

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1747 SCOMM 69: HOUSE LIABILITY INSURANCE TASK FORCE, 1989-1990 315

designed to be self-supporting,¹⁷¹ but earlier this year most of the 12 JUA's in the nation were facing large deficits.¹⁷² Some wanted to expand their "base" by increasing their membership.¹⁷³ In other words, they were seeking subsidization from other insurers through legislation. Relatedly, physicians mutuals which wrote "long-tail" coverages have flirted with insolvency.¹⁷⁴ Among the most troubled has been Medical Liability Mutual Insurance Company (MLMIC) in New York, whose "shortfall" was close to \$750 million.¹⁷⁵

SUB-SUMMARY:

JUAs have worked for medical malpractice availability. But the price has been very high. And when it comes to making medical malpractice liability "affordable," the first answer has been some form of subsidy.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	6	8	9	5	28
AFFORDABILITY	6	6	11	5	28

CONCLUSION ON INSURANCE REFORMS:

Non-cancellation laws are an effective quick fix but can eventually be counter productive. JUAs work very well in assessing coverage, but they involve subsidization of one commercial enterprise by another raising fundamental questions of fairness. So do pools and captives. But with each there is some kind of trade off: Drying up of the normal market in the case of non-cancellation laws and JUAs; less solvency regulation and the third party claims question in the case of pools and captives; and, in the case of offshore captives, there are alien jurisdictions over whom U.S. based insureds and state governments have little regulatory clout in the event of claims disputes and/or insolvencies.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	13	20	20	20	73
AFFORDABILITY	8	14	31	20	73

135. O.R.S. 836-85001-85040

136. M.I.L 48A, 547A.

137. Response to Question 16, note 3 supra.

138. Nevada Insurance Department Regulations.

139. Note 137, supra

140. H.R.S. 294.9-C; responses to Question 16, note 3, supra.

141. M.I.L. 48A, 547A.

142. Response to Question 16, note 3 supra.

143. Washington Insurance Code 48.62-120W, 1979

144. Response to Question 18, note 3 supra.

Reform

VI.

REGULATORY REFORMS

When it comes to regulatory reforms the question focuses quickly on rating laws. But despite the focus, a wide universe of opinion remains as to which kind of rating law best promotes availability and/or affordability of insurance. In the crisis of 1985-86 it has not been unusual for a legislator and regulator to question the rating law in his or her state and to contemplate the alternative. As Mississippi Insurance Commissioner George Dale said in a follow-up interview:

"All the file and use states are looking at prior approval and all the prior approval states are looking at file and use."¹⁷⁶

At the same time, Commissioner Dale and others who have worked with insurance regulation have for years pointed out that rating laws cannot change prices overall, that premium levels will move where they will regardless of rating laws.¹⁷⁷ But, study has shown that where rate changes do not need government approval or sanction, rates can change more quickly to serve the availability needs of the real world market.¹⁷⁸

17. FILE AND USE/USE AND FILE/NO FILE ("Open Competition")

PURPOSE:

About half the states have laws designed to encourage competitive behavior and allow each company to set the own prices without State approval. The same laws do, however, require that rates not be excessive, inadequate, or unfairly discriminatory.

WHAT WORKS:

Among respondent states which have an open competition rating law, sources in only one, Tennessee,¹⁷⁹ believe its rating statute was effective in promoting availability and affordability of liability insurance.¹⁸⁰

In New York where file and use had been in effect since 1970,¹⁸¹ one legislative source qualified his enthusiasm for the statute this way:

"Open rating, where working, works great, however in a tight market, it has been used to create great instability in the marketplace."¹⁸²

In response to tight markets in the late 1960's, New York switched from prior approval to competitive rating.¹⁸³ In the after shock of price increases and dropped coverages of 1985-86, the State adopted, "flex rating."¹⁸⁴ So has Oregon.¹⁸⁵

And in California where the nation's classic "no file" law, the McBride-Grunsky Insurance Regulatory Act,¹⁸⁶ has been in effect some 40 years, Insurance Commissioner Roxani Gillespie has changed "no file" to "flex file." The Department now requires insurers to submit data

supporting rate increases of more than 25 per cent for liability insurance.¹⁸⁷

In promulgating the new rule, the Commissioner said:

"Historically, competition has been a strong regulatory force--to the benefit of the insurance buying public. However, due to significant operating deficits caused by extreme competition and rapidly increasing loss costs during the early 1980s, commercial liability insurers have imposed, in the last two years, substantial rate increases which have caused hardship in many cases for commercial insureds and their customers. Given these recent conditions, some regulatory method is therefore necessary whereby the Commissioner can be informed in a timely manner of substantial rate increases in commercial liability insurance."¹⁸⁸

(SUB-SUMMARY ON FILE AND USE AND PRIOR FOLLOWS PRIOR APPROVAL SECTION.)

DOES NO LAW WORK BEST?

Ironically, some definite information regarding non-personal liability insurance comes from Illinois, which has no rating law. In Illinois, combined ratios (losses plus expenses divided by premium) for commercial insurance lines, as well as for other liability and medical malpractice lines, show that Illinois insurers of outgo to income is consistently higher than the regional and countrywide ratios.¹⁸⁹ Insurers' losses are as high or higher in Illinois as in other states which have rating laws.¹⁹⁰

In other words, Illinois businesses and professionals are getting more for their money than their neighbors in Iowa, Indiana, Wisconsin, Missouri, and Michigan.¹⁹¹

The following charts track those ratios.¹⁹²

18. PRIOR APPROVAL

PURPOSE:

To meet the same statutory mandate, the laws in some other states provide that the rate changes cannot go into effect without approval of the Insurance Commissioner.

BACKGROUND:

Half the states have prior approval rating laws.

WHAT WORKED:

Sources in only two respondent jurisdictions, Hawaii and Puerto Rico, saw their prior approval laws¹⁹³ as "very effective" in fostering both availability and affordability.¹⁹⁴

WHAT DIDN'T

From that point the cheers subside. Nebraska sources say that the state's prior approval law, in effect since 1947, has produced "no change" in liability insurance availability and/or affordability.¹⁹⁵

In South Carolina, which has had prior approval for the same 40 year period, sources also say there has been no difference from what would have happened anyway.¹⁹⁶

In other jurisdictions, sources did not say if the law had any effect, positive or negative. In three states, Alaska, Washington, and West Virginia, there have been a total of more than a century of rating law years, but no responses as to whether those laws had been effective.¹⁹⁷

SUB-SUMMARY:

In regard to both kinds of laws, recurring availability and affordability crises speak for themselves. Under both forms of law, rates have gone up and insurance prices have risen sharply.

Assessing the past (or future) effectiveness of insurance rating law is not easy.

The sudden skyrocketing of prices beginning in late 1984 proved that insurance buyers could be subject to fearsome increases. But low prices, whether produced from private competition or government suppression, are only one test of a law's effectiveness. Another test is whether the law permits the industry to respond to changes, such as a serious capacity shortage, produced from one or several causes e.g. falling investment yields, underwriting losses, herd driven premium prices. Under more permissive rating laws like the file and use statutes, the industry has been able to begin to restore that capacity rather quickly, albeit painfully, in many cases. Increases such as took place in early 1985, would have been much more difficult and might have not been so widespread under a system where the full exercise of prior approval laws was dominant.

But still another test is the law's ability to discourage irresponsible price cutting or "price war," especially the kind such as took place in the late seventies and the first half of the present decade. While that memory is still fresh it may be worthwhile to note that the possibility of price wars had been dismissed not so long ago. In 1969, as New York began consideration of "open" rating, then New York Superintendent of Insurance Richard E. Stewart wrote:

"Important segments of the insurance industry have urged until recently that if rates were left to the forces of open competition, the economic law of the jungle would apply and produce chaos. They assert that unbridled competition would unleash rate wars and ruinous competitive practices...

"There is no evidence in the past two decades that greater reliance on the forces of the marketplace to set rates results in price wars...."

But the price wars did come, brought on by changes that no one could have predicted when that statement was made nearly 20 years ago. Competitive rating laws did not prevent the price war. But neither did prior approval. Prior approval may be the law in half the states but well over half the states have experienced availability and affordability problems in 1985-86. In rate regulation, the search continues.

FILE & USE

	VE	E	NC	NK/DA	CP	TOTAL
AVAILABILITY	2	3	7	5	4	21
AFFORDABILITY	2	2	8	5	4	21

PRIOR APPROVAL

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	5	0	3	17	25
AFFORDABILITY	3	3	3	16	25

19. FLEX RATING

PURPOSE:

To realize the benefits of sensible competition, while maintaining a degree of control, New York and Oregon have adopted flex rating in nearly all commercial lines and most professional liability lines, except medical malpractice.¹⁹⁸ It is too early to judge the effect.

20. EXCESS PROFITS

PURPOSE:

To keep insurers from taking advantage of their advantage in selling what many consider to be essential to personal, professional, public, and corporate well being, curbs on profits have been proposed.

Nebraska, New York (commercial and private passenger auto), North Carolina and South Carolina have excess profit provisions.¹⁹⁹ Nebraska and New York report that the measures have effected "no change."²⁰⁰ South Carolina sources said the effect was not known.²⁰¹

Few question the value of excess profits provisions. But they can be relied on only where there is adequate funding to investigate, document and prosecute possible abuses.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	0	2	2	4
AFFORDABILITY	0	0	2	2	4

21. INCREASED DATA TO INSURANCE DEPARTMENTS

PURPOSE:

To better understand what is really happening in regard to insurance profits, premiums, losses etc., legislators and insurance commissioners have been asking for more data from insurers.

BACKGROUND:

Many insurance law changes in recent years have included a provision that companies furnish specific data to State Insurance Departments. The legislation seldom, if ever, provides for additional personnel and computer resources to handle the additional data.

WHAT WORKED AFTER A WHILE:

Oregon's experience provides an example. Closed claim data, filed pursuant to the state's 1975 medical malpractice reform law,²⁰² remained unused until the State Medical Association refined the data.²⁰³ Now the sorted and refined data has helped the Department spot and review claim and loss trends and establish a climate where medical malpractice liability insurance is available in the private voluntary market.²⁰⁴ The Oregon Department reports that "there is no availability problem" in medical malpractice insurance in Oregon.²⁰⁵

Sources in Tennessee report that its 1977 law²⁰⁶ requiring the filing of closed claims data to the department was effective in regard to medical malpractice.²⁰⁷

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But favorable opinions in regard to increased data are not universal. Michigan reports that information furnished to the Department

in regard to medical malpractice, government and commercial liability yielded "no change."²⁰⁸

SUB-SUMMARY:

Quality data like that produced from closed claim studies can help enhance availability. The key is having the staff and equipment to refine and apply the needed information.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	3	5	2	10
AFFORDABILITY	0	3	5	2	10

CONCLUSION ON REGULATION:

"Open" rating has enabled the market to recover faster and respond to its environment, with price moving up or down -- as experience has shown all too clearly. But prior approval has not kept rates down for long. It remains to be seen whether flex rating will offer the best -- or worst -- of both worlds. Both excess profits laws and measures requiring increased data can help if legislators provide regulators with the resources for implementation.

	VE	E	NC	NK/DA	CP	TOTAL
AVAILABILITY	7	6	17	26	4	60
AFFORDABILITY	5	8	18	25	4	60

176. Telephone interview with George Dale, Commissioner of Insurance, State of Mississippi, July 1986.

VI.

ADMINISTRATIVE ACTION

In the crisis of 1985-86, several Commissioners were able to effect significant relief in some lines of insurance -- especially when the legislature had already given them the powers they need to bring about industry cooperation.

22. MARKET ASSISTANCE PROGRAMS^{**}

To establish an additional, medium of communication between buyers and sellers of insurance in a tight market, Insurance Commissioners, acting as motivators, have established so called Market Assistance Programs (MAPs).

BACKGROUND:

During the crisis of 1985-1986, Market Assistance Programs have proved themselves an effective catalyst to availability in some lines of liability insurance.

Where MAP programs have been most effective, notably in New Hampshire and North Carolina, the legislature had already passed "stand-by JUA" legislation,²⁰⁹ meaning that the commissioner could mandate the establishment of a JUA to write insurance in a troubled line.

With over 90 per cent of the applications received actually placed, New Hampshire Commissioner Bergeron sees the eventual phasing out of the MAP, with the risks it covers -- municipal, day care, and liquor liability placement going back to the normal market or self-insurance.²¹⁰

North Carolina Commissioner James E. Long reports an equally high percentage of placement of risks handled through his Department's MAP Program.²¹¹

Several respondent states were divided on whether the MAPS were effective.

As with other areas of inquiry, several states declined to offer answers regarding the effectiveness of their MAP programs.

OTHER ADMINISTRATIVE ACTIONS:

In Oregon, Commissioner Josephine M. Driscoll used administrative powers, as noted earlier in this report, to ban cancellations in commercial insurance and to initiate flex rating.

SUB-SUMMARY

There is little question that a MAP can be effective in making insurance available, especially when the Commissioner has a JUA among his persuasive assets. One caution: different MAPs have addressed different lines of insurance in different states. It is also fair to say they have been successful in lines where at least part of the problem was not related to reality but only perception, as has been the case with day-care. No one is beating the drums for proposed MAPs for such real

lingering availability and affordability problems such as hazardous waste, medical malpractice, asbestos removal liability.

208. N.C.I.C. 58-4500-460.

209. Remarks by Louis E. Bergeron, COIL Seminar, note 1, supra

210. Remarks by James E. Long, Insurance Commissioner, State of North Carolina, COIL Seminar note 1, supra.

** The survey responses for MAPs are not included in any above tabulations. Map experience is still very new, while some MAPs may be phased out as the need becomes less acute. However, there is little doubt that standby JUA law, not included in the Questionnaire provides Commissioner with formidable leverage in encouraging insurers to cooperate with MAP programs.

Also worth noting is the fact that from early indications, it is apparent that MAPs have been effective in lines of insurance affecting smaller businesses and institutions such as dram shop and day care liability as distinct from larger long tale and "open ended" risks like hazardous waste liability.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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January 30, 1987

MEMORANDUM

TO: Representative John Sund
ATTN: Shari Kochman
FROM: Penelope Weyhrauch
Legislative Analyst
RE: Federal Government Medical Malpractice Insurance
Research Request 87.097

You asked for information regarding medical malpractice insurance for federal government physicians. Federal government physicians include: physicians working for the U.S. Public Health Service (USPHS), Indian Health Service (IHS) and Veteran's Administration, physicians in the military and physicians in other federal government agencies. According to John Fanning, the Legislative Coordinator with the U.S. Public Health Service, Office of Health Planning and Evaluation, federal government physicians are not covered by malpractice insurance. An individual who is injured by a federal government physician in the normal course of the physician's job requirements may sue the federal government under the Federal Tort Claims Act. When an individual is successful in their claim against the federal government, damages are paid from a fund administered by the U.S. Department of Justice.

Jeffrey Axelrad, Torts Branch Director with the U.S. Department of Justice, confirmed that federal government physicians are protected from individual liability for malpractice by the Federal Tort Claims Act. Mr. Axelrad said that the vast majority of federal government physicians are exclusively protected, which means suing the federal government under the act is the only remedy an injured individual has. A very small percentage of federal government physicians may also be individually liable. Physicians with the U.S. Bureau of Prisons are the largest group of federal government physicians not exclusively protected under the act. An individual with a malpractice claim against a physician not exclusively protected will first sue the federal government and then the physician.

Representative Sund
January 30, 1987
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Claims which exceed \$25,000 are handled by the U.S. Department of Justice. Claims under \$25,000--which represent the bulk of malpractice claims against the federal government--are handled by the U.S. Attorney's Office. Mr. Axelrad said that comprehensive statistics on the number of malpractice claims brought against the federal government are no longer compiled because many different agencies would be required to coordinate records and the cost of compiling and coordination exceeds the value of maintaining such statistics. Although no records of the number of claims filed are available, in 1986, the U.S. Department of Justice settled 154 malpractice claims asking for damages of more than \$25,000. The total settlement cost of these claims was \$33.3 million.

Lawsuits brought against the federal government must be processed through the Department of Justice and are subject to the department's supervision.¹ Mr. Axelrad said that the number of malpractice lawsuits brought against the federal government is increasing annually. He estimated that 400 malpractice lawsuits were brought against the federal government in 1985. In 1986, the number of lawsuits increased to 600. Of the estimated 600 lawsuits in 1986, 52 lawsuits asking for damages of more than \$200,000 were litigated, and a total of \$27.7 million was paid out in settlements for these cases. Many cases take several years to reach settlement and approximately one-tenth of the suits filed are dismissed. Mr. Axelrad said that statistics on malpractice lawsuits handled by the U.S. Attorney's Office are incomplete and difficult to obtain.

