

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1761 SCOMM 69: HOUSE LIABILITY INSURANCE TASK FORCE, 1989-1990/329

ATTACHMENT NUMBER FOUR

Comments From Task Force Members

Alaska State Legislature

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Member
Alaska Legislative
Council
Labor & Commerce
Committee
Special Committee
on Foreign Trade
Finance Sub-Committee
for Labor

Representative Virginia Collins

MEMORANDUM

To: Representative Sam Cotten, Chairman
Liability Task Force

From: Representative Virginia Collins *VC*

Date: March 23, 1990

Subject: Statement-Liability Task Force

Several members of the task force expressed their concerns that the task force had been a failure. Given the time frames and the climate, I think that the task force really did the best it could.

The real failure, as I see it, is everybody's inability or refusal to address the real problem and that, I believe, is that the original purpose of the civil justice system, i.e., compensating innocent victims who have been injured or suffered a loss by another through no fault of their own, has been lost.

It seems that the civil justice system has become a means to redistribute the wealth. The only people who have to worry about being sued are those who have assets. The only victims who are compensated are those whose injury occurred at the hands of a wealthy individual or entity. This leaves us with an expensive, unworkable and unbalanced system, that in the end hurts us all.

Until we focus our efforts on returning the civil justice system to the purpose for which it was originally intended, we will continue to fail in our efforts to appropriately address these issues.

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DAN A. HENSLEYTELEPHONE (907) 270-1101
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March 27, 1989

Via FaxDavid E. Rogers, Esq.
Box 33932
Juneau, Alaska 99803Re: Liability Task Force Report

Dear David:

I have very serious objections to the Task Force issuing a report in the problem/solution form you have suggested. The reasons for my objections are:

- (1) The "problem" portion of the report suggests a widespread insurance problem when, in fact, the data gathered by the Task Force indicates that insurance problems only affect a limited segment of Alaska's businesses;
- (2) The "solution" portion of the report suggests that there are a number of viable solutions to insurance problems when, in fact, the data gathered by the Task Force indicates just the opposite; and
- (3) The report fails to mention that the Task Force has investigated only the tip of the iceberg of the insurance issue and that a substantial number of the Task Force members recommended that the investigation continue before the Task Force issues any reports or makes any recommendations.

Now let me move to the most important issue. The issue isn't what kind of report we do, but what kind of accountability we have to the legislature and to the public.

We were charged with investigating issues relating to insurance problems. We looked at issues of interest to some members of the committee -- legislative restrictions on victims' rights. We completely failed to consider issues such as insurance regulation, reinsurance, and similar questions. We haven't completed our job but we have been disbanded.

David E. Rogers, Esq.
March 27, 1990
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Some persons, more cynical than I, might suggest that the reason we were disbanded is that the information we gathered concerning the impact of restrictions of victims' rights on insurance rates did not support further legislative activity in that area. Regardless of the reason for discontinuation of the Task Force, the fact remains that there is much work to be done before we can even begin to understand how best to reduce insurance rates (assuming reduction of rates is necessary). We will have wasted the public's money if we don't complete that work.

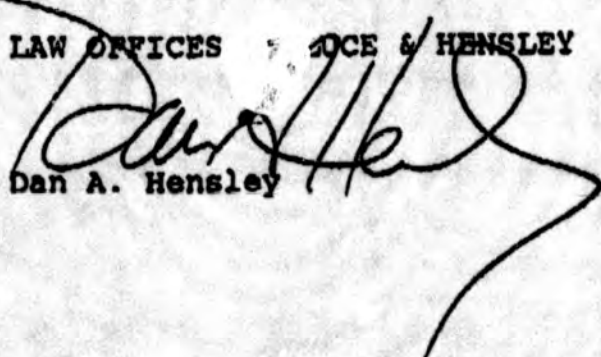
I realize that issuing any report from the Task Force may be problematic because there exist disagreements among the members as to the impact of the data gathered. As you know, I believe that the data gathered by the Task Force strongly supports the view that further legislative restrictions on victims' rights won't have any appreciable impact on insurance rates and certainly won't solve those insurance problems that presently exist in this state. However, I am sure that there will be no Task Force consensus on that view. Therefore, I don't expect you to issue a report taking that position.

I don't have any objection to a report which attempts to summarize the data gathered by the Task Force in an objective manner. You did just that in your February 22, 1990, draft. I would have no objection to the Task Force issuing a report in this form (as opposed to the March 2 edited form) if the report is prefaced with appropriate disclaimers, and if the report makes clear that there still is much work to be done to understand how insurance rates are made and how those rates can be impacted by legislation.

Thanks for the opportunity to participate and make these comments.

