ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4114 SJUD SB 377 (FILE 1) 994

plaintiff who plans to capitalize on a misfortune. See if you can live with the changes proposed by this bill. Most of your constituents probably feel the same; they are fed up with the costs and threats of wide open litigation, which some folks call our "rights" as American citizens.

The proposed changes of SB 377 will funnel more of the award to the victim and less to the legal system, and should thus be more cost effective. Claims of less than $50,000 can be settled by arbitration, avoiding much of the legal cost. Larger awards will be itemized to reflect actual past and future losses, eliminating the tendency to award nice, round, (and inflated) figures. (Most of us have little appreciation for what a hundred thousand tax-free dollars really amounts to). It can be awarded in periodic payments, to put less burden on the uninsured defendant and be less costly to the insurance company (i.e. less costly to the payer of premiums also) An annuity could be set up to dispurse the monthly payments. The money would be more likely to go for the purposes intended. The sky will no longer be the limit for "pain and suffering" to pad an award where actual monetary damages have not occurred. The court will take into account other sources of compensation and insurance to avoid double payment. Contributory fault needs to be implemented. In obstetrics this is especially important for us when "failed" home deliveries occur and a mother with an undelivered infant appears at the emergency room entrance in serious trouble from lack of proper care. The doctor is then expected to produce good results, with a healthy mother and infant. If the physician cannot do so, he may be successfully sued. In this sort of case, the patient should have to assume much of the responsibility for the unfortunate results. You shouldn't be held responsible for injuries suffered by the the thief who joyrides in your car or burgles your school and falls through the skylight, either.

Apportionment of damages is necessary also. If I mismanage an obstetrical case and an obstetrician helps with an emergency C-section, but the baby does poorly, then the obstetrician who helped out should not be held liable for my poor management. Conversely, if I am called in the middle of the night to assist with an emergency operation and the surgeon is negligent, then I should not be held 100% liable for damages if the surgeon has little insurance or assets or even leaves the country. The present doctrine of joint and several liability allows any party to be sued for the full amount regardless of percentage of actual fault. This is called "deep pocket" and is not fair when I jump in and help out with a critical case. You wouldn't want to be a victim of this doctrine, either.

Verification of claims is important. Plaintiff's lawyers should persue a case only if it has real merit, and avoid the claims that consume time and money and are unlikly to succeed, but do manage to run up defense fees, cause the defendant emotional pain, and use up his time and mental energy better spent on other chores. Verification will require the plaintiff's attorney to do his homework well prior to filing a suit and not simply throw a net for defendants to dismiss them one by one as discovery progresses. Sometimes, defendants are named in the initial action in order to have the trial held in a location known to have liberal juries. Claims which are groundless or frivolous cannot be tolerated. Critics will say that this will deny poor victims access to their "day in court". I doubt that a case needs to go to court to determine whether or not it has sufficient merit. We feel that lawyers need to be as accountable as everyone else for their actions and that groundless litigation that turns a blameless person into a "victim-defendant" should not be tolerated.

The cap on pain and suffering needs to be held at $250,000 per event, and not be used as multiples of that amount to pad an award when no actual monetary damages occurred. The federal studies have recommended $100,000 as the cap. A tax-free $250,000 at 8% is $20,000 a year (tax free) without even spending any of the $250,000. That's a goodly amount, in my book.

Punitive damages will benefit society as a whole and will not be used as a threat to make a defendant settle for policy limits, (your liability policy does not pay punitive damages).

Itemized verdicts will cause a jury to account for the actual usage and purpose of the award, causing more realistic figures to be reached.

Periodic payments will allow a defendant or his insurance company to make payments rather than be forced to pay a lump sum which may cause undue hardship. A defendant can undergo hardship just as easily as the plaintiff.

Contingency fees should be paid on a sliding scale. SB 377 needs to have this provision added.

Contributory fault is an essential provision. When the plaintiff's injury is 95% his own doing, the defendant should be responsible for 5% at the most. Present legal doctrine allows the defendant to be liable for 100% of the damages and that just plain isn't fair.

The statute of limitations somehow needs revision; I believe that California has a 6 year-3 year statute for minors but I could be wrong about the exact figure. Time of discovery is a difficult date to document and can be subject to abuse. Time from date of injury seems best. At least the insurance companies would have some sort of predictable risk when writing policies. Present product liability statute seems to have no limit at all. 21 years for me in my obstetrics is terribly long. It's a tough issue. It would seem that in only exceptional circumstances would any injury actually go undetected for more than several years though I would certainly expect that exceptions could probably be found. I feel strongly that a change in the statute of limitations needs to be added as a part of SB377.

I've said my piece: please support the concepts of the original SB 377 in it's entirety, with additions addressing contingency fees and restructuring the statute of limitations. SB 382 seems an attempt to continue the status quo under the guise of a tort reform effort, with non-economic damages in multiples of $750,000, continued joint and several liability, and a detailed provision allowing more than what the sliding scale for contingency fees allows. The U.S Attorney General's report of February 1986 gives a good analysis of the whole picture and it's eight recommendations are given as a basic beginning structure for meaningful tort reform. It does clearly state that meaningful tort reform as the only real long-range solution for our affordability/availability problem. We need more that a bandaid for this problem. Thank you, I appreciate your attention.

Yours truly,

David P. Werner, M.D.

Alaska State Legislature
House of Representatives

4007 BRENTWOOD CIRCLE
ANCHORAGE, ALASKA 99502
(907) 243-7574

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4939

REPRESENTATIVE
ALYCE HANLEY
DISTRICT 9, SEAT B

MEMBER
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE
LABOR AND COMMERCE COMMITTEE
PUBLIC SAFETY SUBCOMMITTEE

April 15, 1986

Senator Pat Rodey, Chairman
Senate Judiciary Committee
P.O. Box V, (M/S 3100)
Juneau, Alaska 99811

Dear Mr. Chairman:

The Health Association of Alaska sent me a copy of their April 14 letter to you regarding my amendment to House Bill 532. This amendment was added in the House Labor and Commerce Committee, and exempts hospital board members, among others, from certain liability.

My intent in suggesting this language was to address the growing problem of protecting members of the public willing to serve on the boards of hospitals, non-profit corporations, and schools.

The language suggested by Dennis DeWitt in his April 15 letter seems to clarify that intent. It is my hope that your committee will recognize the need for the amendments and consider them for adoption in Senate Bill 377.

With best regards,

Sincerely,

Alyce

Alyce Hanley

cc: Senator Tim Kelly

STATEMENT OF PURPOSE

RS 12049C1

This bill will amend Section 41-335, Idaho Code, to require disclosure to the Department of Insurance of certain financial information maintained by insurance companies. The bill confers additional rule-making authority upon the Department of Insurance to require such statistical information and reports as the Department deems necessary to more adequately monitc -urance coverage, claims, and rates in the State of no.

The Statistical information currently being reported by the Insurance Industry to the Department of Insurance is incomplete and does not enable the Department of Insurance to evaluate questions of coverage, rates, claims, or losses within the industry.

FISCAL IMPACT

No Fiscal Impact on the general fund. This bill requires the Director of Insurance to include within the regulation currently existing under Section 41-401, the costs of administering this provision.

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature — Second Regular Session — 1986

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 460

BY BUSINESS COMMITTEE

AN ACT

RELATING TO STATISTICAL REPORTING OF INSURANCE CARRIERS; AMENDING SECTION 41-336A, IDAHO CODE, TO REQUIRE INSURANCE CARRIERS TO REPORT THEIR IDAHO EXPERIENCE AND OVERALL EXPERIENCE SEPARATELY, TO AUTHORIZE THE DIRECTOR TO PROVIDE FOR FORMS AND INFORMATION BY RULES AND REGULATIONS, AND TO ALLOW THE DIRECTOR TO COMPILE STATISTICS AND PREPARE REPORTS; AMENDING CHAPTER 3, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-336B, IDAHO CODE, TO REQUIRE AN INSURER TO SUBMIT A DISPOSITION OF CLAIMS REPORT FOR CERTAIN TYPES OF CLAIMS, TO REQUIRE THE REPORTS BE MADE PUBLIC, AND TO PROVIDE IMMUNITY FROM SUIT FOR INSURERS AND THE DEPARTMENT FOR ACTIONS TAKEN PURSUANT TO THE SECTION; AMENDING CHAPTER 3, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-336C, IDAHO CODE, TO PROVIDE PENALTIES FOR FAILURE TO REPORT; AND AMENDING CHAPTER 3, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-336D, IDAHO CODE, TO PROVIDE FOR FEES AND MISCELLANEOUS CHARGES FOR THE ADMINISTRATION OF THE PROVISIONS OF SECTIONS 41-336A, 41-336B AND 42-336C, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-336A, Idaho Code, be, and the same is hereby amended to read as follows:

41-336A. STATISTICAL REPORTS. (1) As a condition of doing business in the state of Idaho each insurer transacting insurance covering:

(a) Liability for malpractice of any person licensed under chapter 18, title 54, Idaho Code;

(b) Liability for malpractice of any person licensed under chapter 1, title 3, Idaho Code;

(c) Liability for the manufacture, design, production, processing or modification of any product; or

(d) Any other risk or risks, whether liability or otherwise, that the director of the department of insurance may specify;

shall report to the director such statistics as the director may designate by rule or regulation. The statistics shall be reported to the director annually, by the first day of March, for the preceeding year ending December 31. The statistics shall separately address the experience of the state of Idaho and all other experience including the state of Idaho.

(2) The reports required by subsection (1) above shall include, but shall not be limited to, the following for each insurer for each type of insurance for which a report is required:

(a) Number of exposures;

(b) Direct premiums written;

(c) Direct premiums earned;

(d) Direct losses paid

(i) amount,

(ii) number of claims;

(e) Direct losses incurred;

(f) Direct losses unpaid
(i) amount reported,
(ii) number of claims; and
(g) Net losses incurred but not reported.

(3) Reports required by subsection (1) of this section shall be made on forms required by the director and shall contain the information required by rule and regulation of the director.

(4) The director may annually compile and review all reports submitted under the provisions of this section. When reports are submitted representing no less than seventy-five percent (75%) of the premiums written for each reporting line of insurance for the reporting year, the director shall evaluate the premium rates in Idaho for each reporting line of insurance. The findings of such review and evaluation, and the reports required of insurers under this section, shall be made available to any interested citizen, insured or licensed insurer.

SECTION 2. That Chapter 3, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-336B, Idaho Code, and to read as follows:

41-336B. DISPOSITION OF CLAIMS REPORT. (1) As a condition of doing business in the state of Idaho, each insurer transacting insurance subject to the provisions of section 41-336A, Idaho Code, shall report to the director annually by the first day of March, for each of the two (2) years next preceding the initial report and for one (1) year next preceding filing the report thereafter for each and every claim as defined in section 41-336A, Idaho Code, caused by the insured, for policies issued in the state of Idaho, if the claim resulted in:
(a) A final judgment in any amount;
(b) A settlement in any amount;
(c) A final disposition not resulting in payment on behalf of the insured.

(2) Reports required in subsection (1) of this section shall be made on forms required by the director and shall contain the information required by rule and regulation of the director.

(3) The director shall make reports required hereunder available to the public in a manner which will not reveal the names of any person, manufacturer or seller involved.

(4) There shall be no liability on the part of, and no cause of action shall arise against, any insurer reporting hereunder or its agents or employees, or the director or employees of the state, for any action taken by them in good faith compliance with the provisions of this section.

SECTION 3. That Chapter 3, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-336C, Idaho Code, and to read as follows:

41-336C. FAILURE TO COMPLY -- PENALTIES. (1) Any insurance company required to file a report with the director under sections 41-336A or 41-336B, Idaho Code, which neglects to file such report in the form prescribed and within the time specified, or who neglects to fully and satisfactorily respond in any report timely filed, shall be subject to a penalty of one hundred dollars ($100) for each day in default.

(2) This penalty shall be in addition to any administrative penalty under

section 41-327, Idaho Code.

SECTION 4. That Chapter 3, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-336D, Idaho Code, and to read as follows:

41-336D. FEES AND MISCELLANEOUS CHARGES. The director shall include within the regulation required in section 41-401, Idaho Code, the fees and miscellaneous charges required for the administration of the provisions of sections 41-336A, 41-336B and 41-336C, Idaho Code.

TORT REFORM

THE ROAD TO PREDICTIBILITY

A Position Paper

-By-

THE NATIONAL ASSOCIATION OF
PROFESSIONAL SURPLUS LINES OFFICES, LTD.
P.O. Box 1507
Roswell, Georgia 30077

TORT REFORM - THE ROAD TO PREDICTIBILITY

I. INTRODUCTION

An "availability and affordability crisis" in some lines of commercial insurance is a problem that now confronts the U.S. property/casualty insurance industry. Spiraling premium increases, reduced limits, large deductibles and, in some cases, a complete lack of coverage for some lines of insurance are becoming common occurrences. In short, there has been a complete market dislocation over the past year in some commercial property/casualty insurance lines.

As with any market disruption for any commodity or service, there are many causes. However, in the present commercial insurance crisis, one problem can be identified as playing a predominent role. The U.S. tort system, as interpreted and implemented by the courts at both the state and federal levels, has been tortured, abused and expanded in such a way that insurers can no longer predict or assess their exposure in insuring liability risks. In addition, those individuals and corporations that secure sufficient insurance coverage, are viewed simply as the "bank" or "deep pocket" from which monies are to be "drawn" to pay for any injury that occurs.

Our nation's tort system stems from the English common law and is our method of assessing legal fault and providing damages caused to one by the wrongful actions of another. Unfortunately, the present tort system has become derailed and turned into a compensation mechanism rather than a fault or true tort system. In recent years, the U.S court system appears to have shifted from a forum of adjudication to a forum for compensation where injury victims can appeal and obtain relief regardless of who is at fault or their degree of fault.

The court system does not operate in a vaccum, however. To a great extent, the changing court attitudes and the concurrent abberations in the nation's tort system mirrors changes in our society's values and outlooks.

First, advances in technology, science, medicine, etc. have produced a high standard of living for the vast majority of our citizens. As we continue to make further progress in these areas and the quality of our life increases, we also strive to reduce or eliminate the impact of adversity in our lives. For example, we have built "safety nets" to protect us from failures of our financial institutions. For the more unfortunate members of our nation, we have established welfare programs and our elderly have "social security." The country has also "bailed out" a number of failing business enterprises over the past ten years. As a society, we have rising expectations about the good life and, although impossible, we expect to live in a "riskless society."

Second, our expectations of being insulated from the adversities of life have resulted in a ubiquitous belief that each citizen is "entitled" to compensation from some source - any source - for every injury or loss experienced. Thus, compensation for any loss or injury, even if the victim is partially or totally at fault, is perceived today to be virtually an absolute right.

Third, to accomodate these rising expectations, the courts have evolved new theories of tort liability which shift the cost of injury or loss to "deep pocket" insurers, governmental entities or large corporations regardless of fault. Fault is no longer the issue since injury compensation is the goal.

Fourth, associated with this dramatic change, there has come a tremendous increase in litigation and transactional costs related to resolving disputes. As the courts become a forum for compensation of injuries irrespective of fault, the public has flooded the judiciary with disputes. Each individual dispute requires expensive lawyers, time consuming and costly procedures and often it results in inflated awards and settlements.

The 600 members of the National Association of Professional Surplus Lines Offices (NAPSLO) who provide high limit protection for both liability and property risks have been impacted by the problems of the civil justice system in the same manner and, possibly, to a greater degree than the general insurance industry. As the "deep pocket" theory of liability is applied, those organizations that supply high limits of coverage often find themselves being the targets of plaintiffs, lawyers and judges who view them as the resource to be used to compensate victims of injury or loss regardless of fault or cause.

The following are some reforms which NAPSLO believes could be instituted which would bring a balance to our civil justice system. These reforms would assist in solving both the availability and affordability problems which afflict the property/casualty insurance industry today by allowing insurers to accurately predict their exposure to risk.

II. GENERAL REFORMS

A. JOINT LIABILITY: Joint liability is the legal doctrine which makes every defendant in a group of defendants equally or solely responsible for damages when the other defendant(s) are unable to pay. This can occur regardless of a defendant's degree of culpulbility. Consequently, the defendant with greatest funds is often left "holding the bag" when other responsible parties default. The result is that those defendants that carry high insurance liability limits (deep pocket defendants) are often required to pay the entire cost of a judgment. While these defendants or their insurers can take court action to force the other defendants to pay their fair share, such action is expensive and time consuming and is ineffective against defendants who are "judgment proof" or whose resources are minimal.

The burden of joint liability is increased in those jurisdictions that abandon contributory negligence (a plantiff who is even partially responsible for his injury recovers nothing) and replace it with pure comparative negligence (damages are allocated purely by percentage and responsibility). Twenty-seven states either by legislative action or court edict have adopted pure comparative negligence. Consequently, in these states many plantiffs previously barred from a recovery now can secure an award. Thus, the "deep pocket" defendant is even more vulnerable to absorbing awards in excess of its responsibility.

A more reasonable and equitable approach in assessing damages is the doctrine of "several liability." Under several liability, defendants are only liable for their own tortuous conduct and are not required to pay the awards and judgments imposed on others. Therefore, NAPSLO urges all states to eliminate joint liability and hold defendants subject only to several liability.

To the extent that joint liability cannot be eliminated, NAPSLO supports the enactment of the "Uniform Contribution Among Tort Feasors Act" which establishes a system for all defendants to collect from one another without additional litigation when payments are made by a defendant which exceed that defendant's own individual responsibility.

B. CONTINGENCY FEES: The United States is the only major industrialized nation in which lawyers can be engaged exclusively on a contingency fee basis. In other countries, the contingency fee is either illegal, unethical or strictly regulated.

The contingency fee is a percentage of the client's recovery the lawyer receives for his or her effort. Thus, if no recovery is obtained, the lawyer does not get paid.

Theoretically, the contingency fee client need not be rich or even able to pay a lawyer. The only thing that is needed is a good case. The contingency fee has, therefore, been described as the "poor person's key" to the courthouse.

