ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3441 HLAB SUNSET APUC - INSURANCE

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RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

9/5/89
Date

02-519 (REV 8/78)

HLC

SUNSET

APUC

Pouch V
Juneau, Alaska 99811

Alaska State Legislature
House of Representatives

Phone:
(907) 465-3892

Labor and Commerce Committee

MEMORANDUM

TO: Rep. Mike Navarre, Chairman
House Labor & Commerce Committee

FROM: Roger Poppe, staff
HLC Committee

DATE: January 25, 1985

SUBJECT: Don Thrapp P.OM. of 1/22/85 on APUC service

This afternoon at 2:30 pm, January 25, 1985, Marvin Weatherly, one of the Commissioners on the Alaska Public Utilities Board (who is coincidentally one of the re-appointments we are approving this coming Mondayin confirmation hearings), made a follow-up call to me regarding his investigation of the Thrapp Memo I called him about yesterday.

Mr. Weatherly called Mr. Thrapp directly, and found that Mr. Thrapp was told by Glacier State (the phone utility covering Kasilof) at Soldotna that Glacier State had filed a petition with APUC to allow the elimination of the quarter-mile rate to go to a zone rate and thus allow single party service at an affordable rate for Kasilof. Further, an employee at Glacier State had told Mr. Thrapp that APUC was sitting on the approval of this request and had been doing so for a year and a half, hence Mr. Thrapp's irate P.O.M.

Mr. Weatherly contacted Bernie Murray, the State Manager for Glacier State, and Bernie said she was not aware of any such filing. Fuurther, a check of the filing records by Mr. Weatherly did not turn up any such filing.Ms. Murray indicated that Glacier State was considering making such a filing in the near future along with several other related filings, but had not yet done so. She did ask who the employee was that had passed on this erroneous information so it could be corrected. A check by Mr. Weatherly with Mr. Thrapp met a dead end, as Mr. Thrapp refused to reveal thename of the Glacier State person he had talked to.

As a result however, Bernie Murray said they will be contacting all their employees in the near future to update them on their filing activities and correct any erroneous impression that it was the fualt

of APUC. A meeting has also been scheduled for Monday, January 28, 1985 in Anchorage in order for APUC and Glacier State to explore ways of speeding up the filing process for this particular issue and the other realted issues Glacier State is intending to submit, in order to get service to the Kasilof area as soon as possible.

So it looks like for the wrong reasons, the right thing is going to be done.

Mike... Jan 24, 85

As follow-up on this POM, I contacted Marvin Weatherly, IV who is one of the Commissioners on the APUC Board, in Anchorage at 276-6222. He is also coincidental one of the APUC appointments that is up for approval of his re-appointmnet next week Monday.

He was surpised at the allegation made. Apparently, Kasilof is in the Glacier State Company service area. While Glacier State and Juneau-Douglas Telephone have recently been bought out by Continental Telephone (after a year-and a half of federally required hearings), and the final buy-out has been requested, it is up for review now by the fedederal Dept. of Justice. So those delays are apparently out of their hands.

There is a separate issue here which is whether there are enoough people in the Kasilof area to warrent expansion of facilities and equipment to warrent putting in single-party telephone lines; however, that is a decision of the local Glacier State company to make, and apply for, which apparently they have not done yet. Glaicer State is not adding any new equipmnet until the Dept of Justice approves or disapproves everything, so its not even something APUC can force the local company to do. They regulate, they are not the owners of the local equipment.

He was thus unaware of any requests from Glacier State on behalf of Kasilof to put in this issue, and if any one is dragging it appears it is the local company.

He promised he would call Don Thrapp and try to get the details of the situation and resolve the problem or at least let Don know what is happening, and then he will call back and inform us.

Also you may want to note that aside from confirming two Commissioners on Monday for the APUC Board, APUC is up for sunset review, so there will be some more opportunities for the L & C Committee to raise this and other issues.

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* DELIVER TO: JPOM                                       *
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* ORIGINAL                                               *
* SENT:          01/22/85  TIME: 16:13                   *
* FROM:          LIOSOL                                  *
* SUBJECT:       TELEPHONE ZONING                        *
* PRINT DATE:    01/22/85  TIME: 16:14                   *
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P.O.M.

TO: ALL SENATORS AND ALL REPRESENTATIVES

FROM: DON THRAPP
BOX449
KASILOF, AK 99610
262-1433

MESSAGE: PLEASE GET ALASKA PUBLIC UTILITY COMMISSION OFF THEIR TAILS AND ZONE OUR TELEPHONE SERVICE AREAS SO RURAL RESIDENTS CAN OFFORD PRIVATE LINES. APPLICATION HAS BEEN BEFORE THEM FOR OVER TWO YEARS. ACTION PLEASE!

E.O.M.

Mike

We should get this person's testimony & see if he has a legit complaint while we have two Commissioners up for confirmation. Could you have LtC staff look into it?

Thank you
Ray Prack

Copy of testimony - Dr. Joyce Murphy

Concentrate on specific areas to make better use of resources

Allocation of costs - SB64 ↓

Budget control on APUC ——

Real Cost to Co-ops from APUC regs.

— Service - Safety regs - proposed

Are they overregulating?

— Regs —

Overextension of knowledge & expertise.

What is ~~the~~ scope of APUC ~~re~~ responsibilities

What are their (co-ops) ↓ suggestions.

— Ron Bergh —

Co-ops absorbing the costs of APUC experts because APUC allocates costs to them.

— How should they be regulated when

EDNA CHAPMAN —

CAN the APUC require electric companies to provide more electricity than their current capacity?

— most feel APUC has a purpose, but they consistantly exceed the scope of their responsibility.

— Increase to consumers because of added costs caused by APUC.

— Billing costs to co-ops.

— open dockets? - loopholes -

— Bob Husted —

- Efficiency and accountability at APUC.

- APUC assuming management

Leo Rhode — Homer Electric Assoc. Director 29 years

Originally set up to regulate territorial disputes — set consumer rates — APUC has, perhaps, grown out of hand.

Joy Foster

- APUC is assuming some of the responsibilities of the Bd of Directors who are elected by the members.
- Proper chain of ~~command~~ procedures for consumer complaints.
- Limit time of open dockets -

Doug Bechtel

AS 42.05

- Cordova opted out in 1981 to be deregulated.
- Service and safety report that applied to <u>All</u> elec. utilities, including deregulated utilities and municipal utilities.
- Consumers elect the bd. of directors

Copper Valley Elec. David Higher

David Nease - Kodiak Elec -

- Time frame of open dockets
- Tied indexing might cut down on rate

MEMORANDUM

March 1, 1985

TO: Dave Hutchens

FROM: Ken Johnson

RE: APUC Sunset Review Research

The following info was compiled in preparation for the upcoming "sunset review" hearings scheduled by the legislature for the Alaska Public Utilities Commission.

OPEN DOCKETS

According to a computer printout dated 2/4/85, the APUC had 254 open dockets in commission files. The utility breakdown of those open dockets is:

Telephone Utilities	92
Electric Utilities	78
Water/Sewer Utilities	51
Cable TV Utilities	11
Gas Utilities	6
Other	17

Of the 78 electric utility dockets, 31 involve ARECA members.

AGE OF DOCKETS

The oldest open docket in the files is the Chugach/ML&P boundary dispute, opened in 1971. A total of 35 dockets, opened prior to 1980, remain open today. Listed below is the number of dockets according to the year they were opened.

71-1	73-2	74-1	75-2	76-11
77-3	78-6	79-9	80-15	81-35
82-24	83-66	84-63	85-16	

RATE CASES

As I read through the orders in the rate-case dockets I researched, I found a very consistent pattern of action taken by the APUC on rate cases. The commission generally gives public notice that a utility is filing a rate case within seven days after the utility has filed. The public is given

thirty days after notice to file comments on the utility rate request. In almost every case, the commission issues an order granting the utility an interim rate within six weeks of filing. The effective date for the interim rate is about 30 days after filing. The commission seems to make a practice of contacting the utility by telephone to advise it of the commission's decision, with the order coming out 10-14 days later.

Four of our member utilities have rate cases pending before the APUC that have been open for 1-4 years (CEA 4 yrs, GVEA 3-1/2 yrs, KEA 2-1/2 yrs, INEA 1 yr.). Excluding these four utilities, the average length of time a rate-case for one of our members is before the APUC, based on the most recent rate case dockets, is 15.39 months.

NON-RATE CASES

The commission's handling of non-rate case dockets has patterns similar to those involving utility rates. The commission, in almost every case, took some action on the docket within thirty days after it had been filed. If public hearings were necessary, they are normally scheduled about 90 days from the date the docket was noticed to the public. Using the most recent non-rate dockets, it took the commission an average of 14.8 months to close non-rate cases involving ARECA members.

DELAYS

In my research I found that the commission's staff regularly requests time extensions to complete docket work. I did not add up the number of extension requests I came across (now I wish I had), but staff was responsible for far more case delays than utilities were. That's not to credit utilities. In many cases, I found our co-ops were not a bit reluctant to ask for case delays. I would think there is a lot of room for improvement in this area for both the commission and the utilities.

To: Mike
From: Roger March 5, 1985
APUC Sunset Review:

This will be a statewide teleconference, including all rural village locations in Alaska, so you should welcome them; but also indicate that this is for their listening in only. We are not at this time taking testimony on this issue from the teleconference sites, but are taking testimony in Juneau from the members of the Alaska Rural Electric Cooperative Association, (which includes all the rural electric utilities in Alaska) who are having their annual meeting in Juneau this week.

You should also announce that this is a joint teleconference of the House and Senate Labor and Commerce Committees.

I understand that there will probably be about 50 people at the hearing from ARECA, but they have worked out among themselves some 7 or 8 people who they feel are articulate to make the major points.

To reiterate some of what I found out last night at the ARECA reception, all of the major concerns could be boiled down to a relatively short bill, in the opinion of the legal counsel for Chugach, Julie Simon. I don't know if we want to put her on the spot publicly with that request, but you might want to request Chugach or ARECA to draft up a piece of legislation that would take care of their concerns, so that for subsequent hearings we would have something more tangible to work with. The actual legislation sounds like it would be fairly short; but each of the 7 or 8 major points of concern involves a major policy decision by the legislture.

There are numerous options on how to proceed after today. Michael Thill has pointed out that there is some problem with the 60 day requirement, which says that we are required under statute to make the decision on whether to sunset or extend within the first 60 days. However, Michael feels that since the APUC report didnt come out until the 49th day, and you have in your files a letter from Carolyn Guess saying she wouldnt be available on March 13th and 14th, it makes it difficult for us to meet the requirement; but we probably could do it by the end of this session.

Or, we may chose to just put out a bill for continuation of APUC within the next 9 days; and leave the other issues in a separate bill; but the utilities would resist that, because they know the Governor would not sunset the APUC, so I'm sure they would want legislation in with the continuation so it would have a better chance of passing without being vetoed by the Governor.

Or, we may wish to give the APUC a one-year extension and then use the interim to really do research on this issue and come up with a solid bill that we can submit at the beginning of next session.

Or, we could just let the APUC sunset by not doing anything this year, because a bill next year would salvage the situation. The trouble with this approach is that the law requires a Board that has been sunsetted that they have to make a concerted attempt to start winding down their program during their last year of existence. This would mean that APUC would have to start laying off staff (which may not be all that disastrous --skuttlebutt has it that one of APUC's problems is that they have some really high-paid people over there that are both incompetent and stupid).

To: Mike
From: Roger March 19, 85

APUC HEARINGS:

Attached to this memo is some of the notes I have had from various phone conversations with different people on the APUC; there is more coming. I haven't shown any of it to Fred or Michael yet--it should probably be treated confidential so the individuals involved dont get put on the spot.

I hear that the Commission has come loaded for bear. We did manage to get at least some resumes on them on short notice (see files).

There is also a good overview paper on terms and concepts that you might want to call the Committees attention to: #6 in the file, by Chugach, on "What is a Utility," which they drew up at my request after I had some meetings with them last week and it became clear that there were terms I simply didn't understand, and figured the Committee wouldn't either.

There is a good Memo (#7) from Johnson to Hutchers which speaks to the number of open docket cases that APUC has outstanding--a sore point for all the utilities right now.

You probably already saw the letter (#10) from Guess to Frank giving us her response to the names of utilities under $500,000 in vale--I thought it would be helpful backup for the Committee because it deals indirectly with the concern as to whether utilities below a certain size should even be regulated and whether it is cost effective to do so. I will have notes typed up later on the phone call from Bob Blodgett, ex Senator who now runs Teller utility (he is the guy who called you from Kona yesterday--he bent my ear for almost an hour) and is being fucked over by APUC, in his opinion.

I have one big question you might want to ask APUC--which is why are they spending their time going after the little utilities and letting Alascom get by with making regular 20-30% tariff increases? Why does it cost almost double to call inside Alaska what it costs to call outside long distance?

A second question you might want to ask is that in their annual report from last year (see attached), on page 1 they said they would be developing all these procedures to substantially reduce the lag between the hearing process and the issuance of decisions. Why haven't they been able to do this? And why can't they reduce the lag time between the opening of a case and the actual hearing of it?

