

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1748 SCOMM 69: HOUSE LIABILITY INSURANCE TASK FORCE, 1989-1990

1316

Furthermore, the screening of on-the-job injuries performed by these centers provides a coherent, orderly mechanism for investigating the causes of injuries and for monitoring workers' compensation claims.

Before this occupational health program was started, unskilled laborers were not required to undergo physicals before being hired, even though all other prospective county employees were required to do so. The pre-employment physicals for unskilled workers have helped eliminate those job candidates whose existing health problems would become a liability for the county. Twenty percent of the candidates for unskilled jobs have been rejected for employment as a result of this health

screening. The program also has brought about a reduction in time lost from work due to injury or illness. The annual physicals and health evaluations have helped in many instances to identify and treat health problems, thus reducing the number of sick days used.

The program has been so successful that the county has opened another health center at the county courthouse, serving an additional 450 employees. The Jefferson County risk manager reports that county employees have responded very favorably to the occupational health program. The program has had a very positive effect upon employee morale and employer-employee relations within the Jefferson County government.

27

*Risk Management in Westchester County**

INTRODUCTION

In March, 1974, Alfred Del Bello became the county executive of Westchester County. This date also marks the birth of the Office of Risk Management. Historically, the insurance responsibility was handled by an individual in the Law Department. This individual had various other jobs and no authority, although it was needed, to develop and implement policy or a risk and insurance program.

The primary goals of the Office of Risk Management were and continue to be the analysis and reduction of risk that could cause Westchester County severe financial loss, thereby forcing a reduction in services to tax-

payees. The objectives to help meet this goal were as follows:

- to establish a policy and procedure statement
- to inspect and examine county facilities to determine modes of operations and uncover employee safety problems
- to develop insurance and indemnification requirements and a system in which to monitor compliance with the above
- to develop a countywide safety program involving input from all departments
- to review security procedures at all county facilities
- to develop a countywide disaster plan
- to develop procedures for the solicitation and purchase of insurance
- to establish record-keeping procedures and reports for top management

*By Robert M. Bieber, Ebasco Risk Management Consultants, Inc. The author is the former Director of Risk Management, Westchester County, New York.

INFORMATION FROM THE NATIONAL
INSURANCE CONSUMER ORGANIZATION (NICO)

LANDSMAN & LASTER

1503 21ST STREET, N.W.
WASHINGTON, D.C. 20036

(202) 331-0800

JOHN L. LASTER
RON M. LANDSMAN

August 14, 1985

Hon. Rick Rule
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
Tenth and Constitution Avenues, N.W.
Washington, D.C. 20530

Dear Mr. Rule:

I am writing on behalf of the National Insurance Consumer Organization to bring to your attention evidence of concerted anticompetitive conduct within the property casualty insurance industry that is not exempt under the McCarran-Ferguson Act.

The industry is now going through one of its periodic capacity scares. As in previous incidents, the public suffers severe and economically debilitating dislocations. After a period of glut, when premiums drop to a fraction of their prior fixed-price levels, underwriting tightens like a vise and important major manufacturing and service industries find themselves unable to purchase insurance protection at any price from any company.

To be sure, much of this pattern may reflect nothing more than the operation of the business cycle in an industry not under reasonable and effective regulatory oversight at the national level. The extremely aggressive price competition in commercial property/casualty lines in the late 1970s, and perhaps the subsequent price increases as well, appears to reflect such market forces. Some of the industry's responses may also reflect the mindless herd instinct which so distinctively marks the insurance industry. This is perhaps to be expected in an industry with a long history of price-fixing and other cooperative anticompetitive arrangements under state regulation that from the consumers' perspective ranges from lax to impotent, but so be it.

But the response of the industry to recent developments in their customer industries -- and the statements of industry leaders explaining their conduct -- suggest that something more is occurring.

Spokesmen for the reinsurance industry have told state regulators that they plan to withdraw en masse if they -- the regulators -- do not approve new insurance policy forms jointly developed by the reinsurers and the industry price-fixing agency (Insurance Services Office, Inc.). These new policy forms severely

Mr. Rick Rule
August 14, 1985
Page Two

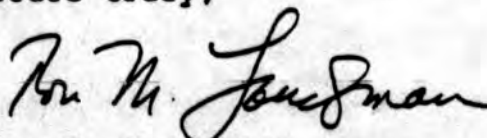
narrow the protection provided to the insurers' commercial customers, changes about which they are, to say the least, extremely unhappy. See Attachment A. Along the same lines, a well-known insurance company executive has justified the mass departure of insurers from medical, toxic waste, and directors' and officers' liability lines by "the social good" in "let[ting] the pressures build in the courts and the state legislatures" to change laws respecting their customers' -- and the insurers' -- liability. See Attachment B.

There is, finally, irrational market conduct that goes beyond even this industry's herd instinct. They have withdrawn from lines for risks with experience ranging from good to excellent and which even the insurers admit could and should be written. See Attachment C.

Boycotts to force action by state and federal officials, be they judges, legislators, or regulators, are illegal. The McCarran-Ferguson Act specifically does not exempt boycotts from federal antitrust enforcement. In St. Paul Fire and Marine Insurance Co. v. Barry, 438 U.S. 531 (1978), the Supreme Court held that the term boycott was broadly applicable to joint action to deny coverage to customers. Nor is there protection to be had under any of the familiar non-statutory exemptions. The Noerr-Pennington doctrine does not exempt "an express or implied agreement ... that the participants will jointly give up their trade freedom, or help one another to take away the trade freedom of others through ... boycotts" Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 136 (1961). And Parker v. Brown, 317 U.S. 341 (1943), does not exempt joint product-fixing absent state statutes authorizing such joint action. The debates on the McCarran-Ferguson Act reflect absolutely no consideration of agreements respecting products, and the state laws enacted in response to it by and large do not adopt such joint action as state policy. Southern Motor Carriers Rate Conference v. United States, --- U.S. ---, 53 U.S.L.W. 4422 (March 27, 1985).

Property/casualty insurance industry conduct, as explained by industry leaders themselves, may be but a prelude to a larger campaign to force major industries, from the chemical and drug manufacturers to physicians and others, to bend to the interests and will of insurers. If their means include non-exempt joint anticompetitive action, however, then you may hold the key to important public protection. I urge you to investigate to ascertain whether the federal antitrust laws are being violated.

Yours truly,



Ron M. Landsman
Counsel, National Insurance
Consumer Organization

RML/kd

Appendix A

JCC 6/18/85

Insurers Told: Exit Some Lines

By JAMES NOLAN
Journal of Commerce Staff

WOODBIDGE, N.J. — The insurance industry should quit covering doctors, chemical manufacturers and corporate officers and directors. And the sooner the industry quits such lines of business, the sooner it will free itself from its bondage to a court system "that has run amok."

This was the message delivered to a meeting of actuaries here Monday by John J. Byrne, chairman and chief executive officer of Geico Corp., the Washington-based personal lines insurance company.

Mr. Byrne said that the single thread running through such lines of business for underwriters was that they have fallen under the sway of the courts.

"There will be no problem with insuring homeowners or autos in the coming years," he said. "But anyone who puts his private capital behind lines such as malpractice is putting himself in the hands of a zany judge or jury out in California. To my mind, he is absolutely stupid."

Mr. Byrne's comments came in the midst of a discussion at a meeting of the Casualty Actuaries of New York about what kinds of insurance products might be available in the future.

The touchstone for the discussion was a presentation by the Insurance Services Office Inc., an industry-rating and data-gathering service. The ISO estimates that in the next few

'Anyone who puts his private capital behind lines such as malpractice is putting himself in the hands of a zany judge or jury out in California.'

years the insurance industry will suffer a \$62 billion shortfall in capacity. This means that corporate America will not be able to buy all the insurance it needs because insurers' ability to cover them will fall short by that amount.

Mr. Byrne said the industry was responding to these losses in precisely the right way by refusing to cover lines of business that are hostage to court interpretations. "It will be best for the national good to let society know that the problem is not one for the insurance industry but for society as a whole. It is right for the industry to withdraw and let the pressures for reform build in the courts and in the public imagination," Mr. Byrne said.

He said he saw little hope for reform in such things as the federal program for Superfund, a toxic waste cleanup measure. He said the vast amount of money thus far spent by Superfund was to "educate lawyers on how to refine their suits brought on the part of plaintiffs against industry."

"Anybody who leaves his private

capital where the courts can grab it has not done the right thing for his owners," Mr. Byrne said.

On a related score, Thomas A. Greene, president of his reinsurance brokerage firm in New York, said that still more pressure would be brought to bear on the American property and casualty industry by underwriters at Lloyd's of London. Mr. Greene said that beginning in 1986, Lloyd's syndicates would "simply not write reinsurance for the American casualty industry, especially in the lines mentioned by Mr. Byrne." He said further that reinsurance underwriters would virtually dictate to the ISO about a proposed commercial general liability form. He said the domestic reinsurance industry will not write treaties unless the industry adopts the new CGL form.

As to the stability of the insurance companies suffering through this trying period, at least one of the actuaries said that current measures of company solvency used by the National Association of Insurance Commissioners were less than adequate.

Kevin M. Ryan of the National Council of Compensation Insurance urged the actuaries to model industry solvency judgments on a study done by the Aetna Life & Casualty Co. a few years ago.

Aetna studied the financial data of companies that had actually failed and the resultant ratios were absolutely realistic, Mr. Ryan said.

EPA Chief Deems It Necessary To Keep Toxic Liability Powers

18

By LEAH R. YOUNG
Journal of Commerce Staff

WASHINGTON — The Environmental Protection Agency must keep the authority allowing it a wide choice of whom to sue for cleaning up toxic waste sites, Administrator Lee M. Thomas said.

While acknowledging that the market for all kinds of environmental insurance is drying up, Mr. Thomas insisted in an interview that the EPA cannot give up the "strict, joint and several liability" powers that courts have given it.

The insurance industry has been arguing that it cannot insure and collect premiums from individual companies when a court can require one or a few companies to pay all the costs of cleaning up a site.

That is especially true, insurers add, when many of the policies being interpreted by state courts never were intended to pay for hazardous waste cleanup.

But Mr. Thomas pointed out that he is responsible for getting such sites cleaned up while ensuring to the extent possible that the polluter, not the federal government, bears the costs.

The insurance industry would like to divide liability so that its clients are held responsible only for their share of damage, but the EPA finds that in most Superfund waste clean-up sites substances are mixed and records are poor.

When the EPA tried to apportion

responsibility — an approach that is surfacing again among some congressmen at the behest of the insurance industry — it became "just as controversial among the private parties as utilization of joint and several liability," Mr. Thomas said.

The EPA tried to base responsibility on the volume of waste, he said, but the companies fell into long debates over whose waste was more toxic.

However, as adamant as he is that strict, joint and several liability must be part of any Superfund program, Mr. Thomas opposes attempts by House Energy and Commerce Subcommittee Chairman James Florio, D-N.J., to write it into the pending Superfund bill.

"We don't think it should be specifically mandated," Mr. Thomas said. "Trying to get language in the statute has the potential of opening up the whole issue again to litigation."

But Rep. Florio argues that while he is "heartened" by the district court rulings to date, "this principle could be gutted by a specific district court or by the Justice Department."

He wants to make sure that industry cannot convince the administration to abandon this unwritten interpretation.

Rep. Florio lost a battle in his subcommittee on the issue to a group headed by Energy and Commerce Committee Chairman John Dingell, D-Mich.

In spite of the setback, Rep. Florio has vowed to continue his fight on the issue, and for other provisions the subcommittee rejected, in the full committee and on the House floor.

His rejection in subcommittee is no reason for rejoicing by the insurance industry. Many who opposed Rep. Florio support the views of Mr. Thomas.

Rep. Jim Slattery, D-Kan., explained that injecting joint and several liability into the legislation could lead to a situation in which the provision was either stricken or filibustered in the Senate.

That would create legislative history that might convince state courts that such liability is not part of Superfund.

While Mr. Thomas is determined to keep joint and several liability in spite of evidence of growing insurance problems, Mr. Thomas does not have any recommendations to alleviate the burden on the insurance industry.

He pointed out that a lot of the problems are not related just to Superfund, but rather to the general economic situation in the property-casualty insurance industry.

He noted that the European reinsurance market is drying up for environmental policies. There has been poor experience with asbestos, and a general desire to "establish a less risky base of insurance."

Under such circumstances, he said, he has been unable to win from the insurance industry any assurances that particular steps taken on the federal level will result in a return to the environmental market.

Instead, insurance industry spokesmen will only say that if some steps are not taken "there is a chance we won't get back in the market," Mr. Thomas said.

It is possible that there is a need for federal involvement in the environmental liability field, but the debate has not reached the point where he thinks he can draw any conclu-

AC 7/2/82
In the meantime, EPA recognizes that many hazardous waste sites being licensed under the Resource Conservation and Recovery Act may not prove financial responsibility on Nov. 8 as required.

Without insurance, some facilities may use their own net worth, Mr. Thomas said, but others may just be forced out of business.

Fewer facilities will require companies that are generating wastes to modify their procedures to incinerate or otherwise minimize waste that until now was cheaper to send to land disposal facilities.

It is too soon to analyze the impact of this scenario, he said, in light of the congressional decision to encourage companies to move away from land disposal.

The only thing he is at all sure of now is that solving the problems of insuring hazardous waste facilities would not solve the entire insurance dilemma.

The House subcommittee did vote against one provision that disturbed the insurance industry. Congressmen rejected an amendment to permit citizens to sue private parties if they perceived a dangerous situation being ignored by the Environmental Protection Agency.

Only one Florio amendment was attached to the Superfund bill that goes to the full Commerce Committee.

That provision requests that the House Ways and Means Committee devise as part of the taxing scheme in import fee to reduce the share of general federal revenues envisioned in the bill from \$250 million to \$110 million.

The idea is to tax imported feedstock derivatives equally with domestic feedstock components in order not to give an advantage to foreign derivatives.

Mr. Thomas said the administrator still opposes new Superfund taxes.

In Day-Care Crisis Cited

Official Criticizes Insurance Firms

By Sandra Sugawara
Washington Post Staff Writer

Maryland Insurance Commissioner Edward J. Muhl said yesterday that "hysteria" had caused insurance companies to discontinue coverage of day-care centers and that Maryland officials had blocked an attempt by one California firm to cancel 242 day-care policies.

Muhl also said that state officials were studying a wide variety of options, including the creation of a mutual liability insurance fund in Maryland similar to the one created in 1974 by the General Assembly to help physicians hit by an insurance malpractice crisis.

Muhl testified yesterday before the House Select Committee on Children, Youth and Families, which is holding hearings on the nationwide insurance crisis in the day-care industry. Muhl, who appeared on behalf of the National Association of Insurance Commissioners, criticized insurance companies for wholesale cancellation of day-care policies, saying the insurance industry was overreacting to news accounts of sexual abuse and court suits involving some day-care centers.

Muhl said a California insurance carrier canceled policies at 242 Maryland day-care centers before they were to expire. He said he recently ordered that firm to revoke the midterm cancellations, although he said the company does not have to renew the policies.

Muhl said he was sympathetic to the plight of the insurance industry, which had its worst year ever in 1984. He said the Association of Insurance Commissioners expects the industry to sell \$67 billion less in insurance this year than last year.