The reality of the contingency fee system, however, is somewhat different. Often, lawyers refuse to accept small cases regardless of their merit because the percentage of recovery will not be sufficient to cover the expenses of pursuing the case. In some personal injury cases, the lawyer may contract for as much as 50% of the injured claimant's recovery. This substantially reduces the total amount the client/victim receives.

While the contingency fee system encourages a lawyer's personal interest in the client's case and in obtaining the highest recovery possible for the client, there is no moderating mechanism within the contingency fee system that requires the lawyer to make reasonable and appropriate demands. Thus, it is in the lawyer's personal interest often to make an excessive demand knowing that a sympathetic jury may very well provide a recovery that is based upon the demand rather than upon the actual value of the loss.

Also, compensation on a contingency fee basis bears no relationship to the time, effort and skill a lawyer applies to the case. For example, cases in which hundreds of thousands of dollars of recovery are obtained may not require any more hours of skill or effort on the lawyer's part than a case in which a much lower recovery is secured. The contingency fee system, however, allows the lawyer to collect the same percentage regardless of the time, effort and skill put forth in the case. This actually discriminates against the plantiff with a meritious but low recovery case in favor of the client with a high recovery case and a "deep pocket" defendant that has purchased high liability limits. It also encourages demands to be inflated and discourages settlements.

NAPSLO recommends that the contingency fee system be modified so that contingency fees are based upon a declining percentage depending upon the amount of recovery. For example under this modified contingency fee approach, a lawyer could not accept more than 33.3% of the first $50,000 of recovery; 25% of the next $100,000; 15% of the next $200,000; and 10% of any recovery over $350,000.

Such a sliding scale will assure a greater share of the recovery will go to the injured party as well as reflecting a fair payment for the attorney.

C. PERIODIC PAYMENT OF DAMAGES: Traditionally, awards and settlements for personal injury cases have been paid on a "lump sum" basis. "Lump sum" payments for damages, however, have proved to be "expensive" and at times, inappropriate for both the victim who secures the payment and for the insurer that makes the payment. Lump sum payments provide no guarantee that the monies awarded to a victim, particularly a victim needing long term care or rehabilitation, will be available when actually needed to pay for medical and other necessary expenses. Lump sum payments need to be managed prudently and accident/injury victims, concentrating on their recovery, are not in the best position to manage large lump sum awards.

Seventeen states have enacted statutes that require or allow courts to award damage payments periodically rather than on a "lump sum" basis. Under these statutes, the defendants (or their insurers) must pay the victim's expenses as they occur rather than providing a speculative "up front" total award. In addition, such awards can also be structured to provide, when necessary, a stream of income.

By allowing periodic payments, liability costs are lessened because insurers can fund them at a substantially lower cost than a lump sum payment and the saving is passed on to the insured in the form of lower liability premiums. The recipient (victim) can be assured that the costs for which the award is given are paid and, when necessary, a steady stream of income can be provided. NAPSLO urges states to enact laws to provide for periodic payment of damages.

D. DISCOVERY ABUSE: "Discovery" is the means by which parties involved in litigation conduct a pretrial investigation. The purposes of discovery are: 1) to define the issues of a trial; 2) obtain evidence to be used in the trial; and 3) to find other additional evidence to be used in the litigation.

The process of discovery can be very time consuming and expensive. Both litigants (whether they be questioner or respondent) have found ways to frustrate the discovery process. Plantiffs often engage in "fishing expeditions" in which they ask extremely broad questions in order to uncover evidence of unrelated wrong doings for use at another trial. Defendants or respondents wishing to protect information "stall" by interpreting discovery requests in the most narrow terms possible. Thus, cases are delayed, settlement and litigation costs are increased and no one benefits.

Court rules and procedures must be rewritten to control discovery in order to reduce delays and trial costs. Therefore, NAPSLO recommends that legislation be adopted in the states which would allow courts to, on their own, weed out unmeritorious claims and defenses, sharpen the legal issues and impose sanctions against litigants who disobey pretrial orders and deviate from pretrial schedules.

E. STATUTE OF LIMITATIONS: Statute of limitations are limits imposed by law on the length of time following an injury that a victim has to file a lawsuit.

Statute of limitations are a recognition that stale claims are difficult to adjudicate. Over time, witnesses become hazy in their recollection and evidence disappears and is sometimes destroyed. Moreover, a statute of limitations provides protection to defendants from having to defend suits which are filed many years after an injury occurs when advances in technology, science, education and manufacturing have changed the standard of conduct to which the defendant is to be held.

Every state has a statute of limitations applicable to general tort actions. In general, the time period for a statute of limitations begins to run when the injury is discovered or should have been discovered. However, many statute of limitations have been broadened by legislative actions in recent years. In addition, the courts have been interpreting statute of limitations in the broadest possible manner to allow claims which are based upon incidents that took place many years ago to be litigated. Simply, the desire to compensate victims has outweighed the spirit of fairness and the practical protection the statute of limitations affords.

NAPSLO supports statute of limitations that provide a reasonable time period in which a personal injury suit can be brought and urges legislative reform where judicial interpretations of a state's statute of limitations have unreasonably broadened the period of time in which suits can be brought.

F. COLLATERAL SOURCE RULE: The collateral source rule is a rule of evidence which prevents juries from receiving or considering evidence that a plaintiff has been compenstated from other sources such as workers compensation, health insurance, personal injury protection under no fault auto insurance, etc. Thus, plaintiffs with multiple insurance coverages often are able to get double and triple "dips" which are in essence "windfall" recoveries. Such multiple recoveries are unfair and costly to society and they increase the cost of insurance premiums to all consumers.

Juries should be given information as to other sources of recovery. Such information is crucial for a jury to determine the amount of a fair and proper award. Therefore, NAPSLO recommends the elimination of the collateral source rule in all jurisdictions.

An alternative to repealing the collateral source rule is implementing a mandatory offset against damage awards for all other compensation received by the victim which is related to the injury.

The Rand Corporation's Institute for Civil Justice has stated that the mandatory offset of collateral benefits against damage awards is one of the two tort reforms with the greatest impact on the size of awards. A ceiling or "cap" on awards is the other. The institute reports that in states where the collateral offset has been imposed, the severity of awards has dropped by 50% on the average within two years time.

NAPSLO recommends, therefore, that in states where the collateral source rule is maintained, a mandatory offset of collateral benefits against damage awards be enacted.

G. CLASS ACTIONS: One of the most complex and costly types of legal actions is the class action suit. Defense costs of a class action suit are enormous. In a class action suit, a defendant is required to identify and notify every plaintiff in the action and it must conduct a massive and costly investigation into thousands of individual plantiff situations.

Another problem with class action suits is that some attorneys have found the class action suit to be a very effective way to secure evidence for other litigation and file such actions for that purpose.

Class action law suits are an intimidating instrument. Defendants, when faced with a class action law suit are often willing to make generous settlements in order to avoid the burden and costs of lengthly litigation. NAPSLO recommends that all courts (federal and state) invoke rules that: 1) provide sanctions against lawyers who use the class action to seek evidence for other suits; 2) assure that members of class action plantiff [illegible]oups receive an appropriate amount of the recovery; and 3) assure that [illegible]ees are not excessive. Where courts can't accomplish these objectives, [illegible]ies should act to provide these protections.

Finally, court rules should also be amended to: 1) prevent class action suits from being filed simply to coerce a defendant instead of trying to settle a dispute; and 2) to impose on the plaintiff its fair share of the costs related to the initial identification and notification process.

H. PAIN AND SUFFERING AWARDS: The pain and suffering award (non-economic award) is one area in which reform is vitally needed. Under the present system, juries have unlimited discretion in awarding damages for pain and suffering. The pain and suffering award is intended to "compensate" victims of bodily injury for mental, physical or emotional distress. However, such an award often reflects a jury's "sympathy" for the victim rather than its actual evaluation of the "loss." Actual economic losses can be determined but "pain and suffering" awards are in the realm of the "abstract" at best and can be inflated for any reason.

In recent years, pain and suffering awards have become volatile and unpredictable. In such an environment, insurers cannot predict their potential losses with any degree of precision and, thus, have reduced limits and eliminated coverage for many lines of liability insurance.

NAPSLO, therefore, urges states to place reasonable "caps" or ceilings on pain and suffering awards (non-economic awards). Alternatively, states should establish specific criteria and standards for awarding pain and suffering damages rather than leaving the entire amount to the discretion of the jury. Such action would at least provide insurers with some basis to accurately access their potential losses.

I. PUNITIVE DAMAGES: The purpose of punitive damages (exemplary damages) is to "punish" defendants for malicious and outrageous acts. Punitive damages were originally thought to be one method of controlling such "outrageous" behavior. However, in recent times they have become simply a way for plaintiffs to obtain "higher" awards and for attorneys to increase their fees.

In essence, punitive damages have become just another weapon in the arsenal of intimidation used by plaintiff lawyers to obtain higher settlements. Thus, rather than being a benefit to society, punitive damages do nothing but raise the cost of goods and services.

Both the reason and underlying purpose of civil punitive damages must be questioned. "Punishment", whether it be incarceration or monetary sanctions, is the responsibility of the criminal laws and criminal justice system not the civil courts. Those whose actions transgress the bounds of propriety, whether through negligence or intent, should be tried and punished by the criminal courts.

It is the criminal justice system that has been established to meet out punishment and it has created proper rules of evidence and safeguards to guaranty fair treatment for the defendant.

The theory that the fear of punitive damage judgments actually has a practical impact in controlling behavior is very doubtful. For example, punitive damages are quite often assessed in products liability cases. This has led to some ridiculous situations in which manufacturers and distributors have been "punished" several times as several suits are filed related to the same occurrence. However, the prospect of punishment, a multiple monetary punishment, in the civil courts is minimal and ineffective when compared to the "punishment" the marketplace can give a manufacturer or distributor of defective goods. It is the real fear of marketplace reaction rather than the threat of punitive damages that is the actual controlling factor in commercial behavior.

NAPSLO, therefore, recommends that punitive damage laws be eliminated or that action be taken to reform the abuses in punitive damages. Punitive damage reforms such as "caps" on awards, statutory definitions of the precise standard of conduct and proof required to justify a punitive damage award, and the elimination of multiple punitive damage awards in separate cases stemming from the same occurrence should be instituted. To avoid "windfalls" to plaintiffs, states should require that all or a certain percentage of punitive damage awards be used for public purposes. Also, lawyer's fees should be reduced or scaled back for any amount awarded under a punitive damage judgment. A lawyer's role is to represent the client and assure a fair result not to benefit financially from the punishment of others.

J. PREJUDGMENT INTEREST: Presently, twenty seven states by law add interest to the amount of an award in a civil suit. Such interest is added either from the date of the injury or the date the suit is filed. The purpose of such laws is to dissuade defendants from unnecessary delay and encourage prompt resolution of disputes.

These, of course, are very laudable goals. However, all that prejudgment interest laws have actually done is to provide a reason for plaintiffs to delay settlement since more delay will fatten the final award and to give plaintiff lawyers another "sword of intimidation" over the defendants to force them to "settle" questionable cases.

There can be no level of prejudgment interest that can be established that will eliminate delay by either plaintiff and defendant. Thus, the use of prejudgment interest laws to attain the prompt settlement of cases is futile.

NAPSLO, therefore, recommends the elimination of prejudgment interest laws.

As an alternative to prejudgment interest, NAPSLO suggests that court procedures be instituted that make the party that refuses to accept a reasonable pretrial settlement offer from the other party responsible for the other party's attorney fees and court costs. For example, if a settlement cannot be reached, the figure offered or demanded by each party would be a bench mark by which the court would later determine payment of attorney fees and costs. Under this approach, if a final trial judgment exceeds the amount demanded by a plaintiff at a settlement conference, the defendant would be required to pay the plaintiff's reasonable attorney fees. On the other hand, if the judgment is less than the defense counsel's offer, the plaintiff would be required to pay the reasonable attorney fees and costs of the defendant. If the final judgment fell at or somewhere between the plaintiff's offer and the defendant's demand, neither side would be required to pay the attorney fees and costs of the other party.

Thus, when a plaintiff refuses a defendant's offer of $50,000 to settle the case and the final judgment is $20,000, the court would require the plaintiff to pay the defendant's attorney fees and costs. Such action penalizes the plaintiff for seeking unrealistic damage awards and causing an unnecessary trial. Conversely, if a final judgment is $75,000 and the defendant offered a pretrial settlement of $50,000, the defendant would be responsible for the plaintiff's attorney fees and costs. This punishes the defendant for an unrealistic settlement offer.

The institution of these procedures by the courts would encourage reasonable offers and demands as well as encouraging prompt settlement of cases.

III. SPECIFIC COVERAGES - TORT REFORM

Abuses in the U.S. Civil Justice System have been a fundamental cause of a decline in insurance capacity in certain commercial coverages. To some extent, the proposed general reforms discussed previously would serve to alleviate this problem through all lines of commercial insurance. However, there are some coverages in which specific reform can be taken that will directly impact and ease the present availability crisis.

A. DAYCARE CENTER LIABILITY: Daycare Center liability coverage was never an "easy" risk. The concentration of infants and young children in one facility for a period of time, creates a potential for substantial losses. Even in the best home environments, children can be seriously injured and at times fatalities occur. Thus, when the inevitable "minor" injuries associated with a large group of children are combined with the potential for large losses due to possible serious injury or death, daycare centers become a "difficult" risk to underwrite.

The endemic problems with daycare center liability insurance have been exacerbated recently by the publicity associated with sexual and physical abuse that has occurred in a few daycare facilities. As a consequence, underwriters expect both the severity and frequency of insurance claims to increase. Moreover, many suits may be "delayed" until children reach their age of majority and then take legal action on thier own. Thus, daycare centers offer great potential for major law suits to occur many years after an alleged incident takes place.

Tort Reform and Other Actions: Certainly stricter licensing, inspection and regulation by the state for family or home based daycare centers as well as the "professional" daycare provider would help make daycare facilities more appealing to underwriters. Many states are presently moving in that direction.

In addition, the implementation by daycare center operators of "risk management" and loss control techniques including better background checks of potential employees, disease control, physical hazard control, development and use of the specific supervision criteria based on the number and ages of children and an "open door" policy where parents are allowed to visit the facility at any time will go a long way in reducing the risks associated with daycare facilities.

Finally, one of the major problems with daycare liability insurance is its "long tail" nature. The potential of claims being filed years after the policy was written only adds to the fact that the risk is a difficult one in the first place. Some limitations or "caps" on the period of time in which claims can be filed against daycare centers, perhaps a five-to-seven year statute of limitations from the date of the alledged occurrence, would bring predictibility back into daycare center liability underwriting.

B. GOVERNMENTAL LIABILITY: The lack of governmental liability and, in particular, municipal liability insurance in today's insurance marketplace is directly related to the erosion of the doctrine of "sovereign immunity." Under this doctrine, the federal, state, and municipal governments as well as county, townships and unincorporated divisions of the state are immune from law suits from citizens.

However, both state legislatures and the judiciary, in recent years, have chipped away at the sovereign immunity doctrine particularly as it relates to municipalities. In some states, the state constitution has been amended or state statutes have been changed in a manner that partially or totally abolishes sovereign immunity as it applies to state and local units of government. Also, in some states where the legislature has eliminated the state's immunity, courts have ruled that the repeal also applies to all other political subdivisions of the state.

The courts have also applied a number of theories to circumvent the doctrine of sovereign immunity. Specifically, courts are holding that "governmental functions" are subject to immunity but "proprietary functions" are not. Also, courts have made distinctions between a governmental entity's general duty to the public and specific duty and responsibility to a specific citizen. This has provided individual citizens with the opportunity to sue governmental entities. Governmental entities have also been held liable for damages caused by highly dangerous acts and nuisances. In addition, the liability of municipalities has been expanded by the courts to include liability for violation of the constitutional rights of citizens. Finally, as the ultimate "deep pocket" defendant, municipalities often end up absorbing the full amount of damages under the doctrine of joint and several liability even though its responsibility for the damage was minimal.

Tort Reform and Other Actions: NAPSLO recommends the following measures be taken which will allow a viable market for municipal liability insurance to return:

1) Create state claims commissions to adjudicate claims against both the state government and local jurisdictions;

2) Adopt the Model Governmental Entity Claims Act which provides that governmental entities are liable for their torts but maintains immunity for certain governmental functions such as education, fire protection, utilities, welfare, taxation, crime control and the operation of recreational facilities;

3) Limit the amount of damages given to any one individual in a law suit against

a municipal entity or other state or local goverment jurisdiction;
4) Make certain high risk governmental activities immune from suit by giving immunity for actions involving defective highways, negligent operation of governmental cars, or dangerous or defective conditions of public buildings;
5) Provide that state legislatures and the governing bodies of other local jurisdictions can authorize the payment of claims without having to first waive their immunity;
6) Provide that government is not liable for "willful and wanton conduct" either directly or through actions for indemnity;
7) Allow for state of the art defenses in suits related to buildings and other projects undertaken by governments; and
8) Eliminate ad damnum clauses and introduce procedural reforms including a requirement that courts review attorney fees in cases where the suit is against the state or a political subdivision.

C. PROFESSIONAL LIABILITY: A severe crisis has developed in several areas of the country regarding both the availability and affordability of professsional liability insurance. In some lines of medical professional liability, particularly, prices have risen dramatically in recent months. In addition, reduced limits are common, increased deductibles are required and many insurers are switching to a claims made policy form in order to secure greater predictibility of risk. Specifically, insurance availability problems have arisen for a number of high risk medical specilities most notably obstetrics/gynecology, neurosurgery, orthopedic surgery and cardiology.