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James O. Smith
Signature of Camera Operator

9/5/89
Date

02-519 (REV 8/78)

HLC ORGANIZATL MEETING DEPT.'S of LABOR & COMMERCE

HANDBOOK
ON
STATE GOVERNMENT

DIVISION OF PUBLIC SERVICES

LEGISLATIVE AFFAIRS AGENCY

STATE OF ALASKA

March 1984

Department of Labor

OFFICE OF THE COMMISSIONER
- Occupational Safety and Health Review Board
- Alaska Safety Advisory Council

ADMINISTRATIVE SERVICES DIVISION

EMPLOYMENT SECURITY DIVISION
- Employment Security Advisory Council

LABOR STANDARDS AND SAFETY DIVISION

WORKERS' COMPENSATION DIVISION
- Workers' Compensation Board
- Fisherman's Fund Advisory and Appeals Council

DEPARTMENT OF LABOR
(AS 08.18, AS 08.40, AS 08.53, AS 18.60, AS 23, AS 36, AS 44.31)

The DEPARTMENT OF LABOR'S primary mission is to foster and promote the welfare of the wage earners of the state, improve their working conditions, and advance their opportunities for profitable employment. The department administers employment service, unemployment insurance, and workers' compensation programs; enforces laws and regulations dealing with job safety, hours of work, wages, and work conditions; and collects, analyzes, and releases labor and population statistics. The department is the labor relations agency for all public employers and employees, except state employees.

OFFICE OF THE COMMISSIONER
- Occupational Safety & Health Review Board (AS 18.60.057)
- Safety Advisory Council (AS 18.60.830)

The OFFICE OF THE COMMISSIONER is responsible for the overall management of the department's programs and resources; serves as liaison with other state agencies, federal agencies, cities and boroughs, and the state legislature; and acts on unemployment insurance appeals. The office sponsors national distribution of information about employment in Alaska to offset the influx of unemployed persons to the state.

The Occupational Safety and Health Review Board holds hearings and rules on contests which have been filed in connection with citations issued or penalties imposed by the Division of Labor Standards and Safety for alleged violations(s) of Alaska's safety and health standards, statutes or regulations.

The Alaska Safety Advisory Council represents industry, labor, the federal, state and local governments, and the general public. The Council works in cooperation with organizations that are interested in promoting safety, and makes recommendations to appropriate state departments, the governor, and the legislature on the achievement of a coordinated state policy and program for the safety and health of residents of the state. The ASAC organizes an Annual Governor's Safety Conference.

ADMINISTRATIVE SERVICES DIVISION

- Population Information Program
- Research & Analysis Section

This Division provides management information and support services to the Department and develops and distributes labor market and population information and conducts labor force research. The Division's support services include personnel, fiscal, research and analysis, word processing and office services. This Division assists all programs in the Department in planning and meeting their goals and objectives. The research and analysis section gathers data on Alaska's population and economy and produced estimates for total population, population characteristics, employment by industry, and by occupation, wage rates, occupational injuries and illnesses, and unemployment. This section also answers requests and published research. Clients served by the Division include department management and staff; local, state, and federal agencies; legislators; nonprofit organizations; private employers; and individual and organized members of the work force.

EMPLOYMENT SECURITY DIVISION

- Employment Service
- Unemployment Insurance
- Work Incentive Program (WIN)
- Alaska Employment Security Act (AS 23.20)
- Employment Security Advisory Council (AS 23.20.025)

This Division consists of two basic complementary operating programs--Employment Service (ES) and Unemployment Insurance (UI). They provide essential job-matching services to the public, and temporary benefits to eligible claimants while they are seeking employment. The Division also administers the Work Incentive (WIN) Program, which assists welfare clients in obtaining unsubsidized employment.

The EMPLOYMENT SECURITY DIVISION operates within the framework of a federal/state partnership. Congress appropriates the money to the State, and the programs operate under the Alaska Employment Security Act. This act reflects basic federal requirements, tempered with the special requirements of Alaska as determined by the legislature.

The Employment Security Advisory Council reviews problems and assists in determining department policy on matters relating to employment security.

LABOR STANDARDS & SAFETY DIVISION

- Wage and Hour Program
- Labor Relations Agency
- Unemployment Insurance Investigations Program
- Mechanical Inspection Section
- Occupational Safety & Health Section
- Voluntary Compliance Section

The Wage and Hour Program insures that workers are justly compensated for their labors and are safeguarded from unfair or discriminatory practices by enforcing and administering Alaska labor laws. This includes enforcement of minimum wages and overtime, child labor laws, right to return transportation, public contracts law, contractors licensing requirements, wage security bonding of fish processors and primary fish buyers, acting in the capacity of the Labor Relations Agency for all political subdivisions of the State, and responsibility for the administration and licensing of private employment agencies.

The Unemployment Insurance Investigations Program is charged with the responsibility of maintaining a system for detecting fraud overpayments to reduce loss to the Unemployment Insurance Trust Fund.

The Mechanical Inspection Section provides public protection through inspection and certification of amusement rides, boiler and pressure vessels, and elevators. Electrical and plumbing installations are inspected for faulty workmanship, contractor licensing, and to assure that the electricians and plumbers have Certificate of Fitness cards. Cease and desist orders may be issued if contractors or individuals are not in compliance with the statutes.

The Occupational Safety and Health Section aims to protect Alaskan workers from industrial accidents and job-related illness through the enforcement of standards accepted by labor and industry, and by training employers and employees to follow safe and healthful work practices. Every fatality and serious accident as well as all valid complaints about working conditions are investigated. Some work processes, conditions, and procedures are more hazardous than others. Therefore, efforts are concentrated to inspect those employers and work places in industries that have been identified as having a high incidence of injury and illness. The Section also offers services to help employers voluntarily comply with its regulations. No citation or penalty is issued as a result of a consultative inspection. Training courses in occupational safety and health can be requested from the Voluntary Compliance Section by employer and employee groups.

Approximately 163,000 employers and employees in private, local, and state government sectors are served by this division.

WORKERS' COMPENSATION DIVISION
° Workers' Compensation Board (AS 23.30.)
° Second Injury Fund
° Workers' Compensation Act (AS 23.30)
° Fisherman's Fund
° Fisherman's Fund Advisory and Appeals Council (AS 23.35.010)

The WORKERS' COMPENSATION DIVISION is the administrative arm of the Workers' Compensation Board. Its basic purpose is to insure that Alaska workers who suffer injury or disease from their employment receive medical care and cash wage benefits during disablement through their employers or the employers' insurance companies. The board selects cases for hearing and issues orders, including formal board decisions.

The Second Injury Fund, an integral part of the Workers' Compensation Act, provides for the vocational rehabilitation of permanently disabled workers. The Fund provides not only financial aid for retraining, but support and encouragement to the disabled worker and family through personal contact during the crucial period of physical and emotional adjustment.

The Fishermen's Fund provides for treatment and care of Alaska's licensed commercial fishermen who are injured or become ill due to fishing-related activities on shore in Alaska or in Alaska waters. Sixty percent of fees received for each commercial fishing license sold is used to support the Fund. The Fisherman's Fund Advisory and Appeals Council reviews applications for assistance.

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James O. Smith
Signature of Camera Operator

9/5/89
Date

02-519 (REV 8/78)

HLC

INSURANCE

December 4th, 1985

Governor Bill Sheffield
Capital Building
Juneau, Alaska

Dear Governor Sheffield:

The City of Craig has just received more bad news about it's insurance coverage. I know this issue is of concern to you and this information is passed along for your insurance task force, if it is still active, and for you because we need your support for a tort liability limit law.

The latest horror story concerns the city's umbrella liability coverage. Current coverage is 5 million dollars above all of the city's underlying policies. The annual premium is $14,897.00 (up from $3200.00 the year before). The policy expires in January, 1986 and the only available coverage will cost $13,000.00 for the first six months and $20,000.00 per annum thereafter. The bad news is that the amount of coverage is reduced from 5 million dollars to $500,000 and the coverage will apply only to the auto and general liability policies. We can not purchase umbrella coverage for workers compensation, emergency medical, police professional or errors and omissions coverage.

Aside from the incredible premium costs (which account for almost one half of the property tax levy in Craig) the coverage is significantly reduced or unavailable.

Local governments are placed in the situation of trying to provide a multitude of varied services from emergency service to sewerage, daycare, recreation, harbors, transportation, construction, social services; you know the list. We operate with personnel who vary from professionally trained individuals to volunteers who are trying just to make the town a better place to live. We have continuous exposure to innumerable lawsuits. Most cities operate with limited resources and we can no longer insure ourselves sufficiently. We can not ask volunteers (or employees) to place personal homes or savings on the line because they maybe personally named in a civil rights, medical malpractice,or similar lawsuit.

Absent a state lottery, the next best game in town is "sue the city" (or state or school district or borough). We need a limit on the amount of money that can be awarded in a claim against a governmental entity. (I'd like to see it apply to everyone, but my concern now is for the city). Since we can't get umbrella coverage, we need a statue to protect us so governmental functions can continue. Otherwise, I believe, we face serious threats by the loss of services as insurance costs or uninsured exposure or uninsured awards increase.

I read that a recent Rand Corporation survey of lawsuit settlement claims in the asbestos industry showed that for every $1.00

(907) 826-3275 P.O. Box 23, Craig, Alaska 99921

awarded to plaintiffs, 95 cents went to defense lawyers and 64 cents went to plaintiff's lawyers. About 2/3 of the settlements go to the lawyers. I know the Alaska Bar Association is organizing to oppose a tort liability law for obviaous reasons. The American Trial Lawyers Association is organizing for the same fight on the national level. These special interests selfishly ignore the whole problem.

Now the pitch for help: Will you introduce a tort liability bill to protect governments from exorbitant claims? Some states still have soverign immunity for governmental units, which is a possibility. Politics, I'm afraid, will dictate the particulars, but we need strong initiative to get the legislation rolling. I hope you find it consistent with your administration's policy to continue the initiative you have shown by appointing the task force and take the next step to introduce the legislation we need.

Sincerely,

David R. Palmer
City Administrator

cc: Elizabeth Cuadra
Scott Burgess, AML
Senator Dick Eliason
Representative Peter Goll
Mayor Sprague & Councilmembers

Midterm Cancellations, Premium Increases and Nonrenewals: 1985 State Insurance Department and Legislative Responses

October 17, 1985

STATE	FORM	APPLICABILITY	AUTHORITY	CONDUCT	COMMENTS & RATIONALE
Arizona	Circular Letter (8/15/85)	Commercial Lines	"Case and contract laws; unfair trade practices."	Midterm Cancellations	State's cancellation laws pertain only to auto. Contract of adhesion. Insurers "violate trust" by midterm cancellations. Threatens "administrative action."
Arkansas	Directive No. 1-85 (1/7/85)	Property/Casualty	Statute and Directive 20-67	Policy Cancellations & Nonrenewals	Comprehensive bulletin restates specific statutory restrictions and previous department position. Specifically prohibits wholesale cancellations.
California	Letter (7/26/85)	Commercial Lines	Unfair Trade Practices Act	Midterm Cancellations, Premium Increases & Nonrenewals	Threatens legislative action if abuses do not cease, as well as administrative action under the unfair trade practices act. Cancellations and price increases proper only upon "factors... not present at the inception of coverage."
Delaware	Bulletin No. 85-7 (9/18/85)	Commercial Lines	Unfair Trade Practices Act	Midterm Cancellations & Nonrenewals	"Indiscriminate cancellations and nonrenewals" will be reviewed as possible unfair trade practices. Bulletin threatens an ultimate legislative response.
Florida	(1)Informational Bulletin 85-103 (7/25/85)	Property/Casualty	Unfair Trade Practices Act	Inadequate Notice of Nonrenewals/ Premium Increases	Bulletin primarily directed at inadequate notice of nonrenewals and premium increases.
	(2)Informational Bulletin 85-279 (8/13/85)	Commercial Property/Casualty	Florida Insurance Laws	Midterm Cancellations & Nonrenewals	Letter issued "guidelines" providing that "cancellation, particularly midterm cancellation, ...is appropriate only...as a result of...factors ...not present at the inception."
Georgia	Bulletin (7/16/85)	Property/Casualty	Unfair Trade Practices Act	Midterm Cancellations & Premium Increases	Any action not justified by "sound underwriting or pricing considerations" will be scrutinized as a possible unfair trade practice. "Individual risk factors" are key.
Idaho	Bulletin No. 85-1 (3/26/85)	Commercial Property/Casualty	Unfair Trade Practices Act	Midterm Cancellations & Premium Increases	Action must be based on individual risk factors. Unjustified actions will be reviewed as possible unfair trade practice.
Kansas	Bulletin 1985-20 (8/15/85)	Property/Casualty	NAIC Resolution	Midterm Cancellations & Nonrenewals	Threatens legislative and administrative action if insurers continue to correct their errors at the expense of innocent policyholders.