Muhl said he has signed 20 notices of insolvency for Maryland insurance firms this year. Those firms have gone out of business or must stop writing policies because of financial problems.

Insurance industry executives testified yesterday that the industry was in a slump and urged Congress to allow the industry to voluntarily work out the problem. But Rep.



EDWARD J. MUHL

... testifies before House committee

gress would be forced to get involved if the insurance industry failed to take immediate action to prevent the closing of thousands of day-care centers.

Insurance industry representatives have said the financial slump was caused by excessively low rates that companies charged during the late 1970s, when they were trying to increase business. They tried to make up the losses through investments, but were hurt by falling interest rates, according to Marvis A. Walter, senior vice president of Insurance Services Offices Inc., which compiles statistics and rate information for the industry.

Because of the financial problems, insurance firms began dropping high-risk industries, and they place the blame on the high awards given in liability cases.

The potential for multimillion-dollar judgments exists even though no such award has yet been paid in a child-abuse case, said Frank Neuhauser Jr., vice president of AIG Risk Management Inc., an insurance group based in New York. "Many of us believe we are living under a tort system that is completely out of control."

But J. Robert Hunter, former head of the Federal Insurance Administration during the Ford and Carter administrations, said that the insurance industry is using the courts "as a scapegoat."

"It's a self-inflicted problem, and to take it out on day-care centers is wrong," said Hunter.

Mike Casey is on vacation. The Federal Diary will resume when he returns.

Appendix B

JUC 6/18/85

10A

INSUR

Insurers Told: Exit Some Lines

By JAMES NOLAN
Journal of Commerce Staff

WOODBIDGE, N.J. — The insurance industry should quit covering doctors, chemical manufacturers and corporate officers and directors. And the sooner the industry quits such lines of business, the sooner it will free itself from its bondage to a court system "that has run amok."

This was the message delivered to a meeting of actuaries here Monday by John J. Byrne, chairman and chief executive officer of Geico Corp., the Washington-based personal lines insurance company.

Mr. Byrne said that the single thread running through such lines of business for underwriters was that they have fallen under the sway of the courts.

"There will be no problem with insuring homeowners or autos in the coming years," he said. "But anyone who puts his private capital behind lines such as malpractice is putting himself in the hands of a zany judge or jury out in California. To my mind, he is absolutely stupid."

Mr. Byrne's comments came in the midst of a discussion at a meeting of the Casualty Actuaries of New York about what kinds of insurance products might be available in the future.

The touchstone for the discussion was a presentation by the Insurance Services Office Inc., an industry-rating and data-gathering service. The ISO estimates that in the next few

'Anyone who puts his private capital behind lines such as malpractice is putting himself in the hands of a zany judge or jury out in California.'

years the insurance industry will suffer a \$62 billion shortfall in capacity. This means that corporate America will not be able to buy all the insurance it needs because insurers' ability to cover them will fall short by that amount.

Mr. Byrne said the industry was responding to these issues in precisely the right way by refusing to cover lines of business that are hostage to court interpretations. "It will be best for the social good to let society know that the problem is not one for the insurance industry but for society as a whole. It is right for the industry to withdraw and let the pressures for reform build in the courts and in the state legislatures," Mr. Byrne said.

He said he saw little hope for reform in such things as the federal program for Superfund, a toxic waste cleanup measure. He said the vast amount of money thus far spent by Superfund was to "educate lawyers on how to refine their suits brought on the part of plaintiffs against industry."

"Anybody who leaves his private

capital where the courts can grab it has not done the right thing for his owner," Mr. Byrne said.

On a related score, Thomas A. Greene, president of his reinsurance brokerage firm in New York, said that still more pressure would be brought to bear on the American property and casualty industry by underwriters at Lloyd's of London. Mr. Greene said that beginning in 1986, Lloyd's syndicates would "simply not write reinsurance for the American casualty industry, especially in the lines mentioned by Mr. Byrne." He said further that reinsurance underwriters would virtually dictate to the ISO about a proposed commercial general liability form. He said the domestic reinsurance industry will not write treaties unless the industry adopts the new CGL form.

As to the stability of the insurance companies suffering through this trying period, at least one of the actuaries said that current measures of company solvency used by the National Association of Insurance Commissioners were less than adequate.

Kevin M. Ryan of the National Council of Compensation Insurance urged the actuaries to model industry solvency judgments on a study done by the Aetna Life & Casualty Co. a few years ago.

Aetna studied the financial data of companies that had actually failed and the resultant ratios were absolutely realistic, Mr. Ryan said.

(1)

Adoption Of New Policy

By JAMES NOLAN

Journal of Commerce Staff

CHICAGO — The very fate of the American liability insurance industry hangs on state regulatory approval of new liability insurance forms.

An array of insurance industry spokesmen argued this position in public hearings Thursday before a panel of insurance regulators from 18 states.

The industry representatives predicted further that American businesses and industry in all likelihood would go unprotected by insurers against liability claims on their assets unless the regulators approve a proposed uniform commercial general liability form for use by Jan. 1, 1968.

The hearings were organized by Illinois, New York and Texas insurance commissioners after a meeting of the National Association of Insurance Commissioners in Kansas City in June.

The commissioners at that time said they felt they wanted to hear from the industry in a single presentation, rather than taking testimony on a state-by-state basis as is usually the case when insurers seek approval for a new policy form.

Illinois Insurance Director John E. Washburn, chairman of the regulator panel, grouped supporters of the new policy in the morning and afternoon session.

Opponents, such as the Risk and Insurance Management Society, the voice of corporate insurance buyers, were to present their case later in the day and continue this morning.

Speaking in support of the new policy John C. Morrison, a senior vice president at Cigna Corp., said the use of the new commercial general liability policy drafted by the

the financial solvency of some members of our industry.

"Without approval of the new ISO program, there will likely be an unacceptable number of insurer insolvencies — and this problem could have disastrous consequences for the general public."

The ISO in a statement said the industry's existing "occurrence" policy would be replaced by a "claims-made" version.

An occurrence policy covers the insured for injury and property damage that happen during the policy contract year.

The claims-made policy covers the insured only if a claim is made for the damage during the year the policy is in force.

Christopher C. Mansfield, vice president and general counsel, Liberty Mutual Insurance Co. said that "unless we act positively, our industry may not be able to provide the risk shifting and loss distribution capacity which our customers require and society demands."

Fred R. Marcon, ISO executive vice president and chief operating officer, said, "There has been a complete breakdown in confidence on the part of risk takers: confidence in the predictability of loss, the efficacy of the underwriting process and the ability of insurers to control their own financial destinies."

Supporters of the new policy were united in placing the major share of the blame for the crisis on the judiciary system.

Industry officials say almost with one voice that it is the courts redefinition of policy contract language that has led to awards in pollution liability, product liability and medical malpractice that are bankrupting liability underwriters.

Gerald Wakefield, chief executive, North American reinsurance division of C.T. Bowring & Co., presented the views of Lloyd's of London reinsurers, vigorous supporters of the new policy.

Every state using the new form is not approved, and it will not truly serve American liability underwriters.

"Worldwide reinsurance capacity at this juncture is so short that further erosion could cause a fundamental change in the fabric of the U.S. insurance industry's mode of operation." He concluded: "ISO's proposed new claims-made form certainly goes a long way toward the retention of such reinsurance market support which currently looks so tenuous."

The industry spokesmen returned to the hearing table later in the day for questioning by the insurance commissioners.

CHICAGO — The casualty insurance industry and its biggest customers, corporate America, are having problems with words.

Three words in particular.

The words occurrence and claims made refer to that most important facet of the insurance business, the payment of claims and the question of who will make the payment.

To put it as simply as is possible, no small thing in a sea of policy language complexity, when you buy an occurrence insurance policy, your claim is good for damages you sustained in the period for which you paid the premium, usually one year.

You may not discover the damage until years later, but still your claim is valid and the underwriter who sold you that occurrence policy must pay the claim.

If you bought a claims made policy, your claim is good only if you file the claim during the period in which the policy contract is in force.

So if you are a doctor or make your living by making anything from cookie tins to insect spray, you must assuredly want that occurrence coverage. Who knows what you did 10 years ago to lay yourself open to a claim?

Now we get to the sticky part.

It is the occurrence policy and the way law courts are defining the words therein that is bleeding the casualty industry white, industry leaders say.

The insurance industry, therefore, wants to sell only claims made coverage beginning in January 1968.

In the process, the coverage afforded by the occurrence policy as it is understood by the corporations who buy it would be no more.

Understandly, then, the Risk and Insurance Management Society, the voice of insurance buyers for America's corporations, is, to a

New Liability

By JAMES NOLAN

Journal of Commerce Staff

CHICAGO — Major state insurance regulators were openly skeptical last week about the property/casualty industry's plans to use a new commercial general liability standard policy form.

In hearings convened by the Illinois Insurance Department, regulators from New York, Texas, Connecticut and Illinois said time and time again that the insurance industry was intent on reducing the amount of liability coverage corporations could buy beginning in January.

Further, the regulators argued with industry representatives during hours of intense questioning that the proposed policy was much too complex for corporate insurance buyers to understand.

More than a dozen industry representatives countered with arguments that the new policy form was an absolute necessity for the survival of the industry.

The burden of the industry's case was carried by delegates from the Insurance Services Office, an industry-funded policy-making body, which has fashioned the new policy forms.

All of the industry arguments ran on a thread that casualty underwriters have been suffering catastrophic losses in recent years.

A Lloyd's of London delegate who spoke over expressly for the meeting said that unless the U.S. industry is permitted to adopt the new form, the Lloyd's reinsurance market would discontinue backing American underwriters forthwith. Such a move would severely limit the U.S. industry's ability to buy reinsurance, thus spreading risks on major disasters such as a supertanker sinking, an offshore oil well disaster and the coming claims associated with the Bhopal, India, gas leak catastrophe that killed more than 2,000 and injured tens of thousands more less than a year ago.

Lloyd's has had a substantial position for generations in supporting American primary underwriters with reinsurance for product liability, pollution and environmental impairment coverages, directors and officers liability and medical and other professional malpractice coverages.

The industry forum was organized by commissioners from Illinois, Texas and New York. They were joined by commissioners and staff regulators from 14 other states after they found they were reacting in a piecemeal fashion to pleas from the industry, state by state, for permission to adopt the new system.

Although the commissioners protested that they were open minded about the issues, their questioning showed mounting skepticism.

For example, Peter Gillies, Connecticut commissioner, said that traditionally the industry position on a new policy filing has been that policy contract language is virtually cast in bronze and should not be changed.

"The purpose of this whole exercise is to avoid litigation. But aren't we going to just march lock step into court on this issue?" Mr. Gillies said.

"When the industry does not want us to approve something in a policy, the form the argument is made that if you change it, we will have to go and litigate. And you know what this means in the courts, so for God's sake, don't do that to us."

"Now you are asking us to approve a form which is going to make some very dramatic changes in a whole host of areas. How do you avoid the courts?" Mr. Gillies said.

Richard Savage of the ISO said that the danger of litigation was lessened because the new contracts were worded most carefully.

To put the kindest face possible on the matter, the response drew laughter from the regulator's table.

Later, Fred R. Marcon, ISO executive vice president, conceded that the possibility of new litigation had been much on the mind of those who shaped the new form. But, he added, the property/casualty industry has no other course if it is to survive.

At another point, Gerald H.C. Wakefield, chief executive, North American reinsurance division of C.T. Bowring at Lloyd's of London, employed an extended anecdote to explain the genesis of a legal liability principal.

He said that a British court had ruled in the days of Queen Victoria that if a householder was "told" enough to keep a tiger in the back garden, the householder was liable for damages the tiger did when he got out.

At a later moment in the proceedings, Mr. Wakefield sought permission to address the panel on a point.

"Fine," said James P. Corcoran, New York Insurance Superintendent, "but, please, no lions and tigers."

Outright hostility to the new policy forms was repeated at the meeting by a delegation from the Risk and Insurance Management Society, an organization of some 3,000 corporate insurance buyers.

William Blick Jr. of the Allen Group, a New York auto parts maker, and spokesman for the society, said the group stood fast on the position it took in public hearings before the New York Insurance Department in May.

The society then accused the ISO of "an abuse of the antitrust exemption granted to insurers by the McCarran Ferguson Act," and that the new policy had been fashioned "with little or no concern as to the impact these changes will have on the insured or potential claimants."

OK
4/21/85

**STATEMENT
OF THE
AMERICAN
INSURANCE
ASSOCIATION**

**BEFORE THE
HOUSE SELECT COMMITTEE ON CHILDREN, YOUTH AND FAMILIES
CONCERNING
CHILD CARE AND INSURANCE
JULY 30, 1985**



The American Insurance Association is a national
trade organization of casualty insurers.

The American Insurance Association (AIA) is a trade association which represents 172 property and casualty insurance companies. The member companies of the Association provide a majority of the commercial line insurance coverages written throughout the United States. Some of AIA's members provide general liability coverage to professional day care centers. Liability insurance is provided to some family day care homes through the application of the "business pursuits" endorsement which removes the business exclusion from the homeowner's policy.

Professional day care centers and family day care homes are currently experiencing a liability insurance availability and affordability problem. To the extent that state law mandates the acquisition of general liability insurance coverage as a prerequisite for doing business, the availability/affordability situation is exacerbated. Current insurance market conditions for professional day care centers suggest a market in transition rather than chaos. The countrywide experience for those companies reporting premium and loss data to the Insurance Services Office, Inc. (ISO) for advisory ratemaking purposes for day nurseries appears to conform with the current loss experience for the majority of commercial insurance lines. If expense factors are built into the loss and loss adjustment data for day care nurseries provided by ISO, the combined ratio approaches the aggregate general liability combined ratio of 152. Although these losses clearly indicate the need for increased rates, they do not suggest that insurers should abandon the market.

Insurance availability and affordability problems are not confined to the day care industry. Societal litigiousness and our legal system's movement

Appendix C (Con't)

"The day care facilities have been caught up in this availability crunch and are being deemed higher risk, not necessarily based on a claims experience but due more to an insurance hysteria . . ." Testimony of Edward J. Muhl, Insurance Commissioner of the State of Maryland, before the House Select Committee on Children, Youth and Families, July 30, 1985. The Commissioner went on to point out these statistics for Maryland, remarkable action by many companies given the lack of statistical justification for such a move:

Of 28 insurers writing liability insurance for day care centers in Maryland last year, 15 have left the market. Of the remaining 13, six will not write any new business. The last 7, those who will write new business, all have excluded child abuse from their policies. The Maryland Commissioner of Insurance has termed the pull out "hysteria" since no data supports it.

THE INSURANCE CRISIS OF 1985 : WHAT CAN BE DONE?

During the last "crisis" of 1974/5 swine flu vaccine, medical malpractice and product liability were the lines most adversely impacted.

