

ALASKA LEGISLATURE COMMITTEE FILED 1905-1900

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1 ten years ago, twenty years ago, or thirty years ago, what a car
2 cost, what a house cost, what a candy bar cost, and think about
3 what it's going to cost in thirty years, and if somebody's
4 injured now making \$30,000 a year, under our present system, if
5 that person, and we use Dr. McGuire's example, the 35 year old
6 person who is making \$30,000 a year and is a quadriplegic, can
7 never walk again, he's entitled under Alaska law, the jury may
8 award him, his lost earning capacity, what he'll be entitled to
9 receive in the future, so over a thirty year period he's
10 entitled to receive \$30,000 for each year. Now, so let's add,
11 \$900,000, and I'll do that example. Now, clearly most people do
12 not earn at age 35 what they're going to earn at age 40, or at
13 age 45. People generally get promotions, just on inflation
14 alone they're going to increase their wages over their
15 lifetime. Under Alaska law, you're not entitled to do that,
16 Alaska law says that you cannot consider inflationary wage
17 increases, so even if that person would have earned had he kept
18 his present job \$30,000 till he was 35, he may have earned
19 \$60,000 at age 45, but under Alaska law, he's not entitled to
20 get that from the jury. The jury will award him, may award him,
21 no more than that \$30,000, and cannot consider inflation. So if
22 they really want to have this structured settlement system work
23 right, the periodic payment plan, the least it could do, would
24 be to consider the fact that the person may be making \$30,000 in
25 1986, but 10 years from now if inflation keeps at its present
26 rate, he may be making a lot more than that, and their system

1 doesn't do that, it is a, would result in a tremendous windfall
2 for the insurance companies. That's a complicated concept and
3 I'm sorry I can't example it any simpler, but the fact of the
4 matter is that the end result under that periodic payment plan
5 is that it is, substantially reduces the amount of money that an
6 insurance company would have to pay for a dramatic injury or a
7 catastrophic injury. The system may need changes, and I'm not
8 saying that the system is perfect, no system is. Years and
9 years ago I worked in terms of trying to change the criminal
10 justice system and we spent three or four years trying to do
11 that, but the end result was we ended up with mandatory
12 sentences. Everybody was very happy at the time, at least
13 everybody but the criminals was happy with the way things were
14 working. Now we realize that that has to be changed again
15 because the prison system can't accommodate the lengthy sentences
16 that we recommended at that time. Now we're going back and
17 changing again. I think that if a system needs changes, a
18 system that's been in process since statehood, we'd better be
19 very, very careful about what changes we're making, and are they
20 changes that are good for themselves, and I guess what I'm
21 saying is that, if the system needs changes, let's make sure
22 they're good changes. Let's make sure they're productive
23 changes, and I think, my bottom line is, let's make some changes
24 in the civil justice system if they're going to improve the
25 system. But the idea that if we make any change at all, or if
26 we make dramatic changes in the next few months, they are not

1 going to have any impact at all on Alaska insurance rates this
2 year or next year, they may, although they may not, have an
3 affect in 10 years, we won't know, and, I think that if we're
4 going to change the system we'd better do it right, and not rush
5 through it, and that's really what a lot of people are
6 proposing, let's make these changes now to affect insurance
7 rates. If we make these changes now they may or may not have an
8 impact in 10 years, and I guess my question is, what's the rush?
9 Let's do it right, let's not rush through it and end up with a
10 system that's even worse than what we've got now. Thank you.

11 SPEAKER: KEITH E. BROWN

12 Thank you. I think it's particularly appropriate that the
13 Alaska Bar Association has taken this opportunity to view,
14 inspect in some detail one of the most perplexing problems
15 facing all of us in Alaska today, that is the soaring cost of
16 liability insurance. I view this as an opportunity not only to
17 discuss this issue with members of the Board of Governors, but
18 also to serve in some small way as a medium by which the public
19 can be educated at least in part as to some of the many
20 ramifications of what is a most significant problem. It may
21 surprise you that from the standpoint of my standpoint as a
22 defense lawyer that there is at some degree of agreement between
23 the kinds of things that I'm going to be talking about today and
24 what Mr. Sanders has talked about. I think that if there are
25 going to be changes enacted in the tort liability system, those

1 kinds of actions do have to be done with some care. Where I
2 would differ in the approach, where I think that public has to
3 be particularly aware of what's going on, is that it may be
4 correct to say that immediate changes in the tort liability
5 system will not result in immediate decrease in the price of the
6 product, but the converse of that is this, if there aren't some
7 very favorable changes in legislation involving the tort
8 liability system within the immediate future, we aren't going
9 to be talking next year about the price of insurance, we're going
10 to be talking about availability and presence in the
11 marketplace. The industry is looking to us to give them a
12 signal, a signal of change, the signal of departure from the
13 jurisprudence that has developed in this area within the last
14 years, probably more particularly within the last 5 years. It
15 comes as no secret to those of you who are members of the Bar
16 that this is viewed as being a somewhat liberal or recovery
17 oriented jurisdiction. That is to say that all things being
18 equal, the plaintiffs are looking at some pretty good case law
19 that supports their position. That the cases in Alaska tend to
20 be somewhat recovery oriented, and the industry is looking
21 towards the legislature and the people of the State of Alaska
22 to send them the signal that the system is now going to be
23 adjusted, and I think it's appropriate that we discuss now what
24 form those adjustments might take. It's my perception that one
25 of the principle problems facing the industry in Alaska today
26 is the absence of predictability. It is their perception right o

1 wrong that Alaska is a wild and woolly place in which to do
2 business. It is their perception right or wrong that this is a
3 land of high jury verdicts, I sort of take exception to that
4 characterization because I don't really think Alaska's all that
5 different from a number of other jurisdictions including, like
6 California for example, or some of the pacific coast states.
7 Nonetheless, that is the perception, and it is that perception
8 that controls in large measure their willingness to do business
9 within this state. I think that this dispute has been
10 characterized as being a question of tort reform and we might
11 all argue about what is meant by the word reform. I prefer to
12 think of the process as not being one of reformation because I
13 think the tort liability system works. Essentially it is a fair
14 and equitable system and it works, but from time to time, just
15 like everything else, it needs a bit of fine tuning, and it is
16 in that area that I think that our legislature should spend some
17 time, and I see some positive efforts in that direction through
18 some of the bills that are now being considered, such as Senate
19 substitute for House bill 532. That is not to say that I'm
20 endorsing all of the provisions of that particular piece of
21 legislation, but let's look at some of the things that could be
22 done to change some of the problems confronting Alaskans today.
23 I think that the first problem that we run into in terms of the
24 availability of coverage here in the State and the perception
25 problem is the problem that there are different rules that
26 pertain in Alaska that are not familiar to those insurers who do

1 not do business here regularly and those who do do business her
2 regularly, they don't like them. And they have to do with some
3 peculiar quirks in our law that were created in large measure b
4 the process of several years of decisions by our Supreme Court.
5 It's not to say that the decisions were ill-intended. They
6 weren't, but they've been in place now for several years and th
7 effect of them is becoming obvious and they have to be changed.
8 The first of those has to do with the problem of awards for a
9 loss of future income. Under present case law since 1967, the
10 Alaska Supreme Court has decreed that there shall be no
11 reduction to present value for awards involved with loss of
12 future earnings. Moreover, the court has decreed that there
13 will be no deduction for the effect of future taxation on the
14 awards for loss of future earning capacity. One mechanism for
15 dealing with that problem, although it does not deal with it in
16 its entirety, is the mandatory structured payments suggestion
17 that Dr. McGuire addressed a short while ago. Incidentally the
18 version of the Senate Bill and the House bill that I looked at
19 made that discretionary and unmandatory. It is not the only
20 means by which that problem can be resolved. Elimination of th
21 strictures of the Buoy case which provides that there's no
22 reduction in the present value, would accomplish a fair and
23 equitable result and be consistent with current economic
24 thinking. The case has been critized in a number of national
25 law review article. It lacks in my judgment a continuing
26 vitality, I think it's no longer a viable economic analysis of

1 future earnings loss, and I think it ought to be changed. I
2 think you would be hard pressed, and even plaintiff's counsel I
3 think would concede this, to find any economist who could
4 justify failing to deduct out the effect of future income
5 taxation on awards. And yet today the jury is never informed in
6 a personal injury case or a wrongful death action of the effect
7 of future income taxation, and it doesn't take a great deal of
8 imagination to realize that when you have a young well field
9 worker who has been killed through some tragic accident, that
10 the fact of the matter is that income taxation would have taken
11 a large chunk of his future income. Instead his estate and
12 beneficiaries receive a huge chunk of money not reduced to
13 present value and as to which no deduction has been made for the
14 effect future income taxation. In my view that's wrong, I think
15 it ought to be changed. It's not a major change contrary to
16 what many of you might believe. Indeed, the other jurisdictions
17 that I referred to earlier, some of which are viewed as being
18 liberal, California being an example, but do not have that
19 approach to loss of future earnings. But it's this kind of
20 peculiarity that insurance companies focus on and they say we
21 don't understand that approach, it's different, we don't know
22 how to rate it, get rid of it please, and I think it's time to
23 do that. I think that there are other things that have occurred
24 in Alaska as a result of case law which need reanalysis, and I
25 urge you as members of the Board to consider these kinds of
26 issues individually and make your own independent decisions

1 about them, but one of those problems is the matter of
2 prejudgment interest. In Alaska since the State v. Phillips
3 decision in 1970, prejudgment interest has been awarded on jury
4 verdicts and plaintiffs' personal injury cases and in wrongful
5 death actions whereby interest begins to run from the date of
6 the accident, and in effect you run into a situation where
7 interest is being awarded, not only from the date of the
8 accident but upon sums of money that have not even been earned
9 and that are going to come due at some time in the future.
10 There are, as I understand it, some states which have adopted
11 certain forms of prejudgment interest, but which are much less
12 onerous than those which exist in Alaska. One step which could
13 be taken to solve this problem would be for the State to have
14 prejudgment interest run not from the date of the accident,
15 which can be quite a long time, particularly in medical
16 malpractice actions, which tend to have a long exposure, but
17 from the date the suit is filed, or from the date the plaintiff
18 first offers to settle the case. If one considers that
19 prejudgment interest is somehow socially desirable, my question
20 whether it is, if you take that view then it seems to me the
21 cost of committing to that kind of program is reduced by a more
22 reasonable approach to the award of prejudgment interest. It's
23 a distinction in our system that is unparalleled elsewhere within
24 the country and it's one of the things that has led to our
25 reputation among insurance companies as a wild and woolly
26 State. One of the sometimes more controversial aspects of the

1 so-called issue of tort reform is the question, what to do about
2 Rule 82, Attorney Fees? For those members of the public who may
3 not be familiar with the concept, Rule 82, Attorney's Fees, are
4 essentially in a trial situation where the plaintiff recovers 10
5 percent plus \$1950 added pursuant to a schedule to the judgment
6 entered against the defendant. Let me give you an example of
7 the combined effects of prejudgment interest and Rule 82
8 attorneys fees on a \$500,000 case. If you assume a case is
9 worth \$500,000, and it's five years old, at current interest
10 rates, adding in the effect of the Rule 82 attorney's fees, that
11 judgment that will be entered on a verdict of half a million
12 dollars will be multiplied or extended to a net verdict or net
13 judgment rather of \$840,600, plus whatever costs in addition to
14 the attorney's fees that the lawyer may have incurred.
15 Insurance companies don't understand that concept. They don't
16 really know how to read it. Alaska is such a small market, that
17 it doesn't really seem worth their while administratively to
18 deal with those kinds of problems. One of the things that I
19 believe that will result in an adverse market selection by
20 certain insurance companies. I think it may be correct to say
21 as Mr. Sanders has suggested that the effects of tort reform, if
22 we're going to call it that, are not going to be manifest
23 immediately, but if we don't change the things that make us
24 different, and that are not understood by foreign insurers,
25 they're not going to be here with their product for us to buy,
26 it's that simple. It happened once before in 1975, when, when

1 for a period of time malpractice insurance was not available to
2 physicians. It could well happen again. I believe it's likely
3 to happen again. I think that we need to send them the signal
4 that we're examining our system and that we are prepared to make
5 changes in those things which they don't understand, and which
6 are really not justified upon closer analysis. There are other
7 proposals that I think should be considered carefully by the
8 Board, and by the public, and the like. Not all of them are
9 universally accepted by lawyers. I think it's a mark of our
10 profession that we present both the pros and the cons of this
11 issue and you'll find very few lawyers which can agree about
12 whether two or three aspects of this very perplexing issue. But
13 some of the things that we could do, include a revision of the
14 concept of joint and several liability. Dr. McGuire alluded to
15 that earlier. Essentially, under our system in Alaska, we have
16 a system of pure comparative negligence. Theoretically, it is
17 possible for a person who is himself 99 percent negligent to
18 recover for that one percent that he is not negligent for, if I
19 can use that term. In practice of course it doesn't work that
20 way. But, as a practical matter, a defendant which is only 10
21 percent negligent can have the whole judgment collected against
22 him alone where the other defendant is insolvent. It happens
23 frequently, we see situations where there are attractive deep
24 pocket targets, such as major oil companies, with perhaps
25 limited exposure if you were to look at the fault concept and
26 yet, because they have that deep pocket, that 10 percent