In regard to military physicians, I contacted Captain Hughes, Administrator of the Troop Medical Clinic at Elemendorf Air Force Base in Anchorage. Captain Hughes said that military personnel cannot sue the federal government in court if injured by a military physician, and are compensated for service-connected disabilities only. Families of military personnel can sue the federal government under the Federal Tort Claims Act.

* * *

I hope this information is helpful to you. If you have any questions or would like additional information, please contact our agency.

PW

¹Malpractice claims may be filed with agencies and settled without a lawsuit.



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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

February 19, 1986

MEMORANDUM

TO: Representative Steve Rieger
ATTN: Lisa Rubenstein
FROM: Mark Torgerson *MT*
Legislative Analyst
RE: Insurance and Tort Reform
Research Request 86-089

You asked this agency to address a number of issues on tort reform, including:

- California's cap on medical malpractice damage awards;
- current regulation of insurance premiums in Alaska, and the effect of damage awards on insurance premiums;
- the impact of insurance rates on State commerce;
- the impact of tort claims on the State treasury; and
- tort reform efforts in other states and Congress.

We contacted private insurance companies, the Alaska Department of Insurance, the Alaska Department of Administrations Division of Risk Management, State and national medical associations, the American Trial Lawyers Association, the Insurance Services Office, and the National Association of Insurance Commissioners.

Effect of California's Limit on Damages in Medical Malpractice Cases

California's Legislature enacted the Medical Injury Compensation Reform Act (MICRA) in 1975. As you know, a section of the act limits the dollar damages for noneconomic losses incurred by an injured party in

a medical malpractice suit to \$250,000.¹ According to Ron Neupauer, Underwriting Manager for the Medical Insurance Exchange of California (MIEC), the effect of the section's damage "cap" on jury awards, out-of-court settlements and malpractice insurance rates cannot be easily quantified. Mr. Neupauer explained that the statutory cap was appealed in the courts, and its constitutionality was questionable until the United States Supreme Court recently refused to hear an appeal from the state court, thereby affirming the law's validity. Mr. Neupauer asserted that the provisions in the law were not strictly followed or enforced because of this "constitutional cloud." Mr. Neupauer further stated that the law's effect on the size of damage awards and insurance costs may be discernible in the future.

A recent letter written by Jay Dee Michael of the California Medical Association provides the following information on the size of malpractice awards and on malpractice premiums in California:

	<u>Nationwide</u>	<u>California</u>
Average size of malpractice awards	\$974,000	\$396,000
Premium increase in average policy since 1975	300 percent	150 percent
Premium increase in average policy in 1985	33 percent	15 percent

We contacted Mr. Michael, who was unsure of the year(s) used to calculate the size of the award and the source of the information. We are attempting to verify these data and will forward our findings to you.

The above average shown for California malpractice awards conflicts with data provided by the California Board of Medical Quality Assurance. By law, attorneys, insurers and courts must report malpractice settlements, judgments and arbitration awards of \$30,000 or more to the board. Ms. Joyce Miller, Administrative Analyst for the board, provided data showing that the average award per reported claim increased by 86 percent between 1980 to 1984, from \$153,929 to \$286,301. Because this does not include payments for settlements and judgments less than \$30,000--which usually comprise the majority of claims--these averages overstate the actual average settlement.

Mr. Neupauer stated that MIEC's average annual increase of premium in the state was just under five percent during the past 10 years. He also stated that MIEC also insures doctors in Alaska, Nevada, Idaho and

¹Noneconomic losses in the act include pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.

Representative Rieger
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Hawaii. In these states, the rate of premium increases has been more rapid than those in California, and rates for all of these states but Idaho are now higher than those in California.² According to Mr. Neupauer, the MIEC believes that California's tort reforms "have had a significant moderating effect" on the rate of increase in malpractice premiums for California doctors.³

Regulation of Insurance Rates in Alaska

In response to your request for information on regulation of insurance rates in Alaska, we provided your office with a copy of House Research Agency memorandum 85-239, "Regulation of the Insurance Industry in Alaska." As that memo points out, AS 21.39.010 gives the Alaska Division of Insurance rate-regulating authority. Each insurer must file its proposed rates and supporting data with the division, which can disapprove rates deemed excessive, discriminatory or inadequate to make a reasonable underwriting profit.

In addition, the division allows "deviations" from the approved rates. The majority of insurers are members of an approved rating organization (such as the Insurance Services Office, Inc.), which files standard rates on members' behalf. Alaska Statute 21.39.070 provides that rating organization members may apply to the Division of Insurance for a deviation from the standard rates. The division approves requests for deviations if they meet the same general standards required in rate filings (excessiveness, etc.). According to Don Koch, Chief of Market Surveillance for the division, there is no limit to deviations, but each must be justified by the insurer and approved by the Division of

²Mr. Neupauer stated that the rates MIEC charges Alaska's doctors now exceed MIEC's California rates by an average of 32 percent. At one time, MIEC's rates for Alaska and California were identical.

³"Tort reforms" includes other provisions of the 1975 act. For example, the act provides that evidence of collateral sources of benefits available to the injured party may be admitted by the court. Lawyers argue that this encourages juries to reduce an injured party's award accordingly.

Insurance.⁴ Insurers may request a deviation on all insurance they sell or may limit deviations to a specific class within one line of insurance. According to Richard Block of the Alaska National Insurance Company, many insurers sold insurance below filed rates until recently.

Correlation Between Damage Awards and Insurance Premiums

You asked if there is any correlation between the size of damage awards and insurance premium rates. Insurance companies generally set rates by determining the amount needed to pay for claims and for "loading," which is intended to cover the insurer's sales expense, overhead and profit. Losses include payments for settlements and court-awarded damages. Although the size of damage awards affects the extent of a company's underwriting losses, an insurance company may decide not to adjust premiums if its return on invested funds compensates for the losses.

For example, liability insurance premiums decreased in the late 1970s and early 1980s while underwriting losses during this same time increased steadily. Note, however, that interest rates were at record high levels during this period. Lower interest rates in recent years have reduced investment income causing insurance companies to pay more careful attention to underwriting losses and increasing premiums when underwriting losses are experienced.

Impact of Insurance Rates on State Commerce

You asked us to determine the impact of rising insurance rates on business activity in the state, specifically, the number of jobs lost, businesses closed, or professions changed to reduce liability risks. To the best of our knowledge, there is no method to separate the effects of insurance rates from the effects of other economic factors which influence a business's ability to make a profit. These other factors include the number of competitors, demand for business services, regulatory impacts, and operating costs.

⁴In addition, insurers may request "schedule ratings" which allow further deviation from the rate filing. These deviations apply to specific factors such as safety or business location. According to Mr. Koch, insurers must document and justify deviations allowed buyers. Mr. Koch stated that the division can make field investigations and declare rate law violations for unjustified deviations. Because of staff shortages, the division has made no field investigations during the past two years.

We contacted 13 state commercial air and surface carriers and asked each to assess the impact of insurance rates on their business activity.⁵ One of the 13 companies--Seair--stated that they stopped operations specifically because of unavailability of insurance.⁶ The other companies have continued operations although some have laid off employees who have not normally been laid off. The owners of companies affected by lay-offs stated that these were caused by a number of factors, including increased competition (resulting in less revenue) and rising operating costs. In addition, all of the contacted companies stated that insurance costs were a major factor affecting operating costs.⁷

We contacted Martha MacDermaid, Executive Director of the Alaska State Medical Association (ASMA), to ascertain the impact of insurance costs on the medical profession. Ms. MacDermaid stated that the ASMA recently surveyed members to determine the effect of insurance costs on business. Although the results of the survey are incomplete, Ms. MacDermaid stated that some obstetricians are quitting the obstetric practice because of insurance costs. Moreover, some doctors have "gone bare," that is, they have decided to practice without insurance protection. We will send the results of the ASMA survey when it is received.

Impact of insurance rates on tourism. Like other businesses, those involved in tourist-related enterprises (boating, aviation) are paying more for liability insurance than was required in prior years. Some of these businesses cannot get the amount of coverage which they previously purchased; others cannot afford it. According to Mr. Hank Rust of Rust's Air Taxi in Anchorage, his business paid \$100,000 in 1985 for insurance on six airplanes. Mr. Rust has been told that identical coverage could double when the policy is renewed in 1986.

Mr. Rust further stated that the additional insurance costs must either be absorbed as an additional cost or passed on to customers via more expensive fares. Mr. Rust said that profits could be affected in either case because the demand for services is roughly the same each

⁵Attachment A includes the companies contacted.

⁶According to Seair's President Al Gay, the company can get insurance for five of the airline's 32 planes.

⁷As you know, the rising cost and unavailability of liability insurance is a nationwide phenomenon. For example, the American Trucking Association recently claimed that 100 companies failed financially because of increased insurance costs.

year, and competition has increased because of the recent deregulation of the Alaska Transportation Commission. Mr. Rust noted that increased fare prices could 'scare away' potential customers.⁸

Insurance Rate Increases During the Past Two Years. According to Richard Block, the only way to accurately determine insurance cost increases for businesses and professionals is by individual survey. As noted, insurance companies file rates with the Division of Insurance. However, insurers usually deviate from the filed rates based upon the particular risk involved and competition for the business. In recent years, insurance premiums were often 20 to 50 percent below filed rates. Currently, premiums are at or slightly above filed rates. In other words, premiums for many buyers can more than double with no change in the standard rate filing. This makes standard rate filings of little value in an attempt to determine premium increases. Moreover, the Division of Insurance does not keep usable records on deviations.

Premium increases for some businesses have been proportionately larger than increases for others. For example, the American Medical Association reported that average increases for general practitioners--considered a low risk segment of the medical profession--increased 31.4 percent during the past two years. However, average premiums for all physicians increased by 44.8 percent during the same period.

As another example, the National Society of Professional Engineers reported that average premiums for engineers and architects increased by 15 percent in 1984 and 35 percent in 1985. However, the average premium increases for structural engineers has been higher because they have experienced the worst loss records in the profession in recent years.

Impact of Tort Claims on the State Treasury.

You asked us to find out the number of tort claims filed against the State in 1985, the number of cases the State lost, payments on these cases, and the range of damage awards paid by the State. According to information supplied by the Department of Law, 120 tort complaints were filed against the State of Alaska during fiscal year 1985, and 78 complaints have been filed during fiscal year 1986. These complaints include physical injury cases and nonphysical injury claims such as sexual harassment or wrongful termination. A list of these cases is

⁸We contacted Dave Stewart of the Alaska Division of Tourism. According to Mr. Stewart, the division received no complaints related to insurance from businesses involved in the tourist industry.

included as Attachment B. The Department of Law does not record whether it wins or loses a case; nor does it keep records of damages awarded. However, the Department of Administration's Division of Risk Management compiles data on all claims filed by third parties against the State. These records include the legal complaints handled by the Department of Law. In addition, the data include claims for physical and nonphysical injuries, with no available breakdown between the two types. Attachment C contains tables from the Division of Risk Management. These tables contain historical data on third-party claims filed against the State. Those categories which contain predominantly third-party physical injury claims include general liability, malpractice and auto liability. Attachment C also contains a table showing frequency, severity and average of general liability claims paid since 1980. Note that most claims incurred are in the \$0-\$50,000 range.

The following table shows total State losses for primarily third-party physical injuries in fiscal years 1983 to 1986. Outstanding reserves are estimated amounts needed to pay on unsettled claims. Loss and expense payments include amounts paid for claims and related litigation expenses during the year. Recoveries include amounts received from other insurance sources. As the table illustrates, the State has incurred almost \$8,000,000 for filed injury claims during the past four years.⁹

TABLE 1
SUMMARY OF LOSSES
GENERAL LIABILITY, AUTO LIABILITY AND MALPRACTICE

Fiscal Year	Outstanding Reserves	Loss Payments	Expenses Payments	Recoveries	Net Incurred
1983	\$1,726,290	\$810,034	\$477,807	\$7,448	\$3,021,579
1984	1,165,907	551,688	294,546	9,306	2,021,447
1985	1,562,392	401,734	214,586	241	2,178,953
1986	<u>624,545</u>	<u>58,806</u>	<u>8,095</u>	<u>0</u>	<u>691,446</u>
Total	\$5,079,134	\$1,822,262	\$995,034	\$16,995	\$7,913,425

⁹Note that some injured parties with potential claims against the State have probably not filed their claims. In addition, recoveries lag losses and reserves may not necessarily equal losses paid. The actual net incurred loss will not be known until all cases are settled.

Representative Rieger
February 19, 1986
Page Eight

Tort Reform in Other States and Congress

In order to address your question on tort reform activity in other states during the past five years, we sent requests for information to all 49 states and a number of congressional committees. When the information is received, we will forward our findings.

In addition, Attachment D contains a list of medical malpractice legislation enacted between 1971 and 1985. During this time, eight states placed statutory caps on malpractice damages while thirteen states limited attorney contingency fees. Moreover, the statutes in 12 states allow periodic payments on damage awards.¹⁰

Congressional Bills. There are a number of insurance-related bills pending in Congress; Attachment E provides a summary of the proposed legislation. Please contact our agency if you wish to review copies of these bills.

I hope that this information is helpful to you. Please call me if you have additional questions.

MT

Attachments

¹⁰States with damages caps are California, Indiana, Louisiana, Nebraska, New Mexico, South Dakota, and Virginia. States with limits on contingency fees include California, Florida, Indiana, Iowa, Michigan, Nebraska, New Jersey, New York, Oregon, South Dakota, Tennessee, Virginia, and Utah. Periodic payments are allowed in Alaska, Arkansas, California, Delaware, Florida, Indiana, Louisiana, Maine, Maryland, New York, South Carolina and Wisconsin.

Attachment A

Businesses Contacted for this Memorandum

<u>Air Carriers</u>	<u>Location</u>
Alaska Aeronautical Industries	Anchorage
Rust's Air Taxi	Anchorage
Seair	Anchorage
Wilbur's Flying Service	Anchorage
Harold's Air	Fairbanks
Cook Inlet Aviation	Homer
Channel Flying	Juneau
 <u>Trucking Firms</u>	
Big State Trucking	Anchorage
Carlisle Enterprises	Anchorage
Frontier Transportation	Anchorage
Lynden Transport	Anchorage
Air Land Transportation	Fairbanks
Weaver Brothers Trucking	Kenai