In 1985, we again see product liability and medical malpractice "crises" (even in states with tort "reform"--I recently was invited to address the Virginia Legislature on the medical malpractice "crisis" in the state even though Virginia capped awards for pain and suffering years ago). In 1985, we also see insurance crises developing for day care centers for children, environmental cleanup and nurse-midwives, among other lines. Are all of last year's good day care center insureds suddenly populated with child molesters? Of course not, but the psychology among the insurance industry is reflected by statements made to day care advocates like that of one industry representative who said; "Typically, an underwriter is afraid to write a business regarding children. It is emotion rather than fact." (1) As Federal Insurance Administrator I was involved in studies during the last "crisis" that focused on the medical malpractice and product liability "crises." These, too, were true crises in the mental state of underwriters, but not crises in fact, as the interagency task forces dealing with these issues back then found out.

How could Congress act to stem this boom/bust approach to insurance issues? How can we as a nation insure against the cycle? Must we face this all over again in 1995?

One answer may be found in the way the federal government responded to the riots of the 1960's. You may recall that insurers were pulling out of the inner city areas of the nation, leading bankers to begin pulling mortgages. It was extremely serious. The federal government agreed to reinsure the businesses for the specific peril of concern (riot) in return for their forming pools to assure full coverage (including fire, liability, etc.) in distressed areas. The federal government collected a reinsurance premium (and ultimately made \$125 million profit) and also required the insurers to impose certain safety standards for risks they undertook.

I believe such authority should be ready on a stand-by basis for each insurance line that becomes distressed when the industry cycle hits bottom. Today product manufacturers, day care centers, nurse-midwives and others need insurance at affordable rates. The common thread binding these together is the current "crisis" of the industry cycle plus panic by underwriters. Are all of these insureds, who had no difficulty getting insurance a year ago, suddenly "bad" risks? Of course not.

It is amazing to see what happens in an insurance cycle to the mental state of underwriters. At the top of the cycle, in 1981, insurers were willing to not only take all of the risks they are shunning today, but were willing to go so far as to insure the liability of MGM after their Grand Hotel burned down. Compare that with today's doomsday attitude toward risks that the underwriters have subjectively declared to be taboo. The potential impact on the multiple breadwinning family of day care centers closing down is very serious. Doctors going out of business, birthing centers closing, etc. are other examples of the adverse impact of the current underwriter's psychological attitude. This situation can be mitigated quickly. Here's how:

If a line becomes distressed the government should meet with insurers to determine what's their specific fear (e.g. child abuse at day care centers). The government should then meet with representatives of day care centers and insurers to devise criteria for what's a safe day care center, a model for risk management. Next the program would offer reinsurance to insurers (for a fee) to insure against the specified peril of abuse (child abuse but not fire, or other liability for example). In return, insurers would agree to write, through pools or otherwise, all day care centers which meet the definition of "safe" as devised by the centers, insurers and government. The government would reinsure all business of this sort for participating insurers, even those not in the pools, just as was the case in the riot reinsurance program. This helps the government get spread of risk.

Funding for such a program should be through borrowing authority initially, but self-sustaining over time. A small premium tax of, say, one fourth of one percent on all property/casualty policies could be collected in addition to reinsurance fees on the specific reinsurance line to make the program fiscally sound. As a matter of fact, the federal government is likely to make another profit. As policyholders we all gain by stabilizing the property/casualty cycle. Such an annual tax is de minimus for the ratepayer -- for example, of \$.81 on the average private passenger auto insurance premium, currently. We all gain by securing protection against fluctuation in the economic cycle -- sort of insurance against abusive insurance practice. Currently \$118 billion in premiums per year are written in the property/casualty industry and a yearly premium tax of one-quarter of one percent would produce \$300 million a year. Over the eight to ten year cycle it would add up to well over \$3 billion (due to growth) available to ease availability and affordability in the lines insurers shun at the bottom of the next cycle, in about 1995.

If such a program were in place now, we'd have a way to control the current series of "crises". Since much of the problem relates to reinsurance and availability and the fear of primary insurers to write these coverages at any price.

Such a program is particularly attractive because it will lower costs in distressed lines for good risks and that buys time to allow for substantive review of the contemporary tort system or other areas of potential reform. This gives Congress the time to perform careful laser surgery to excise tort abuses or other changes rather than undertaking radical heart transplants under pressure.

A federally sponsored reinsurance program would provide tremendous incentives for safety through the development of risk management models as industry standards to obtain insurance. Lowered insurance costs to these businesses would mean greater productivity and lower prices for consumers. In any reform schemes enacted by the Congress, the probability that Congressional intent will be frustrated is high (e.g., there is a high probability that Congress might enact some sort of reform and see no improvement in insurance availability or affordability due to the crisis mentality of insurers at cycle bottom). This approach assures that the pricing goal of available/affordable insurance will be accomplished.

CHART a1

THE "CYCLE" AND CONSUMER ABUSE

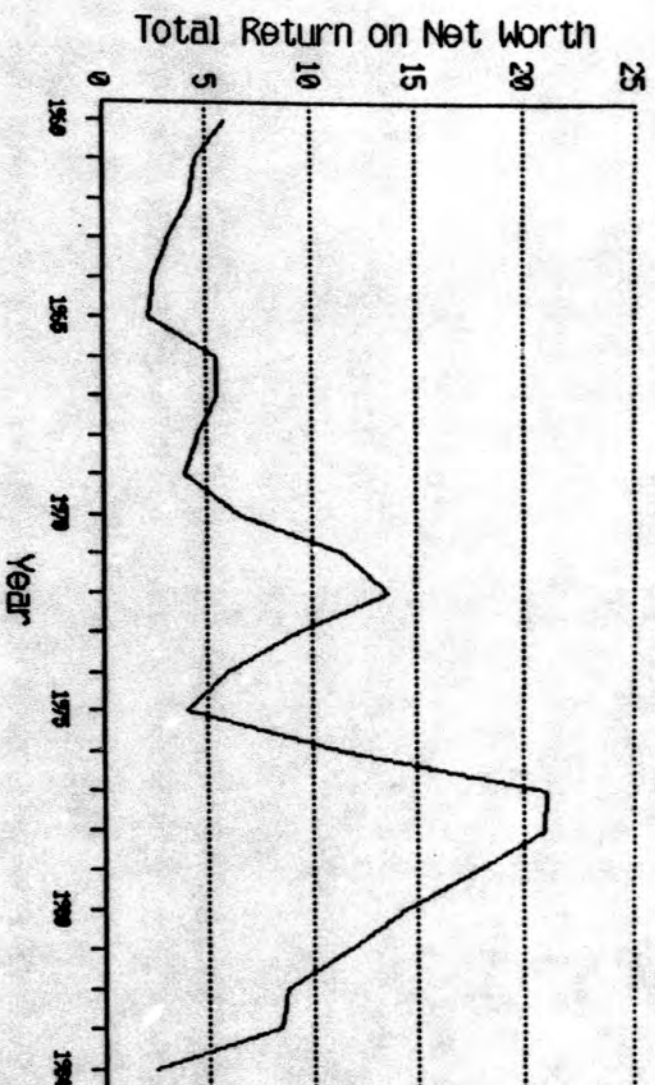


CHART a2

Best's Property/Casualty Stock Index

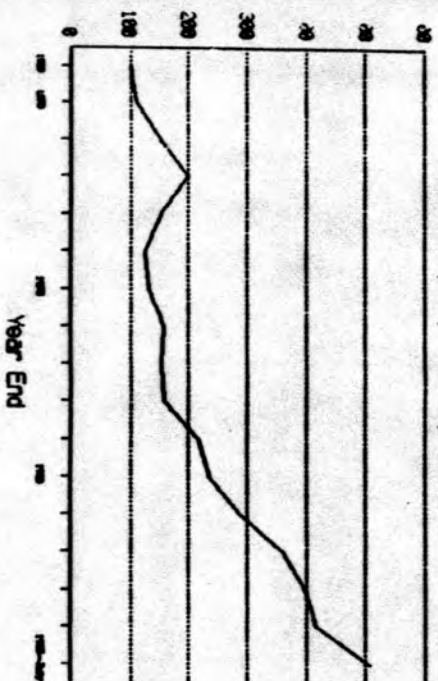
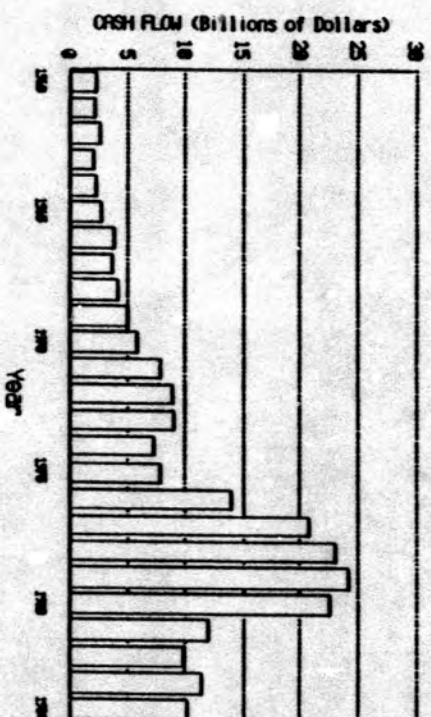


CHART a3

CASH FLOW OF INSURERS



Omnibus Reinsurance Act of 1985

PROBLEM: Many insureds are facing crises in availability and affordability of liability insurance. States, municipalities, environmental concerns, product manufacturers and medical professionals are among the hardest hit. Most day care centers and nurse-midwives cannot find coverage and if they are lucky enough to do so, the cost is prohibitive.

The twin crises of availability and affordability of liability insurance may force manufacturers and service providers out of the normal course of their business. If day care centers close, some families with marginal incomes might lose their homes as well as a second paycheck. Lower cost, high quality care birthing centers may be forced to close, as indeed some have. Products which are safe and beneficial might be kept from markets and physicians or surgeons may quit practice because of unavailable or unaffordable liability insurance. Society cannot function properly when its commerce is so disrupted.

SOLUTION: A federally sponsored reinsurance program to ease availability and affordability of liability insurance in distressed lines of property/casualty insurance.

PRECEDENT: In the late 60's the federal government set up a riot reinsurance program. The federal government agreed to reinsure carriers for the specific peril of concern (riot) in exchange for their forming pools to assure full coverage (including fire, liability, etc.) in distressed areas. The federal government collected reinsurance premiums (and made \$175 million) and also required insurers to impose certain safety requirements upon risks they undertook. (See, 12 USC 1749bbb, 42 USC 4011 (1968)).

IMPLEMENTATION: Legislation would have to be passed to give some federal agency stand-by authority to declare certain lines of property/casualty insurance "distressed" and eligible for reinsurance from the federal program. The "distressed" determination would have to be made upon application or at the agency's discretion. Initial funding would be from borrowing authority from the Treasury, later paid back through the collection of reinsurance premiums and a surcharge upon all property/casualty premiums paid. A surcharge of .25 percent upon all premiums paid would generate about \$300 million per year and with interest would make almost \$6 billion available to reinsure distressed lines at the bottom of the next underwriting cycle.

OUTCOME: Distressed lines of property/casualty insurance will be stabilized against the vagaries of the underwriting cycle. Reasonably safe risks like most day care centers and nurse-midwives will be able to obtain essential insurance. Society will not be faced with the lack of products or services because of unavailable or unaffordable insurance.

OMNIBUS REINSURANCE ACT OF 1985

Section -[1]- (a) Within 30 days after the receipt of an application by any manufacturer, service provider or any group or association representing such manufacturers or service providers, the Commission shall conduct a hearing on the reasonable availability and affordability of adequate commercial general liability insurance and other lines of insurance for that manufacturer or service provider or the members of any group or association of manufacturers or service providers.

(b) The Commission may in its discretion hold hearings to investigate the reasonable availability or affordability of commercial general liability insurance and other such lines of insurance as from time to time become unavailable or unaffordable thereby threatening the health, welfare or commerce of the United States and the various states by making some manufactured good or provided service unavailable or available only at an unreasonable cost.

(c) Within 30 days after the hearing required under subsection (a) or conducted under subsection (b) the Commission shall determine in writing, based upon the record of the hearing conducted pursuant to subsection (a) or (b), whether the insurance described in subsection (a) or (b) is, and will be, reasonably available or affordable to affected manufacturers, service providers or the members of any group or association representing manufacturers or service providers to cover anticipated claims. Such determination, and the basis therefore, shall be published in the Federal Register.

(d) (1) If the Commission determines at any time that:

(A) the insurance described in subsection (a) or (b) is not available or reasonably affordable from the private sector to applicants under subsection (a) or the affected parties described pursuant to subsection (b) to cover anticipated claims;

(B) in order for an applicant under subsection (a) or affected party described pursuant to subsection (b) to have regular operations in the United States, assistance under any of the programs authorized under sections [2] or [3] is necessary; and

(C) the availability of such goods or services from that applicant under subsection (a) or affected party under subsection (b) is essential to promote the public health, welfare or the general commerce of the United States, the Commission is authorized to implement the insurance pool described in section-[2]- and the reinsurance coverage described in section-[3]- with respect to such goods or services. If at any time the Commission determines that one or both of the programs provided for in section -[2]- or -[3]- reasonably assures the availability or affordability of such goods or services in the United States, the Commission may implement the operation of the programs described therein.

(2) to further the purposes of this act and in recognition of the critical situation facing both day care centers in insuring for the specific peril of child abuse and nurse-midwives in obtaining medical malpractice insurance, the Congress makes the necessary determination for the Commission to implement section [2], [3] or both and any other pertinent section under this title for these affected parties. Affected party eligibility under section [1](d)(2) shall not be subject to review by the Commission until 90 days after the enactment of this title.

(3) To the extent feasible, the programs provided for under this title shall be implemented in a manner to insure that:

(A) such programs will not act as a disincentive to improvements in product safety or safe service delivery, and shall operate to promote product safety and safe service delivery through the establishment of models for risk management as may be agreed upon by the Commission, the insurers and the insureds as a prerequisite for eligibility for any of the programs under this title.

(B) each manufacturer or service provider which benefits from such programs will agree that such goods or services shall remain available to the public during the period in which such product manufacturer or service provider or the insurer of such product manufacturer or service provider participates in such programs.

(C) each insurer which benefits from such programs will agree that such insurance as is written during the period in which such insurer or its insured product manufacturer or service provider participates in such programs shall have premiums which are based upon an experience rate.

Section-[2]-(a) After making findings under section [1], the Commission shall encourage and otherwise assist any insurance companies which meet the requirements of subsection (c) and any others set out in this title to form, or otherwise join together in insurance pools for the purpose of assuming, on such terms and conditions as may be agreed upon, such financial responsibility as will enable such companies and other insurers, with federal financial and other assistance under this title, to assume a reasonable portion of responsibility for the adjustment and payment of claims arising from product or service induced injuries, disabilities, illnesses and deaths.

(b) Funds from such insurance pools shall be available only to pay claims resulting from product or service related actions in excess of such amounts as are established each year by the Commission. The Commission may establish differing amounts for each manufacturer or service provider or insurer and each good or service based upon the needs of the manufacturer or service provider or insurer and other relevant factors.

(c) any insurer licensed to operate as such by any state, territory or possession of the United States shall

be eligible for participation in such insurance pools.

(d) Such insurance pools may be funded by premiums paid by manufacturers or service providers to insurers approved by the Commission. If the Commission finds, after notice and public hearing, that the premiums charged by such insurance pools make the insurance from such insurance pool unavailable for manufacturers or service providers, the Commission may amend the terms and conditions of reinsurance under this title to lower premiums to be paid by such manufacturers or service providers.