Nurse/mid-wives have had problems similar to those of physicians in regard to jury verdicts and, consequently, in obtaining liability insurance. There are other additional factors, however, specifically related to nurse/mid-wives that have made availability of insurance for them much more difficult. One such problem is the fact that the standard of care for a nurse mid-wife is less clear than it is for a physician. With this uncertainity as to what constitutes negligence, carriers are not anxious to write nurse/mid-wives. In addition, a lack of licensing standards in certain states and the broader practice for nurse/mid-wives in recent years has increased the risk particularly when licensed physicians are not present. This too makes insurers hesitant to underwrite this group of health professionals.

One reason for this insurance "crisis" among health related professions has been the excessive losses related to high and unreasonable verdicts in medical malpractic lawsuits.

Tort reform and strong peer review activities are the key to stabilizing prices and bringing back insurers into the professional liability marketplace.

Tort Reforms and Other Actions: Peer review activites and tough licensing criteria and procedures are vital in reducing the occurrence of medical malpractice. In order to bring about a more effective peer review and licensing mechanism, certain actions need to be taken:

1) Enactment by state legislatures of mandatory sanctions by peer review committees for certain types of inappropriate and unethical conduct. This would take the peer review committee's disciplinary actions out of the realm of discretion and put all professionals on notice that errant behavior will result in swift and sure disciplinary action;
2) Require doctors and other health care providers to report to their licensing authority their claims record (open and closed claims) including closed claims occurring prior to licensing;
3) Establishment by licensing authorities of criteria setting forth that a specified number of awards over a certain monetary amount within a certain period of time is a basis for license suspension, revocation or non-licensing of a physician or other professional;
4) Require hospitals to institute risk management programs meeting certain standards that the hospital will monitor the activities and claims records of all practioners using the facility. Thus, hospitals would be required to have every professional disclose his or her claims records including all judgments, settlements and pending claims before granting priviledges; and
5) Provide immunity by statute for all persons engaging in good faith in peer review activities.

NAPSLO recommends the following tort reform measures be enacted in the states:

1) Alternative dispute resolution mechanisms including arbitration, mediation and the institution of screening panels in regard to all medical malpractice cases;
2) Modification of the qualifications for expert witnesses in medical malpractice trials. Specifically, a requirement that only licensed practioners of the same speciality and from the same locality as the defendant practioner be qualified as experts;
3) A limitation or "cap" on non-economic damages regarding medical malpractice claims;
4) A requirement that malpractice awards be itemized with amounts being separated into the economic and non-economic damages and into present and future damages;
5) Imposition of sanctions for frivilous claims; and
6) Enactment of a "state of the art" defense or a statutory requirement holding physicians only to the standard of care in effect when the occurrence took place.

D. LIQUOR LIABILITY (DRAM SHOP LIABILITY): In recent years, the problem of alcohol and its dehabilitating effects on our society have become the focus of public concern. In particular, "drunk driving" has received wide spread attention and major efforts both socially and legally have been instituted to reduce the number of intoxicated drivers on our highways. The National Commission Against Drunk Driving estimates that half of the 43,918 motor vehicle fatalities in 1984 were alcohol related.

One means used to control drunk driving has been the establishment of "dram shop" laws in various states. These laws provide that the retail liquor establishment that serves alcohol to a minor or to an intoxicated person who later causes a motor vehicle accident is civilly liable for the damages. In states that have not enacted dram shop laws, courts have invoked common law liability principals which allow recovery against the establishment on the basis that the establishment violated the state's liquor licensing law in serving a minor or an obviously intoxicated person. Presently, two thirds of the states have either dram shop laws or base "liquor liability" on common law principals. In order to protect themselves, those licensed establishments retailing liquor to the public must obtain liquor liability insurance.

Due to the tremendous public awareness in recent years of the dangers of drunk driving, the frequency of liquor liability lawsuits and dram shop actions has increased. Also, because of the mounting pressure to stop drunk driving, juries have been finding higher and higner amounts of damage in these types of actions.

Obviously, liquor liability has never been an easy risk to write. However, with the changing legal climate surrounding liquor liability, insurers find it even more difficult today to adequately determine their exposure under liquor liability policies.

The problems related to the availability of liquor liability insurance, in most states, is primarily centered on those liquor establishments that try to secure mono-line coverage (liquor liability insurance alone) rather than obtaining this coverage as part of a commercial lines insurance package. In many states, the monoline liquor liability coverage market has contracted dramatically and in some places, it is virtually non-existant.

Tort Reform and Other Actions: In order to alleviate the availability and affordability problems existing in liquor liability insurance market today, NAPSLO recommends the following reforms:
1) Set or retain financial responsibility requirements for liquor licensees at reasonable levels;
2) "Cap" damages under dram shop statutes and other liquor liability laws at reasonable levels;
3) Provide that where dram shop liability exists by statute, it is the exclusive remedy and no other common law theory of liability should be allowed against the retail liquor establishment;
4) Establish by law a responsible business practice defense for liquor licensees;
5) Establish by law a presumption that only the last licensed liquor establishment serving the last alleged intoxicating beverage to a person is liable in a dram shop action;
6) Exclude by law from the class of plaintiffs under a dram shop action the intoxicated person and guests (except for minor guests) in the automobile as well as the spouse and children of the intoxicated person;
7) Limit any cause of action for liquor liability to the "unlawful sale" which should be defined as a sale to one who is a minor or who is visibly drunk. Reliance in good faith by a retail liquor licensee on false identification cards should constitute immunity;
8) Strenghten criminal sanctions against retail liquor establishments that make unlawful sales and, therefore, eliminate punitive damages in a dram shop or liquor liability action;
9) Limit the statute of limitations for a dram shop or liquor liability action to one year;
10) Limit the action under a dram shop act or liquor liability law to vehicular accidents only;
11) Limit liability to the operator of the business not the owner of the premises (unless they are the same); and

12) Retain the intoxicated person as a defendant in all dram shop and liquor liability actions.

Also efforts must be made in the states to strenghten penalties for serving minors and for using false identification cards. Finally, states should require that all employees of a liquor establishment participate in a training program as part of the liquor licensing or relicensing procedure.

E. DIRECTORS AND OFFICERS LIABILITY: The availability of directors and officers liability insurance has become particularly difficult in recent months. Industries which are having particular difficulty in finding such coverage are financial institutions, electric (nuclear) utilities, "wild cat" oil and gas companies, real estate developers, chemical companies, steel companies, research and development enterprises and highly leveraged businesses.

Companies of larger size appear to be having more difficulty than smaller companies in securing directors and officers liability insurance. This is because the capacity constriction that the marketplace is now experiencing falls more heavily upon larger institutions needing high limits of coverage. The problem is also greater for profit making companies than for non-profit organizations. This is due to the fact that non-profit entities do not have the large exposure through dividend distributions, mergers, acquisitions and other financial transactions that profit making companies have. However, if the non-profit organizations begin to have difficulty in obtaining directors and officers liability coverage there will be more legislative/regulatory action in this area to assure a market.

The underlying problems responsible for the coverage limitations and rate increases for director and officers liability coverage stem from:
1) The well publicized financial management difficulties of many U.S. banks and savings and loans. Banks are suing their own managers and officers in some instances are attempting to collect on their own directors and officers coverage. Federal agencies that insure failed banks, in an attempt to make up their losses, are also suing former officers and directors for mismanagement;
2) The growing number of hostile takeovers and other business practices related to such activities as "poison pills," greenmail and golden parachutes; and
3) a growing perception among stockholders that directors and officers are not representing the interests of shareholders.

Tort Reforms and Other Actions: Positive reforms can be implemented through legislative action as well as specific policy exclusions. Such exclusions or legislative actions are:
1) The elimination of suits brought by the FDIC, FSLIC and other government regulatory agencies (the "regulatory exclusion");
2) The elimination of the right of corporations to sue their own officers and directors and the right of officers and directors to sue one another; and
3) The elimination of pollution and environmental claims.

F. POLLUTION LIABILITY: The lack of availability of insurance for pollution liability has been caused by a number of diverse yet related events.

For years, insurers offered coverage for "sudden and accidental" discharge through comprehensive general liability (CGL) policies. Later, insurers created an

environmental impairment liability (EIL) policy to cover the damage which gradual pollution incidents caused. However, as pollution cases were litigated, courts interpreted policy language to cover damages which insurers never intended to cover and for which they had collected no premium. The most significant example of this was the Jackson Township case in New Jersey. In this case, which dealt with the pollution of a number of wells, the New Jersey court:
1) Destroyed the use of the sudden and accidental coverage limitation as a way of limiting or defining pollution coverages; 2) found each contaminated well a separate occurrance with separate limits; and 3) broadened the coverage to include the costs of on-site clean up.

In addition to court created problems, federal and state legislatures have enacted various environmental laws. Specifically, the federal government in 1980 enacted the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the "Superfund Law," which imposes retroactive and broad liability for the costs involved in the cleanup of toxic waste dumpsites. Forty states have enacted their own environmental protection laws which have been modeled after this Federal Superfund Act.

The Federal Superfund Law poses at least four major problems for insurers. First, the provisions of the law apply retroactively to generators and transporters of toxic waste and to owners and operators of toxic waste sites.

Second, the law imposes strict liability regardless of the fact that the responsible party's acts or omissions were not the proximate cause of any leak or the fact that the substance that is leaking was not actually deposited by that party. In essence, simply being involved in the dumping of waste at a site will create responsibility.

Third, a majority of the courts have held responsible parties jointly and severably liable for damages related to the cost of cleanup under the superfund law. Thus, a company only contributing 1% of the polution can be held responsible for the entire cost of the clean-up.

Fourth, the legal costs and attendent investigative costs involved in a "superfund action" are substantial and insurers, therefore, incur enormous transactional costs in superfund "actions".

Thus, problems with the superfund law and its administration by the Environmental Protection Agency (EPA) combined with state court decisions eliminating coverage limitations or exclusions in insurance policies regarding pollution liability has led to a withdrawal from the marketplace by the insurance industry.

Tort Reforms and Other Actions: NAPSLO recommends the following revisions to state and federal environmental pollution laws and to common law actions regarding environmental pollution liability to restore market stability and to increase predictibility for environmental pollution liability insurance:
1) A reinstitution of causation requirements and elimination of retroactive application of environmental laws;
2) A replacement of joint and several liability with several liability;
3) A replacement of strict liability with a negligence standard; and

4) The implementation of flexible financial responsibility requirements that are reflective of the risks involved rather than one standard for all generators, transporters, owners and operators of waste dump sites.

Asbestos: Included within the general framework of environmental "pollution" insurance problems are the difficulties asbestos contractors presently have in securing liability insurance. The great hazards asbestos poses to human beings has just recently been discovered. The demand by the public and the requirement by many state legislatures that asbestos be removed from schools and other public buildings as well as the growing commitment by private industries to eliminate asbestos from their facilities has resulted in a surging demand for asbestos removal contractors. The present demand far exceeds the supply of qualified and experienced contractors.

A number of new contractors have recently entered the asbestos removal business. Insurers, however, have elected to deny coverage to these inexperienced contractors. In addition, insurers concern about long latency diseases associated with asbestos, previous bad experience with asbestoes product claims, the lack of removal standards and the possibility that the state of the art performance will not be accepted as a legitimate defense in future action, all make insurers leary of providing coverage to asbestos removal operators.

Accepted standards for a removal of asbestos need to be developed. Strict licensing procedures also must be established for asbestos removal contractors and immunity or "hold harmless agreements" for contractors for "non negligent" actions which comply with established governmental standards also need to be developed and implemented. If these actions are taken, the problems in the asbestos removal liability insurance market would be eased.

IV. CONCLUSION

Major revisions in this nation's tort system are needed if many commercial lines of insurance are to remain available and affordable. If the U.S. tort system is not modified to a significant degree very soon, insurers will continue to be unable to predict or assess risks and, therefore, will be unable to provide insurance. This will have a devastating impact on the American economy for many businesses in this country will be unable to purchase necessary liability coverages to protect their assets.

There are those who charge that the present "availability and affordability crisis" in the property/casualty insurance market is directly attributable to the insurance industry and its failure over the past five years to apply prudent and proper underwriting and pricing policies. Such a comment simply "begs" the issue. How are insurers to employ prudent underwriting and pricing practices in the face of courts that alter policy wording and limitations; that apply liability retroactively; that sanction, if not encourage, expensive procedural delays; develop new theories of liability rather than seeking out justice; and view the insurance industry as a "banking system" to use whenever a claimant desires compensation? The answer is that the insurance industry can not institute any true underwriting or pricing practices in such an environment.

The tort reforms and suggestions NAPSLO has set forth in this paper are simply aimed at bringing about a tort/liability system that allows insurers to operate in a fair and predictable environment. If reforms are not made, what is now seen as a "crisis" will become a permanent condition.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : ______

REQUEST

Bill/Resolution No. : CSSB 377(L&C)
Title : Relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 58 68, and 82; and providing for an eff date"
Sponsor : Sen Kelly, et al
Requestor : ______
Date of Request : ______

FISCAL DETAIL

Agency Affected : Court System
BRU : ______
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	0	0	0	0	0	
CAPITAL	0	0	0	0	0	
REVENUE	0	0	0	0	0	

FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME	0	0	0	0	0	
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Michael Thill, Aide
Division : Senate Labor and Commerce Committee
Phone : 3844
Date : 4/1/86

Approved by Commissioner : Senator Zharoff, Chairman
Agency : Senate Labor and Commerce
Date : 4/1/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

SB 377

health
association
of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

April 14, 1986

Honorable Pat Rodey
Alaska State Senate
Pouch V (MS3100)
Juneau, Alaska 99811

Dear Senator Rodey,

The Health Association of Alaska wishes to indicate our support for the proposal to limit liability of directors and officers of our member institutions. It is important to our continued ability to recruit members of the public to serve in this important activity.

In response to your concern that corporate directors of any investor owned corporation be treated consistently, I would like to suggest an amendment to the proposed language which may resolve that concern. Amend 09.17.045(a)(2) to read: "a member of the board of directors of a public or nonprofit hospital or a community based advisory board of a hospital;". I believe that this language accomplishes the goal within the parameters you have suggested.

Thank you for your consideration in this matter.

Sincerely,

Dennis L. DeWitt
Executive Director

Enclosure

cc: Representative Hanley

Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS, OFFICERS AND SUPERINTENDENTS. (a) Unless the act or omission constituted gross negligence, a person may not recover damages for an act or omission to act, in the course and scope of official duties, from the following:

(1) a member of the board of directors or an officer of a nonprofit corporation;

(2) a member of the board of directors of a public or private hospital;

(3) a member of a school board or superintendent of a school district;

(4) an elected or appointed official of a political subdivision of the state.

(b) Notwithstanding (a) of this section, the duties and liabilities of a director or officer of a nonprofit corporation to the corporation or the corporation's shareholders may not be limited or modified.

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

SENATOR PATRICK RODEY, CHAIRMAN
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIRS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

M E M O R A N D U M

To: Senator Rick Halford

From: Senator Pat Rodey Pat

Date: April 9, 1986

Re: SB 443 - Surplus lines of insurance/brokers monthly reports.

We need a bill with an insurance related title in order to write a comprehensive insurance reform package as a Judiciary Committee Substitute.

Your SB 443 is now in the Senate Labor and Commerce Committee. Would you consent to modification of this bill to include this reform?

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

SENATOR PATRICK RODEY, CHAIRMAN
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

M E M O R A N D U M

To: Senator Fred Zharoff

From: Senator Pat Rodey Pat

Date: April 9, 1986

Re: SB 443 - Surplus lines of insurance/brokers brokers monthly report.

We need a bill with an insurance related title in order to write a comprehensive insurance reform package as a Judiciary Committee CS.

The above-referenced bill is in your committee and would be an ideal vehicle. We would appreciate you moving the bill out of your committee with a Judiciary Committee referral.

ROBERT J. SAMUELSON

The Lawyering of America

We are now seeing the glimmers of a new legal crisis in America. It arises from the clamor over liability insurance and a vague unease that lawyers are exercising too much influence. The United States now has more lawyers (an estimated 675,000 of them in 1985) per capita than any other major nation. Since 1950, their numbers have grown twice as fast as the population. But our sense that lawyers are meddling too much sits awkwardly with the great American faith in law as a remedy for almost any ill. Or, as one book a few years ago put it, "Sue the B*st*rds."

The key to understanding this confusion—if not entirely dispelling it—is to grasp a basic truth. Lawyers and law firms are businesses, and their business is conflict. Creative lawyering often means exploiting or creating conflicts. Just as companies develop new products, so lawyers search for new legal theories on which to sue. Rights of action are lawyers' markets. But their economic self-interest—their legal innovations—may subvert their social usefulness. The civil-justice system's essential purpose is to resolve conflict, not to excite it.

It's often a pretense that lawyers represent other people's grievances rather than their own economic interests. There are thousands of cases where lawyers, not their supposed clients, are the main aggressors. In the early 1980s, for example, many new "high technology" companies sold stock to the public. Many of these admittedly speculative stocks subsequently collapsed. Now there are dozens of suits against these companies, their officers, accountants and insurance companies alleging that investors were misled. But the suits have been brought by a few law firms on a contingency-fee basis. The lawyers—who typically take 30 percent or more of a settlement or damages—stand to win the most.

Of course, a rising tide of lawsuits is not the only reason for more lawyers. Greater government regulation, complicated tax rules and expanding international business have all contributed. But the growth of lawsuits also has a big multiplier effect. It requires defense lawyers and lawyers to advise people and companies how to avoid being sued. Consider the evidence of more litigation:

- Since 1970, membership of the Association of Trial Lawyers of America has nearly tripled, to 60,000. (In the same period, all lawyers rose 90 percent.) To belong, half a lawyer's work must be representing people in personal-injury cases.
- The number of product-liability cases filed in federal courts has risen from 1,579 in 1975 to 10,745 in 1984. Although most cases are settled before trial, the volume of jury awards in product-liability and medical-malpractice suits roughly tripled between 1975 and 1984, says Jury Verdict Research Inc.
- Since the mid-1970s, suits against officers and directors of public corporations—from shareholders, employees, customers and others—have more than doubled, according to The Wyatt Co., a Chicago actuarial firm. Many of these cases are contingency-fee cases.