ATTACHMENT B

**Special Tort Report
February 11, 1986**

FY '85

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
----	----	----	----	----
33000185	2602	BILLINGSLEY V SMITH (-----DCAK)	840702	850919
33000285	1801	SMITH D&E V ST (PROP DAMAGE--TRCT)	840724	840904
33000385	1603	POLLARD V KALWARA & ST (UNLAWFUL SEIZURE--TRCT)	840724	850424
33000485	9987	DAVIDSON V ST (NEGLIGENT DESIGN--TRCT)	840730	000000
33000585	3806	URQUHART V ST & DON FRANK (GRAVEL OVERLOAD--TRCT)	840803	841231
33000685	2602	MCWAIN V WOOTEN & ST (DOT/PF IMPROPER GRADING--TRCT)	840810	000000
33000785	2602	SOUZA V ENDELL & ST (1983 FINGER INJURY--USDC)	840810	000000
33000885	1603	STANDBERG V ST (KLEHINI DROWNING--TRCT)	840813	000000
33000985	2601	GOVT EMPL INS CO V HOWELL (PD--TRCT)	840820	840829
33001085	2602	DEWITT V ST (FAIL TO PROVIDE MED ASST--TRCT)	840821	000000
33001185	9915	MYERS V ST (FOSTER CARE PLACEMENT--TRCT)	840829	000000
33001285	9994	BICKMORE V ST (1983--TRCT)	840829	840919
33001385	3806	YODER V ST (INTENTNL TORT OF CO-WORKER--TRCT)	840829	850403
33001485	2602	LOCKHART V BETZ (1983 RACE DISCRIM--TRCT)	840829	850814
33001585	9902	ROBERTS V ST (UNSWTH)	840914	000000
33001685	9950	MORONEY V ST (NEG SUPER KOR--TRCT)	840906	000000
33001785	3806	CRANE V WILKIE & ST (RAPE IN STA PK LOT--TRCT)	840906	000000
33001885	3806	NORMAN V NC MACHINERY (FAIL TO INSPECT VEHICLE--TRCT)	840906	850701
33001985	1318	SKULTKA V ST (FISHERMAN--TRCT)	840919	860131
33002085	2601	LOCKHART V BETZ (1983 RACE DISCRIM--DCAK)	840919	841114
33002185	2422	K & R ENTERPRISES, INC V ST (NEG RECORDKEEPING--TRCT)	840920	850828
33002285	2602	PRZYBYLA V JOHNSTON (HARRASS ST TROOPER--TRCT)	840925	000000
33002385	9955	NICKERSON V ST (1983--TRCT)	840928	860131
33002485	3806	HOLZHEIMER V CLARK (CIV RTS '83--TRCT)	840928	000000
33002585	3806	SCHEIBL V CLARK & ST (EXCESS FORCE--TRCT)	841012	000000
33002685	9989	VANDER SLOOT V VAN GELDER (EXCESS FORCE--TRCT)	841012	851107
33002785	3806	STRACK V ST (NEG HWY MAINT--TRCT)	841012	841231
33002885	3806	L&H ENTERPRISES V ST (DETRIMENTAL REL--TRCT)	841012	000000
33002985	2316	MANCUSO V ST (DAMAGE TO SEIZED VESSEL--TRCT)	841026	841114
33003085	9953	FAIKS V PITTMAN (SLANDER--TRCT)	841026	000000
33003185	9955	SANFORD, M V ST (IMPROPER GAS DISPOSAL--TRCT)	841102	000000
33003285	2804	SHADE, A V ST (DEFECTIVE PLANE TIEDOWN--TRCT)	841102	000000
33003385	9989	DARBYSHIRE, I V ST (4TH AMEND/1983--TRCT)	841102	000000
33003485	4005	NEWSOM, P V DICKENS, H (CIVIL RIGHTS/1983--DCAK)	841102	850513
33003585	9953	LUPRO, INC (CAP. OFFICE SUPPLY) V ST (ANTITRUST--TRCT)	841121	000000
33003685	9994	ST V MORRISON (JAIL SUPERVISION--)	841121	000000
33003785	9945	NELSON, J V ST (UNSWTH--TRCT-WA)	841220	000000
33003885	2602	ST V DUFREY, M (WC--TRCT)	841220	000000
33003985	9902	RYAN, A V. ST (UNSWTH--TRCT-WA)	841220	000000
33004085	9915	RICHEY, B V ST (FAILURE TO MONITOR--TRCT)	841220	000000
33004185	9945	DONALDSON, M V ST--(BREACH OF WC SETTLEMENT--TRCT)	841224	000000
33004285	9955	RECTOR V ST (EDDIE--TRCT)	841224	850919
33004385	9989	JUDICIAL MISCONDUCT	841224	000000
33004485	2602	ANDERSON V WILSON (1983 COPYRIGHT INFRINGE--FED.)	850104	000000
33004585	9989	BENKA, J V AK POWER AUTHORITY (WRONGFUL TERM--TRCT)	850108	850429
33004685	9989	KIDWELL, S V AK POWER AUTHORITY (WRONGFUL TERM--TRCT)	850108	000000
33004785	9989	ARMOUR, C V. AK POWER AUTHORITY (FAIL TO INSPECT--TRCT)	850108	000000
33004885	2602	WILSON V. MCCONNELL (PI--TRCT)	850108	851231
33004985	1603	BOEING JETFOIL CONTRACT NEGOTIATION	850111	850111

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
33005085	1603	BARRETT V ST (PI S&F--)	850111	850111
33005185	1603	ZABEK, B V. ST (SEX HARASSMENT--TRCT)	850115	000000
33005285	9953	NICK, E V. ST (API NEG RELEASE--TRCT)	850123	000000
33005385	9955	HOFF, J V. ST (HWY MAINT--TRCT)	850123	000000
33005485	1603	HAMMOND V ST (NEG HWY MAINT--TRCT)	850123	850123
33005585	9989	WILLMARTH, R V ST (FALSE ARREST--TRCT)	850123	000000
33005685	9905	DORIS, C V. API (NEG RELEASE--TRCT)	850123	000000
33005785	1417	BULCOA V. O/S SMARAGD & ARC (WRGFUL DEATH/ADMIR--TRCT)	850123	000000
33005885	9953	AGF CONSTR. INC V. ST (NEG SUPER IC--TRCT)	850131	000000
33005985	2601	1985 SERVICE RECEIPT (ADMIN. FILE--ADMIN)	850131	850227
33006085	2602	SPECIAL LITIGATION MISC (ADMIN FILE--ADMIN)	850131	851118
33006185	1318	MASON V LYNCH V NANGLE (NEG RECORDKEEPING--TRCT)	850201	000000
33006285	1603	ALMONTE, L V ST (S&F--CLAIM)	850214	860114
33006385	1603	HEUSSLER V HOLBROOK (HWY MAINT--CLAIM)	850214	000000
33006485	2420	EITEL, G V HUNT (JUDICIAL ABUSE--DCAK)	850219	000000
33006585	1603	CHURCH, K V ST (NEG DESIGN--CLAIM)	850227	850802
33006685	9911	BROWNE, S V COTTLE, A & ST (SEXUAL HARASSMENT--TRCT)	850228	000000
33006785	9953	CHRISTIAN, C V ST (HWY MAINT--TRCT)	850301	000000
33006885	9950	HANSON V ST (NEG BLASTING--TRCT)	850301	000000
33006985	3806	CONSUMERS INSURANCE CO V ST (HWY MAINT--TRCT)	850308	000000
33007085	1801	LOY V ST (TRESPASS--TRCT)	850308	000000
33007185	3806	GALLAHAN, R V ST (MALPRACTICE--TRCT)	850308	850730
33007285	3806	YODER V ST (APPEAL)	850308	000000
33007385	3806	CONRAD V ANDERSON & ST (PI/HWY MAINT--TRCT)	850312	000000
33007485	9996	SAHM V ST (SEXUAL HARASSMENT--TRCT)	850320	851227
33007585	1603	BAUDER, B V ST (NEG INVESTIGATION--CLAIM)	850328	000000
33007685	3019	BLAKE, S V HALL, J (FALSE ARREST--TRCT)	850328	860122
33007785	1603	DELANEY, L V ST (EMPLOYEE SANCTION--CLAIM)	850328	000000
33007885	1603	JOHN, M V LARSON, R (INMATE PROPERTY LOSS--TRCT)	850403	000000
33007985	1603	KUNTZ, J V ST (FALSE ARREST--TRCT)	850403	000000
33008085	2602	TETLIN VILLAGE COUNCIL V THORSRUD (TRESPASS--TRCT)	850405	000000
33008185	9991	BOUFFIOUX, T V ST (FAILURE TO WARN-SUICIDE--TRCT)	850405	850725
33008285	9987	KALLSTROM-DAVISCOURT CONST V ST (CONTRACT NEG--TRCT)	850410	000000
33008385	4014	MCBETH, J V ENDELL, R (1983 CIVIL RIGHTS--TRCT)	850410	850904
33008485	2601	LACK, J V ST & LACK, L (PFD GARNISHMENT--TRCT)	850410	850828
33008585	9915	BEISH V ST (NEG LICENSING--TRCT)	850410	000000
33008685	3013	RUBALACAVA V ST (APPEAL--USDC-AK)	850417	851121
33008785	1603	WILLARD, K V JAMES, J (NEG RELEASE FROM API--TRCT)	850424	000000
33008885	9900	KELLY V ST (C & U PUNISHMENT--USDC-AK)	850424	000000
33008985	9955	Q.C. COMPANY V ST (FAIL TO DO PLAN REVIEW--TRCT)	850424	000000
33009085	9989	JOHNS V JOLIKER (FALSE ARREST--TRCT)	850424	000000
33009185	9987	BLACKBURN V ST (FERRY S&F--TRCT)	850509	000000
33009285	1603	DUNNING, R ST (FALSE ARREST--USDC-AK)	850509	000000
33009385	3013	STEPHENS, C V. ST (WRONGFUL COLLECTION--TRCT)	850509	000000
33009485	9987	CAMERON V. ST (INMATE INJURY--TRCT)	850509	000000
33009585	4004	COSTLOW V ST (1983--USDC-WA)	850509	000000
33009685	2602	HAUSE, S V. ST (INMATE SUICIDE ATTEMPT--TRCT)	850509	000000
33009785	1211	KING V. ST (FALSE CERTIFICATION--TRCT)	850517	000000
33009885	3013	REYNOLDS, C V ORTON, J (ILLEGAL S&S--TRCT)	850528	851010

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
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33009985	1603	STATON, J V ST (1983--TRCT)	850528	000000
33010085	1603	JEPPSEN, D V ST (SEXUAL DISCRIM--TRCT)	850528	851218
33010185	1603	STOTT, C V ST (S&F ON DOCK--CLAIM)	850528	000000
33010285	9902	WASHBURN V ST (ASBESTOSIS--TRCT-WA)	850531	000000
33010385	9962	BAUMER V ST (S&F--TRCT)	850531	000000
33010485	1603	YOUNG V ST (SLOPE FAILURE--CLAIM)	850531	851107
33010585	9970	CORNELL V ST (NEG CONSTR/MAINT-AIRPORT--TRCT)	850531	000000
33010685	9970	SOUTHCENTRAL AIR V KOREAN AIR V ST (NEG CONSTR-AIRPT--TRCT)	850531	000000
33010785	9955	BURNS V ST (NEG HWY DESIGN--TRCT)	850531	000000
33010885	9989	JONES V ST (NEG POLICE INVESTIGATION--_____)	850531	000000
33010985	3806	GLOVER, D V. ST (NEG HWY MAINT--TRCT)	850605	000000
33011085	3806	COMMEAN, C V ST (AUTO PI CLAIM--CLAIM)	850605	000000
33011185	9915	COOPER V ST (IMPROPER DETENTION--TRCT)	850605	000000
33011285	9915	HOWELL V ST (NEG PROSECUTION--USDC-AK)	850605	851227
33011385	3013	LANTZ, R. V. ST (WITHHOLDING OF FUNDS--TRCT)	850605	850718
33011485	1211	RENAUD, C V. ST. (SEX/AGE DISCRIM--TRCT)	850607	000000
33011585	9970	PEDERSEN V ST (NEG. DESIGN, OP, & MAINT--TRCT)	850613	000000
33011685	3806	QUINLAN V PIONEER HOME (NEG. SUPERVISION--TRCT)	850613	000000
33011785	1603	COHERN M. V. ST (PD-CLAIM)	850613	850718
33011885	1603	EMARD V ST (FALSE ARREST--CLAIM)	850613	851015
33011985	1603	DAVIS D V ST (APPEAL--APCT)	850613	000000
33012085	1603	O'CONNOR V ST (SEX HARRASSMENT--TRCT)	850613	000000

MMMM TORT CASES FY 86 MMMM AS OF 02/12/86

WMNO	ATTY	CDAT	TITL
BLN			
33000186	1604	851107	DOVER V STATE (NEG. INSPECTION--CLAIM)
33000286	3806	000000	GREENE V MAMMOTH OF AK & ST (HWY MAINT--TRCT)
33000386	3013	000000	STEARNS, T. V. WILLIAMS, J. & BAINBRIDGE R. (1983--TRCT)
33000486	9955	000000	ADAMS V. STATE (ROADSIDE OBSTACLE--CLAIM)
33000586	9989	860131	DENARDO V WILLIAMS (WRONGFUL TERMINATION)
33000686	9962	000000	O'BRIEN V ST (NEG DRIVING--TRCT)
33000786	9962	000000	KNIGHT V PARKER (SLANDER--TRCT)
33000886	9914	000000	VANDERSLOOT V VANGELDER (DEFAMATION--DCAK)
33000986	9994	000000	MCCUTCHEON V ST (DEFAMATION--TRCT)
33001086	1603	851107	PETERS V ST (WRONGFUL TERMINATION--CLAIM)
33001186	9953	000000	ASPEN EXPLORATION CORP V SHEFFIELD (EXEC TORT--TRCT)
33001286	9962	000000	FELTHAUSER V ST (SAFE WORK PLACE--TRCT)
33001386	9912	000000	DANIELS V JONES (WHISTLEBLOWER--TRCT)
33001486	9914	000000	AK ENVIRON INDUSTRIES V ROSS (SLANDER--TRCT)
33001586	3806	000000	BRIGGS V ST (NEG HWY MAINT--TRCT)
33001686	2420	000000	EITEL V HOLLAND (WRIT OF MANDAMUS APPEAL--9TH CIR)
33001786	3019	000000	LEMON V ST (FALSE IMPRISONMENT--TRCT)
33001886	1318	860128	GOODLATAM V ST (WRONGFUL DEATH--USSUPCT)
33001986	1318	860206	MASON V LYNCH V ST (PT REV CONTRUCTIVE NOTICE--APCT)
33002086	3806	000000	BLAKE V RICHARDS (FALSE ARREST--TRCT)
33002186	9945	000000	CITY OF HAINES V HESS (CONTRIBUTION--TRCT)
33002286	4009	000000	FRAZIER V ST (FALSE ARREST--TRCT)
33002386	9905	000000	ISACKSON V ST (HWY MAINT--TRCT)

XXXXX TORT CASES FY 86 XXXXX AS OF 02/12/86

WMNO BLN	ATTY	CDAT	TITL
33002486	1603	000000	ST V ALYESKA (INDEM APPEAL--APCT)
33002586	9915	000000	WHEELER VID (FAIL TO MONITOR/INTERVENE--TRCT)
33002686	9950	000000	BEARD V ST (FAIL PROVIDE SAFETY DEVICE--TRCT)
33002786	9970	000000	FOSTER V ST (AIRPORT MAINT--TRCT)
33002886	9991	000000	TAYLOR V PETER KIEWIT SONS, INC (SAFE WORKPLACE--TRCT)
33002986	9945	000000	LARSON V ST (JONES ACT--DCAK)
33003086	9987	000000	LIPSCOMB V DONNELLY (INMATE BATTERY--TRCT)
33003186	9913	860131	EDWARDS V FABB (LEGAL MALPRACTICE PD--TRCT)
33003286	9955	000000	HACKATHORN V ST (HWY MAINT--TRCT)
33003386	9915	000000	TRONICK (MISHANDLING OF BODY--CLAIM)
33003486	9987	000000	EVAN (JAIL SUICIDE--CLAIM)
33003586	1211	000000	JENKINSON V ST (WRONGFUL TERMINATION--TRCT)
33003686	9995	000000	WHITESIDES ENTERPRISES V ST (BULLDOZER RENTAL--TRCT)
33003786	1603	851218	CARLSON V CLERK OF SUPERIOR COURT (COURT CLERK NEG--TRCT)
33003886	9902	000000	OSBORN V AK MARINE HWY SYS (JONES ACT ASBESTOSIS--TRCT-WA)
33003986	9905	000000	HARDMAN V ST (SUICIDE/NEG INMATE SUPRV--TRCT)
33004086	9953	000000	CWC FISHERIES V ST (SET NET RIGHTS--TRCT)
33004186	1603	851218	MORINO V ST (NEG RECORDKEEPING--TRCT)
33004286	4014	000000	SPRINGER V COREY (ASSAULT/1983--DCAK)
33004386	4005	000000	LIPSCOMB V ENDELL (ASSAULT/COND OF CONFINEMENT--TRCT)
33004486	3013	000000	MANTEI V CRAIG (FAIL REMOVE HWY OBSTACLE--TRCT)
33004586	1603	851126	ELROD (TRAILER SPACE/EVIDENCE--CLAIM)
33004686	9950	000000	MOTOROLA, INC. V KOREAN AIR LINES CO. (AIRPORT NEG--TRCT)

