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only way that we will be able to offer insurance to our members in all fifty states.

2) Address the problem of reinsurance unavailability:

Our problem began when Mutual Fire's reinsurance treaties were not renewed. Since then we have heard many insurers state that their capacity to write insurance is limited by the unavailability of reinsurance. A new company also cannot get reinsurance and this substantially increases both short and long term financial risks.

In this regard, the American College of Nurse-Midwives urges you to make reinsurance available. This could be done by legislating the plan for federally-based reinsurance which has been drafted by the National Insurance Consumers Organization, investigating U.S. business practices and legislating changes to encourage the establishment of U.S. owned reinsurance companies.

3) Make occurrence policies available.

Nurse-midwives cannot purchase an occurrence policy. Additionally, in studying the possible formation of a new company, we have been advised that

this company would also have to write a claims-made policy. The reason is that reinsurers will only reinsure the claim-made type policy. This situation must be changed.

Lastly, we need this assistance quickly. Although some private practices and birthing centers have already gone out of business, by spring the vast majority of these small businesses will be vulnerable. Thank you for your support and interest in this problem.



LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

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CABLE ADDRESS: LAWCV, WASHINGTON, D.C.

August, 1984

MEMORANDUM

RE: The Constitutionality of State
and Local Divestiture Legislation

FROM: The Lawyers' Committee for
Civil Rights Under Law*

In the last few years a number of state and local governments have acted to withdraw investments of pension and other governmental funds from firms doing business in South Africa. This "divestiture" by state and local governments of funds invested in firms doing business in South Africa has been criticized as unconstitutional in the halls of Congress and elsewhere. State divestment, and in particular state divestiture legislation, these critics contend, both violates the foreign commerce clause of Article I of the Constitution and intrudes

* The Lawyers' Committee gratefully acknowledges the assistance of Mark P. Gergen, an associate at the law firm of Arnold & Porter, in the preparation of this memorandum. Please direct all inquiries regarding this document to Gay J. McDougall, Director, Southern Africa Project, Lawyers' Committee for Civil Rights Under Law.

upon the impliedly exclusive authority of the federal government to conduct foreign relations.¹

The charge that state and local divestiture legislation is unconstitutional is misguided and without basis in either constitutional principle or judicial precedent. Divestiture is grounded on the undisputed authority of a state to manage its own finances and to determine what activities it will support. State divestiture legislation does not violate the Commerce Clause, for that clause is simply not concerned with this type of state proprietary decision. Nor does such legislation impermissibly intrude upon the federal foreign relations power. State divestiture legislation violates no statute, treaty or executive agreement of the United States, and so transgresses none of the grounds upon which state action has traditionally been deemed violative of national foreign policy. Further, as a form of proprietary action state divestiture is not so disruptive

¹ Larry M. Eig (Legislative Attorney, American Law Div., Congressional Research Service). Analysis of Whether the District of Columbia South Africa Investment Act (D.C. Act 5-76) Violates the Commerce Clause of the Constitution and the Exclusive Federal Power To Conduct Foreign Relations (Jan. 31, 1984) ("CRS Memorandum"); Note, Constitutionality of the No Discrimination Clause Regulating University of Wisconsin Investments, 1978 Wis. L. Rev. 1059. See also Letter of Philip M. Crane to Members of the House of Representatives, Jan. 24, 1984.

of foreign relations to warrant its prohibition on the basis of some presumed constitutional principle prohibiting state action which impairs this nation's foreign relations.

I. The Divestiture Movement.

In recent years opponents of apartheid in this country have sought to compel American firms to cease doing business with or in South Africa. The movement has taken a variety of forms, including shareholder corporate governance resolutions, consumer boycotts of South African products, and, most prominently, threats by governments, labor unions, and other prominent institutions to withdraw funds invested in firms or banks doing business in South Africa. The divestiture movement is important, for American businesses play a significant role in South Africa, and those businesses depend upon investments from public and private pension funds.²

² Currently, over 6,000 American companies do business in South Africa, and total United States investment in that country is over \$14 billion. American corporations play a significant role in such important sectors of the South African economy as petroleum, automobiles, and the computer industry. See Davis, Cason, and Hovey, Economic Disenfranchisement and South Africa: the Effectiveness and Feasibility of Implementing Sanctions and Divestment, 15 L. & Pol. Int. Bus. 529, 545-49 (1983).

[Footnote continued on following page]

The divestiture cudgel has been picked up by private organizations as diverse as Yale University, the National Council of Churches, and trade union pension funds. This private action poses few legal difficulties, even though it has been argued that divestment by a trustee of a pension fund or a charitable trust might violate the fiduciary duty to the beneficiaries of the fund or trust to maximize investment return.¹ More problematic is divestiture by state and municipal governments, for that raises Constitutional issues not implicated by private action concerning the power of state and local governments to play a role in shaping this nation's commercial and political relations with South Africa.

States which have divested in some fashion include

[Footnote 2 continued from preceding page]

It has been reported that public and private pension funds own one-quarter of all publicly traded stock and control more than two-fifths of all debt capital in this country. Id. Indeed, General Motors reports that 10% of its total debt is held by public funds, such as pension systems and state cash accounts. Wall Street Journal, April 13, 1984, at 33, col. 4.

¹ Note Socially Responsible Investment of Public Pension Funds: The South Africa Issue and State Law, 10 N.Y.U. Rev. L. & Soc. Ch. 408 (1980-81), responds to this criticism of private divestiture.

Connecticut,⁴ Massachusetts,⁵ Michigan,⁶ Nebraska,⁷ and Wisconsin.⁸ Cities which have acted include the District of Columbia,⁹ Philadelphia,¹⁰ San Francisco, and Wilmington. Currently, similar initiatives are pending before numerous other state legislatures and city councils.¹¹

The decision to divest has been made by states in a variety of fashions. In Massachusetts, for example, divestiture was in the first instance done informally

⁴ CONN. GEN. STAT. ANN. § 3-13f.

⁵ MASS. GEN. LAWS ANN. ch. 32, § 23. See also 1979 MASS. ACTS ch. 393, item 0612-1500.

⁶ MICH. COMP. LAWS §§ 25.145(5); 37.2402(1)(f).

⁷ LR43, Neb. 86th Leg., 2d Sess. (Mar. 31, 1980). It has been reported that Nebraska recently enacted formal legislation imposing some restrictions on investments of public pension funds in firms doing business in South Africa. Wall Street Journal, April 18, 1984, at 33, col. 4.

⁸ WIS. STAT. ANN. § 36.29(1), which prohibits University of Wisconsin investments in firms which discriminate on the basis of race, has been interpreted by the Wisconsin Attorney General to prohibit investment in companies that do substantial business in South Africa.

⁹ D.C. Law 5-50 (1984).

¹⁰ Bill 1060-A (June 17, 1982).

¹¹ It has been reported that divestiture bills are now pending in 26 states -- including New York and California, the two most populous states -- and 20 cities. Wall Street Journal, April 18, 1984, at 33, col. 4; Christian Science Monitor, March 2, 1984, at 3.

by a decision of the Massachusetts State Treasurer to no longer place new investments in firms doing business with South Africa.¹² Later, the Massachusetts legislature formally acted to require divestment by state owned employee pension funds.¹³ Other jurisdictions which have enacted legislation specifically requiring divestiture include Michigan, Connecticut and the District of Columbia. In Wisconsin, on the other hand, divestiture was ordered by the State Attorney General who interpreted a statute generally prohibiting the investment of state funds in firms which practiced race discrimination as prohibiting the investment of state funds in firms doing business in South Africa.¹⁴ And, in Nebraska the state's policy of divestiture was first announced by an informal legislative resolution.

The fashion by which states divest is as varied as the process by which the decision to divest is reached. Connecticut, for one, merely requires that as a condition to the receipt of investments of state funds a company doing business in South Africa must agree to adhere to the Sullivan Principles and not to give succor to

¹² N.Y.U. Note, supra, n.3 at 414-15, n.66.

¹³ MASS. GEN. LAWS ANN. ch. 32, § 23.

¹⁴ 67 Wis. Op. Att'y Gen. 20 (1973).

the South African armed forces or police.¹⁵ Most other jurisdictions have required complete divestment and not merely adherence to the Sullivan Principles. So, Michigan prohibits investments in "organizations operating in South Africa."¹⁶ Casting its net somewhat wider, the District of Columbia prohibits investment in any company or financial institution "doing business in or with the Republic of South Africa or Namibia."¹⁷

Divestiture legislation need not even identify South Africa as its subject. The Wisconsin experience illustrates how a general legislative mandate that funds not be invested in firms that practice race discrimination could be applied to bar investments in firms operating in South Africa, which of necessity must follow discriminatory employment practices. Similar legislation has been proposed in Oregon either to prohibit investments of state funds in firms which practice or condone discrimination or, alternatively, to prohibit investment

¹⁵ CONN. GEN. STAT. ANN. § 3-13f. The Sullivan Principles require that a corporation doing business in South Africa desegregate the workplace, treat workers equally, provide training for blacks, and seek to improve the quality of workers' lives. See Davis, *et al.*, *supra*, n.2 at 350-53.

¹⁶ Mich. Comp. Law § 37.2501(1)(f). The Michigan statute also requires divestment from organizations operating in the Soviet Union. *Id.* 37.2501(1)(g).

¹⁷ D.C. Act 5-76, § 2.

'in any firm which conducts substantial business operations in any country whose laws on their face require invidious discrimination on the basis of race, color or national origin."¹¹ The Michigan statute is comparable in that its stated purpose is to not "encourage or condone legally required discrimination against an individual on the basis of race or color," however the law goes on to specifically prohibit investments in firms operating in South Africa.¹²

The diverse forms of divestiture complicate the analysis of the movement's constitutionality. The arguments which may be made against "purer" forms of divestiture legislation -- such as the Michigan or the District of Columbia laws which simply prohibit investments in firms doing business in South Africa -- are considerably muted when directed at other forms of action. So, divestment seems less an intrusion by a state into foreign relations where it is the consequence, as it was in Wisconsin, of the implementation by a state of a general edict not to support firms which practice discrimination. At the same time, it is impractical for federal courts to oversee state investment

¹¹ Senate bill 957, 1979 regular session.