Louisiana	Directive #58 (7/12/85)	Commercial Lines	"Insurance Rating Laws"	Midterm Cancellations & Nonrenewals	Bulletin contains guidelines regarding cancellations and nonrenewals. Unclear as to precise statutory authority.
Maryland	Bulletin to select companies	Commercial Lines	Unfair Trade Practices Act	Midterm Cancellations	Directive used unfair trade practice act as basis. Department is contemplating permanent rules.
Minnesota	(1) Proposed Rules 2700 2400 (8/19/85)	Commercial Lines	Minnesota Insurance Code §45.023; §72A.19	Midterm Cancellations	Proposed rules specify limited permissible bases for midterm cancellation of commercial policies. Notice of cancellation must be given sixty (60) days in advance and must specify basis.
	(2) Bulletin 85-5	Commercial Lines	Unfair Trade Practices Act	Midterm Cancellations, Premium Increases & Nonrenewals	Bulletin primarily directed toward failure to give adequate notice of nonrenewals, premium increases and nonrenewals. Notice should be provided "at the time such information becomes available and no later than sixty (60) days prior to the anniversary or expiration date of the coverage." The commissioner has issued a draft of compromise rules to be published formally in mid-October.
Montana	Emergency Rules (7/19/85)	Property/Casualty	Unfair Trade Practices Act	Midterm Cancellations, Premium Increases & Nonrenewals	Rules cited complaints from policyholders. Complex rules specify permissible bases for midterm premium increases and cancellation as well as nonrenewals. Violation of guidelines constitutes unfair trade practice.
Nevada	Amended Rules 687B. 510 (6/20/85)	All Property/ Casualty including Commercial	Insurance Code (N.R.S. 687B.310)	Midterm Cancellations & Nonrenewals	Amended rules repealed previous exemptions of commercial lines from statutory cancellation and nonrenewal instructions. Rules cited "unprecedented number" of midterm cancellations, often of entire lines.
New Jersey	Emergency Regulations N.J.A.C. 11:1-20.1	Property/Casualty	Unfair Trade Practices Act	Midterm Cancellations, Premium Increases, Nonrenewals	Emergency regulations prohibit midterm premium increases and/or reductions during policy term. Rules issued on emergency basis by commissioner in conjunction with governor and proposed to be adopted permanently. NAII had joined in a lawsuit challenging the regulations as unconstitutional.
North Dakota	House Concurrent Resolution No. 3082	Property/Casualty		Cancellations, Nonrenewals, Premium Increases	House-Senate concurrent resolution directed a study of current cancellation, nonrenewal, and premium increase problems. Current statutes in place do not handle these problems.
Oklahoma	Statute (H-1424; 36 O.S. 4807)	Commercial Lines		Midterm Cancellations	1985 statutory provision designed to curb midterm cancellation of commercial policies. Statute delineates permissible bases for such action.

Oregon	(1) Bulletin (3/7/85)	Property/Casualty	Unfair Trade Practices Act	Midterm Cancellations	Informal bulletin criticized insurers for midterm cancellation of entire lines of coverage. Insurers violate a trust, as well as the unfair trade practices act.
	(2) Rules (9/19/85)	Commercial Lines	Unfair Trade Practices Act	Midterm Cancellations, Premium Increases, Nonrenewals	Rules issued on emergency basis (5/30/85); adopted permanently (9/19/85). Rules require timely notice of nonrenewal, restrict midterm cancellation; prohibit midterm premium increases, and regulate nonrenewals. Final version contains a number of changes; most were favorable. Application only to commercial lines. Proposed thirty day nonrenewal notice cut to twenty days.
South Carolina	Emergency Rule (10/17/85)	Property/Casualty	Trade Practices Law; Case Law	Midterm Cancellation; Inadequate Notice of Nonrenewal	Regulations restrict midterm cancellations, specifying permissible bases therefore; require notice of cancellation ten days in advance; and require thirty day notice of nonrenewal. As in other states, it has been suggested these rules lack statutory authority.
Texas	Bulletin (6/25/85)	Commercial Lines	Existing Rules and Statutory Provisions	Midterm Cancellations	Bulletin reiterated necessity of adhering to existing rules governing midterm commercial lines cancellations.
Washington	Statutes 48.17.080, 48.18.2901	Property/Casualty	Statute	Cancellations & Nonrenewals	1985 law amended comprehensive statute already in place. Increases minimum notice of cancellation (20 to 45 days) and specified permissible reasons for nonrenewal.
Wisconsin	Bulletin (8/31/85)	Commercial Lines	"Insurance Rating Laws"	Midterm Cancellations & Premium Increases	Bulletin encourages insurers to curb midterm cancellations and rate increases.

RLZ:kh

Prepared by National Association of Independent Insurers.

David McGuire

CITIZENS COALITION ON TORT REFORM, INC.

One of the gravest problems facing individuals, governments and businesses in Alaska today is the dramatic rise in liability premiums. At the present time the problem is compounded by a variety of factors. While insurance premiums are being increased, many insurance companies are pulling back from servicing policies in Alaska. The risks, especially in the Bush, are too great. Legislative remedies are needed. Following is a summary of proposals from the CITIZENS COALITION ON TORT REFORM INC.

1. CAP NON-ECONOMIC AWARDS (public entities only? muni. govts; etc)

significant immediate impact

Non-economic awards compensate a victim for pain and suffering, loss of consortium and other intangible losses. A cap will establish consistency and result in predictable insurance programs. We suggest a maximum award of $250,000.

A recent United States Supreme Court decision allowed California to impose a limit of $250,000.

2. MANDATE STRUCTURED SETTLEMENTS

Factors from case determined by AK. figures

Structured settlements provide future payments to the victim equal to the total award. The future payments are consistent with the victim's loss.

Impact-actuarial ~~impact~~ figures for AK.

3. DISCLOSE COLLATERAL INCOME SOURCES

Juries currently are not allowed to know when a victim has insurance coverage and has already been compensated. Accordingly that coverage is ignored in Jury awards.

4. SET A SLIDING SCALE OF ATTORNEY'S CONTINGENT FEES

40% of 1st 50k
30% next "
20% next "
10% above

A sliding scale will increase the proportion to the victim as the amount of the award increases. Current practice allows an attorney a set percentage irrespective of the amount of the award.

The California sliding scale has been upheld as constitutional.

5. MODIFY JOINT AND SEVERAL LIABILITY

Several liability will apportion responsibility in accordance with degree of fault. Under current practice of Joint and Several liability, anyone at fault may be subject to the total liability.

6. REQUIRE ITEMIZATION OF ALL JURY AWARDS

The jury should make its award for damages with specific amounts. Damages will be itemized so as to reflect the monetary distribution among economic losses, non-economic loss, future losses, past expenses and other losses as applicable.

Similar legislation has been adopted by the State of Illinois in May of 1985.

7. ABOLISH RULE 82

This eliminates an additional expense. Current practice allows juries to make an award for damages which includes attorney's fees. Under Rule 82, the court can add up to 10% of the award for attorney's fees. (An attorney can claim and receive up to 10% of the settlement even if the case does not go to court.)

8. MODIFY PREJUDGEMENT INTEREST

Interest should accrue from the time of award or first offer of settlement. Current practice allows for interest to accrue from time of occurance. This will eliminate an unreasonable expense.

9. REVISE WRONGFUL DEATH STATUTE

A cap on wrongful death awards where there are no legal dependents will eliminate unreasonable expenses. The maximum benefit payable for wrongful death, in instances of no surviving dependents, should be limited to $25,000.

Similar legislation exists in Montana.

10. PUNITIVE DAMAGES — not covered under malpractice ins. — used as a bargain to wage settlements

Awards for punitive damages should accrue to the benefit of society as a whole, ie., the State of Alaska.

11. Statute of Limitations

The current statutes of limitation should be modified to insure that they are applicable to a reasonable time certain. Recent interpretations open the individual to liability to an indefinite time future. The result is total unpredictability and unlimited exposure is an uninsurable risk.

12. REQUIRE AN AFFIDAVIT OF MERIT

As a condition of filing a complaint, the plantiff's attorney, must certify there is reasonable and meritorious cause of filing the action. The plantiff's attorney must certify that he has consulted and reviewed the facts with a competent authority and has determined there is reasonbnable and meritorious cause for filing the action.

Similar action has been adopted by the State of Illinois in May of 1985.

13. SPECIAL DAMAGES IN COUNTERCLAIMS

Eliminate the requirement to show special damages. This will require the plantiff's attorney to be held to the same standard of care principles required of other professionals.

14. EXPERT WITNESSES

Strict guidelines must be established for expert witness standards including current experience, substantial portion of his or her time currently involved in the practice and demonstration of a knowledge of the state of the art. Currently there are some expert witnesses whose sole practice is being an expert witness.

15. UNTRUE ALLEGATIONS

Legislation is needed to permit award of attorney's fees and payment of reasonable expenses from parties making untrue allegations without reasonable cause.

Currently there is no prohibition to plantiffs making allegations which are untrue. Similar legislation has been adopted by the State of Illinois in May of 1985.

16. MANDATORY ARBITRATION

Contracts shall provide for mandatory arbitration. The law should provide for judicial review of the arbitration hearings. In the event the mandatory arbitration is substantially upheld, the party requesting the judicial review shall assume all costs and fees related to the appeal.

OTHER SIGNIFICANT ISSUES

Provision for early dismissal of uninvolved parties by filing an Affidavit of Non-Involvement.

Require release of records prior to the institution of a suit.

Mandate advance notice of at least 60 days prior to the cancellation of insurance and provide for a timely return of unearned premiums.

Require disclosure of settlement information to licensing authority.

Provide reasonable immunity in anti-trust suits, except in the instance of malice and provide penalities for frivolous suits.

Make provision for review of professional activities by professional society.

Require all disciplinary actions by any professional group duly consistituted to be reported to licensing authority.

Limit application of strict liability.

REPRSENTATIVE MIKE NAVARRE
C/O SOLDATNA LEG. INFO. OFFICE
Legislative Affairs

from; Division of Insurance

Per your telephone request this date.

Please call me or John George at 465-2515 if we can further assist.

PAUL ~~FROSH~~, DEPUTY DIRECTOR

ELEMENTS PASSED BY THE CALIFORNIA LEGISLATURE

1. CONTINGENCY FEE AGREEMENTS - A sliding scale for contingency fees

2. COLLATERAL SOURCE

3. LIMITS ON LIABILITY - $250,000 cap on non-economic losses (pain and suffering)

4. STATUTE OF LIMITATION - A tightened statute of limitations

5. PERIODIC PAYMENTS - Periodic payments & diversionary trusts

6. ARBITRATION

A G E N D A

October 5, 1985

I. History of the liability issue - given by Dr. David McGuire

II. Presentation from a representative of the following professions.

a. Day Care Center Operators - Margaret Wolfe

b. Alaska Air Carriers - Dave Zundell

c. Alaska Truckers Association - T.J. Thrasher

d. Alaska General Contractors - Dick Cattanaugh

e. C.H.A.R.R. (Caberet, Hotel and Restaurant Retailers) - Charles Selman

III. Overview of the Insurance aspect and how it affects society - given by Bill Gee.

IV. Wrap-up - given by Al Tamagni

EXECUTIVE SUMMARY OF THE PROBLEM

Perhaps one of the gravest problems facing businesses in Alaska today is the dramatic rise in liability premiums. These increases have been so dramatic, in fact, that many Alaskan businesses face the realistic possibility of closing their doors because the cost of insurance is so high that it is not in the best interest of prudent business management to continue to do business. Further, this is not a problem with any one sector of the economy, rather, it is a difficulty faced by day care center operators, tool and equipment rental companies, doctors, air carriers, nurse midwives, lawyers, municipalities, cities, architects, nonprofit organizations, as well as small and large businesses and small, single person proprietorships. Then there is the question of availability in addition to affordability of insurance. Many Alaskan businesses are finding that they cannot find insurance companies to take their account even if they are willing to pay the premiums.

At the present time the problem is compounded by a variety of factors. First, while insurance premiums are being increased, many insurance companies are pulling back from servicing policies in Alaska. The risks, especially in the Bush, are too great. Second, with no legislative remedies under consideration, it appears to many of these companies that Alaskans are content with the situation as it now exists. Third, without a concerted effort by all sectors of the Alaskan economy -- both public and private sectors -- more insurance companies will probably reconsider their coverage policies and the difficulties Alaskans face today will substantially worsen.

WHO IS AFFECTED BY THIS DRAMATIC INCREASE IN LIABILITY INSURANCE?

The cost of liability insurance is a cost of business and is passed along to the consumer as are other costs. ALL Alaskans are paying for this rise in liability insurance in the prices they pay for the goods and services they buy. As the premiums for liability insurance is 'rolled into' the cost of service for a day care center, for instance, that cost will be passed along to all of the parents who send their children to that day care center. Thus all Alaskans are paying for this cost -- if the businesses who are paying the higher liability cost stay in business. At one particular day care center in Anchorage, for instance, the operator must charge parents almost $200 per child per month just to cover the liability insurance premium -- and coverage for the day care center is only for $100,000.

WHAT IS THE SOLUTION?

The problem of astronomical liability insuance rates is not new in the United States. Many states have attempted to resolve this issue in a variety of ways. Some proposals are listed below for consideration

1) PLACE A CAP ON NON-ECONOMIC AWARDS

A noneconomic award is traditionally that sum of money which is given to the victim in compensation for 'pain and suffering.' This award is somewhat nebulous since there is no way to realistically equate the amount of pain and suffering with a dollar figure. The Citizen's Coalition for Tort Reform proposes a cap on noneconomic awards of between $100,000 and $250,000 which is in line with legislation passed by the Illinois and California legislatures, respectively.

2) ITEMIZATION OF LOSSES

In the event of an injury, the injured party is reasonably entitled to compensation for lost income. Under current practice, the injured party does have to state how he or she would have made that money. In other words, if a victim feels that he or she 'could have' made $80,000 in the year that the injury occured, the jury would be urged to accept that figure. The Citizen's Coalition for Tort Reform feels that the injured party is entitled to fair compensation but that the jury should be instructed to itemize the settlement as far as reasonably possible.

3) MANDATE STRUCTURED SETTLEMENTS

While it is truly unfortunate that anyone must suffer injury, the Citizen's Coalition for Tort Reform feels the victim should not be given a windfall profit but rather, should be compensated for his loss(es) in structured and less risky manner. Structured settlements are intended to compensate for further expenses incurred as a result of the injury and to protect the value of the award to the plantiff who might mismanage a lump sum award in a short period of time. This mechanism will allow the insurance company to spread its losses out over a period of time making its loses more predictable, thus making insurance and re-insurance more available. This type of settlement ensures that the victim does not become a burden on society if his or her investment is lost and, further, maintains the victim's dignity and pride. These two objectives can be achieved by the insurance company and the injury party to the best interest of both, the insurance company and the injured party receiving all benefits tax free.