1 exposure is enough to get them 100 percent of an adverse
2 judgment. I don't think that system is entirely fair, and it's
3 not without its social cost. It seems to me that at minimum we
4 should be looking at a system which returns more closely to
5 principles of fault allocation than to risk spreading. We've
6 spread the risk far enough, Let's return to the principles of
7 fault, and if we look at the fault principles, there're a couple
8 of things you can do in the area of joint and several
9 liability. You can either eliminate it completely, which is
10 viewed by many as an extreme position, and perhaps rightly so,
11 because there are going to be people in that situation who will
12 never recover or otherwise they would do so. But at a minimum,
13 I urge you to consider adoption of the Uniform Comparative Fault
14 Act. A portion of that act is contained in the Senate
15 Substitute for House bill 532. Would add what is described as
16 an amendment to Title IX, Chapter 17 and appears to be in its
17 present form a modification of the Uniform Comparative Fault
18 Act. It would more closely, that is to say the jury verdict
19 that would be awarded in that situation, the ultimate judgment
20 would more closely be allocated along principles of fault than
21 is presently the case. I think it goes beyond the time period
22 that we have here to explain fully the concept of the Uniform
23 Comparative Fault Act, but it would be a much more equitable
24 means of sharing the responsibility for a civil wrong.
25 Incidentally, in its present form, that particular House bill
26 seems deficient in that sections 4, 5 and 6 of the Uniform Act

1 need to be added, they're out right now, they deal with the
2 principles of contribution, but that is an area of reform or
3 fine tuning to the system that needs close examination. A sho
4 while ago Mr. Sanders mentioned the problem that is presented
5 90 percent of the claims, and that is that they're small, and
6 that the present system doesn't serve them very well. I agree
7 There is an alternative means to resolving those problems that
8 think deserves at least as much consideration as arbitration
9 does. To many trial lawyers arbitration is (indiscernible).
10 That means splitting things down the middle. Of course that
11 isn't the way it always works, but that's the way its perceive
12 by many of us who try cases. An alternative to that would be
13 increase the jurisdictional limits of the district court to
14 \$50,000 or \$100,000 and have those cases tried on a fast track
15 system in district court with very limited discovery. That
16 would mean decreased costs to the plaintiff, decreased costs to
17 the insurance companies, where there are insurance companies
18 involved in defending them, and a faster, and I believe more
19 equitable distribution or adjustment of the dispute, I think
20 it's an alternative that really should be examined closely. I
21 not prepared to endorse the arbitration concept in its entirety
22 indeed, perhaps we've gone too far. I note that one of the
23 proposals would permit a new trial in an arbitration system.
24 Even the American Bar Association which has looked at
25 arbitration as a means of resolving small disputes, has
26 determined that the arbitration judgment ought to be binding.

1 I'm not a fan of arbitration, but I think it's fair to say that
2 the problem with the smaller claims needs to be resolved and it
3 needs to be resolved now. It's a problem not just for insurance
4 rates, but it's a problem to the public and we should attend to
5 it. As to the problem of punitive damages I take a slightly
6 different view of that. It is a perplexing problem because
7 there are obviously situations where each one of us could
8 conceive that punishment might be appropriate, but it's not
9 always the answer. There's a very intriguing law review article
10 in the Vanderbilt Law Review in Volume 37. It's written by two
11 members of Fulbright & Jaworski firm from Houston. It calls for
12 complete abolition of punitive damages. That's a pretty extreme
13 position, but they make some pretty compelling arguments for
14 doing that. They point out that in many instances
15 municipalities, for example are held responsible vicariously
16 for the acts, outrageous acts of their employees which were done
17 with malice or illwill and which resulted in a grievous injury
18 to a particular person. But the concept itself, that is of
19 deterrence, doesn't work. The municipality has economic
20 incentives to hire appropriate personnel, it has supervisory
21 systems in place, and only in the very rare instance would the
22 award of punitive damages truly serve its stated purpose of
23 deterrence. I think that's a concept that really has to be
24 examined in somewhat more detail, but there are some interesting
25 areas of possible reform. One of them has already been
26 suggested by Dr. McGuire, and that is, if you're going to retain

1 punitive damages, let's award the damages to the State. The
2 authors of the law review article I mentioned a moment ago have
3 taken that position, as a fall back position, if you will to the
4 concept that punitive damages really ought to be abolished.
5 They point out that if punishment is appropriate, we have a
6 criminal justice system in place, and that will serve as an
7 appropriate system to exact punishment. And the insurance
8 example that Mr. Sanders gave you awhile ago, it can be argued
9 that there is regulatory mechanism that is in place that can
10 punish insurance companies who engage in the kind of conduct
11 that he has described. For example, if outrageous conduct is
12 engaged in by insurance companies, and their certificates to do
13 business in the State, their licenses are pulled, or suspended,
14 you can bet that you'll get their attention. If it's a
15 nonadmitted carrier, and there's a surplus linesbroker involved
16 and you might get him responsible for the conduct of his, the
17 carrier for whom he is placing insurance, and you suspend his
18 license, I think you've got their attention. That problem need
19 not be resolved by punitive damages, but if you're going to
20 retain punitive damages, here are some of the things that you
21 ought to do. You ought to require a rewriting of the standards
22 for the application of a punitive damage type award. We should
23 crank back in the fault system, we should tell the jury that
24 malice and illwill is required. In this particular law review
25 article, the authors point out that Alaska has one of the more
26 wishy washy, if I can use that term, standards. In Alaska one

1 of the basis for the imposition of the award of punitive damages
2 is what is described as "reckless indifference to the rights of
3 others". No one really knows what that means, least of all,
4 many of the lawyers who practice in our courts and some of our
5 judgments. We think we have an idea, we think we can give some
6 guidance to the court system when we're talking about these
7 cases, but we really don't know. And as a result of that, and
8 because of the vagueness of that language, courts have been
9 reluctant to dismiss frivolous punitive damages claims on
10 motions for summary judgment, so the kinds of problems that Dr.
11 McGuire described awhile ago are very real problems.
12 Particularly, because in most instances of course, insurance
13 policies may not provide coverage for those kinds of damages.
14 So at a very minimum, we ought to require a stringent showing
15 that the defendant acted with ill motive or malice. That's
16 easily enacted piece of legislation. It would do much to
17 improve the problem that we now face in this State with those
18 kinds of claims. You could change the level of proof that is
19 required to sustain punitive damages. For example, right now
20 all you have to show is a preponderance of the evidence, and yet
21 we're talking about something that is designed to punish, much
22 as we do in the criminal justice system. At a minimum the
23 authors of the Vanderbilt Law Review article suggest that clear
24 and convincing evidence should be required. They probably
25 prefer beyond a reasonable doubt. Those are possibilities which
26 deserve serious consideration, because I believe that there is

1 an abuse of the process on a widespread scale in the sense that
2 there are a number of frivolous punitive damage claims being
3 filed in this State. There is support to argue that judges
4 should decide such awards under tighter guidelines. There have
5 been suggestions that the awards be capped. I really don't know
6 that that's necessary, but there are going to have to be some
7 changes in the way in which punitive damages are managed in this
8 jurisdiction. Absent those, this is going to remain a very
9 unattractive place for insurance companies to operate. I think
10 there are a number of other minor, or modest rather proposals
11 that could be accomplished that would do much to stabilize our
12 insurance market. And to make this a more favorable place for
13 all to do business, and they're not take away type measures.
14 One of them is to restore the Aaron judgment instruction that
15 was taken from doctors several years ago by the Alaska Supreme
16 Court. It's not quite clear from the opinions in Baker v.
17 Warner why the court acted in the manner in which it did, but
18 that instruction is almost universal in every other State in the
19 country including California. That instruction should be
20 restored. It simply, it permits us to tell the juries that a
21 physician is not necessarily negligent because he or she errs in
22 judgment or because he or she does not effect a cure, and it's
23 a reasonable kind of instruction to give the jury. There are
24 other modest modifications that are possible and there are other
25 major ones that probably deserve your attention, but given the
26 time strictures, the only other one I'm going to mention is the

1 collateral source rule. Collateral source rule is a litigation
2 (indiscernible) There are instances of double dipping that Dr.
3 McGuire has talked about, and there are instances in which you
4 could argue that you really shouldn't penalize the victim for
5 having the prudence to purchase certain types of insurance.
6 There are two sides to the argument, I'm not going to try and
7 pretend otherwise, but its results more than anything else, I'm
8 sorry to tell you, in a multiplicity of litigation in law
9 suits. Where there are collateral sources that is, health
10 insurance plans, or campus military benefits which are paid to a
11 particular injured party, that insurance carrier or health care
12 provider is entitled to subrogate against the tortfeasor. It
13 results in additional litigation and generates a lot busy for
14 lawyers and I think you wouldn't find very much uniform support
15 within the Bar for abolishing the collateral source rule. It's
16 the kind of thing clogs the court and really doesn't add
17 anything toward tort system it seems to me. In some instances
18 the risk spreading has become too costly to be justified. I
19 think this is one of those instances, so I urge all of you to
20 consider some of these proposals very carefully. To the members
21 of the public that might be watching this show, I think it would
22 be appropriate to direct you to the March 24th article in Time
23 Magazine which everyone has talked about so much. It really
24 lays out the problem in a rather nice way, it's readily
25 understandable, I think most of the issues are fairly raised,
26 and I think it behooves all of us as citizens of this great

1 State to educate ourselves as to some of the problems that are
2 presented by the current insurance crisis. Thank you.

3 **SPEAKER: SANDRA K. SAVILLE**

4 I, like all the other speakers before you am pleased that I have
5 this opportunity to speak to you. I am not one of the standard
6 speakers at these types of forums, although I do represent
7 plaintiffs in personal injury actions and I do pay insurance
8 premiums. I just finished negotiating, if I could use that
9 word, premiums for my law firms, you know, insurance for next
10 year and I have the same horror stories as everyone else. But I
11 do feel that I'm probably a little less accustomed to talking
12 out about this issue and in preparing for making this
13 presentation, I thought that I needed to be sure and catch up on
14 all the information that I could find about the current
15 situation, so I did a lot of reading, and I read the Time
16 article hot off the press on Thursday when I find it in the
17 newsstand, and I read testimony that had been presented to the
18 legislature, and I read articles that I could find from both
19 sides, and I read statistics, and I thought about my own
20 experiences and the more I read, the less clear it all became.
21 I realized that it is a very complex and confusing issue. That
22 there are an awful lot of accusations, there are statistics,
23 there are studies, there are graphs, there are charts, there are
24 horror stories on both sides. Horror stories about verdicts,
25 horror stories about malpractice, about actions by insurance

1 companies, some of which I could find had been substantiated,
2 some of which I couldn't find. But what I really came away with
3 as my total sense of the whole situation was panic, stampede,
4 emergency, the whole feeling, the whole feeling of the Time
5 Magazine article, "Sorry American Your Insurance Has Been
6 Cancelled." And I realized that what was happening is we were
7 all stampeding, we were all running around like chickens with
8 our heads cut off, we were all screaming, the sky is falling,
9 the sky is falling, don't stop, don't do anything, yes, do
10 everything. And it didn't appear to be that anybody new whether
11 any of the actions we were taking or advocating not taking would
12 have any affect at all on insurance rates. And the problem, the
13 problem was premiums, the problem was no insurance, the problem
14 was a short term very important problem. But the solutions,
15 many times the justifications for them were things like, I don't
16 think it's fair, that an attorney gets a big fee after 90 days,
17 I don't think it's fair that somebody who is injured gets paid
18 \$900,000 today when they might not have had it in the future.
19 And this isn't right and there are lots of changes, and suddenly
20 it sounds like any idea somebody happened to think of while they
21 were in the shower, that might be a great solution to some
22 things, is being thrown into the pot. Well this is a problem,
23 let's try this, oh, let's try that, or I read about a study
24 where they suggested the other. Nowhere can you find any
25 correlation, any studies, any kind of analysis that if you do
26 this thing, A, here's how it will have an effect on your

1 insurance premium B, and I'm particularly amused when I hear
2 talk about we have to change here in Alaska, because we're
3 different. Well we might well be very different, but we seem to
4 have the very same problem that everybody in the whole rest of
5 the United States has, so why do we have unique problems in
6 Alaska that we're going to solve in a unique way and how will
7 that ever have any impact on our insurance premiums or our
8 insurance rates. I think one of the things I started to
9 contemplate when I was thinking about well what is the problem,
10 and what kinds of solutions might there be, with the fear that
11 had that what we were doing was panicing, what we were doing was
12 making significant encroachments on tort law as it has existed
13 for hundreds of years essentially, but at least for decades in
14 this State, and that we hadn't truly looked at not only would
15 the solution solve the problem, but what problems would the
16 solutions cause. And I don't mean by that that my fee might be
17 lower, that's a problem, but that's my personal problem, but
18 what would it cause in terms of the policies and the
19 philosophies that have gone into our tort system over the period
20 of years that it's developed. You know we in the United States
21 have a very high regard for human life. It might be too high a
22 regard for human life, I don't know, if it's my life I have a
23 very high regard for it. And I was thinking about that when I
24 watched television last night and saw the CNN News about a
25 recall of contact and dietac and some other drugs that had been
26 recalled because of a caller who said I've put cyanide in some