Sincerely,

LAW OFFICES OF ROCE & HENSLEY


Dan A. Hensley

DAH:fs
:udd:case:off.let.rog.tor.ref
cc: Representative Sam Cotten

March 21, 1990

TO: Speaker Sam Cotten
Chair, Liability Insurance Task Force

FROM: Nancy Lord *NL*

RE: Liability Insurance -- Conclusions and Recommendations

At the end of the task force's final, teleconferenced meeting last week, task force members agreed to submit their thoughts on the subject, to be compiled into a report. It is understood that the task force did not fulfill its charge to complete a comprehensive review of the issue and make recommendations to the legislature. The primary reason for this, in my opinion, was that the task force did not meet enough times to reach a common basis of fact and consider with any seriousness any of the options identified.

CONCLUSIONS

After participating in the two task force meetings and reading the enormous amount of material that was gathered, my personal conclusions are these:

The problem in Alaska concerning the availability and affordability of professional liability insurance is a complex one with no easy solutions. Following national trends, Alaska addressed the problem in 1986 by passing a "tort reform" package that was, among the states, one of the most substantial; this was followed in 1988 by passage of a ballot measure that eliminated joint liability for tort actions involving fault. There is no data suggesting that these changes in tort law, which restricted the rights of victims, have had any effect on making liability insurance more available or less costly. Nationally, the focus has now moved on to court challenges of "tort reform" and to efforts to reform the insurance industry, ensure better self-regulation by the professions, and provide alternative dispute resolution mechanisms.

In my opinion, the liability insurance problem in Alaska needs to be

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further defined and addressed, not through more changes to our civil justice system but through Alaska-specific investigations into the insurance industry, the regulation of professionals, and alternative dispute resolution systems. An understanding of each of these subjects--how they operate and what possibilities they offer for reducing insurance costs while maintaining services--may provide the basis for recommending statutory changes.

RECOMMENDATIONS

1. If the legislature is interested in continuing a fact-finding effort, establish a continuing or new task force. To be more workable, such a task force might be either smaller or divided into committees; it might also be given a more narrow focus, such as to address specifically the medical malpractice issue. It might also be given the resources to contract for specific research. (Of all the reports we reviewed, the one I believe serves as the best model for an Alaskan effort is Maine's 1989 "Medical Malpractice Liability Study," which was prepared by a study team of public health experts, under the oversight of a special legislative committee.)
2. Review "tort reform" changes of 1986 and 1988 and determine what impact they have had on the rights of victims, insurance rates, insurance availability, etc.
3. Provide the Division of Insurance with a budget adequate to regulate the insurance industry, including having on-staff actuaries. Request or require (with sufficient funds) the division to do its own review of insurance regulation and identify areas it believes need attention or hold promise for meaningful reform.
4. A data-base is absolutely necessary to understand what is happening with insurance claims and profits. Require all insurance companies doing business in Alaska to report to the Division of Insurance such information as claims, settlements, premiums, investment income, reserves, and estimates of incurred claims. (Washington law may provide a good example.) Once this data is available, it should be possible to see if, among other things, the insurance companies are operating efficiently. (Generally, they do not, since they can pass along expenses to policy holders). Alaska could mandate that all insurers that do business in the state demonstrate

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an effective cost control program.

5. Investigate further the issue of reinsurance. From what I know about this, there's a definite potential of holding down premiums by having the State of Alaska, by itself or in a compact with other states, offer reinsurance as an alternative to the main reinsurers, particularly Lloyd's of London. Reinsurers are currently beyond the regulatory control of states, yet a large portion of premium costs (40% of medical malpractice premiums in Maine) go to cover reinsurance costs. Reinsurers hold major economic power over primary insurers, including in many cases dictating their terms and coverages. Alaska as reinsurer could assert its own influence on rates and coverage and, importantly, the efficiencies of primary insurers; it could also offer reinsurance to groups that self-insure; properly run, it could expect to make a profit.

6. Continue to investigate alternative dispute resolution mechanisms. While none of the systems we looked at were clearly working so well that we would want to adopt them, the general concept certainly holds much promise for providing more complete and timely compensation to victims while keeping costs down.

7. Encourage the adoption of risk management programs. Consider mandating that health care facilities develop and implement risk management programs.

8. Review the panel system currently used for peer review in the medical profession. There seemed to be consensus that this was not working well and could be improved. (HB 336, which changes the panel system, does not seem to be responsive to the problems we heard about.)

I appreciated being able to serve on the task force and hope that our efforts have helped advance the legislative discussion. Thank you for the opportunity to participate.