MMMM TORT CASES FY 86 MMMM AS OF 02/12/86

WMNO	ATTY	CDAT	TITL
BLN			
33004786	3013	000000	HOLZHEIMER V CLARK (ATTY FEES/COSTS--APCT)
33004886	1603	000000	CARNEY V ST (QUASI JUDICIAL NEG--TRCT)
33004986	9989	000000	ZAHARI V AK POWER AUTHORITY (FAIL REQUIRE INSURANCE--TRCT)
33005086	9962	000000	ANDREWS V ST (TORT--TRCT)
33005186	9962	000000	BENTLEY V HUDSON (MALPRACTICE--DCAK)
33005286	9950	000000	APPLIED MAGNETICS CO V KOREAN AIR (AIRPORT MAINT--TRCT)
33005386	3806	000000	FINCH V ST (PETITION FOR REVIEW--APCT)
33005486	1603	000000	DEMO V HOEY (S&F--TRCT)
33005586	3013	000000	GEE V ST (INMATE PI--TRCT)
33005686	9955	000000	BURTON V ST (NEG DESIGN--TRCT)
33005786	3806	000000	FINCH, ST V (PETITION FOR REVIEW--APCT)
33005886	3806	000000	L&H ENTERPRISES V ST (APPEAL--APCT)
33005986	9999	000000	MCCLURE V EVERGREEN HELICOPTERS (CONTRIBUTION--DCAK)
33006086	9999	000000	ROX V ST (NEG SUPERVISION--TRCT)
33006186	9999	000000	UNDERWRITERS AT LLOYDS V ST (NEG AIRPORT MAINT--TRCT)
33006286	9999	000000	MCKINLEY V DAHLBERG (NEG HWY MAINT--TRCT)
33006386	9989	000000	JONES V ST (WRONGFUL TERMINATION--TRCT)
33006486	1603	000000	FLETCHER V BURNHAM (JUDICIAL IMMUNITY--DCAK)
33006586	1211	000000	WALT V ST (WRONGFUL DISCHARGE/CIVIL RIGHTS--APCT)
33006686	9999	000000	REDMOND V ST (HWY MAINT--TRCT)
33006786	9955	000000	SCHUMACHER V CLARK (AST EXCESS FORCE--TRCT)
33006886	9950	000000	NAHORNEY V KOREAN AIR LINES (AIRPORT MAINT--TRCT)
33006986	9950	000000	VICKERS V KOREAN AIR LINES (AIRPORT MAINT--TRCT)

PAGE 4

***** TORT CASES FY 86

***** AS OF 02/12/86

WMNO ---	ATTY ----	CDAT ----	TITL -----
BLN ---			
33007086	9999	000000	GORDON V ST (NEGLIGENCE--TRCT)
33007186	9999	000000	CARSON V AVILA (NEGLIGENCE--TRCT)
33007286	9999	000000	ZIEMANN V MUNICIPALITY OF ANCHORAGE (PEDESTRIAN--TRCT)
33007386	1006	000000	BAKKE V BAKKE (NEGLIGENCE--TRCT)
33007486	9999	000000	CHANNEL CONSTRUCTION V ST (NEGLIGENCE--TRCT)
33007586	9999	000000	RICHARDS V ST (NEG FRISK--TRCT)
33007686	9999	000000	SAILOR V ST (SNOWBLOWER--TRCT)
33007786	9950	000000	SCHAPS V ST (AIRPORT MAINT--TRCT)
33007886	9950	000000	BAIRD V KOREAN AIR LINES (AIRPORT MAINT--TRCT)

ATTACHMENT C

Summary of Losses
December 31, 1985

SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	-----CLAIMS----- TOTAL	OPEN	OUTSTANDING RESERVES	+	LOSS PAYMENTS	+	EXPENSE PAYMENTS	=	TOTAL INCURRED	-	RECOVERIES	=	NET INCURRED
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COVERAGE: MARINE PII - FERRY ENPL (17)

<i>State employees</i>	1980	1			5,850				5,850				5,850
	1981	1			18,598		963		19,561				19,561
	1982	2			10,000		1,841		11,841				11,841
	1983	74	10	252,385	44,345		22,303		319,034		924		318,110
	1984	284	24	114,176	470,098		43,652		627,926		73,961		553,965
	1985	232	15	250,165	555,232		17,417		822,815		65,278		757,537
	1986	133	75	97,150	106,982		91		204,223		1,078		203,146
	TOTAL	727	124	713,876	1,211,106		86,268		2,011,250		141,240		1,870,010

COVERAGE: TRAVEL ACCIDENT (18)

<i>State employees</i>	1979	1			35,000				35,000				35,000
	1981	1			18,598		1,331		19,929				19,929
	1982	1			75,000				75,000				75,000
	1984	1			75,000				75,000				75,000
	TOTAL	4			203,598		1,331		204,929				204,929

✓ COVERAGE: GENERAL LIABILITY (20)

<i>Third party</i>	1978	231	2	4,652	980,952	457,708	1,443,312	123,422	1,319,890
	1979	289	4	115,823	909,895	474,685	1,500,404	21,048	1,479,355
	1980	267	10	733,635	691,491	420,916	1,846,041	15,607	1,830,435
	1981	211	13	1,750,370	3,017,498	791,351	5,559,219	1,283,301	4,275,918
	1982	217	13	197,161	1,609,421	566,906	2,373,488	442,159	1,931,329
	1983	311	35	1,566,192	504,733	474,865	2,545,789	6,900	2,538,890
	1984	339	42	995,482	336,466	269,387	1,601,336		1,601,336
	1985	449	49	778,463	181,730	176,014	1,136,208		1,136,208
	1986	121	34	582,793	28,810	8,095	619,688		619,688
	TOTAL	2,435	202	6,724,562	8,260,997	3,639,927	18,625,486	1,892,437	16,733,050

SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	CLAIMS TOTAL	OPEN	OUTSTANDING RESERVES	LOSS PAYMENTS	EXPENSE PAYMENTS	TOTAL INCURRED	RECOVERIES	NET INCURRED
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✓ COVERAGE: AUTO LIABILITY

(50)

1978	114			156,007	20,026	176,032		176,032
1979	111		-200	1,335,605	50,500	1,385,905	806,501	579,404
1980	82			497,423	27,197	524,620	70,049	454,571
1981	131			128,248	3,460	131,707		131,707
1982	177	1	20,854	170,825	5,530	197,209		197,209
1983	188	3	160,098	302,937	2,122	465,157	548	464,609
1984	214	5	117,903	209,508	2,820	330,231	8,306	321,925
1985	274	13	777,743	217,649	12,152	1,009,543	241	1,009,302
1986	88	19	41,762	26,246		68,009		68,009
TOTAL	1,379	41	1,120,160	3,044,445	123,807	4,288,412	885,644	3,402,768

Third
party

COVERAGE: AUTO PHYSICAL DAMAGE

(51)

1978	7			1,604	56	1,660	427	1,233
1979	28	1	2,315	35,001	1,398	38,714	7,108	31,606
1980	306	4	358	173,658	14,839	188,855	39,293	149,562
1981	299	10	89	254,748	13,149	267,984	43,541	224,443
1982	420	4	965	434,184	15,465	450,614	62,892	387,722
1983	427	6	113	340,707	16,818	357,637	25,249	332,389
1984	114	1	6,000	72,140	4,895	83,035	1,639	81,396
1985	38	1	585	19,616	55	20,256	41	20,216
1986	7	2	913	3,434	275	4,622		4,622
TOTAL	1,646	29	11,338	1,335,091	66,950	1,413,379	180,189	1,233,190

State
property

COVERAGE: REAA PROPERTY

(70)

1978	6			142,398	601	142,999	11,403	131,596
1979	8			2,407,922	483	2,408,405	740,224	1,668,181
1980	2			12,193		12,193		12,193
1981	2			225,073		225,073	205,073	20,000
1982	2			621,290		621,290		621,290
1983	1			850		850		850
TOTAL	21		0	3,409,725	1,085	3,410,809	956,700	2,454,110

State
property

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL	-----CLAIMS-----		OUTSTANDING	LOSS	EXPENSE	TOTAL	NET
YEAR	TOTAL	OPEN	RESERVES +	PAYMENTS +	PAYMENTS =	INCURRED - RECOVERIES =	INCURRED
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✓ COVERAGE: GENERAL LIABILITY-ST ADM (21)

<i>Third party</i>	1978	1		403		403		403
	1979	2		1,500		1,500		1,500
	1980	2		147		147		147
	1981	5		39,169	481	39,650		39,650
	1982	2	1	15,000		15,000		15,000
	1983	3		2,364		2,364		2,364
	1984	9		5,714	16,880	22,595	1,000	21,595
	1985	13	4	3,586	2,355	26,918		26,918
	1986	4		3,750		3,750		3,750
	TOTAL	41	5	18,586	55,402	112,326	1,000	111,326

COVERAGE: MAR P&I - FERRY 3RD PARTY (23)

<i>Third party</i>	1978	62		170,029	42,206	212,235	131,325	80,910
	1979	72	2	7,600	376,947	439,218	342,169	97,049
	1980	71	3	9,930	572,049	613,043	450,545	162,498
	1981	155	5	54,188	635,716	74,392	79,605	684,691
	1982	292	7	260,526	657,838	94,380	1,012,745	850,853
	1983	270	4	32,511	531,976	28,529	593,016	516,097
	1984	74	1	5,000	27,288	188	32,476	32,476
	1985	66	4	11,082	20,076	5	31,162	31,162
	1986	30	5	10,925	9,659	20,584		20,584
	TOTAL	1,092	31	391,763	3,001,579	325,435	3,718,776	2,476,322

COVERAGE: MARINE P&I - OTHER (24)

<i>Third party</i>	1978	3		29,042	2,680	31,722	9,469	23,252
	1979	2		1,446	250	1,696	207	1,489
	1980	3		3,403		3,403	1,275	2,128
	1981	4		9,300	125	9,425		9,425
	1982	1		275		275		275
	1983	2		351		351		351
	1985	3		5,373		5,373		5,373
	TOTAL	18		-0	49,189	3,054	9,951	42,292

STATE OF ALABAMA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	-----CLAIMS----- TOTAL	OPEN	OUTSTANDING RESERVES	+	LOSS PAYMENTS	+	EXPENSE PAYMENTS	=	TOTAL INCURRED	-	RECOVERIES	=	NET INCURRED
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COVERAGE: AIRPORT LIABILITY (27)

<i>Third party</i>	1978	13			177,099		45,314		222,413		197,089		25,324
	1979	43			266,423		219,493		485,916		415,293		70,623
	1980	24	3	740,000	111,989		7,568		859,557		94,644		764,913
	1981	31	2	87,336	74,809		75,358		237,503		34,517		202,986
	1982	36	1	331,923	222,903		83,111		637,937				637,937
	1983	28	2	19,009	298,190		11,135		328,333		1,537		326,796
	1984	22	6	594,525	8,720		118,473		721,717				721,717
	1985	17	4	17,173	10,392		13,717		41,282				41,282
	1986	6	5	322,129			1,961		324,090				324,090
	TOTAL	220	23	2,112,094	1,170,524		576,129		3,858,747		743,080		3,115,667

COVERAGE: AIRCRAFT LIABILITY (28)

<i>Third party</i>	1981	1											
	1982	4			23,500		529		24,029				24,029
	1983	2	1	12,374	767		2,626		15,767				15,767
	1985	4	2	36,058	71,892		4,163		112,112				112,112
	TOTAL	11	3	48,432	96,159		7,317		151,908				151,908

COVERAGE: MISCELLANEOUS (29)

<i>Third party</i>	1979	5			59,139		131,286		190,426		639		189,786
	1982	3			687,000		61,109		748,109		79,056		669,052
	1983	1			75,000				75,000				75,000
	1985	1	1	893			14,107		15,000				15,000
	TOTAL	10	1	893	821,139		206,503		1,028,534		79,696		948,839

✓ COVERAGE: MALPRACTICE (40)

<i>Third party</i>	1982	1					18,225		18,225				18,225
	1983	1					820		820				820
	1984	4	2	52,522			5,459		57,981				57,981
	1985	2	1	600			5,083		5,683				5,683
	TOTAL	8	3	53,122			29,587		82,709				82,709

STATE OF ALASKA
 RANGE TABLE SHOWING
 FREQUENCY, SEVERITY, AND AVERAGE
 FOR TOTAL INCURRED CLAIMS WITHIN SPECIFIED RANGES
 VALUED AS OF: 02/11/86

COVERAGE IS: GENERAL LIABILITY

FISCAL YEAR	0 - 50,000	50,001- 100,000	100,001- 150,000	150,001- 200,000	200,001- 250,000	250,001- 300,000	300,001- 500,000	500,001- ALL
1981								
TOTAL \$	672,079	269,404	110,000	153,367			1,734,379	2,619,995
FREQ.	196	4	1	1			4	3
AVG LOSS	3,394	67,351	110,000	153,367			433,594	873,331
1982								
TOTAL \$	797,736	428,353	122,530	357,962	237,409		673,109	670,174
FREQ.	212	6	1	2	1		2	1
AVG LOSS	3,762	71,392	122,530	178,981	237,409		336,554	670,174
1983								
TOTAL \$	734,035	318,250	501,503	260,000	202,672	270,000		520,000
FREQ.	302	4	4	1	1	1		1
AVG LOSS	2,430	79,570	125,375	260,000	202,672	270,000		520,000
1984								
TOTAL \$	865,834	597,034	240,000			300,000		
FREQ.	337	1	2			1		
AVG LOSS	2,569	74,329	120,000			300,000		
1985								
TOTAL \$	945,535	150,000	125,000					
FREQ.	456	2	1					
AVG LOSS	2,082	75,000	125,000					
1986								
TOTAL \$	256,897	150,000				300,000		
FREQ.	156	2				1		
AVG LOSS	1,646	75,000				300,000		
TOTAL								
TOTAL \$	4,275,250	1,913,071	1,096,033	711,329	440,081	870,000	2,407,488	3,810,169
FREQ.	1,661	26	9	4	2	3	6	5
AVG LOSS	2,575	73,580	122,115	177,832	220,041	290,000	401,248	762,034

ATTACHMENT D

Medical Malpractice Legislation Enacted in the U.S. 1971 - 1985

✓ - Dr. McCune
✓ - Marilyn - Coalition

MEDICAL MALPRACTICE LEGISLATION
ENACTED IN THE UNITED STATES 1971 - 1985

STATES SURVEY UPDATE 1985

Deborah R. Siegel, Director
Long-Range Planning
Medical Society of the State
of New York

**MEDICAL MALPRACTICE LEGISLATION
ENACTED IN THE UNITED STATES 1971 - 1985**

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>ALABAMA</u>	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
<u>ALASKA</u>	Claims Made & Occurrence policies Collateral Sources Periodic Payments *	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees

* Jury cannot be advised of periodic payments use.

Highest premium \$5 mil/\$5 mil is \$40,246 annually.

<u>ARIZONA</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees Periodic Payments
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Highest premium (\$3,000,000 coverage) is \$30,000 annually. \$5 mil/\$5 mil coverage available.

<u>ARKANSAS</u>	Claims Made & Occurrence policies Collateral Sources Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees
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Average premiums range between \$900 and \$7,000. \$7,000 highest in the state.

<u>CALIFORNIA</u>	Claims Made & Occurrence policies Caps on Awards Collateral Sources Contingency Fees Periodic Payments	Caps on Physicians' Personal Assets
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The highest premium (\$1 mil/\$3 mil coverage) is \$51,920 for Neurosurgeons. \$10 mil/\$10 mil is available. \$2 mil/\$4 mil is the most common, but there are a large number of \$5 mil/\$5 mil policies.

Have had a cap on pain and suffering (non-economic damages) since 1975 (\$250,000). It was upheld by the Supreme Court this year. They feel, as far as it's effect on premium costs, that it will be felt more now and in the next few years than it had been previously. While it is believed to be of value, no empirical data will be available before November or December, 1985. There are already signs that the trial lawyers will go for higher economic damages and will try to undo what's been done-there have been proposals to this effect and also to raise the level of the cap.

<u>COLORADO</u>	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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Average premiums range from \$1,600.- \$26,000. \$26,000 highest.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>CONNECTICUT</u>	Claims Made Policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets

Contingency Fees (not mandated but are used).

Periodic Payments (not mandated but are used in large settlements).

Highest premium (for Neurosurgeons, Cardiologists, Orthopedics) is \$27,000, but will rise to \$31,800 after an 18% increase. The highest coverage is \$1 mil.

<u>DELAWARE</u>	Claims Made policies Collateral Sources Contingency Fees * Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets
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* The contingency fee schedule is 35% on first \$100,000; 25% on next \$100,000; and 10% on the balance.

Average premiums range between \$5,000-\$10,000. The highest is \$21,000 for fourth year OB/GYN's.

<u>FLORIDA</u>	Claims Made & Occurrence policies Contingency Fees * Periodic Payments **	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources
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* Contingency fee scale (subject to Supreme Court changes). The sliding scale ranges from 15% - 45% depending upon the point at which the case is settled. 15% on awards in excess of \$2 mil.