1 of these capsules and the news reporter was saying that the last
2 time there has been a recall of contact, many years ago, it had
3 cost the company 400 million dollars to recall the product.
4 Presumably, recalling three products, and as the reporter
5 announced, reconsidering using capsule medicine at all was going
6 to cost at least that amount of money, maybe a whole lot more
7 money than that. And I began to think about that amount of
8 money, and I thought, well the last time there was actually
9 cyanide, seven people died and then the last time that, or not
10 the last time, the previous time in Chicago, the very last time,
11 one person died. This time so far no one has died and yet in
12 this particular instance we as a society I think are willing to
13 have this company pay, and it does spread out to society just
14 like insurance premiums, we're willing to have them pay 400
15 million dollars. I was, I was willing for them to recall all
16 that medicine so one person didn't die, and so I could feel safe
17 when I go into a drug store and buy a medication, and yet it's a
18 high cost, it's a very high cost. It might mean that the next
19 time I have to buy a cold medicine, it costs four times what it
20 used to cost. I don't know, but rather than run in and say well
21 that's too high a cost, let's just let them out there, everybody
22 can take their own risk, we'll see if anything happens, we'll
23 compensate the victim if they take it and die, we've made this
24 choice to spend this money to prevent loss of life. And if
25 we're going to change our philosophy about the value of the loss
26 of life, or about the value of the pursuit of happiness, in

1 other words, the amount of money, we as a society are willing to
2 pay victims, we have to think about it, we have to think how
3 that permeates our whole philosophy, how that changes the way we
4 live in the United States, how that might change the degree of
5 comfort that we have when we walk into a drug store. And we
6 know that in the United States because of our value of human
7 life, which is reflected in the tort system, we can be fairly
8 comfortable, accidents happen, unfortunate things happen, but in
9 general, we have a philosophy, that we will try to avoid it,
10 well take care of it, and if we start changing it, that all
11 changes. If it becomes economically viable to make a decision
12 like in the Ford Pinto case, to make a decision that this
13 improvement to the product that will make it more safe is not
14 worth making because we can pay x numbers of claims, rather than
15 make the improvement, we suffer, it's less safe for us. So I
16 think that what my bottom line, my bottom line position on tort
17 reform is that I'm not sure that the tort system is perfect.
18 I'm not sure that some of the issues that Dr. McGuire raises or
19 others on the side of tort reform raise are not valid. I think
20 they deserve further investigation, I think that we can take a
21 look at it. I don't think however, that we should be stampeded
22 into making willy nilly changes to the tort system in the hope
23 that our insurance premiums are lower. To me it does not appear
24 to be that simple, the solution, the problem is more difficult
25 and more complex, and the solution is very radical and can have
26 a tremendous affect on the quality of life. I know that ten

1 years ago I know there was another insurance crisis. I read the
2 testimony of Robert Hunter, whom Mr. Sanders referred to, the
3 insurance commissioner for Presidents' Ford and Carter, and he
4 said that at that time there was a rush to have tort reform. In
5 Alaska we didn't see too much of it, but in other states
6 no-fault insurance was in place as a direct result of the
7 complaints about insurance rates and insurance premiums. I know
8 that Dr. McGuire talked about the changes that were put in place
9 when the doctors felt a malpractice problem several years back.
10 And he talked about the panel, the advisory panel that was put
11 into place and MICA the insurance company. Recently, President
12 Reagan appointed a commission to study tort reform and they came
13 back with recommendations and surprisingly to me one of their
14 recommendations was we must do away with no-fault insurance, so
15 then I thought, what, ten years ago they wanted no-fault
16 insurance. Ten years ago it was thought to be a solution to a
17 problem. Obviously just maybe like mandatory minimum
18 sentencing, it wasn't, and five years ago the doctors thought
19 that an advisory panel would be the solution and MICA would be
20 the solution, today they say, it isn't. And the problem with
21 the reforms that are being proposed now, is they're even more
22 wide ranging, they're even more far reaching, and if we've made
23 an error, and if they're in place, and if things as a result are
24 mucked about, and if we won't know for seven to ten years
25 whether they were right or wrong, we risk seven to ten years of
26 living under damaging and maybe forever damaging situations that

1 can't be corrected. So I think that what we have to do is take
2 a very careful look at the problem, take a very careful look at
3 the proposed solutions, take a very careful look at the benefit
4 exactly how much benefit will we have from this solution, and
5 then look very carefully at the down side, exactly what are we
6 giving up, and for the general public to make decisions based c
7 panic and fear, that they won't have insurance, that their rate
8 will be too high, that they'll have-to go out of business,
9 without understanding that some of these quick and easy
10 solutions might have an even more disastrous effect. It's not
11 just somebody out there who got injured will only get \$250,000
12 for pain and suffering, that's not the problem, everybody think
13 it won't be them, the problem is does it have other, more
14 ominous, more far reaching ramifications which are going to
15 affect the general public, and there are certainly many people
16 who argue that it will. It was amazing to me when I read
17 through all the information, because I was trying to see where
18 is it that the insurance companies say that if we get these .
19 reforms this, we've worked out these statistics and this is how
20 our earnings will change, and this is how our procedures will
21 change, and this is why we'll be able to give you lower rates
22 and more predictability in your insurance. And it appears to
23 me, and this is born out again by Mr. Hunter's testimony, that
24 A, the insurance companies have not been willing to give out
25 total information about their earnings histories, about their
26 loss histories, about their investment histories, B, their

1 accounting mechanisms appear to be obscure at best, so that even
2 the information they will give out is not easily and readily
3 understandable by people trying to analyze it, and C, they don't
4 appear to be combining any proposals about tort reform with any
5 proposals about insurance reform in the sense of consumer
6 protection. There are some people, other people who are, but it
7 does not appear to me that it's not a package. There's not a
8 willingness for full disclosure. There's not a willingness for
9 regulation for more tightly controlled hearings about rate
10 increases. There's not a willingness about cancellation
11 policies, and so we're being asked again to make drastic changes
12 in a very old system based on their promises that, or in Mr.
13 Brown's estimation, a showing by us of good faith that we'll try
14 to do things to make them happier, to be up here in Alaska. So
15 it appears to me that number one, what should be done about the
16 immediate problem is that all the information that's possible to
17 be obtained, be obtained, that if this takes legislation, fine,
18 do it, if this is voluntary, fine, do it, but obtain as much
19 information as possible about the problems, about verdict sizes,
20 about inflation sizes, any other problems that need to be looked
21 into. But apparently it's two different problems. If there's a
22 problem with the tort system, that's a problem that has to do
23 with fairness and equity, that should be looked at by experts in
24 that area, if there's a problem with insurance rates, that
25 should be looked at by experts in that area, but let's get all
26 the information and then let's sit down and look at what

1 solutions are possible, what solutions seem to work, and we can
2 argue the merits of whether a proposed tort reform is the best
3 way to go. I certainly have my own opinions about some of the
4 changes that are being recommended, and some of the arguments
5 that I have and feel against some of the changes. I'll briefly
6 touch on them, but I don't think that's really the relevant
7 issue. The relevant issue is, do we have enough information to
8 make all of these changes, and do we think that they'll be of
9 any benefit to anyone? One of the things that's been talked
10 about quite a bit is the collateral source rule. What concerne
11 me about the proposal for the collateral source rule was A, I
12 didn't really think that the legislation proposed was very clea
13 about how it intended to do away with the subrogation rights of
14 people, for instance, the federal government, their own health
15 insurance plan or workers comp, and so I was very concerned
16 about whether it was even possible, feasible, or could be done,
17 but let's assume it was done, and let's assume there were no
18 subrogation rights. All that meant to me was that I was going
19 to pay more for the primary insurance I was carrying, for my
20 health insurance, for my workers comp insurance. Because if
21 they never get reimbursed for any losses, even though a third
22 person might have been responsible, it only made sense to me
23 that they were going to make less money and therefore I was
24 going to pay a higher premium. Now I'm not an actuary and I
25 don't know, but that makes sense to me, because now the way it
26 happens, is if I'm representing a plaintiff who is injured and

1 they've received money from workers comp, and they get a verdict
2 of \$100,000, they pay back workers comp the \$20,000 that workers
3 comp paid them. And workers comp presumably then has that as a
4 credit on their books, and presumably that keeps the workers'
5 comp. insurance rates lower. And until somebody fully explains
6 that to me, I'm a little worried about supporting what appears
7 to be, oh well, don't worry, it's no loss to the plaintiff,
8 because they don't have to pay it back anymore, that's an
9 unanswered question to me. Rule 82 attorneys fees and
10 prejudgment interest, amazingly enough in part of what I read, I
11 found that Rule 82 attorneys fees or the concept of Rule 82
12 attorneys fees was being touted by all of the country as a big
13 tort reform. And I thought what, isn't this what I heard they
14 don't want Rule 82 attorneys fees in Alaska because it makes us
15 unpredictable? Elsewhere, including President Reagan's advisory
16 task force, but also in some other states, there's legislation
17 being introduced to pay attorneys fees to the prevailing party.
18 The theory being that it will stop frivolous law suits,
19 encourage settlement and that it will be an ultimate benefit to
20 the insurance companies and the fact I believe it is. I know my
21 clients take settlements at times, because they don't want to
22 risk an award of attorneys fees against them. So I'm not sure I
23 understand why that's being opposed here and it just points out
24 to me again that the right hand doesn't know what the left is
25 doing, nobody really knows whether any of these solutions are
26 going to solve the problem. Prejudgment interest again, the

1 theory behind it is really quite simple, the insurance company
2 has this sum of money, they reserve a sum of money for a claim
3 and they make interest on that sum of money, if there's no
4 incentive to pay the claim, it's obviously going to take longer
5 there's incentive to drag it out, because if you can make more
6 interest or any interest, if you have no prejudgment interest,
7 if you can make any interest on your money, you may as well hold
8 it as long as you can. So the theory behind it is not a
9 windfall to the plaintiff. It's an incentive to settle and if
10 the case can't be settled it's an incentive to at least give the
11 plaintiff the benefit of the money that the plaintiff should
12 have had at the time of the injury, now I don't know if it works
13 or not, but the explanation seems to be a positive one, it seems
14 to make sense, and before throwing it out, and seeing that there
15 it takes five years to get cases through litigation, or defense
16 costs escalate by triple, we should see, we should analyze that
17 because it seems to have a good rational basis. I'm sure that
18 during the question and answer period we'll get some more tough
19 questions about the issues that are involved but, my pitch, my
20 bottom line is only I don't think anything should be done
21 without clear thought, clear investigation and a consensus that
22 what we're doing is making it better and not making it worse.
23 Thank you.

1 SPEAKER: RICHARD L. BLOCK

2 Thank you very much for an opportunity to appear before the
3 Board of Bar Governors and whatever public I guess this tape
4 becomes used for, to have an opportunity to explain to the
5 extent that I'm capable of doing so the role of the insurance,
6 the property and casualty insurance industry, both in this
7 debate, but more importantly, in understanding how we got where
8 we are, as where we are as defined by those who argue that we
9 are currently in an insurance crisis. I was asked to appear on
10 a television program a couple of weeks ago on the public
11 broadcasting network statewide, the title of the program was
12 something having to do with the insurance crisis and I think I
13 nonplused the moderator by telling her that I did not think that
14 we had an insurance crisis. Number one, it was not an insurance
15 problem at all, and I could demonstrate why that was, and more
16 than that, it really isn't a crisis and I could demonstrate
17 that. My argument was that in reality when you understand what
18 the insurance industry is and how it functions in a bodily
19 injury reparation system, you realize that there's got to be
20 some other fundamental background that causes an increase in
21 costs other than the insurance industry itself. And that if you
22 really want to analyze and understand why costs are going up, or
23 why insurance is becoming available, you need to look at the
24 fundamental underlying costs of the insurance industry, the
25 money that is being spent and where it is being spent, and why
26 it is being spent, and when you see that you realize it is not

1 being spent on or to or for the insurance industry. It is being
2 spent by the insurance industry on or for or to people who are
3 injured in an ever changing legal climate and thus, it is this
4 legal climate, the judicial system climate, that I think needs
5 to be look at. And I guess while Harry Branson introduced this
6 forum this morning by saying we're here to talk about insurance
7 and five of the six invited guests will talk about insurance,
8 I'm here to redirect your attention back to the judicial system
9 which I say has a material bearing on what is regarded as an
10 insurance problem. Secondly, to bolster my viewpoint that it is
11 not a crisis, I create my own definition of what a crisis is.
12 And I say that a crisis is something that comes along which is
13 serious, immediate, dramatic, unexpected change in
14 circumstances. Something that is so totally out of the flow of
15 what one might expect, that we must react with emergency and
16 with radical and immediate responses. And it is my suggestion
17 to you that if you accept that definition of a crisis, that we
18 don't have a crisis. That what we have is a current
19 manifestation of a longstanding problem that has been existed
20 nationwide and in the State of Alaska for many, many years. As
21 a matter of fact the thing that brought me to Alaska ten years
22 ago was what was then billed as an insurance crisis, although it
23 was then build in the narrow sense of a medical malpractice
24 insurance crisis and I was invited up here from my position as
25 an executive with an insurance company in Los Angeles to act as
26 a consultant to the Governor's, then Governor Hammond's medical

