4FA-87-00525CI	MMP	03/23/87	FJH			
	MORMON JAMES H V FBKS MEM HOSP					
4FA-87-00689CI	LMP	04/16/87	JFK	12/02/87	PT	DS
	BEZY FRANK V FLECK					
4FA-87-00748CI	MMP	04/22/87	NJS	03/23/89	JU	OJ
	MONROE LOTTIE V BROWN M.D.					
4FA-87-00826CI	MMP	05/01/87	RDS	12/10/87	PT	DS
	ENGBRETSON ROBERT V MCCONKEY					
4FA-87-01809CI	MMP	09/21/87	MEG			
	JOHNSON LOUIS V TILBY					
4FA-87-01961CI	MMP	10/12/87	MEG			
	CREVELING K V STERLING DRUGS					
4FA-87-02105CI	LMP	11/02/87	NJS			
	WALKER LORIN V BELLAND					
4FA-88-00062CI	LMP	01/13/88	RDS			
	SHAW JOHN V ALASKA DOA					
4FA-88-00221CI	MMP	02/11/88	NJS			
	PEEP ERIC V DINGEMAN					
4FA-88-00294CI	MMP	02/25/88	FJH			
	BROOKS FLOYD V HOGAN					
4FA-88-00342CI	MMP	03/02/88	MEG			
	LINDSOE SHERRIE V FMH					
4FA-88-00663CI	OMP	04/15/88	NJS			
	ALASKA DOT V FRANKLIN & ALLEN					
4FA-88-00726CI	MMP	04/26/88	NJS			
	HURN LISA V THORNLEY					
4FA-88-00908CI	MMP	05/27/88	FJH	06/14/89	JU	OJ
	SNYDER JENNIFER V FOOTE					
4FA-88-01001CI	MMP	06/13/88	MEG			
	BERNHARDT DONNA V FMH					
4FA-88-01029CI	MMP	06/17/88	RDS	01/26/89	BA	DS
	ALVAREZ INES V WOLF					
4FA-88-01111CI	LMP	07/01/88	HEC			
	SEMMLER LORNA V COLEMAN					
4FA-88-01115CI	MMP	07/01/88	FJH			
	LINK MILDRED V CAMMACK					
4FA-88-01360CI	OMP	08/09/88	FJH			
	PENDERGRAST P V AK 100 INS					
4FA-88-01392CI	LMP	08/15/88	FJH			
	SHAW JOHN V B H BITTNER INC					
4FA-88-01631CI	LMP	09/19/88	MEG			
	MICHEL JOHN V HOPNER					

FAIRBANK cases filed between 1/1/87 - 7/1/89 where clerks identified (2)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
4FA-88-01821CI	MMP	10/17/88	NJS			
	LAWRENCE SUSAN V FBKS CLINIC					
4FA-88-01958CI	MMP	11/08/88	MEG			
	PEDERSON EINAR V FLANNERY					
4FA-88-02074CI	LMP	12/05/88	JXB			
	WILSON THOMAS V ASCHENBRENNER					
4FA-89-00359CI	OMP	03/06/89	NJS			
	HARPER JAMES V COLETTE					
4FA-89-00464CI	MMP	03/23/89	NJS			
	PAUL LLOYDENE V HANLEY					
4FA-89-00777CI	MMP	05/12/89	FJH			
	TEEL MARY V TANANA VALLEY GRP					
4FA-89-01029CI	MMP	06/19/89	MEG			
	VINCENT ELAINE V F M H					
4NE-85-00110CI	LMP	11/12/85	FJH	06/06/86	BA	DJ
	GROBER MARC V FRUEHAN					

Total Records Reported By Fairbanks Clerks During Period = 33

KETCHIKAN cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
1KE-88-00303CI	MMP	05/06/88		04/26/89	PT	DS
		MOORE V SE AK ANESTH & ZEIDNER				
1KE-88-00487CI	MMP	12/19/86	TES			CV
		DUNNAGAN V BABCOCK ET AL				

Total Records Reported By KETCHIKAN Clerks During Period = 2

JUNEAU cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By JUNEAU Clerks During Period = 0