Section [3](a) In order to further the purposes of this title, the Commission may take such action as may be necessary to make available, to the insurance pools formed or otherwise created under section [2], reinsurance coverage under this section to any insurer or pool for losses assumed by such insurers or pools in accordance with the agreements entered into under subsection (b).

(b)(1) Following the date of enactment of this title, the Commission is authorized to enter into any contract, agreement, treaty, or any other arrangement with any insurer or pool for reinsurance coverage, in consideration of payment of such premiums, fees or other charges by insurers or pools which the Commission deems to be adequate as required under Section-[5]- of this title to obtain aggregate reinsurance premiums and charges for deposit in the Omnibus Reinsurance Fund established under Section-[5]- in excess of the estimated amount of insured product or service induced losses in 1985, and thereafter the Commission may increase or decrease such premiums or charges if it is found that such action is necessary or appropriate to carry out the purposes of this title.

(A) Reinsurance offered under this title shall reimburse an insurer or pool for its total proved and approved claims for covered losses resulting from product or service induced injuries, disabilities, illnesses and deaths during the term of the reinsurance contract, agreement, treaty, or other arrangement, over and above the amount of the insurer's or pool's retention of such losses as provided in such reinsurance contract, agreement, treaty, or other arrangement entered into under this section.

(B) Such reinsurance contracts, agreements, treaties, or other arrangements may be made without regard to section 3679(a) of the Revised Statutes of the United States (31 USC 665(a)), and shall include any terms and conditions which the Commission deems necessary to carry out the purposes of this title. The terms and conditions of such contracts, agreements, treaties, or other arrangements with insurers or pools, throughout the country, in any one year shall be uniform: Provided, that where necessary to further the purposes of this title, pro rata and other such forms of reinsurance may be included in such terms and conditions.

(C) Such reinsurance shall be provided upon such terms and conditions, and subject to such deductibles

and other restrictions and limitations, as the Commission deems appropriate, but no reinsurance shall be available to a product manufacturer, service provider, insurer or pool of insurance which the Commission determines to be uninsurable or to any product manufacturer, service provider, insurer or pool of insurance with respect to which reasonable protective measures to prevent loss, consistent with standards established by the Commission under section [1](d)(3)(A), have not been adopted.

(D) Any contract, agreement, treaty, or other arrangement for reinsurance under this section shall be for a calendar year.

Section 4(a) The Commission shall take such action as is necessary or appropriate to make reinsurance available directly to insurers which participate in pools created under this title for that portion of their business which is related to any distressed line as determined under section [1](d) which is written and not within a pool created pursuant to section [2] of this title.

(b) Such reinsurance may be made pursuant to contract, agreement, treaty, or other arrangement, and pursuant to such regulations as may be reasonably prescribed by the Commission.

Section 5(a) To carry out the programs authorized under this title, the Commission may establish in the Treasury of the United States an Omnibus Reinsurance Fund which shall be available without fiscal year limitations--

(1) to pay reinsurance claims under the reinsurance coverage provided under section [3]; and

(2) to pay reinsurance claims under section [4]; and

(3) to pay such administrative expenses as may be necessary or appropriate to carry out the purposes of this title; and

(4) to repay to the Secretary of the Treasury such sums, including interest thereon, as may be borrowed from him for purposes of such programs under section [5](b).

(b) The reinsurance fund under this section may be financed by:

(1) such amounts as may from time to time be advanced to the fund from the general fund of the Treasury in order to maintain the fund in an operative condition adequate to meet its liabilities; and

(2) premiums, fees, or other such charges which may be collected in connection with the reinsurance coverage provided under section [3]; and

(3) premiums, fees, or other such charges which may be collected in connection with the reinsurance coverage provided under section [4]; and

(4) such amounts as may be raised by the establishment of a uniform surcharge upon premiums paid to

property and casualty insurers.

(A) the Treasury shall, no later than 120 days after the enactment of this title, collect a .0025 (.25 percent) surcharge upon all premiums paid to property and casualty insurers which revenues shall go to maintain the reinsurance fund created under this section in an operative condition adequate to meet its liabilities.

(5) interest which may be earned on investments of the fund; and

(6) receipts from any other source which may, from time to time, be credited to the fund.

Section [6](a) If at any time the Commission makes the determinations described in section [1](d), the Commission may, in carrying out its responsibilities under this title, utilize--

(1) insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal officers of the United States,

(2) officers and employees of the Federal Trade Commission, and such other officers and employees of any executive agency (as defined in section 105 of title 5 of the United States Code) as the Commission and the head of any such agency may from time to time agree upon, on a reimbursement or other basis, or

(3) both of the alternatives specified in paragraphs (1) and (2), or any combination thereof.

Section [7](a) The Commission may in the interest of furthering the purposes of this title delegate authority to administer any portion of this title to other appropriate officers and employees of any executive agency (as defined in section 105 of title 5 of the United States Code) as the Commission and the head of any such agency may from time to time agree: Provided that any action taken by any such agency officer or employee shall not be inconsistent with any portion of this title.

(b)(1) The Commission through its Bureau of Competition shall periodically review each plan under this title and the methods and practices by which such plan is actually being carried out in order to--

(A) Assure that such plan is effectively making commercial general liability and other essential lines of liability insurance readily available to such product manufacturers and service providers as is intended and is otherwise carrying out the purposes of this title, and in order to identify any aspects of the operation or administration of such plan which may require revision, modification, or other action to carry out such purposes.

(B) Report to the Congress at least once a year the findings of any such investigation under subsection b(1)(A), or from time to time as may be requested by the Congress to report on the current status of all programs under this title.

Section [8](a) Within 90 days after the enactment of this title and before implementation of the programs contained therein for the benefit of any applicant, affected party, insurer or pool of insurance, the Commission shall prepare and transmit a report to the Congress which shall—

(1) indicate the nature and extent of anticipated use of the insurance industry in the delivery under this title of reinsurance to product manufacturers, service providers, insurers, and pools of insurance.

(2) identify anticipated costs of provision of such reinsurance to product manufacturers, service providers, insurers, and pools of insurance under this title.

(3) identify any potential applicant which has made query to the Commission about such programs as have been authorized under this title and, in the case of affected parties, those which preliminarily might benefit from participation under the programs authorized under this title.

Section [9](a) The Commission, or any agency officer or employees which administer portions of this title as authorized under section [6] and [7], in a suit brought in the appropriate United States district court, shall be entitled to recover from any insurer the amount of any unpaid premiums lawfully payable by such insurer to the Commission or its delegated agent.

(b) No action or proceeding brought under this section may be brought for any amount in excess of that lawfully payable by any insurer to the Commission or its delegated agent and any such action shall be brought within five years of when the right to such payment accrued, except where any false or fraudulent conduct warrants, the claim shall not be deemed to have accrued until its discovery.

(c) Any recovery had pursuant to any action or proceeding under this section shall be deposited to the credit of the reinsurance fund created under this title.

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

ADDRESS

BY

NATWAR M. GANDHI

GROUP DIRECTOR, TAX POLICY

GENERAL GOVERNMENT DIVISION

U.S. GENERAL ACCOUNTING OFFICE

1201 E St., N.W. Room 606

WASHINGTON, D.C. 20221

(202) 376-0023

BEFORE THE

AMERICAN RISK AND INSURANCE ASSOCIATION

VANCOUVER, B.C.

August 20, 1985

I am pleased to present our views on taxation of the property/casualty insurance industry. We, at the General Accounting Office, have had an active interest in this area for the past 6 years. In 1981 we submitted a report to the Congress on taxation of life insurance companies. Earlier in 1985 we issued to the Senate Finance Committee a report on taxation of the property/casualty insurance industry. Today, I will focus on the latter.

Mr. Chairman, we believe that the Congress should reexamine several aspects of the tax code dealing with property/casualty insurance companies. These aspects include the deduction for loss reserves, the deduction for acquisition expenses, and the protection against loss account. Before explaining why we believe certain parts of the tax code should be reexamined, I would like to provide some background information on property and casualty insurance company pricing strategies, a financial overview of the industry, and the impact on the industry of certain current tax provisions.

PROPERTY/CASUALTY COMPANY PRICING STRATEGIES

A property/casualty company derives its income from underwriting gains (the excess of premiums over claims and expenses) and investment gains. Because of investment gains, a property/casualty company can still have net income even though its premiums alone are not large enough to cover claims and expenses.

Thus, even though a company has a ratio of claims and expenses to premiums in excess of 100 percent, which normally would indicate the company had suffered an operating loss, it may well have a positive net income.

The ability to offset underwriting and investment income has played an important role in a company's pricing strategy--that is, the amount of premiums it charges for the lines of insurance that it offers. For a number of years the companies have been willing to charge lower premiums to compete for certain insurance lines, even though they will have ratios of claims and expenses to premiums in excess of 100 percent. (For example, in some major lines of business, such as medical malpractice and other liability, these ratios have been more than 150 percent.) The companies expect to make up the premium shortfall through investment income. Through the incremental volume of premiums resulting from this pricing approach, companies are able to generate a larger amount of net cash flow which they can then invest to earn additional investment income. For instance, in 1983 when the industry had a combined ratio of claims and expenses to premiums of about 112%, which produced an underwriting loss of about \$11 billion dollars, it still had a net gain of about \$9 billion and generated a total of about \$12.1 billion in net cash flow, as reported by Best's Management Reports.

While in past years investment gains have exceeded underwriting losses by a fairly wide margin, in more recent years the gap has narrowed. For example, in 1984, underwriting losses for

the industry were \$20.5 billion, while investment income and realized capital gains were \$20.8 billion. As the margin has narrowed, many companies have reacted by raising premiums. Given this, it does not seem unreasonable to expect the gap to widen again as companies within the industry implement new pricing strategies.

FINANCIAL OVERVIEW OF THE PROPERTY/CASUALTY INDUSTRY

We developed a financial overview of the property/casualty insurance industry by studying financial data for stock and mutual companies for the 10-year period 1974 through 1983. We obtained these data from Best's Aggregates and Averages. While Bests' reports omit figures for many small and/or new companies, we believe that the data are sufficiently representative of the overall financial results of the property/casualty industry.

In tables 1 through 5 we show sources of income, broken out by underwriting gains, investment gains, and total gains. We also show disposition of income, broken out by the increase in surplus, dividends to stockholders, and the combined total. Federal income taxes are also shown.

We show in table 1 that, while property/casualty companies had about \$28 billion in underwriting losses from 1974 through 1983, they had about \$100 billion in investment gains during this period, resulting in a total gain of about \$72 billion for those years. From 1974 through 1983, property/casualty companies paid \$1.3 billion in federal income taxes, an amount equal to about 2 percent of the industry's total gains for the period.

Table 1

All P/C Companies - Consolidated Basis
1974 through 1983
(in billions of dollars)

<u>Underwriting</u> <u>gains</u>	<u>Investment</u> <u>gains</u>	<u>Total</u> <u>gains</u>	<u>Federal</u> <u>income</u> <u>tax</u>	<u>Percentage of</u> <u>federal income</u> <u>tax to</u> <u>total gains</u>
(\$28.4) ^a	\$100.7 ^b	\$72.3 ^c	\$1.3 ^d	1.8

^aPositive gains in 1977-78, 79, negative in other years.

^bNegative gain in 1974; positive in other years.

^cNegative total in 1974; positive in other years.

^dNegative taxes in 1974-75; 1982-83; positive in other years.

Table 2 shows that about \$44 billion of property/casualty companies' income from 1974 through 1983 went to an increase in surplus, and about \$17 billion to stockholders in the form of dividends. These two items totaled about \$61 billion, and the \$1.3 billion paid in federal income tax during this time equal 2 percent of this total.

Table 2

All P/C Companies - Consolidated Basis
1974 through 1983
(in billions of dollars)

<u>Increase in</u> <u>surplus</u>	<u>Dividends to</u> <u>stockholders</u>	<u>Total</u>	<u>Federal</u> <u>income</u> <u>tax</u>	<u>Percentage of</u> <u>federal income</u> <u>tax to total</u>
\$44.3 ^a	\$17.0	\$61.3 ^a	\$1.3	2.1

^aNegative in 1974; positive in other years.

The figures in tables 1 and 2 refer to mutual and stock companies combined. Since only stock companies give dividends to stockholders, we developed table 3 to show some ratios solely for stock companies.

We show in table 3 that from 1974 through 1983, stock companies had total gains of \$59 billion and, as we previously mentioned, distributed about \$17 billion to stockholders as dividends. During this period, stock companies paid \$200 million in federal income taxes, an amount equal to 0.3% of their total gains and to 1.2% of their dividends paid.

Table 3
Stock Companies
1974 through 1983
(in billions of dollars)

<u>Total gains</u>	<u>Dividends to stockholders</u>	<u>Federal income tax</u>	<u>Percentage of federal income tax to total gains</u>	<u>Percentage of federal income tax to dividends to stockholders</u>
\$59.0	\$17.0	\$0.2	0.3	1.2

We also wanted to see how the 20 largest companies compared with the other companies. Tables 4 and 5 provide results separately for stock and mutual companies.

Table 4
Stock Companies
1974 through 1983
(in billions of dollars)

	<u>Total gains</u>	<u>Federal income tax</u>	<u>Percentage of federal income tax to total gains</u>
20 largest companies	\$19.8	(\$1.0)	(5.1)
All other companies	39.2	1.2	3.1
All companies	59.0	0.2	0.3

Table 5
Mutual Companies
1974 through 1983
(in billions of dollars)

	<u>Total gains</u>	<u>Federal income tax</u>	<u>Percentage of federal income tax to total gains</u>
20 largest companies	\$17.2	\$0.9	5.2
All other companies	5.6	0.4	7.1
All companies	22.8	1.3	5.7

Tables 1 through 5 have shown that from 1974 through 1983 the industry as a whole, in spite of its underwriting losses, had positive net gains yet paid a small percentage of these gains, 1.8 percent, in federal income taxes. For stock companies, the percentages of taxes paid were lower than for mutual companies--0.3 percent for stock companies and 5.7 percent for mutual companies.

For large companies, the percentages of federal income taxes paid were lower than for smaller companies. For stocks, the 20 largest companies had an income tax rate of -5.1 percent as compared with 3.1 percent for the smaller companies. For mutuals, the 20 largest companies paid 5.2 percent as compared with 7.1 percent for the smaller companies.

As previously mentioned, tables 1 through 5 each cover the 10-year period ending in 1983. Information is not yet available for updating all of the tables through 1984. However, preliminary information shows that the property/casualty companies had a record underwriting loss in 1984 and, as we indicated, investment gains (including capital gains) were approximately equal to the underwriting losses.

Using data from our table 1 and from the preliminary information that has been published for 1984, we constructed table 6 to cover the 10-year period 1975 through 1984.

Table 6

All P/C Companies - Consolidated Basis
1975 through 1984
 (in billions of dollars)

<u>Underwriting</u> <u>gains</u>	<u>Investment</u> <u>gains</u>	<u>Total</u> <u>gains</u>	<u>Federal</u> <u>income</u> <u>tax</u>	<u>Percentage of</u> <u>federal income</u> <u>tax to</u> <u>total gains</u>
(\$47.0)	\$119.1	\$72.1	(\$0.063)	(0.1%)

These figures show that from 1975 through 1984 the investment gains exceeded the underwriting losses by over \$72 billion while taxes were a negative \$63 million, a rate of -0.1% of the total gains.