** On awards over \$500,000.

Highest premium (OB Surgeons and Neurosurgeons) \$78,450 (\$100,000/\$300,000). Highest coverage: \$1 mil/\$3 mil.

<u>GEORGIA</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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Highest premium is \$37,000. Highest coverage is \$10 mil/\$10 mil.

<u>HAWAII</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments
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* Attorney fees must be approved by the court.

Highest premiums are \$33,000 annually. Total physician liability: \$5 mil/\$5 mil.

<u>IDAHO</u>	Claims Made & Occurrence policies	Caps on Awards * Caps on Physicians' Personal Assets Collateral Sources * Contingency Fees * Periodic Payments
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* Caps, collateral sources and contingency fees had statutes but were declared unconstitutional several years ago.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>ILLINOIS</u>	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

The highest premium is \$83,000 (Neurosurgeons) and total physician liability is \$5 mil/
\$5 mil. Most physicians in state carry \$1 mil/\$3 mil.

<u>INDIANA</u>	Claims Made & Occurrence policies *	Collateral Sources
	Caps on Awards	
	Caps on Physicians' Personal Assets	
	Contingency Fees **	
	Periodic Payments	

* Four companies writing occurrence policies and one writing claims made (with a long tail).

** Via a statute created patients compensation fund.

Feel very strongly that their \$500,000 cap on awards has helped keep premiums down.

<u>IOWA</u>	Claims Made & Occurrence policies **	Caps on Awards
	Collateral Sources *	Caps on Physicians' Personal Assets
	Contingency Fees *	Periodic Payments

* Modified collateral sources provision and contingency fees are not statutorily mandated, but are used.

** Are moving towards claims made only.

The highest coverage is \$5 mil.

<u>KANSAS</u>	Claims Made & Occurrence policies	Caps on Awards
	Collateral Sources	Contingency Fees *
		Periodic Payments

Physicians' Personal Assets and Awards beyond coverage are covered via a "health care stability fund". This adds a 110% surcharge on premiums.

* Attorneys fees are not covered by statute, but are expected to be "reasonable" - the courts don't like to get involved - generally 25% - 50% of settlement.

Premiums for physicians who can't get coverage through two companies, possibly get it through JUA - if they pass personal interview which determines the physicians willingness to properly inform patients.

Have a cap on punitive damages.

Premiums are very variable.

<u>KENTUCKY</u>	Claims Made policies	Caps on Awards
		Caps on Physicians' Personal Assets
		Collateral Sources
		Contingency Fees
		Periodic Payments

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>LOUISIANA</u>	Claims Made & Occurrence policies Caps on Awards Periodic Payments *	Caps on Physicians' Personal Assets Collateral Sources Contingency Fees

* Periodic payments are used via authority of the Attorney Generals office.

Since 1975 have three caps of \$500,000 each:

Medical malpractice - private physicians; medical malpractice - employers of physicians in Louisiana; state liability for all other tort actions.

The highest premium is in the range of \$21,000.

<u>MAINE</u>	Claims Made Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees
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Have instituted monthly meetings with trial lawyers in response to their liability crisis.

Highest premium \$40,000 (Neurosurgeons).

<u>MARYLAND</u>	Claims Made & Occurrence policies Contingency Fee * Periodic Payments **	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources
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* Contingency fee statute allows judge to review attorney's fees.

** Periodic payments optional, not mandated.

The highest premium (OBGYN) is \$35,000 for \$1 mil/\$3 mil. Highest coverage is \$1 mil/\$3 mil with a \$5 mil excess.

<u>MASSACHUSETTS</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments
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* Though no statutory provision for contingency fees, they are used: 33 1/3% - 50%.

The highest premium is \$15,300 (Orthopedics, Plastic Surgeons, Neurosurgeons, OBGs).

<u>MICHIGAN</u>	Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments
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* Court rule allows 33% contingency fees.

Highest premium \$55,000 (OBGs', Neurosurgeons). \$1 mil/\$1 mil highest coverage.

<u>MINNESOTA</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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Highest policy is \$20,000. Total physicians liability \$4 mil/\$5 mil.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>MISSISSIPPI</u>	Modified Claims Made policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments *

* Contingency fees and periodic payments are used.

Highest premium (Neurosurgeons/Anesthesiologists) \$31,000. \$5 mil/\$5 mil highest coverage available.

<u>MISSOURI</u>	Claims Made & Occurrence policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments **
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* Are moving to claims made only.

** Although not statutorily mandated the judge may opt for it.

The range of premiums is \$1,200 - \$34,000. \$34,000 is the highest. Total physicians' liability is \$5 mil/\$5 mil.

<u>MONTANA</u>	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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The highest premium is \$20,000.

<u>NEBRASKA</u>	Claims Made & Occurrence policies Caps on Awards * Collateral Sources Contingency Fees	Caps on Physicians' Personal Assets Periodic Payments
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* Caps on awards are covered via a participating voluntary state fund. The cap is \$1 mil.

The highest premium is about \$11,000. Total physician liability is \$1 mil/\$3 mil.

<u>NEVADA</u>	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments
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* Contingency fees are used - generally 30% - 40% but can go up to 50%.

The highest premium is \$44,160 for \$1 mil/\$3 mil coverage. The highest coverage available is \$5 mil/\$7 mil.

<u>NEW HAMPSHIRE</u>	Occurrence policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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* Moving towards Claims Made.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>NEW JERSEY</u>	Claims Made & Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments

* Sliding scale contingency fees.

Average premium is \$9,000; the highest is \$30,000 (Neurosurgeons) \$1 mil/\$1 mil coverage. The highest coverage is \$5 mil.

Currently before legislature is a four part bill which includes caps on awards, collateral sources, periodic payments, expert witness and certificate of meritorious claim.

<u>NEW MEXICO</u>	Claims Made policies Caps on Awards * Caps on Physicians' Personal Assets	Collateral Sources Contingency Fees Periodic Payments
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* Caps on awards excluding punitive damages.

Have since 1976 a \$500,000 cap (excluding punitive damages). Feel it has had somewhat of an effect on premium costs. The courts are very conservative - only two cases have been awarded the \$500,000. The conservative climate, the cap and the whole malpractice bill are what keeps the premiums low.

<u>NEW YORK</u>	Claims Made & Occurrence policies Collateral Sources Contingency Fees * Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets
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* Contingency Fees: 33 1/3 - 30% of first \$250,000; 25% next \$250,000; 20% next \$500,000; 15% next \$250,000; and 10% of any further amount.

Highest premium is \$83,000 for Neurosurgeons - \$1 mil/\$3 mil.

New York physicians pay the highest premium rates overall in the country. Downstate especially so.

<u>NORTH CAROLINA</u>	Claims Made policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments
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* Contingency fees are not a statutory provision, though they are used - average is 20-30%.

The highest premium is \$17,000 (Neurosurgeons). \$5 mil/\$5 mil coverage is available.

<u>NORTH DAKOTA</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees *
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* Contingency fees are not a statutory provision, though they are used - generally 33 1/3%.

The average premium is very variable and the highest is \$45,000 (Neurosurgeon). Highest coverage is \$10 mil.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>OHIO</u>	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees Periodic Payments

Current bills will attempt for a cap on punitive damage and certain economic damages, contingency fees and periodic payments. Feel the "situation is deteriorating rapidly." Major hospital carriers are requiring hospital medical staffs to change bylaws to include as criteria for membership that a physician carry \$1 mil coverage. Feel this will only encourage larger awards.

Highest premium is \$17,000 for Neurosurgeon -- \$1 mil/\$3 mil. The highest coverage is \$5 mil. There is a \$250,000 cap on pain and suffering and collateral sources provision.

Have had a \$250,000 cap since 1975 on non-economic damages - no cap on economic or punitive damages.

<u>OKLAHOMA</u>	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments *
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* Neither contingency fees or periodic payments are statutorily mandated but can be used (contingency fees are generally 40 - 50% of award).

Average premium is \$4,000. The highest premium is \$12,000 (OBGs, Neurosurgeons, Plastic Surgeons) \$1 mil/\$3 mil.

<u>OREGON</u>	Claims Made & Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments
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* Contingency fees: 35% on first \$100,000; 35% on next \$100,000 and 10% on balance.

Highest premium, \$3 mil coverage: \$40,000. Going to \$64,000 in 1986 (Neurosurgeon).

<u>PENNSYLVANIA</u>	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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No limit on amount of insurance physician can buy, a catastrophic loss fund covers \$1 mil. including personal assets.

<u>RHODE ISLAND</u>	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments *
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*Periodic payments not statutorily mandated, in actuality, they are used.

Highest premium is \$30,000 (\$1 mil/\$3 mil coverage).

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>SOUTH CAROLINA</u>	Periodic Payments Caps on Physicians Personal Assets *	Caps on Awards Collateral Sources Contingency Fees

* Physicians Personal Assets are covered through a patients compensation fund (no cap).

Highest premium (\$1 mil/\$3 mil) is \$5,600 for a Neurosurgeon.

<u>SOUTH DAKOTA</u>	Claims Made & Occurrence policies Caps on Awards Collateral Sources Contingency Fees	Caps on Physicians' Personal Assets Periodic Payments
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Have had a \$500,000 cap on general damages since 1974-75. Feel it hasn't made any difference on premium costs as premium rates continue to go up.

The highest premium is \$32,000 for Orthopedic Surgeons and Neurosurgeons. Can buy as high a policy as they wish.

<u>TENNESSEE</u>	Occurrence policies Collateral Sources Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Periodic Payments **
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* Contingency fees maximum is 33%.

** No provision for periodic payments but judge can use.

Highest premium approximately \$30,000.

<u>TEXAS</u>	Claims Made & Occurrence policies** Caps on Awards *** Caps on Physicians' Personal Assets* Collateral Sources	Contingency Fees ** Periodic Payments **
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* Homestead rule covers physicians' personal assets.

** Contingency fees and periodic payments are not statutorily mandated, but are used.

*** A \$500,000 cap on awards since 1975. This cap is now being challenged. Feel the cap has had a positive effect on keeping premium costs down.

*** Moving towards claims made policies.

\$1 mil/\$3 mil is the highest coverage.

<u>UTAH</u>	Occurrence policies * Collateral Sources Contingency Fees **	Caps on Awards Caps on Physicians' Personal Assets Periodic Payments
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* Moving towards claims made policies.

** Contingency fees - 33 1/3%.

Highest policy is \$18,600.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
<u>VERMONT</u>	Claims Made	Caps on Awards Caps on Physicians' Personal Assets/ Collateral Sources Contingency Fees * Periodic Payments

* Contingency fees not mandated but used.

Rural community and general conservative climate keep situation under control.

The highest premium for \$1 mil/\$3 mil coverage (Neurosurgeons) is \$10,889 or \$24,622 depending on company (mature rates). Highest coverage is \$1 mil/\$3 mil with a \$9 mil excess.

<u>VIRGINIA</u>	Claims Made & Occurrence policies Caps on Awards * Contingency Fees	Caps on Physicians' Personal Assets Collateral Sources Periodic Payments
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* Caps on awards \$1 mil.

Highest premium is \$42,000 (Neurosurgeon). Highest coverage is \$5 mil.

<u>WASHINGTON</u>	Claims Made policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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* Claims made policies only starting in 1986.

Average premium \$8,500. Highest premium \$25,690 (\$1 mil - Neurosurgeon). Highest coverage available \$5 mil/\$7 mil.

<u>WEST VIRGINIA</u>	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
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The average premium is \$11,700. The highest is \$48,000 (Neurosurgeon). \$10 mil coverage available.

<u>WISCONSIN</u>	Claims Made & Occurrence policies ** Caps on Physicians' Personal Assets* Periodic Payments **	Caps on Awards Collateral Sources Contingency Fees ***
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* A physician is required to purchase \$200,000 coverage which makes him eligible for a patients compensation fund. Awards beyond his coverage and personal assets are handled via this fund.

** 85-90% are occurrence policies.

*** Contingency fees are not statutorily mandated, but are used.

*** A modified periodic payment rule is used for awards of future damages of \$1 mil.

The highest premium is \$44,600 (Neurosurgeon).

<u>STATE</u>	<u>HAVE PROVISIONS FOR:</u>	<u>DO NOT HAVE PROVISIONS FOR:</u>
<u>WYOMING</u>	Claims Made & Occurrence policies Collateral Sources Structured Awards *	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees

* Structured awards are not consistently recognized by the courts.

Highest premium (\$1 mil coverage) under \$20,000.

ATTACHMENT E

Insurance-Related Legislation

Insurance-Related Legislation: A Roundup

While federal regulation of the insurance industry is blocked by the McCarran-Ferguson Act of 1945 (PL 79-15), there are a number of bills in the 99th Congress that address specific insurance problems. Following is a roundup of their status.

Product Liability

Manufacturers hope recent concern over the availability of business insurance will rekindle interest in legislation to set federal standards to govern product-liability lawsuits. They contend that such standards, which they have been seeking since the late 1970s, would reduce exorbitant settlements.

Sen. John C. Danforth, R-Mo., chairman of the Commerce, Science and Transportation Committee, has promised early action on a bill (S 1999) to establish federal standards and set up a new system to allow victims to recover damages without going to court.

An earlier version without the compensation system (S 100), which had been pushed for several years by Sen. Bob Kasten, R-Wis., died in the committee last May on an 8-8 tie vote. (1985 Weekly Report pp. 2730, 1586)

Trial lawyers heatedly oppose the concept of uniform tort-law standards, and so do many state officials. Consumer groups and organized labor are fighting provisions that they say would make it difficult for victims of unsafe products to recover damages.

In the House, leaders of the Energy and Commerce Committee, which has jurisdiction over the matter, are interested in product-liability legislation but are waiting for the Senate to take the lead.

Pollution Liability

Insurers failed to obtain major relief from liability for hazardous-waste cleanup costs in a bill (HR 2005) to reauthorize the "superfund" cleanup program.

The House and Senate each passed versions of the reauthorization bill, and a conference to settle differences will probably take place early in the new session.

In neither bill did insurers get their prime objective: relaxation of the "strict, joint and several liability" standard that can hold them responsible for toxic-waste problems decades after a policy lapsed, regardless of how small a share of responsibility they carry.

They could yet win some relief, however, through a House provision that would make it easier for the Environmental Protection Agency to make out-of-court settlements to release from liability parties who have contributed only small amounts of waste to a dump site. (1985 Weekly Report p. 2619)

Vaccine Compensation

Legislation (S 827) to compensate people injured by adverse reactions to some vaccines remains stalled in the Senate Labor and Human Resources Committee.

Sen. Paula Hawkins, R-Fla., says the bill is needed both to help victims and to ensure the availability of vaccines. Some pharmaceutical companies have stopped making certain vaccines, such as DPT (diphtheria, pertussis and tetanus), because of the risk of lawsuits on

behalf of children who suffer rare but severe side effects.

Opponents of the bill object to a provision that would require victims to give up their right to sue if they want to receive compensation from the government (1985 Weekly Report pp. 2742, 1591)

Medical Malpractice

The American Medical Association is backing a bill (S 1804) by Sen. Orrin G. Hatch, R-Utah, to spur states to revise their medical malpractice laws.

The bill would offer states up to \$4 million as an incentive to enact specific changes in malpractice laws, such as limiting attorneys' fees and putting a cap of \$250,000 on awards for pain and suffering.

The bill is pending in the Senate Labor and Human Resources Committee, which Hatch chairs.

Another approach was offered by Reps. Richard A. Gephardt, D-Mo., and W. Henson Moore, R-La., in HR 3084. Their bill would set up an alternative to lawsuits, featuring a combination of binding arbitration by an independent body and judicial review of claim amounts.

Other bills would set up screening boards to examine claims (S 175, HR 2659), make it easier for doctors to insure themselves (S 1357, HR 2261), and make it possible for military personnel to sue for malpractice in military hospitals (HR 3174).

Antitrust Exemption for Insurance

House Judiciary Committee Chairman Peter W. Rodino Jr., D-N.J., says his panel will re-examine the antitrust exemption the industry enjoys as a result of the McCarran-Ferguson Act. (Background, p. 149)

The law exempts the insurance industry from federal regulation so long as it is regulated by the states, and it allows insurance companies to share information and set joint rates without violating antitrust laws.

The insurance industry generally opposes efforts to limit its privileges. A few executives of larger companies, however, have said they would be willing to give up the antitrust exemption, which they feel protects smaller, less efficient companies.

Taxation

The property-casualty insurance industry would be hit hard by the tax-reform bill (HR 3838) passed by the House Dec. 17. That segment of the industry has paid little tax in recent years because of its investment and accounting practices.