KENAI cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
3KN-87-00957CI	LMP	10/27/87	CKC	12/28/88	PT	DS
		TOWSLEY V ESCH, ESQ.,				
3KN-87-01113CI	OMP	12/15/87	CKC	02/08/88	PT	DS
		RICHARD ET AL V GAEDE ET AL				
3KN-88-00384CI	MMP	05/17/88	CKC			
		GRAINGER V MEESIS & COBB				
3KN-88-00681CI	MMP	08/18/88	CKC			
		BUTLER V BELL				
3KN-88-00825CI	MMP	09/29/88	CKC			
		OLSEN V SANGSTER ET				
3KN-89-00170CI	LMP	03/01/89	CKC	04/19/89		CV
		JOHNSON V MANN III				
3KN-89-00615CI	LMP	07/24/89	CKC			
		HAWKINS V PATEL, HAWKINS ET AL				

Total Records Reported By KENAI Clerks During Period = 7

KODIAK cases filed between 1/1/87 - 7/1/89 where clerks identified (1) case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
3KO-87-00351CI	MMP	09/11/87	RHM			
	CATHEY V LUTHERAN HOSP/JOHNSON					
3KO-87-00486CI	LMP	12/30/87	RHM	04/28/88	PT	DS
	THOMAS V ST OF AK/PD/WALL					
3KO-88-00081CI	MMP	03/09/88	RHM	12/23/88	PT	CV
	DIANE BEHM V BRAD BRINGGOLD MD					
3KO-88-00147CI	MMP	04/13/88	RHM			
	CAPACILLO V LUTHERAN HOSPITAL					
3KO-88-00552CI	MMP	12/09/88	RHM			
	ROBERT CASEY V CLYDE DEAL, MD					
3KO-89-00283CI	MMP	07/07/89	RHM			
	PILAR HENLEY V CLYDE DEAL					

Total Records Reported By KODIAK Clerks During Period = 6

KOTZEBUE cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
2KB-88-00060CI	LMP	07/01/88	CRT			
	WELCH,ED & PD; WM HOWARTH SR V					

Total Records Reported By KOTZEBUE Clerks During Period = 1

NOME cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
2NO-88-00287CI	MMP	08/17/88	CRT	02/24/89		CV
	KITCHEN V NS HEALTH CORP.INC.					

Total Records Reported By NOME Clerks During Period = 1

PALMER cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By PALMER Clerks During Period = 0

PETERSBURG cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By PETERSBURG Clerks During Period = 0

SITKA cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
1SI-88-00215CI	LMP	06/07/88				
		FEIGHT ETAL V STAHLA ETAL				
1SI-88-00405CI	MMP	11/29/88	TES			
		FOX VS WHITE				

Total Records Reported By SITKA Clerks During Period = 2

VALDEZ cases filed between 1/1/87 - 7/1/89 where clerks identified (1)
case type as 'MMP', 'LMP' or 'OMP' - Medical, Legal & Other Malpractice

Case Number	Type	Filed	Judge	Closed	Stage	Dispo
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Total Records Reported By VALDEZ Clerks During Period = 0

SOURCE UNKNOWN
(LOST IN THE
SHUFFLE)

EXPERT ADVISORY PANEL DATA

December 22, 1989

The following information requested concerns statistics dealing with the expert advisory panel process and the medical malpractice suits.

Total number of claims processed since the inception of AS 09.55.536

338 Claims

Annual Claims:

1977	12
1978	6
1979	15
1980	12
1981	16
1982	27
1983	32
1984	37
1985	55
1986	31
1987	37
1988	29
1989	30 to date

Total number of claims presented to the panel that have been settled:

This information is not available, since records of such activities have not been supplied by the court. The following information however, might be helpful concerning the final results of some cases:

Dismissed	27
Cases Dropped	10
Excused expert advisory panel members	20
Panel ruled fault and jury ruled against plaintiff	1
Plaintiff ordered to pay settlement	2

Expert Advisory Panel Determination

Defendant - No Fault	138
Defendant - Fault	40
No Report Available	93

The number of judgements entered in favor of the plaintiff is unknown.

SCOMM

69:B2

CHANGES IN INSURANCE SERVICES**HOW THE PUBLIC IS TREATED**

- 1) Suggested Legislative Agenda for 1987 by: National Insurance
Consumer Organization

SET 1
#2

CHANGES IN INSURANCE SERVICES
HOW THE PUBLIC IS TREATED



How To

**Tame the Insurance Industry Cycle
and
Make the Legal System More Efficient:**

A Suggested Legislative Agenda for 1987

by

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

**Presented at the Annual
Meeting of the National
Conference of State
Legislatures
New Orleans, Louisiana
August 8, 1986**

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

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How to Tame The Insurance Cycle and Make the Legal
System More Efficient

I. Introduction and Background

Dramatic insurance premium increases and refusals of insurance companies to write certain types of insurance at any price are now old news. The debate over what is responsible for such price increases and refusals to deal -- an expanding legal system or insurance industry practices and privileges -- is also a familiar one.