4) REQUIRE DISCLOSURE OF COLLATERAL INCOME SOURCES

At the present time, in a law suit, the jury is not allowed to know other sources of the victim's insurance coverage until after a verdict has been reached. In other words, if a victim is suing for medical (economic) as well as 'pain and suffering' (noneconomic) damages, the jury is not allowed to know if the victim is actually covered under another policy. A victim could reasonably have all of his or her medical benefits already paid through one insurance policy and still be suing for that medical coverage. The plantiff should not be entitled to double indemnity.

5) TIGHTEN THE STATUTE OF LIMITATIONS

Under current statute, a victim may sue up to and including two years after the discovery of an injury. In the case of a broken leg, for instance, the injured party might have sustained the injury in 1978 and, after a number of difficulties, discovers in 1980 that one leg was shorter than the other. Once that discovery has been made, the injured party has two years to file a claim.

Unfortunately the statute of limitations is so loose that suits may be filed for injuries sustained decades earlier. There are cases where suits have been filed by victims who claim that injuries sustained when they were children affected their later life. While the Citizen's Coalition for Tort Reform feels that victims are certainly entitled to settlement of their claims, it is unreasonable to file suit decades after an action

6) REVERT TO 'SEVERAL' LIABILITY

In the process of filing a suit, often parties who have had little actual participation in the injury are saddled with payment for the entire cost. For instance, suppose a youngster is running along the roof of a school that is closed for the summer. He trips and falls through the skylight. The parents of the child sue the School District, the architect who designed the school, the General Contractor who built the school and the firm which made the skylight itself for damages. Suppose further that the architect has died, the General Contractor has left the state and cannot be found and the firm which made the skylight does not have product liability. The School District is thus the only defendant with insurance. Since the School District is the only party with insurance, it must absorb the entire cost of the legal action even though it minimally responsible for the accident. Under 'several liability' the court would assess a percentaage of responsibility and assess damages on that basis. If the School District was held to be 5% responsible for the injury, then the School District should only be responsible for 5% of the total costs incurred by the victim.

7) ESTABLISH A SLIDING SCALE OF ATTORNEY'S FEES

Under current practices, attorney's fees are a combination of expenses and contingency fees -- plus costs. In certain cases, the expenses of investigation are so high and the settlement so low, that the victim may end up with a minimal settlement. There is no guarantee that even if the victim wins a suit that he or she will be left with any remuneration; but the attorney will have his fee covered. A more reasonable mechanism to protect the fiscal rights of the victim is to legislate a sliding contingency fee scale which will ensure that as the victim gets less, the attorney must scale down his fee as well. This approach has been written into law in California and has been upheld as constitutional.

8) REVISE THE CONCEPT OF WRONGFUL DEATH

Wrongful Death is the term used to describe the denial of an estate financial gains because of the premature death of a person. If a breadwinner were to die prematurely, for instance, the dependents are entitled to compensation equivalent to the income that the breadwinner would have earned. This is reasonable. But the method in which this compensation is figured should be scrutinized.

9) ESTABLISHMENT OF A CRITERIA OF MERIT FOR LIABILITY CASES

At the present time there is no mechanism to ensure that when liability cases are initially filed that they are not frivolous. Since it is so easy to file a suit, attorneys can file a suit, knowing that it is frivolous, in the hopes of forcing a settlement from a company that is more interested in avoiding bad publicity that settling a just and reasonable claim. The intent of a liability suit is to compensate a victim for losses incurred. The Citizen's Coalition for Tort Reform feels that an "Affidavit of Meritorious Cause of Action" should be required before a suit is filed as is currently done in Illinois. Only those cases with merit should be considered

10) REPEAL OF SPECIAL DAMAGES

Under current statute and practice, some professions are shielded from suit because of what is known as "Special Damages." Suppose, for instance, that an attorney files suit against an architect for designing a faulty home. At the trial it is discovered that the architect in question did not design the home in question. The suit is dropped but the architect still has legal fees to pay defending himself from a suit brought on by the error of the attorney. Under current statute, the architect would have to file a special damage suit against the attorney in question to recover his losses. But a special damage suit is difficult because the architect must prove loss of business, for instance, because of the bad publicity in the press. This makes his suit more difficult.

The repeal of the special damage statute will place the attorney in the same degree of jeopardy as other professionals with similar background and education.

11) TIGHTENING OF PRE-JUDGMENT INTEREST

Under current statute and practice, awards are made which have a compounded interest attached. Suppose a man is suing a tool company for $100,000 for an accident which occured five years earlier. Suppose further that it took another year for a settlement to be reached. While the jury believed it was granting the victim a $100,000 settlement, the actual cash involved is $100,000 <u>plus</u> compounded interest for six years. If this jury had known this fact, the final settlement might have been different.

12) REPEAL OF RULE 82

Under current practice under what is known as Rule 82, the victim is entitled to add 10% onto the settlement fee to pay for 'legal expenses.' Originally this was intended to assist the victim in covering his legal expenses. But by allowing the 10% as an additional expense, the victim is recovering 10% more than the jury awarded. There is no reasonable reason why this practice should be continued.

13) LIMIT RECOVERY OF PUNITIVE DAMAGES

The intent of a punitive damage suit is to compensate a victim for damage caused by poor quality goods or services which were intentionally portrayed as good quality goods and services. The Citizen's Coalition for Tort Reform feels that there would be a reasonable upward dollar limit placed on punitive damages. The point of punitive damages is to rectify the damage, not drive the company out of business.

Business, public face big insurance liability crisis

By RALPH NICHOLS
Special to AJC

Alaskans face major changes in the way they do business, and in virtually every other area of their lives.

These are not positive changes stemming from the oil wealth enjoyed by the state in recent years. Rather, they come from an unprecedented crisis in the liability insurance system, and threaten the financial security of all Alaska residents and businesses.

Just before Christmas, for example, low-income women expecting babies after July 1 were jolted with unseasonably bad news.

Sky-high insurance rates had forced the Anchorage Neighborhood Health Center to deny obstetrical services to these mothers.

The center's insurance premiums for those services alone had jumped by more than 400 percent--to $200,000--for the 1987 fiscal year.

Similar coverage for physicians working there was up by $30,000 for each doctor.

Officials said the non-profit agency just couldn't afford to provide obstetrical services at these prices.

This most recent example of a liability insurance system gone wild is just the tip of the iceberg.

The current crisis isn't limited to medical care, or even to government and non-profit agencies as well. It's hitting Alaskan businesses hard--and threatening to cripple some of the state's vital industries.

Commercial fishermen are feeling this crunch. For many, insurance is unaffordable or unavailable.

Only four of 30 American insurance companies that still offer marine coverage are willing to write policies on fishing vessels working Alaskan waters.

These policies reflect premium increases of at least 200 percent. Fishermen have been advised to buy them--and to consider themselves lucky for getting any coverage at all.

An Anchorage subcontractor was told recently the cost of insurance for his small crew was going to jump from less than $500 a year to more than $2,000.

Air carriers, architects, truckers and toy store owners are all affected by the current insurance crisis. So are virtually all other businesses, professions and trades.

Customers and clients must pay more in prices, fees for service and taxes to cover these astronomical costs for less liability coverage.

Who is to blame? How can the problem be solved?

Most business persons and professionals--along with America's insurance industry--say the current system through which personal injury claims are settled is flawed and must be reformed.

Trial lawyers--who, on the other hand, will see some of their fees limited in liability cases if reform efforts succeed --say nothing is wrong with the system.

The fault lies squarely with the insurance industry, which must be regulated more closely, they say.

But, says a pro-reform brochure, the primary cause of this crisis is a breakdown of "the fabric of laws intended to protect victims' rights and provide just compensation for injuries."

That brochure, published by the non-profit Citizens Coalition for Tort Reform, adds, "no one can avoid the costs of this unpredictable and inherently unfair system ... not even victims."

The coalition, composed of representatives from a broad cross-section of Alaska businesses and industries, is calling on the 1986 legislature to adopt a package of reforms.

Opposing this reform attempt is the Citizens for Consumers and Victims' Rights, which also speaks for trial lawyers who are aganst the proposals of the tort reform coalition.

This victims' rights organization wants the legislature to adopt a four-point program to regulate the business practices of insurance companies operating in Alaska.

Ames Luce, an Anchorage trial lawyer, said at a recent Anchorage Chamber of Commerce meeting that the crisis "is not caused by the tort system."

It is "caused by the way the casualty insurance business has conducted its business during the last seven to eight years...

"We are facing an insurance, not a tort, crisis," Luce said.

"Tort" is a legal term meaning a wrong. Tort law basically says if a negligent act by one person--either a committed or omitted act--causes injury to another, then the negligent party should pay for those damages.

This concept has been a cornerstone of common law for 300 years.

But, Dr. David McGuire, vice president of the citizens coalition, told chamber members, "the fact is, our tort laws have undergone a radical change in the last 25 years."

Defendants in liability cases once had to be found with "contributory negligence"--an act of negligence that actually con-

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12/30/85 AK Journal of Commerce

• Tort reform

Continued from Page 1

tributed to an injury--before they were required to pay damages.

Court rulings and jury verdicts since the early 1960s, however, have created "joint and several liability." This means that all defendants can be held equally responsible regardless of their comparative fault.

More people are also filing personal injury lawsuits than ever before.

The filing of private civil suits in federal courts was 50 percent higher in 1984 than in 1979; private civil suits filed in state courts were up 20 percent for the same period.

That's one civil lawsuit for every 15 Americans.

Almost 17 millioin private civil suits were tried in state courts in 1984; another 150,000 were tried in federal courts.

The average award for product liability in the United States was $1.07 million last year. In 1975 it was $345,000.

In medical malpractice cases the average award was $950,000.

In 1983, 360 personal-injury cases in the U.S. were settled with awards of $1 million or more. That's 13 times more than the number of million-dollar awards in 1975.

As a result, Alaskans as well as other Americans, have come to view personal injury lawsuits as a form of lottery.

The victims' rights organization, in a printed statement, claims, however, that "the size of verdicts and settlements from personal injury litigation has remained essentially unchanged from 1978 ... when inflation is taken into consideration."

This group also says "tort reform will have little or no impact in Alaska in making available reasonably priced insurance ...

"Alaska represents only a minute section of an insurance company's premium dollar and the present insurance crisis is nationwide."

Luce said any application of national malpractice statistics to Alaska begs the issue, since only one malpractice award has been handed down in South-central Alaska in the last 10 years.

But in one six-month period in 1984, a $3.75 million wrongful death award was made. This single case puts Alaska above the national average on a per capita basis for multi-million dollar liability awards for that year.

Advocates of tort reform counter the argument that changes in Alaska law won't change the insurance rates Alaskans pay by pointing to the case of

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Nader calls for insurance revolt

United Press International

Ralph Nader

By THOMAS FERRARO
United Press International

WASHINGTON — Consumer advocate Ralph Nader spoke out on behalf of American business Monday and said he will call for a "business revolt" against the insurance industry, which he accused of price-gouging.

Nader and J. Robert Hunter, a former federal insurance administrator, charged that the property-casualty insurance industry has used misleading figures to claim it lost money the past two years.

They said at a news conference that the industry has squeezed customers and twisted figures to impose rate hikes of up to several hundred percent for commercial liability insurance in the past year.

Afterwards, Nader said in an interview he plans to hold a meeting soon with representatives of particularly hard-hit industries, such as day care centers, architects and truckers.

"We're going to call for a business revolt against the insurance industry," he said.

Nader said he will urge the businesses to push for legislation to lift the industry's partial immunity to federal anti-trust statutes and measures to make it easier for companies to form their own insurance pools.

Asked if it feels odd to suddenly be a business advocate, Nader said, "Businesses are consumers, too."

The Insurance Information Institute, a trade group, said it isn't worried by Nader's plans, saying it believes the evidence is on its side.

It reiterated the contention that the industry sustained record operating losses last year, but said it did make an after-tax profit of $1.7 billion.

Marc Rosenburg, an institute vice president, said the industry has been forced to boost the commercial liability rates of some customers and cancel the policies of others because it is in "poor economic health."

Last week, the institute estimated that the industry will show a "record operating loss of $5.5 billion in 1985, topping the previous record loss of $3.8 billion in 1984."

Hunter, insurance administrator in the Carter and Ford administrations, charged "the figures are fraudulent." He said counting tax breaks, capital gains and investment income, the industry actually made $1.7 billion in 1984 and $6.6 billion in 1985.

Sean Mooney, the institute's economic expert, stuck to the group's numbers and called Hunter's figures "operating loss" and Nader's figures "some of Hunter's off the wall."

No mention of the industry's after-tax profit was included in last week's institute release, entitled, "Underwriting Loss for P-C (Property-Casualty) Industry Hits New High."

In the past year, the industry has boosted liability premiums of many municipalities by more than 200 percent, 25 percent to more than 600 percent.

At the same time, a number of businesses, including day care centers, mass transit lines, skating rinks, architect firms and bars have seen their liability premiums jump from 100 percent to more than 600 percent.

Some companies had to close because they couldn't afford coverage.

NATIONAL INSURANCE
CONSUMER ORGANIZATION

FOR IMMEDIATE RELEASE
December 9, 1985

CONTACT: Bob Hunter
(703)549-8050

NAIC "FIDDLES WHILE SMALL BUSINESS BURNS" NICO CHARGES

Reno, NV, December 9 - The National Association of Insurance Commissioners (NAIC) is "fiddling around" with issues like collision damage waivers on rental cars "while America's small business community is burned with excessive price increases and unwarranted cancellations of liability insurance," J. Robert Hunter, President of the National Insurance Consumer Organization (NICO) and former Federal Insurance Administrator, charged today.