To be fair, the liability-insurance mess—complaints from doctors, cities, consulting engineers, day-care centers and others that insurance is too costly or unavailable—is not entirely the doing of lawyers. The insurance industry bears much of the blame. A few years ago companies lowered premiums to compete for business. They expected to earn lush profits by investing premium income at high interest rates. Declining interest rates wrecked that gamble and, combined with steep insurance losses, triggered premium increases and coverage cutbacks. But the insurers' blunder only mitigates the role of lawyers.

The big danger is becoming an overly cautious, rigid society

Side effects: If courts adopt expansive liability doctrines, then the costs—not just insurance—will be huge. The gravest danger is becoming a precautionary society. Unintended side effects are already emerging. The threat of suits has driven some drug companies from manufacturing vaccines; consulting engineers now refuse to work on hazardous sites for fear of suits. Companies are losing outside directors for lack of liability coverage. As attorney Peter Huber argues, courts deal poorly with the full social effects of products, like vaccines, whose public benefits overwhelm the risks. Courts see only mistakes. "Beneficiaries of risk-reducing products . . . do not litigate," he writes.

Stating the problem is easier than solving it. Lawsuits are an important discipline on corporate and individual irresponsibility. They do compensate victims. There is no neat dividing line between too much or too little liability. But we can impose self-restraint on the legal system by treating lawyers for what they are—businesses. We need legal rules with proper economic incentives. In damage suits, the losing side should always pay the other side's legal fees. This would deter weak suits by reducing the pressure for expedient settlements that are less than the cost of litigation. And a losing defense would ultimately pay if its delays ran up the other side's costs.

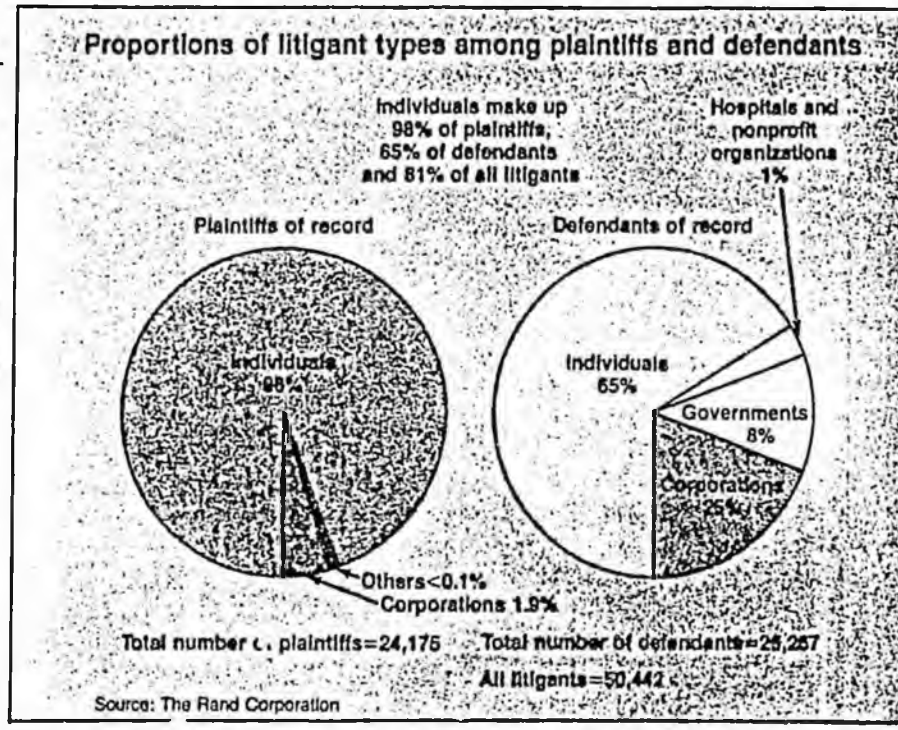
These common-sense ideas strike many lawyers as radical. They aren't. One inevitable complaint is that having losers pay would make it tougher for people of modest means to bring legitimate cases to court. This is nonsense. The reality is that the contingency-fee lawyer is already financing these cases. Strong cases would be more attractive under this system, because—aside from the contingency fee—the lawyer would also recover costs. But weak cases would be less attractive (the losing contingency-fee lawyer would pay the other side's legal fees), and they should be. The system exists to settle conflicts, not to generate lawyer caseloads. In a subtle way, commercial interests of lawyers now corrupt the law.

So let the lawyers grumble. If the current insurance mess leads to any good, it will be renewed political interest in our legal system. And that is as it should be. To paraphrase an old cliché: law is sometimes too important to be left to lawyers.

Must Reading

by Linda L. Castle

Juries hit corporate and government defendants hardest



JURORS returned one-third larger damage awards against corporate defendants than against individual defendants, and their verdicts went against blacks more often than whites, both as plaintiffs and defendants, according to a recent survey. The study, performed by the Rand Corp.'s Institute for Civil Justice, included more than 9,000 civil jury trials over a 20-year period in the Chicago area.

Rand terms its survey "the most sweeping and systematic analysis in the annals of U.S. law of juries' behavior in connection with different characteristics of litigants." The survey findings are reported in "Deep Pockets, Empty Pockets: Who Wins in Cook County Jury Trials," written by Rand staffers Audrey Chin, a social scientist, and Mark A. Peterson, a lawyer.

Chin and Peterson also report that:

- In lawsuits in which plaintiffs claimed severe injury, corporations not only had to pay higher damage awards "but were significantly more likely to be found liable in the first place."
- In lawsuits in which injuries were comparable in kind but less severe, however, government defendants paid more than corporations.
- Blacks lost more often than whites, both as plaintiffs and defendants, and black plaintiffs received smaller awards. Black defendants were assessed smaller damage awards than white defendants.

The authors point out that while their findings seem to indicate that juries treated types of litigants differently, it is possible that trials differed among types of defendants in ways not examined in the researchers' analyses—differences that also might have affected outcomes. Chin and Peterson nevertheless add that "while these limitations require caution in drawing conclusions, the results of our analyses are statistically robust, stable over time, and consistent with widely held expectations about how juries treat different types of litigants."

The authors also found that jury trials were an effective vehicle for compensation to ordinary citizens, contradicting the cynical view that the court system favors the wealthy and powerful.

Corporations made up 2 percent of the plaintiffs and a little more than 25 percent of the defendants in the survey; government agencies accounted for 8 percent of defendants but only 13 government agencies were plaintiffs in civil jury trials. Defendants in lawsuits that produced the largest awards were usually "deep-pocket," or institutional, defendants.

Average award tops $120,000

Corporations were the most frequent defendants in high-stakes trials arising from workplace injuries, products liability and business or contract disputes, but only one-third of these corporations were named as a sole defendant, the authors found. The average award against corporate defendants was more than $120,000 —$97,000 in the case of hospitals and other nonprofit organizations—while the average award against individual defendants was $18,500. "To some degree," the report says, "the average awards against corporations and hospitals were so great because of a few extraordinarily large awards."

Even routine awards against corporations were large, however, half of them more than $25,000. This was more than twice the median award against government defendants ($11,000), and more than four times that against individuals ($5,800).

The "deep-pocket" effect was most evident, the report shows, when severely injured plaintiffs sued corporations, which paid 4.4 times more than was assessed individual defendants. "Where a government defendant might pay $75,000 and an individual defendant $50,000 to a severely injured plaintiff, a corporate defendant would pay $220,000," say Chin and Peterson.

"Long-shot" gambles

The authors found that malpractice trials were "long-shot" gambles for both plaintiffs and defendants. "Plaintiffs won only about one-third of the time, but received large awards when they did win," with hospitals and doctors treated like "deep-pocket" defendants.

Chin and Peterson conclude that their study might "improve lawyers' and litigants' understanding, so that particular types of potential litigants are neither discouraged from bringing lawsuits nor unwisely encouraged to go to trial."

("Deep Pockets, Empty Pockets: Who Wins in Cook County Jury Trials," Rand Corp., Publications Department, 1700 Main St., P.O. Box 2138, Santa Monica, Calif. 90406-2138. $10. (Report No. R-3249-ICJ).)

Racist joke in jury room kills death sentence

The Illinois Supreme Court ordered a retrial for a black man convicted of murder and sentenced to death by an all-white jury because three jury members said they read a racist joke in the jury room.

A courthouse janitor discovered a mimeographed copy of a racist joke and turned it over to the bailiff, who notified the trial judge. The trial court denied the defendant's motion for a mistrial, but the supreme court reversed.

Justice Goldenhersh held that prejudice to the defendant will be presumed in "such intolerable circumstances." He surmised that the failure of the jurors to bring the material to the attention of the court could be "indicative of either lack of appreciation for their responsibility as jurors, or that they did not consider it offensive."

The court refused to disseminate the "scurrilous material," saying "it suffices to note that it contains denigrating, racist comments which are insulting to black people."

(*Illinois v. Jones*, Feb. 6, 1985, 475 N.E. 2d 832.) —*Lauren R. Reskin*

California OKs cap on medical malpractice awards

A divided California Supreme Court has upheld the constitutionality of a state law limiting noneconomic damages in medical malpractice cases to $250,000.

Writing for the 4-3 majority, Justice Kaus rejected the arguments of an injured lawyer that the limit of the Medical Injury Compensation Reform Act of 1975 den s due process and equal protection. T measure is rationally related to the legitimate state interest in lowering costs of malpractice defendants and their insurers, Justice Kaus reasoned.

The court cited several possible legislative rationales for the $250,000 limit: it provides a more stable base on which to calculate insurance rates; it promotes settlements by eliminating the chance of huge awards for pain and suffering, which can "make litigation worth the gamble;" and it is fairer to malpractice victims to reduce only the very large noneconomic awards rather than the more modest recoveries in most of the cases.

Chief Justice Bird, joined by Justice Woods, dissented vehemently. "Insurance is a device for spreading risks and costs among large numbers of people so that no one person is crushed by misfortune. In a strange reversal of this principle, the statute concentrates the costs of the worst injuries on a few individuals," she said, lamenting that the majority opinion disregarded the court's duty "to apply the constitutional guarantee against irrational and invidious leglislative classifications"—crisis or no crisis.

Justice Mosk agreed with Bird's dissent but would have used an intermediate equal protection test.

(*Fein v. Permanente Medical Group*, Feb. 28, 1985, 695 P.2d 665.) —*Lauren R. Reskin*

Contractor acts "under color of federal law"

The U.S. Court of Appeals for the District of Columbia Circuit has ruled that constitutional claims for damages

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison..."

MEMCRANDUM

TO: ALL LEGISLATORS

FROM: CITIZENS' COALITION FOR TORT REFORM

SUBJECT: FOR YOUR INFORMATION

Enclosed is a comparison of the current settlement practices versus the Citizens' Coalition for Tort Reform proposals under HB532.

The enclosed document in effect lays out the facts and numbers of a particular case to show how effectively the Coalitions proposals would work.

I believe you will find tort reform will work and that the proposals by the Citizens' Coalition will get more money to the injured client and reduce the cost of litigation while providing a substantial benefit to all injured parties.

Sincerely,

Al Tamagni, Sr.
Chairman

738 H Street, Suite 300 • Anchorage, Alaska 99501 • (907) 276-1135

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison..."

Vol. 1, No. 2   February 19, 1986

WE'RE MAKING NEWS

The Anchorage Board of Realtors News for February includes an article on the coalition's push for legislation, written by Marigale Compton, CCTR board representative for the Anchorage Realtors. Dr. Vince Haneman, P.E., has authored an essay on tort reform which will run in the Fairbanks News-Miner.

The successful Alaska Air Carriers convention in Juneau last weekend included a program on tort reform. CCTR was represented by Dr. Dave McGuire.

Dr. Peter Cannava spoke to the Kenai Chamber of Commerce earlier this month; by coincidence, Rep. Mike Navarre, chairman of the key House Labor and Management Commitee, was in the audience.

ENDORSEMENTS

In addition to the groups which have formally joined the Coalition, we now have the endorsements of the Sitka Chamber of Commerce and the Professional Engineers in Private Practice (PEPP).

JURY AWARDS: WHO LOSES?

The biggest losers in the current jury award lottery system seems to be corporations, governments and blacks, according to the Rand Corporation's Institute for Civil Justice. The survey findings are reported in "Deep Pockets, Empty Pockets: Who Wins In Cook County Jury Trials," a 20-year study of more than 9,000 civil jury trials in Cook County, Illinois.

Written by a social scientist and a lawyer, both Rand staff members, the report shows that:

In lawsuits in which plaintiffs claimed severe injury, corporations not only had to pay higher damage awards "but were significantly more likely to be found liable in the first place."

However, in lawsuits in which injuries were comparable in kind but less severe government defendants paid more than corporations.

Blacks lost more often than whites, both as plaintiffs and defendants, and black plaintiffs received smaller awards. Black defendants were assessed smaller damage awards than white defendants.

THE POLIO VACCINE: PAYS BETTER THAN A VEGAS SLOT MACHINE

In 1975, a Kansas farmer had his infant daughter vaccinated for polio with the Sabin oral vaccine. She spit some of it up on his hands. He came down with polio and claimed it was contracted from his daughter. He lost partial use of his arm and has some breathing problems as a result. His attorney, noted for winning record-breaking awards, managed to set a new Kansas record, when the jury awarded the farmer $2 million actual damages and $8 million in punitive damages. An attorney on the plaintiff's team termed the award "a civil penalty ... for wanton wrongdoing, more than simple negligence." The federal Center for Disease Control in Atlanta, Georgia, says that about 24 million doses of the oral vaccine are distributed each year. One in every 9.3 million results in polio. Among people coming into contact with a vaccinated child, the risk is 1 in 5.1 million. The CDC notes that in 1977, the vaccine's wholesale cost was 29 cents; as of February 1, 1986, it is over $8 per dose, minimum. The manufacturer, Lederle, issued a memo to doctors on January 28 saying "All indications are that Lederle may not be able to get any liability insurance coverage for vaccines after July 1, 1986."

If you are old enough to remember the last polio epidemics of the early 1950s, and iron lungs in which some youngsters lived out their short lives, you have to question the premise that the vaccine manufacturer was guilty of anything except saving thousands of lives, and preventing disabilities in thousands more.

CANDIDATE BOB RICHARDS SUPPORTS TORT REFORM

In a letter to CCTR Chairman Al Tamagni, gubernatorial candidate Bob Richards writes: "I am in complete accord with all of the provisions of the program proposed by the Citizens Coalition for Tort Reform and am prepared to aggressively pursue you objectives as governor."

738 H Street, Suite 300 • Anchorage, Alaska 99501 • (907) 276-1135

'FAMOUS CASES' IN THE LOTTERY GAME

CCTR speakers have been questioned by plaintiff's lawyers about some of the cases we have been citing. While we are not interested in doing their research for them, here are some court citations which you may want to memorize:

A 41-year old body builder entered a footrace with a refrigerator strapped to his back. The strap broke; he got hurt. He sued and won over $1 million. The case was Franko Colombo v. Transworld International, et al., C223 491 September 23, 1982; Los Angeles Superior Court. Prior to an appeal of the jury award, the case was settled in excess of $1 million; no specific figure available.

The hot air balloon in the dryer: A pair of balloonists decided to dry their wet hot air ballon in a commercial laundry dryer. The balloon and dryer blew up, destroying the laundry, and the men were hurt. They sued and won $885,000. Horan v. American Laundry Machinery Industries, Maryland Court of Appeals.

Remember the man who claimed that his Sears lawnmower was so hard to start, that it triggered a heart attack? That case was Frederick S. Share v. Sears Roebuck Co., Pennsylvania Common Pleas Court, Case No. 2984 PA.C April 27, 1984. Mr. Share already had a history of coronary problems. The jury awarded him $1.2 million plus damages for $550,000 for delays in settling the claim. Prior to Sears appealing the award, there was an out of court settlement for an undisclosed amount.

NEED MORE INFORMATION. WRITE OR CALL THE COALITION

The Citizens Coalition for Tort Reform
738 H Street, Suite 100
Anchorage, AK 99501
(907) 276-1135

ANCHORAGE FEB 21 '86 ALASKA

U.S. POSTAGE 0.22 METER 2256628

Hon. Patrick Rodey
P.O. Box V
Juneau, AK 99811

MEMBERSHIP FORM

Name: ____________________

Firm/Group/Agency: ____________________

Mail address: ____________________

City: ____________________

State: ____________________

Zip: ____________________

Phone: ____________________

Contribute to the campaign to restore common sense to the tort system.

Individual:		$10 [ ]	$100 [ ]	$500 [ ]
Company:	$100 [ ]	$500 [ ]	$2,500 [ ]	$5,000 [ ]
Association:	$500 [ ]	$2,500 [ ]	$5,000 [ ]	$10,000 [ ]

Signature: ____________________

Mail or deliver to
THE CITIZENS COALITION FOR TORT REFORM

Participating Organizations:
Alaska Air Carriers
Alaska Broadcasters Association
Alaska Chapter, American Institute of Architects (AIA)
Alaska Dental Society
Alaska General Contractors
Alaska Chapter, American Optometric Association
Alaska Movers Association
Alaska Oil Marketers Association
Alaska Rental Association
Alaska Section, Fairbanks Branch, American Society of Civil Engineers
Alaska Society of Professional Engineers
Alaska State Health Association (Hospitals)
Alaska State Medical Association
Alaska Support Industry Alliance
Alaska Truckers Association
Alaska Visitors Association
Anchorage Board of Realtors
Anchorage Restaurant and Beverage Association (ARBA)
Cabaret Hotel and Restaurant Retailers (CHAR)
Childbirth Educators
Daycare Operators Association
Financial Managers
Hotel and Motel Association
Insurance Brokers and Agents Association
Nurse Midwives Association
Pension Consultants
Professional Physical Therapists Association
Risk Management Association
Southern Alaska Association of Life Underwriters

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SB 377
file

MEMORANDUM

To: All Senators

From: Senator Tim Kelly TOK

Attached is a copy of an article from the Seattle Post-Intelligencer on the efforts of the Washington Legislature to address the tort reform problem.