1 malpractice insurance commission that was then chaired by Tony
2 Motley. And at that time we explored the problem that generated
3 the unavailability of insurance for physicians in hospitals and
4 concluded as Dr. McGuire has pointed out to you, that there were
5 a variety of things that could be done in order to eliminate or
6 alleviate, at least alleviate that problem. But that
7 fundamentally, what we had was a growing change in the
8 definition of liability and the public perception of entitlement
9 in the event of injury and that that was the underlying
10 problem. And there was at that time a recognition, that any
11 changes that might be made in the tort law, the law that defines
12 the rights of the people who are injured against those who are
13 perceived to have caused that injury, any change in that law
14 would in fact take awhile, take a long time to have an effect
15 for a variety of reasons. And that is why there were several
16 sets of recommendations made at that time, the tort reform
17 recommendations that were as I recall six or seven specific
18 recommendations in the medical malpractice report that came out
19 and went to the legislature, that there be an insurance
20 mechanism be put into place so that there would be an immediate
21 relief for the physicians, even though the tort reforms might
22 take a long time, and a recognition that the medical profession
23 themselves had to clean up their act and why certain changes in
24 the way they practiced and the way they were licensed, and the
25 way the licensing board governed what they did, or implemented,
26 and as Dr. McGuire pointed out, those recommendations affecting

1 the practice of medicine were adopted and those recommendations
2 creating a new insurance mechanism were adopted but the
3 recommendations with respect to tort reform were not adopted.
4 And it can be argued I think with some persuasiveness, as did
5 Dr. McGuire and as I believe the very statistics in the medical
6 indemnity corporation of Alaska's records will demonstrate, the
7 failure to adopt those tort reforms have been MICA back in the
8 same position the rest of the insurance industry is today. It'
9 interesting to note that in 1977 I believe it was, or maybe as
10 late as 1978 that Governor Hammond appointed another commission
11 to review the tort law in the State of Alaska and that
12 commission was populated by attorneys and physicians and
13 insurance executives, numerous people who could bring to bear
14 their expertise on the subject of the liability of people found
15 to be at fault to those who were injured. And that commission
16 came out with numerous recommendations, many of which called fo
17 changes in the tort law, and what is interesting to me is that
18 the changes recommended in the medical malpractice commission
19 report in 1976 or 1975 and the recommendations in the tort
20 reform commission of 1977 or 1978 are essentially the same
21 recommendations that are coming up today. So that I do take
22 issue with the concept, A, that this is a crisis problem and it
23 just all of a sudden jumped out at us. This problem has been
24 with us for a long period of time and I have to reject the
25 argument that the solutions are immediate hysterical reactions.
26 They're not, these are the same recommendations that have been

1 studied by many commissions over a long period of time and have
2 been thoroughly debated and are only being brought up again at
3 this time as you might say well worn recommendations that at
4 some point in time are going to have to deserve favorable
5 recognition by those who make public policy in this State. Now
6 what is the role of the insurance industry in the reparation
7 system? To me, we serve as an intermediary, a financial service
8 as an intermediary in this system. That is to say, we are
9 analogous to a pipeline, through which funds are funneled from a
10 group of people which is defined either by public policy or by
11 market forces as those who should put money into the system and
12 we pay that money out to those people who public policy as
13 defined either by the legislature or by the courts of this land,
14 ought to be entitled to the money paid in by this group over
15 here. We are a financial intermediary and thus other than the
16 fact that we, in order to make a profit peel off a piece as it
17 flows through the pipeline, really have no particular economic
18 interest in who gets it over here or how much they get, other
19 than, since ours in effect a cost plus type of business, the
20 more that must be paid over here, thus the more that's collected
21 over here, obviously the more plus we'll be able to get as it
22 flows through. So what I am saying to you is, as a matter of
23 corporate self interest it probably makes little or no
24 difference to us how you define the rights and liabilities of
25 those who are injured and those who ought to pay and that as a
26 matter of fact it may in the short term at least be in our

1 economic self interest for you not to make changes in the tort
2 law and to continue to allow the costs to escalate. Now, if you
3 think I am here on a (indiscernible) mission, there must be some
4 hidden motivation, let me say that I do have a concern. I have
5 a concern because some of the things that I have feared over the
6 last 15 years that might come about by not changing the tort
7 system and changing the exorbitant amount of monies that are
8 flowing through this pipeline are beginning to manifest
9 themselves in the legislature. And I am down there not only
10 talking on issues of tort reform, but protecting the industry
11 backside on such issues, as the State getting into the insurance
12 industry, as there are being permitted irresponsible means of
13 so called pooling, but because people are frustrated and try to
14 pull themselves out of the insurance industry, and so they're
15 moving into self insurance or what is euphemistically and
16 incorrectly called group self insurance and a variety of
17 regulatory impositions on our industry as if those things would
18 solve the problem. So my, my motivation for being involved in
19 this is to see that the system remains a reasonable one so that
20 we can continue to provide this service in a reasonable and
21 competitive environment. When you see it in this light, then
22 you realize that such comments as has been made here this
23 morning, that if you were to change a particular provision of
24 the law to reduce the benefits that are paid to an injured
25 person such as was made I believe by Eric Sanders, that if you
26 went to a discounting to present value of large awards would be

1 windfall to the insurance industry is utter nonsense because it
2 will in fact reduce the level of loss, but it will mean that we
3 can collect less from those who pay into the system. And when
4 you hear people who make comments that you're going to punish
5 the insurance industry by punitive damage awards in bad faith
6 cases, this is equally nonsense because certainly in the short
7 term it means money paid out that they haven't allowed for, but
8 in the long term it's going to get rolled back into the cost of
9 coverage and will, as Sandy Saville pointed out, eventually be
10 borne by the public. So when you're talking about windfalls to
11 the insurance industry or punishment to the insurance industry,
12 keep in mind that the insurance industry is an intermediary
13 financial service and is a pass through function of the money.
14 And what you are doing is not defining the money to be paid or
15 retained by the insurance industry, you are talking about the
16 money to be paid by or retained by the public who pays for the
17 losses ultimately. And one last point before I move on to my
18 description of the economics in the insurance business. One of
19 the other reasons I say that this is not an insurance crisis is
20 because the exact same problems are affecting those people who
21 do not buy insurance, and I'm not talking those who are not
22 buying it because they can't afford it, but who would like to
23 have it, I'm talking about major enterprises such as the State
24 of Alaska or the municipality of Juneau and other municipalities
25 who appeared or were represented on this same t.v. program I
26 referred to earlier who deliberately do not purchase insurance

1 because they can't contain losses within their own economics or
2 other very large corporate enterprises in the State of Alaska
3 who have set up a risk management program that does not involve
4 the purchase of insurance. They are also having the problem
5 because they also must pay this money and while they may not pay
6 it as the rest of us do, by paying it in the form of insurance
7 premiums to be administered by the industry and paid out the
8 other end of the pipeline, they have a more direct
9 relationship. They pay it directly without the advantage of
10 spreading the risk or spreading the risk only among their own
11 exposure and they're having the same problem. Thus, I say to
12 you that it must be something more fundamental and more
13 indigenous to the system than just the fact that it's insurance
14 involved. Now, a lot has been said raising questions about the
15 economics in the insurance business and in fact Sandy Saville
16 pointed out that it's very hard to know what's going on in the
17 insurance business because the information isn't there. I was
18 very, very disappointed to have a legislator tell me the same
19 thing, that they're not getting access to the information. It's
20 disappointing to me because we must report to the regulatory
21 agencies in one of the most comprehensive financial reporting
22 documents that exists for any industry in this country, all
23 financial documents that we have to file runs anywhere from a
24 minimum of 50 to several hundred pages. It details our
25 investments, our purchases, our sales of investments. It
26 details our reserves by line, including every single expense

1 item. This is broken down by line, by expense item. by state,
2 and that document is a public record. And that document is
3 filed not several hundred feet from the legislature in the new
4 state office building and it has been filed every year by every
5 insurance company doing business in this state. Those records
6 are there and they're available, and more than that, there are
7 agencies, that is to say private enterprise companies that
8 engage in the business of keypunching-that information so that
9 it can be reported in statistically useful means and made
10 available to anyone who wishes to purchase it. The information
11 is there and it is public, and it keeps the requirements to
12 provide data are continually expanding, there is no excuse for
13 anyone saying they do not have the data. Now, this organization
14 to which I refer, that does this keypunching and has this
15 information, A.M. Vest Company located back east, publishes
16 information on individual insurance companies and aggregates the
17 data by state and by line and by any other matrix you wish to
18 see it and then they publish graphs and information. As a
19 matter of fact in this Time article that's becoming kind of
20 talked about this morning, on page 24 of Time magazine is a
21 graph not very dissimilar from what I would like to show you
22 this morning. Now unfortunately it's not very large and you're
23 not all going to be able to see it, but I understand that for
24 the television the graphics will be dubbed in and you will be
25 able to see it. And what I would like to show you here, these
26 are statistics taken from the period 1967 to 1984 actually,

1 affecting calendar year 1984 is to show you some of the key
2 aggregate numbers for the insurance industry nationwide. Now
3 this line right here that's black on the chart shows the level
4 of loss in aggregate gross dollars back in 1967 and you can see
5 that over the period of not quite 20 years, 19 years, this line
6 continues to march right on up. That's the loss one, that's the
7 amount of money that is paid or incurred by the insurance
8 industry and paid out ultimately in losses. This line is the
9 line that shows the written premium over the same period of
10 time. You will notice that the written premium line is above
11 higher than the loss line. And if you have an appreciation for
12 simple economics you'll recognize that that's the way it should
13 be. It has to be above the loss line to cover the profit in the
14 insurance industry and the costs of operating the insurance
15 company mechanisms, and you will find that over a period of time
16 it contains to march up tracing the loss line. But there was
17 some aberrations, it does dip down and it does go up, cycling,
18 and as a matter of fact this period right here is rather
19 interesting to me it's the 1975 period. You remember that's
20 when we had the last crisis when the thing started down and then
21 all of a sudden it started back up again and it went up until
22 1981, 1982 one of the highest levels in the history of the
23 insurance business. Still above the loss line but not by any
24 greater margin, in fact by a lesser margin than it was in
25 earlier periods. And then the line started back down again,
26 probably not unreasonable to expect here we are at the ten year

1 cycle. It's time for us to go out and compete and for the
2 insurance industry, to shoot it's economic foot off again, only
3 this time, they not only shot off their foot, they shot it off
4 at the knee. Because now for the first time, the written
5 premiums that are collected in gross are less than the losses
6 that are being incurred in gross and the line comes down below
7 the losses, the premium line comes down below the loss line
8 until here in 1983 it is at the lowest-point below the lost line
9 that it has ever been. Now why is that? Well we have heard
10 some comment about why that might be and we hear about bad
11 investments and we hear about predatory pricing and we hear
12 about excessive competition and we hear about a variety of
13 things, and I am here to tell you that many of the charges that
14 have been made about the conduct of the insurance industry that
15 led to the pricing that shows this phenomenon that I just
16 described to you are in fact absolutely true. There is one
17 thing that has been said about the insurance industry that is
18 not true, and I want to clarify that. You will recall in the
19 period about 1981, 1982 when the premiums were at their zenith,
20 was also the time that interest rates in this country began to
21 grow at unprecedented levels, when you talked about savings
22 accounts being generously awarded at 4 1/2% and then within a
23 period of about a year the prime rate and interest rates were up
24 at 15, 16 and 17%, you have an enormous incentive to draw in a
25 lot of money to invest, the investment yields are just
26 fantastic. So what did the insurance industry do, which tends

1 to invest in long term high yielding income investments. It
2 said we can afford to charge just a little bit less than we
3 might ordinarily have to in order to attract in money because if
4 we attract in this money we can invest it in 15 to 17% and make
5 up the difference with investments and increase our overall
6 income by so doing. Well Company B said the same thing only he
7 went just a little lower than Company A and Company C went a
8 little lower that and we spiraled ourselves into charging less
9 for the product that we were (indiscernible) to in order to
10 capture the money to invest. We called this cash flow
11 underwriting. Even though it was a dumb thing to do, we gave it
12 a name to glorify it. So out of this incentive to make money,
13 to draw in money to invest, we did engage in what would appear
14 to any outsider as predatory pricing. Now, has that hurt the
15 public? Let me show you another chart, and were the investments
16 bad investments? This chart which also tracks the same period
17 1967 to 1985 shows this is 0 and this is billions of dollars of
18 profit and this is billions of dollars of loss and you will find
19 that on an underwriting basis, premiums less losses and less the
20 expenses of operating have always hovered around 0, dipped below
21 zero, very seldom ever go above zero, but what you do have is
22 this investment income line that plods along here in rather
23 normal expectancies until you get out to about 1980 and 1981 the
24 investment curve jumps way up for the phenomenon that I talked
25 about. What did it do to that income? Well that income plods
26 along here as the sum of the underwriting result and the