Hunter pointed to the NAIC press release of November 21, 1985 regarding its annual meeting. The release, which does not mention the liability insurance crisis, lists the "specific issues" that the NAIC will discuss as follows:

- Special Report on AIDS
- Rental Car Collision Damage Waivers
- Credit Life Insurance (on Student Loans)
- NAIC Elections
- State Telecommunication Network

The NICO executive suggested that the NAIC should be dedicating its entire meeting to the crisis. Hunter said the NAIC should be covering the cause of the crisis, which he described as a "crisis manufactured by insurers to bloat their profits and gouge small businesses." Hunter pointed to the fact that the property/casualty stocks have risen 44% as evidence of the gouging. "That's more than twice the rise of the general stock market," Hunter stated.

The fact that this is cyclical and caused by insurer price cuts is evident from the attached charts which display the cycle, the stock market performance and the fact that price cuts are the key cause of the current crisis.

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

Hunter said the NAIC should be looking for solutions to the crisis, such as:

1) The NAIC should encourage the federal government to seek a more pro-active role in the regulation of the insurance business. It is a sign of strength, not weakness, to ask for help when it is truly needed, and states surely need help in this area today. An example of the need is the woefully inadequate insolvency funds of the states, a Maryland S&L crisis waiting to happen.

2) The US General Accounting Office noted that the most critical deficiency in the regulation of insurance by the states was in the shortage of proper staff for adequate regulation. Only half the states have an actuary on staff, for instance. The GAO pointed out that this was a function of money and increased resources for targeted staff development for actuaries, accountants and lawyers will improve the quality and extent of state regulation of the insurance business. Regulators need to develop staff in the critical areas outlined and must be given sufficient resources to do so. The NAIC needs to to a better job of telling America of these gross inadequacies.

3) State law must require disclosure of loss data on a line-by-line basis which would give regulators much better ability to discern whether rates are excessive, inadequate or unfairly discriminatory. Line-by-line reporting will allow for adjustments between personal and commercial lines. The Blanks Committee of the NAIC should amend the Annual Statement to require detailed reporting of all general liability subline data, by subline.

4) To the maximum feasible extent, insurance rates must be made based upon experience. Admittedly some risks are hard to rate experentially, but over time the necessary data base can be developed to properly rate individuals and unusual risks. Experience rating will allow proper market messages to be sent to unsafe risks and reduce the costs for good risks currently paying to allow the continued operations of bad risks. No where is this more critically needed than in medical malpractice rates. The NAIC should lead in such developments.

5) Tough conflict-of-interest statutes must be enacted in the states to prevent continuation of the "revolving door" found by the USGAO where 50% of regulators came from the industry and 50% went to it after being a regulator. An "arms length" relationship between regulators and the regulated industry must be established. The NAIC should adopt a model bill to be on record as favoring such independence.

6) Insurance regulators need better data verification techniques either through conducting their own, more frequent audits or using outside auditors. Recent charges by NAIC President Foudree that data has been falsified strikes at the core of state regulation of insurance. If we cannot trust the annual statements, then state regulation of insurance is a fraud and a sham. The NAIC must move on this forthwith.

7) Insurers must be required to fully disclose to regulators the total rates of return earned, including on investment income, so that full blown rate of return rate regulation can be utilized. The NAIC endorsed this approach at its June 1984 meeting. Texas, the first state to fully use the method in setting auto rates earlier this year, saw a 10 percent reduction in premiums required. This action saved Texas consumers $250 million over the proposed rates. The NAIC needs to be sure that this approach is pushed in each state now that it is official NAIC policy. It will save premiums for small businesses as well as for individuals.

8) State Commissioners must be empowered by the legislatures to meaningfully regulate excess, surplus lines carriers and reinsurers. Abuses, such as withholding coverage by these carriers, have contributed significantly to the current capacity crunch. The NAIC should adopt a model bill to implement this.

9) States need to establish their own reinsurance programs modeled after NICO's federal proposal (See attachment). A state reinsurance program with a risk management component requirement can bring meaningful safety considerations into insurance markets. Establishing models for risk management as a requirement for reinsurance through the state would provide a general market incentive and would ease availability and decrease risks faced by consumers and their primary carriers.

10) States need to examine their anti-group and anti-rebate statutes to see if they serve any public purpose. Since these laws adversely impact upon availability and affordability of cover, they should be scrapped. The NAIC has lagged on calling for the elimination of these obviously anti-competitive and protectionist state laws.

11) State regulators should conduct financial, market conduct and trade practice examinations on a regular basis for all licensed insurers in states. Increased monitoring of insurer's practices and finances can only benefit consumers by curbing rating and other market abuses, as well as insolvencies. Some states have no examiners; this must be repaired.

12) Regulators must resist attempts by industry advocates to force proposed claims made forms, which include defense costs inside the limit of liability, upon consumers.

The proposed, and constantly modified, ISO claims made form means less coverage, more exclusions and less competition for insureds.

There is less coverage because of the timing of coverage involved in the policy and the proposed inclusion of defense costs inside the limit makes coverage illusory. If a buyer has a million dollar claim against it and a million dollars are spent by the insurer defending the suit from which the loss accrued, there is nothing to pay for the loss but the assets of the insured. That's not coverage, its an insurance defense lawyer income security plan! The proposed pollution exclusion is simply a refusal to write this risk until the tort law is changed to suit the industry. It is fascinating to note that ISO does not discount the claims made policy rate a whit for excluding "high cost" pollution coverage. ISO cannot have it both ways; either polluton cover costs a lot and the exlusion should cause a dramatic drop in price, or it costs little (nothing according to ISO) and the coverage should be contained within the policy. Consumers face captivity because of the exhorbitant levels of premium for extended tail coverage that can go as high as 200 percent of the last year's premium. The higher the tail coverage cost, the less likely you are to seek more competitive rates at another company.

Claims made poses a particular problem for the unsophisticated purchaser. Believing that they are getting the same coverage for less, many insureds will immediately purchase the new policy and suffer unanticipated losses. I think that if states adopt any form of the new claims made policy form that it should not be allowed to be sold to small business consumers at all. ISO admits that its "problems" are with only five percent of its larger accounts. It would be inappropriate for regulators to broadly restrict cover based upon scarce, potentially false, and small samples of data. In the alternative, if it can be shown that some small business consumers (again, as defined in 13 CFR 121) would be able to benefit from the new policy form, then that form should be made available to such consumers but only after a reasonable occurrence policy quote is given and a full and complete disclosure of the differences of cover is made by the seller. Disclosure forms could be promulgated by the regulators with input from consumers and the industry.

In any event, states should not approve this moving target, constantly amended form until the industry has had time enough to educate the agents and the consumer. Even if the latest amendments are the last, which I doubt, the form should not become effective before July 1, 1986 at the earliest.

13) States must allow greater consumer representation before the regulatory bodies. All too often the only parties to rate cases are the regulators and the insurer. States must give

greater funding to or create Offices of Public Advocate to statutorily intervene in insurance rate cases. The New Jersey experience can serve as a good model, there the costs of intervention are billed back to the filing party and this causes minimal growth in appropriations expenditures while maximizing consumer protection from abusive insurance rates. A related program could be authorized by the federal government or the states to allow consumers to organize their own Citizen's Insurance Board to intervene on their own behalf as a complement to the efforts of the Public Advocates. The NAIC should take the lead here.

14) The NAIC should unequivocally state that the crisis is caused by insurers and act responsibly to end the unwarrented insurer allegations that the crisis is caused by the tort law. At least, the NAIC should require proof of this charge to refute the clear evidence (see Charts) which I present here that the fault lies within the insurance industry. The least of those in our society, the victims of accidents, stand to lose a lot, for no reason, if the NAIC does not act to strip away the insurance contribution to this crisis.

15) Finally, and of utmost importance, the NAIC should call upon states that rely on competition to control excessive rates to review the market today to determine if competition is sufficient to do the job and, if not (as I expect), to regulate the rates small businesses must pay. States with rate regulation should move firmly to limit the out-of-control pricing practices currently being used by insurers which <u>are</u> excessive and <u>will</u> produce excessive profits in due course.

"This agenda I propose for the NAIC is urgent enough for them to cancel all other sessions and get to work on the real issue facing them. Their choice is of being Neros or heros, and I urge them to choose the latter," Hunter concluded.