The House bill would tax the companies' income from currently tax-exempt securities, and would impose a 20 percent minimum tax on property-casualty companies beginning in 1988.

Life and health insurance companies were generally relieved that the House bill ignored proposals to tax employees' health insurance and the increase in the value of life insurance policies.

Blue Cross and Blue Shield companies would have to pay \$1.7 billion in taxes, however, because of a provision that would tax them as if they were profit-making companies (1985 Weekly Report pp. 2190, 2705)



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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

February 5, 1986

MEMORANDUM

TO: Representative John Sund

ATTN: Shari Kochman

FROM: Jay Moor *JM*
Legislative Analyst

RE: Disability Insurance: The California Plan
Research Request 87.098

You requested information on the Disability Insurance Program administered by the Employment Development Department (EDD) of the State of California. Mr. Charles Burger (Telephone: 916-445-0518) of the EDD provided the attached Annual Report and Actuarial Evaluation of the Disability Insurance Fund which contains detailed answers to your questions. Also attached are portions of the California statute related to disability compensation.

THE CALIFORNIA PLAN

California has three programs for protection against wage loss:

1. **Workers Compensation** is applicable where unemployment results from on-the-job injuries;
2. **Unemployment Insurance** covers someone who is out of work but able and available to work; and
3. **Disability Insurance** covers the person who is unable to perform his or her usual or customary work because of illness or injury (physical or mental) incurred off the job.

Who Is Covered

California first adopted its Unemployment Insurance Program in 1935. In 1946, provisions were added to establish the Disability Insurance Program which applied to all workers covered by unemployment insurance (with certain common exclusions). In 1961, coverage was extended to agricultural workers; in 1965, to foreign farm workers; in 1968, to some hospital workers; in 1972, to most nonprofit organizations; in 1976, to school district employees; and in 1978, to certain domestic workers. Workers are

covered for wages lost due to illness, injury, pregnancy, communicable disease, and to enrollment in alcoholism or drug treatment programs.

Alternative Plans

There are several disability insurance plans. Most employees contribute to the State Plan (and, therefore, the Disability Insurance Fund) through a tax withheld from wages. Self-employed persons may elect to cover themselves. An employer may provide a voluntary plan where premiums are deducted from wages. Voluntary programs do not contribute to the Disability Insurance Fund.

Benefits

In order to receive benefits, the claimant must: 1) file a claim form; 2) go through a seven-day waiting period; 3) earn at least \$300 in wages during the base period; 4) submit to an examination if requested; and 5) file a certification of disability. Benefits may be reduced or denied if a claimant receives worker's compensation, sick leave pay, or regular wages during the claim period (worker's compensation is generally applied in work-related cases). Full disability benefits may be paid for permanent disability, even if worker's compensation is paid. There are provisions for using disability insurance to cover the difference between regular wages and sick leave pay. The claimant is not eligible for disability insurance payment for any day he is entitled to receive state or federal unemployment insurance benefits.

The maximum period of benefits is 52 weeks. The minimum weekly benefit is \$50; the maximum is \$224. Pregnancy is now covered with the same benefits as any other disability. In 1979, a hospital benefit of \$12 per day, up to 20 days, was discontinued, and the savings were used to increase basic benefits.

Claims

The system is set up to process claims sent in by mail. The first claim is mailed by the claimant's doctor with an opinion on the probable duration of disability. The claim is processed in one of 21 field offices. Trained claims examiners apply standards of normal expectancy of duration to each claim and may make unscheduled visits to claimants or require a medical examination to verify a claim.

The Disability Insurance Fund

The Disability Fund has, until recently, been solvent. The balance in the fund reached a record level of \$635 million in 1979. This was attributable to several factors. The rate of disablement had been decreasing since 1970. Although the number of claims has generally increased over time, the proportion of taxpayers filing claims has declined. Furthermore, the system used a tax rate based on expected claims. In 1977, the taxable wage ceiling was raised from \$9,000 to \$11,400 in order to cover an expected increase in the number of claims due to pregnancies, a phenomenon which did not occur until several years later. The program paid out over \$1 billion to 600,000 claimants last year. Another 200,000 claimants were not eligible for benefits.

To lower the fund balance from the 1979 high, taxpayers were given a rebate, there was benefit enhancement, and a new variable formula for contributions was installed. In 1980, the balance was \$166 million. Then, in 1985, the variable tax rate overreacted to the previous year's increases and dropped too far, wiping out the fund. The EDD is now recommending a change in the formula if the fund is to avoid continued bankruptcy. To cover this year's losses, the fund has had to borrow from the General Fund.

California Disability Insurance Fund (Millions of Dollars)

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986(Est.)</u>
Receipts	829	859	1,148	918	1,273
Disbursements	854	860	991	1,224	1,331
Difference	(25)	(1)	157	(305)	(41)
Fund Balance	132	130	286	(19)	(60)

(numbers do not add due to rounding)

If you have any questions or wish additional information, please contact our agency.

JM

Attachments

YOUR RIGHTS

You are entitled to the reason and authority for any determination of eligibility which reduces or denies your benefits.

You may appeal any determination of your eligibility by notifying the disability office that you wish to appeal. You are entitled to a hearing before an administrative law judge and appeals may be carried from the administrative law judge to the Appeals Board and subsequent to that, to the courts.

Information about your claim will be kept confidential except for the purposes allowed by law.

YOUR OBLIGATIONS

You are responsible for filing your claim and other forms promptly and accurately.

Time limits are explained on the applicable form.

If a form is "late" and you believe you have "good cause", you should include an explanation of the reason(s) on or with the form.

If you are not sure how to answer a question or what is required, attach an explanatory note or contact the disability insurance office.

OTHER PROGRAMS

IF INJURED ON THE JOB or ill as a result of occupation, you should notify your employer.

IF YOU WILL NEED RETRAINING or other services in order to return to work, you should contact the Department of Rehabilitation (under *California, State of* in the telephone book "white pages").

IF YOUR DISABILITY IS TOTAL and is expected to continue for a year or more, you should contact the Social Security Administration (listed under *United States Government, Health and Human Services* in the telephone book).

IF YOU ARE ABLE AND AVAILABLE TO WORK but unemployed, you may be eligible for Unemployment Insurance.

FOR HELP IN FINDING WORK, contact a Job Service office.

Employment Development Department offices, including Unemployment Insurance and Job Service, are listed under *California, State of* in the telephone book.

Disability Insurance

FOR DISABILITIES BEGINNING ON
AND AFTER JANUARY 1, 1985



State plan

ADMINISTERED BY
STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT

This pamphlet is for general information only, and does not have the force and effect of law, rule, or regulation.

DL 2515 REV. 38 112 841

Under the California Unemployment Insurance Code, "disability" includes any illness or injury, either physical or mental, including pregnancy, childbirth or related medical condition, that prevents you from doing your regular or customary work.

The cost of the disability insurance program may vary from year to year. For specific tax rates contact the nearest disability insurance or Employment Tax office.

Employers, self-employed individuals or persons in family employment may elect disability insurance self-coverage; see "elective coverage".

HOW TO APPLY

1. Obtain a claim form. You can get one from any office of the Employment Development Department by telephone, letter, or in person. Your doctor, hospital or employer may also have forms available. (Out of state: To obtain a claim form write to Employment Development Department, Disability Insurance, P.O. Box 13140, Sacramento, CA 95813.)
2. Fill out and sign the "Claim Statement of Employee." Write or print clearly. Be sure all information is correct, be especially careful with your social security number, addresses and dates. Errors can delay payment of a claim. If you wish to explain an answer more fully, attach a note to the form.
3. Give the form to your doctor for completion of the "Doctor's Certificate." A claim cannot begin more than seven days before you were examined by or under the care of the certifying doctor. Your doctor may be any licensed physician and surgeon, osteopath, chiropractor, podiatrist, optometrist, dentist, psychologist* or medical officer of a United States medical facility. An accredited religious practitioner may also certify.
4. Mail your claim not later than the 41st day after the first day for which benefits are payable. Earlier filing will speed your payment. Late filing results in loss of payment for the number of days the claim is late unless "good cause" for the delay is established.

*additional requirements apply.

HOW BENEFITS ARE PAID

The Disability Insurance Program is designed to serve you by mail. You do not need to leave home or the hospital to receive benefits.

When your claim is received, the disability insurance office serving your community, will request the information necessary to determine your eligibility. In the meantime, unless you had already recovered, you may be sent a "continued claim" form to certify to benefits while awaiting the responses for requested information.

Benefits may begin with the day after the seven-day waiting period of disability or the first day of hospitalization, including certain "short stay" facilities, whichever comes first. (You may be paid for the waiting period if your disability exceeds 21 days.)

Benefits are paid as rapidly as possible after receipt of all needed information if you meet all eligibility requirements. The benefit check will be mailed to you. If you are eligible for continued benefits, a "continued claim" form for the next period will be enclosed. Normally these periods will be for two weeks. Partial weeks are paid at 1/7th of the weekly benefit amount for each day of disability.

VOLUNTARY PLANS

A majority of employees of an employer may voluntarily consent to be covered by an insured or self-insured plan with that employer instead of the State Plan. If you have chosen coverage under such a plan the provisions of this pamphlet may not apply to you; you should obtain information about your coverage and file your claim through your employer.

ELECTIVE COVERAGE

The current cost can be obtained by contacting your local Employment Tax District Office.

Employers and self-employed persons may elect coverage. The cost is set annually based on claim experience.

Individuals in family employment, not subject to the Code, may also elect coverage at the same rate as other employees.

Claims are filed in the same manner as State Plan claims, however there are some differences in eligibility requirements from those listed in this pamphlet. For information, contact your disability insurance office or any Employment Tax Office.

HOW YOUR BENEFIT RATE IS DETERMINED

The weekly and maximum benefit amounts of your claim will be based on the wages paid to you during a certain past 12 month period known as the **base period**. Only wages subject to the disability insurance tax law can be used and they must total at least \$300. The date on which your claim begins determines which your base period will be and thus the wages which will be used in computing your benefits. If you wish your claim to begin at a date later than the date your disability begins, contact the nearest Disability Insurance Office to have your claim start later.

The **base period** is divided into four consecutive calendar quarters. The month in which your claim begins determines which four quarters must be used. To determine your base period use the following chart which shows how base periods are determined:

When Your Claim Begins	Then Your Base Period is the Twelve Months Ending On:
1st quarter	September 30
2nd quarter	December 31
3rd quarter	March 31
4th quarter	June 30

For example, a claim beginning in July is based on the four quarters of the previous year. A claim beginning in August uses the last three quarters (9 months) of the previous year plus the first quarter of the year in which the claim begins.

EXCEPTIONS. If you were paid less than \$300 in wages in the base period and your claim begins during an unemployment insurance benefit year, the unemployment insurance base period will be substituted.

If you were in the military service, received workers' compensation benefits, or did not work because of a trade dispute during your base period, you may be able to substitute wages paid in prior quarters to make your claim valid or increase your benefit amount. If your claim is denied because of extended unemployment during your base period, you may also be able to substitute wages paid in prior quarters to make your claim valid.

WAGE CONTINUATION

WAGES. If you receive wages from an employer while disabled, benefits and wages added together are limited to your weekly wage (less overtime) immediately prior to disability.

BENEFIT MAXIMUMS

The maximum amount of benefits is 52 times the weekly rate but not more than your total base period wages, except:

WHILE RESIDENT IN AN ALCOHOLIC RECOVERY HOME OR A DRUG FREE RESIDENTIAL FACILITY. While participating in an approved alcoholic recovery program or drug free residential program on referral or recommendation of a doctor, disability benefits are payable for a limited period.

* Disabilities caused by acute or chronic alcoholism, or drug abuse, being medically treated do not have this limitation.

BENEFITS ARE NOT PAYABLE

1. When you are entitled to temporary disability benefits for workers' compensation, except if they are at a lesser weekly rate than your disability insurance, the difference may be paid to you.
2. When you are entitled to unemployment insurance.
3. If you had left the labor market prior to becoming disabled.
4. When legal custody is the cause of unemployment.
5. When confined by court order or certification as a drug, alcoholic, drug addict or sexual psychopath.

BENEFIT SCHEDULE

Here is how your "weekly" rate (the amount of benefits paid for a seven day period) is determined from the quarter of your base period during which you were paid the highest wages.