Today, the insurance cycle has turned. First quarter 1986 profits for the industry were up 1227%; second quarter profits are likely to be even higher; and profits in 1987 and 1988 will be the highest in the history of the industry, according to Wall Street analysts. While prices will not fall to the same extent that profits have risen, insurers are already beginning to re-enter markets they had withdrawn from, and within six months prices should begin to fall. The insurance crisis thus is coming to an end.

However, the crisis, the legislation enacted in its wake, and insurers' reaction to that legislation has made one conclusion inescapable: limiting the ability of severely injured people to sue and be compensated for their injuries does not bring down insurance rates. For example, during the first half of 1986 a handful of states, notably Washington, Maryland, Colorado and West Virginia, enacted legislation

limiting damages for disfigurement, paralysis, and all other pain and suffering without requiring insurance companies to reduce their rates. After the enactment of such legislation, insurers did not reduce their rates but rather tried to increase them. After Washington enacted a \$117,000 to \$570,000 cap (depending on the age of the injured person) insurers sought substantial increases but were turned down by Insurance Commissioner Dick Marquardt; 1/ after Maryland enacted a \$350,000 cap, the major medical malpractice insurer sought a 50% rate increase, which was granted by Commissioner Ed Muhl; 2/ and after Colorado enacted a \$250,000 cap, the Hartford, one of the nation's largest insurance companies, announced that it would start cancelling current malpractice policies in November, 1987. This led Republican legislators to charge that "the insurance industry deceived the legislature when it pushed the reforms as dealing with the liability crisis." 3/

The most significant activity, however, occurred in West Virginia. There the legislature passed a bill in March, to take effect in June, that capped damages, required insurer data disclosure and prohibited arbitrary policy

1/ "The Shockwaves Begin," National Underwriter, May 30, 1986, at 14 (editorial) (characterizing Commissioner Marquardt as saying "You people have said that civil justice abuses have caused rates to soar. We believe you, and so we've acted to curb these abuses. Now its your turn to put up or shut up.")

2/ The Washington Post, July 3, 1986.

3/ Liability Week, Vol. 1, No. 13, July 28, 1986, at 3

cancellations. In May, the five West Virginia medical malpractice insurers notified all West Virginia doctors that their insurance would be cancelled effective May 31 unless the legislature repealed the disclosure and anti-cancellation provisions of the law. Although the West Virginia Supreme Court enjoined the insurers from leaving the state, the legislature came into special session, repealed the provisions the industry found objectionable, and threw in some additional "tort reform" for good measure. The insurance industry thus successfully blackmailed the West Virginia legislature. 4/

But the industry's West Virginia actions may have ensured that tort reform without insurance reform will never again be enacted. In June, for example, Florida limited damages for pain and suffering to \$450,000 but also required insurers to roll back their rates. Several companies promptly threatened to withdraw from Florida and have gone to court to prevent the law from taking effect. Nevertheless, the Governor signed the tort reform/insurance reform package, recognizing that the industry never carried out similar threats to leave the state when Florida rolled back auto and workmen's compensation insurance rates in the early 1970's.

Similarly, in July New York tied tort reform to insurance reform by requiring New York insurers to file new rates "appropriately modified to reflect the likely reductive

4/ See Business Insurance, May 19, 1986, at 1; Business Insurance, June 9, 1986, at 2.

cost effects reasonably attributable to any newly enacted statutory provisions of the civil practice law." And in Hawaii, the legislature enacted modest tort reform and mandated 10% to 15% cuts in insurance rates for each of the next three years.

States therefore seem to be beginning to learn that limiting compensation for disfigurement and paralysis will not bring down insurance rates, but that reforming the insurance industry and making the legal system more efficient will. NICO's recommendations in both areas follow.