- 5 -

CHART #1

THE "CYCLE" AND CONSUMER ABUSE

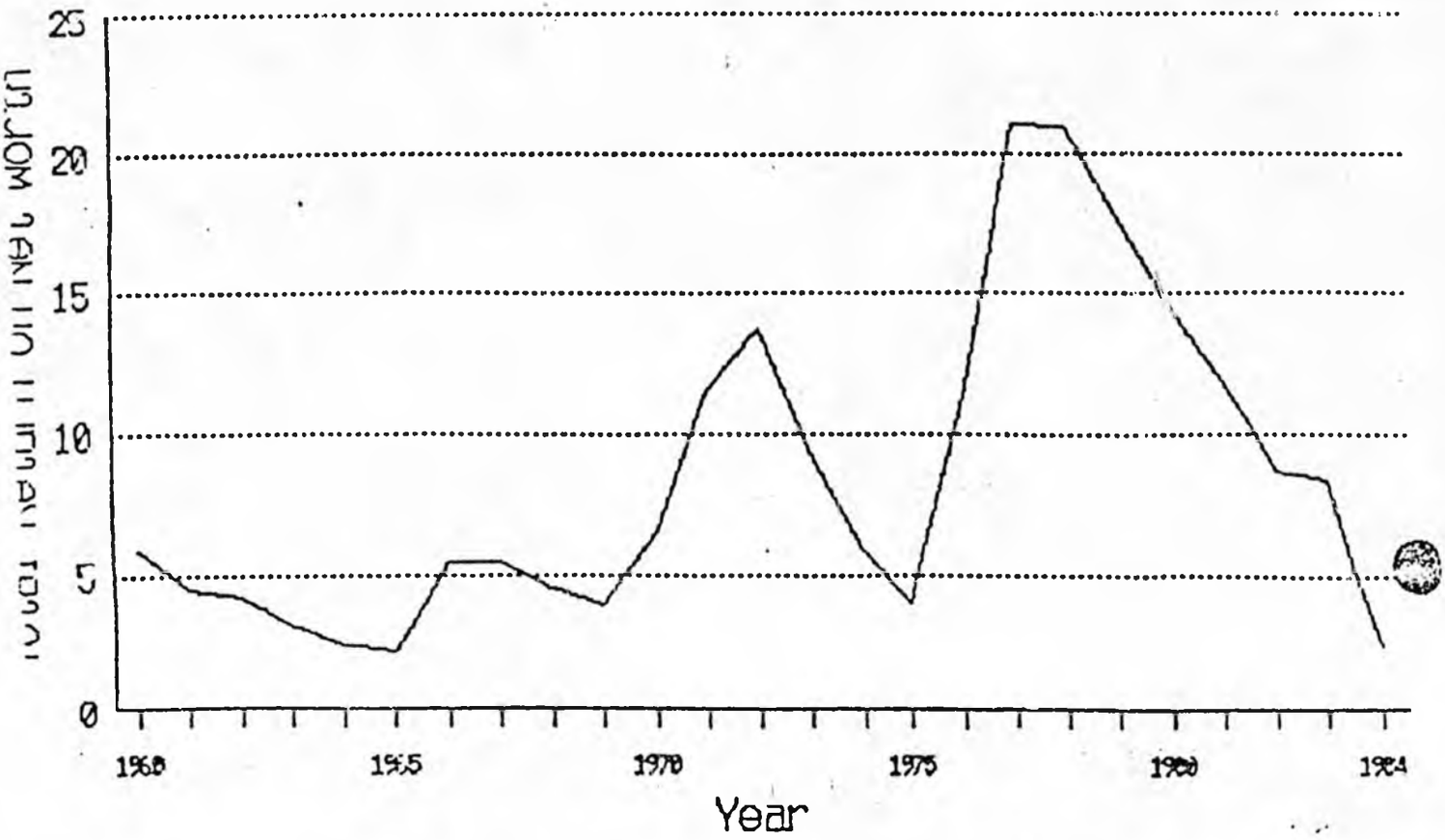


CHART #2

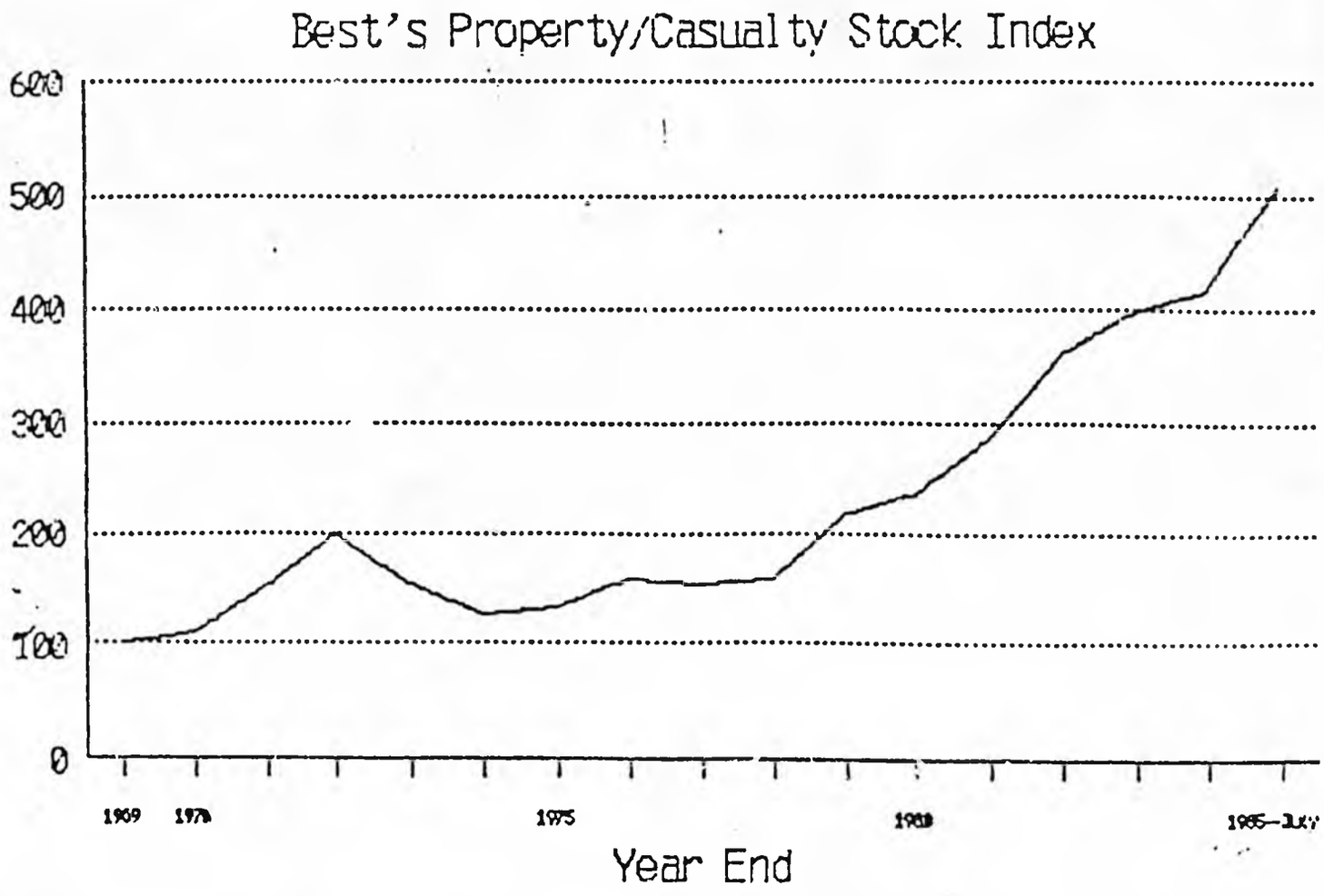
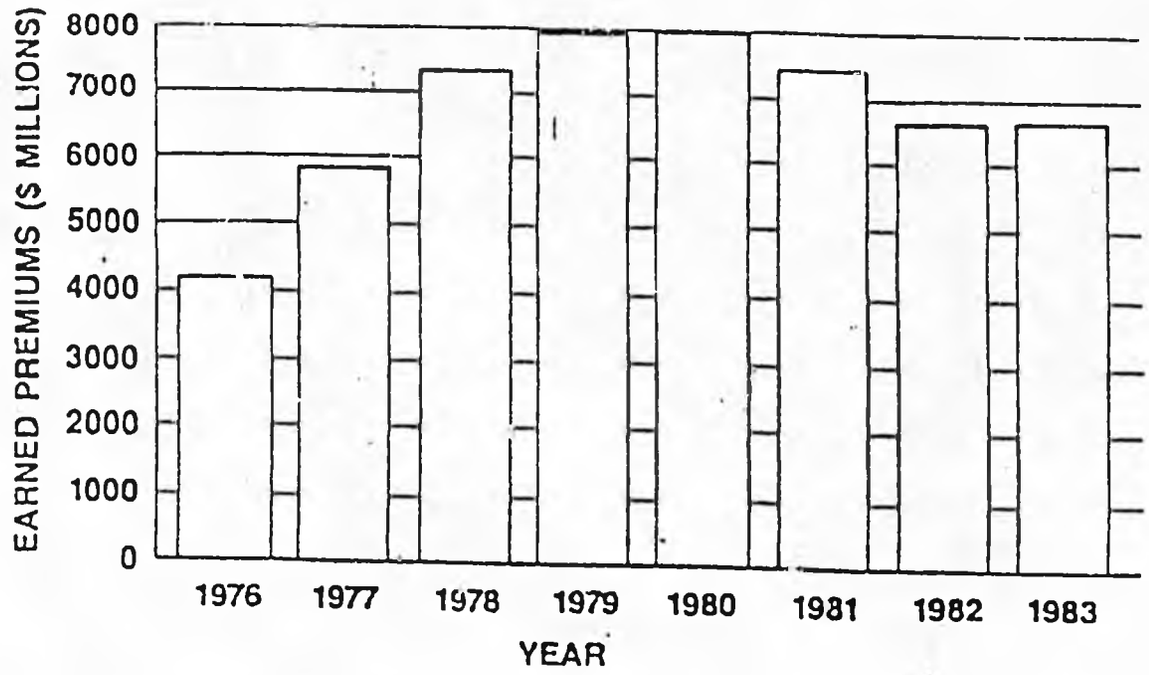

Best's Property/Casualty Stock Index
600
500
400
300
200
100
0
1969
1975
Year End

CHART 3

NATIONAL LIABILITY INSURANCE STRIKE



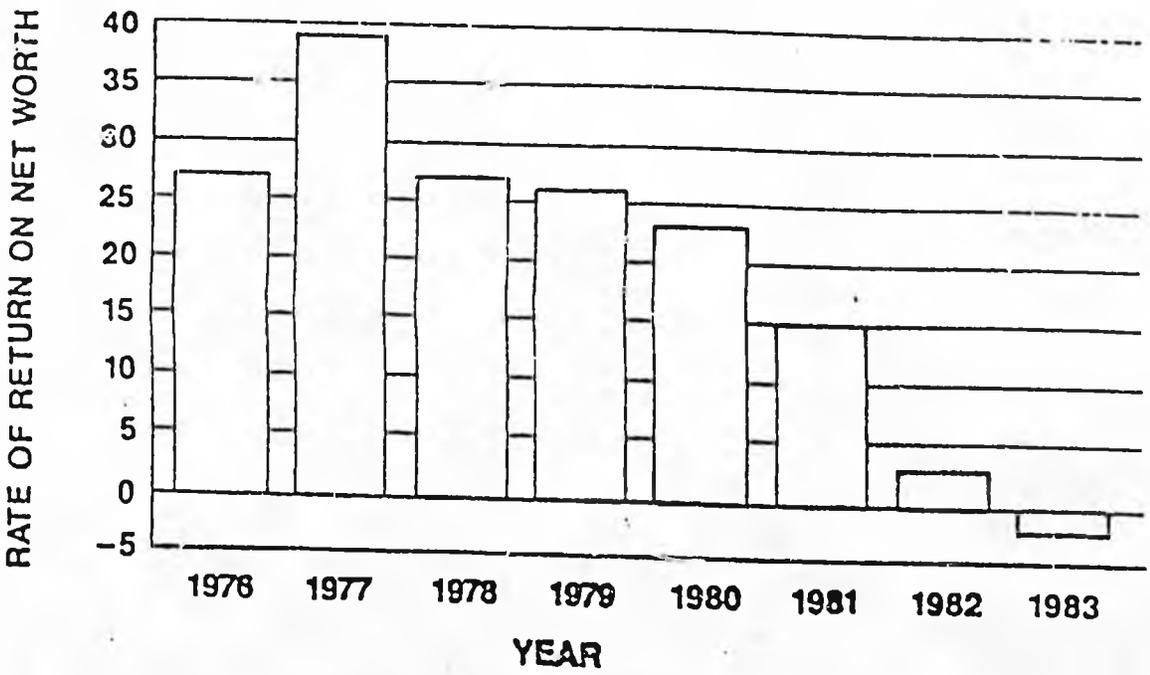
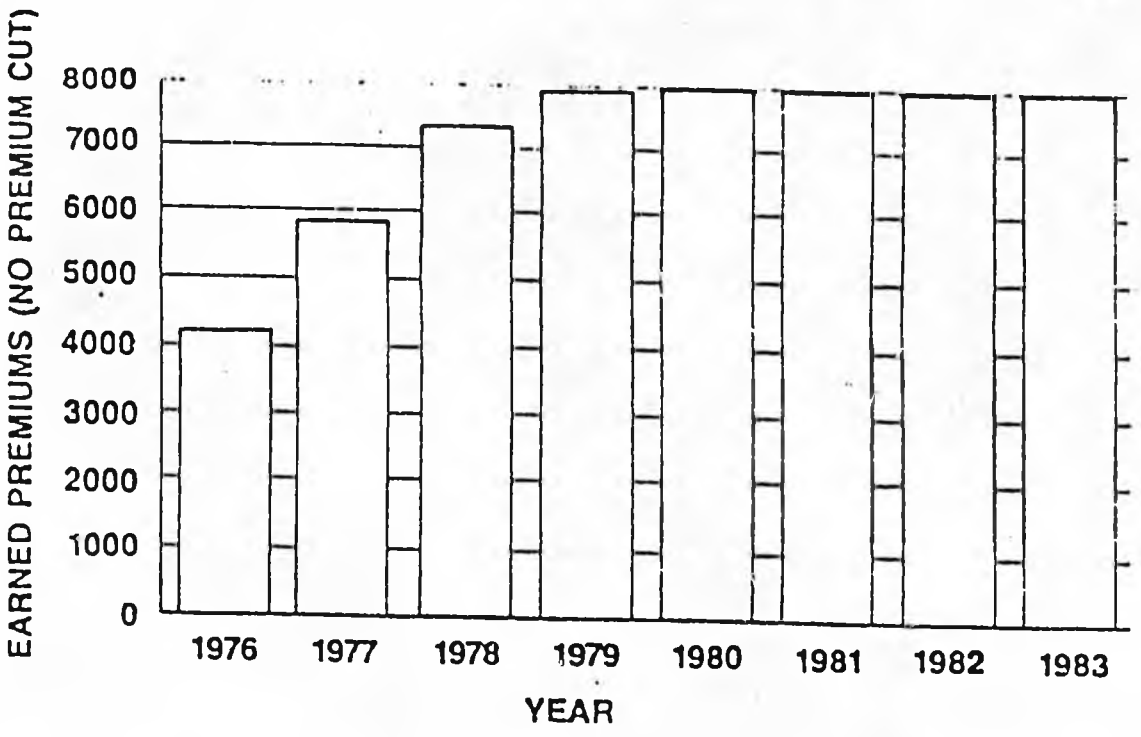
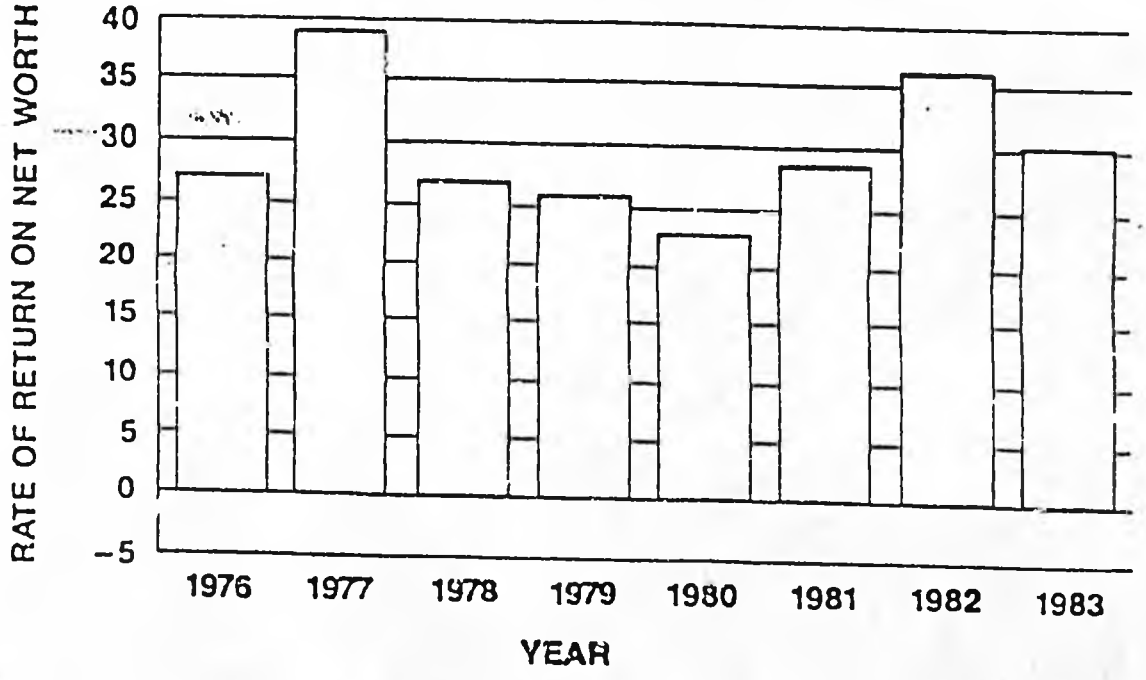


CHART 4

NATIONAL LIABILITY INSURANCE
STRIKE II





DATA UNDERLYING CHARTS 3 & 4

COMMERCIAL LIABILITY INSURANCE PROFITABILITY STATISTICS.(1)
Rate of Return on Net Worth (2)

Year	Earned Premiums (Millions of $)	Actual ROR	All American Industry (3)
1976	$4160	27%	13.3%
1977	5865	39	13.5
1978	7334	27	14.3
1979	7943	26	15.9
1980	7969	23	14.4
1981	7416	15	14.0
1982	6627	3	11.0
1983	6671	-2	11.5
Average		19%	13.5%

(1) Source: National Association of Insurance Commissioners Report on Profitability, By Line, By State.