1 investment result and so you're always making money. You're
2 always enough above the zero or the break even point to make a
3 reasonable return. In fact up here it went up rather nicely,
4 but what happens here is that the losses so vastly exceeded the
5 premium, the losses were so high that the underwriting result
6 plummeted to the point that even with the increased investment
7 income, this line for the first time in the history of the
8 insurance business went below the break even point. And so what
9 you have is, the public has been benefited by this pricing
10 phenomenon because the prices have gone down, but the result is
11 it was at the expense of the insurance business to the extent in
12 1984 of 6.6 billion dollar loss, 6.6 billion dollar invasion or
13 reduction in the industry's net worth, which in effect, you'd
14 have to say was paid back to the public in the form of markedly
15 reduced prices. And so what you find now is the inevitable
16 response and that is the premium line is going to have to go
17 back up and get again above the loss line, and that's what's
18 taking place today. Now, we can focus on the investment issues,
19 we could focus on the predatory pricing issue, we can focus on
20 the lack of information issue, we can focus on any issue
21 affecting the insurance industry's operations that you wish to
22 look at, including whether we are operating effectively and
23 efficiently. And if anyone of you would like to come in and
24 show me how I could reduce the phone bill or the salaries I pay
25 or the rent I pay or anything, you are more than welcome to show
26 me how I can improve on that portion of the premium dollar I pay

1 in operating expenses to make the system go, and I would commen
2 to you as members of the Bar and as the leaders of the Bar my
3 biggest single expense is what I pay my defense lawyers. If
4 you've got a way to address that, help me out, but I would
5 suggest to you that the area that deserves your most prominent
6 concern, no matter what you may say about the insurance industr
7 and how well or how badly it operates, is you have to at some
8 point focus on the loss line, because that is the real outflow
9 of dollars through the pipeline and that is that to which I wis
10 to address my comments at this point. And I would like to poin
11 out to you that for the reasons I've pointed out, whatever is
12 done by the makers of public policy, whether it's the courts or
13 the legislature, that affects the loss line will definitely,
14 that is to say that changes the definition of liability, that
15 says we are to pay less to him than we have in the past will
16 definitely affect the loss line. Now it has been said, and I
17 think truly, that we cannot predict the effect on the premium
18 line, and the reason for that is not because we can't predict
19 the impact on losses. We can almost give you a dollar for
20 dollar measurement on the impact on losses by changing certain
21 provisions of the tort law. But you can see that there are so
22 many other economic impacts of what premiums are that it is ver
23 difficult to predict with certainty, or with honesty what might
24 happen. For example, it has been said, quoting Robert Hunter,
25 that if you did nothing, the rates are likely to go down
26 anyway. He may or may not be right depending on economic and

1 competitive forces, and how much new capital comes into the
2 insurance industry. I can take advantage of that and say if you
3 adopt the tort law, rates are going to go down rather
4 immediately. And if you adopt the changes in the tort law and
5 the rates go down I can say, see I told you so. And Hunter will
6 say it would have happened anyway. And that's because this
7 premium line goes up and down for a whole variety of reasons.
8 But you can rely on the fact that if you develop a public policy
9 that says, we're going to pay X number of dollars to these
10 people and no more, and the X is less than what we're paying
11 now, the loss line is going to go down. And if you believe that
12 this industry has so many players in it, and that it is so
13 vigorously competitive, that this kind of phenomenon can happen,
14 then you've got to believe that by lowering the loss line
15 competition will take care of driving the premium line to follow
16 it. So what is our position on tort reform? I have no position
17 on tort reform. I cannot tell you that I favor it or that I
18 disfavor it. I can only tell you that I sit and watch it on a
19 day to day basis as the numbers float across my desk and I try
20 to remain cognizant of what's going on in our claim files. And
21 all I can do to you is humbly tell you the impact on the costs
22 on the current attitude by our judicial system towards
23 reparations of injured people and share with you what I observe
24 as what's going on and then those who are responsible for the
25 making of public policy can decide whether they like or whether
26 they don't like it, whether commerce is being burdened by the

1 cost of this reparation system or whether maybe the costs have
2 gotten out of hand and we have to do an economic and public
3 policy balancing between the cost to the public and the rights
4 of these individuals. Let me tell you some of the areas that I
5 think I see from my perspective as the touch points of great
6 concern. One is excessive litigation. We litigate too much.
7 Now I'm going to cite as an example of this and obviously as I
8 believe Sandy pointed out we all reach for the most exorbitant
9 example to make our case and I guess that's logical.
10 Unfortunately this example that I'm about to give you is unusual
11 but it is not unique, and it's rather current, so please excuse
12 me if I don't make it overly specific, but we were involved in a
13 situation involving a person who slipped and fell coming out of
14 a camp on the Slope and hurt himself. He was employed by
15 Company A that was insured by another insurance company that
16 paid the workers comp, then this claimant turned around and sued
17 others for a variety of causes of action having to do with
18 maintenance of the camp and the construction of the design and a
19 whole lot of other theories, and sued our insured and we
20 defended. Now there was some complications in the litigation,
21 it's unimportant to get into the litigation, the complications
22 of it for purposes of this discussion, but the fact of the
23 matter is that a rather unusual judgment, we're not sure whether
24 we won it or lost it was handed down, it was a little of both I
25 guess and that was that. And because of the unusual nature of
26 the judgment, we commenced an appeal. The attorney representing

1 the person who was injured, on behalf of his client filed a
2 direct action against our insurance company alleging things that
3 might be regarded as bad faith and fraud. That got our
4 attention, and maybe as a result of that and maybe for other
5 reasons, it was reasonable to settle that litigation and it was
6 settled. Now you've got to realize that the claimant here has
7 been paid his workers comp and now he's been paid whatever he
8 was entitled to out of the settlement, and he's left the State,
9 so that ought to be the end of it. Except that now the
10 insurance company who had paid the workers comp is suing the
11 lawyer for breach of contract for not paying over the workers
12 comp lien that should have been paid and we are going to have to
13 step in and indemnify that attorney and we are going to have to
14 bring an action against that insurance company who was
15 representing the injured persons employer for failure to honor
16 an indemnity contract in the subcontract between our insured and
17 the other company's insured. So what do we have, we have one
18 large complicated workers compensation proceeding before the
19 Workers Comp Board, and four separate lawsuits, attention, in
20 order to get an amount of money to a person who's already left
21 the State and couldn't care less what happens among all these
22 insurance companies. Now what kind of a bizzare legal system
23 have we built that fosters that kind of litigation that
24 accomplishes absolutely nothing in getting the money to the
25 injured person. What about the size of the award? The size of
26 the award is important, a point has been made here, and I think

1 it's quite correct, that the vast majority of the number of
2 cases that we deal with in the insurance setting are small
3 cases. We don't have large numbers, thank goodness, of six
4 million dollar verdicts, or three million dollars potential
5 exposure. The problem isn't with those cases, and those that
6 say the insurance industry can't afford to pay a six million
7 dollar judgment are nuts, because we just got through paying
8 about 600 million for a blown up satellite. We can afford the
9 judgments if we know about them and can collect the premiums for
10 them, the pipeline is big enough and flexible enough to
11 accommodate that. Why then does the big judgment present a
12 problem, well it presents a problem because it sets the
13 precedent, it sets the guidelines by which the 98% of the number
14 of cases in that realm that Eric talked about of the \$50,000 or
15 \$100,000 and less are settled. And so if we begin to see that
16 the tenor of the court is to expand theories of liability and if
17 the extent of the jury is to make awards, we don't go down to
18 the jury to say but don't do it in this case. We stay away from
19 the jury, we stay away from the courts. What kind of a judicial
20 system have we built when those people are afraid to go to court
21 for an equitable result and the areas that are driving up the
22 size of the awards are obviously the size of the damages which
23 we think is not a unreasonable reason to increase the size of
24 the awards, but what is happening is that we see new theories of
25 law being developed to expand the entitlements, to expand the
26 reasons for giving awards, new kinds of damages that are being

1 discussed, including, punitive damages. And while it has been
2 said that punitive damages is not something that's been awarded
3 very often in this State, it has been awarded, and it's been
4 awarded in other States. And it becomes a primary concern to
5 anyone who has to indemnify against these losses and contrary to
6 what has been said, one way or another it finds its way back
7 into the insurance losses because if you may be able to argue
8 that punitive damages aren't covered in the policy, but when
9 they present this array of damages there are certain times you
10 don't want to go fight and find out. Probably the most, the
11 third thing, and probably the one that is of most trouble to us
12 is the unpredictability of the law. Now I don't want to unduly
13 accuse anyone on the Board of Governors when I say that I look
14 around the room and I see contemporaries and why, because I do,
15 I say unduly accuse you. I will assure you as I say that, that
16 my gray hair is premature, so I am not unduly charging you when
17 I say you are contemporaries of mine, and when we went to law
18 school when one the doctrines that was enunciated and drilled
19 into us as important and part of our common legal system was the
20 doctrine of stare decisis, a term forgotten here I think in the
21 last several years. The doctrine of stare decisis says that our
22 common law is built on precedent, that we can look at a set of
23 facts and if that set of facts is similar to our set of facts,
24 we can look to the rule of law in that case and assume with some
25 reasonableness that it applies in our case. But what do we do
26 when we think we understand the law by looking at prior similar

1 fact situations and their legal outcome and find that the court
2 decides to change the rules? Change the rules in a case
3 involving a claim arising out of a policy sold several years,
4 priced on the assumptions made several years ago about the state
5 of the law as we knew it then. It is this unpredictability that
6 has probably more than anything else, that's making it difficult
7 to acquire insurance in certain lines. Not so much the pricing
8 but just insurance companies cannot live in an unpredictable
9 world, anymore than you or anyone else can, and just as you see
10 insurance to level out unpredictability and make it
11 predictable, the insurance industry looks for a certain amount
12 of predictability and finally the fourth, bad faith. I heard I
13 said that the reason the insurance industry has tried to do away
14 with punitive damages in its tort reform has to do with bad
15 faith. That's nonsense, and the reason I say it's nonsense is
16 because the statutes that are being proposed have to do with
17 punitive damages against the person charged with negligence
18 leading to the injuries of the injured party and have nothing to
19 do with the punitive damages so far as I've been able to see
20 affecting the insurance industry in a completely separate and
21 different cause of action, having nothing to do with the
22 injuries of the injured person. So when you analyze punitive
23 damages in the context to which it comes up in these bills, I
24 think you should focus on where it was intended to be and that
25 is punitive damages for the wrongdoer causing the injury to the
26 injured person and not the insurance industry. It's a separate

1 and distinct question, but I got to tell you, that the bad faith
2 litigation is causing a very serious concern among the insurance
3 people, because how can we operate in an environment what is
4 defined by our juridicial systems as an adversary system, where
5 the plaintiff lawyer is out there arguing as hard as he can on
6 behalf of his client which is his sworn duty to do, and we,
7 having the contract with our insured to defend our insured go
8 out and do the same thing, to defend to the highest extent both
9 ethically and morally permitted, and if we do that and we do it
10 too aggressively, we're charged with bad faith. These to me are
11 the four areas that I think are causing serious problems leading
12 to the high cost of loss, the excessive litigation, the size of
13 the awards, the unpredictability of the law, and the bad faith
14 exposure directly imposed on insurance companies, and these are
15 the areas that if you wish to accomplish something, you are
16 going to have to address. What ought to be done. Well I don't
17 tell you what ought to be done, but I would tell you I think a
18 standard by which anything you do ought to be judged, we are
19 talking here about a reparation system. We're talking not just
20 about a single component of it, the law that defines the rights
21 and parties, but we're talking about the whole thing. We're
22 talking about the role of the insurance companies, the role of
23 the lawyers, both plaintiff and defense, we're talking about the
24 role of the courts, we're talking about the role of self
25 insurance and self insurance administrators, we're talking about
26 the role of the legislature and the role of the appellate