II. Insurance Reforms

A. Requiring Disclosure

Most industry observers, including many insurance executives, acknowledge that the industry discloses little if any data on actual income and payouts on different types of insurance. ^{5/} For example, insurers disclose their payouts

^{5/} For example, John A. Bogardus, Chairman of Alexander & Alexander, the nation's second largest insurance brokerage, recently told the National Association of Insurance Brokers that "It is damaging to the industry's credibility when we respond with partial, self-serving answers or data that must later be corrected," that "more complete disclosure of claims data and the positive impact various reforms might produce must be forthcoming," and that "the industry gets nowhere by stonewalling these allegations [that profits are being hidden]." Journal of Commerce, May 14, 1986, at 2. Similarly, Kansas Insurance Commissioner Fletcher Bell has emphasized that "adequate, credible and useful statistical data and information is a problem of longstanding," and National Association of Insurance Commissioners President Josephine Driscoll has agreed that "the need for additional information has been more than amply demonstrated." The NAIC News, Vol. III, No. 7, June 1986, at 1.

for a category called "other liability" but not for the specific types of insurance that constitute "other liability," such as day-care, municipal, liquor, nurse-midwife, directors and officers, non-profit organizations, and pollution liability.

Insurers also do not disclose how much they pay out for economic damages - i.e., actual out-of-pocket loss, such as medical expenses and lost wages; for compensatory non-economic damages, such as compensation for paralysis, for the loss of a limb, for the loss of the ability to bear children or for brain damage; and for punitive damages - damages not to compensate the injured person but to punish the defendant and deter similar conduct in the future. And insurers do not disclose how much they pay out after a verdict is rendered (as opposed to the amount of the verdict, which is often dramatically greater than the amount paid out) and the amount they pay out in settlements, the amount they pay to injured people and the amount they pay to their own lawyers and for expenses, and the time that elapses between the insurance company receiving notice of a claim and the company actually paying the claim.

Finally, insurers do not disclose how often they pay claims in cases involving multiple defendants, nor the amount by which their payments in such cases exceed the amount proportional to the fault of their insureds.

Yet the disclosure and analysis of the above information is essential to determine the true condition of the insurance

industry, as well as the likely effect on both injured people and insurance rates of the various "tort reforms" that are today being considered -- such as limitations on damages for disfigurement and paralysis and punitive damages, and the elimination of joint and several liability. States should therefore require insurers to disclose certain information each year for major classes of liability insurance, including day-care center, products, municipal, medical malpractice, liquor, officers and directors, errors and omissions, and commercial auto. The information disclosed should include the following:

1. the amount paid out in economic damages, compensatory non-economic damages, and punitive damages, tabulated by size of economic damage;
2. the number of claims paid and the amount paid in claims pursuant to (a) verdicts (allocated separately for judge and jury verdicts); (b) settlements after a complaint is filed but before verdict; (c) settlements before a complaint is filed;
3. the total amount rendered in verdicts, and the total amount actually paid out pursuant to verdicts;
4. the average time elapsed between receiving notice of a claim and payment of the claim, by size of claim paid;
5. the investment income earned on the amount ultimately paid between receiving notice of the claim and paying the claim, by size of claim paid;
6. the total amount paid in defense lawyer's fees in connection with claims paid (a) pursuant to verdict; (b)

pursuant to settlements after a complaint is filed but before verdict; (c) pursuant to settlement before a complaint is filed;

7. the total amount paid in defense lawyer's fees in connection with (a) defense verdicts; (b) claims resolved prior to verdict pursuant to which no indemnity was paid;

8. the total amount of all other loss adjustment expenses paid in connection with:

- (a) claims paid pursuant to verdict;
- (b) claims paid pursuant to settlements after a complaint is filed but before verdict;
- (c) claims paid pursuant to settlements before a complaint is filed;
- (d) defense verdicts;
- (e) claims resolved prior to verdicts pursuant to which no indemnity was paid.

9. the total amount of premiums written;

10. the total amount of premiums earned;

11. in cases involving multiple defendants, (a) the number of claims paid, and the total amount paid; and (b) the amount by which the amount paid exceeded the amount proportional to the insurance company's insured's percentage of responsibility for the injury, as determined by the jury (in cases tried to verdict) or as estimated by the insurer (in cases that are settled).

Data similar to the above on auto accident cases was collected by the U.S. Department of Transportation in the

1970's. The data showed that people who were severely injured in auto accidents received only 50% of their economic loss, while those who were only slightly injured received several times their economic loss. ^{6/} Based on this study, DOT recommended a no-fault system for small claims: eliminating the right of people with limited damages to sue but in exchange guaranteeing them prompt payment of their economic damages. It did not recommend limiting the amount severely injured people could recover, since they were already being undercompensated. By undertaking studies similar to the DOT study in other areas of tort law, states could intelligently decide what, if any, reforms of the legal and insurance systems make sense.