(2) Rate of Return on net worth estimated from the NAIC Reported Insurance Operating Profit on Earned Premiums by converting to net worth by multiplying by a 2:1 Premium/Net Worth Ratio. Investment Income on Surplus is added at an assumed after tax yield as follows: 1976, 5.0%; 1977, 5.5%; 1978, 6.0%; 1979, 6.5%; 1980, 7.0%; 1981, 7.5%; 1982, 8.0%; 1983, 8.5%.

(3) Fortune 500, 1976-1980; Business Week, 1981-1983.

NOTE: Had the insurers not cut premiums after 1980 but held them constant, the Rate of Return on Net Worth would have been:

1981	29%
1982	37%
1983	31%
8-year average	30%

The problem is clearly rate cutting, nothing else!

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

To be sure, the predicate for the withdrawal of riot insurance was strong, given the very serious situation extant in the country at the time. But the finding of the President's Panel on the Insurance Crisis is just as valid for the day care provider community today and others losing coverage as it was for the inner city communities of the late 60's when the panel found that; "Communities without insurance are communities without hope."

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

The federal government made $125 million writing this reinsurance!

The cities were saved from the sure death that being uninsured brings in twentieth century America!

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

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

Studies would be undertaken to determine if other longer range actions (risk management, insurance reform, etc.) are also needed to resolve underlying problems.

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

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The Tacoma
News Tribune
The Pacific Northwest's Leading Independent Newspaper—Established 1883

NOV. 13, 1985

Insurance firms blamed for rate crisis

By RICK SEIFERT
The News Tribune

OLYMPIA — Insurance companies are largely to blame for rising liability insurance rates and widespread insurance policy cancellations, according to a state legislative report issued today.

"In far too many cases, people are being victimized by a giant industry facing a crisis of its own making," concluded the bipartisan Joint Study Committee on Insurance Availability and Affordability.

The five-member group was chaired by State Insurance Commissioner Dick Marquardt.

The report comes on the heels of a committee hearing late last month at which insurance company executives complained about mounting legal costs, multi-million dollar court judgments and unpredictable coverage risks.

In its report, the committee, which made several recommendations for legislation, called the problems within the insurance industry a crisis, one which was expected to last through 1986.

But the committee laid the bulk of the blame at the feet of the insurance companies.

At six public meetings held around the state this fall, the committee heard from hundreds of people, scores of whom "told of being hit by sharply increased insurance costs or of not having insurance available at any price," reported the committee.

Among those testifying were child care providers, doctors, nurses, restaurant owners, truckers, local public officials, installers of wood stoves and tow-truck operators.

Some are caught in a "catch-22" situation of being required by law to carry insurance but unable to buy it at any price, the committee reported.

And committee members learned that governments, which must stay in business regardless of insurance availability, "are forced to function with dangerously low amounts of protection or with no protection at all," the members said they discovered.

The root of the problem, the committee concluded, originated with insurance companies engaging in "cash-flow underwriting" in which they lowered rates to win premium dollars, which in turn were invested at the high interest rates of the early '80s.

"Sound underwriting and investment practices ... were either ignored or glossed over in favor of a quick return," concluded the committee. Insurance executives said they were forced to cut rates in order to remain competitive.

The report also cited the rising number and cost of court cases as contributing to the problem. One large company told the committee that in 1974, six doctors per 100 were being sued annually. By this year, the ratio had grown to 16 per 100.

The same company reported that legal costs for defending doctors has risen from $12 per $100 in claims in 1950 to $58 per $100 this year.

The committee made several recommendations for legislation, including:

- Expanding high-risk insurance pools to include liability insurance.
- Requiring companies to give 120 days' notice to agents and brokers prior

Continued on Page A-4

Insurance

Continued from Page One

to canceling agency contracts.

- Funding the insurance commissioners office in a way that would tie the amount of funding to the demands placed on the office. Presently the commissioner's office is underfunded, forcing it to rely too heavily on information provided by the companies, the committee concluded.
- Requiring insurance companies to tell commercial policy holders why policies are canceled or not renewed.

The committee also decided that some reform of the state's tort law "appears to be needed" but the group concluded the complex question needs further study.

A tort is wrongful act or damage which can be the subject of a civil court suit. A proposed change in the law might place a lid on the amount for which plaintiffs can sue for pain and suffering.

A REPORT TO THE LEGISLATURE

FROM THE

JOINT STUDY COMMITTEE

ON

INSURANCE AVAILABILITY AND AFFORDABILITY

November 13, 1985

Washington State

Dick Marquardt
Insurance Commissioner, Committee Chairman

Senator Ray Moore
Chairman, Senate Financial Institutions Committee

Representative Gene Lux
Chairman, House Financial Institutions and Insurance Committee

Senator Alex Deccio
Ranking Minority Member, Senate Financial Institutions Committee

Representative Shirley Winsley
Ranking Minority Member, House Financial Institutions and
Insurance Committee

November 12, 1985

To the Honorable Members of the
49th Legislature

Ladies and Gentlemen:

After holding meetings around the state to hear from people affected by the current "insur crisis," the members of this committee agree the crisis is mostly a result of poor manage practices by the companies, compounded by the unpredictability of rising costs for litigatior jury awards.

The reasons for the problems are many, but chief among them is the companies' practic several years of underpricing policies on the theory that volume builds investment cap Unable to predict losses from a weakened investment market and a lawsuit-prone society, companies ran headlong into trouble. The result has been that, in far too many cases, pe are being victimized by a giant industry facing a crisis of its own making.

Hundreds of people attended the meetings, and scores of them told of being hit by shar increased insurance costs or of not having insurance available at any price. Those testif included child-care providers, medical practitioners, restaurant owners, truckers, local offic wood stove installers, tow truck operators, other small business people and many more w livelihoods depend on adequate, affordable insurance coverage. For many of them, insuranc not an option, but a legal or practical necessity.

At the final meeting of the task force, the members heard representatives of major insur companies give their views on the reasons for the current problems in insurance cover nationally and here in Washington.

While recognizing the national, even international, scope of this complex problem the task fc also realizes that the insurance industry is regulated at the state level and that is where actions to address the problem must be taken.

Sincerely,

Dick Marquardt
Insurance Commissioner

Senator Ray Rhore
Chairman, Senate Financial
Institutions Committee

Senator Alex Deccio
Ranking Minority Member, Senate
Financial Institutions Committee

Representative Gene Lux
Chairman, House Financial
Institutions and Insurance
Committee

Representative Shirley Wilbely
Ranking Minority Member, House
Financial Institutions and
Insurance Committee

REPORT ON 'NSURANCE

AVAILABILITY AND AFFORDABILITY

November 13, 1985

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INTRODUCTION

Six public meetings were held by the Joint Study Committee on Insurance Availability and Affordability to gather information on the current "insurance crisis" affecting Washington and the rest of the country. In the interests of readability, this report of the committee has been kept short. For readers wanting more detail, the appendices address various aspects of the problem in some depth. Copies of draft legislation, case histories and other reference materials are being prepared by the Insurance Commissioner's Office.

Five of the six meetings - held August 1 in Wenatchee, August 8 in Yakima, August 14 in Bellingham, August 21 in Spokane and September 11 in Seattle - were scheduled well in advance, to hear from people wanting to comment on any insurance problems. Testimony was sought specifically on day care liability, restaurant and liquor liability, insurance for long-haul trucking, insurance for local governments and insurance for non-profit agencies.

The sixth meeting, held October 21, was set after the insurance industry failed to offer substantive testimony at the first five sessions. Officials of 12 companies were invited to appear and give their views on the insurance crisis as well as on specific cases involving their firms. Eleven of the 12 companies invited sent representatives to the meeting. This report summarizes the committee's conclusions and recommendations.

REPORT OF THE SPECIAL COMMITTEE ON INSURANCE AVAILABILITY AND AFFORDABILITY

The Insurance Crisis - An Overview

The fact that a crisis does exist in the insurance market is apparent to anyone willing to even briefly examine the problem. The number of people directly affected by the rising cost of insurance or the lack of availability of certain types of coverage seems to grow every day.

While it is difficult to determine just how serious the problem will become and how long it will last, most industry observers feel it will continue at least through 1986. How severe its effects will be on our society, on our economy, will depend a great deal on what actions are taken, by legislation or regulation, to ease it.

The inability to obtain adequate, affordable insurance coverage deeply concerns many people. It is an emotional issue, one often colored by subjective viewpoints and misinformation. Insurance underwriting may involve speculation as well as science, and many factors in the current crisis are not easily measured or verified.

The greatest problems of cost and availability exist in the commercial insurance lines, which refers to property and casualty coverage provided to business, professional people and governments. The commercial lines are distinct from the personal lines such as auto or homeowner's insurance, which are property and casualty coverages provided to private individuals.

The Insurance Code states that the business of insurance is "affected by the public interest, requiring that all persons be actuated by good faith..." The public interest is not being served by the commercial insurance underwriters. It is clear that the property and casualty companies are not meeting the needs of business and government. In fact, the ability of business and government to function normally is being

severely curtailed, and in some cases their very existences are threatened. Many businesses and branches of local government are going without insurance coverage or are facing 200 to 300 percent increases in premiums for coverages with dangerously low liability limits.

How Did It Happen?

Property and casualty insurance goes through cycles, with competition during profitable times driving prices low and a tight market forcing prices high. The cycle often depends on outside factors, such as interest rates on investments or an unanticipated rise in the number or size of claims. The highs and lows are more extreme in the commercial insurance lines than in personal lines such as auto or homeowner's insurance.

During the past few years, insurance companies engaged in "cash flow underwriting" (see App. A), competing for every premium dollar. Lower premiums were used to get cash quickly and invest it at the high interest rates then available. Sound underwriting and investment practices, which are the bedrock on which the insurance industry was built, were either ignored or glossed over in favor of a quick return.

Price wars violate the Insurance Code (RCW 48.30.240), but policing the commercial underwriters to see that proper rates and forms are used is the job of the Examining Bureau. The Bureau, established by the Legislature (RCW 48.19.410) as a self-policing arm of the insurance companies, has been limited to property insurance. While rates must be filed with the commissioner's office before they are used, the "watchdog" role was assigned to the companies, acting through the Examining Bureau. From time to time, the commissioner's office has requested funding for field rate investigators so the commissioner could do his own rate examinations, but these requests have always been denied. The committee believes the commissioner's office should be authorized, and staffed with rate investigators, to be sure filed rates are actually being used.

During the height of the price war, so many filings came in that would have permitted even lower premiums than previously allowed, that the commissioner's rate analysts had to adopt a standard form letter of denial. For practical purposes, however, there is no policing mechanism to assure that only approved rates and forms are actually being used in the field.

The Capacity Crunch

The consumers are now paying the price for the insurers' drive for investment dollars. Today's comparatively low interest rates and new restrictions imposed by the "reinsurers," the international companies that in a sense "insure" the insurance companies, have forced a halt to cash flow underwriting. The commercial insurers now find their ability, or "capacity" to provide coverage, severely limited. The "capacity crunch" and the key role played by the reinsurers is described in Appendix B.

Growth of Court Claims

Compounding the current crisis is the long-term growth in the number and size of lawsuits companies must fight. One big insurance firm with long experience in liability coverage told the committee that in 1974, six doctors per 100 were being sued annually, but by 1985, the ratio was 16 per 100. Defense costs for that company rose from $12 per $100 in claims paid in 1950 to $58 per $100 in claims paid in 1985. Evidence given the committee pointed to court actions and legislation which increased the number of lawsuits and cases in which a defendant could be held liable. Significant growth in the size of jury awards during recent years was also shown.

The Need for Coverage

While the insurance market has been hit by such cyclical financial turmoil before, never has the "low point" been so low. The current crisis is the worst in the memory of those now in the insurance business. Unfortunately, the insurers seem determined to solve the problem, which they created, by sudden and drastic action that places often intolerable burdens on business and government.

For some businesses, insurance is an absolute necessity -- required by statute or regulation as with truckers, contractors and escrow companies. They are in a "Catch 22." The law requires insurance, but for some, insurance is not available at any price.

For most others, it is a practical necessity. Without insurance, or with inadequate protection against catastrophic loss, many businesses must severely cut back operations or simply close their doors. Governments, on the other hand, cannot "go out of business" but are forced to function with dangerously low amounts of protection or with no protection at all.

Resources of the Regulator's Office

While the insurance industry was going through the turmoil of cash flow underwriting from 1981 through 1985, more than one-fifth of the Insurance Commissioner's staff was cut. During the same period the number of authorized insurers increased by 132. More companies meant more premiums, more agents and brokers, more policy filings, more rate filings--a huge increase in paperwork. This required the commissioner to put proportionately more people onto the "paper pushing" end of the system (See App. C).

RECOMMENDATIONS

The committee unanimously adopted the following recommendations to enable the insurance commissioner to exercise more effective regulatory control of the insurance industry, to provide a means for guaranteeing insurance availability, and to prevent abusive marketing practices by insurers.

1. The Legislature should make sure insurance is available to those needing it by reauthorizing and expanding the FAIR plan. The FAIR plan, also known as the Washington Essential Property Insurance Inspection and Placement Program, would be expanded to provide liability insurance. The general idea behind the FAIR plan for fire insurance and the assigned risk pool for high-risk drivers auto insurance, both of which have been functioning for many years, is assuring that coverage is available for all.