1 courts. They are all part of the reparation system, and if you
2 look at it systemically, what ought to be the standards for
3 determining whether this is a good system, whether it's the
4 right system for reparations of injuries, I would commend to you
5 these four standards. And anything that is done ought to meet
6 these four tests, one, it ought to be fair, now that's broad and
7 general enough, almost anything will fit within it, but what I
8 mean by that is this, it's got to be fair to all parties. It's
9 got to be fair to the injured person. He's got to be made
10 whole, but it's got to be made fair for the public, who is
11 paying the tab. And I am unfortunately of the view that the
12 court has concerned itself so much with fairness to the
13 individual irrespective of balancing it against the cost to the
14 public, not just the cost to this guy who may be at fault,
15 obviously that's a concern, but the courts have seemed, as Keith
16 has pointed out earlier, we've gone beyond looking at fault and
17 we're looking to this as a cost reimbursement system almost
18 without regard to fault because insurance or some other
19 financial resource is available. And if we're going to do that,
20 then let's go all the way and look at what the cost is to the
21 public for this reparation system. Secondly, it's got to be
22 predictable. I don't care what kind of system you adopt, if we
23 can't look at it and have some reasonable basis for anticipating
24 what it's going to cost and thus establish reasonable pricing,
25 it's never going to work. Thirdly, it's got to be cost
26 effective. Now, one of the arguments that was made by Sandy

1 Saville in connection with the subrogation question was why are
2 we going to subrogate? Why are we going to eliminate
3 subrogation from the liability system to the workers
4 compensation system? Let me give you one reason why I think
5 leaving it with the workers compensation system may have some
6 merit and why I think the whole argument for collateral sources
7 ought to be thought up with this new element. If you'll look at
8 the cost of operating the third party liability system, by that
9 I mean the amount of money that goes in at this end of the pipe
10 and look at the money that goes out this end of the pipe, but to
11 the person who is injured, not to everybody, the lawyers and
12 everybody, but just to the person who was injured, who was the
13 original intended beneficiary of the system, by the time you
14 take off the money that goes to the insurance industry in the
15 pipeline and the amount of money that we pay for the defense of
16 our cases which is one of the expenses we have agreed to incur,
17 and the amount of money that goes out the other end and gets
18 paid to the plaintiff's lawyer and to their systemic costs, it
19 is reasonably estimated by those who have studied, not me, but
20 in studies going back ten and fifteen years ago, that less than
21 30 to 35% of the money that goes in this end, gets to the
22 injured people. And you compare that with other reparation
23 systems like the workers compensation system, where
24 approximately 75% of the bucks that go in the pipeline get to
25 the person who is injured, or compare it with health insurance
26 programs where 85% or even more in the case of the blue cross

1 programs are getting to the injured people you can see that what
2 we're arguing is that you transfer the cost away from the least
3 efficient to one that's more efficient, and if there's no other
4 value in the collateral source doctrine that's being advocated,
5 then moving money to the person who is injured through a more
6 efficient vehicle, that itself ought to be value enough to do
7 it. And finally, I said it should be fair, predictable, cost
8 effective and finally we're going to have to find one that's
9 affordable. It's being picked up by the public and the public
10 has said we've had enough. The public has said it because the
11 doctors have said, because the dentist and other health care
12 providers have said it, the AGC, air carriers, people engaged in
13 education, the municipalities of the State has said it. We've
14 had enough, we cannot afford the existing coverage, and since
15 this ultimately being passed on to the public, I think what
16 we've done is we've said the definition of what should be paid
17 to injured people has probably reached its zenith, and it's time
18 now to pare it back to the level that with all the other
19 intended expenses, it become affordable to the Alaskan public.
20 Now I think I've about used up my, I see Harry smiling and
21 standing, I think I know what that means, thank you very much.

22 SPEAKER: ROBERT M. LIBBEY

23 Thank you Mr. Branson and thank you members of the Board of
24 Governors for the opportunity to add what I can add to what has
25 been said at length in this forum today. Thank you Mr. Block

1 and thank you Dr. McGuire for, on behalf of the Bar Association,
2 and I am a member, for coming in here and sharing your view
3 points, providing what insight you can provide into our
4 problem. And thank you who have stayed attached to your seats
5 throughout this presentation, for being willing to stay and hear
6 the last word that will be said today about this whole matter.
7 I appreciate that you're respectful enough to hear my views,
8 although we have now gone on for nearly three hours. The
9 insurance crisis was here when we started, that is, this debate
10 today. Most of us acknowledged and lived with the insurance
11 crisis. For the first today and I've heard Mr. Block speak
12 before, and I have great deference for Mr. Block as an insurance
13 representative, but for the first time today I have heard
14 someone say in this long (indiscernible) which has lasted nearly
15 six months now, that there is no insurance crisis. That's not
16 what we have. Well I guess that's a matter of perspective.
17 Maybe if you are simply trying to match a loss line with a
18 premium line and to do so you have to increase premiums, maybe
19 that's not a crisis, maybe that's something else. If on the
20 other hand you see your premium increase six hundred fold, six
21 fold, six hundred percent in one year or more as I heard from a
22 thousand percent, ten fold, and you're told that the insurance
23 may not be available at all, then personally to you it's a
24 crisis. To me it's a crisis because I saw my premium increase
25 six fold from last year to this year. And I'm puzzled about
26 that because I look back over 20 years of law practice doing

1 about the same thing in the same community right here and no one
2 has ever sued me. No one has ever made a claim against me, no
3 one has ever invaded or benefited from the insurance that I have
4 provided over those years, and yet overnight I'm a bad risk, my
5 insurance costs must rise six hundred percent and I'm a little
6 touchy and I feel that I'm facing a crisis. I feel that I'm
7 entitled to an answer, and what I have heard as I followed this
8 debate through the public mediums and through the legislature is
9 that this crisis unfolded over the last three or four years and
10 I know I'm redundant, but I want to trace it again, because I
11 think it's important to keep that fact in perspective, that this
12 crisis came along over the last three or four years. Three
13 years ago I was insured, you were insured as members of the
14 public, we had reasonable premiums, we had the same tort system
15 that we had today and insurance companies made a profit, made a
16 profit from selling us insurance. About four years ago, a new
17 mode of selling insurance, a new mode of making profit from
18 insurance entered the picture, rates were cut to compete for
19 market shares. The expectation of insurance carriers was that
20 that loss that was inevitable that would follow those low rates
21 would be recouped in investment profits. Unfortunately that
22 expectation ran afoul of the steep decline in interest rates and
23 its impact on other investments and there was no investment
24 income to recoup those inevitable losses. Now it seems to me
25 that the insurance industry has decided to balance that line,
26 clean up that graph, recoup those substantial losses that they

1 inflicted upon themselves in one or two years with a premium
2 increased that brings a new era to most of us in terms of
3 insurance costs. Bewilderness made us ask the questions, one,
4 is there something wrong with me, two, is there something wrong
5 with the system, three, is there some fraud afoot in the land
6 that has somehow made me a victim of the system. One thing that
7 has come out of this debate and it can be substantiated by
8 reference to the records of the legislative hearing, wherein the
9 industry, the insurance industry was well represented by
10 qualified people, the lawyers spoke out, victims spoke out,
11 businessmen from this community spoke out who were bearing the
12 costs of these premium increases, but several things were
13 actually admitted, admitted on record by the insurance industry,
14 and they're pertinent. For one thing it was admitted that if
15 all of these so-called reforms were enacted tomorrow, as a
16 package, that we would not have solved our insurance crisis, our
17 premium increase problems, that if any benefit would flow to us
18 in terms of reduced premiums, of that benefit we could expect
19 somewhere between seven and ten years from now. That's a long
20 time, that's a long time to be in a crisis, and most of the
21 speakers today will be in retirement when that premium increase,
22 perhaps all of us but Dr. McGuire will be in retirement when
23 that premium decrease takes affect. It's not going to help us
24 much today, it is not the kind of answer that we're looking
25 for. Secondly, the industry admitted that in our neighboring
26 country in Canada, in the province of Ontario, back in the 1970s

1 they adopted all these changes, all these take aways from tort
2 victims, where are they today, where are the people of Ontario
3 today? They are right where you are, they are facing an
4 idential insurance crisis, it affects the same industries in
5 their community that it affects here in Alaska, it affects in
6 Iowa, it affects in Utah and California. It didn't help the
7 people of Ontario that they took away the rights of victims
8 under their civil justice system. And finally the insurance
9 industry has admitted repeatedly that if left alone, if the
10 civil justice system is left alone, profitability will return i
11 about a year to eighteen months and that they will be again
12 writing premiums on a profitable basis, probably competing by
13 cutting rates, competing for a larger market share of your and
14 my insurance needs. Given these admissions the bottom line is
15 that the industry as a whole has admitted that in terms of the
16 current insurance crisis, that is the incredible rate increases
17 that we have had to bear, there is no cause and effect, there i
18 no direct cause and effect relationship between any problems.in
19 the civil justice system. If there is anything to be gained by
20 tampering with the civil justice system they've admitted it is
21 indefinite and long term and not the kind of solution or quick
22 fix that the country as a whole needs. Why then do we hear so
23 much about tort reform? What is tort reform? Tort reform as w
24 see it in legislation today is not the broad concept of tort
25 reform or reform that we are generally familiar with. Tort
26 reform in the sense that we are dealing with it in the

1 legislature is a narrow menu for the taking away of the rights
2 of injury victims, for the taking away of compensation to injury
3 victims. There is a substantial body of interest groups
4 supporting such narrow reform, in large part it is very much
5 like the shrill cry one could predict when suddenly one's
6 insurance premiums are increased six or ten fold. A demand for
7 something, a demand for an answer and a willingness to accept
8 anything that sounds good at the time. It matters little that,
9 in that state of mind, that even if we rush that entire menu
10 through, we will still have to live with insurance problems
11 because we want to do something, we want to try and change this
12 thing and something is better than nothing, but we're tampering
13 with a very precious commodity. We're tampering with a very
14 precious aspect of what it means to be an American, and when we
15 have been told there is no direct cause and effect between some
16 problem in the tort system and the problems of the insurance
17 industry when that nexus does not exist, it is inappropriate to
18 rush in and adopt anybody's menu of solutions without a thorough
19 airing, without thorough and objective consideration of each and
20 every one, without requiring that each change, each change stand
21 on its own merits. And how can the public ever know if any
22 change in the civil justice system can stand on its own merits.
23 I submit that it requires responsible people to get close to the
24 system, to find out what our legal system as a whole is, to find
25 out what the tort system as a whole is, and what it means to us,
26 to gain some perspective from which to judge these proposed

1 changes. Perspective is a very essential part of any rational
2 act. Perspective can be very, or poor perspective can be very
3 distorting, very, very misleading. For example, as we drive
4 down the road on a smooth, dry highway and we can see for a mil
5 and a half and it looks like there's a pool of water in the
6 road. And yet we drive on and we get closer and we can see in
7 more detail and the road is dry, there was no pool of water.
8 Merely an impairment in our perspective. Or we look off into
9 the distance and we see a jumbo jet approaching Anchorage
10 International, and it looks like that jumbo jet is barely
11 moving, less than a mile an hour. In fact he traveling in
12 excess of 200 miles an hour, but we just don't have the
13 perspective and we need it here. What is true for that jumbo
14 jet, what is true in life generally about perspective is true
15 with the legal system, we have to get close enough to have in a
16 meaningful perspective into it and we have to avoid getting so
17 close that we cannot see the forest for the trees, but that's
18 our obligation, if we want to make a fair and meaningful
19 appraisal of the current justice system. We've got to be able
20 it seems to me to think about the tort system as a whole, we
21 have got to be able to examine each and every proposal for
22 change in context, with that clear perspective that we have
23 gained through study, gained through listening, gained through
24 discussing. The tort system, we've heard an awful lot today
25 about the cost of the tort system, and of course ultimately
26 that's what brought the tort system to our attention, cost, cos

1 in terms of dollars paid for insurance policies, but the tort
2 system to the public means a lot more. In its simplest form
3 the tort system provides the public, provides you and me in
4 terms of these dollars spent with two essentials, one of which
5 is direct and the other of which is tentative. The first
6 essential is that it provides within the public a deterrence of
7 unsafe conduct. The tort system stands in many instances as the
8 only deterrent to unsafe conduct. It follows me wherever I go
9 with my automobile, with my rifle, it follows the manufacturer
10 into his laboratories for research and development, it follows
11 the doctor into the operating room. It is that force in society
12 that requires us to be careful, that requires us to live up to
13 the level of knowledge in caution that we have come to expect as
14 citizens. In addition, the system provides compensation for
15 victims who fall victim of accidents caused by the fault of
16 others. I've heard it suggested here today that there is a
17 system at large where really no one has to be at fault, there is
18 no fault at all in the accident, there is nevertheless recovery,
19 I'd like to know what that system is. I've worked awfully hard
20 for nothing if that system in fact exists and Mr. Block has paid
21 an awful lot to defense lawyers for nothing if they're defending
22 in cases where there really is no defense. Of course there's
23 fault, there's fault and that is the essence of our recovery
24 system. Every juror requires it when he sits to resolve a case
25 and it is the force of the civil law that forms the deterrent
26 ultimately, that holds that fault at a tolerable level. Now, if