¹² MICH. COMP. LAW § 37.2501(f).

activities to ensure that divestiture is not accomplished informally, as it was first done, for example, in Massachusetts. The regulation of such informal divestment would require close scrutiny of the day-to-day investment decisions made by the fund administrator and a critique of his estimate of the comparative value of various investment strategies to determine if his decisions were made for some "invidious" reason. This memorandum does not address these and similar issues raised by the more subtle forms of state divestiture. Rather, it focuses on the most straightforward issue, the constitutionality of state legislation which explicitly prohibits the investment of state funds in firms doing business in or with South Africa.

II. The Constitutional Basis for Divestiture.

That the Constitution endows a state with authority to determine how its own funds will be invested is indisputable. The Supreme Court has recognized that an essential element of state sovereignty is the control by a state over its own finances.¹⁰ Further, the Court has recognized that the Constitution leaves a state with considerable discretion to determine which activities

¹⁰ National League of Cities v. Usery, 426 U.S. 833, 855 (1975).

it will subsidize.¹¹ Divestiture implicates both of these functions. On one hand, divestiture involves a decision by the state as to how best to administer its own funds. At the same time, divestiture represents an effort by the state to invest its funds in a socially responsible manner so that it does not support the South African system of apartheid.

Critics of divestiture argue that no legitimate state interest is served by divestiture.¹² However, they ignore the primary justification of divestiture:

¹¹ The issue of the constitutional restraints on subsidy choices by a state has arisen most starkly in the abortion funding cases, where the Court has held that a state may refuse to fund abortions while funding childbirth. Harris v. McRae, 448 U.S. 297 (1980); Maier v. Roe, 432 U.S. 464 (1977). In Maier v. Roe, the Court explained:

There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consistent with legislative policy. Constitutional concerns are greatest when the State attempts to impose its will by force of law; the State's power to encourage actions deemed to be in the public interest is necessarily far broader. 432 U.S. at 475-76, citing Buckley v. Valeo, 424 U.S. 1 (1976).

¹² CRS Memorandum, supra, n.1 at 16, 34; Wisconsin Note, supra, n.1 at 1063-65.

that is, the interest of a state as an financier to ensure that its investments are made in a socially responsible manner. The clarion call of the divestiture movement, in both public and private quarters, has been the principle that investor is morally responsible for the use to which his funds are put. No constitutional principle bars a state from so noticing the moral consequences of its actions.

III. The Foreign Commerce Clause.

Opponents of divestiture legislation argue that it violates the Foreign Commerce Clause of Article I of the Constitution. The clause, which empowers Congress "To regulate Commerce with foreign Nations, and among the several States," has long been interpreted by the Supreme Court to prohibit, by implication, overly burdensome state regulation of foreign or interstate commerce or "parochial" state regulation which discriminates against foreign or interstate commerce.²³ Critics of state divestment urge that it impermissibly restricts commerce with South Africa, in violation of the Commerce Clause, and that it furthers no corresponding

²³ The leading case of the modern era enforcing the dormant commerce clause is Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945).

state interest which might justify the action.²⁴

The argument that divestiture legislation violates the Commerce Clause is of little weight. The Commerce Clause simply does not apply to this type of state proprietary decision. In a bevy of recent decisions the Supreme Court has held that the Commerce Clause restricts only the power of a state to regulate or tax commerce, and that the clause imposes no restrictions on the right of a state to choose who it will do business with as a buyer or a seller in the free market.²⁵ Divestiture, of course, does not involve the regulation or taxation of commerce. Rather, it simply involves the refusal by a state or local government to deal with companies or banks which support the South African system of apartheid.

Hughes v. Alexandria Scrap Corp.²⁶ is the first case to consider whether the Commerce Clause governs state action of a proprietary nature. At issue in Hughes was the constitutionality of a Maryland program providing

²⁴ CRS Memorandum, su 12, n.1 at 9-25; Wisconsin Note, supra, n.1 at 1063-66.

²⁵ White v. Massachusetts Council of Construction Employers, 75 L. Ed. 2d 1 (1983); Reeses, Inc. v. Stake, 447 U.S. 429 (1980); Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976).

²⁶ 426 U.S. 794 (1976).

bounties to junkyards for scrapped automobiles which required out-of-state junkyards to provide more thorough documentation of ownership of the vehicle on which the bounty was claimed than was required of Maryland junkyards. A Virginia junkyard challenged the disparate documentation requirements as discriminatory against interstate commerce, invoking precedent declaring state discrimination against interstate commerce to be impermissible per se under the Commerce Clause.²⁷ The Court rejected that argument, reasoning that the purpose of the Commerce Clause was to prevent states from erecting barriers to interstate commerce by taxation or regulation, and concluding that the clause was not concerned where a state participated in the market to favor its own citizens.²⁸

The issue of Commerce Clause limitations on state proprietary action was next raised in Reeves, Inc. v. Stake.²⁹ At issue in Reeves was a decision by South Dakota to confine the sale of cement from a state owned cement plant to state residents. As in Fuchs v. Alexandria Scrap, the plaintiff argued that the Commerce

²⁷ Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970).

²⁸ 426 U.S. at 807-08.

²⁹ 447 U.S. 429 (1980).

Clause prohibited such discrimination by a state against interstate commerce. The Court held otherwise, concluding that "[t]here is no indication of a constitutional plan to limit the ability of the States themselves to operate freely in the free market."¹⁰ The Court reasoned that the freedom of the state to restrict sales as it wished was counseled by "the long recognized right of trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal."¹¹

The issue of state proprietary action was addressed by the Court most recently in White v. Massachusetts Council of Construction Employers, 75 L. Ed. 2d 1 (1983). There the Supreme Court rejected a Commerce Clause challenge to a Boston requirement that half the workforce in municipally funded construction projects be residents of Boston -- again, on the ground that the Commerce Clause does not reach proprietary activity.

In light of this authority, the argument that divestiture might in some way violate the Commerce Clause is mystifying. Critics of divestiture have suggested

¹⁰ Id. at 437.

¹¹ Id. at 438-39, quoting United States v. Colgate & Co., 250 U.S. 300, 307 (1919).

that this precedent is inapposite to the issue of the constitutionality of divestiture legislation since Alexandria Scrap and its progeny concerned interstate, and not foreign commerce.¹² There is, however, no basis for restricting the principle that states may deal with whom they please in the marketplace to market decisions of a purely domestic character. The only court to face the question has held that the proprietary action doctrine applies to foreign commerce as well as domestic. At issue in K.S.B. Technical Sales Corp. v. North Jersey Dist. Water Supply Co.,¹³ was the constitutionality of New Jersey's "Buy American" statute, which provided a preference for United States-produced goods in state procurement. The New Jersey Supreme Court upheld the law against a Commerce Clause challenge, reasoning that Alexandria Scrap immunized a state's proprietary conduct from scrutiny under that clause. In reaching that result the court specifically rejected the argument that proprietary activities were of a significantly different

¹² CRS Memorandum, supra, n.1, at 21. In Reeves the Court remarked that "[w]e have no occasion to explore the limits imposed on state proprietary actions by the 'foreign commerce' Clause," and observed that "Commerce Clause may well be more rigorous when a restraint of foreign commerce is alleged." 447 U.S. at 432 n.9.

¹³ 75 N.J. 272, 381 A.2d 774 (1977), appeal dismissed, 435 U.S. 982 (1978).

tenor when they involved foreign commerce.¹⁴

The CRS Memorandum relies upon Japan Line Ltd. v. County of Los Angeles¹⁵ as authority for restricting the proprietary action doctrine to the domestic context. In that case the Supreme Court held unconstitutional a California ad valorem tax imposed on shipping containers temporarily within the state which were used exclusively in foreign commerce. The Court posited that the tax might withstand scrutiny if imposed on instrumentalities of interstate commerce, but concluded that "more extensive constitutional inquiry is required" where foreign commerce was at stake.¹⁶ The Court identified two factors present in the international context not present in the domestic context which compelled invalidation of the California tax. First, the Court observed that the danger of multiple taxation was greater in the international context since it had no power to allocate authority to tax among the competing jurisdictions, as it does when the dispute

¹⁴ 381 A.2d at 738. A decision by a lower court in California striking down that State's "Buy American" statute, Bethlehem Steel Corp. v. Board of Commissioners, 276 Cal. App. 2d 221, 80 Cal. Rptr. 300 (1969), predates Alexandria Scrap.

¹⁵ 441 U.S. 434 (1979).

¹⁶ Id. at 445-46.

over power to tax is between states.¹⁷ Second, the Court reasoned that the tax undermined a significant national interest in the uniformity of treatment of cargo containers, an interest the Court found evidenced by federal statutes and treaties.¹⁸

Japan Lines does not, however, suggest that the "foreign commerce" clause might restrict the freedom of a state to deal with whom it pleases in the international marketplace.¹⁹ The decision involved regulatory rather than proprietary, state action. Proprietary state action simply does not implicate one concern identified in Japan Lines - the risk that states might subject persons to multiple or inconsistent regulatory burdens. Moreover, as is explained fully below, divestiture does not run afoul of some pressing national interest in uniformity. Unlike the tax at issue in Japan Lines, divestiture violates no plainly expressed policy of the United States with respect to foreign

¹⁷ Id. at 446-48.

¹⁸ Id. at 448, 452-53.