2. The Legislature should adopt a new law requiring companies to give 120 days notice to agents and brokers prior to cancelling agency appointments. This would prevent insurers from arbitrarily and indiscriminatively cancelling contracts with agents and brokers, thereby eliminating coverage for large blocks of policyholders. This new law would give agents and brokers more latitude in getting cancelled policyholders new insurance (See App. D).

3. The Legislature should adopt a new method of funding the Insurance Commissioner's Office that would tie the amount of funding to the level of activity in the insurance industry. This would provide more stability for the regulatory staff, assuring staff cuts would not occur at the same time more industry control is needed. Funding should allow the hiring of six field rate investigators and two new rate analysts that are needed to enable better monitoring. With only three rate analysts and no field rate investigators, the commissioner now must rely on information supplied by the companies. Funding should also allow restoring six positions in the commissioner's consumer protection office lost during the budget cuts and provide supporting staff for the new personnel (See Appendices C and E).

4. The Legislature should require insurance companies to notify commercial policyholders of the reasons why their policies were cancelled or not renewed. Current law requires insurers to do this for policyholders in the personal insurance lines, and the law should be extended to cover all commercial policies.

5. The Legislature should amend existing law to improve the ability of insurance companies to comply with statutes on cancellation and nonrenewal of insurance contracts. This would involve limited changes to a bill adopted during the 1985 legislative session that required insurers to give policyholders more notice of cancellation or nonrenewal (See App. F).

In addition to the recommendations to the Legislature, the committee unanimously recommends or endorses the insurance commissioner's actions in the following areas:

1. The committee recommends that the commissioner return to "Prior Approval" on commercial rate filings. The committee recognizes that while the commissioner has the authority to do so, more staff is needed to implement it. This action would assure that the commercial insurance rates are fair and thoroughly "checked out" before they are used.

2. The committee endorses the current regulatory action by the commissioner to narrow from 40 percent to 25 percent the "judgmental" factor allowed companies in adjusting commercial insurance rates above and below the filed rate.

3. The committee endorses the commissioner's recent adoption of a regulation prohibiting insurance companies from cancelling, failing to renew or denying homeowner policies for the sole reason that day care facilities are being provided in the home.

- more -

In addition to the foregoing recommendations and endorsements, the committee is taking the following direct action.

The committee has begun setting up a Legal Action Task Force to review and collect data relevant to Washington's experience in tort law, and to recommend any changes needed to improve the availability and affordability of liability insurance. Based on testimony received by the committee, some reform of Washington's tort law appears to be needed. The committee, however, has neither the legal expertise to judge tort reform proposals, nor enough facts pertinent to Washington's experience to make informed recommendations of appropriate legislative action.

APPENDIX A

Cash Flow Underwriting

Cash flow underwriting had its roots in the runaway inflation that peaked in the late 1970s and early 1980s. Federal deficits, the oil embargo, "guns and butter" financing of the Vietnam War -- whatever the reasons for inflation, they can also be assigned blame as the root causes of the current dilemma. The excessive inflation led to excessive interest rates, which in turn led to the excesses of cash flow underwriting which resulted in the excessive measures being taken now by insurers against policyholders.

In the latter half of the 1970s, inflation pushed interest rates to unprecedented heights. Insurers began moving away from their traditionally conservative investment philosophy in favor of the short-term high yields that became available during those years. This practice picked up momentum and, by 1980, the insurance industry was engaging in a mad scramble to obtain premium income for the primary purpose of reinvesting it at the high interest rates. Sound underwriting considerations were glossed over or ignored in the rush to increase the cash flow.

The day of reckoning arrived when interest rates moved down to today's levels. About the same time, the disregard for sound underwriting started affecting the surpluses of insurance companies. An insurer's surplus is roughly equivalent to the net worth of a conventional business. It is the money available to pay claims if premiums are inadequate.

In the Spring of 1984, the reinsurers that had survived the rate cutting frenzy let it be known that, as their treaties (contracts with insurance companies) came up for renewal, sanity would have to return to the markets. By the Spring of 1985, most of the treaties that had not been cancelled had been renewed with strict requirements that the primary insurers increase their premiums -- particularly in the liability lines. The commercial underwriters had no choice but to comply. Appendix B, which follows, describes how the unregulated reinsurance market exercises ultimate control over commercial insurance underwriters.

APPENDIX B

The Capacity Crunch and the Reinsurers

The "capacity crunch" is industry jargon referring to the insurance companies' inability to write as many policies, measured by the amount of "premium" or money taken in each year from policyholders, as they did a few years ago. There are three reasons why the companies do not have the capacity to handle new policyholders or even some of their old policyholders.

The first is that the companies' surplus (money available to pay claims that exceed the total of premiums taken in) has diminished as interest rates have fallen and claim frequency increased.

Second, there are recognized industry guidelines limiting the amount of premium property and casualty insurers can write. The amount of premium, which translates into number of policies written, has a fixed relationship to the amount of surplus. Insurance companies can generally write up to three times as much premium as they have surplus. Historically, most insurers have written more policies -- more premium -- than three times their surplus, but have maintained their good ratings by passing the excess premium (policies or "risks") on to a reinsurance company. When the reinsurance carriers pulled out of the market, that practice was severely restricted or ended.

The third reason for the capacity crunch is that higher premiums on individual policies meant fewer policies could be supported by a relatively fixed or shrinking capacity. Some companies were forced to cancel policies to stay within their capacity level.

To illustrate, assume an insurer had $100 million of surplus and thus could write $300 million of premium based on its own resources. Such a company might have written as much as $400 million by passing excess premium (and risk) on to a reinsurer. The cash flow underwriting binge has not only depleted the $100 million surplus and thus the amount the company could write on its own resources, it has also caused the reinsurer to withdraw from the market. Thus, the insurance company is limited in its writings by its own resources. If, in this example, its surplus had been reduced from $100 million to $90 million, the company is now limited to $270 million of premium, instead of the $400 million it was writing when its surplus was $100 million and it had reinsurance treaties extending its writings to as much as $400 million. Capacity has been reduced by $130 million -- from $400 million to $270 million.

A company with its capacity limited is like a merchant who can sell more goods than he has on the shelf. The supply is constricted but the demand continues to grow. An insurance company in this situation will contrive to raise premiums, be very selective in its underwriting, cancel contracts with its producing agents, and generally conduct itself like any supplier in a seller's market.

APPENDIX C

Resources of the Regulator's Office

The committee recommends that the Insurance Commissioner be funded to hire six field rate investigators trained to examine insurance company underwriting and rating records to determine whether (a) insurance companies are using filed rates and (b) submitting accurate statistical and other information to the Insurance Department in support of rate filings. The committee believes that during the destructive "rate war" that occurred from about 1979 to 1984, many if not all property/casualty insurance companies used unfiled and often inadequate rates to obtain business and retain market share. With a small staff of three rate analysts and no field rate examiners the Insurance Department lacks the tools to monitor such conduct and to enforce the existing rate statutes.

In addition to the hiring of field rate investigators, the committee recommends that the Insurance Commissioner be funded to hire two rate analysts to assist the present staff of three with their review of insurance company rate and form filings. Due to an ever increasing workload in this area the Insurance Commissioner was compelled to go from a "prior approval" system of rate review for commercial rate filings to a "file and use" system which, while subject to the same statutory standards for disapproval of filings, results in insurance companies being able to use rates before those rates have been reviewed by the Insurance Department. The addition of these rate analysts will permit a return to the "prior approval" system of rate filing review and, in conjunction with field rate examinations, should result in more effective supervision of rate adequacy and enforcement of existing rate statutes and serve to lessen the severity of destructive underwriting cycles upon the citizens of Washington.

APPENDIX D

Draft Legislation on Agency Cancellations

CANCELLATION OF WRITTEN AGREEMENT WITH AGENT OR REFUSAL TO ACCEPT BUSINESS

(a) No insurer may cancel its agreement with an appointed agent with respect to insurance or refuse to accept insurance business from such agent unless it complies with the provisions of this section.

(b) If an insurer intends to cancel a written agreement with an agent, or intends to refuse any class of renewal business from the agent, the insurer shall give the agent not less than 120 days advance written notice of it. Notwithstanding any provision of the agreement to the contrary, the insurer shall continue, for not less than one year after notice of its intent to terminate the agency agreement, to permit insureds to process their renewals through the agent as to any of the policies which have not been replaced with other insurers as expirations occur. This subsection shall not apply to: (1) agents or policies of a company or group of companies represented by agents who by contractual agreement represent only that company or group of companies if the business is owned by the company or group of companies and the cancellation of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance; or (2) life, health, surety, ocean marine and foreign trade, and title insurance policies.

(c) No insurer shall cancel or refuse to renew the policy of the insured because of the termination of the agent's contract.

(d) In addition to the other provisions of this section, no insurer may cancel or amend a written agreement with an agent, or refuse to accept business from such agent if the cancellation or amendment is arbitrary, capricious, unfairly discriminatory as contemplated by RCW 48.30.300, or based in whole or part upon the sex, race, creed, color, religion, national origin, place of residency of the agent, his or her applicants or policyholders.

(e) Any insurer or agent that accepts brokerage business and rejects the business of a broker shall provide to the broker, upon request of the broker, the reasons in writing for the rejection.

APPENDIX E

Orderly Funding of the Insurance Regulatory System

The Insurance Commissioner's Office should be funded on a systematic basis that would reliably relate to the activity in the insurance business. Senate Bill 3657, now in Senate Rules 2, would do this. It assesses each insurer a small fraction of one percent of premium to fund the Commissioner's Office. To the best of the committee's knowledge, the Commissioner's Office is the only regulatory agency not now funded by the industry it regulates. Too often a budget crunch at the state level coincides with unusual activity in the insurance business.

Between 1981 and 1985, while the insurance industry was going through it's self-destructive cycle of cash flow underwriting, personnel in the Insurance Commissioner's Office was cut by more than 20 percent -- from 95 to 74 FTEs. During that time, general government employment rose by 10 percent. While staff cuts were being imposed, the number of authorized insurance companies in Washington grew by 132 to the present level of more than 1,400. During that time, the total annual premium taken in by the companies went from $3.8 billion to $5.5 billion. With more companies and more premiums, the number of licensed agents, brokers, and adjusters increased -- increasing the burden on the Commissioner's staff with respect to qualifications, continuing education, appointments, supervision and discipline of licensees. The number of licensees has increased to about 25,000, and new policy forms and thousands of rate adjustments have added to the workload. Contacts between the public and the commissioner's staff have increased from about 1,500 per week in 1983 to the present 3,000 contacts per week.

This rapid growth meant a huge increase in paper work. With decreasing personnel, the Commissioner was forced to shift more effort to pushing paper through the system and less to the examination of companies, policy and rate analysis, agent supervision and policyholder complaints.

Senate Bill 3657 would fund the regulatory system in an orderly manner that would relate directly to the activity in the insurance industry rather than subjecting it to the vagaries of the general government budgeting process. Too often the resources of the Commissioner's Offi zig when the activity in the insurance industry zags.

APPENDIX F

Cancellation and Nonrenewal Statutes With Proposed Amendments

Draft For Changes to RCWs

Sec. 17. Section .18.29. Chapter 79. Laws of 1947 as last amended by section 7, chapter 110, Laws of 1982 and RCW 48.18.290 are each amended to read as follows:

(1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy, may be effected as to any interest only upon compliance with either or both of the following:

(a) Written notice of such cancellation must be actually delivered or mailed to the insured or to his or her representative in charge of the subject of the insurance not less than forty-five days prior to the effective date of the cancellation except for cancellation of insurance policies for nonpayment of premiums, which notice shall not be less than ten days prior to such date and except for cancellation of fire insurance policies under chapter 48.53 RCW, which notice shall not be less than five days prior to such date: PROVIDED, That where cancellation is within the first 30 days after the contract has been in effect, at least ten days notice of cancellation is sufficient, and in case the contract is evidenced by a written binder which has been delivered to the insured, if such binder contains a clearly stated expiration date, no additional notice of cancellation or nonrenewal shall be required; PROVIDED FURTHER, that in all cases a loss payee shall receive no less than forty-five days notice of cancellation.

(b) Like notice of not less than forty-five days must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder.

(2) The mailing of any notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

(3) The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as possible, and no later than forty-five days after the date of notice of cancellation to the insured for homeowners', dwelling fire, and private passenger auto. Any such payment may be made in cash, or by check, bank draft, or money order.

(5) This section shall not apply to contracts of life or disability insurance without provisions for cancellation of life or disability insurance without provision for cancellation prior to the date to which premiums have been paid.

NEW SECTION Sec. 20. A new section is added to chapter 48.18 RCW to be codified as RCW 48.18.2901, to read as follows:

(1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.290 unless one of the following situations exists:

(a) The insurer gives the named insured at least forty-five days' notice in writing as provided for in RCW 48.18.290, that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or

(b) At least twenty days prior to its expiration date, the insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, ((~~including the amount by which the premium or deductibles have changed from the previous policy period, and the date by which such payment must be made,~~)) and the insured fails to discharge when due his obligation in connection with the payment of such premium or portion thereof; or

(c) The insured's agent or broker has procured other coverage acceptable to the insured prior to the expiration of the policy period.

(2) A renewal shall be based on rates and forms applicable to the expiring policy and its term, except to the extent the insurer gives at least 20-days advance notice of changes in rates or contract provisions.

~~(2)~~ (3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal, or with respect to cancellation of fire policies under chapter 48.53 RCW.

~~(3)~~ (4) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term: PROVIDED, HOWEVER, That any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295 be considered as if written for a policy period of terms of six months: PROVIDED, FURTHER, That any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295, be considered as if written for successive policy periods or terms of one year.