Seattle Post-Intelligencer

A HEARST NEWSPAPER | Tuesday, March 11, 1986 | 25 Cents

Lawmakers OK limits on awards to injured

By Mary Rothschild
P-I Olympia Bureau

OLYMPIA — An extensive rewrite of state liability laws, with tight limits on damage awards for the injured, was approved 31-16 last night by senators convinced their actions will ease the insurance crisis.

In voting to concur with amendments already approved by the House, the Senate sent the bill to Gov. Booth Gardner, who must decide whether to sign it into law.

Senate opponents argued that the bill will not make liability insurance more available or affordable but will crush the rights of injured victims.

In emotional debate on a bill that has been the hottest issue of this legislative session, the Senate majority leader, Democrat Ted Bottiger of Graham, said he was so distressed he "thought very seriously" about resigning.

'Anti-victim'

"This is the worst thing I've ever seen in this Senate," he said.

Sen. Phil Talmadge, D-Seattle, said the bill will guarantee nothing more than years of "uncertainty, conflict and court challenge" and called it "the most comprehensive anti-victim legislation ever passed by the state of Washington."

But Sen. Alan Thompson, D-Kelso, argued, "If this is extreme, then this radicalism is sweeping the country."

Thompson, prime sponsor of the measure, was joined by Republican leader Sen. Jeanette Hayner of Walla Walla in contending the bill will reform the rules of liability and thus cut insurance costs.

The bill's main features include:

☐ Eliminating a rule called "joint and several" liability if the injured party is even partially at fault.

A rewriting of this rule, which had allowed a plaintiff to collect from any defendant regardless of the defendant's degree of fault, was the primary goal of the coalition sponsoring the legislation.

☐ Capping non-economic damages for "pain and suffering" at $573,000, with a minimum award of $117,000.

Compensation for lost wages and medical expenses still would be unlimited.

☐ Allowing damage awards to be spread out in installments

See SENATE, Page A-6

INSIDE

DAVE EKREN/P-I PHOTO

Sen. Phil Talmadge almost seems to be praying for defeat of revisions of the state's liability laws, but the Senate later approved them. Talmadge argued that passage of what he called the "anti-victim legislation" would guarantee "uncertainty, conflict and court challenge."

Pay raise for state elected officials clears Legislature

OLYMPIA (AP) — State senators gave final legislative approval yesterday to give themselves and other state elected officials a pay raise.

The Senate passed the bill 30-14, and sent it to Gov. Booth Gardner for signing, after agreeing to changes made by the House. Seven minority Republicans joined two dozen Democrats in voting for the measure.

Some elected officials, who haven't had a pay increase since 1980, would get raises of up to 80 percent.

Legislators would get step increases to raise their pay from the current $13,650 a year to $17,000 a year by Jan. 1, 1990. They would have to win re-election before they could get the pay increase.

Other elected officials would receive a raise Jan. 1, 1987, and another on Jan. 1, 1988. Here are current salaries followed by those two-step increase amounts:

☐ Governor, $63,000, $74,900, $86,800.

☐ Lieutenant governor, $28,600, $42,400, $53,800.

☐ Secretary of state, $31,000, $42,400, $53,800.

☐ Attorney general, $47,100, $55,450, $63,800.

☐ Superintendent of public instruction and land commissioner, $42,800, $53,300, $63,800.

☐ Auditor, treasurer and insurance commissioner, $37,200, $46,450, $55,700.

Salaries for legislators would rise to $14,500 on Jan. 12, 1987; $15,000 on Jan. 1, 1988; $16,000 on Jan. 9, 1989, and $17,000 on Jan. 1, 1990.

The vote:

Democrats for (24) — Bender, Bottiger, Conner, DeJarnatt, Fleming, Garrett, Gaspard, Goltz, Halsan, Hansen, Kreidler, McDermott, McManus, Moore, Owen, Peterson, Rasmussen, Rinehart, Talmadge, Thompson, Vognild, Warnke, Williams, Wojahn.

Republicans for (7) — Bailey, Bluechel, Deccio, Johnson, Kiskaddon, McDonald, Metcalf.

Democrat against (1) — Bauer.

Republicans against (13) — Barr, Benitz, Craswell, Guess, Hayner, Lee, McCaslin, Newhouse, Patterson, Pullen, Saling, von Reichbauer, Zimmerman.

Absent or excused: Cantu, R. Gronlund, Stratton, D.

Winds kill five

70 injured as storms rake three states

Associated Press

Tornadoes and winds up to 90 mph raked Indiana, Kentucky and Ohio yesterday, killing at least five people and injuring as many as 70, while cutting electricity to thousands of people and destroying dozens of airplanes at Cincinnati's airport.

About 40 people were injured in Newport, Falmouth and Erlanger, Ky., state police said. Eight to nine injuries were reported in Lexington and Bromley, Ky., 22 in Indiana and four in Ohio.

In nearby Covington, Ky., which is across the Ohio River from Cincinnati, officials declared a state of emergency and warned non-residents to keep out of the city after high winds knocked out power to most of the city and ripped roofs from dozens of buildings.

Trailer park hit

High winds "just wiped out" a trailer park on the west side of Indianapolis and caused heavy damage to several businesses, said a Marion County sheriff's dispatcher. No casualties were reported there.

The National Weather Service's Severe Storms Center in Kansas City reported at least 21 tornadoes, with 15 touching down in Indiana.

In Hancock County, Ind., a man was crushed to death when the barn in which he and his brother sought refuge collapsed under high winds. His brother suffered minor injuries.

Near Evansville, Ind., a man died when struck by a falling tree limb while working on a house, police said.

Roof drags man

In Jasper Township, Ohio, a

U.S. football gets rolling in China — think of the options

JOE MOONEY

The estimated population of China in 1984 was more than 1 billion people — 1,034,907,000 to state it numerically, and somewhat more precisely.

It's almost impossible to appreciate a number that large. Consider this: If you had a billion dollars at the time of Christ and began losing $1,000 a day, you'd still be in business. You wouldn't be broke until sometime after the year 2,000.

Of course, if you had your heart set on blowing it all by the year 2000, it could be arranged. But you'd have to contrive some way to increase your losses to $1,369.86 a day.

As you can see, a billion dollars is a lot of money. And a billion people are a lot of people. A friend of mine, trying to impress me with the importance of opening up trade relations with China (which I now plan to do at my next opportunity), said, "Can you imagine the economic consequences to the Northwest if we just sold toilet paper to that many people?"

The Super Bowl

Well sir, I bring this up today not because we're about to sell toilet paper to China, but because we're about to sell something far more exciting: professional football.

In fact, it may already have been sold. Last weekend, amid a great deal of excitement, Super Bowl XX — the Chicago Bears against the New England Patriots — was shown nationwide on China Central Television, the state network.

Central Television has previously shown several National Football League games, but most Chinese are still unfamiliar with the sport, which in Chinese is translated as "olive ball."

What is plain from this is that the Chinese needed a crash course in something — either English or football. And as luck would have it, they got one — in football, compliments of the official Communist Party newspaper People's Daily.

'Crash course'

For those who want to "see ourselves as others see us," or

at both ends of the field is 10 yards wide.

One side can score six points by reaching the gate area of the other side and score another point if the ball is kicked into the gate again.

Three points can be scored if the ball is kicked into the gate from outside the gate zone.

Each side has 11 players, and a side loses its chance to attack if its players cannot move ahead 10 yards during four attacks.

Potential enormous

I don't normally give financial advice in this space, but if I had some money to spare I think I'd put it into the helmet and shoulder pad industry. Not only is the sales potential enormous if the Chinese people take to the game, but the markup is also much greater than on toilet paper.

The question, of course, is whether olive ball can steal the Chinese heart. Nobody knows that for certain, but as one Chinese office worker said when he learned the game would be televised, "It's so much more exciting than Ping-Pong."

In the People's Republic, that's high praise.

* * *

The other day in this space I was talking about a friend of mine here at the P-I. I talked about his shiny Cadillac, which I said was gray. And I talked about his philosophy, which I said was sanguine. (Actually what I said was that he believes life is fair, that jerks always get it in the end.)

Here's an update, taken from a message I found when I got to work:

"It is silver, Joe. (He means the car.)

"And they always get it *during* (he means during their lives, not necessarily in the end) and they always do it to

Senate votes to limit awards

From Page A-1

rather than paid in one lump sum.

☐ Requiring medical malpractice suits involving children to be brought within three years of the negligent act or within one year of discovery.

Gardner, declining to say whether he will sign the bill, promised yesterday to have his staff and the attorney general's tort division "review it intensively."

The governor, who has remained outside the sometimes bitter lobbying battle waged by both sides, called limiting liability "an issue that came cascading out of the ocean — just one big tidal wave that caught everybody without a great deal of foreknowledge."

But Gardner conceded he believes the proposed changes will have some impact on reducing insurance rates.

That's what the powerful coalition of city and county governments, businesses, day-care operators, physicians and insurance companies supporting the bill have promised. Called the Liability Reform Coalition, their lobbyists wrote the final version of the bill.

All the coalition members have been hit hard by sharp rate increases in liability insurance. Some have seen their policies canceled, leaving them without any coverage.

If the limits to liability laws are found to be constitutional, coalition representatives predict reductions in their insurances premiums of up to 30 percent.

The coalition's efforts were opposed by an alliance of trial lawyers, labor unions and victims' groups such as Mothers Against Drunk Driving and the Church Council of Greater Seattle.

They ran a well-financed, highly organized media campaign against rewriting liability laws, arguing that insurance companies have created the rate crisis through their investment decisions.

But the coalition, which won bipartisan legislative support at the beginning of this 60-day session, proved to be a juggernaut that couldn't be stopped.

Talmadge failed in a procedural attempt to add new amendments to the bill, including a 16 percent limit on insurance premium increases.

He acknowledged that the move would have returned the bill to the House, where it would have to go through the hearing process. That would have killed the measure for this session.

"I believe there are needed changes in tort and civil justice," Talmadge said, but he argued for more time to work out a better agreement.

In the heat of nearly two hours of debate on the issue, Sen. Jim McDermott, D-Seattle, called the insurance industry a "500-pound gorilla" that had effectively deflected attention from itself by pitting day-care operators and small business owners against lawyers.

"Meanwhile, watch the stock market and they (the insurance companies) are doing pretty well," he said.

But Hayner insisted lawmakers could not "stand by and do nothing" on the issue of soaring insurance costs. "If we fail to do anything on this, we're putting our heads in the sand," she said.

FIREMANS FUND
INSURANCE COMPANIES

777 San Marin Drive
Novato, CA 94998
(415) 899-2000

February 24, 1986

Senator Patrick Rodey
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: TORT REFORM

Enclosed you will find two pamphlets entitled "The American Tort System: A Time to Rebalance the Scales of Justice" and "A Citizen's Guide to Tort Reform." These are provided to you with compliments from Richard E. Wagner, President of Alaska 100 Insurance in Fairbanks, Alaska.

If you wish to obtain extra copies of these brochures, please write to me at the address referenced above c/o Tort Reform.

Thank you for your support on these issues.

Sincerely,

Charlene Conway

Charlene Conway
Public Affairs

Allies, opponents clash over reforms

'Tort' laws would alter insurance compensation rules

by Mary Scarpinato
Times Business Writer

It's called "tort reform."

Translate that as a whole new way of who sues whom, over what, for how much under "tort law" compensation criteria for injured parties.

Specifically, on insurance claims.

Especially with an eye to putting a lid on the number of these cases that can get into court — and the award amounts that juries and judges can hand out after that.

The Alaska legislature now is considering a package of tort reform proposals. Roughly 30 states are considering or already have adopted similar provisions.

Tort reform is essentially a response to what currently is being called "the insurance crisis" in this country.

Everybody from day-care providers and air taxi operators to the Alaska Zoo and the Municipality of Anchorage are reportedly reeling under skyrocketing coverage rates.

Meanwhile, a number of businesses, particularly smaller ones, are either "going bare or going broke." That is, risking their assets as non-insured supply and service firms or simply closing shop for fear of non-insurable risks.

But is tort reform really the remedy to all this?

Well, maybe . . . later.

Tort reform promises no rate reductions, but it may increase coverage availability in the future for some higher-risk operations who now cannot find insurance "at any price."

Mike Schneider
. . .against tort reform

Its primary aid is for a national insurance industry that last year recorded $25 billion in underwriting losses, and $21 billion the year before that.

The industry itself — tort reform's leading lobbyist — claims added woe with a record-breaking rise in insurance suit filings and jury awards.

Relief from these arguably could reduce premium requirements on policy holders as an aftereffect.

However, anti-tort reformists — led by trial lawyer associations — see no reason for injury and accident victims' recovery rights to suffer.

Their argument is that the industry is only sitting in its own financial stew and crying for public bailout *a la* Chrysler Corp. but without the automaker's payback clause.

Even a U.S. Attorney General's policy group, which advocates tort reform, published a report in February, saying:

"These underwriting losses appear to be largely a result of coverage written in the late 1970s and early 1980s which may have been underpriced due to the industry's desire to obtain premium income to invest at the then-prevailing high interest rates."

Mike Schneider, a local attorney specializing in claimant representation, takes aim at the insurance industry for targeting jurors as a major source of its problems.

"The jury is being attacked by the industry and by legislators as being a random collection of bozos," says Schneider, who is actively involved in the anti-tort reform campaign.

High damage awards, which tort reformists like to label "outlandish" and "exorbitant," are "damned few here and they've all been for terribly injured people," he says, adding that the proposal to cap such awards can only hurt compensation possibilities for worst-case victims.

Bill Gee, an insurance agent here who is active in the tort reform drive, agrees that Alaska is not known for exceptionally high damage awards.

"The insurance companies make money in Alaska," admits Gee.

"But we constantly want to

See Insurance, page D-11

Insurance reforms might widen coverage but not cut costs

Continued from page D-5

separate Alaska from the rest of the world, and we can't," he adds. "The fact is that there's only so much money out there for the (nationwide) insurance companies to use."

In such a tight-finance situation, Gee says the industry logically will funnel itself toward the Lower 48 where climatic and geographic conditions make many ventures less-risky policy investments.

"None of the insurance companies are saying that rates will go down (if tort reform is adopted)," Gee clarifies. "But one thing it will effect is that more companies will be able to write (policies)."

"The long-term effect is what we're looking at," he says of a coverage situation that should improve for policy holders, or seekers, if the industry's financial status is improved.

Tort reformists also emphasize that the drive to hold down dollar verdicts is not in the area of actual damages (say, for medical expenses) but in that of "pain and suffering" and other non-economic compensation, which they claim often is inflated by juror sympathy in an emotional courtroom setting.

But opponents like Schneider say such a proposal again picks "victims like the young, poor and subsistence livers who don't have a lot of W-2s (salary tax deduction statements) to prove economic damages."

> Tort reformists also emphasize that the drive to hold down dollar verdicts is not in the area of actual damages but in that of 'pain and suffering' and other non-economic compensation, which they claim often is inflated by juror sympathy in an emotional courtroom setting.

Under these award restrictions, he says: "A 5-year-old boy can have his legs traumatically removed and get $20,000 in medical and $5,000 in pain and suffering. In my view, that's not reasonable and that's not fair.

"That kid can have his life literally crumpled up and trashed in front of him," Schneider continues.

But with no wages to show as lost and no dependents left without support, actual damages in such a case may make for a relatively minimal award.

Gee hears sorry stories at his desk daily, he says, but more from the home-provider family-supporter point of view.

He told of one client in the air carrier business whose coverage cost $8,500 two years ago, $24,000 last year, and is looking at $65,000 in premiums for policy renewal this year.

"His decision is that he's got to go without (insurance) or close his doors because he can't have a profit margin to make up for it (coverage costs)," explains Gee.

If verdict awards have not soared out of sight here, the sheer volume of case filings has certainly taken a dramatic upswing.

Although there is no way to calculate how many are insurance claims, general civil damage suits filed in Alaska Superior Court did take a rise from 1,305 in 1984 to 2,096 in 1985.

And much of the so-called insurance crisis is due just to Americans' ever-increasing willingness to sue, says Gee.

"I'll guarantee you," he says, "that if you slip and fall on the sidewalk in front of somebody's business, the first four people to stop will tell you to sue and the fifth will tell who's an attorney to call."

According to Gee, the notion that someone should be found to pay has replaced the one that individuals must sometimes accept responsibility for their own fates.

"For example," he says, "we live in a state with lots of ice and it's practically humanly impossible to make sure it's all kept cleared. So, maybe we do have the responsibility to at least learn how to walk on it."

Insurance companies might also do their part to make sure claim payments are prompt, he says, "so many good people don't end up getting bills (from cunning creditors) that drive them to get attorneys."

Tort reformists like to point out that the lawyers now challenging their proposals are the same professionals who earn their livelihoods with typical chunks of 30 percent or more out of claimants' case awards.

But Schneider says the insurance industry has been less than candid about the profits it pulls in, too.

Lawyers claim the industry has refused to break down and make public its profits and losses on a careful "line item" basis and has not offered more low-rate policies to clients with low-claim histories.

These attorneys also wish states across this country would take a closer look at Ontario, Canada, where many of the tort reform proposals being considered here already are in place.

According to a report compiled by a trial lawyers' lobby: "Pain and suffering awards (there) are capped at $185,000, punitive damages are virtually non-existent . . . Yet the insurance industry is raising its rates 400 percent and more, canceling policies in midterm and refusing to provide coverage at any price both in the U.S., which has not enacted the tort provisions the industry seeks, and in Ontario, where such provisions have long been in the law."