1 we're talking about the deterrent force of the law, any system
2 that provides harshness in its civil penalties is the best
3 system. If deterrent is the only consideration, as we weaken th
4 rule of law, as we take the harshness out, we impair or impact
5 the deterrent force. As we impair or detract from the deterrent
6 force of the law we compromise the public safety, so if we want
7 a strong deterrent in our civil law we have got to retain
8 harshness. Mr. Block asked the question and he's asked it
9 before, as a compensation system, how much is the public willin
10 to pay, how many of these rules will they retain, how many are
11 they willing as a group to pay for. I submit the competing
12 question in that, in that calculus is how much public safety is
13 the public willing to compromise, how much of the deterrent forc
14 that provides us safe streets, safe products, a safe workplace,
15 is the public willing to give up in order to make insurance
16 again profitable for the companies that write it. In terms of
17 the deterrent force of the law, one of the various items propose
18 by the tort reformers is the abolishment of joint liability.
19 Joint liability for members of the public is the concept of the
20 law, hundreds of years old, not three or four years old, but
21 hundreds of years old. Wherein if you are at in any means of
22 fault for someone else's misfortune and loss, and if there are
23 others who combined with you in fault in bringing about that
24 loss, and if those others or one of those others is himself
25 insolvent, unable to help compensate the victim, then because
26 you are in part at fault, you as the defendant, you as the tort

1 feason are required to pay the entire damages suffered by the
2 plaintiff. That rule has been ameliorated in Alaska by virtue
3 of the comparative negligence rule which indicates that to the
4 extent and to the percent that the victim presented himself to
5 injury by his own negligence, by his own carelessness, that
6 percent is to be deducted from his damages, but the balance is
7 to be paid by any tort feason found in any degree at fault, be
8 it 1%, 5% or 70%. Now, granted there is a public policy debate
9 or contest over the, over the justification of that principle.
10 But the courts have addressed it several times, this state has
11 addressed it, nearly every other state in the United States has
12 addressed, and nearly every state has resolved that issue in
13 favor of holding the defendant liable for the entire damages if
14 he is at all at fault, whether that fault is 1%, 5% or 70%, or
15 100%. And the basis and the justification for those rulings is
16 simply that in that way, and only in that way can we give, can
17 we maintain the maximum deterrent force of the civil law that was
18 offende l, of the civil law that resulted in that defendant's
19 negligence, and in that way, and in only that way can we give
20 the public the greatest protection against carelessness, against
21 unsafe products, against outright recklessness. Some say that
22 that doctrine is unfair, some say that it's time to change it,
23 some say that we should create a formula and if someone is only
24 5% at fault, they should pay only 5% of the damages, if they're
25 only 5% at fault, they should pay only 50% of the damages, there
26 are various substitutions that have been proposed. I submit

1 that the question ultimately will be how much of the deterrent
2 leverage of the law the public is willing to give up. After all
3 a man or a corporation or a municipality, if they are even 5% a
4 fault are indeed at fault in the eyes of some jury, they have
5 been, they have engaged in some act of carelessness or
6 recklessness that has brought about an injury to someone. The
7 fact that there is someone more at fault, whose negligence or
8 carelessness combined with the same act to cause the injury,
9 doesn't change the fact that the 5% offender is at fault, had
10 there been no other tortfeasor, had there been no other person
11 more at fault, they would have paid the whole judgment because
12 jury found them at fault. That's the way that the law is today
13 and a change, if there is one has to be a balancing, and there
14 has to be a significant reason to lift the deterrent force and
15 compromise the essential product of safety that follows. The
16 other, the other side of the civil law, or the civil justice
17 system is to compensate the victim, it goes back again, hundred
18 of years, the concept that we have accepted as Americans is that
19 we compensate the victim with money and the amount of that money
20 is as, is the sum that will as nearly as possible make that
21 person whole again. The idea is that we are to take the money
22 and as near as money can do place the person back in the
23 position that he would have been in had this carelessness not
24 happened, had it not occurred, had it not brought about his
25 injury, had it not caused his losses. That process is presently
26 delivered, that question is resolved by a jury of your

1 community, if you're the victim of a tort, if you're the victim
2 of negligence, the victim of an unsafe product. You have a
3 right today to have a jury of twelve people drawn from your
4 community decide what you have lost, decide what you are, your
5 wage impairment is worth, decide what your pain and suffering is
6 worth. That concept is an old concept, it goes back to the time
7 when we distrusted the king and his delegees to determine our
8 rights, we wanted our fellow citizens to make that
9 determination. And now, and now it is being proposed that we
10 pass that right to that determination on to the legislature to
11 create some general rule that will in some way compensate
12 everyone fairly, that will do it more fairly than a jury of
13 twelve of our fellow citizens. Well I suggest that that
14 proposition, that proposal be very carefully considered. One
15 express provisions or item in the reform package that is aimed
16 at the jury, aimed at that right is the so-called cap. What is
17 the so-called cap? Well it sounds harmless enough in the
18 abstract. We aren't going to allow anybody to have a pain and
19 suffering award that exceeds \$500,000, a half a million dollars.
20 After all, a half a million dollars is enough for anybody in
21 terms of his suffering, isn't it? Well, I'm not willing to
22 answer that question until I have sat on somebody's jury who has
23 been catastrophically injured, who has been committed to a life
24 of living in a body that functions neither physically nor
25 mentally for him, that is captive for a lifetime in a body that
26 has been essentially destroyed, essentially turned into a

1 prison. When I've heard that evidence and when I've looked that
2 person in the eye, and when I have heard the comments and
3 discussion of my fellow jurors, I'll make that determination for
4 myself, and not until then, whether \$500,000 is enough for that
5 person. I think is a very difficult question and one that
6 cannot be generalized and one that cannot be answered nearly as
7 well by the legislature in the throes of an insurance crisis as
8 it can be answered by twelve fellow citizens of mine sitting in
9 the courtroom. The trouble with that cap, well there are a
10 number of troubles. Let's talk about that cap. Let's talk
11 about it first of all in terms of the victim. The trouble with
12 that cap is that it affects only the mostly seriously injured
13 victims. In other words we're going to save insurance dollars
14 at the expense of those who have been most grossly, most
15 completely destroyed by someone's negligence. That \$500,000 cap
16 is not going to mean anything to the whiplash victim, or the
17 broken leg, or to the five broken ribs, or any of another, a
18 number of other injuries that occupy the courts day in and day
19 out. It's going to affect that person who has been
20 catastrophically injured, and only he will pay the subsidy that
21 somehow affects our insurance premiums for that particular item
22 the cap. That's not right. It's not right to ask that person
23 to give up his rights so that I, as healthy as I am, can maybe
24 save a few dollars over my lifetime on my insurance premium.
25 Secondly, because it is a catastrophic case that's involved, and
26 because it's only this person with a multimillion dollar claim,

1 it's going to affect only a tiny fraction of the overall cost or
2 burden on the insurance premium. The vast majority of the
3 claims don't come anywhere near that figure. The last study
4 that was done, on just who does get the insurance premium in
5 terms of victims indicated that that particular person is
6 extremely rare, and not a significant factor in the overall cost
7 of insurance. Pain and suffering altogether when last studied,
8 pain and suffering which is to be capped by this provision, in
9 terms of the insurance dollar, when last studied pain and
10 suffering burdened approximately 1 to 2% of the insurance
11 dollar. So if we were to abolish all pain and suffering, not
12 just the pain and suffering above \$500,000, but all pain and
13 suffering as a remedy, we could only save between 1 and 2% of
14 the insurance premium dollar. In contrast the cost of defending
15 insurance claims has now reached in excess of 50% of the
16 insurance dollar. We talk about the pipeline and how it's
17 somehow eventually, how the money somehow flows out of the
18 pipeline to the victim. Well, over 50% of the insurance dollar
19 sticks in the pipeline with the insurance industry and it's
20 attorneys. Something less than 50% flows out the end to the
21 victim to be divided between him and his attorney. If we're
22 going to reduce the cost of insurance, if we're going to somehow
23 resolve an insurance crisis, if we're going to bring prices into
24 line, we've got to go at that portion of the insurance dollar
25 that is meaningful, we can't fool around with items that may
26 sound good, that may, that may be sexy, that may have

1 superficial appeal, but really don't impact the insurance
2 dollar, we can't do that. In the end it'll be meaningless.
3 Certainly, we do not live with a perfect system. Certainly any
4 system invented by the human race has had imperfections,
5 certainly every system is subject to, appropriate subject to
6 review from time to time. This system should be reviewed. I
7 agree that it is an expensive and a very protracted system. It
8 is unfair to victims. It is unfair to defendants, that when a
9 case is filed the resolution is some three years away. It's
10 inappropriate and embarrassing that the system is as expensive
11 as it is, and changes should be considered. I have a formula
12 for changes too, it differs a little from Mr. Block, but perhaps
13 it talks a little less about the cost of insurance and a little
14 more about the other aspects of the civil justice system which
15 the public has an interest. I submit that any change we make
16 first of all in the justice system, we must know will have a
17 meaningful affect on the cost of insurance, not some tiny
18 fraction of a percent, but some meaningful impact on the cost of
19 our insurance. Secondly, that the change will not significantly
20 reduce the deterrent force of the law, will not significantly
21 reduce the power of the law to bring about and maintain public
22 safety. And thirdly, that the changes will not deprive the
23 injury victim of full and fair compensation. That, those
24 considerations bear on review of the tort system, those
25 considerations have nothing to do with the immediate problem of
26 insurance premiums. In the legislature there is legislation

1 that is aimed directly at the insurance crisis. I support it
2 because I believe that it will bring some relief, and I think
3 that relief will be much more immediate. There is for example,
4 legislation that will enable school districts or municipalities
5 to group together and become self insured entities, where they
6 don't pay anybody to accept their risk, they simply share it as
7 a group, as an affiliated group. That at least will create some
8 competition for the private sector of insurance so that what
9 insurance we get we will know is competitive, competitively
10 rated. It will also give some of the more distressed, insurance
11 lead to stressed industries such as daycare centers, some hope
12 of finding an alternative to private insurance, In addition,
13 the legislature has proposed a more careful regulation of the
14 industry. I don't think the data is available to our
15 legislators. I don't think it's available to our regulators. A
16 great deal of the insurance written in this State is not written
17 by companies that are, as Mr. Block, registered to do business.
18 It's written by surplus lying companies that are not regulated
19 by the State of Alaska, are not registered to do business, and
20 their data which is significant and extensive is not available
21 to the legislature. It's not available to the insurance
22 commission and it's not available to the consumers to evaluate
23 the causes of this crisis. We can get to those surplus line
24 carriers through additional regulative procedures. Finally, the
25 legislature has looked for a way to transfer a leverage from the
26 industry to the insurance buyer, to give the buyer some rights

1 with regard to this company, when the company threatens
2 cancellation, or mid-term increases in premiums, that
3 legislation is good, ultimately it will make the insurance
4 industry more careful how they rate and, and justify their
5 premiums initially. All these things deserve consideration.
6 Everything that has been mentioned today, deserves
7 consideration. The important thing as we approach is as Sandy
8 Saville warned us, not to be too hasty, not to rush in because
9 we feel the crush of increased premiums, to be willing to commit
10 ourselves to gain some perspective, to put these issues in
11 context, and to keep them in context, not to be carried away by
12 somebody's anecdotal, a story about what happened in some part,
13 somewhere a long way from here, sometime ago, but to approach
14 each of these proposals objectively, with a view toward whether
15 or not we really are improving a system that is perhaps the
16 distinguishing feature between, we as Americans and the rest of
17 our fellow humans. I understand that everybody is tired and I
18 think that everything has been said. Thank you for your time.
19 again.

20 BREAK

21 SPEAKER: HARRY BRANSON

22 Thank you. Okay, we're going back in the session. We have each
23 of the speakers here in front of us. We've all agreed because
24 of the time and the depth of the discussion that we're going to

1 limit this questioning to thirty minutes. I've asked each of
2 the Board members to try to focus their questions to take into
3 account anything they think may not have been covered or they're
4 confused, and I've asked the panel members to try to give us
5 succinct answers, so we get as many questions answered as
6 possible during this period, and with that I believe the first
7 person that wanted to ask a question was Bob Wagstaff.

8 BOB WAGSTAFF

9 Q: My first question is to Mr. Block. You made the statement
10 that in 1984 there was an insurance industry loss of 6
11 point - some billion dollars. As I understand it, the
12 insurance industry has claimed that 1985 the subsequent
13 year that it lost 5.5 billion. Is that figure . . .

14 MR. BLOCK

15 A: I don't have the figures for 1985, they're only now being
16 collated and so we won't know the end result until, the
17 figures are all massaged. I think we can find is that
18 there will either be less of a loss and maybe even an
19 income overall or profit overall for the industry, but I
20 also think what you're probably going to find is that in
21 the policy for the year in question, the 1985 year, it
22 probably was profitable looking at the policies sold this
23 year and the losses attributable to that year, what your
24 also going to find is probably . . .

1 BOB WAGSTAFF

2 Q: Mr. Block we want to keep this focused.

3 MR. BLOCK

4 A: Well I'm trying to answer your question.

5 BOB WAGSTAFF

6 Q: Well let me restate the question. As I understand the
7 insurance industry has claimed a 5.5 billion dollar loss
8 in 1985 and according to the National Insurance Consumer
9 Organization, that this loss, in this loss, claim loss,
10 the industry neglected to include federal tax credits, and
11 capital gains of 8.4 billion and also neglected to include
12 2.1 billion in dividends paid to stockholders and when
13 those are in fact included that rather than a 5.5 billion
14 dollar loss in 1985, that the insurance industry really
15 had a 5 billion dollar profit, that's information obtained
16 from the National Insurance Consumer Organization. Would
17 you care to comment on that?