States therefore should enact legislation requiring the disclosure of the above information (numbers 1 through 11). They may also wish to undertake so called "closed claim" studies which require the disclosure of similar information on a case-by-case basis for claims that have been resolved. Questions that could be included in such a study are attached as Exhibit A.

B. Increasing Competition

1. Repeal anti-group laws

For decades most states have had anti-group laws: laws that prohibit businesses or individuals from banding together

^{6/} See U. S. Department of Transportation, Automobile Insurance and Compensation Study, "Economic Consequences of Automobile Accident Injuries," Vols. I and II (April 1970).

to buy insurance as a group or to form a self-insurance group. Members of a self-insurance group, also known as a risk retention group, each contribute money to a pool out of which claims against them are paid.

Anti-group laws were passed at the behest of insurance agents, who earn more money by selling insurance policies one-by-one than by selling a smaller number of group policies (or, of course, by not selling any policies to those who choose to self-insure). As a result, today we have group life and health insurance, but in most states group homeowners and most group commercial liability policies are illegal.

Recognizing the obvious injustice of such laws, Congress in 1981 passed the Risk Retention Act, which pre-empts state anti-group laws and thus allows group purchase and self-insurance, but only for product manufacturers. A bill expanding the Risk Retention Act to apply to all commercial risks was approved in July by the Senate by a vote of 96 to 1 and may be enacted this year. In addition, several states, including Florida and New York, substantially repealed their anti-group laws this year. Because there is no legitimate policy justification for such laws, and because allowing commercial risks to self-insure or form purchasing groups would provide private insurance companies with some much-needed competition, the states should repeal their anti-group laws.

A bill effectively repealing an anti-group law and

permitting commercial risks to buy group insurance is attached as Exhibit B1. A bill expressly permitting self-insurance is attached as Exhibit B2.

2. Allow banks in insurance

A combination of state and federal laws effectively prevents banks in most states from writing liability insurance or even investing in insurance or reinsurance companies. There is a legitimate policy justification for such laws: the fear that a bank would refuse to make loans or provide other services to its customers unless they also purchased insurance from the bank. For example, a bank might refuse to issue a mortgage unless the borrower agreed to purchase homeowners insurance from it. Or it could refuse to make an auto loan unless the borrower agreed to purchase credit life insurance from it.

However, safeguards can be provided to prevent such practices. Given the current state of the insurance market, and the likelihood of similar markets in the future given today's inadequate state regulatory framework, allowing banks to write insurance or at least establish some presence in the insurance industry makes a great deal of sense. Banks are substantially more efficient than insurance companies, have the necessary capital base to write insurance, and want to enter many of the markets from which insurers have withdrawn or in which insurers have raised their rates dramatically. Moreover, even if banks concentrated on personal lines of insurance, such as homeowners and auto, insurance capacity is

fungible, and thus could be redirected toward commercial lines. States should therefore allow banks to enter the insurance industry.

A bill enabling banks to invest in reinsurance companies is attached as Exhibit C.

3. Establish Joint Underwriting Associations

By law, all drivers must have liability insurance, since the states have made the policy judgment that victims of auto accidents should not go uncompensated. Therefore, states have required that an insurer writing auto insurance must agree to insure, at actuarially sound rates, a small percentage of the high risks who can't get insurance in the normal, voluntary market. Such agreements are called assigned risk plans.

Arrangements similar to assigned risk plans, called joint underwriting associations, or JUA's, were created for medical malpractice insurance during the last trough in the insurance cycle in 1975-76. JUA's, like assigned risk plans, provide insurance at actuarially sound rates to those who can't get insurance in the voluntary market. The difference between the two structures is that the JUA itself collects premiums and pays claims, distributing its profits to its members if it makes money and assessing its members if it loses money. The JUA is in effect an insurance company. An assigned risk plan, on the other hand, is simply a mechanism through which high risk applicants apply and are assigned to private insurers who write the policies.

During the troughs of the insurance cycle, when interest rates are low, JUA's for some professional and commercial risks are as essential as assigned risk plans for drivers, since during those troughs insurers cancel certain classes regardless of risk. During the peaks of the insurance cycle, on the other hand, some insurers insure all commercial applicants regardless of risk. In 1981 for example, with interest rates at 20%, insurers wrote liability coverage for the Las Vegas MGM Grand Hotel fire after it occurred, reasoning that they could take in more by investing the premiums they collected than they would pay out in claims.