ON THE ARCTIC RIM

NEWSLETTER OF THE U.S. ARCTIC RESEARCH COMMISSION APRIL 1986

Kodiak and Anchorage Public Meetings

The sixth general meeting of the United States Arctic Research Commission (ARC) will be comprised of two separate parts. One is to be held in Kodiak on April 28, 1986; the other is scheduled to occur on the following day in Anchorage. The Kodiak sessions are planned to: (1) provide information about the mission and activities of the Commission, and (2) acquire input about fisheries ecosystem research needs as such work may relate to the Bering Sea and the Aleutian littoral zone. Kodiak has important commercial interests in both of these areas, and the acquisition of useful testimony on research needs concerned with harvesting, processing, marketing, and transporting the catch is expected. The public meetings in Kodiak are scheduled to start at 8:30 a.m. at the Community College. At midday and in the early afternoon of the 28th, the Commission will meet with the Kodiak Borough Assembly and the Kodiak City Council.

The Anchorage sessions start at 9:00 a.m., April 29, in the auditorium of the Anchorage Museum of History and Art, 121 West 7th Avenue. Dr. Oran Young, Northern Studies Center, Wolcott, Vermont, will present a public lecture entitled "Arctic Geopolitics and Their Impact on Research." A general understanding of northern geopolitical trends is important in making a long-range forecast of Arctic research needs. Other activities planned for Anchorage are a press conference and a business session of the Commission.

The Commission and its Activities

The Commission was established by the Arctic Research and Policy Act of 1984. Its duties are to:

1. develop and recommend an integrated national Arctic research policy;
2. assist the Interagency Arctic Research Policy Committee in establishing a national Arctic research program plan to implement the Arctic research policy;
3. facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;
4. review Federal research programs in the Arctic and suggest improvements in coordination among programs;
5. recommend methods to improve logistical planning and support for Arctic research as may be appropriate and in accordance with the findings and purposes of this title;
6. suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;
7. offer other recommendations and advice to the Interagency Committee as it may find appropriate; and
8. cooperate with the Governor of the State of Alaska and with agencies and organizations of that State which the Governor may designate with respect to the formulation of Arctic research policy.

No later than January 31 of each year, the Commission will (1) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee in the performance of its duties, and (2) submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.

In February 1985, President Reagan appointed Dr. James H. Zumberge, president of the University of Southern California, as Chairman of the Arctic Research Commission. The other two scientific members appointed were vice chairman Juan G. Roederer, Geophysical Institute, University of Alaska-Fairbanks, and Dr. A. L. Washburn, Quaternary Research Center,

U.S. Arctic Research Commission

3500 South Figueroa, Suite 114
Los Angeles, California 90007

On the Arctic Rim is published by the U.S. Arctic Research Commission, 707 A Street, Anchorage, Alaska 99501, (907) 263-0661 (Branch office). Requests for copies, submissions, and comments may be directed to Lyle D. Perrigo, editor, at above address.

The U.S. Arctic Research Commission was appointed in accordance with the Arctic Research and Policy Act of 1984. Our main address is: U.S. Arctic Research Commission, 3500 South Figueroa, Suite 114, Los Angeles, California 90007, (213) 743-0970.

University of Washington. Messrs. Elmer E. Rasmuson, Anchorage, and Oliver Leavitt, Barrow, are respectively presidential appointees to commission positions set aside for business/industry and the indigenous Natives of the American Arctic. Mr. Erich Bloch, director, National Science Foundation, is an *ex officio* member. W. Timothy Hushen serves as executive director.

The sister organization created by the Act is the Interagency Arctic Research Policy Committee. Its role is to establish and to develop a five-year program plan to integrate federal research activities in the Arctic. The Committee has representatives from all federal agencies, conducting research in the Arctic with the National Science Foundation serving as chair.

The Commission's accomplishments since it began operations in March 1985 include: (1) the acquisition of information on U.S. Arctic research needs through public testimony at meetings in Anchorage, Fairbanks, Barrow, Los Angeles, and Seattle; (2) the development of guidelines of U.S. Arctic Research policy; (3) the preparation of *National Needs and Arctic Research: A Framework for Action*, an overview of research needs and priorities to guide the Interagency Committee in its work; (4) the opening of an office in Alaska; (5) the publication of the annual report detailing fiscal year 1985 activities; (6) meetings with the governor, legislative committees, and key administrators in Alaska; and (7) signing agreements with Alaskan officials to promote national/state cooperation in information transfer and the identification of northern health research needs. (The signing of a similar agreement to form a joint group to identify Bering Sea fishery ecosystem research needs is pending.) Copies of the Commission's annual report may be obtained through the offices in Los Angeles or Anchorage.

Alaska Office

The Commission opened an Alaska office at 707 A Street, Anchorage, Alaska, 99501 in January 1986. This office is expected to provide local coordination of Commission activities with State and local research organizations, and serve as a place of contact in the North. Staff support is provided by Lyle D. Perrigo.

The Newsletter

On the Arctic Rim is the newsletter of the Arctic Research Commission (ARC). The purposes of this publication are: (1) provide an overview of ARC activities, and (2) disseminate information about related themes. Copies of the first edition are being mailed to: (1) those who testified before or otherwise contacted ARC, (2) state and federal officials responsible for Arctic research, (3) individuals conducting research in the Arctic, and (4) others who may have expressed an interest in following ARC activities. You may be added to the mailing list by writing to the editor, Lyle D. Perrigo, in Anchorage.

U.S. Arctic Research Commission
707 A Street
Anchorage, Alaska 99501

The Honorable Patrick Rodey
Chairman, Senate Judiciary
Committee
Alaska State Legislature
Capitol Building, Pouch V
Juneau, Alaska 99811

(907) 586-3530

DOUGLAS L. GREGG, Esq.

A Professional Corporation

ATTORNEY-AT-LAW

130 SEWARD STREET, SUITE 417

JUNEAU, ALASKA 99801

April 14, 1986

Honorable Patrick Rodey
Chairman, Judiciary Committee
Alaska State Senate
P. O. Box V
Juneau, Alaska 99811

Re: The Insurance Crisis and Tort Reform

Dear Senator Rodey:

I have practiced law in Juneau since 1959, am a former Assistant Attorney General, former Juneau City Attorney, and have a modest but respectable practice. Over the years I have handled a fair share of personal injury and a number of wrongful death cases for the victims and families of victims of negligence. I have no ax to grind because for the past year I have been gearing down to an even more relaxed practice, which obviously does not include a heavy litigation schedule. Nevertheless, I speak out strongly against legislation which would create a special class of people to be discriminated against: the victim of negligence.

As I wrote to Rep. Mike Miller a while ago, when you consider the many ideas afoot to alleviate the insurance crises, pause for a moment or two. In the life of a legislator many groups seek exemption. It may be from budget cuts, from taxes or the application of some law, rule or regulation. These requests for special treatment invariably involve money. The burden of one man's exemption is usually shared by all who pay taxes and is spread evenly.

Tort reform is different. It calls for payment by a class which already carries special burdens.

These Alaskans are a strange and pitiful lot. They are the brain-injured children struck by automobiles; the helpless passengers in the airplanes that should not have taken off that day; the pregnant women whose lives have perhaps been jeopardized by incompetent doctors; they are the maimed, the scarred, the blinded and the crippled. Include, also, in this group the survivors of those who were killed by acts of negligence.[1] Of all the people in society who ought NOT to be made to shoulder the burden of helping the insurance industry out of the doldrums, it is these survivors and these injured whom a jury has found entitled to recover.

----

1. I note that damages for the negligent killing of a person without dependents would be limited to $25,000 by the reform coalition. Why don't they say what they mean? They mean that $25,000 is the maximum payment for a child killed by a drunk driver. (That is less than some people pay for a car, a boat or even a horse.)

Today it is doctors who would deny the victim full compensation. But doctors are not the first nor will they be the last to seek emasculation of the legal system as a "quick fix." Ski areas, aircraft owners/operators, manufacturers of defective products, government entitities--these are examples of others who seek to limit their own liability. The one who will pay for that favored treatment is the faceless victim. I say "faceless" because we are speaking of the child, woman or man who does not know that tomorrow he or she will be chosen for tragedy. Tomorrow's victims are very real. They are as real as the awful numbers which measure the carnage. Since they have not yet been injured they cannot very well organize into a citizen's coalition.

The question you face is this: Will future maimed and injured Alaskans be made to pay, out of their compensation for injury, the cost of reducing insurance premiums?

Wealthy plaintiffs' firms are rare. Wealthy defense firms are well known in every major city in the State. The insurance lawyer is paid when he wins and he is paid when he loses. The Plaintiff's lawyer is only paid when he wins. The reason is simple: his clients cannot afford hourly fees. It is often hard to find a lawyer who will accept many of these cases--even at a 33-1/3% contingent fee. The coalition would reduce that fee even further. What a stroke of genius! It not only strikes a favorite target, the lawyer, but in so doing it also deprives the victim of representation.

I don't say there is no insurance problem. There surely is and for that reason all suggestions should be carefully considered--all but one, that is. You should reject out of hand the coalition's plans to undermine the common law tort system. You should steadfastly refuse to create a class of Alaskans whose ability to hire a good lawyer is compromised. You should vote "no" on legislation which would substitute the judgment of the legislature for the verdict of a jury as to what is fair compensation in any given situation.

The kind of "reform" I have been hearing about would be a high price to pay for the purpose of restoring profitability to an industry whose ethics (as well as profits) are in great doubt. I enclose a sampling of "twice told tales." These are some favorites of the news media--the Paul Harvey's of the world. Please take a few minutes to review the "rest of the story" behind these distortions. Thank you.

Very truly yours,

DOUGLAS L. GREGG

Enclosures
DLG:lb

ıominal. (The fee in
)
irosvener, executive
MTLA, called the
to the People's Law
tic." As proof, he
ıt return rate as new
red, and pointed out
students invariably
nd family members

"graduate," a legal
St. Clair Shores, said
n was especially use-
ives u . important in-
t law that people use
.y lives."
that ATLA efforts to
ople's Law School are
"our strong belief in
c f a citizenry that is
vare of its legal rights
ties. I am very proud
, the world's largest
ation, take the lead-
exciting project." ■

ıpital Tours

st popular tourist at-
ıshington, D.C., are
ouse, the Supreme
pitol, and the FBI
Special tours of these
ed and more leisure-
ılar public tours, are
'LA members.
:rested in touring any
ontact ATLA's Pub-
oartment at least a
'our trip so that the
:es can be alerted and
ckets obtained. ■

Query

ng book on legal hu-
sted in hearing from
ecdotes, jokes, hu-
oinions, or miscella-
outions used will be

ssor David E. Aaronson
rican University of Law
Myers Hall 205
ıchusetts Avenue, N.W.
Washington, DC 20016

Insurance "Crises"

The doctors are crying out in pain, because they are getting stung by the insurance industry. It is perhaps small comfort to them, but they are not alone. Just about anybody who does anything, from accountant to zookeeper, is being dogged by skyrocketing premiums, punitive policies, or difficulty in getting any insurance at all.

Have all of us, all of a sudden, become bad insurance risks? Of course not. Rather, the property/casualty insurance industry is creating an illusion of "crises" through the artful presentation of imprecise financial data. The insurers manufacture "losses" and blame them on our system of trial by jury. The industry pronounces itself virtually without fault as it searches, it seems, to get out of the business of insuring anything except profits. It blames these "crises" instead on the horribly injured victims of negligence, defective products, unsafe workplaces, faulty warnings, deficient safeguards, dangerous designs, and drunk drivers. It blames those who have suffered catastrophe and dare to exercise their right to go to court—the one place they have a fighting chance against the rich and powerful—and to seek a decision by a jury of fellow citizens.

Two things are primarily responsible for the shocking rise in insurance premiums: poor underwriting practices and exaggerated estimates of future losses by the insurers.

When interest rates are high, insurers slash premium prices in many commercial lines of insurance, getting back in investment income more than was lost through low-priced premiums. When interest rates fall, the tax-free money set aside to pay anticipated claims—a number that is only the insurers' estimate—earns less than expected. The insurers then proclaim a "crisis" and take actions they now are taking, raising premiums in all lines of insurance, even for those who have never had a single claim against them. As one insurance agent said recently, "Insurers are trying to recover five years of discounts in one year."

In 1984, the industry reported underwriting losses of $20.5 billion, according to Congress's General Accounting Office. Remember, these are not real losses; the sum largely represents invested, interest-earning, tax-free money reserved to pay estimated future claims. Even at that, insurers earned $30 million more in 1984 in investment income than their "losses" of $20.5 billion.

Wall Street knows that the property/casualty insurance industry is in sound shape. The stock index of property/casualty insurers rose by 50 percent in 1985, almost double the rise of the general stock market, according to the A. M. Best and Company index. Further evidence of health is the robust growth of the industry's assets. In 1984, these assets totaled $267.7 billion, up $15.6 billion from 1983, according to the Insurance Information Institute. The insurers try to tell us that they are paying out more than $1 in claims for every $1 they are taking in. How can this be, when their assets are growing, year in and year out?

Despite their profitability, the property/casualty insurers pay little federal income tax. From 1974 through 1983, according to the General Accounting Office, these companies had a total profit of about $72 billion, but they paid only $1.3 billion in federal income taxes. That's about 2 percent of their total profit for the period. ■

This is one of a series of articles prepared by the Public Affairs Office for you to submit to or use as resource material for articles or op ed pieces for your local paper.

WANTED: Discovery Abuse Sanction Materials

The ATLA Committee on Discovery Abuses and Protective Orders is collecting examples of court orders, transcripts of hearings, motions, supporting affidavits, memoranda of law, and anything else you have in your files regarding successful imposition of sanctions for abuse of discovery. The Committee is particularly interested in identifying chronic abusers. Once collected, the materials will be made available upon request. Send your examples to Discovery Exchange, c/o Kris Meyer, ATLA Education Department, P.O. Box 3717, Washington, DC 20007.

ADVOCATE

The Association of Trial Lawyers of America February 19

JNSEL

MITH

uad"

eting in Orlan-
an made it clear
of ATLA must
uad" if we're
the American
of *The Advo-*
you can use as
to correct the

pen a popular
story about an
as outrageous,
eive. But the
those additional
ous" cases ones
s been genuine-
expressed their
e plaintiff.
itional facts in
that you can
when there are
on the facts on
it till the truth

e at headquar-
ff of the Pub-
king constantly
the truth, and
be seeing more
mation in *The*

nation we give
mation on the
. Some of our
iting letters to
ps and schools
lo, learning the
blic. But some
ve to put our
ire.
ou run across
we'll check it
und an answer
us know so we

is an informa-
re trying to ex-
'e locked in
can make all
nd misconcep-
rosion of our
en we're fight-
and our future
own rights as
of equal justice
n.
ke ATLA can't
unity that you
only be at full
if every single
works daily to
unting on you.
you. And the
ing on you. ■

The Facts Behind the Horror Stories

The insurance companies, which oppose injured Americans' right to a jury trial, try to ridicule juries by parading before the media the same 6 or 7 stories of what they call "outrageous verdicts." Some of these cases are 6, 7, or 10 years old and have nothing to do with the truly outrageous premiums sought by the insurers today.

Nevertheless, insurers tell the tales to mislead the public into believing that juries give huge sums to undeserving victims and that this is driving up the cost of insurance.

Except for the injuries to the victims, close examination shows, there is nothing horrible about these "horror stories." Here are the anecdotes . . . and the facts.

THE PERFUME AND THE CANDLE

Among those citing this case is Victor Schwartz, chief lobbyist in Washington, D.C., for corporate and insurance interests. On the network news show "Nightline," Schwartz said recently: "A woman in Maryland recovered money when perfume was poured on a lit candle."

The Full Facts: First of all, Schwartz neglected to tell viewers that this case was decided 10 years ago and has nothing to do with today's issues. Second, the final award to the plaintiff was about $30,000, hardly enough to break an industry with assets of more than $267 billion. Third, the perfume was not poured on a lighted candle.

Nancy Moran, 15, was visiting a friend of the same age. There was a Christmas candle burning in a saucer. To give the candle fragrance, the friend poured cologne from a drip bottle into the saucer, not on the flame. The heat of the flame ignited the vapors rising from the cologne. The burning vapors torched the perfume in the saucer, causing it to explode into flame. Ms. Moran was seriously burned.

The jury verdict in *Moran v. Faberge, Inc.* was upheld in 1975 by the Maryland Court of Appeals, which ruled that the defendant knew or had reason to know that the cologne might come close enough to a flame to explode. The same product, sold in a spray bottle, contained a warning not to use it near a flame. A woman applying the cologne could experience the same result if she were to light a cigarette.

Had the plaintiff poured the cologne directly on the flame, there would have been no case, said Martin Freeman of Bethesda, Md., who handled the case. His number is (301) 951-1610.

THE REFRIGERATOR AND THE BODY BUILDER

Forbes Magazine in a July 1985 article and syndicated columnist Ernest Conine last November, among others, have cited the case of the "41-year-old body builder [who] entered a foot-race with a refrigerator strapped to his back to prove his prowess. During the race, he alleged, one of the straps came loose and the man was hurt. He sued everyone in sight, including the maker of the strap. Jury award: $1 million." The quote is from *Forbes.*

The Full Facts: The recitation of this 8-year-old accident is wrong on several counts. In *Columbo v. Trans World International,* the plaintiff, Franco Columbo, was a world-champion body builder. In 1976, he won the "Mr. Olympia" contest. In 1977, he agreed to participate in a television show, "The World's Strongest Man," produced by Trans World International Corporation and aired on CBS television. The other defendants were MCA, the parent company of Universal Studios, where the event occurred, and Zuver Fitness Center, Inc., the manufacturer of the equipment used by the plaintiff.

The event was to have 10 participants, all well-known athletes, competing in "off-beat" contests. One event was a refrigerator race. Each contestant was to walk or run 40 yards with a 400-pound refrigerator on his back.

Before the event, each contestant was given a written contract guaranteeing that all the equipment had been tested for safety. Zuver Fitness Center developed the contests and prepared the equipment.