1	15	140.00	90	3,250	3,274.99	6	96	4,375	4,399.99	141	180
16	110	1,140.00	61	3,260	3,284.99	6	96	4,400	4,424.99	146	185
31	210	2,140.00	76	3,270	3,294.99	6	96	4,410	4,434.99	151	190
46	310	3,140.00	91	3,280	3,304.99	6	96	4,420	4,444.99	156	195
61	410	4,140.00	106	3,290	3,314.99	6	96	4,430	4,454.99	161	200
76	510	5,140.00	121	3,300	3,324.99	6	96	4,440	4,464.99	166	205
91	610	6,140.00	136	3,310	3,334.99	6	96	4,450	4,474.99	171	210
106	710	7,140.00	151	3,320	3,344.99	6	96	4,460	4,484.99	176	215
121	810	8,140.00	166	3,330	3,354.99	6	96	4,470	4,494.99	181	220
136	910	9,140.00	181	3,340	3,364.99	6	96	4,480	4,504.99	186	225
151	1,010	10,140.00	196	3,350	3,374.99	6	96	4,490	4,514.99	191	230
166	1,110	11,140.00	211	3,360	3,384.99	6	96	4,500	4,524.99	196	235
181	1,210	12,140.00	226	3,370	3,394.99	6	96	4,510	4,534.99	201	240
196	1,310	13,140.00	241	3,380	3,404.99	6	96	4,520	4,544.99	206	245
211	1,410	14,140.00	256	3,390	3,414.99	6	96	4,530	4,554.99	211	250
226	1,510	15,140.00	271	3,400	3,424.99	6	96	4,540	4,564.99	216	255
241	1,610	16,140.00	286	3,410	3,434.99	6	96	4,550	4,574.99	221	260
256	1,710	17,140.00	301	3,420	3,444.99	6	96	4,560	4,584.99	226	265
271	1,810	18,140.00	316	3,430	3,454.99	6	96	4,570	4,594.99	231	270
286	1,910	19,140.00	331	3,440	3,464.99	6	96	4,580	4,604.99	236	275
301	2,010	20,140.00	346	3,450	3,474.99	6	96	4,590	4,614.99	241	280
316	2,110	21,140.00	361	3,460	3,484.99	6	96	4,600	4,624.99	246	285
331	2,210	22,140.00	376	3,470	3,494.99	6	96	4,610	4,634.99	251	290
346	2,310	23,140.00	391	3,480	3,504.99	6	96	4,620	4,644.99	256	295
361	2,410	24,140.00	406	3,490	3,514.99	6	96	4,630	4,654.99	261	300
376	2,510	25,140.00	421	3,500	3,524.99	6	96	4,640	4,664.99	266	305
391	2,610	26,140.00	436	3,510	3,534.99	6	96	4,650	4,674.99	271	310
406	2,710	27,140.00	451	3,520	3,544.99	6	96	4,660	4,684.99	276	315
421	2,810	28,140.00	466	3,530	3,554.99	6	96	4,670	4,694.99	281	320
436	2,910	29,140.00	481	3,540	3,564.99	6	96	4,680	4,704.99	286	325
451	3,010	30,140.00	496	3,550	3,574.99	6	96	4,690	4,714.99	291	330
466	3,110	31,140.00	511	3,560	3,584.99	6	96	4,700	4,724.99	296	335
481	3,210	32,140.00	526	3,570	3,594.99	6	96	4,710	4,734.99	301	340
496	3,310	33,140.00	541	3,580	3,604.99	6	96	4,720	4,744.99	306	345
511	3,410	34,140.00	556	3,590	3,614.99	6	96	4,730	4,754.99	311	350
526	3,510	35,140.00	571	3,600	3,624.99	6	96	4,740	4,764.99	316	355
541	3,610	36,140.00	586	3,610	3,634.99	6	96	4,750	4,774.99	321	360
556	3,710	37,140.00	601	3,620	3,644.99	6	96	4,760	4,784.99	326	365
571	3,810	38,140.00	616	3,630	3,654.99	6	96	4,770	4,794.99	331	370
586	3,910	39,140.00	631	3,640	3,664.99	6	96	4,780	4,804.99	336	375
601	4,010	40,140.00	646	3,650	3,674.99	6	96	4,790	4,814.99	341	380
616	4,110	41,140.00	661	3,660	3,684.99	6	96	4,800	4,824.99	346	385
631	4,210	42,140.00	676	3,670	3,694.99	6	96	4,810	4,834.99	351	390
646	4,310	43,140.00	691	3,680	3,704.99	6	96	4,820	4,844.99	356	395
661	4,410	44,140.00	706	3,690	3,714.99	6	96	4,830	4,854.99	361	400
676	4,510	45,140.00	721	3,700	3,724.99	6	96	4,840	4,864.99	366	405
691	4,610	46,140.00	736	3,710	3,734.99	6	96	4,850	4,874.99	371	410
706	4,710	47,140.00	751	3,720	3,744.99	6	96	4,860	4,884.99	376	415
721	4,810	48,140.00	766	3,730	3,754.99	6	96	4,870	4,894.99	381	420
736	4,910	49,140.00	781	3,740	3,764.99	6	96	4,880	4,904.99	386	425
751	5,010	50,140.00	796	3,750	3,774.99	6	96	4,890	4,914.99	391	430
766	5,110	51,140.00	811	3,760	3,784.99	6	96	4,900	4,924.99	396	435
781	5,210	52,140.00	826	3,770	3,794.99	6	96	4,910	4,934.99	401	440
796	5,310	53,140.00	841	3,780	3,804.99	6	96	4,920	4,944.99	406	445
811	5,410	54,140.00	856	3,790	3,814.99	6	96	4,930	4,954.99	411	450
826	5,510	55,140.00	871	3,800	3,824.99	6	96	4,940	4,964.99	416	455
841	5,610	56,140.00	886	3,810	3,834.99	6	96	4,950	4,974.99	421	460
856	5,710	57,140.00	901	3,820	3,844.99	6	96	4,960	4,984.99	426	465
871	5,810	58,140.00	916	3,830	3,854.99	6	96	4,970	4,994.99	431	470
886	5,910	59,140.00	931	3,840	3,864.99	6	96	4,980	5,004.99	436	475
901	6,010	60,140.00	946	3,850	3,874.99	6	96	4,990	5,014.99	441	480
916	6,110	61,140.00	961	3,860	3,884.99	6	96	5,000	5,024.99	446	485
931	6,210	62,140.00	976	3,870	3,894.99	6	96	5,010	5,034.99	451	490
946	6,310	63,140.00	991	3,880	3,904.99	6	96	5,020	5,044.99	456	495
961	6,410	64,140.00	1,006	3,890	3,914.99	6	96	5,030	5,054.99	461	500
976	6,510	65,140.00	1,021	3,900	3,924.99	6	96	5,040	5,064.99	466	505
991	6,610	66,140.00	1,036	3,910	3,934.99	6	96	5,050	5,074.99	471	510
1,006	6,710	67,140.00	1,051	3,920	3,944.99	6	96	5,060	5,084.99	476	515
1,021	6,810	68,140.00	1,066	3,930	3,954.99	6	96	5,070	5,094.99	481	520
1,036	6,910	69,140.00	1,081	3,940	3,964.99	6	96	5,080	5,104.99	486	525
1,051	7,010	70,140.00	1,096	3,950	3,974.99	6	96	5,090	5,114.99	491	530
1,066	7,110	71,140.00	1,111	3,960	3,984.99	6	96	5,100	5,124.99	496	535
1,081	7,210	72,140.00	1,126	3,970	3,994.99	6	96	5,110	5,134.99	501	540
1,096	7,310	73,140.00	1,141	3,980	4,004.99	6	96	5,120	5,144.99	506	545
1,111	7,410	74,140.00	1,156	3,990	4,014.99	6	96	5,130	5,154.99	511	550
1,126	7,510	75,140.00	1,171	4,000	4,024.99	6	96	5,140	5,164.99	516	555
1,141	7,610	76,140.00	1,186	4,010	4,034.99	6	96	5,150	5,174.99	521	560
1,156	7,710	77,140.00	1,201	4,020	4,044.99	6	96	5,160	5,184.99	526	565
1,171	7,810	78,140.00	1,216	4,030	4,054.99	6	96	5,170	5,194.99	531	570
1,186	7,910	79,140.00	1,231	4,040	4,064.99	6	96	5,180	5,204.99	536	575
1,201	8,010	80,140.00	1,246	4,050	4,074.99	6	96	5,190	5,214.99	541	580
1,216	8,110	81,140.00	1,261	4,060	4,084.99	6	96	5,200	5,224.99	546	585
1,231	8,210	82,140.00	1,276	4,070	4,094.99	6	96	5,210	5,234.99	551	590
1,246	8,310	83,140.00	1,291	4,080	4,104.99	6	96	5,220	5,244.99	556	595
1,261	8,410	84,140.00	1,306	4,090	4,114.99	6	96	5,230	5,254.99	561	600
1,276	8,510	85,140.00	1,321	4,100	4,124.99	6	96	5,240	5,264.99	566	605
1,291	8,610	86,140.00	1,336	4,110	4,134.99	6	96	5,250	5,274.99	571	610
1,306	8,710	87,140.00	1,351	4,120	4,144.99	6	96	5,260	5,284.99	576	615
1,321	8,810	88,140.00	1,366	4,130	4,154.99	6	96	5,270	5,294.99	581	620
1,336	8,910	89,140.00	1,381	4,140	4,164.99	6	96	5,280	5,304.99	586	625
1,351	9,010	90,140.00	1,396	4,150	4,174.99	6	96	5,290	5,314.99	591	630
1,366	9,110	91,140.00	1,411	4,160	4,184.99	6	96	5,300	5,324.99	596	635
1,381	9,210	92,140.00	1,426	4,170	4,194.99	6	96	5,310	5,334.99	601	640
1,396	9,310	93,140.00	1,441	4,180	4,204.99	6	96	5,320	5,344.99	606	645
1,411	9,410	94,140.00	1,456	4,190	4,214.99	6	96	5,330	5,354.99	611	650
1,426	9,510	95,140.00	1,471	4,200	4,224.99	6	96	5,340	5,364.99	616	655
1,441	9,610	96,140.00	1,486	4,210	4,234.99	6	96	5,350	5,374.99	621	660
1,456	9,710	97,140.00	1,501	4,220	4,244.99	6	96	5,360	5,384.99	626	665
1,471	9,810	98,140.00	1,516	4,230	4,254.99	6	96	5,370	5,394.99	631	670
1,486	9,910	99,140.00	1,531	4,240	4,264.99	6	96	5,380	5,404.99	636	675
1,501	10,010	100,140.00	1,546	4,250	4,274.99	6	96	5,390	5,414.99	641	680
1,516	10,110	101,140.00	1,561	4,260	4,284.99	6	96	5,400	5,424.99	646	685
1,531	10,210	102,140.00	1,576	4,270	4,294.99	6	96	5,410	5,434.99	651	690
1,546											

FROM:



TO:

State of California
Employment Development Department
P.O. Box 13140
Sacramento, CA 95813-4140



HAVE YOU COMPLETED ALL ITEMS AND CHECKED YOUR SOCIAL SECURITY ACCOUNT NUMBER?

The Information Practices Act beginning with Section 1798 of the Civil Code imposes conditions on the gathering, maintenance, disclosure, and correction of personal information by public agencies.

1. Right to inspect and correct Civil Code Section 1798.34 gives you the right to inspect any personal records maintained about you by the Employment Development Department. Section 1798.35 permits you to request that the record be corrected if you believe that it is not accurate, relevant, timely or complete.
2. Exemptions: Certain limited types of information that would generally be considered personal are exempt from disclosure to you. (a) Medical or psychological records where knowledge of the contents might be harmful to the subject (Civil Code Section 1798.3); (b) Records of active, criminal, civil or administrative investigations (Civil Code Section 1798.3); (c) Names of individuals submitting letters of reference (Civil Code Section 1798.38).
3. Appeal rights: If you are denied access to records which you believe you have a right to inspect or if your request to amend your record is refused, you may file an appeal with your local Employment Development Department office.

DO NOT WRITE OR SIGN IN THESE SPACES
PLEASE DO NOT SIGN

FOLD ON THIS LINE

FOLD ON THIS LINE

NOTE: If you need assistance in a language other than English, write that language here

CLAIM STATEMENT OF EMPLOYEE

COMPLETE ALL ITEMS. IF INCOMPLETE, THIS FORM WILL BE RETURNED, CAUSING A DELAY IN BENEFIT PAYMENTS

1. Print your full name: FIRST LAST		2. IMPORTANT: Enter Your Social Security Account Number	
City and state worked under in last two years: Your mailing address: STREET ADDRESS, P.O. OR R.F.D. APT. NO. CITY OR TOWN STATE AND ZIP CODE		3. What was the first day you were too sick to perform all the duties of your regular or customary work, even if it was a Saturday, Sunday, holiday, or a normal day off? MONTH DAY YEAR MONTH DAY YEAR	
Your home address: (if different from mailing address) STREET ADDRESS OR SPECIFIC DIRECTIONS TO YOUR HOME IF P.O. BOX OR R.F.D.		4. What was the last day you worked? MONTH DAY YEAR	

5. Employer's Business Name		Telephone Number ()	
Employer's Business Address		CITY STATE AND ZIP CODE	
6. Your occupation with this employer		Your Badge or Payroll number	
What is your usual occupation?		Office: 2	
Were you an employer or self-employed individual?		Comp: 2503 B	
Did you work more than 14 days during your last period of employment which ended on the date shown in item (4) above?		2501 H	
Did you stop work because of sickness or injury?			
If "No," please give reason:			
Have you filed for or received UNEMPLOYMENT INSURANCE benefits between the last day you worked and the first day you became disabled?			
Has, or will your employer continue your pay, by means of sick leave, vacation, pension, gift or other means?			
7. Was this disability caused by your work? If "Yes," describe HOW			
Are you claiming or receiving Workers' Compensation benefits for any on-the-job injuries or illnesses during the period covered by this claim?			
8. Have you recovered from your disability?		By	
If "Yes," enter date of recovery:			
9. Have you returned to work for any day, part time or full time after the date shown in item (8) above?			
If "Yes," please enter such dates:			

10. I hereby claim benefits and certify that for the period covered by this claim I was unemployed and disabled, that the foregoing statements including any accompanying statements are to the best of my knowledge and belief true, correct and complete. I hereby authorize my attending physician, practitioner, hospital and employer to furnish and disclose all facts concerning my disability and wages or earnings that are within their knowledge and to allow inspection of and provide copies of any hospital records concerning my disability that are under their control. I understand this authorization is granted for a period of 18 months from the date of my signature or the effective date of the claim, whichever is later. I agree that a photocopy of this release shall be as valid as the original.

Claim signed on: MONTH DAY YEAR Claimant's signature: DO NOT PRINT TELEPHONE NUMBER

Under Section 2101 of the California Unemployment Insurance Code, it is a misdemeanor willfully to make a false statement or knowingly to conceal a material fact in order to obtain the payment of any benefits, such misdemeanor being punishable by imprisonment not exceeding six months or by a fine not exceeding \$100 or both.	If your signature is made by mark (X) it must be attested by two witnesses with their addresses.	
	SIGNATURE-WITNESS	SIGNATURE-WITNESS
	ADDRESS	ADDRESS

If an authorized agent is filing for benefits for an INCAPACITATED claimant, or a spouse is filing for a MENTALLY INCAPACITATED individual, contact the office listed below, or any Employment Development Department office, for the required forms and instructions.

TEAR ALONG DOTTED LINE

KEEP FOR YOUR RECORDS

INFORMATION COLLECTION AND ACCESS

STATE LAW REQUIRES THE FOLLOWING INFORMATION TO BE PROVIDED WHEN COLLECTING INFORMATION FROM INDIVIDUALS

AGENCY NAME Employment Development Department (EDD)	TITLE OF OFFICIAL RESPONSIBLE FOR INFORMATION MAINTENANCE Manager, Disability Insurance Office	
LOCAL CONTACT PERSON Manager of the Employment Development Department Facility	ADDRESS 5009 Broadway Sacramento, CA	TELEPHONE NUMBER (916) 739-2944

AUTHORITY WHICH AUTHORIZES THE MAINTENANCE OF THE INFORMATION

- Sections 2601 through 3272 of the Unemployment Insurance Code.
- Sections 2706-1, 2706-2, 2706-1 and 2710-1, Title 22, California Administrative Code.

THE FOLLOWING ITEMS OF INFORMATION ARE VOLUNTARY. ALL OTHERS ARE MANDATORY

- All information requested is mandatory.

THE CONSEQUENCES IF ANY OF NOT PROVIDING ALL OR ANY PART OF THE REQUESTED INFORMATION

- Failure to supply any or all information may cause delay or may cause you to be denied benefits to which you are entitled.
- Willfully making a false statement or representation or knowingly withholding a material fact to obtain or increase any benefit or payment will result in a disqualification to receive benefits and/or service, and could lead to prosecution.

DOCTOR'S CERTIFICATE

Paternal File No.

1999

Take the stress away and the body takes it the surprising danger is when

Findings

Diagnosis:

Type of treatment and/or medication rendered to patient::

14 Is this patient now pregnant or has she been pregnant

Yes ☒ No ☐

13. Operations

21

1111

0

1997

Use of prewriting

19. Have you reported this on a concurrent

Yes ☐ No ☐ Name of carrier or firm)

20. Further comments (if indicated)

21. Was or is patient confined in a registered bed patient in a hospital?

Was patient treated in the surgical unit of a hospital or surgical unit?

If you please provide

22. Date and hour entered as a registered bed patient and discharged from such Hospital pursuant to your orders

10

23 Would the disclosure of this information to your patient be medically or psychologically detrimental to the patient?

Yes ☐ No ☐

Report on practice

ADVERT TO THE PUBLIC

1

1

... ..

- To determine your eligibility for disability insurance benefits

* To be submitted and published in condensed form for the use and information of government agencies and the public (your name or identification will not appear in publications).

- To be used to inform persons who are being sought for failure to provide support for minor children.

* To be used by other governmental agencies to determine eligibility for public social services under the provisions of Division 9 of the Welfare and Institutions Code.

- To be used by the Employment Development Department to enable it to carry out his responsibilities under the Unemployment Insurance Code.

[illegible]

- Pursuant to section 3714 of the Unemployment Insurance Code, (1) information may be provided to the extent necessary for the administration of public social services or to the Director of Social Services or his representatives; (2) case file records may be released to the Department of Rehabilitation unless the individual requests otherwise; (3) information shall be released to any law enforcement agency upon request after a felony arrest warrant has been issued against the applicant.

UNION CIV. CODE SECTION 1792A YOU HAVE THE RIGHT TO REQUEST RECORDS MAINTAINED ON YOU BY THE AGENCY UNLESS EXEMPTED AS
 DISCLOSED ON THE FOLLOWING

THE UNIVERSITY OF CHICAGO

If you do not understand this form or any form provided by Disability Insurance, call the telephone number shown on the form for assistance.

如果你不明白傷病保險局所提供的這張或任何其他表格，
請照表上所顯示的號碼打電話來，我們會幫助你。

Si no comprende la información en este formulario o cualquier formulario proveído por las Oficinas del Seguro de Incapacidad, y desea asistencia, llame al número telefónico que aparece en el formulario.

Do not complete this claim form if you are insured by a Voluntary Plan maintained by your employer. Ask your employer for information regarding your coverage and for proper forms to complete.

INSTRUCTIONS FOR APPLYING FOR STATE DISABILITY INSURANCE BENEFITS

MEDICAL CARE REQUIREMENTS:

The Doctor's Certificate is absolutely necessary* and must be filled in by a licensed medical or osteopathic physician and surgeon, chiropractor, dentist, podiatrist, optometrist, designated psychologist or an authorized medical officer of a United States Government facility. You must have been examined by or under the care of a physician or practitioner* during some portion of the first eight days of your disability, otherwise you may lose benefits.

HOW TO COMPLETE THIS CLAIM FORM:

First: You must complete ~~ALL~~ parts of the Claim Statement of Employee. Be accurate with the dates. Check your Social Security Account Number carefully.

Second: Ask your Doctor to complete the Doctor's Certificate.

WHEN TO COMPLETE AND MAIL THIS CLAIM FORM:

1. IF YOU WERE NOT HOSPITALIZED, complete and mail this form after the eighth (8) day following the date YOU enter in item 3 on the Claim Statement of Employee.
2. IF YOU WERE HOSPITALIZED, complete and mail this form after the first (1) day of hospital confinement.
3. Important! The claim must be mailed within 48 days of the date you became disabled if you are to receive credit from the day you first became disabled. If the claim is mailed late, and you believe that you have "good cause", you should include an explanation on a separate sheet attached to the claim form.