Thus, while JUA's are probably unnecessary during cycle peaks, states should have the ability to quickly establish them during cycle bottoms. Like state-run insurance companies, they can both deter West Virginia-style blackmail and provide an alternative insurance source if private insurers attempt such blackmail.

A bill giving the Insurance Department authority to establish a JUA is attached as Exhibit D.

4. Establish state re-insurance programs

Reinsurance is insurance for insurance companies: the insurance company pays the reinsurer a premium, in exchange for which the reinsurer agrees to pay all claims above a certain amount, or agrees to pay a portion of claims according to some formula. For example, in Alabama the major medical malpractice insurer pays all claims of up to \$200,000, and a reinsurer, to whom the primary insurer has

paid a premium, pays any amount above \$200,000. Reinsurance thus can insure insurance companies against very large claims.

Small businesses and others who decide to form groups to self-insure may find it relatively easy to set aside an amount sufficient to pay typical claims, but quite difficult to set aside enough to pay the unlikely but possible extremely large claim. They will therefore need to buy reinsurance. During the peaks of the insurance cycle, this presents no problem; during cycle bottoms, on the other hand, reinsurance is often even harder to find than primary insurance. This is especially true today, with Lloyds of London and Weavers of London, the dominant reinsurers, blanketly refusing to insure many U.S. risks. Many explanations for such refusals have been offered, including unprecedented embezzlements by Lloyd's insiders, the drop in the value of the pound from \$2.80 in 1965 to \$1.05 in early 1985 which made payments in dollars to U.S. insureds much more costly for British companies, and pressure from American insurers to reinforce their efforts to pressure legislatures into limiting liability. ^{7/}

To ensure that businesses and others who self-insure will be able to purchase re-insurance even during insurance cycle bottoms, states should establish their own

^{7/} See, e.g., Business Insurance, July 21, 1986, at 2; Chicago Tribune, October 20, 1985, at 5; Business Week, August 5, 1985, at 57; Journal of Commerce, July 26-27, 1985.

reinsurance programs. Self-insureds would pay the state a premium, in return for which the state would agree to pay all claims above a specified amount. If efficiently run, government-run reinsurance programs can make money. An example is the federal riot insurance program, which Congress established in 1968 to reinsure insurers of riot-caused damages. This program made a profit of \$125 million while keeping insurance available in inner cities.

A bill establishing a state reinsurance program for self-insureds is attached as Exhibit E.

5. Establish state-run insurance companies

Many states currently run successful insurance programs themselves. In some cases, the state-run company has a monopoly, as it does in five states with workmen's compensation insurance. In others, the state-run company competes with private insurers, as do 13 state-run workmen's compensation carriers. ^{8/}

All state funds, whether monopolistic or competitive, have two advantages over private insurance companies: they need not make a profit but need only break even, and they do not pay state taxes. In addition, a monopolistic state fund can spread the risk over all policyholders in the state. And a monopolistic state fund can operate on a "pay-as-you-

^{8/} U. S. Chamber of Commerce, Analysis of Workers' Compensation Laws at 39 (1980).

go" plus safety margin basis. By law, an insurance company must have sufficient capital to immediately pay not only all claims it knows of but also all claims it predicts it will pay in the future - over several years or even decades - on current policies. The company must also have sufficient capital to pay the amount it would owe all its policyholders on the unexpired portions of their policies if all policyholders cancelled their policies immediately. And the company must have an additional amount - typically a few million dollars - set aside as surplus.

For private insurance companies, these requirements make sense: if a private insurer becomes insolvent claimants may well go uncompensated, because most state insolvency funds are so undependable. A state-run insurance company with a monopoly, on the other hand, has a guaranteed market and guaranteed source of funding. Such a company need not characterize the entire amount it estimates it will pay out in the future on current policies as a liability, as private insurance companies do, and consequently it can charge lower rates.

Finally, state-run insurance companies, whether monopolistic or competitive, should be able to run much more efficiently than many private insurers. For example, according to data recently submitted by the Insurance Services Office to House Judiciary Committee Chairman Peter Rodino (D-N.J.), for each dollar businesses pay in premiums for product liability insurance, insurance companies pay out

\$.29 in claims and defense costs. 9/ The states have proved they can do a better job. In Ohio, for example, the state-run workmen's compensation fund takes in only \$.84 for every dollar it pays to injured workers, while privately-run workmen's compensation carriers take in as much as \$1.45 for every dollar they pay in benefits. 10/

Perhaps most important, state insurance programs may be the most effective response to insurers who threaten to withdraw from states in order to pressure legislators to repeal legislation insurers find objectionable, as occurred in West Virginia and as is occurring in Florida. The existence of such programs both makes it less likely that private insurers will withdraw and ensures that policyholders have an alternative insurance source if private insurers do withdraw.