Mr. Columbo was in the first of five heats. All the other contestants were more than 6' tall; Mr. Columbo is 5'6" tall, and all the defendants knew that fact. After he had run 7 or 8 yards, he fell when the rack to which the refrigerator was attached struck the ground. For someone of his height to lift the rack and refrigerator off the ground, Mr. Columbo had to bend forward deeply. This caused his center of gravity to be thrown off, and he collapsed. He suffered a total knee displacement. His injuries required extensive surgery.

At the trial, the chief engineer for Zuver admitted that (1) the equipment had never been tested by anyone Mr. Columbo's size, (2) the equipment had never been tested by anyone who had run with it, and (3) he had told Trans World officials that he didn't think the equipment or the race itself was safe. Other experts testified that it was not humanly possible to do what was expected in the contest. (After Mr. Columbo's fall, all the other contestants walked the race.)

In 1982, a Los Angeles jury awarded $1,036,760 and Trans World settled for $1 million. The company was not insured, so this amount had no effect on insurance premiums. And the plaintiff never alleged that the strap broke; in fact, the maker of the strap was not sued. Attorney George Royce of Los Angeles represented the plaintiff. His number is (213) 552-7868.

THE HOT-AIR BALLOON AND THE LAUNDRY

Forbes, in its July 1985 article decrying the so-called current liability crisis, gave this ex-

continued on page 2

More Facts . . .

continued from p. 1

ample of "absurdly generous awards: T... Maryland men decided to dry their hot-air balloon in a commercial laundry dryer. It exploded, injuring them. They won $885,000 in damages from American Laundry Machinery, which manufactured the dryer." This tale is repeated, virtually word for word, in many places.

The Full Facts: Horan v. American Laundry Machinery Industries was decided in 1979. Mr. Horan owned a 60-foot, nylon, hot-air balloon used by his advertising agency. When it became extremely muddy, he took it to a friend in the laundry business, who advised him that his equipment was too small to launder the balloon. They then went to a local hospital, where the equipment was designed for industrial purposes, and began to launder the balloon. The laundry extractor began to vibrate violently, causing it to blow up.

Mr. Horan was badly injured; his friend's hand was nearly severed, requiring microsurgery at Johns Hopkins Hospital. At the trial, it was proved that the company had a patent on a device that would have automatically stopped the machine if it vibrated excessively. Nevertheless, evidence revealed, the company had decided before the accident not to install the device.

A Baltimore jury awarded $1,260,000 to the two men. Samuel O. Jackson, Jr., now retired, represented the plaintiff. The phone number for Mr. Jackson's firm is (301) 539-6633.

THE HORSE AND THE PINTO

In a speech last December, Richard Willard, assistant attorney general for the Civil Division, U.S. Department of Justice, told his audience a story repeated in many quarters.

"An Oregon jury awarded $1.5 million in damages to the estate of a woman who was killed when a horse fell through the roof of her 1980 Ford Pinto. The horse had been spooked by wolves or coyotes and broke through a triple-strand, barbed-wire fence onto the highway. The horse was hit head-on by the woman's car, was knocked into the air, and fell down onto the hood and roof of the car. Although Ford argued that the accident was a 'one in a million accident,' and that no car could ever withstand the impact of a horse, the jury found Ford liable."

The Full Facts: In *Green v. Ford Motor, Co.*, a Portland, Oregon, jury found Ford liable because of weakness in the design of the Pinto's roof. In 1982, Mr. Green was driving his 20-year-old wife and their newborn baby home from the hospital when a horse stepped into the road. The car hit the horse. The animal slid across the windshield and roof. The roof collapsed. Mrs. Green was struck in the temple and killed.

The National Transportation Safety Board requires that a vehicle withstand 5,000 pounds on impact from a rollover, which is close to what happened to the Greens' car. A simulation of the accident proved that the Pinto could withstand only 3,800 pounds. Furthermore, Ford employees testified, records of vehicles that had failed safety tests had been destroyed.

In addition, Oregon records show, a horse is involved in an automobile accident there every three days. So, this is hardly a "one in a million accident." Most important, however, the car should have been able to withstand the impact of the accident. Millions of people depend on the crashworthiness of their cars.

In June 1985, a jury brought a verdict of $1.5 million against Ford. Ford has appealed. The plaintiff's attorney is J. T. Baisch of Portland. His number is (503) 226-3232.

THE DRUNK DRIVER AND THE PHONE BOOTH

The Wall Street Journal, in a December 1985 editorial, said, "A man is injured when a drunk driver crashed into a telephone booth and California Chief Justice Rose Bird rules that the company that designed the booth is liable." (Willard also has cited this case.)

The Full Facts: In *Bigbee v. Pacific Telephone and Telegraph Co.*, Chief Justice Bird, along with five of the six other justices on the California Supreme Court, ruled in 1983 that the issue of liability in this case should be decided by a jury. A summary judgment had been granted to the defendant by the Los Angeles County Superior Court, and the Supreme Court was simply sending the case back to the lower court for trial. Bird wrote for the majority: "Where a telephone booth, which is difficult to exit, is placed 15 feet from such a thoroughfare, the risk that it might be struck by a car veering off the street, thereby causing injury to a person trapped within it, cannot be said to be unforeseeable as a matter of law."

The booth, which had been hit at least once before, was "difficult to exit," because its door was jammed, and the plaintiff was unable to flee the booth when he saw the drunk driver bearing down on him. The seventh justice, incidentally, while dissenting in part, wrote that the summary judgment was "properly reversed" on the question of the jammed door. This case, although sent back to the lower court in 1983, never went to trial. A settlement in this 1974 accident was reached, but attorneys for both sides are under a court order—requested by the defendant—not to discuss the amount. The plaintiff's attorney is Thomas Cacciatore of Los Angeles. His number is (213) 380-6330.

THE BURGLAR AND THE SKYLIGHT

The Wall Street Journal editorial stated, "An insurance company is ordered to pay $260,000 plus $1,500 a month to a plaintiff when he fell through a skylight while burgling a school."

The Full Facts: The insurance company in *Bodeine v. Enterprise High School District* was not ordered to pay anything; the case was settled. The man involved, Rick Bodeine, 19, had graduated from the high school in 1981. In 1982, as a lark, he and two friends tried to take a floodlight from the roof of the school to light

New "M" Club Members

Perry Abernethy	Thomas Guelzow	Stuart Pearlman
George Adelo	Fredd Haas	Stephan Peskin
George Andreos	Michael Haines	Scott Peters
William Anton	Joan Harlan	Thomas Popejoy
David Archuleta	John Harlin, Jr.	Terence R. Quinn
Patrick Armstrong	Thomas Hart III	Drew Ranier
Jeffrey Baker	Lex Hawkins	Thomas Reavely
William Ball	James P. Hayes	Gordon Reiselt
Carl Barbier	Arthur Hedberg	Charles Reynolds
David Baum	Jim Heslet	John Riccolo
Richard Beliles	William Hicks	Peter Riley
Victor Bergman	Albert Hofeld	James Roach
Thomas J. Bice	J. Roy Holliday	John James Rojas
M. Gene Blackburn	Bill Hoppe	Carol Russo
Richard Bosson	Dennis Hummell	J. Nicholas Russo
Richard Breen	Mark Humphrey	Benito Sanchez
Joe Bufogle	Dwight James	Michael Sanchez
Kenneth Butters	Leo Kelly	J. Bryan Schulte
Michael Callen	Jan Kleinman	Michael Sciortino
Patrick Carr	John Kujawski	Mitchell Shamus
Patrick Casey	Gary Lane	William Shelton
Jane Ann Cobb	Joe Lapan	Robert A. Slattery
A. J. Cone	Bill Lawrence	Daniel Spellman
Roxanne Conlin	Mike Lawter	Martin Spellman
James Conrady	James Lawyer	Frank Spring
Sharon Corbitt	Verne Lawyer	Betsy Ann Stewart
Thomas Crawford	Alan Leibson	Larry Stewart
Nick Critelli	Robert Leonard	Leof Strand
Richard Crollet	Harvey Lewis	Lorenzo Tapia
Paul Cronin	Robert Lohman	Tito Trevino
Charles Currier	Marjon Louis	J. Montjoy Trimble
T. A. Demetrio	Peter Mallery	Ronald VanAmberg
[illegible]	Alan Malott	Bette Velde

Legal Fictions

Alaska State Legislature
House of Representatives

4007 BRENTWOOD CIRCLE
ANCHORAGE, ALASKA 99502
(907) 243-7574

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4939

REPRESENTATIVE
ALYCE HANLEY
DISTRICT 9, SEAT B

MEMBER
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
LABOR AND COMMERCE COMMITTEE
PUBLIC SAFETY SUBCOMMITTEE

April 15, 1986

Senator Pat Rodey, Chairman
Senate Judiciary Committee
P.O. Box V, (M/S 3100)
Juneau, Alaska 99811

Dear Mr. Chairman:

The Health Association of Alaska sent me a copy of their April 14 letter to you regarding my amendment to House Bill 532. This amendment was added in the House Labor and Commerce Committee, and exempts hospital board members, among others, from certain liability.

My intent in suggesting this language was to address the growing problem of protecting members of the public willing to serve on the boards of hospitals, non-profit corporations, and schools.

The language suggested by Dennis DeWitt in his April 15 letter seems to clarify that intent. It is my hope that your committee will recognize the need for the amendments and consider them for adoption in Senate Bill 377.

With best regards,

Sincerely,

Alyce

Alyce Hanley

cc: Senator Tim Kelly

16 April 1986

Seward General Hospital
P.O. Box 365
Seward, Alaska 99664

The Senate Judiciary Committee
The Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Committee Member;

I urge you to support the issue of tort reform as presented in HB 532 (L&C) which includes amendments conforming to the principles set forth by the Citizen's Coalition on Tort Reform. Of particular interest is Rep. Alyce Hanley's amendment pertaining to a limitation on the liability of certain board members. Your support in this matter is appreciated.

Thank you for your time and consideration.

Sincerely,

Janet I. Trettner

Janet I. Trettner
Vice-Chairperson
Seward General Hospital Assoc.
Board of Trustees

cc: Sen. Patrick Rodey
Sen. Tim Kelly
Sen. Jan Faiks
Sen. Rick Halford
Sen. Robert Ziegler

DAVID T. MAYSCHAK, M.D.
P.O. BOX 1209
PALMER, ALASKA 99645
Telephone (907) 745-8100

April 9, 1986

Patrick Rodey
Chairman of House Judiciary Committee
Room 504, Capitol Building
Alaska State Legislature
Pouch 5 (MS3100)
Juneau, AK 99811

Dear Mr. Rodey:

As a practicing physician and surgeon in the Palmer and Wasilla area, I want to express my concern regarding problems with liability insurance. Traditionally, the majority of physicians have been dedicated to taking care of people and the surgeon especially delights in freeing people from pain and disease. Unfortunately, this practice of health care delivery is now being severely compromised by attitudes of fear, suspicions and anxiety engendered by the liability crisis. In this day and age, it is impossible to provide good health care without adequate liability insurance. However, without adequate reform of the tort system, I fear that the problem will continue to snowball and, as has happened elsewhere in the United States, professionals will escape from the vicious circle of liability problems by simply abandoning their profession. That probably is a better alternative than either compromising their principles of health care or, on the other hand, driving up the cost of health care simply to protect themselves from untoward suits.

Alas, even when a physician contemplates another profession that may be associated with lower risk, even those professions today are not immune from unrestricted and even indiscriminate liability suits.

The United States Attorney General Tort Policy Working Group Analysis (February 1986) recommends meaningful legislation that would make possible affordable and available liability insurance. It's recommendations are included in HB 532 and SB 377 in their original form. Accordingly, I strongly urge you to support those bills in their original form and in that way to help enact meaningful tort reform.

Sincerely,

David T. Mayschak

David T. Mayschak, M.D.

DTM:ljb

CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison..."

March 28, 1986

TO: ALL LEGISLATORS

Please note that the Citizens Coalition for Tort Reform continues to support the principles set forth in our original comprehensive solution. Those principles are contained in SSHB 532 and most of them are in SB 377. We appreciate the hard work and support which has been put forth in the effort to reform some of the tort practices which have developed in the past few years.

Al Tamagni, Sr.
Chairman of the Board

Gene Roguszka
Vice Chairman

David MacGuire, M.D.
Vice President;
President, Alaska State
Medical Society

David Zundel, Secretary;
Executive Director,
Alaska Air Carriers

William L. Gee

Bill Gee, Treasurer

Frank Mears, President
Professional Trust Administrators, Inc.

Jack Thompson

Jack Thompson
President, Alaska Movers Association

Dick Cattanach

Dick Cattanach
Chairman, Insurance Tax and Bonding
Committee, Alaska General Contractors

Denise L. Knapp

Denise L. Knapp
Board Member
Southern Association of Life Underwriters

Margaret R. Wolfe

Margaret Wolfe
President, Midtown Daycare Center Inc.

Morry Hollowell

Morry Hollowell
President, Yukon Equipment
Member, Associated Equipment Distributors

Alan P. Budahl

Alan P. Budahl
President, Alaska Hotel & Motel Association

Don Redmond

Don Redmond
President, Alaska Rental Association

Bernie Saupe

Bernie Saupe
Vice-President, Alaska Oil Marketers
Association, Inc.

738 H Street, Suite 300 • Anchorage, Alaska 99501 • (907) 276-1135

Marilyn Pierce-Bulger
Chairman, Alaska Chapter
American College of Nurse-Midwives

Martha A. Dearborn
Executive Director
Alaska Dental Society

T.J. Thrasher
Executive Director
Alaska Trucking Association

James E. Suttle
Chairman, Alaska Chapter
International Association of
Drilling Contractors

Marigale Compton
Liason, Anchgrage Board of Realtors

Anita Farley
Childbirth Educator

Lynn J. Coon, O.D.
Legislative Chairman, Alaska Chapter
American Optometric Association

Dr. Vince Haneman P.E.

Dr. Vincent S. Haneman, Jr., P.E.
Immediate past President, Alaska
Society of Professional Engineers
and Dean of Engineering - University
of Alaska , Fairbanks

Nelson M. Franklin
Chairman, Professional Engineers
in Private Practice

Charles H. Selman
President, Caberet Hotel and
Restaurant Retailers (CHARR)

Mary Pierce
Risk Management Consultant

Michael W. Gordon
Board Member, (ARBA)
Anchorage Restaurant & Beverage Assoc.

Roy Robinson
Vice-President, Alaska Broadcasters
Association

Diane E. Ramey
Liason, Alaska Physical Therapy
Association

Dennis DeWitt
Executive Director, Health Association
of Alaska

ALASKA VISITORS ASSOCIATION

P.O. BOX 10-2220
ANCHORAGE, AK 99510
(907) 276-6663

Telex:
Within Alaska 25-147
Lower U.S. 090-25-147
Canada 0305-25-147
International 314-25-147

A RESOLUTION IN SUPPORT OF TORT REFORM

WHEREAS, liability insurance is a necessary cost of doing business within the tourism industry in Alaska; and,

WHEREAS, liability insurance costs have continued to rise to prohibitive levels for many businesses: and,

WHEREAS, these higher costs result in a higher end product cost to the consumer; and,

WHEREAS, these higher costs of insurance are forcing many important visitor attractions out of business and prohibiting the entry of others,

THEREFORE BE IT RESOLVED that the Alaska Visitors Association make Tort Reform a Legislative priority and further direct the board and staff to work with the Citizen's Advocate Committee for Tort Reform and the Governor's Task Force on Insurance.

SUBMITTED BY: Jan Wrentmore, Suzanne Mullen, Bob Jacobsen,
Lee Crane and Bob Englebrecht

PASSED October 12, 1985 by a vote of the membership at the Annual AVA Convention.

One the following five pages you will find a summary of the desired actions of the Citizen Advocate Committee for Tort Reform

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

To: Senator Patrick Rodey, Chairman
Members of the Senate Judiciary Committee SG3

From: Scott A. Burgess, Executive Director

Date: March 26, 1986

Subject: CSSB 377 - Tort Reform

On behalf of the Alaska Municipal League, thank you and all the members of the 14th Legislature for recognizing that an insurance crisis exists, and for taking on, what has already proven itself to be, a difficult issue. The League, on behalf of the 116 municipalities it represents, directly, and all local governments in Alaska, offers its assistance in finding short-term and long-term solutions.

Attached is a copy of an AML resolution on the insurance and tort reform issue from the 1986 Policy Statement which was sent to you at the beginning of the year. Also, the following policy appears on page 8 of the Statement:

F. TORT REFORM
The League urges the Legislature to review tort reform and to work for a viable municipal insurance system.

These policies came out of the discussions and actions at the annual conference in Fairbanks. The Board of Directors chose finding solutions to the availability and affordability of insurance for municipalities as one of its top four legislative priorities for this year. While the League has been working for several years to assist municipalities with their insurance needs, it has been unable to address and fully understand the current crisis.

The League is in support of legislation allowing municipalities to create a self-insured risk pool. The current statutes allowing for municipalities to form reciprocals is unnecessarily burdensome and expensive. It requires municipalities to essentially create an insurance company rather than contracting with existing insurance and financial agencies; requires a heavy surplus deposit over and above the current high premiums; and, is subject to unnecessary regulation by the Division of Insurance.

The League is already helping municipalities with their insurance needs. The League has pursued setting up a self-insurance pool program for several years but have been thwarted by interpretations of existing law, and our attempts to change it. The League has a group insurance program which is providing insurance coverage to over 80 municipalities for workers compensation, general liability, business auto, and errors and omissions coverage for law enforcement, public officials, and school board members. However, because of the market and our inability to pool, we are unable to improve the program and offer the coverage desired.

The League has not been able to research the current tort reform issue well enough to commit to supporting all the recommended changes to the Statues, or to make the direct connection between tort reform and the current insurance problem. Like you, local elected officials are equally concerned for both today's plaintiff and tomorrow's taxpayer. The Board of Directors is unsure whether the fault for the current insurance problems rest with a reckless society, the insurance industry, the justice system or State laws, or a combination of all. Therefore, the League is asking the Legislature for help to analyze the problem and develop reasonable solutions. Tort reform should be evaluated on whether it is good policy, and on the long term effects, not just as a possible solution to the current problem.