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March 29, 1990

Representative Sam Cotten, Speaker
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Speaker Cotten:

You offered members of the Legislative Liability Task Force the opportunity to review and draw some individual conclusions. This was an opportunity I did not want to miss. Although the Legislative Liability Task Force only had the opportunity to meet twice, I was impressed by the membership's ability to communicate and forward their own thoughts on some very complicated issues. At the final meeting on Friday, March 16, 1990, we still had not been able to reach conclusions as a group. I, however, would like to draw my own and am forwarding those to you in this letter.

Let me start by saying that the time spent, both interfacing with other members, and reading the data gathered by David Rogers from various sources, convinced me that this task was extremely complex. Experience has taught me that nothing this complex has a single, simple, easy solution. Although I do admit to that fact that the group didn't seem to agree upon exactly what the problems were, the fact that there were problems didn't allude anyone. In other words, I believe that everyone was convinced that the system was "broken". To what extent there was damage to the system, and what kinds of repairs needed to be made, seemed to be the questions that the group needed to tackle.

It seems to me that a three-pronged approach is necessary in solving the complex liability issue placed before us. These three remedies are as interwoven and complex as the problems they are attempting to solve. I have come to believe that, singly, they will not fix any of the problems but, taken in concert, will work towards attacking the issue from several fronts. I believe that these three remedies are: a thoughtful reform to the tort system, an organized approach to civil justice reform and, finally, increased regulation both of the insurance industry and of professional organizations.

Investigation of our own claims experience and discussions with our actuary have led us to conclude that there are some specific changes to the tort system which would, in the long run, reduce premiums. Certainly, limiting prejudgement interest, establishing a statute of repose, clarifying the statute of limitations, reducing contingencies fees to present value, and reducing the prejudgement interest rate are known changes that would reduce the cost to

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the system. Information and testimony given to the Legislative Liability Task Force seems to point to the fact that no one can exactly quantify what the reduction would be. However, the fact that there would be a reduction seems to be, in my mind, a meaningful reason to make these changes.

I'm a firm believer and supporter of our current civil justice system. My question about the current system revolves around the word "justice". Is, in fact, justice being done under the current system? I feel that the task force was presented with evidence to the contrary. First of all, plaintiff attorney members of the task force testified that they would not pursue medical malpractice cases against a health care provider who was uninsured. They also said that they turned away all but the most compelling cases. This leads me to believe that there are citizens of the state of Alaska who have been legitimately injured and who have no recourse for recovery under the current system. We also had information presented to us that clearly proved the opposite exists: some victims are overcompensated. My feeling is that this is not the American concept of true justice. We were also presented with evidence that the court system is overburdened. Court cases are calendared by judges without any internal control over deadlines. Also, the judge is in charge of giving the jury instructions regarding what they can consider in a court case. The jury does not seem to be allowed the privilege of hearing all information and making their own decisions. That leads me to conclude that the current civil justice system has a variety of flaws. We, at MICA, at least, are interested in looking at an alternative to the current adjudication system.

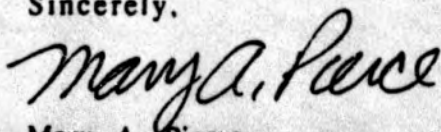
Gathering information for the task force proved difficult in some respects. Insufficient information regarding data from insurance companies on claims losses and risk management was certainly a problem. We also had difficulty in gathering data about the current court system. It is certainly difficult to draw conclusions when you have insufficient information. I believe that we need to take a good look at the requirements for both the insurance industry and the court system, then allow funding to give state government the mechanisms through the Division of Insurance, etc., to do their regulatory job. There also seems to be a variety of certification, licensing, and sanctions on the various professions. My feeling is that there should be some uniformity among the various professions as to sanctions for misconduct, disclosure requirements, education, recertification requirements, peer review and immunity for those peer reviewers.

These three approaches that I have presented here may, on review, seem complicated and overwhelming, but the problem is complicated and overwhelming. It seems when we were discussing these issues, I was reminded of a push button radio in a car where, when you push the button in to fix one problem, the remaining buttons all pop out. I'm afraid that if we don't look at all the issues, much like the buttons on the radio, and attempt to attack them comprehensively, we will end up with a partial fix that soon topples over without the support of other important component parts.

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Let me conclude with saying that I do believe the task force performed a great service in providing a common data bank of information that the legislature can use in making further decisions about the problems. I would like to again thank the other members for the time that I know they committed to this effort. I'd also like to thank David Rogers for the wonderful job that he did, and you, Representative Cotten, for putting such a well balanced group together and allowing us the opportunity to share information and experiences.

Sincerely,



Mary A. Pierce
Executive Director

MAP/blb

CC William Brock
David Rogers