A statute authorizing a state-run insurance company is attached as Exhibit F.

6. Establish interstate compacts

What occurred in West Virginia highlighted the gross disparity of bargaining power between a small state and the insurance industry. West Virginia is a very small market for malpractice insurers, with West Virginia doctors accounting

9/ See House Judiciary Committee press release, June 9, 1986 (data "undermines the companies' claims of massive losses and raises the specter of price-gouging." according to Chairman Rodino).

10/ A. Tobias, *The Invisible Bankers*, 168 (1982)

for a tiny fraction of U.S. malpractice premiums; malpractice insurers therefore would lose very little by withdrawing from West Virginia. For West Virginia doctors, on the other hand, malpractice insurance is essential. Both the malpractice insurers and the legislature recognized this, which is why the malpractice insurers won.

West Virginia could have fought back by starting its own insurance company. West Virginia also could have fought back by establishing an interstate joint underwriting association together with several other larger states -- say Ohio, Pennsylvania and New York. Under such a plan, as a condition of writing insurance in any of the member states an insurer would have to agree to insure a certain percentage of the risks in each state. Thus, if an insurer wished to withdraw from West Virginia it could do so -- but it could then no longer write insurance in New York, Pennsylvania or Ohio either, each of which is a huge insurance market. Insurer blackmail would therefore be much less likely.

States could also establish joint re-insurance programs. For example, if New York, Pennsylvania, Ohio and West Virginia established such a program, as a condition of doing business in any of those states an insurance company would be required to contribute a small percentage of its premiums -- say, 1/4 of 1% -- to fund a joint program that would write reinsurance in all four states, under underwriting and other standards established jointly by the member states.

A draft bill establishing an interstate re-insurance program is attached as Exhibit G.

C. Regulating More Effectively

1. Prohibit arbitrary cancellations

Under current law, insurance companies may cancel a policy at any time, without notice, for any reason or for no reason. During the peaks of the insurance cycle - when interest rates are high and insurers are therefore earning substantial investment income - they rarely, if ever, arbitrarily cancel policies. During the troughs of the insurance cycle, on the other hand, when interest rates and therefore insurers' earnings on their investments are low, insurers cancel even excellent risks, arbitrarily and without notice. This is the case today, and was the case 10 years ago.

The states should enact legislation that would prohibit midterm cancellations unless the policyholder has engaged in fraud or has failed to pay his premiums or there has been a change in the underlying risk. It is fundamentally unfair for a policyholder, who has entered into an insurance contract for a specified term, to suddenly find that contract cancelled before that term runs.

Nonrenewals, on the other hand, should be permitted, but only if the insurer gives the policyholder adequate notice of its intent not to renew, and a statement of reasons for not renewing.

Bills restricting cancellations and nonrenewals are

attached as Exhibits H1 and H2.

2. Require experience rating

Good drivers pay less than bad drivers for auto insurance, and homeowners who are good risks pay less than those who are bad risks. In contrast, in most states, good doctors and bad doctors pay the same rate: a doctor who has been successfully sued for malpractice several times pays the same rate as a doctor who has never had a claim against him. Many other professionals and small businesses also pay a set rate regardless of their individual claims experience, i.e., they are not experience-rated.

By requiring insurance companies to experience-rate all professional and commercial risks, just as they experience-rate drivers and homeowners, states could reduce insurance rates for most insureds. This is particularly true for medical malpractice insurance, since studies have consistently shown that a very small percentage of doctors is responsible for a very large amount of the malpractice. ^{11/} Absent experience rating, therefore, the majority of doctors, who rarely if ever engage in malpractice, subsidize the small minority of doctors who are frequent malpractitioners.

^{11/} See, e.g., Michigan Report on the Liability Crisis at 11 (1985) (19.3% of doctors accounted for 72.2% of claims; 58.1% had no claims); Florida Insurance Commissioner, Closed Claims Study of Medical Malpractice Insurance, 1975-82 (1983) (0.7% of doctors accounted for 24% of claims; one doctor for 31 claims); S. Ferber & B. Sheridan, "Six Cherished Malpractice Myths Put To Rest," 52 Medical Economics 150 (1975) (0.6% of Los Angeles doctors accounted for 30% of all payments).