¹⁹ The principles enunciated in Japan Lines are far from absolute. In a case decided four years later, Container Corp. v. Franchise Tax Board, 77 L. Ed. 2d 545 (1983), the Court upheld a state unitary tax imposed on subsidiaries of foreign corporations, even though the unitary tax created some risk of double taxation and was disturbing to foreign nations.

commerce.⁴⁰

Critics of state divestiture further argue that such legislation violates the Commerce Clause because it advances no legitimate local interest.⁴¹ However, the Supreme Court did not inquire into whether the challenged action served some legitimate interest in Alexandria Scrap and the other proprietary action cases. Instead, the Court simply held state proprietary action to be immune from scrutiny under the Commerce Clause. Thus, the nature of the interest served by divestiture legislation is seemingly irrelevant to the question of its constitutionality under the proprietary action doctrine. Moreover, divestiture does serve a legitimate state interest; that is, the interest by a state in the responsible investment of its funds. While this interest is largely moral in character, that does not diminish its legitimacy under constitutional doctrine.

⁴⁰ In Japan Lines the Court emphasized that the tax was inconsistent with the policy of the United States, expressed both in treaty and statute, to eliminate impediments to the use of shipping containers in commerce. 451 U.S. at 452-53. In Container Corp., in comparison, where the tax at issue violated no explicit policy of the national government, the Court concluded that the tax was constitutional even though foreign countries were strongly opposed to it. 77 L. Ed. 2d at 571-73.

⁴¹ CRS Memorandum, supra, n.1 at 13; Wisconsin Note, supra, n.1 at 1063-66. Traditional Commerce Clause analysis requires that state regulation of interstate commerce serve some local interest that outweighs the burden cast by the regulation on interstate commerce. See Pike v. Bruce Church, Inc., 397 U.S. 137 (1970).

IV. The Foreign Affairs Power.

The second objection raised to state divestiture legislation is that such action by a state impermissibly intrudes upon the "exclusive" authority of the federal government to conduct this nation's foreign relations. Critics of divestiture legislation observe that the effect and apparent purpose of such legislation is to disappoint or injure the South African government. This, the critics of divestiture legislation contend, states may not do because the Constitution implicitly forbids them from so interfering in the foreign relations of the national government.⁴²

It is important to keep in mind the limited ground upon which state divestiture is claimed to be objectionable. It is not argued that divestiture violates any of the few Constitutional provisions specifically defining the proper role of states in matters of "foreign relations."⁴³ It is plain that state divestiture does

⁴² Wisconsin Note, supra, n.1 at 1066-70; CRS Memorandum, supra, n.1 at 25-33. See also Letter of Philip M. Crane to Members of the House of Representatives, Jan. 24, 1984.

⁴³ It has been said that "where foreign relations are concerned the Constitution seems a strange, laconic document: although it explicitly lodges important foreign affairs powers in one branch or another of the federal government, and denies important powers to the States, many others are not mentioned." L. Henkin, Foreign Affairs and the Constitution (1972) 15.

not violate any express constitutional mandate. In the area of foreign relations the only powers specifically denied to states by the Constitution are the power to enter into treaties or agreements with foreign states, to engage in war, and to tax imports and exports.** Divestiture runs afoul of none of these prohibitions.

Nor is it claimed that divestiture is inconsistent with any statute, treaty or executive agreement of the United States. Rather, state divestiture legislation is consistent in principle with the national policy toward South Africa and apartheid.† The absence of any inconsistency between state divestiture legislation

** Article I, section 10 of the Constitution provides that "No state shall enter into any Treaty, Alliance, or Confederation [or] grant Letters of Marque and Reprisal"; it requires that Congress consent to state "Imposts or Duties on Imports or Exports"; and, it mandates that states not "enter into any Agreement or Compact . . . with a foreign Power, or engage in war" without the consent of Congress.

† The official position of the United States government is that it is opposed to apartheid. Thus, the United States has imposed a ban on the export by American firms to South Africa of arms, military equipment, and any other goods which might be used by the military or police. See Mehlman, Milch, and Toumanoff, United States Restrictions on Exports to South Africa, 73 Am. J. Comp. L. 581 (1979). And, Congress is now considering legislation to impose even further restrictions on trading by American firms with South Africa. H.R. 3231, 98th Cong., 2d Sess., which was passed by voice vote in the House last fall, would amend the Export Administration Act of 1978 to ban all new investment in South Africa by United States firms and banks.

and federal law is of crucial importance, for in almost every instance where the Supreme Court has held unconstitutional an action by a state because it was overly intrusive on the federal foreign relations power, that action was found to violate some specific provision of a federal statute, treaty, or executive agreement.⁶⁶ The Supreme Court has ruled that in the absence of such authority federal courts are properly reluctant to presume any inconsistency between an action by a state and federal foreign policy requiring invalidation of the action.⁶⁷

⁶⁶ So, in Hines v. Davidowitz, 312 U.S. 52 (1941), the Court struck down a state alien registration system because it conflicted with the federal system. The Court expressly declined to address the argument that ". . . the federal power in this field, whether exercised or unexercised, is exclusive." Id. at 62. Similarly, two other cases which are prominently cited as support for the proposition that the federal foreign relations power is exclusive -- United States v. Pink, 315 U.S. 203 (1942), and United States v. Belmont, 301 U.S. 324 (1937) -- involved the refusal by a state to honor the claim of the Soviet Union to the domestic assets of a nationalized Russian company in contravention of an executive agreement that the Soviet claim would be honored by this nation.

⁶⁷ Recently, in Container Corp. v. Franchise Tax Board, 77 U.S. Ed. 2d 545 (1983), the Supreme Court stated that it would not strike down a state tax on multi-national enterprises, despite the tax's impact on the foreign relations of the United States, where the tax violated no act of Congress and was not opposed by the Justice Department as *amicus curiae*. The Court concluded that, while not dispositive, the absence of such authority "does suggest that the foreign policy of the United States -- whose nuances we must emphasize again, are much more the province of the Executive Branch and Congress than of this Court -- is not seriously threatened" by the tax. Id. at 573.

Because of the absence of any contrary constitutional provision, federal statute, or treaty, the argument that state divestiture in some way intrudes upon the foreign relation power of the federal government rests on the extreme premise that states are simply prohibited by the Constitution from acting in a manner which might irritate a foreign government. There is little authority to support the argument that the Constitution so inhibits the power of states. Rather, by precedent and historical practice, it is plain that states are free to undertake actions done in a traditional capacity even though their action injures or offends a foreign government. Thus, it has been held that a state may adopt reciprocal legislation conditioning the right of an alien to inherit property on the grant of a similar right to United States citizens by the alien's country.⁴¹ A State court may examine the fairness of judicial process of a foreign country to determine if it will enforce a judgment rendered there, and in choice of law a state court may refuse to apply foreign laws it finds distasteful.⁴² And, state legislatures

⁴¹ Clark v. Allen, 331 U.S. 503 (1947); Gorun v. Fall, 287 F. Supp. 725 (D. Mont. 1968), affirmed, 393 U.S. 398 (1969).

⁴² See, e.g., J. Zeevi & Sons, Ltd. v. Grandlavs Bank, Ltd., 37 N.Y.2d 220, 371 N.Y.S.2d 892, 333 N.E.2d 168, cert. denied, 423 U.S. 866 (1975) (confiscation of funds
[Footnote continued on following page]

and state officials have traditionally used their office to criticize the actions of foreign governments. No one has ever suggested that this practice, which has long been a part of the process by which the United States' foreign policy is shaped democratically, might potentially be constitutionally infirm.³¹

In only one case has the Supreme Court held an action by a state forbidden on the basis of its impact on the foreign relations of the United States where the action did not also violate some federal statute or treaty. That case is Zschemie v. Miller,³¹ a 1968

(Footnote 49 continued from preceding page)
by Uganda not recognized as a defense in action for reimbursement); Uniform Foreign Money-Judgments Recognition Act Sec. 4(a)(1) (foreign money judgment will not be recognized if it "was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.") The Supreme Court has consistently recognized that a state need not enforce a foreign judgment or apply a foreign law in its courts "where to do so would be repugnant to good morals." Bond v. Hume, 243 U.S. 15, 21 (1917). See also United States v. Pink, 315 U.S. 203, 231 (1942) (noting "the power of a state to refuse enforcement of rights based on foreign law which runs counter to the public policy of the forum" when Federal statute or treaty does not dictate otherwise.)

³⁰ Professor Henkin observes that the State Department has little "influence to prevent embarrassing 'sense resolutions' of state legislatures on foreign issues." Henkin, supra, n.43 at 247.

³¹ 389 U.S. 429 (1968).

decision.¹² In Zschernig, the Supreme Court held unconstitutional an Oregon law which escheated alien inheritances where the alien's homeland practiced confiscation of private property, did not permit United States citizens to remove inheritances to the United States, or did not grant United States citizens a reciprocal right of inheritance. The Court held the Oregon law was "an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress."¹³ In reaching that result, the Court focused on several aspects of the Oregon law it thought particularly damaging to this nation's foreign relations. Most notably, the Court stressed repeatedly that it thought it improper for state court judges to closely examine and criticize the practices of foreign governments.¹⁴ In addition, the Court remarked upon the notoriety of such inheritance statutes¹⁵ and observed that in a few cases the administration of such laws had provoked protests from

¹² Louis Henkin has said that "[u]ntil 1968 there was no sign of . . . some larger principle limiting the States in matters that relate to foreign affairs." Henkin, supra, n.43 at 238.

¹³ Id. at 432.

¹⁴ Id. at 435-40.

¹⁵ Id. at 440.

foreign governments."⁶⁶ In sum, the Court concluded that the Oregon law could not stand since it would "impair the effective exercise of the Nation's foreign policy" and would have "a direct impact upon foreign relations and may well adversely affect the power of the central government to deal with those problems."⁶⁷

Zschernig did not establish an absolute rule barring states from acting in a manner that might influence the foreign relations of the United States. Rather, shortly after Zschernig was decided, the Court summarily reaffirmed the right of a state to adopt reciprocal inheritance legislation.⁶⁸ Thus, it is generally agreed that Zschernig requires a careful balancing of the interest of the state in a challenged action with the adverse impact that action has on foreign relations: if a state action has a significant adverse effect on foreign relations without advancing some correspondingly weighty state interest it is forbidden.⁶⁹

⁶⁶ Id. at 437 n.7.