IMPACT OF CURRENT TAX PROVISIONS

Our analysis of the foregoing financial data gives insight into how current tax policy affects the property/casualty insurance industry. As a result of certain tax advantages, many property/casualty companies have not paid federal income taxes for a number of years, and, in fact, have qualified for refunds or the ability to carry back or carry forward losses for tax purposes. In addition to the tax deferrals resulting from the treatment of loss reserves, the treatment of acquisition expenses, and the protection against loss account, property/casualty companies can also use tax provisions available to other taxpayers. These include excluding interest income from tax-exempt securities and deducting eighty-five percent of the dividends received from domestic corporations. Between 1975 and 1982, about 40 percent of the gross investment income of all property/casualty companies was tax-exempt investment income. The dividends received deduction during this period represented about 20 percent of the gross income of the companies.

While we presented and discussed these facts in our report, we did not recommend any changes in the application of the exclusion of tax exempt interest or the dividend received deduction to property/casualty companies. We limited our study to those provisions of the tax code which applied only to property/casualty companies.

AREAS OF PROPERTY/CASUALTY INSURANCE TAXATION
NEEDING CONGRESSIONAL REEXAMINATION

We indicated in our report on the taxation of the property/casualty insurance industry that the Congress should reexamine three areas of the tax code.

These areas are

- the deduction currently allowed for loss reserves;
- the practice of currently deducting all of the expenses associated with the sale and renewal of insurance policies; and
- the protection against loss account, which defers a portion of a mutual company's income to provide a cushion for catastrophic loss.

Our conclusions and recommendations in each of the three areas were as follows:

First, we concluded that the present practice of deducting in the tax year the full (undiscounted) amount of future estimated settlement costs overstates the loss reserve deduction. Since the assets underlying loss reserves are invested pending final settlement of claims, the firm actually needs to set aside only that amount which, together with subsequent investment earnings, would equal expected subsequent claims. We suggested that the Congress consider amending the tax code to provide that for tax purposes loss reserves be discounted in calculating the loss reserve deduction. We further stated that the discount rate should be based on a moving average of each company's pre-tax net return on its investment portfolio.

We estimated discounted loss reserve levels at several discount rates for 1980-82 (holding all other factors constant) and the additional tax liability that would have resulted. The higher the discount rate used, the greater the reduction in the loss reserve deduction and the greater the increase in tax liability. If a hypothetical discount rate of 7 percent had been used by all companies in 1982, the deduction taken would have been reduced by about \$1.3 billion, and tax liabilities would have been greater by about \$613 million.

Second, we concluded that the present treatment of acquisition expenses fails to match expenses and revenues. Currently, the tax code permits all acquisition expenses to be deducted immediately, even though the premiums associated with these expenses are spread over the life of the contract. In this case we suggested that the Congress consider amending the tax code to provide that acquisition costs be allocated over the life of related contracts so that these costs are matched with premium payments generated by the contracts.

If acquisition expenses were allocated when revenue is recognized, then taxable income would increase. We estimated the additional tax liability that would have accrued for the years 1980-82 if this change had been made and everything else had remained the same. Based on these assumptions, the additional tax liabilities would have been approximately \$164 million in 1982.

We must mention that for both the changes in the tax code the Treasury in 1982 would have received only a portion of these amounts in additional current taxes. Some companies were showing losses for tax purposes. Furthermore, companies might shelter more of their investment income and thereby mitigate any increases in taxes. This could be done through increasing their holdings of tax-exempt securities or equity securities of domestic corporations.

Third, we concluded that the protection against loss account may not protect mutual companies against catastrophic losses because the money in the account is not earmarked for that purpose. Thus, if a catastrophic loss were to occur, the account does not necessarily ensure the company's ability to satisfy its contract obligations. In this case, we recommended that the Congress consider whether or not this special tax preference for mutual property/casualty insurance companies should be retained in its present form.

CONCLUSION

In conclusion, Mr. Chairman, the financial information we have presented indicates that the property/casualty insurance industry has paid a relatively small share of its net income in federal income taxes in recent years. While we are not in a position to comment on what might be an appropriate federal tax burden for the industry, we do believe that the Congress should consider amending the tax code along the lines suggested in our

report. In our view, the changes would result in a better match of the industry's revenues and expenses and represent a more rational approach to its taxation.

This concludes my prepared remarks.



FOR IMMEDIATE RELEASE
August 15, 1985

For further information, contact:
Bob Hunter, (703) 549-8050

**INSURANCE COMPANIES "ON STRIKE"
NADER/NICO CHARGE:
FEDERAL SOLUTION SOUGHT**

Washington, DC, August 15 - Ralph Nader today charged the insurance industry with "going on strike to extort excessive rates from the public." Nader also said that states were "failing to adequately protect consumers and stop the hemorrhaging." He called for federal action to make insurance available when insurers "abdicate their responsibilities."

Nader was joined by ex-Federal Insurance Administrator Robert Hunter, President of the National Insurance Consumer Organization (NICO). Hunter, an actuary, released a major NICO study of insurer profitability, stating that: "While insurer profits were low last year, a modest rate adjustment of about five percent was all that was needed to gain an acceptable profit level. Instead, we see massive cancellations and price increases of up to 1000% for day care centers, municipalities, environmental clean-up firms, fishing fleets, transit authorities, nurse-midwives and others. This is an unjustified raid on peoples' pocketbooks and the states are letting them get away with it," Hunter charged.

INSURERS "ON STRIKE"
page 2.

NICO studies show auto premiums are skyrocketing at an 18.2% clip in 1985 and that premium increases of 300% to 1000% in the "distressed" lines of liability insurance are not uncommon. "This gouging has already skyrocketed insurer stock prices to record highs, at a rate of change double that of the Dow Jones Industrials," Hunter said.

Nader and Hunter called for a federal solution to the problem by: 1) federal review of the responses of state regulation to this crisis; 2) asking the Department of Justice to determine if illegal boycotts are being used by insurers; and 3) creation of federal pools to make insurance available to good risks who lose coverage through no fault of their own. "There is precedent in the FAIR Plans that kept insurance available in the cities of our nation when the riots of the late 60's occurred," Nader said.

NICO is a non-profit, public interest group that offers advice to help consumers buy insurance wisely and works for more equitable insurance laws and policies.

Good morning! I am Bob Hunter, President of NICO.

We are here this morning to discuss a mounting crisis in America, a crisis which involves every man, woman and child: the nation is losing its liability insurance. (See chart of headlines.) Day care centers are losing their insurance and are being forced to close, perhaps driving second breadwinners out of work or creating new latchkey children. Nurse-midwives are losing their insurance and the lower cost birthing centers are shutting down. Doctors are marching on state capitals because insurance is unavailable or costs have skyrocketed. Cities, Transit authorities, even whole states are losing their liability insurance. One of the leading auto insurers in the District of Columbia has pulled out. The list goes on and on.

And prices have skyrocketed. As this chart shows, the cost of insuring an auto in America has gone up at 9.1% for the first 6 months of 1985, exceeding the rate of change for all of 1984. 1/ The annualized rate of change is 18.2%

What is going on here? Are these practices of insurers justified?

The answer is "NO!" What we are witnessing is a manufactured crisis intended to bloat insurer profits and reduce victim's rights.

Property-Casualty insurance has a cyclical profitability, as this chart shows. 2/ In 1984, if you accept the insurer's whopping reserve increases as valid (quite a large leap of faith), they earned a 3% rate of return on net worth (equity). That is too low. It would indicate that their premiums were about 5% short. If their premiums had been 5% higher, they would have earned a rate of return on net worth of about 15%, more than enough for an industry of the low to average riskiness of Property/Casualty insurance. 3/

A five percent premium shortfall is not a crisis. Yet we see all of the cancellations and mammoth price increases such as:

- o A 70% increase for OB/GYNs in Maryland (totally unjustified -- per analysis, attached).
- o 300% to 900% increases in lawyer and architect malpractice insurance premiums around the country.
- o Increases of 200% to 500% for the day care centers who can get insurance. Many can't.
- o 300% to 1000% increases for public transit authorities.

The statistics don't justify any of this!

What is going on?

If you look again at the cycle chart you will see that 1984 was a typical "bottom-of-the-cycle" year. The last time it happened was in the mid-1970's when I served as Federal Insurance Administrator. At that time, the country observed the twin crises of medical malpractice and product liability unavailability and skyrocketing premiums.

After insurers abandoned the medical and product manufacturer lines, the federal government reviewed the situation. I was fortunate to be part of the interagency working group that found that there was no justification for the insurer actions. 4/ We concluded that the insurers had just panicked from lack of data.

But look at what happened; their profits skyrocketed to all time record levels. They learned that the state regulators would, during the panic, give away the store in rate increases. They also learned that state legislators would act to reduce victims' rights in the wake of the panic (over half the states did so 5/).

They are applying the lessons they learned in the mid-1970's very well today -- to day care centers, to nurse-midwives, to doctors, to product manufacturers, and so on. They are petitioning Congress for product liability tort law changes and the states for changes in other tort systems.

Some property/casualty officials have made statements in the public record that; "It is right for the industry to withdraw and let the pressures for reform build in the courts and in the state legislatures." (Journal of Commerce, 6/18/85) Reinsurance, a critical aspect of maintaining available and affordable insurance rates may not be available from overseas because syndicates would "simply not write reinsurance for the American casualty industry" in 1986. A representative of that overseas market was recently reported to have said that if a new policy form is not adopted by state regulators, reinsurance wouldn't be provided to American liability underwriters.

Wall Street knows what is going on. This chart shows that the property/casualty stocks have soared to record highs more than doubling the Dow Jones Industrial Average rise in 1985. 6/ Wall Street expects state regulators to allow excessive rate increases; Wall Street is right!

Insurers blame this crisis on the courts and the tort law and say the only way to fix it is to take away as many victims' rights as possible. They can point to such statistics as these:

Of 28 insurers writing liability insurance for day care centers in Maryland last year, 15 have left the market. Of the remaining 13, six will not write any new business. The last 7, those who will write new business, all have excluded child abuse from their policies. The Maryland Commissioner of Insurance has termed the pull out "hysteria" since no data supports it. 7/

Insurers will say this points to the need for tort reform, 8/ while admitting that data don't justify the action. 9/ I believe it shows joint action intend to create an atmosphere where rates can be put too high and legislators will be intimidated into action designed to take away victims' rights. Further, at the top of the cycle a few years ago, the now-dreaded liability insurance prices were being slashed wildly and even being sold after the insured event happened, such as in the case of the MGM Grand Hotel fire where liability coverage was written months after the fire. 10/ If tort reform was so desperately needed in 1974 and 1975, why not in 1981? Why again today? The crisis is within the insurance industry, not in the courts.

Now, insurance premiums represent 11.1% of the disposable income in this country. 11/ It is the fourth leading purchase Americans make (behind food, housing and federal income taxes, although we expect it to pass federal taxes this year).

In 1944, the Supreme Court found that insurance was interstate commerce and, thus, subject to anti-trust and other federal statutes. In 1945, under heavy insurer pressure, Congress passed the McCarran-Ferguson Act which uniquely exempts insurance from the federal anti-trust laws (except should intimidation, coercion or boycott occur). Congress delegated the authority to regulate insurance to the states with no standards for regulatory excellence and no ongoing congressional oversight. Indeed, the FTC cannot even study insurance under current law 12/ unless Congress specifically authorizes it in advance. (Their power was revoked because they had the audacity to point out that whole life insurance was not a wise purchase for most Americans. The fact that the FTC was right did not alter their fate.)

The immensely important McCarran-Ferguson Act was adopted by Congress without benefit of a hearing. The legislative history makes it clear that President Roosevelt wanted only a short, two or three-year moratorium after which anti-trust laws would fully apply. 13/ That is, in fact, what both houses of Congress adopted but their language was somewhat different, requiring a conference. Mysteriously, the conference committee reported back a bill that continues in effect today.

Every independent study of insurance concludes that the states have failed mysteriously in their attempts to regulate this giant industry. 14/

The states have allowed this crisis to happen. Had they been equipped to keep prices to statutory standards (all states require that the rates be "not excessive, not inadequate, not unfairly discriminatory") we would not be in the mess we are in today with clearly excessive prices going into effect routinely around the nation and unfair cancellations rampant.

What Should We Do?

(1) We call today upon Congress to review the McCarran-Ferguson Act to determine if it is working to protect America. The quality of state regulation is documented to be inadequate; the insolvency funds are a "Maryland S&L Crisis Waiting to Happen." Congress should act now.

(2) NICO also believes that the approach enacted at a previous bottom, 1968/9 is worthy of consideration by the Congress: The Urban Property Protection and Reinsurance Act of 1968 was a response to the unavailability of insurance in the inner cities in the wake of the riot situation of the late 60's. 15/

To be sure, the predicate for the withdrawal of riot insurance was strong, given the very serious situation extant in the country at the time. But the finding of the President's Panel on the Insurance Crisis is just as valid for the day care provider community today as it was for the inner city communities of the late 60's: "Communities without insurance are communities without hope." 16/ Providers will have to shut down, possibly forcing spouses to decide among themselves which one will have to stop working, or the latchkey situation will be exacerbated, or other undesirable results will be forced on parents. Some families may even have to give up a home for loss of the second income, situations not unlike the loss of mortgage following loss of insurance in inner city areas plagued by riot almost two decades ago.

The federal government agreed to reinsure (insure the insurance companies -- a sort of lay-off bookie arrangement) the insurers against the specified peril of riot and civil commotion in return for a reinsurance premium and a commitment to participate in a pool to make sure insurance is available to all residents whose homes met reasonable standards of insurability.

The federal government made \$125 million writing this reinsurance!

The cities were saved from the sure death that no insurance brings in twentieth century America!

The program worked well.

I think that a program of stand-by authority should be prepared to take care of the day care and nurse-midwives current problem (and, perhaps some of the others). The authority should be granted to cover future crises as well, to stabilize the insurance profit cycle's harsh symptoms.

When a line of insurance became severely distressed, representatives of those purchasers could appeal to the agency given authority to reinsure. The agency would make a finding as to the extent and cause of the dislocation. If a distressed situation is certified, then the agency could offer reinsurance to insurers who would agree to make a market in the line. Following meetings with the insurers, the agency head would determine what the cause of distress was and would offer only to reinsure that cause (e.g., only reinsure the peril of child abuse for day care liability if that is the finding). Insurers would pay a reinsurance premium designed to be self-sufficient.

Insurers, the administrator of the program and representatives of the distressed industry would meet to set standards for insurability under which those who qualify are assured of an insurance market.

Studies will be undertaken to determine if other longer range action (risk management, tort reform, etc.) is also needed to resolve underlying problems.

Funding for this program would come from reinsurance premiums. I also envision a small surcharge, perhaps one-quarter of one percent of premiums written by all p/c insurers, to back up the program. This is in case premiums are insufficient over a short period or if it is determined by Congress that some short term subsidy is required to stabilize a distressed line sometime in the future.