18 MR. BLOCK

19 A: Yes. The National Insurance Consumer Organization
20 apparently doesn't understand or doesn't wish to correct
21 present insurance accounting or even gap accounting. The
22 dividends I believe that they're referring to are
23 policyholder dividends which are part of the cost of
24 insurance and relates to the premium. Taking into account
25 unrealized capital gains or losses really doesn't, well
26 does to some extent, but in the insurance accounting

1 doesn't affect the profitability of the insurance
2 business, and we're going to talk about a consistent
3 basis. That is to say the years in which we make a
4 statutory profit and they have to use a consistent basis
5 in assessing statutory losses, and the key fundamental
6 factors that affecting the profitability in the insurance
7 industry are the losses. Well the point I was trying to
8 make a moment ago was, that one of the things that's
9 taking place in 1985 as I can observe it, by many of the
10 insurance companies is reestablishing loss reserves on
11 prior years losses to bring them up to the level of what
12 they're really going to cost.

13 BOB WAGSTAFF

14 Q: With regard to losses, as I understand it the institute
15 for civil justice has reported that jury verdicts as a
16 whole remained about the same over the last quarter
17 century, verdicts in terms of the dollars, with fact,
18 inflation factor done, they remained about the same, the
19 number of lawsuits per capita has stayed constant, and
20 jurors have found generally as often for defendants as
21 plaintiffs in the last 25 years, is that an accurate
22 statement?

23 MR. BLOCK

24 A: Well I'm not prepared to agree or disagree with it if
25 their research is based on facts, I'd have to agree with
26 it.

1 MR. WAGSTAFF

2 Q: Now with regards to information that insurance companies
3 make available, there is certain information that you
4 have, do you not that you refer to as proprietary.

5 MR. BLOCK

6 A: I'm sure there is.

7 MR. WAGSTAFF

8 Q: But you do not reveal.

9 MR. BLOCK

10 A: I'm sure that there's information we haven't put into our
11 reports.

12 MR. WAGSTAFF

13 Q: For instance would it be possible for a consumer
14 organization to perform claims, audits of your claims in
15 your insurance company?

16 MR. BLOCK

17 A: Well, I can tell you that that's frequently done, the
18 brokers who are representatives of their insurance do come
19 in and review the claims. Many of the people who are, for
20 whom we are administering claims either on a retrospective
21 basis or on an administrative basis, where they have a
22 genuine equitable interest in the outcome of the claims,
23 come in and review our claims. Our claims are reviewed by
24 reinsurers. Our claims are reviewed by the Division of
25 Insurance. They're reviewed by numerous outside
26 organizations.

1 MR. WAGSTAFF

2 Q: Are all of your books opened to customers of your company?

3 MR. BLOCK

4 A: No, they're not. They're not supposed to be.

5 MR. WAGSTAFF

6 Q: The question I have for Mr. Brown. Some of these
7 proposed, what's referred to as changes reforms of
8 insurance, they don't include and tort law includes such
9 things as and I haven't heard mention today, but one of
10 them is that there will be no longer any wrongful death
11 claims for a person who is killed that does not have a
12 dependent.

13 MR. BROWN

14 A: I did not advocate that position.

15 MR. WAGSTAFF

16 Q: That is one of the . . .

17 MR. BROWN

18 A: I've heard that said that, that is one of the proposals,
19 I've not read it.

20 MR. WAGSTAFF

21 Q: Well in that, using that as an example, would you agree
22 that there is a constitutional overlay to a lot of these
23 proposed changes that the legislature does not have free
24 range and do whatever it wants to, aren't there some
25 constitutional ramifications . . .

1 MR. BROWN

2 A: It may well be, you didn't hear me advocate that
3 particular proposal, I think you're asking the wrong
4 person.

5 MR. WAGSTAFF

6 Q: Well, I'm not asking you if you advocated. My question is
7 . . .

8 MR. BROWN

9 A: To answer your question, that's true as to a number of
10 these measures, and if it was true in California for
11 example, what are termed micromeasures, those advocated by
12 Dr. McGuire earlier today were passed in California. They
13 had to pass constitutional muster. The legislature isn't
14 free to do things willy-nilly and they have to stand the
15 test of the constitution. I'm not aware of any particular
16 infirmities that there are in the legislation that's been
17 proposed by Dr. McGuire. There may well be in the example
18 you just gave me.

19 MR. WAGSTAFF

20 Q: That every citizen has the right of access to the courts.
21 And every citizen has a right to equal protection of law
22 and the due process of law.

23 MR. BROWN

24 A: Certainly.

1 MR. WAGSTAFF

2 Q: Regardless of whether they have children, dependents or
3 not.

4 MR. BROWN

5 A: Of course.

6 MR. WAGSTAFF

7 Q: With regards to Dr. McGuire, a couple of questions I have
8 for you, you made a statement towards the end of your
9 remarks that if we do these things, that we will be able
10 to keep insurance. What assurances or agreements are you
11 aware of with the insurance industry that such will occur?

12 DR. MCGUIRE

13 A: I'm aware of none, but that's not sufficient to answer the
14 question.

15 MR. WAGSTAFF

16 Q: What is sufficient then?

17 DR. MCGUIRE

18 A: The statement was made earlier that this is a problem
19 that's come upon us in the last four years, that's simply
20 not true, it's been with us for at least 10 years. The
21 statement was made that there's no evidence that any of
22 these proposals will be of help, that's not true. The
23 RAND Corporation has done a very good and thorough study
24 on it, and I refer you to it. They propose that they
25 would estimate that 25% of premium dollars could be saved
26 by the measures of micro if they were applied across the

1 board The RAND Corporation has done three studies. There
2 was another study done by an actuarial group which gave
3 the only deficit that it was sponsored by the AMA, which
4 showed that significant savings would be obtained in the
5 area of malpractice liabilities alone, so there is
6 information. The California doctors this year, under MIEC
7 which is the same corporation that is in Alaska competing
8 with MICA had a 5% increase in their premiums overall, we
9 had something on the order of 80 to 90%.

10 MR. WAGSTAFF

11 Q: Well the problem with MICA as I understand it, is not MICA
12 itself, but its reinsurance.

13 DR. MCGUIRE:

14 A: It's not true. And as I said in the statement today, and
15 I think that the history illustrates it, in December they
16 were unable to get reinsurance. They decided to go it
17 alone. When they decided to go it alone the actuaries
18 told them that they had to double, increase by 100%,
19 average, the premium and they had to because of no
20 reinsurance, decrease the cover to \$500,000. In February
21 . . . , that was a doubling of the rate without
22 reinsurance. In February of 1986 they were able to get
23 reinsurance from Lords. Then the rate had to go up a 140
24 to 170%, now it seems reasonable that the 40 to 70 is
25 related to the reinsurance.

1 MR. WAGSTAFF

2 Q: That's all tied in to reinsurance. The existence of it,
3 nonexistence of it, or the increased premiums charged by
4 the reinsurer.

5 DR. MCGUIRE

6 A: It really isn't and I think what you . . .

7 MR. WAGSTAFF

8 Q: Maybe we're, I thought that's what you just said.

9 DR. MCGUIRE

10 A: No. I said that without reinsurance in the picture,
11 nevermind reinsurance, they had to double the rate. When
12 they weren't able . . .

13 MR. WAGSTAFF

14 Q: Because of the lack of reinsurance.

15 DR. MCGUIRE

16 A: No. Because that's how much they'd lost in order to stay
17 solvent. They had to double the rate in order to account
18 for the loss experience, nevermind the reinsurance. When
19 they reinsurance, the additional cost of the increased
20 coverage provided by the reinsurance was an additional 40
21 to 70 percent over the 100 percent, and you can verify
22 that with David Frazier and all the rest of MICA.

23 MR. WAGSTAFF

24 Q: The reinsurance company that you eventually have gone
25 with, what access do you have to their books and records?

1 DR. MCGUIRE

2 A: Well, I haven't gone with them because I'm not insured by
3 MICA. I don't know the answer to the question.

4 MR. WAGSTAFF

5 Q: Then you made a statement or told the, towards the end of
6 your talk an incident where an attorney had apparently
7 received a million dollar fee for 90 days work in a case.
8 What case was that?

9 DR. MCGUIRE

10 A: Well, you see one of the problems we have which I think in
11 terms of information that we should make available, the
12 information in settlements that are outside of jury
13 trials, there's a little document in there that says that
14 nobody can relay the information, and that's one of the
15 things that we ought to make open, is what the terms of
16 these settlements are.

17 MR. WAGSTAFF

18 Q: Do you know the name of that case, Doctor?

19 DR. MCGUIRE

20 A: No, but . . .

21 MR. WAGSTAFF

22 Q: Do you know the name of the people involved?

23 DR. MCGUIRE

24 A: Yes.

25 MR. WAGSTAFF

26 Q: And have you approached them and talked to any of them?

1 DR. MCGUIRE
2 A: I have.
3 MR. WAGSTAFF
4 Q: And do you think a wrong was done?
5 DR. MCGUIRE
6 A: I think that we have to decide that as a society. Do we
7 want to have a . . .
8 MR. WAGSTAFF
9 Q: Do they? Do the people involved feel a wrong was done?
10 DR. MCGUIRE
11 A: To whom?
12 MR. WAGSTAFF
13 Q: To either the attorney or the person he's representing.
14 DR. MCGUIRE
15 A: I'm not sure I understand your question. I talked about
16 the dollars of society that were allocated to the
17 mechanism and here's an example of one in which this was
18 allocated. The issue is, is that how we want it to be?
19 MR. WAGSTAFF
20 Q: Your suggesting that that was an excessive attorney's fee.
21 DR. MCGUIRE
22 A: I'm suggesting that none of us working 90 days are
23 probably worth a million dollars.
24 MR. WAGSTAFF
25 Q: Well that, you're saying that that's excessive.

1 DR. MCGUIRE
2 A: I think it's excessive.
3 MR. WAGSTAFF
4 Q: Why doesn't yourself or the person who has agreed to this
5 the client, who has been charged an excessive fee in your
6 judgment, while don't they file a grievance with the
7 Alaska Bar Association.
8 DR. MCGUIRE
9 A: Because I don't think the client perceives that they are
10 aggrieved. They got a million dollars too. The aggrieve
11 party if there is any are the people that paid the
12 insurance to begin with and the consumers that gave them
13 the money in order that they could pay it.
14 MR. WAGSTAFF
15 Q: Well why don't you file a grievance if you feel so
16 strongly about it.
17 DR. MCGUIRE
18 A: Well, I am filing a grievance. What I'm doing is I'm
19 going to the legislature and trying to get them to correc
20 this situation.
21 MR. WAGSTAFF
22 Q: Thank you. I don't have any other questions.
23 DR. MCGUIRE
24 A: Thank you.

1 MR. FRATIES

2 Q: A couple of questions for Mr. Block. Mr. Block in a
3 former incarnation I ran an insurance company, and so I
4 would be concerned to know whether or not, for example,
5 the fact that two of my brethren here are paying in the
6 case of Mr. Sanders his premiums have been increased by
7 ten fold and in the case of Mr. Libbey, six times. Do you
8 have a loss experience that indicates to you that these
9 increases are necessary in the, taking lawyers as a class
10 for example, have malpractice claims against lawyers
11 increased to the point that it is necessary to charge them
12 as a class, these premiums?

13 MR. BLOCK

14 A: Well I have to limit my answer to the areas that I know
15 about and the areas that my company engages in are the
16 ones I've got to know about most readily and we do not
17 insure that class so I don't have the statistics.

18 MR. FRATIES

19 Q: Well, generally speaking as a, you'd agree with me that,
20 would you not that, that investment problems to one side,
21 if you don't have investment problems, the loss experience
22 generally would dictate rates.

23 MR. BLOCK

24 A: That certainly should be the most predominant factor.

1 MR. FRATIES
2 Q: And that underwriting, good underwriting has something to
3 do with your loss experience.
4 MR. BLOCK
5 A: Sure it does.
6 MR. FRATIES
7 Q: Now there was a period in time if I understand what's been
8 said here today, when the insurance company, or when the
9 insurance industry more or less went out on a limb because
10 of the favorable investment climate and sought premium
11 dollars.
12 MR. BLOCK
13 A: That is correct.
14 MR. FRATIES
15 Q: But they made a mistake because of the investment climate
16 turned wrong or their, the percentage of their investment
17 didn't meet their expectations. Am I correct in hearing
18 that?
19 MR. BLOCK
20 A: Well . . .
21 MR. FRATIES
22 Q: Interest rates went down in other words.
23 MR. BLOCK
24 A: Whether you would regard that as a mistake or not is an
25 individual management judgment. I tend to think it wasn't
26 very smart, but managers of the companies that did it,
27 probably don't regard it as a mistake.