⁶⁷ Id. at 440-41.

⁶⁸ Gorin v. Hall, 287 F. Supp. 725 (D. Mont. 1962), affirmed, 393 U.S. 398 (1969).

⁶⁹ See Henkin, supra, n.43, at 241; Maier, The Basis and Range of Federal Common Law in Private International Matters, 5 Vand. J. Trans. L. 133 (1971); Developments, The Supreme Court, 1967 Term, 82 Harv. L. Rev. 63, 245 (1968).

So, in Zschemig the Oregon statute could not stand since the seizure by a state of an alien's property out of distaste for the form of government of the alien's homeland significantly disturbed this Nation's foreign relations without advancing any proper state interest.

[Footnote 59 continued from preceding page]

Zschemig has been applied, most prominently, in cases concerning the constitutionality of state "Buy American" legislation, which directs that a preference be given to American-made products in state procurement. In a decision rendered shortly after Zschemig, a lower state court in California held that state's statute unconstitutional because of its impact on foreign relations. Bethlehem Steel Corp. v. Board of Commissioner of Dept. of Water & Power, 275 Cal. App. 2d 221, 80 Cal. Rptr. 300 (1969). The New Jersey Supreme Court, on the other hand, has upheld that state's law, rejecting the argument that state "Buy American" legislation unconstitutionally interfered in the federal foreign relations power. K.S.B. Technical Sales Corp. v. North Jersey Dist. Water Supply Comm., 75 N.J. 272, 381 A.2d 774 (1977). The court reasoned that, unlike the law condemned in Zschemig, state "Buy American" legislation did not involve inquiry into or criticism of the ideology of a foreign nation. The court also noted the law's consistency with federal policy. Id. at 783-84.

Similar questions concerning the power of a state to interfere in foreign relations have been raised in cases involving an attempt by a city to prohibit the publication of advertisements for employment in South Africa. New York Times Co. v. New York, 41 N.Y.2d 345, 361 N.E.2d 963 (1977); see Note, 16 Harv. Int. L.J. 456 (1975); Note, 15 Va. J. Int. L. 473 (197), an effort by a state to investigate or penalize businesses which comply with the Arab boycott against Israel, General Elec. Co. v. New York State Assembly Comm. on Governmental Operations, 425 F. Supp. 909 (N.D.N.Y. 1975); see Comment, The Arab Boycott and State Law: The New York Anti-Boycott Statute, 18 Harv. Int. L.J. 343 (1977), and the denial by a state university of admission to Iranian students in retaliation for Iran's seizure of the American embassy, Tavvazi v. New Mexico State University, 495 F. Supp. 1355 (D.N.M. 1980).

By this calculus, state divestiture is easily distinguishable from the action condemned in Zschernig. The interest of a state in divestiture is legitimated by the presumptive right of a state to manage its own finances,⁶⁰ to determine what activities it will subsidize,⁶¹ and to choose with whom it will deal in the marketplace.⁶² Thus, a state is legitimately interested in divestiture. At the same time, because divestiture is proprietary action, and involves neither regulation nor any other onerous intrusion by a state into private affairs, the burden cast by divestiture on international relations is slight.⁶³ This is in marked distinction with Oregon's seizure of private property in Zschernig, which represented state interference in private affairs of the most extreme sort. At the same time, divestiture poses little threat to the foreign policy of the United States, for it is

⁶⁰ National League of Cities v. Usery, 426 U.S. 933, 955 (1976).

⁶¹ Maher v. Roe, 432 U.S. 464, 475-76 (1977).

⁶² Reeves Inc. v. Stake, 447 U.S. 429, 438-39 (1980).

⁶³ Both in the abortion funding cases, supra, n.21, and the proprietary action cases, text and notes accompanying supra, n.25 to n.31, the Supreme Court reasoned that states enjoyed wide discretion in undertaking such activities because they involved little disruption of private affairs.

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ADMINISTRATIVE SERVICES

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Art Stanford, Manager

MICA Medical Indemnity
Corporation of Alaska
ALASKA U.S.A. OFFICE BUILDING
4000 CREDIT UNION DR., SUITE 525
ANCHORAGE, ALASKA 99503
TELEPHONE (907) 563-3414

1986

**Physician's and Surgeon's
Professional Liability Coverages and Premium Schedules**

PROFESSIONAL LIABILITY COVERAGES

Explanation of Policy:

The Pure Claims-Made Policy extends professional liability protection to the physician, clinic or employee for claims reported in a single year regardless of when service is rendered as long as the incident occurred while continuously insured under claims-made with MICA. Thus, claims reported this year are covered by this year's policy, claims reported next year by next year's policy, and so on.

MICA'S premium rates are derived from the historical pattern of reported claims resulting from the performance of professional services which form a "stair step" with an increasing number of claims being reported each year until the fifth year. In the first year, only about 20% of the total claims resulting from a professional service are reported; the second 47%; the third 95%; the fourth 98%; the fifth and subsequent years, about 100%.

Cost:

In keeping with the "stair step" development of claims, the rates charged for the Pure Claims-Made policy mature at the fifth year. Subsequent renewal policies are charged at the mature rates. The specific cost of coverages is shown within our table entitled CLAIMS-MADE PREMIUM SCHEDULE.

All policies issued by MICA are renewed on January 1 of each year. Your first years and renewal rates are pro-rated from the first date of coverage (inception date) of the original policy. For example, if your continuous coverage became effective on July 1, 1982, your annual renewal premium on January 1, 1986 would be pro-rated from January 1 through June 30 on the fourth year rates and from July 1 through December 31 on the fifth year rates.

Limits of Liability:

MICA's professional and optional comprehensive general liability coverages are available with policy limits of:

\$200,000 per occurrence/\$600,000

aggregate per calendar year.

\$500,000 per occurrence/\$1,000,000

aggregate per calendar year.

Tail Coverages:

Should you stop practicing or change to another insurance company, MICA guarantees availability of an unlimited Reporting Endorsement known as "tail" coverage to cover subsequent reported claims. Tail coverage must be purchased by the insured within 30

days of termination of coverage, by cancellation or non-renewal; or by termination of employment or association with the physician insured under a master group policy.

Cost:

The cost of "tail" coverage will depend upon the length of time you have been insured with MICA, and will be subject to the company's rules, rates, and rating plans in effect at the time the unlimited reporting endorsement is requested.

The tail premium is quoted as a one time cost but may be paid in installments. Refe. to paragraph INSTALLMENTS.

Nose Coverage:

This coverage allows a physician to enroll in MICA without purchasing tail coverage from the prior professional liability company. SUBJECT TO APPROVAL, the physician can join MICA at a rate equal to the length of time of coverage under a previous professional liability program. For example, a physician in the fourth year of coverage with another insurance company could enroll with MICA at the fourth year rate. Any reported claims arising during the term of your previous coverage would then be reported to and be covered by MICA, subject to the terms, conditions and limits of liability of the MICA policy.

This coverage is not applicable to any prior occurrences which you knew, or reasonably should have known, could or would result in a claim being made against you or any other person or organization providing professional services during the course of patient care out of which the claim arose.

You should: (a) immediately report any such potential claim to your current carrier if you are presently insured or; (b) provide full details of the occurrence on your application for insurance to MICA for a coverage determination prior to policy issuance.

Retirement Benefit:

Following your 62nd birthday, and at that time having completed five consecutive years as a MICA insured, a Reporting Endorsement (tail coverage) will be issued at no extra cost.

Death or Total and Permanent Disability:

A Reporting Endorsement (tail coverage) will be issued at no extra cost because of death or permanent and total disability.

New Doctor Rule

For physicians entering private practice for the first time following completion of medical school, residency training, military service or public health service, premiums will be discounted 25% for the first year of coverage.

Employee Coverages

Unlike many policies, most employees are provided coverage under the MICA policy.

Employee surcharges are limited to (1) Advanced Nurse Practitioners or Physicians Assistants employed or directly supervised subject to 50% annual premium off the rating class of the physician employer; (2) employed nurse midwives are subject to 100% of the Class 3 premium; (3) directly supervised, certified registered nurse anesthetists (CRNAs) are subject to 100% Class 3 annual premium.

No additional premium charges are incurred for other employees.

Locum Tenens:

MICA provides up to 60 days of coverage annually for a temporary substitute physician - locum tenens for surgical and non-surgical specialties. Completion of application and prior approval of MICA is required.

Part Time Practitioners:

Class 1 & 2: 35% of the scheduled annual premiums for 10 hours or less per week practice, 65% of the scheduled annual premium for 20 hours or less per week practice.

Short Term Practice Situations:

Pro-rated amount of annual premium computed on short rate tables subject to \$250 minimum premium.

Comprehensive General Liability Coverages:

This optional coverage is available at \$50 per physician covered, subject to the same limits of liability carried for professional liability. This coverage extends contractual and personal injury in addition to bodily injury and property damage liability protection for those injuries accidentally sustained on the office premises by the general public.

This coverage is limited to only those premises actually occupied by our insured in rendering professional services. For example, an insured occupying only one suite of a building, coverage would be limited to only that suite and not the entire building and parking lots.

Corporate/Partnership/Group Professional Liability:

This optional coverage is available at no additional

charge to solo practitioners and group practices, providing each member or employed physician carries coverage through the Company. Limits of each physician's coverage must be equal to that carried by the group, and the separate limits of liability for the Corporation, does not apply to policy holders who are solo practitioners.

This form provides individual limits of liability to each physician named on the policy schedule in an amount equal to the limits of liability stated on the declarations page of the policy.

Optional Shared Limits Professional Liability Group Coverage:

This optional coverage is available through the Company for your group at reduced premium levels.

One master policy is issued with each associated or employed physician covered by endorsement. Each physician, as joins your group, will be automatically covered provided 45 days written notice is given to the Company.