The one-quarter of one percent surcharge would cost only 81 cents on the average private passenger car premium but would yield over \$300 million this year. Over a ten year cycle, with a 10% growth in premiums and a 10% interest rate, \$7 billion would flow into the Treasury. I would envision these funds being used in the general revenue area, but carefully accounted for to be available to the agency head when needed.

(3) Finally, NICO has today asked the Department of Justice to review the evidence to see if a conspiracy to boycott insureds has occurred in Day Care insurance and other lines, the intent of which is to intimidate state regulation into granting excessive rate increases and to intimidate state and federal legislators into passing unjustified tort law modifications which will maximize insurer profit levels.

Such boycotts and intimidations are not exempt from federal review under the provisions of the McCarran-Ferguson Act.

Conclusion

America deserves a better deal on its insurance. The federal government cannot sit idly by and let the insurance industry hold day care providers hostage in a large game beyond the providers' control. The terrorist tactics of insurers every 10 years at cycle bottom must be dealt with in a systematic way that adds the stability to our economy that insurance is meant to deliver. It is time the Congress began to look at the delegation it made to the states in 1945 to see if we are, as a nation, getting the most we can out of that twelve percent of our disposable income we pay into insurance premiums. A good place to start is solving the day care crisis that exists only in the minds of a few underwriters on John Street in New York City.

FOOTNOTES

1/ CPI data on "auto insurance", Bureau of Labor Statistics.

2/ Source of data: Citybank Economics and Insurance Services Office.

3/ For a discussion of risk in the property/casualty insurance business, see Investment Income and Profitability in Property/Casualty Insurance Ratemaking, J.R. Hunter and J.W. Wilson, 1983, Chapter 5.

4/ Hearing on December 3, 1973, Subcommittee on Health of the Committee on Labor and Public Welfare, US Senate. Among the interesting data supplied by ISO at that hearing were exhibits that showed that the average claim cost ISO used for ratemaking significantly exceeded the limit of liability, clearly ratemaking that had run amok. That led to this exchange:

Sen. Laxalt: Is malpractice always a loser as far as carriers are concerned?

Mr. Hunter: If they charge these rates, they could not help but win. (Page 141.)

In John Guinther's book, The Malpractitioners, Anchor Press, 1978, Guinther cites this exchange at page 169 in a chapter entitled "They Could Not Help But Win." In the following chapter, called "They Won," Guinther reviewed the later experience.

Final Report, Product Liability Task Force. Report on Product Liability Ratemaking, Product Liability and Accident Compensation Task Force, US Department of Commerce, 1980. At page ix the Report states that "overly subjective ratemaking practices were one of the principal causes of the product liability insurance problem."

5/ St. Louis Post Dispatch, Section B, P.3, 4/14/84.

6/ Source of data: Best's Property/Casualty Stock Index, A.M. Best and Company, Oldwick, NJ.

7/ "The day care facilities have been caught up in this availability crunch and are being deemed higher risk, not necessarily based on a claims experience but due more to an insurance hysteria . . ." Testimony of Edward J. Muhl, Insurance Commissioner of the State of Maryland, before the House Select Committee on Children, Youth and Families, July 30, 1985.

8/ "Any permanent solution (of the day care insurance crisis) will require significant changes in the tort system." Testimony of Frank Neuhauser, Vice-President and Actuary for AIG (a leading insurer of day care centers) before the House Select Committee on Children, Youth and Families, July 30, 1985.

9/ "The countrywide experience for those companies reporting premium and loss data to the Insurance Services Office . . . appears to conform with the current loss experience for the majority of commercial insurance lines . . . (these data) do not suggest that insurers should abandon the market." Testimony of James L. Kimble, Senior Counsel, American Insurance Association, before the House Select Committee on Children, Youth and Families, July 30, 1985. The testimony was also endorsed by the Alliance of American Insurers.

10/ See, for instance, the National Underwriter, 11/20/81, page 1, where it says:

A large commercial umbrella (liability) risk came up for renewal and was rated at \$105,000, about the same as the previous year. But the insured was not satisfied. Aware of the aggressive rate competition in the commercial lines market today, he decided to shop around. He approached a second agent, who submitted the very same risk to a different company, which offered to write it for just \$20,000.

But the insured was still not happy. He continued shopping and eventually the original company, which originally wanted \$105,000 came back and took the business for \$5,000. That's right, \$5,000. (Emphasis added.)

11/

Item	1984 Amount Spent in Billions a/	Column (1) - 1984 Disposable Income of \$2,578.1
		Billion a/
Food	444.3	17.2%
Housing	397.8	15.4
Personal Income Taxes	302.6	11.7
INSURANCE b/	287.1	11.1

a/ Source: US Department of Commerce, Bureau of Economic Analysis.

b/ Source: Bests Management Reports, December 31, 1984, page 1.
Life Insurance Fact Book, page 56.
Blue Cross Association, Telephone call of 1/25/85.

12/ The law was euphemistically entitled the "FTC Improvements Act of 1979."

13/ See Statement of Honorable Claude Pepper before the Subcommittee on Monopolies and Commercial Law on the Insurance Industry's Antitrust Exemption, April 11, 1984; found at page 5 of the Subcommittee's report, Competition in the Insurance Industry.

14/ See, for instance, Issues and Needed Improvements in State Regulation of the Insurance Business, General Accounting Office, 1979; Invisible Bankers, Andrew Tobias, Linden Press, 1982; The Life Insurance Game, Ronald Kessler, Holt, Rinehart and Winston, 1985; "Protection for Sale: The Insurance Industry," NBC-TV News, 1981; Risk, Reality and Reason, the Conference of Insurance Legislators, September, 1983.

One of the tests of state preparedness to deal with a crisis in availability and pricing of liability insurance is actuarial staff. Of the 52 states (including DC and Puerto Rico) NICO surveyed, we find that 26 have actuaries. So one-half of the states have no actuaries at all.

There are 62 actuaries employed by the states, of the 7,682 actuaries in the nation. It is well known in the industry that those best suited to deal with matters pertaining to liability insurance are those who have passed the examinations enabling them to be "Fellows" in the Casualty Actuarial Society. State regulation has only 8 such persons. They are employed by only 5 states [Connecticut (1), Massachusetts (1), Michigan (1), New Jersey (1) and New York (4).]

Aetna Life and Casualty Insurance Company alone employs 126 actuaries. Travelers has 100.

Source of data: American Academy of Actuaries 1985 Yearbook and Directory of Members by Business Affiliation.

15/ Public Law 90-448, 82 Stat. 476; 12 U.S.C. 1749bbb,
42 U.S.C. 4011.

16/ Meeting the Insurance Crisis of Our Cities, A report of
the President's National Advisory Panel on Insurance in Riot-
Affected Areas, January, 1968, p. 1.



NATIONAL INSURANCE
CONSUMER ORGANIZATION

5 Rocky Mt. States Lose Liability Cover

By G. A. CANNON
7/13/85
The Colorado Public Insurance Co. has "surrendered" a liability insurance policy for the entire state of Colorado. Unless the state can come up with coverage by Sept. 15, a gap in the state's liability coverage will be created.

"We've been the three thousand companies in the country, only they are willing to government entities."

Midwives Facing Loss of Insurance

NY TIMES 7/13/85
By CAROL LAYTON

THE problems that doctors across the country are having with malpractice insurance are also being felt by midwives. About a third of the 2,500 in the profession have been notified that they must leave their malpractice coverage, meaning that they might have to give up their profession unless another insurer will cover them for professional liability.

Birthing Centers Face Shortage of Cover

Insurance Premiums Sink Fishing Fleet

Journal of Commerce 7/15/85
GLOUCESTER, Mass. — Sam LeGrande was sitting outside the St. Peter's Club on Rogers Street here, looking in the sun. He would rather have been fishing. But Mr. LeGrande, 64, is one of more than 30 Gloucester commercial fishermen who in the last two weeks have been forced to let their trawlers sit idle because their insurance has been canceled.

Transit Systems Face Liability Shortage

The loss ratio for public transportation systems has remained constant, yet members are experiencing premium increases from 300 percent to 1,000 percent.

Fireworks Makers Face Loss of Insurance

By JAMES HOLLAN
NEW YORK — A Fourth of July without an evening of "boom-boom" is unthinkable. But the way things are in the specialty insurance industry, the Fourth of July might very well be quiet, indeed.

Day Care Insurance Imperiled

Policies Canceled
House Hearing '85

Rate hikes, capacity crunch
seen with July 1 renewals

THE 1985 INSURANCE CRISIS
WHAT'S GOING ON HERE?

Auto Insurer To Discontinue Service in D.C.

By Sandra Evans
7/10/85
Dairyland Insurance Co., the No. 1 provider of auto insurance in the District, informed the city government yesterday that it is discontinuing insurance for all of its District policyholders by the end of this year unless the city can find another insurer.

About 18,000 customers, most of them high-risk drivers with month-to-month policies, will have to scramble to get insurance from other insurers.

The worst is yet to come, reinsurers, brokers predict

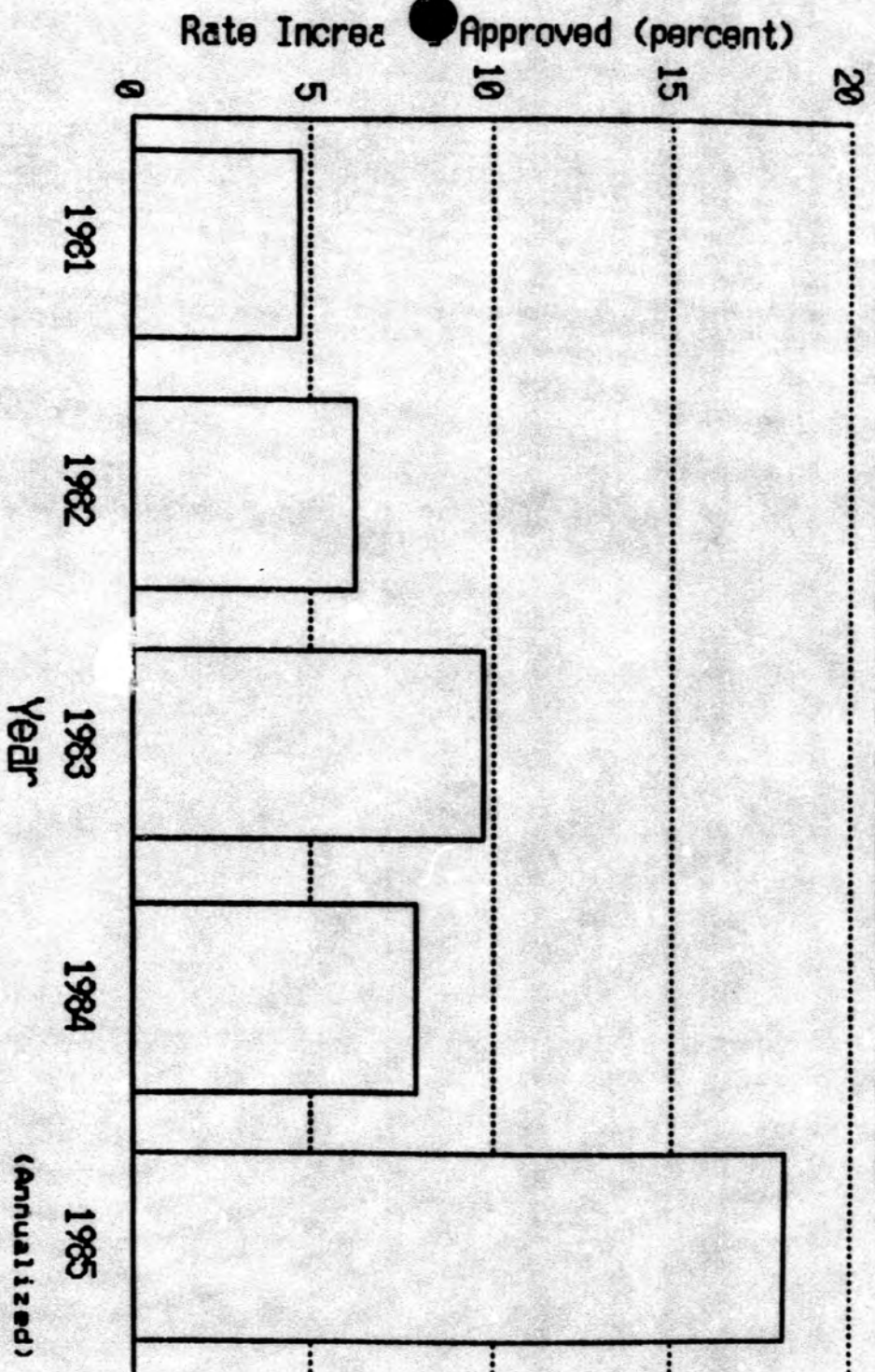
By DOUGLAS McLEOD 7/5/85

It's summertime, but the living is far from easy for reinsurance buyers. After being battered during last January's renewals with rate hikes, capacity shortages and more restrictive policy terms, reinsuring companies were hit even harder during July 1 renewals. And, there is no relief in sight as next January's renewal season approaches, brokers and reinsurers predict. "I think it's going to be a bloodbath," said an underwriter at Constitution Reinsurance Corp. in New York, referring to next

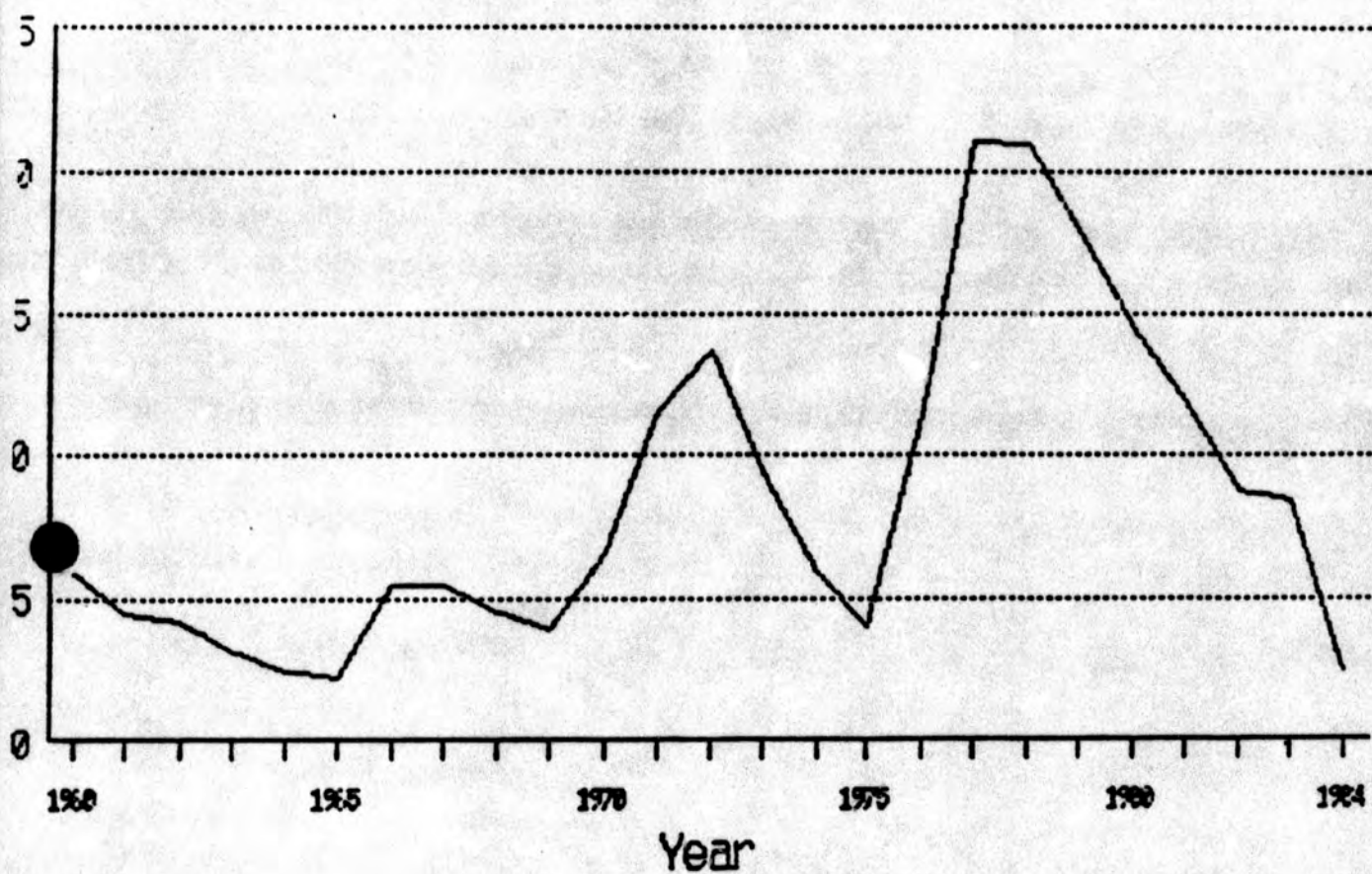
Risky Business
Liability Insurance Is
Difficult to Find Now
For Directors, Officers
Suits by Shareholders Cause
Premiums to Skyrocket

By Sandra Sugar
ALBANY, N.Y. — A woman told a personal insurance broker that she has been providing child care in Burke, Va., for eight years. But this year the care will end, because her insurance has been canceled. Karen E. Stone testified that she also will have to close her day care business at her home in Falls Church, because her insurance policy has been canceled.