It is YOUR OWN responsibility to see that this Claim and Doctor's Certificate are filled out **COMPLETELY** and mailed to the Employment Development Department at the address on the form. If any item is not completed on this form, it will be returned for completion, and your benefit payment will be delayed. If you wish your claim to begin later than the date your disability begins, contact the nearest Disability Insurance Office before you submit your claim.

For important information concerning your benefit rates see "How Your Benefit Rate is Determined" in the Disability Insurance Provisions pamphlet (DE 2515).

For additional information contact any Employment Development Department office.

*If you are receiving temporary workers' compensation and are filing for reduced State disability benefits for the same days, the Doctor's Certificate is not required.

**If you belong to the teachings of a church, sect, denomination or organization, and in accordance with its precepts, abstain from working on sabbath or sabbath days, you may submit the Certificate of your practitioner, who must be approved by the Employment Development Department, in place of the Doctor's Certificate. The certificate must be obtained from your practitioner or any field office of the Department, and must be attached to this form in place of the Doctor's Certificate.

DE 2501 REV. 81 11-001 FIRST CLAIM FOR DISABILITY INSURANCE

FEDERAL PRIVACY ACT

The Employment Development Department requires disclosure of social security account numbers on a mandatory basis to comply with Unemployment Insurance Code Sections 1263 and 2627; with Title 22, California Administrative Code Sections 1085, 1086, and 1326; and with Title 20, Code of Federal Regulations Part 604.

Social security account numbers may be disclosed pursuant to Sections 322 and 2714 of the Unemployment Insurance Code and Section 1796.24 of the Civil Code to other governmental departments and agencies both federal and state, which are concerned with any of the following: (1) administration of an unemployment insurance program; (2) collection of taxes which may be used to finance unemployment insurance or disability insurance; (3) relief of unemployed or destitute individuals; (4) investigation of labor law violations or allegations of unlawful employment discrimination; (5) the hearing of workers' compensation appeals; (6) or whenever necessary to permit a state agency to carry out its mandated responsibilities where the use to which the information will be put is compatible with the purpose for which it was gathered; (7) or when mandated by state and federal law. Disclosures under Unemployment Insurance Code Section 322 will only be made in those instances in which it furthers the administration of the programs mandated by that code.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 6, 1985

TO: Representative Niilo Koponen
ATTN: Deborah Niedermeyer
FROM: Mark Torgerson *MT*
Legislative Analyst
RE: Cost and Availability of Liability Insurance
Research Request 86-027

You asked this agency to survey liability insurance rate increases for various businesses and professions in Alaska during the past two or three years. You also asked us to compile a bibliography of publications which analyze the causes of, and possible solutions to, the rate increases. We contacted the Alaska Department of Commerce and Economic Development's Division of Insurance, the National Conference of State Legislatures (NCSL), the United States House Subcommittee on Commerce and Transportation, the National Insurance Consumer Organization (NICO), the Children's Defense Fund and various national insurance trade organizations. They provided us with the following information.

Liability Insurance Rate Increases

As you know, commercial and governmental liability insurance rates have increased substantially since mid-1984. The entities affected include private businesses such as commercial fishermen, day care centers, medical professionals, owners of liquor establishments, truckers and air taxi operators; governmental entities such as municipalities and schools have also been hit with significant rate increases. According to Don Koch, Chief of Market Surveillance for the Division of Insurance, rates have risen sharply for all lines of liability insurance.

A listing of the specific rate increases for various businesses was unavailable. Mr. Koch stated that the Division of Insurance does not keep an ongoing record of each insurance company's rates. (The division kept these records at one time, but they were rarely used.) The division becomes aware of rate changes when insurance companies request rate increases or decreases. Mr. Koch stated that the division has rejected some requests for rate increases because they were deemed "excessive" as outlined in AS 21.39.030. Based upon rate requests made in the past eighteen months by insurance companies, Mr. Koch estimated

that liability rates have increased between 25 percent and 50 percent, depending upon the type of entity to be insured. (These rate increases have occurred even though the risk to the insurance companies has not changed.) However, actual rates for some businesses have increased by up to a reported 900 percent. This occurs when a business's insurance company cancels its coverage, thereby forcing the business to find another insurer. According to Mr. Koch, insurance coverage is currently available for all types of businesses except asbestos removal, but businesses whose insurance is cancelled may be required to pay large increases for new insurance. In addition, the new coverage may be limited in amount and scope. Furthermore, the business's new insurer may be a "nonadmitted" (also called "surplus lines") insurance company; that is, the company is not subject to State regulation. Mr. Koch stated that the Division of Insurance has no regulatory control or current ability to track the rates charged by the nonadmitted insurers. He said, though, that the division attempts to monitor their financial solvency.

The governor's task force on insurance problems held a teleconference on October 8, 1985. Some of the witnesses provided specific examples of rate increases. For instance, a nurse midwife stated that her insurance cost would increase from \$3,500 to \$11,000 annually. She said that the average annual salary for a nurse midwife in Alaska is approximately \$40,000 per year. Another witness, a day care operator from Wrangell, stated that the cost of insurance for the day care was \$325 in 1984, and would be approximately \$4,000 to \$6,000 for the next year, if the day care decides to continue its operation. Finally, the Kenai city attorney stated that Kenai's municipal liability insurance was scheduled to increase by 285 percent, to \$318,000 annually, a cost that is equivalent to a two mill property tax. The enclosed press clippings provide other examples of specific rate changes.

Bibliography of Causes and Solutions to the Rate Increases

The attached materials provide information on the causes of the recent increases in insurance rates and potential solutions. As these materials indicate, the participants in this "crisis"--the insured businesses, insurance companies, reinsurers such as Lloyd's of London, lawyers and consumer groups--disagree on specific causes and solutions. Among the causes asserted are the following: 1) the boom/bust cycle in the insurance industry has again hit bottom and is caused by insurance industry management policies; the insurance companies, in competing for investment dollars, lowered rates to "bargain basement" levels during each of the past six years (in the normal cycle, rates decrease for three years and increase for three years); and 2) increasing personal injury litigation has resulted in unexpected and unpredictable insurance company costs.

Representative Koponen
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However, the various participants generally agree that the major factor affecting current insurance rates is the insurance industry's 1984 pre-tax operating losses of \$3.8 billion.

Proposed solutions to the increasing rates and decreasing availability vary among the interested parties. Insurance companies and insured parties (including the recently formed Alaska Citizens for Tort Reform Coalition) generally call for tort reforms (see the enclosed article from The Anchorage Times, October 6, 1985: "Insurance Crisis Takes a Turn for the Worse"). The insurance industry asserts that vague tort laws result in arbitrary jury decisions which produce an atmosphere of uncertainty. They contend that if government will provide a more predictable legal climate via specific tort laws, the industry will have the ability to offer the public a stable insurance cost environment. Lloyd's of London, a major reinsurer (these organizations assume some of the insurance companies' risks) in Alaska and the other states, also advocates tort reforms and has threatened to pull out of the United States insurance market unless changes are made.

Among the tort reforms suggested are those which would limit the damages that could be awarded in a personal injury suit. Some suggest that noneconomic damages (e.g., pain and suffering) be limited while others have proposed that punitive damages be awarded to the state instead of to the injured plaintiff. The argument against awarding punitive damages to the injured party is that he or she should be fully compensated by other court awards. Instead, the punitive damages award could be placed in a specific state fund--a reinsurance fund, for example. However, the effect of such a law may be that fewer punitive damage claims would be filed because the plaintiff's financial incentive to sue for these damages would be limited. Attached is House Research Request 81-195, which addresses some of the available options for dealing with personal injury damage claims. At your request, we can further explore the available options regarding punitive or other types of personal injury damages.

On the other hand, lawyers and some consumer groups such as the National Insurance Consumer Organization (NICO) assert that tort reforms should not be implemented at the expense of victims' rights. National Insurance Consumer Organization advocates a system of state or federal reinsurance similar to that used during the riots of the 1960's. The authorized governmental agency would have standby authority to provide coverage for specific risks. The attached information from NICO explains their proposal and provides a draft entitled "The Omnibus Reinsurance Act of 1985."

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Page Four

Some of the witnesses at the October 8 teleconference advocated formation of a public corporation, similar to the Medical Indemnity Corporation of Alaska (MICA), to improve their particular profession's position concerning the cost and availability of insurance. However, Don Koch stated that MICA is currently having financial problems because of policy losses and inability to get reinsurance. Mr. Koch stated that MICA's future is uncertain.

According to Art Stanford, Administrator of MICA, the corporation was originally formed in 1976 as a result of the high cost and scarcity of medical malpractice insurance in Alaska in the mid-1970s. The Report of the Bodily Injury Reparations Advisory Committee (BIRAC) in 1979 states that another factor leading to MICA's creation was "the rights and expectations of an injured consumer of medical services in a climate of uncertainty and contention." The BIRAC report asserts that MICA was designed "to provide the health professional with the option of buying malpractice coverage at a reasonable rate in the State of Alaska if he was unable to obtain or afford it elsewhere." (BIRAC Report, page 70). The report goes on to say that one of the initial reasons for the formation of MICA was mandatory malpractice insurance in Alaska, i.e., all health care professionals would be required to buy malpractice insurance through MICA as a condition of getting a license in the state. However, the purchase of malpractice insurance is still voluntary, and Mr. Stanford estimates that upwards of 30 percent of Alaska's physicians have no malpractice insurance.

Some solutions to Alaska's liability insurance crisis will be proposed by the the Governor's task force, which will issue a report after its final meeting on November 12, 1985. According to Paul Troeh, Deputy Director of the Division of Insurance, one of the task force's recommendations will be that a long-term task force be created to work on specific solutions to the current liability insurance crisis. If you wish, we can provide you with a copy of the task force's report as it becomes available.

Another possible solution is a pilot project initiated by the Division of Insurance. According to Mr. Koch, the division is forming the project with the Department of Education and the Department of Health and Social Services in order to assist the state's day care operations. Basically, the State will act as a liaison between day care centers and insurance companies, providing necessary information to each party as requested. The details of this voluntary program (entitled CADIS--Co-ordination of Alaska Day Care Insurance Search) are still being ironed out.

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Page Five

We contacted the Children's Defense Fund in Washington, D.C. to gather other possible solutions for the day care insurance problem. Although that organization had no specific legislative proposals, they are sending legislation from California and New Jersey which they deem effective. We will forward their information to you when it arrives.

At your request, we have attached press clippings from state and national newspapers, magazines and journals. We have also attached materials from the National Conference of State Legislatures (NCSL). These materials include draft legislation from other states on municipal and tort liability reforms. The NCSL material also contains studies on various facets of liability insurance. We labeled these materials by source and subject matter. We have also attached materials provided by three national insurance industry trade groups--the Insurance Services Offices, Inc., the American Insurance Association, and the Insurance Information Institute (see computer printout of American newspaper articles). In addition, we have a copy of the Bodily Injury Reparations Advisory Committee (BIRAC) report to Governor Hammond in 1979. The 250 page BIRAC report reviewed "changing conditions in the availability and expense of personal injury insurance." If you would like a copy of the report, please let us know.

Although the information in this memorandum is general in nature, we hope that it is useful to you. Please call us if you want us to explore these issues in more detail.

MT

Attachments

American Bar Association Journal
Discussion of Joint & Several Liability Doctrine
1985

The Attack on Joint and Several Liability

By James Granelli

• In Los Angeles a driver high on drugs went through a stop sign and was broadsided by another motorist. A 16-year-old passenger in his car was crippled and brain-damaged in the 1979 crash. Last March a jury returned a verdict of \$2.16 million against the driver—and the City of Los Angeles. The city had failed to trim bushes that partly obstructed the view of the driver and was found to be 22 percent liable. But unless the award is returned on appeal, the city will pay nearly all of it. The negligent driver has no money and three co-defendants settled for their insurance policy limits—a total of \$200,000. (*Sills v. City of Los Angeles*, C-333504, San Fernando Superior Court.)

• In New York City 12 persons were killed and scores injured in a 1970 gas explosion caused by a restaurant owner who turned on a partly installed gas main that had been inspected by the city. A jury found the city 4 percent negligent, but the verdict exposed the city to millions of dollars in damages because the defendants most at fault were bankrupt. But the city was lucky; the verdict was reversed on other grounds in 1983. (*O'Connor v. City of New York*, 447 N.E.2d 33.)

• In San Diego a university soccer player was a passenger in a car on the scenic Torrey Pines Road when a speeding drunk driver crossed the center line on a curve and smashed into the car, killing two of his teammates and rendering him quadriplegic. The drunk driver offered his insurance policy limits of \$25,000. The city also was named as a defendant on a claim for faulty road design. Rather than risk a jury trial, the city settled in 1983—for \$1.6 million. (*Jugan v. City of San Diego*, Civ.

484152, San Diego Superior Court.)

Across the nation these judgments and settlements have become more common, especially in catastrophic injury cases. Public entities, often dragged into cases as defendants with scant liability exposure, find themselves the target defendants forced to pay off the entire judgment when codefendants can't pay. The real villain, public officials say, is the doctrine of joint and several liability.

Changing the ancient doctrine

Fourteen states have limited or abolished the doctrine in recent years. Municipal officials and some lawmakers want the doctrine changed, and pending legislation in California and New York—home of the nation's largest personal injury verdicts—would doom the joint-and-several rule, if enacted.

Developed over centuries by English and American courts, the rule dictates that when a person is injured by the joint acts of several people, liability is indivisible. That means, in practical terms, a plaintiff can collect an award from the defendants most able to pay—those with "deep pockets."

The rationale is basic fairness. "Who should suffer, the innocent victim or one of the wrongdoers who can afford to pay?" said James Frayne, executive director of the California Trial Lawyers Association. He and CTLA president Robert B. Steinberg of Los Angeles also contend that the joint-and-several rule acts as a deterrent—forcing cities, for instance, to trim trees that could obscure a motorist's vision and lead to an accident—and keeps a penniless victim from going on welfare.

"These cases are not that easy to win," Steinberg said. "So when the city is included, the jury has got to be pretty darned convinced the city was at least partially liable."

"The nature of the beast is such that it's the single greatest problem that cities face in liability issues," said California State Assemblyman Alister McAlister, who is supporting a colleague's proposal to limit the liability of public bodies. And Jay Biggins, consultant to New York City's Office of Management and Budget, complained, "The entire public treasury is considered available to each and every plaintiff. They're treating government as the ultimate insurer."

The League of California Cities has compiled figures from 134 cities statewide on cases involving joint and several liability. It found that those cities paid more than \$15.5 million in settlements and judgments during the fiscal year ending in June 1984. Two years earlier the same cities paid out \$4.5 million. That kind of a hike has forced insurance carriers either to raise premiums drastically—300 percent to 450 percent for one group of California cities—or to stop writing liability policies for public entities.

It is the hand of the insurance industry that the plaintiffs' trial bar sees behind the current efforts to abolish or modify the rule.

"Insurance companies have sold public entities a bill of goods that would save them millions and millions of dollars if they could have the joint-and-several rule changed," said Frayne. Although his group killed four bills to limit the rule in the last five years, Frayne admits the fight this year will be the toughest ever. Not only is the League of California Cities better organized, he said, but more legislators are sensitive to the needs of local governments because they once served on those bodies.

Even if no state changes the rule this year, lobbyists for public entities believe that change is inevitable. "We're very confident that, at some time, we will succeed because the joint-and-several

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ABSTRACT Losses have forced insurance companies writing business in Alaska to raise some commercial premiums 200 percent and new businesses are finding coverage difficult to obtain at any price. Don Koch, chief of market surveillance for the Alaska Division of Insurance, said concern is mounting over the ability of some companies to meet the obligations of large claims. Koch said two companies doing business in Alaska went bankrupt in 1984, and he is now concerned about six or seven others. According to Koch, the problems of availability are limited to business property, workers' compensation and commercial liability. New businesses are being forced to turn to the state's assigned risk pool for automobile liability and workers' compensation policies. Increases in the personal lines will be minor compared with those facing businesses.
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**STATEMENT
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INSURANCE
ASSOCIATION**

**BEFORE THE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM
CONCERNING
AVAILABILITY AND AFFORDABILITY OF LIABILITY INSURANCE
SEPTEMBER 19, 1985**



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