Coverages are limited to the course and scope of employment or association with your group. The combined clinic/group insureds are subject to the single limits of liability per occurrence and annual aggregate limits as procured. Completion of the Physician's and Surgeon's Professional Liability Group Application is required, along with completion of individual application for each physician to be insured.

Discounts Per Limits of Liability*

No. Doctors in clinic	\$500,000
1	0
2	9%
3	11%
4	12%
5	13%
6	14%
7	15%
8	16%
9+	17%

Installments — Deferred Payment:

Installments are subject to deposits of \$1,000 or two months' annual premium. Deferred payments are available in quarterly or semi-annual installments payable: 35%, 25%, 25% and 15% quarterly or 60% and 40% semi-annually. Carrying charges are computed at 10% annual simple interest on the unpaid balance.

PHYSICIAN'S RATE CLASSIFICATIONS

Class 1

Neurology

Psychiatry — excluding ECT

Physicians — no surgery. Applies to general practitioners and physicians specialists who do not perform obstetrical procedures or surgery (other than incision of boils and superficial abscesses or suturing of skin and superficial fascia) and who do not ordinarily assist in surgical procedures.

Class 2

Neonatology

Ophthalmology (Excluding Radial Keratotomy)

Physicians — minor surgery or assisting in major surgery. Applies to general practitioners and physician specialists who perform minor surgery (including catheterization) or assist in major surgery.

Class 2-A

Emergency Medicine — including free-standing emergency care centers

Class 3

Physicians who include obstetrical procedures as any part of their practice. (May still be indicated as class 2-B on policy.)

Physicians — Major Surgery

Proctology

Otorhinolaryngology

Abdominal Surgery

General Surgery

Gynecology (No Obstetrics)

Pediatric Surgery

Thoracic Surgery

Traumatic Surgery

Plastic and Reconstructive Surgery, excluding cosmetic surgery

Urology

Class 4

Anesthesiology (subject to restrict endorsement)

Class 4-A

Physicians — Major Surgery

Therapeutic Radiology

Obstetrics — Gynecology

Cardiovascular Surgery

Hand Surgery

Plastic and Reconstructive Surgery, including cosmetic surgery

Vascular Surgery

Orthopedic Surgery, excluding total joint procedures

spinal surgery and insertion of prosthetic devices

Ophthalmology (including radial keratotomy)

Class 5

Physicians — Major Surgery

Neurosurgery

Orthopedic Surgery including total joint procedures

spinal surgery and insertion of prosthetic devices

*CNM's
Nurse-anesth*

physic ansth

CLAIMS-MADE PREMIUM SCHEDULE

Effective January 1, 1986

LIMITS OF LIABILITY: EACH CLAIM AND ANNUAL AGGREGATE

	1st-5th Years Retroactive Dates	\$200,000/\$600,000	\$500,000/\$1,000,000
		Annual Premium	Annual Premium
Class 1			
1st year rates	Jan. 1, 1986	2,020	2,394
• 2nd year renewal rates	Jan. 1, 1985	3,141	4,016
• 3rd year renewal rates	Jan. 1, 1984	4,986	6,639
• 4th year renewal rates	Jan. 1, 1983	5,089	6,786
• 5th year renewal rates	Jan. 1, 1982	5,151	6,674
Class 2			
1st year rates	Jan. 1, 1986	2,692	3,632
• 2nd year renewal rates	Jan. 1, 1985	4,933	6,437
• 3rd year renewal rates	Jan. 1, 1984	8,098	10,919
• 4th year renewal rates	Jan. 1, 1983	8,275	11,169
• 5th year renewal rates	Jan. 1, 1982	8,380	11,318
Class 2-A*			
1st year rates	Jan. 1, 1986	4,039	5,046
• 2nd year renewal rates	Jan. 1, 1985	6,981	9,205
• 3rd year renewal rates	Jan. 1, 1984	11,654	15,810
• 4th year renewal rates	Jan. 1, 1983	11,915	16,178
• 5th year renewal rates	Jan. 1, 1982	12,070	16,398
Class 3			
1st year rates	Jan. 1, 1986	5,115	6,461
• 2nd year renewal rates	Jan. 1, 1985	9,029	11,927
• 3rd year renewal rates	Jan. 1, 1984	15,211	20,701
• 4th year renewal rates	Jan. 1, 1983	15,555	21,187
• 5th year renewal rates	Jan. 1, 1982	15,760	21,477
Class 4			
1st year rates	Jan. 1, 1986	7,403	9,466
• 2nd year renewal rates	Jan. 1, 1985	13,380	17,855
• 3rd year renewal rates	Jan. 1, 1984	23,768	31,094
• 4th year renewal rates	Jan. 1, 1983	25,291	31,832
• 5th year renewal rates	Jan. 1, 1982	23,602	32,271
Class 4-A			
1st year rates	Jan. 1, 1986	8,346	10,704
• 2nd year renewal rates	Jan. 1, 1985	15,172	20,277
• 3rd year renewal rates	Jan. 1, 1984	25,880	35,373
• 4th year renewal rates	Jan. 1, 1983	26,476	36,215
• 5th year renewal rates	Jan. 1, 1982	26,831	36,716
Class 5			
1st year rates	Jan. 1, 1986	11,441	14,770
• 2nd year renewal rates	Jan. 1, 1985	21,060	28,235
• 3rd year renewal rates	Jan. 1, 1984	36,105	49,434
• 4th year renewal rates	Jan. 1, 1983	36,942	50,616
• 5th year renewal rates	Jan. 1, 1982	37,440	51,319

Family Pract "exposure" MICA

*Underwriting
tail 21,000*

*free add for
to get 1,000,000
premium!*

CLAIMS-MADE PREMIUMS PREPARED BY MILLIMAN & ROBERTSON, INC., CONSULTING ACTUARIES FOR THE MEDICAL INDEMNITY CORPORATION OF ALASKA ARE BASED ON A FIVE-YEAR PRICING STEP FOR REPORTED CLAIMS ADJUSTED ANNUALLY FOR CLAIMS EXPERIENCE.

*RETROACTIVE DATES AND RENEWAL PREMIUMS APPLY TO 2ND THROUGH 5TH YEAR ANNUAL RENEWAL WITH THE FIRST DATE OF THE ORIGINAL POLICY (INCEPTION DATE) EFFECTIVE ON OR WITHIN THE CALENDAR YEAR FOLLOWING THE RETROACTIVE DATE SHOWN. FIRST YEAR PHYSICIANS ARE SUBJECT TO FIRST YEAR RATES.

ALL POLICIES ARE RENEWED EACH YEAR ON JANUARY 1. ALL 1ST YEAR AND RENEWAL PREMIUMS ARE PRORATED SUBJECT TO THE FIRST DAY OF COVERAGE (INCEPTION DATE) UNDER THE ORIGINAL POLICY.

NOTE: IF 10% OR MORE OF THE PHYSICIAN'S PRACTICE IS IN A SPECIALTY WITH A HIGHER CLASS THAN HIS NORMAL SPECIALTY, HE OR SHE WILL BE PLACED IN THE HIGHER SPECIALTY FOR RATING PURPOSES.

**AMERICAN COLLEGE OF NURSE-MIDWIVES,
ALASKA CHAPTER**

March 9, 1986

**Senator Bettye Fahrenkamp
Chairman, Senate HESS Committee
Alaska State Legislature
Pouch U (MS 3100)
Juneau, Alaska 99811**

Dear Senator Fahrenkamp:

Thanks for your continuing interest in nurse-midwifery. I am following various bills and hearings regarding liability insurance and am hopeful that some form of relief will be considered this session.

I met with Art Stanford at MICR on February 24th. I am pleased to report that he is willing to support nurse-midwives in their request for consideration as providers eligible for MICR coverage.

MICR's Underwriting Committee based their decision regarding high (\$6,461- 21,4??) premium rates for certified nurse-midwives on risk 'exposure' and hypothetical 'loss risk'. A national audit done for the American College of Nurse-Midwives reviewed suit data and loss figures for the past 10 years. Monetary losses to the insurance companies involved were minimal for the 65 cases reviewed.

Mr. Stanford indicated that this information will be very helpful to the Underwriting Committee. He also indicated that it is likely that our premium rates will be lower than those on the current premium schedule.

His favorable reception to certified nurse-midwives and his willingness to work with us, gives the Alaskan ACNM membership new hope regarding liability insurance availability and affordability.

I am requesting that you consider introduction of your draft amendment dated 10-3-85, entitled "An Act relating to providing for medical malpractice insurance for nurse midwives." I believe there is still time to introduce new legislation if it is done at the committee level. If I am incorrect, please advise me of any alternatives.

I will be awaiting your reply.

Sincerely,

**Marilyn Pierce-Bulger, RN, MN, CNM
Chairman, Alaska Chapter, ACNM
Box 9416 Hiland Road
Eagle River, Alaska 99577
wk 265-9245 hm 694-6076**

Enclosure (1)

Reed 2-18-86

ASSOCIATION OF THE AMERICAN
COLLEGE OF NURSE MIDWIVES
CLAIM AUDIT

By: Marilyn P. Driesen
Philadelphia Claims
Manager,

November 30, 1985

Alexsis

Risk Management Service

TABLE OF CONTENTS

- I. Scope of Audit
- II. Extent and Purpose of Audit
- III. Review of Chicago Insurance
Company Claims
1976 - 1983
- IV. Review of Home Insurance
Company Claims
1984
- V. Review of Mutual Fire Insurance
Company Claims
1985
- VI. Summary of Results
- VII. Conclusions
- VIII. Recommendations/Comments

I. Scope of Audit

The audit was conducted at the home offices of Interstate National Corporation (Chicago Insurance Company) in Chicago, Illinois; Mutual Fire Marine and Inland Insurance Company, in Philadelphia, Pennsylvania; and The Home Insurance Company, in New York City, New York.

The file review was to study all files for reserve adequacy and technical procedures of the respective carriers for the insured program years of 1976 through present.

Total files reviewed amount to 65.