AUTO INSURANCE RATE INCREASES IN THE USA



THE "CYCLE" AND CONSUMER ABUSE



Analysis of Rate Filing of

MEDICAL MUTUAL LIABILITY INSURANCE SOCIETY OF MARYLAND

Filing Date: May 16, 1985 Effective: July 1, 1985

J. ROBERT HUNTER

**Fellow, Casualty Actuarial Society
Member, American Academy of Actuaries
President, National Insurance Consumer Organization
Former Federal Insurance Administrator**

BACKGROUND

On May 16, 1985, the Medical Mutual Liability Insurance Society of Maryland (MMLIS) filed for an increase in malpractice premiums of +29%. The filing also requested changes in the relativities between classes, the most notable of which was a one-third increase in Class B (OB/GYN Surgery). The total impact of the overall rate change of +29% and the class relativity change of +33.3% on OB/GYN surgeons was to increase their rates by 66.7%. For the highest rated territory, these doctors had their rates raised from \$25,429 to \$42,393. This did not please the OB/ GYN community.

WAS THE OVERALL 29% RATE INCREASE JUSTIFIED?

In my opinion, there was no justification for an overall rate increase of 29%. Indeed, I believe that the filing supports a reduction in premiums rather than an increase. Here's why:

- o The filing incorrectly assumes that the yield on investments that the MMLIS will earn is 5%, an unrealistically low assumption, and
- o The filing incorrectly assumes that inflation in the future will be at double-digit levels.

When proper assumptions are made on just these two items, even accepting other major assumptions (such as their reserves are accurate), a rate reduction of 10.5% is indicated.

HOW SHOULD INVESTMENT INCOME BE FACTORED IN?

To do the job properly, a full blown total return analysis should be undertaken. The National Association of Insurance Commissioners adopted the total return approach at their June, 1984 meeting, and issued a report detailing several approaches. Under a total return approach, all income is analyzed to determine what overall profit the company will make under a given set of rates and a comparison of that potential earning power to the needed margin to attract risk capital is undertaken. It is a sophisticated, highly desirable approach that should be used in Maryland, as the NAIC recommended for all regulated lines.

In that the filing was woefully short of the data needed to undertake total return analysis, I decided to accept, for review purposes, the MMLIS approach to discounting the cash flows (their Exhibit 5, my Exhibit "A", attached). On my exhibit, you will see the MMLIS approach as typed and mine in

handwriting. MMLIS discounted the losses based on a distribution of losses paid by time. Presumably this is based on their Maryland experience, the filing does not identify that.

The average claim takes a bit over 7 years to pay. This means that MMLIS holds the money in reserve for that long before they pay the average claim. Obviously this means that the reserves, which are fully funded today under statutory accounting rules, will produce a significant amount of investment income.

The MMLIS approach assumes that they will earn 5% on their invested reserves. This is obviously too low. MMLIS has earned, according to their 1984 Annual Statement, the following yields on their total assets (including assets not invested or used for business--such as properties) the following:

1982	9.1%
1983	8.9%
1984	9.3%

Other filers recognize that the yield is not so absurdly low. For example, on May 17, 1985 the leading writer of medical malpractice insurance in the country, St. Paul submitted a filing in South Carolina in which it used a 10.5% yield to discount that state's cash flow. (see my Exhibit "B")

I have chosen to use a 10% discount rate, which is reasonable for fully invested assets of MMLIS. That change is shown on Exhibit "A". It results in a discount for investment income of 43% rather than 26% based on the unjustified 5% yield assumption. If that change is carried through to the rate level itself, the rate filing would have been for a reduction in rates of 1.4% rather than an increase of 29%. The calculation of the reduction is found on Exhibit "C", attached.

TREND

MMLIS displayed its own Maryland data for trend on its Exhibit 4, my Exhibit "D". It carefully analyzed the data and concluded that the range of results were between an annual trend of +7.8% based on straight line projection, and +9.3% based on exponential line projection. The data are company specific and Maryland specific and through the most recent year, 1983.

For some reason, the filer then displays data for other insurers, for other states, that is old data. (See Exhibit

"E"). This experience is from a period of high inflation and is not relevant, in my opinion to the case at hand. For one thing, the federal government has reported that medical inflation rates in the nation are below 10%, certainly no where near the 16% figure that the irrelevant data produce. These data should not be given weight, in my estimation.

I selected a trend of 9% for the purposes of this review. It gives weight to the fact that the exponential line has a slightly better "fit" to the data and is within the range as calculated by MMLIS, but near the exponential side. I also chose to apply the trend exponentially (this gives a higher answer than using a straight line).

Looking again at Exhibit "C", the use of the amended trend, coupled with the 10% yield assumption produces an indicated rate level reduction of 10.5%

SENSITIVITY ANALYSIS

If we used a yield of only 9% (less than MMLIS earns, even on all assets including cash) and use a trend of 10% (which is more than that realized by MMLIS and more than that in the nation today) the indicated rate would be a reduction of 0.9%.

ANALYSIS OF CLASSIFICATION CHANGES

Incredibly, there is absolutely no justification for the changes in the classification differentials employed by MMLIS contained in the filing. The entire "justification" for the change is found on Exhibit "F", attached.

There are other, more minor changes made without a shread of evidence, such as the territorial relativity changes, and the increased limits changes.

BALANCE SHEET

MMLIS is as solid an insurer as there can be. Their 1984 balance sheet shows that the company enjoys a premium/surplus ratio of 1.2 to 1. This company appears to be over-capitalized. If the ratemaking has followed the current filing approach, it is no wonder.

CONCLUSION

This filing is not justified. An overall rate level decrease of 10.5% is needed, not a 29% increase. The class changes which so sharply impact the OB/GYN surgeon group is not justified in the filing, although their may be experience somewhere that supports that change. The filing should have been disapproved. It is particularly abusive to observe a 66.7% increase for OB/GYN surgeons with no justification. On the basis of the filing, the OB/GYN rate should have been decreased by 10.5%. This means that the OB/GYN surgeons in Maryland may be paying about 85% too much.

Exhibit "A"

MEDICAL MUTUAL LIABILITY INSURANCE SOCIETY OF MARYLAND
1985 PROFESSIONAL LIABILITY RATE LEVEL REVIEW - OCCURRENCE COVERAGE

PRESENT VALUE OF PAID MEDICAL MALPRACTICE CLAIMS
(OCCURRENCE BASIS)

<u>Time Interval</u>	<u>Cum. Paid</u>	<u>% Paid Losses By Interval</u>	<u>Years of Discount (n)</u>	<u>Vn (5%)</u>	<u>10%</u>	<u>Present Value</u>
Up to 12 mos.	0.0%	0.0	0.5	.976	.954	-
24	2.0	2.0	1.5	.929	.867	1.858 1.73
36	7.0	5.0	2.5	.885	.768	4.425 3.941
48	19.0	12.0	3.5	.843	.716	10.116 8.591
60	35.0	16.0	4.5	.803	.651	12.848 10.47
72	53.0	18.0	5.5	.765	.592	13.770 10.65
84	68.0	15.0	6.5	.728	.538	10.920 8.07
96	79.0	11.0	7.5	.694	.489	7.634 5.38
108	87.0	8.0	8.5	.661	.445	5.288 3.55
120	92.0	5.0	9.5	.629	.404	3.145 2.02
132	95.0	3.0	10.5	.599	.368	1.797 1.10
144	97.0	2.0	11.5	.571	.334	1.142 .669
156	99.0	2.0	12.5	.543	.304	1.086 .609
168	100.0	1.0	13.5	.518	.276	.518 .27

AVR 7.14 yrs

74.547%

57.1

St. Paul Fire and Marine Insurance Company
St. Paul Mercury Insurance Company
Physicians and Surgeons Professional Liability

Exhibit "B"

Exhibit C
Loss and Loss Expense
Payout Patterns

<u>Year</u>	<u>Cumulative Annual Payout</u>	<u>Incremental Annual Payout</u>	<u>Present Values</u>
1	.061	.061	.059
2	.275	.214	.187
3	.496	.221	.175
4	.668	.172	.124
5	.786	.118	.076
6	.869	.083	.049
7	.910	.041	.022
8	.952	.042	.020
9	.976	.024	.011
10	1.000	.024	.009
		1.000	.732

* Discounted claims payments at 10.5% pre-tax.

Exhibit C

MEDICAL MUTUAL LIABILITY INSURANCE SOCIETY OF MARYLAND

1985 Professional Liability Rate Level Review - Occurrence Coverage

Total Limits Rate Level Indication -- \$000's

(1) Year	(2) E. P. at Current Rate Level (Exh. 3)	(3) Ultimate Incurred Loss & ALAE (Exh. 2)	(4) Trend Factor to 7/1/86 at 11% 9%	(5) Losses Trended to 7/1/86 (3)x(4)	(6) Loss Ratio at Current Rate Level (5)/(2)
1979	33,395	24,688	1.826	51,255	1.535
1980	35,732	25,235	1.677	47,200	1.321
1981	33,872	25,904	1.539	43,649	1.289
1982	28,984	25,414	1.412	38,580	1.331
1983	18,203	18,854	1.245	25,785	1.417
	150,185			206,470	1.375
				187,816	1.249

Annual Trend Factor: 11.0%
(Exhibit 4)

- a) Five year loss ratio at current rate level: 1.249
- b) Discount for investment income at 5.0%: (10%) .570
- c) Discounted loss and ALAE ratio (a) x (b): .712
- d) Provision for Unallocated LAE (Exhibit 6): 1.05
- e) Discounted loss and LAE ratio (c) x (d): .748
- f) Permissible discounted loss and LAE ratio: .835
- g) Indicated rate level increase (e) / (f): -10.5
- h) Selected rate level increase: —

INVESTMENT
INCOME AND
TREND CHANGE

ONLY
INVESTMENT
INCOME
CHANGE.

Exhibit "D"

MEDICAL MUTUAL LIABILITY INSURANCE SOCIETY OF MARYLAND

1985 RATE LEVEL REVIEW - PROFESSIONAL LIABILITY - OCCURRENCE COVERAGE

TREND IN TOTAL LIMITS LOSS RATIOS AT CURRENT RATES
(3000'S)

(1) Calendar/ Accident Year	(2) Earned Premium at Current Rate Level	(3) Ultimate Incurred Loss and ALAE	(4) Loss Ratio at Current Rates	(5) Linear Fit	(6) Exponential Fit
1979	33,395	24,688	.739	.672	.683
1980	35,732	25,235	.706	.748	.747
1981	33,872	25,904	.765	.825	.816
1982	28,984	25,414	.877	.901	.893
1983	18,203	18,854	1.036	.978	.976

Average Annual Trend:

+ 7.8%

+ 9.3%

r :

.899

.906

(2) Exhibit 3

(3) Exhibit 2

(4) (3) / (2)

ISO COUNTRYWIDE TREND (Exh. 4A): 16%

Selected Trend Factor: 11%

16% relevant

Use 9.0%

COUNTRYWIDE

Professional Liability Insurance
Calculation of Annual Trend Factor
Based on Basic Limits Loss Ratios at Present Rates

PHYSICIANS, SURGEONS AND DENTISTS

Basic Limits

			Average Loss Ratio at Present Rates	
(1) Policy Year Ending	(2) \$100,000 Basic Limits Incurred Losses*	(3) Premium At Present Rates	(4) (2)÷(3) Actual	(5) Exponential Curve of Best Fit
12/31/75	\$167,810,058	\$615,020,250	.273	.232
12/31/76	139,176,608	524,225,850	.265	.271
12/31/77*	181,630,098	638,830,853	.284	.316
12/31/78*	251,848,210	700,894,098	.359	.369
12/31/79*	280,590,219	717,382,127	.391	.430
12/31/80*	332,612,672	705,726,416	.474	.502
12/31/81*	426,038,352	684,461,050	.622	.585
12/31/82*	497,532,513	666,499,516	.746	.683

Average Annual Loss Ratio at Present Rates Trend.....16.6%

* Excluding Texas and Massachusetts

* Losses include allocated loss adjustment expense and are developed to an ultimate settlement basis.

* Includes Claims Made Data.