A bill requiring experience rating is attached as Exhibit I1. Regulations specifying how doctors can be experience rated are attached as Exhibit I2.

3. Establish flex-rating

If insurance companies were fully subject to the antitrust laws, then rate regulation might be unnecessary; the market would determine the proper level of rates. However, because under the McCarran-Ferguson Act insurers may legally fix prices and engage in other anticompetitive activity, regulation of insurance rates is essential.

To allow the market to work as competitively as possible despite McCarran-Ferguson, insurance companies should be permitted to raise or cut their rates without approval by the insurance commissioner within a "zone of reasonableness" - say, 15% above and 15% below the existing rate. Above or below that rate, however, states should not permit a rate to take effect unless and until the insurance commissioner approves the rate. Requiring such prior approval of rates except those within the zone of reasonableness should both smooth out the insurance industry cycle and enhance competition in the industry.

A bill requiring prior approval of insurance rates except those within a zone of reasonableness - so called "flex-rating" - is attached as Exhibit J.

4. Beef up enforcement

It is well-established that state insurance departments

are understaffed and underfunded. According to the 1986 Yearbook of the American Academy of Actuaries, for example, 26 states have no actuaries - people who have been professionally trained to determine the adequacy of present rates on the basis of past claims experience. Moreover, of the 8,000 actuaries in the United States, only 64 are employed by state insurance departments; Aetna alone has twice as many actuaries as all the states combined.

The result is that insurance departments, no matter how dedicated, can not meaningfully scrutinize insurance company requests for rate increases; as Ken Merin, New Jersey's new insurance commissioner, has said, insurance departments often are simply "out-manned and out-gunned." ^{12/} Often, therefore, rate increase requests are effectively rubberstamped.

State insurance departments are similarly lacking in investigators, auditors and other professionals, as the U. S. General Accounting Office has found. ^{13/} Specifically, the GAO found that "most states do not have specialized examiners and few states have the capacity to do computerized audits," that "the authority of departments to order corrective action is very limited," and that only two of the 17 states it examined "conducted an original actuarial analysis enabling

^{12/} Journal of Commerce, July 8, 1986, at 1.

^{13/} See U.S. General Accounting Office, Issues and Needed Improvements in State Regulation of the Insurance Business (October 1979).

them to independently recommend the appropriate level of insurance rates."

The states should pass legislation requiring insurance departments to have on staff a specified number of actuaries auditors, investigators and other professionals, and appropriating adequate funding for such positions.

5. Close the "revolving door"

While some insurance commissioners are dedicated to the public interest and do yeoman work with limited resources, others lack the will to stand up to the insurance industry. For example, the GAO study found that most regulators do not have an "arms-length relationship" with the industry, and that about half of all insurance regulators come from and return to the insurance industry.

Clearly, prior experience in the insurance industry yields expertise helpful in regulating the industry. Conversely, one can learn much about the industry from regulating it, and can use that knowledge productively within the industry after leaving the insurance department.

Yet regulators must always hold uppermost the broad public interest, not the narrow, albeit legitimate, private interests of insurance companies, and an insurance commissioner must never allow his vigilance in guarding the public interest to be compromised by his looking toward a future job within the industry. Therefore, to eliminate the appearance of any conflict of interest, states should pass

legislation that would require state insurance commissioners to wait five years before going to work for any company they had regulated.

States should also seriously consider as candidates for insurance commissioner qualified individuals who have not worked in the insurance industry.

A bill that has gathered substantial support in Congress in the wake of the Michael Deaver scandal, which can be adapted to apply to state insurance commissioners and the insurance industry, is attached as Exhibit K.

6. Establish an Office of Insurance Consumer Advocate

Perhaps because insurance is such an arcane and seemingly boring issue, the consumer is rarely if ever represented in insurance rate hearings. This lack of consumer presence is compounded by the lack of an "arms-length relationship", as the GAO study put it, between the insurance industry and insurance regulators.

An insurance consumer advocate would represent the consumer point of view at rate hearings and ensure that the insurance department does not rubber stamp insurance company rate requests. An insurance consumer advocate might also cause insurance companies to moderate their requests for rate increases. A handful of states (South Carolina, Maine, Oklahoma and New Jersey) have already established such offices. New Jersey's is particularly effective: the cost of the consumer advocate's intervening is billed back to the insurance company seeking the rate increase, thus creating an