II. Extent and Purpose of Audit

The purpose of the audit was to determine the propriety of reserves and the reserving procedures employed by the three insurance carriers for their respective policy periods.

At the same time, there was an analysis of the technical quality and the claim service being rendered.

III CHICAGO INSURANCE COMPANY

An audit was conducted on November 11,12,13,14 and 15, 1985 at the offices of Interstate National Corporation, 55 East Monroe Street, Chicago, Illinois 60603. Telephone number (312) 346-6400. The Claim Manager is Jack Knish.

Chicago Insurance Company was the carrier for several years. The expiration date was June 30, 1983.

Total files reviewed were 50. Present pending files are 21.

All claims reviewed were handled by staff adjusters, and reviewed on a monthly diary by supervisory personnel.

Reserves were reviewed and found to be adequate. Reserve recommendations were presented to supervisor for approval and/or comment.

All files are seen on monthly diaries, noted by both supervisor and adjuster. With their internal claim file review system, I find it would be difficult to have a claim file go for a period of a few months without being seen.

Mail was matched immediately to files and the files that warranted the excess carrier being notified was also done.

Investigations for the most part were adequate and done in a timely manner.

Alexsis

Risk Management Service

There were a few files which I commented on, if I felt the reserves may be low. Those you will see on the individual work sheets.

Most of the files reviewed exhibited confirmation of special damages, negotiations and work product.

Files were neat in chronological order. A very effective and efficient claim operation.

Alexsis

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HOME INSURANCE COMPANY

An audit was conducted on November 21, 22 and 23, 1985 at the offices of Home Insurance Company, 59 Madison Lane, New York City, New York 10039. The telephone number is (212) 530-7000. The Supervisor in charge of the medical/professional liability unit is Patricia L. Page.

Of the three offices I visited, this was the least organized. There were 22 files to be reviewed. All offices were notified at the same time and the Home Insurance Company was the last audit to be completed.

Out of the 22 files, I only saw 8 files.

The reason for this is due in part to their assigning the claim to the closest office where it occurs.

This in itself is not a problem, however, there is no one person monitoring the files.

The individual files reviewed were adequate, work product was evident, and in some instances good. (Some files were given to independent adjustment companies for statements, follow up, etc.)

Reserves on files seen were adequate, there are still files which need to be developed, (however, that is not necessarily the fault of the adjuster, but in the legal system).

Alexsis

Risk Management Service

As with the other carriers, if I noted deficiencies I noted them on the work sheet.

The remainder of the files are being sent to me express mail from the Washington, Texas and California. When received I will complete Home Insurance Company audit.

Alexsis

Risk Management Service

THE MUTUAL FIRE MARINE AND INLAND INSURANCE COMPANY

An audit was conducted on November 18, 1985 at the offices of the Mutual Fire Insurance Company, UMI Building, 1760 Market Street, Philadelphia, Pennsylvania 19103. Telephone number (215) 563-7100. The Claim Manager is Paul Dooley.

Master Policy Number GA043288. July 1, 1984 through July 1, 1985. Master policy with all individual insureds expiring by December 31, 1985.

Number of Insureds: 1,299

Total Incidents Reported: 7 To Date

The present pending claim count is 7 files. All incidents are set up as claims. All claims which are sent to Mutual Fire, are given to an independent claims service for handling. The major reserving responsibility rests with the adjuster handling the file. I found the reserving practices to be good. As you are aware, these are initial reserves and are fairly realistic for the information available at this time.

Investigation was found to be timely. And reserve adjustments were made up or down within a reasonable amount of time of when it became known previous reserves were inadequate.

Alexsis

Risk Management Service

I did note in the files reviewed different adjusters make reserve recommendations. To be consistent, I believe reserves should be made by the supervisor involved with those files, or at least input should come from that person.

Investigations were good and leave little to be criticized, at this point in time. These files are far from being developed to their fullest potential, but there appears to be a good grasp on knowledge known to date.

Again, as with the reserving, I did not see any input from a supervising authority figure. I believe that is necessary so that the files do not lose direction or proper development.

Alexsis

Risk Management Service

SUMMARY OF RESULTS

The files reviewed in total have been from various states.

They are as follows:

<u>STATE</u>	<u>CLAIMS PRESENTED</u>
Florida	11
Pennsylvania	9
New York	7
California	6
Minneapolis	4
Maryland	3
Colorado	3
Connecticut	2
New Mexico	2
Georgia	2
Massachusetts	2
Texas	2
Arizona	2
Illinois	1
North Carolina	1
Delaware	1
Wisconsin	1
Utah	1
Louisiana	1
Mississippi	1
Virginia	1
New Jersey	1
Arkansas	1

Alexsis

Risk Management Service

AMERICAN COLLEGE OF NURSE-MIDWIVES
PROFESSIONAL LIABILITY LOSS EXPERIENCE HISTORY

<u>Year</u> <u>Carrier</u>	<u>Number</u> <u>Claims</u>	<u>Status</u> <u>Open-Closed</u>		<u>Current</u> <u>Indemnity</u>	<u>Reserves</u> <u>Expense</u>	<u>Paid</u> <u>Indemnity</u>	<u>Expense</u>
1979 (Chicago)	2	-	2	\$ -0-	\$ -0-	\$ -0-	-0-
1980	1	1	-	\$ 15,000.00	\$ 9,237.14	\$ -0-	\$ 10,882.00
1981	14	8	6	\$ 87,795.00	\$41,311.00	\$ -0-	\$ 19,635.00
1982	22	5	17	\$247,100.00	\$30,282.00	\$565,741.00	\$114,197.00
1983	11	7	4	\$ 36,500.00	\$ 9,779.00	\$ 33,750.00	\$ 21,264.00
1984 (Home)	8	7	1	\$127,500.00	\$ -0-	\$ -0-	Home Ins. Not Tracking Expenses
1985 (Mutual)	7	5	2	\$ 17,500.00	\$ 2,150.00	\$ -0-	\$ 1,628.15
				<u>\$527,395.00</u>	<u>\$92,759.14</u>	<u>\$599,491.00</u>	<u>\$ 167,606.15</u>

32 closed cases =

6 years

3 companies

paid out + expenses

CONCLUSIONS

Overall, as with all the files reviewed, the liability for a majority of the claims for Nurse Midwives is limited in respect to exposure. Most times the circumstances involving the Nurse Midwives in claims are hospital/medical center type settings (66%).

In those files you find liability is generally shared with the physicians, and/or hospital and staff.

The Birth Centers (19%), Physician Offices/Laboratories and Home settings make up the balance (15%).

98% of the files reviewed, the Nurse Midwives are employed, and in most cases their coverage is secondary to their employer.

While I did not find claims handling consistency in every carriers' office, the deficiencies cited do not carry enough impact to alter my conclusion that the files are deemed satisfactory.

**AMERICAN COLLEGE OF NURSE-MIDWIVES,
ALASKA CHAPTER**

March 9, 1986

**Mr. Art Stanford, Manager
Medical Indemnity Corporation of Alaska
Alaska USA Office Building
4000 Credit Union Drive, Suite 525
Anchorage, Alaska 99503**

Dear Mr. Stanford:

As a follow-up of our meeting at your office on February 24th, I am writing to request that MICA consider the inclusion of certified nurse-midwives (CNM's) as a provider group eligible for liability insurance coverage with your corporation.

I understand that MICA will probably need an amendment to AS 21.88.030, 050, 080, and 900. Senator Bettye Fahrenkamp has written draft legislation and I will be contacting her to determine the best way to set the amendment process in motion.

I know that certified nurse-midwives may currently obtain liability insurance through MICA if they are an employee of a MICA covered physician. However, there are certified nurse-midwives who work with physicians who do not carry their own liability insurance. In addition, Alaska statutes that cover certified nurse-midwives as Advanced Nurse Practitioners, do not require the CNM to be an employee of a physician. The certified nurse-midwife must show proof of her collaboration/referral process. As an example, the law would allow a group of certified nurse-midwives to form their own business. Nurse-midwives need their own affordable liability coverage.

In the past, the American College of Nurse-Midwives (ACNM) has held a master group liability policy for its members wishing coverage. Mutual Fire, Marine and Inland Insurance Company of Philadelphia terminated that policy as of July 1, 1985 due to problems with the 'reinsurance' industry. (See attached Fact Sheet: Nurse-Midwives and the Malpractice Insurance Crisis.)

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 522 (L&C)
 Title: Relating to payment of premiums, cancellation of policies, and medical malpractice insurance for nurse midwives
 Sponsor: Labor & Commerce
 Requester: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
 BRU: Insurance
 Components: Public Protection

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULLTIME						
PARTTIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
 Division: Division of Insurance
 Approved by Commissioner: Robert L. Brumby
 Agency: Commerce and Economic Development

Phone: 465-2515
 Date: April 14, 1986
 Date: April 14, 1986

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

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* FAIRBANKS OFFICE
** JUNEAU OFFICE
*** VALDEZ OFFICE

March 11, 1986

Representative Mike Navarre
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: House Bill 522

Dear Representative Navarre:

I am writing to you on behalf of State Farm Insurance Company and Allstate Insurance Company to register our opposition to House Bill 522. Of all the legislation pending, this legislation, if enacted, would by far have the most significant adverse effect on the insurance industry. We want to explain the reasons why we oppose House Bill 522, as well as what we believe the practical effect of that legislation will be.

The Unfair Claims Settlement Practices Act, as it presently exists, was passed to regulate claims settlement practice. This legislation was introduced by Governor Hammond in 1976, and his intent in introducing this legislation is clear from the letter he sent which accompanied the bill:

The bill gives the director of the division of insurance authority to investigate complaints and issue orders requiring persons to stop acts or practices in violation of the chapter. Once an order is issued, the bill provides that the director may also order a penalty of as much as \$10,000.00 for each violation of the chapter and suspend or

revoke the violator's license. In addition, the bill gives the director authority to seek injunctive relief to aid in the enforcement of the chapter.