Selected Annual Trend 16.0%

Exhibit
"F"

MEDICAL MUTUAL LIABILITY INSURANCE SOCIETY OF MARYLAND

1985 PROFESSIONAL LIABILITY RATE LEVEL REVIEW

Effect of Proposed Classification Changes

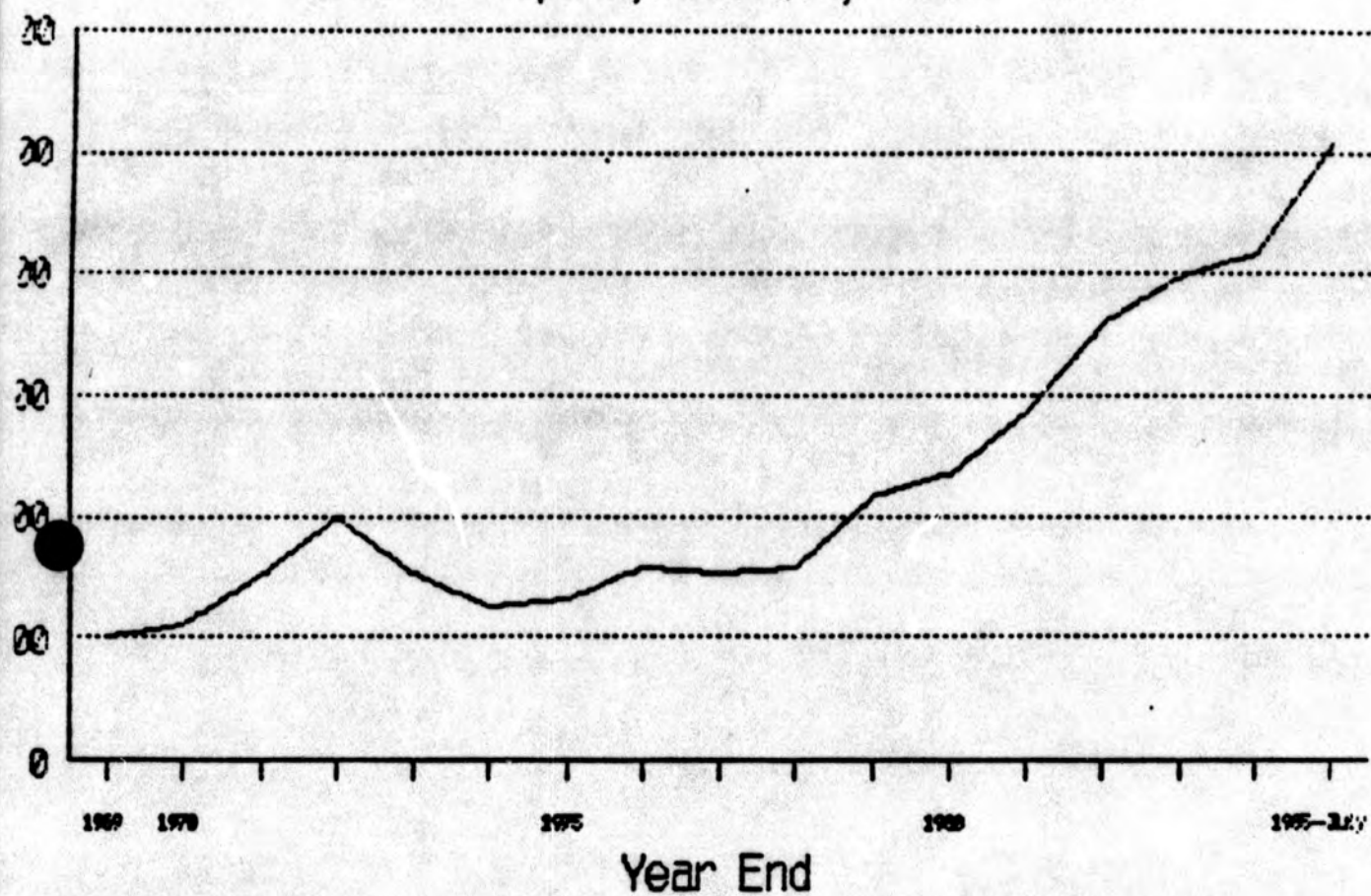
<u>Specialty</u>	<u>Description</u>	<u>Distribution Of Total Limits Premium</u>	<u>Present Relativity</u>	<u>Proposed Relativity</u>
80240	Forensic Medicine	0.0 %	.75	.65
80232	Hypnosis	0.0	.75	.65
80248	Nutrition	0.0	.75	.65
80263	Ophthalmology-No Surgery	0.2	.75	.65
80235	Physiatry and Physical Medicine	0.2	.75	.65
80249	Psychiatry	0.3	1.00	.65
80250	Psychoanalysis	0.0	1.00	.65
80251	Psychosomatic Medicine	0.0	1.00	.65
80266	Pathology-No Surgery	0.5	1.00	.65
80261	Neurology-No Surgery	0.8	1.00	1.20
80253	Radiology-Diagnostic-No Surgery	0.5	1.20	1.80
80280	Radiology-Diagnostic-Minor Surgery	0.1	2.10	2.80
80145	Surgery-Urology	3.0	3.00	3.60
80155	Surgery-Plastic-Otorhinolaryngology	1.5	6.00	5.00
80156	Surgery-Plastic-N.O.C.	2.5	6.00	5.00
80141	Surgery-Cardiac	0.0	5.00	6.50
80150	Surgery-Cardiovascular	0.0	6.00	6.50
80153	Surgery-Obstetrics/Gynecology	8.0	9.00	12.00
80168	Surgery-Obstetrics	0.1	9.00	12.00
All Other		82.3		
		100.0%		

Effect: +2.8%

Current Average Relativity: 2.15

Projected Average Relativity: 2.21

Best's Property/Casualty Stock Index



CALIFORNIA
Draft Legislation to Limit Recovery for Punitive Damages
May 2, 1985

Introduced by Senator Robbins

March 6, 1985

An act to amend ~~Sections 825 and 990~~ *Section 825* of the Government Code, relating to public liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 969, as amended, Robbins. Public liability.

Existing law provides that a public entity is not liable for punitive damages and, although generally liable for a judgment against a public employee, is not authorized to pay that part of a judgment or claim that is for punitive damages.

This bill would provide that a local public entity is authorized to pay that part of a judgment or claim that is for punitive damages if the governing body *determines that it is in the best interest of the public makes specified findings.*

Existing law authorizes a local public entity to insure against its liability and its employees' liability, and such an entity is authorized to insure against the expense of defending a claim against it or its employees including a claim for punitive damages, but is not authorized to insure for payment of that part of a judgment that is for punitive damages.

This bill would authorize a local public entity to insure, contract, or provide against liability for a claim, including a claim for punitive damages.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

COLORADO
1985 Self-Insurance for the State
Changes Liability Standard for Public Employees

An Act

HOUSE BILL NO. 1001.

BY REPRESENTATIVES Paulson, Bledsoe, Berry, Allison, Taylor-Little, Brown, Gillis, P. Hernandez, Johnson, Neale, Owens, Philips, Reeser, Romero, Schauer, Singer, Swenson, Trujillo, Underwood, Wham, K. Williams, and Younglund; also SENATORS Wells, Strickland, Baca, Beatty, Bishop, Callihan, Gallagher, Glass, Lee, McCormick, Meiklejohn, R. Powers, Traylor, and Wattenberg.

CONCERNING THE LIABILITY OF PUBLIC ENTITIES, OFFICIALS, AND EMPLOYEES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Article 30 of title 24, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 15

DIVISION OF RISK MANAGEMENT

24-30-1501. Legislative declaration. The general assembly recognizes that the general liability and automobile liability insurance policies of the state of Colorado have been cancelled, that no responsive bids were received, and that, as a direct result, the governor called an extraordinary session of the general assembly to address the need for a method to protect the state and its employees against claims brought under the "Colorado Governmental Immunity Act", article 10 of this title, and arising under federal law. The general assembly further recognizes that the consequences of

CONNETICUT
1895 Discussion of Sovereign Immunity Doctrine

Connecticut General Assembly

07273



OLR Selected Report 85-18

LAN GREEN
DIRECTOR

JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH

LEGISLATIVE OFFICE BUILDING
18-20 TRINITY STREET
HARTFORD, CONNECTICUT 06106
(203) 566-8400

February 15, 1985

85-R-0376

FROM: Office of Legislative Research
David O'Connor, Research Attorney

RE: Sovereign Immunity

You have asked for background on the concept of sovereign immunity.

DISCUSSION

Sovereign Immunity in Connecticut

The state is immune from suit in Connecticut in contract, tort, or any other action except where it is clearly waived by statute. Murphy v. Ives, 151 Conn. 259, 262-63 (1963). The areas where immunity is waived are as follows: negligence in maintaining highways, bridges or sidewalks (§ 13a-144); negligent operation of a state motor vehicle (§ 52-556); a contract for the design, construction, repair or alteration of any state highway, bridge, building or public work (§ 4-61); and suits against a municipality for damage resulting from failure to prevent disturbances of the peace (§ 7-465).

The Claims Commission

Despite sovereign immunity, claims against the state, whether based on contract or tort, may be brought by filing a claim with the Claims Commissioner. The Commissioner by himself may make awards of up to \$5,000. If he wants to award more, he must submit the claim to the General Assembly. If the claimant is asking for more and is turned down by the Commissioner, the claimant may bring the claim to the General

ILLINOIS
Governmental Tort Immunity
April 11, 1985

HOUSE BILL 1721
84th GENERAL ASSEMBLY
State of Illinois

1985 and 1986

Introduced April 11, 1985, by Representative Woodyard

SYNOPSIS

(Ch. 85, par. 9-103; amends title)

Amends the Local Governmental and Governmental Employees Tort Immunity Act. Provides that a local public entity may protect itself or its officers or employees, by insurance or other means, from liability arising out of any statute or legal theory. Provides that such protection may be in the form of indemnification.

LRB8405302RLks

LOUISIANA
1985 Proposed Legislation on Self-Insurance Liability of
Public Entities

LIABILITY/PUBLIC: Limitation of liability of public entities

1 AN ACT

2 To enact R.S. 9:2800, relative to the limitation of liability for
3 public entities, to provide with respect to proof of actual or
4 constructive notice of allegedly defective conditions, and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2800 is hereby enacted to read as follows:

8 §2800. Limitation of liability for public entities; notice
9 required

10 Notwithstanding any other provision of law to the contrary,
11 liability under Civil Code Article 2317 shall not be imposed
12 against the state, a state agency, a political subdivision, or any
13 unattached agency, board, commission, or other instrumentality
14 serving a public function for damages caused by a vice or defect in
15 any roadway, sidewalk, public servitude of drainage or sewerage, or
16 any other public way or the subsoil thereof, if the public entity
17 proves that it had neither actual nor constructive notice of the
18 alleged defective condition.

SELF INSURANCE: Membership in interlocal risk management agencies

AN ACT

To enact R.S. 33:1343(F), relative to membership in an interlocal risk management agency, to authorize any statewide association of local governmental subdivisions to become a member of such an agency for purposes of providing accident and health protection to its employees, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 33:1343(F) is hereby enacted to read as follows:

~~§1343. Authority of governmental subdivision to form, join, and or~~
participate in interlocal risk management agency; employer contributions toward accident and health protection premiums; ownership of records;

* * *

F. In addition to local governmental subdivisions, any
statewide association of local governmental subdivisions, including
but not limited to the Police Jury Association of Louisiana and the
Louisiana Municipal Association, may become a member of an
interlocal risk management agency for purposes of providing
accident and health protection to its employees upon approval of
the governing body of the association and the governing body of the
interlocal risk management agency.

MAINE
1980 Study: Self-Insurance for Public Schools

04052

MINORITY REPORT
of the
JOINT STANDING COMMITTEES
ON
BUSINESS LEGISLATION
AND
EDUCATION

A STATE PROGRAM OF FUNDED SELF-INSURANCE
FOR PUBLIC SCHOOLS
(S.P. 627)

Submitted to the
Legislative Council
109th Legislature

February 15, 1980

MARYLAND
1985 Tort Claims Act Amendments
[Tort Reform]

SENATE BILL No. 380
(51r2064)

35

Introduced by Senator Coolahan

Read and Examined by Proofreader:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor,
for his approval this _____ day of _____
at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 Maryland Tort Claims Act

3 FOR the purpose of providing that the waiver of the sovereign
4 immunity of the State and its units is extended to include
5 any claim of any amount to the extent of insurance coverage;
6 providing that sovereign immunity is not waived for certain
7 items; repealing a certain provision regarding the provision
8 of State liability insurance; providing that State personnel
9 are immune from certain tort suits; ~~providing--for the~~
10 ~~separate-trial-of-certain-issues-in-these--suits;~~ providing
11 that certain claims filed with the State shall contain
12 certain additional information; altering the effect of the
13 acceptances of settlements of certain claims against the
14 State; altering the notice requirements for final denials of
15 these claims; altering the conditions which determine when
16 final denials of these claims occur; changing the statute of
17 limitations for certain tort claims against the State and
18 its units; providing certain requirements for the service of
19 certain legal documents; and generally relating to the
20 sovereign immunity of the State and its units and personnel.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken from the bill by
amendment or deleted from the law by amendment.

NEW YORK
Draft Legislation
New York Municipal Tort Liability Joint
Underwriters' Association
June 25, 1985

STATE OF NEW YORK

4145

1985-1986 Regular Sessions

IN SENATE

March 18, 1985

Introduced by Sen. LEICHTER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law and the insurance law, in relation to municipal liability insurance contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The general municipal law is amended by adding a new section
2 ninety-two-c to read as follows:
3 § 92-c. Liability insurance contracts. Notwithstanding any contrary
4 provision of law, each municipal corporation shall submit any proposed
5 contract for liability insurance coverage to the superintendent of in-
6 urance at least sixty days prior to the date on which such contract is
7 to take effect or within fifteen days of notification by such superin-
8 tendent of the disapproval of any such contract, whichever is later. No
9 such liability insurance contract shall take effect unless it is ap-
10 proved by the superintendent of insurance.
11 § 2. The insurance law is amended by adding a new section three hun-
12 dred sixteen-a to read as follows:
13 § 316-a. Municipal liability insurance. (a) The term "municipality" as
14 used in this section shall mean any county, city, town or village.
15 (b) Notwithstanding any contrary provision of law, the superintendent
16 shall establish regulations for the purchasing of liability insurance
17 contracts by municipalities.
18 (c) The superintendent shall review each proposed contract for liabil-
19 ity insurance coverage for a municipality including its terms, condi-
20 tions, rates and broker fees and commissions.
21 (d) The superintendent shall inform the municipality of its approval
22 or disapproval of an insurance contract within thirty days of the
23 receipt of such contract.
24 § 3. This act shall take effect immediately and shall apply to all
25 contracts entered into on or after the first day of January, nineteen
26 hundred eighty-seven.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD08890-01-5

STATE OF NEW YORK

8232

1985-1986 Regular Sessions

IN ASSEMBLY

June 25, 1985

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Gorski) --
read once and referred to the Committee on Local Governments

AN ACT to amend the insurance law, in relation to the New York municipal
tort liability joint underwriting insurance association

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The insurance law is amended by adding a new article fifty-
2 seven to read as follows:

ARTICLE 57

NEW YORK MUNICIPAL TORT LIABILITY JOINT UNDERWRITING INSURANCE ASSOCIATION

6 Section 5701. Declaration of legislative purpose.

7 5702. Definitions.

8 5703. New York municipal tort liability joint underwriting in-
9 surance association.

10 5704. Policies.

11 5705. Procedures.

12 5706. Rates.

13 5707. Participation.

14 5708. Appeals.

15 5709. Immunity.

16 5710. Annual statement.

17 5711. Examinations.

18 5712. Stabilization reserve fund.

19 5713. Termination of article.

20 § 5701. Declaration of legislative purpose. The legislature takes cog-
21 nizance of the burdens and difficulties confronting municipalities as
22 they attempt to obtain appropriate personal and property damage liabil-
23 ity insurance. It is therefore the purpose of this article to enable

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD11425-04-5

NEW YORK STATE LEGISLATURE
Study on Municipal Insurance Pools
January 1980
(141 Pages)