This bill is a strong, consumer-oriented measure which gives the director of the division of insurance more power to deal with unfair and deceptive practices than he presently has. The remedies in this bill provide broad relief to the insurance consumer through the insurance director.

Vol. I House Journal 1976, at 24. (Emphasis added).

As you can see from this letter, the legislation granted to the Director of the Division of Insurance broad authority to investigate and regulate claims settlement practices. It is significant that even this authority was based upon the premise that a single instance was not itself a violation, but a violation occurs only where the acts are committed with such frequency to indicate a practice.

House Bill 522 would change the focus of the original legislation, and would instead allow a claimant a private civil cause of action based upon a single violation of this act. Furthermore, House Bill 522 would allow a third-party claimant a private civil cause of action based upon a single violation of this act. The practical ramifications of the enactment of House Bill 522 are thus significant, for the Bill would create a private civil cause of action in cases where such a cause of action is not presently recognized.

If House Bill 522 is enacted, virtually every time there is disagreement about liability or damages, there will be the potential for a private civil cause of action based on an alleged violation of the Unfair Claims Settlement Practices Act. That this will occur is evident from a simple examination of the mechanics of the settlement process in a typical liability case. Every case that involves a settlement arises from an occurrence which allegedly caused injury to a third party. In every such case, two questions must be addressed before there can be a settlement: (1) Whether the insured was liable, and if so, the extent of his or her liability; and (2) The damages caused to the third party by the insured. In many cases, the questions of liability and damage are relatively clear, however in many others, those questions are not.

For example, Alaska has adopted judicially the concept of comparative negligence. This concept in essence provides that the party bringing the claim may be at fault as well, and that to the extent that party is at fault, he or she may not recover damages from the other side. The concept of comparative negligence requires a percentage allocation of responsibility to the party bringing the claim if that party was at fault. Many times, whether the defendant was at fault to begin with and if so, the nature and extent of the plaintiff's comparative fault are items which are legitimately and vigorously contested.

The same is true with respect to the question of damages. Since our legal system allows recovery for many types of damage that are not capable of being measured objectively, in many cases we see a significant and legitimate conflict as to the amount of damages the person is entitled to, even when liability is relatively clear. For example, one of the most difficult cases to resolve is a soft tissue neck case, and this is true regardless of whether liability is clear or not. There is no test that can be given to objectively determine the extent of the disability, and most such cases essentially turn on the credibility of the individual involved. This is also true in many other types of cases simply because there is no way to objectively measure certain types of damage such as pain and suffering.

If House Bill 522 is passed, an insurer would be exposed to a lawsuit virtually every single time a settlement offer made by a plaintiff is refused. Examples of such lawsuits in other states are numerous. For example, California has an Unfair Claims Settlement Practices Act which allows a private cause of action. In a recent case there the insurer refused a settlement offer made by the plaintiff, and the case proceeded to trial. Even though the jury ultimately awarded the plaintiff only one-fifth of that amount, the California Court still held the insurer could be found liable for failing to make proper efforts to settle the case.

It is virtually impossible to calculate the cost of such a system, for virtually every case that is settled would be settled under the shadow of an Unfair Claims Settlement Practices Act threat. Frankly, this is just about the worst thing that could be done by the legislature at a time when many insurance carriers have left the Alaska market, and the price of liability insurance has continued to rise. Instead of providing disincentives for insurers to do business in Alaska the legislature should provide incentives.

As our system presently exists, there are tremendous incentives for insurers to expeditiously resolve cases. First of all, prejudgment interest presently runs at a rate of 10.5% per annum, and this alone is a significant incentive for an insurer to expeditiously resolve a case. A second incentive for an insurer to resolve a case is simply the cost of litigation and the cost of claim handling. If an insurer can settle a case for a fair amount promptly, the insurer avoids the cost of having its claims adjustor continue to deal with that case, and furthermore avoids the significant legal fees that occur in the defense of virtually any personal injury lawsuit. A third incentive is the desire of both parties to avoid Rule 82 attorneys fees. Yet an additional incentive is the statutory offer of judgment that parties can file pursuant to AS 09.30.065. If a plaintiff files such an offer of judgment and this offer is not accepted, and the plaintiff then recovers a larger amount than the offer, the plaintiff recovers an additional 2% in interest, for a total of 12.5% per annum, from the time of the occurrence. These are significant incentives which are already present in our system which encourage both parties to expeditiously resolve claims, and frankly the system works well, for only a very small percentage of cases ultimately proceed to the courtroom.

If HB 522 is passed, the legislature in effect will create a new cause of action on the part of plaintiffs directly against insurance carriers. However, the legislature will be doing nothing to encourage plaintiffs to act more fairly and expeditiously in resolving disputes. It takes two parties to settle, and this legislation would govern the conduct of the insured party, but not the other party. If anything, the legislature should provide incentives for all parties, insured or not, to promptly and fairly resolve claims.

We know problems with claims have occurred in the past, and we suspect there will be occasional problems in the future, but disagreement is inherent in the adversarial system of justice. That system is now equally balanced, since neither a plaintiff nor an insured defendant may sue the other side for lack of good faith in negotiation. The passage of HB 522 would change that balance.

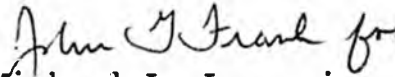
The cost and availability of insurance is one of the most significant problems facing the legislature this year. Passage of HB 522 will complicate rather than assist the resolution of this problem. We strongly feel that claims settlement practices should continue to be overseen by the Division of Insurance through the broad powers granted by the

HUGHES THORSNESS GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW

present act. We thank you for the opportunity to comment on
this issue.

Sincerely,

HUGHES THORSNESS GANTZ
POWELL & BRUNDIN

By:  for
Michael L. Lessmeier

MLL/mh
0419A

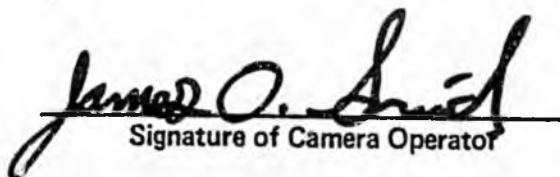
cc: Members of the House Labor and Commerce Committee




RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

5 3 1

HOUSE
COMMITTEE REPORT

HESS

2/24

(7)
Date referred: 1/31/86

FURTHER REFERRALS: FINANCE

DATE: Feb 20 1986

The LABOR & COMMERCE Committee has considered HB 531

"An Act establishing the risk management collateral fund for the University of Alaska; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note *Sup 90*
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mike Davam

George Henley - No Rec

Mike Davam - No Rec

Mike Davam
Chairman

ALASKA
STATE LEGISLATURE
MEMORANDUM

February 7, 1986

TO: Representative Mike Navarre, Chairman
House Labor and Commerce

FROM: Representative Jim Duncan

SUBJECT: Insurance

Attached is the back-up for HB 531, "An Act establishing the risk management collateral fund for the University of Alaska; and providing for an effective date.", for your use in Committee meetings scheduled for the week of February 17, 1986.

If you have any other questions regarding this bill please contact Dale Staley of my office at 465-4766.

University of Alaska
Risk Management Collateral Fund

Collateral Fund:

Pool of money for payment of large uninsured claims.

Benefits:

Provides security to excess carriers.

Alternative to purchase of high cost primary coverage.

Alternative to campus assessments for large losses.

Provides annual investment income.

Characteristics:

Limited access to only large specified claims.

Reimbursement requests on a specific claim basis.

Investment earnings available for reimbursement of claims or expansion of the fund.

University of Alaska
Schedule of Unplaced Insurance Coverage
 (Excluding Workers' Compensation Coverage)

	<u>July 1</u> <u>1985</u>	<u>Aug 1</u> <u>1985</u>	<u>Nov 1</u> <u>1985</u>
	(% Not Placed)		
Property:			
Primary \$10 Mil	18%	18%	13%
\$30 Mil excess of \$10 Mil	67%	58%	-
\$30 Mil excess of \$40 Mil	74%	27%	-
Casualty:			
Primary \$5 Mil (Placed 8/1/85)	100%	-	-
\$5 Mil excess of \$5 Mil	75%	20%	20%
\$40 Mil excess of \$10 Mil	-	-	-
\$50 Mil excess of \$50 Mil	10%	-	-
Aggregate (Stop Loss):			
\$2 Mil	50%	50%	50%
Board Errors and Omissions:			
\$1 Mil	100%	100%	100%
Medical Malpractice:			
\$1 Mil	100%	100%	100%
Environmental Impairment:			
\$1 Mil	100%	100%	100%

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

ALASKA
STATE LEGISLATURE
MEMORANDUM

February 7, 1986

TO: Representative Mike Navarre, Chairman
House Labor and Commerce

FROM: Representative Jim Duncan

SUBJECT: Insurance

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If you have any other questions regarding this bill please contact Dale Staley of my office at 465-4766.

Introduced: 1/31/86
Referred: Labor & Commerce,
Health, Education & Social
Services and Finance

BY DUNCAN, M.M. MILLER AND
LARSON

1 IN THE HOUSE

2

HOUSE BILL NO. 531

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act establishing the risk management collateral
7 fund for the University of Alaska; and providing for
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 14.40 is amended by adding a new section to article 3
11 to read:

12 Sec. 14.40.455. UNIVERSITY RISK MANAGEMENT FUND. (a) There is
13 established in the general fund the University of Alaska risk manage-
14 ment fund. The fund consists of money appropriated by the legislature
15 for the purpose of providing a nonlapsing collateral fund for payment
16 of uninsured losses of the University of Alaska in excess of pre-
17 established loss assumption levels.

18 (b) The fund may be used only for the purposes of making pay-
19 ments as a result of

20 (1) civil suits;

21 (2) claims, damages, or losses to real and personal proper-
22 ty owned by or in the actual or constructive possession of the Univer-
23 sity of Alaska;

24 (3) losses of income from real and personal property; and

25 (4) expenses, attorney fees, and claims investigation costs
26 associated with claims or losses.

27 (c) The legislature may appropriate into the fund earnings
28 derived from temporary investment of collateral fund assets, recover-
29 ies of losses previously charged to the fund, and restoration of funds

University of Alaska
Risk Management Collateral Fund

Collateral Fund:

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Alternative to campus assessments for large losses.

Provides annual investment income.

Characteristics:

Limited access to only large specified claims.

Reimbursement requests on a specific claim basis.

Investment earnings available for reimbursement of claims or expansion of the fund.

1 utilized for specified claims. The amount of the fund may not exceed
2 the amount necessary and prudent based on independent actuarial deter-
3 minations. The University of Alaska may request that University of
4 Alaska funds be deposited into the risk management collateral fund
5 under AS 37.07.080(h).

6 (d) The Department of Administration and the University of
7 Alaska shall determine the loss assumption levels at the beginning of
8 each fiscal year for the purpose of assessing the risk management
9 collateral fund. The loss assumption levels shall be established at
10 the amount necessary and prudent based on independent actuarial
11 determinations.

12 (e) An annual report of the activity of the fund and loss as-
13 sumption levels shall be submitted by the Department of Administration
14 to the Office of Management and Budget and the Legislative Budget and
15 Audit Committee.

16 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
17 10.070(c).

University of Alaska
Schedule of Unplaced Insurance Coverage
 (Excluding Workers' Compensation Coverage)

	<u>July 1</u> <u>1985</u>	<u>Aug 1</u> <u>1985</u>	<u>Nov 1</u> <u>1985</u>
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\$1 Mil	100%	100%	100%
Medical Malpractice:			
\$1 Mil	100%	100%	100%
Environmental Impairment:			
\$1 Mil	100%	100%	100%

University of Alaska
**General Liability Premium Cost
 Per Layer of Coverage**

\$100 Mil	Total	\$397.6
~~~~~   ~~~~~   \$50 Mil ~~~~~   ~~~~~   \$10 Mil ~~~~~   ~~~~~   \$5 Mil ~~~~~   ~~~~~	<div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;"><b>\$50 Mil excess of \$50 Mil</b>  <b>\$100 Per Million</b></p> </div> <hr/> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;"><b>\$40 Mil excess of \$10 Mil</b>  <b>\$750 Per Million</b></p> </div> <hr/> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;"><b>\$5 Mil excess of \$5 Mil</b>  <b>\$9,000 Per Million</b></p> </div> <hr/> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;"><b>Primary \$5 Mil</b>  <b>\$63,250 Per Million</b></p> </div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">\$5.0</p> </div> <hr/> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">\$30.0</p> </div> <hr/> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">\$45.0</p> </div> <hr/> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">\$317.6</p> </div>
Coverage		Premium

University of Alaska  
 FY87 Risk Management  
 Cost Projections

(Excluding Workers' Compensation Coverage)

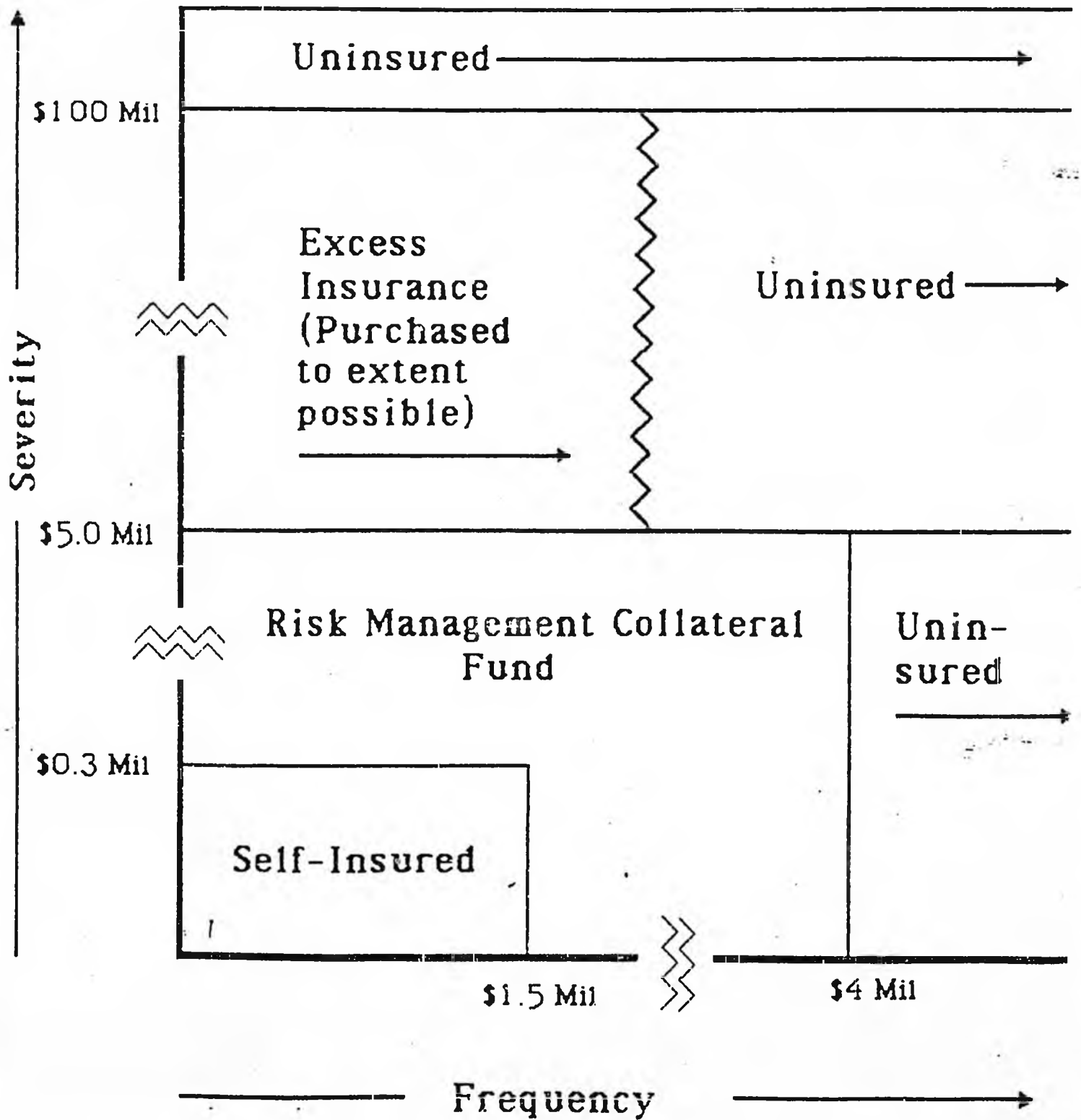
	<u>Low</u>	<u>High</u>	<u>Forecast</u>
<b>Sources of funds:</b>			
State General Fund	<u>\$910.4</u>	<u>\$910.4</u>	<u>\$910.4</u>
<b>Expenditures:</b>			
Premiums	1,358.6	1,594.9	1,476.8
Claims	789.7	1,230.0	1,034.8
Loss prevention	48.7	48.7	48.7
Other	<u>48.3</u>	<u>86.8</u>	<u>50.1</u>
Total	<u>2,245.4</u>	<u>2,960.4</u>	<u>2,610.4</u>
Deficiency	<u>(\$1,335.0)</u>	<u>(\$2,050.0)</u>	<u>(\$1,700.0)</u>
Premium increase rate	<u>15%</u>	<u>35%</u>	<u>25%</u>
Loss confidence level	<u>80%</u>	<u>25%</u>	<u>50%</u>

**University of Alaska**  
**FY87 Risk Management Loss Projections**  
**(Excluding Workers' Compensation Coverage)**

<u>Confidence Level</u>	<u>Loss Projection</u>
80%	\$789.7
70%	\$889.6
50%	\$1,034.8
25%	\$1,230.0
10%	\$1,425.1

**Confidence level - assurance that actual losses will meet or exceed loss projection**

# University of Alaska FY87 Risk Funding Plan



**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : _____

**REQUEST**

Bill/Resolution No. : HB 531  
 Title : Establishing Risk Management  
 Collateral Fund for University of  
 Alaska , ed.  
 Sponsor : Duncan  
 Requestor : _____  
 Date of Request : _____

**FISCAL DETAIL**

Agency Affected : University of Alaska  
 BRU : Statewide Programs and Services  
 _____  
 Components : _____  
 _____

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL		2,500.0				
REVENUE						

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		2,500.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

See attached

Prepared by : Brian Rogers Phone : 907-474-7593  
 Division : University of Alaska Date : 2/19/86

Approved by Commissioner : Brian Rogers for Sherman Carter Date : 2/19/86  
 Agency : University of Alaska

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 531

This bill establishes a Risk Management Collateral Fund in the general fund. The fund is to be used to pay for uninsured losses at the University of Alaska in excess of pre-established loss assumption levels. The loss assumption levels are to be determined annually by the Department of Administration and the University of Alaska based on independent actuarial assumptions.

Creation of a risk management collateral fund was recommended to the University by Corroon and Black Corporation, the State's risk management consultants. Their proposal considered the primary layer of general liability insurance, the \$4.7 million in coverage between \$300,000 and \$5 million. This coverage currently costs the University \$317,600 annually. Corroon and Black recommended an initial appropriation to the fund "in the range of \$2.5 - \$5.0 million." The University is requesting establishment of the fund at the lower end of this range. Also covered by the fund would be losses in other lines of insurance, or in areas not covered by insurance companies.

Coopers and Lybrand, certified public accountants, gave preliminary estimates to the University based on insurance industry statistics and estimates. The actuarial assumptions used for this fiscal note should be revised prior to the beginning of the fiscal year, but will have little effect on the size of the fund. Assuming that the risk management collateral fund provides coverage for claims of up to \$5 million, the estimated retained loss for fiscal year 1987 in general liability would be \$2,119.3. For auto liability, the estimated retained loss would be \$76.4. Retained losses for property insurance were not calculated by Coopers and Lybrand.