There is a problem. Municipalities, and others who will appear before you, are unable to obtain or afford insurance to protect themselves, their investments, and the public. The problem faced by municipalities is unique. Municipalities are regarded as high risk clients by insurance companies because they have a greater potential for being sued; therefore, they have, historically, been victims of paying higher premiums. This, itself, is not unique because the same applies to doctors. However, the fact that municipalities are in the business of providing high risk public services, such as fire and police, that they cannot stop providing just because of the cost or risk, is unique to municipalities. Secondly, municipalities are the victims of the "deep pocket" theory. Municipalities are named in suits, directly or indirectly, regardless of the degree of fault because there is a perceived unlimited ability to pay. A claim is not limited by the amount of insurance coverage but by assets, and juries perceive that municipalities need only raise taxes to pay the claim.

The League is currently collecting information through a survey of its 116 members on their recent insurance experiences. The survey is not complete; however, attached is the information from the communities that have responded to date. Also included is information from other municipalities in the AML Insurance Program, provided by our broker Frank B. Hall & Co. of Alaska.

Several bills are before the Legislature attempting to address the insurance problem in Alaska. We support the concept of allowing municipalities to form self-insured risk pools. An AML Legislative Subcommittee has reviewed the bills introduced this session and before your committee, and has no problem with the tort reform measures most completely covered in SB 377 and HB 532. However, the Subcommittee and the staff will follow the hearings and your deliberations closely to better understand all concerned before recommending any specific bill. The League, of course, is available to help you in any way we can to find short and long term solutions to the insurance problems faced by municipalities and others.

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 86-13

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE URGING THE STATE LEGISLATURE TO INVESTIGATE TORT REFORM AND THE REASONS BEHIND THE UNAVAILABILITY OF CERTAIN LINES OF INSURANCE.

WHEREAS, insurance rates have increased astronomically and this has caused businesses to close and has created a financial burden on taxpayers in Alaska, and

WHEREAS, municipal insurance rates have increased as much as 500% in some areas, and

WHEREAS, day care operators, air carriers, truckers, contractors, CHAPP-affiliated businesses, doctors, and architects are in many cases unable to obtain any insurance, and

WHEREAS, the Alaska Municipal League feels strongly that an investigation into causes should be made and a solution to this problem must be found this year;

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that the Office of the Governor and the Alaska State Legislature are urged to immediately pursue all avenues available to solve this problem and find a way to provide insurance in Alaska.

Adopted this 16th day of November 1985.

LEO B. RASMUSSEN, President

ATTEST:

SCOTT A. BURGESS, Executive Director

MUNICIPALITY	LAST YEAR PREMIUM/COVERAGE	THIS YEAR PREMIUM/COVERAGE	% of budget	JOIN/ SUPPORT POOLING
ALAKANUK	UNINSURED	UNINSURED	4%	YES
ALEKNAGIK	$ 4,500	$15,000	13%	MAYBE
BARROW	$ 4,100/$ 1 million	$10,000/$500,000		
BETHEL	$350,000	$600,000	10%	YES
CORDOVA	$ 21,000/$ 1 million	$ 31,850/$500,000		
EAGLE	$ 3,365/$500,000	$ 8,739/$500,000	6%	YES
FAIRBANKS	$212,876/$20 million	$514,167/$5 million	2.5%	NO
GALENA	REPEATED CANCELLATIONS/PREMIUMS UP 200%		5%	MAYBE
GAMBELL	$ 19,300/$1 million	$ 15,617/$500,000		
HAINES BOROUGH	$ 25,000	$ 34,797	3.5%	NO
HOONAH	$ 6,484/$1 million	$ 11,640/$500,000		
HOUSTON	$ 23,906	37,444	16%	MAYBE
JUNEAU	$518,000	$1,253,900	2%	YES
KAKE	$ 10,617/$1 million	$ 7,080/$500,000		
KENAI	$ 85,000/$10 million	$320,000/$10 million		NO
KODIAK	$ 90,083/$500,000	$155,725/$500,000	5%	YES
KOTZEBUE	$140,000	$280,000	5%	YES
LOWER KALSKAG	$ 2,500/$1 million	$ 5,000/$500,000		
McGRATH	$ 13,596	$ 41,063	7.5%	YES
NULATO	$ 4,500/$500,000	$ 12,000/$500,000	5%	YES
PALMER	$138,000/$10 million	$219,000/$1.5 million		YES
PELICAN	$ 7,457/$500,000	$ 15,908/$300,000	11.5%	YES
RUSSIAN MISSION	$ 2,580/$1 million	$ 5,000/$500,000		
St. MARY'S	$ 4,200/$1 million	$ 5,000/$500,000	10%	YES
SAND POINT	$ 45,000	$ 80,000	9%	YES
SITKA	$ 53,753/$10 million	$131,628/$5 million	3%	YES
SKAGWAY	$ 31,883/$1 million	$ 55,806/$ 1 million	6%	MAYBE
SOLDOTNA	$110,000/$10 million	$270,000/$10 million	6%	YES
TENAKEE SPRINGS	$ 13,670	$ 42,000	16%	YES
UNALASKA	$131,124/$14 million	$ 99,468/$4 million	10%	YES
WALES	$ 11,663	UNINSURED		YES
WASILLA	$ 11,000/$6 million	$19,000/$1.5 million	2%	MAYBE

** ALL INFORMATION COMPILED BY THE ALASKA MUNICIPAL LEAGUE BY SURVEY. BACK-UP IS AVAILABLE THROUGH THE AML 105 Municipal Way, Suite 301, Juneau, Alaska 99801

Trial Courts
State of Alaska

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

GOLDEEN GOODFELLOW
Assistant Area Court Administrator/
Clerk of Court

(907) 264-0440

Memorandum

To: Karla Forsythe
Staff Counsel

From: Goldeen Goodfellow
AACA/Clerk of Court GG

Re: Personal Injury Statistics

Date: April 9, 1986

I had Sue and Melissa go through all of the Case Characterization Forms which we have in LeEllen's office at this time. They picked out the personal injury cases and put them into categories of (1) \$100,000 and under, (2) more than \$100,000 and (3) no amount indicated. They looked at a total of 188 Case Characterization Forms for personal injury cases. The breakdown is as follows:

\$100,000 and under - 120 cases - 63.8%

more than \$100,000 - 43 cases - 22.8%

amounts not indicated - 25 cases - 13.3%

If you want me to, I can continue to monitor the Case Characterization Sheets as they come in and add to the above figures.

cc: Douglas J. Serdahely, Presiding Judge
Albert H. Szal, Area Court Administrator

Allen R. Cheek
Attorney at Law
Northward Building, Suite 214-G
Fairbanks, Alaska
99701
907-456-8538

Tort

April 29, 1986

RE: LIABILITY INSURANCE CRISIS AND TORT REFORM LEGISLATION

Dear Legislator:

Please find enclosed information regarding the liability insurance crisis. My clients and your constituents are very concerned that spokesmen for the insurance industry have indicated that liability premiums will not be reduced if tort reform legislation is enacted. As is indicated in the article entitled "Taming the Latest Insurance 'Crisis'" printed in the New York Times, April 13, 1986 edition:

"Perhaps most significant, insurance companies have consistently refused to reduce their rates in exchange for legal limits on liability. If their problems were traceable to the civil justice system, then they should jump at the offer."

I strongly urge you to vote against any tort reform legislation unless and until the insurance industry comes forward with sufficient financial information with which to determine whether or not the present liability insurance crisis is in fact the product of the industry's own price-cutting policies of recent years. Additionally, any tort reform legislation which would of necessity limit the exposure of the insurance industry should be tied into a definite and substantial reduction in insurance premiums to the Alaskan consumer. It is further my opinion that all tort reform legislation should be tabled pending a further in-depth analysis of the extent of the problem and other possible solutions to this problem.

Sincerely yours,

Allen R. Cheek

ALLEN R. CHEEK

Enclosures
ARC/ej

Forum

REFORM INSURANCE, NOT LIABILITY LAW

Taming the Latest Insurance 'Crisis'

By ROBERT HUNTER

THE latest liability insurance "crisis," like its predecessors, is widely attributed to overly generous juries and court decisions expanding manufacturers' liability. As in the preceding "crisis," in 1975, little is said about the fundamental cause — the sharp ups and downs of the insurance industry's profit cycle.

The gradual expansion of legal liability and the profit cycle are distinct phenomena and should be treated separately. The former has not caused rates to increase dramatically; the profit cycle has. Thus, limiting liability and restricting jury awards will not avert future insurance squeezes, but flattening the insurance cycle will.

Consider the roller-coaster ride the insurance industry has taken us for in the last decade:

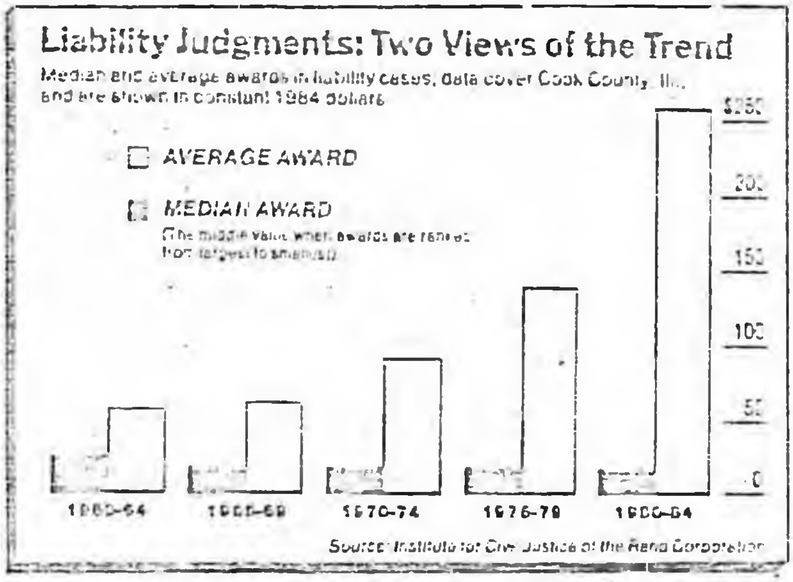
• 1975. The bottom. The industry earned 4 percent on equity, well below the average for all industry.

• 1976 to 1977. The ascent. The cost of insurance skyrockets by 300 percent or more for many doctors, manufacturers and others, as insurance companies' profits leap by more than 500 percent.

• 1978 to 1984. The fall. The high profits attract a flood of new capital. Insurers begin cutting prices and insuring poor risks, so as to obtain as many premium dollars as possible to invest at the high interest rates that prevail. Not surprisingly, the industry's profits decline, to a 2 percent return on equity in 1984.

• 1985 to 1986. A new ascent. As in 1976 and 1977, doctors, manufacturers and municipalities, this time joined by day-care centers and nurse midwives, find insurance costs rising by 300 percent and more — if they can get insurance at all. As the industry raises total premiums by $25 billion while reducing coverage, the stock prices of liability insurance companies rise by 50 percent, twice the rise of the Dow Jones industrial average. During the first quarter of 1986, insurance stocks rise another 22 percent.

Today, as in 1976, the insurance industry blames the legal system for the huge premiums. Their implausible claim is that judges and juries became generous in 1976, stingy for the next eight years and inexplicably generous again in 1985.



Actually, liability awards are remarkably consistent. In constant dollars, the median award has hovered around $20,000 over the last 25 years, according to the Rand Corporation's Institute for Civil Justice, although the average award has risen appreciably, reflecting the impact of a few huge settlements.

Legislated limits on liability awards have proved ineffective. Many cities and towns in Pennsylvania, for example, cannot get insurance even though the legislature virtually immunized them from liability the last time insurance rates shot up. The reason, simply, is that insurance rates and availability are determined by the profit cycle, not by juries.

Perhaps most significant, insurance companies have consistently refused to reduce their rates in exchange for legal limits on liability. If their problems were traceable to the civil justice system, then they should jump at the offer.

Certainly, the legal system is not perfect. Reforms, such as limiting fees for both plaintiff and defense lawyers and penalizing frivolous suits and frivolous defense delays, would enhance efficiency. But it would be unfair and nonsensical to limit compensation for injuries without proving that such a reform would work and providing an alternative.

Our experience with no-fault auto insurance is instructive. No-fault systems were enacted only after exhaustive studies showed that people with relatively minor injuries were overcompensated while people with severe injuries were undercompensated. Thus, a no-fault system for small claims made sense.

In contrast, the package of "reforms" sought by the insurers (and recently endorsed by President Reagan) not only involves no trade-offs — it takes away rights of injured people without giving them anything back — but is unsupported by any data about how victims fare under the current system, what drives up costs and how a given reform would affect victims or change system costs.

RECURRING insurance crises will be controlled only by insurance reform. Although insurance is a national, $310 billion business, it is regulated only by the states. But most state regulation is of consumer insurance; commercial insurance is almost entirely deregulated. Thus, deregulated commercial insurers are exempt from Federal antitrust laws and from oversight or prosecution by the Federal Trade Commission, and effectively exempt from Federal income taxes. Over the last 10 years, property/casualty insurers earned $75 billion but received a net tax refund of $125 million.

Last week, a special commission in New York proposed a plan that would restrict insurers' freedom to set rates and cancel coverage, and would give municipalities the right to form insurance pools. In return, insurers would get some protection against frivolous suits, the right to pay out settlements over several years and protection against one insurer paying the entire award when several parties share responsibility.

The plan, combined with Governor Cuomo's stipulation that limits on liability awards be accompanied by reductions in premiums, has much merit, and, if enacted, would be a constructive step and an excellent model for other states. But more needs to be done on the Federal level. Specifically, Congress should do the following:

• Repeal the insurance industry's antitrust exemption. Now, committees of the Insurance Services Office, a rate-making organization run by the insurance companies, set rates for most types of insurance.

• Create a Federal Office of Insurance to monitor the industry and establish minimum standards for state regulators.

• Repeal the insurance industry's exemption from Federal Trade Commission jurisdiction.

• Expand the Risk-Retention Act, which allows manufacturers — but not other businesses — to join together to self-insure or bargain for lower rates. This would pre-empt state laws.

The states could take several steps to bring down rates, starting with enforcing their own laws. Most states rely on competition to control rates, but competition cannot control prices when the periodic cartel pricing takes over. And states should follow New York's example and require insurers to give adequate notice of, and clear reasons for, cancellations or refusals of new coverage.

They should also build up their regulatory bodies — half do not even have actuaries, and few require consumer representation. One exception is New Jersey, where the public advocate may intervene in insurance rate cases, with the cost borne by the insurer seeking a price increase. This both discourages insurers from seeking exorbitant increases and minimizes public outlays.

The roller coaster is now reaching the top of the first big hill — the steep part of the ride, toward excessive profits. In a year or so, the downward trip will start, heading us toward a 1995 "crisis." To stop the roller-coaster ride, Congress should apply the brakes of insurance reform. ■

Robert Hunter, Federal Insurance Administrator from 1974 to 1978, is president of the National Insurance Consumer Organization, a consumer-oriented research organization.

April, 1986

Fact Sheet
Background/Key Findings of Rep. John LaFalce (D-NY)

John LaFalce on March 25 inserted in the Congressional Record a fascinating analysis of the current liability insurance crisis. LaFalce is undoubtedly one of the most informed members of Congress who as far back as 1977 held product liability insurance hearings covering 5 volumes, 75 witnesses on 16 separate days.

Some of LaFalce's findings back then were what we hear today: 500 to 1000% premium increases, companies "going bare", capricious increases bearing no relationship to claims experience.

Other findings were:

-Regarding the meaning of the word "loss": I quickly found out that in the insurance industry appearances can often be deceiving... You and I might think we know what a loss is: It means something that has been lost, rather simple. Not so in ...insurance... The definition of "loss" varies upon the context... If you use the word "loss" ...in finanical reporting to the States it means one thing. If you use the word.. in ratemaking it means something quite different... "Loss" also includes within its definition , reserves that have been set aside for claims that have been reported... and claims that the industry says probably have occurred, but which it has absolutely no knowledge of whatsoever.

- 90% of written product liability premiums were not primarily based on actuarily determined rates. A substantial portion were based on the subjective judgment of the underwriter... Now that's a fact, and a disturbing one.

- Any literature you read circa 1976-77 contains the truism that we had gone from a handful of product liability claims to the point where we had 1 million claims per year...But what was the reality? The best judgment of the Insurance Services Office of the number of product liability claims was from 60,000 to 140,000. The insurance underwriter's perception of reality was inflating reality by anywhere from 700 to 800%.

-In the media we read continually about multimillion dollar settlements and verdicts. The ISO reported in its testimony that the average payment for bodily injury claims is $13,911. That's a tremendous difference from a million dollars. Not only did statistical gimmickery create a misleading average, but ISO also failed to factor in unsuccessful claims which were closed without any payment at all. If you use the true facts, you would see that the average payment... was not in the millions nor even $13,911. The average payment in reality was $3,592.

- IBNR figures - incurred but not reported- also require close scrutiny. In this area there is no effective way to monitor the insurance industry. When the IRS did study reserves subsequent to the medical malpractice crisis, it discovered the insurance industry was overreserving by approximately 30-45%. The lowest product liability reserving was 32% by Travelers, whereas Crum and Foster was the highest with its IBNR accounting for 71.4% of all its reported losses.

- History really does repeat itself- but this time it has done so with a vengeance... The picture is indeed bleak. Unfortunately, based on my previous experience with this issue, I am not confident that state insurance commissioners will be able to adequately handle the problem... Nothing has happened in the intervening period to alter this conclusion that a State-by-State approach to the insurance crisis simply is not adequate, and that a Federal response is warranted.

CAUTIONARY NOTE

John LaFalce is no tool of the trial bar. He has called for limited uniform federal product liability legislation as part of his package of reform. But so much of what he says is good that it is worth getting out his news.

MEMORANDUM   State of Alaska

TO: John L. George, Director

DATE: March 17, 1986

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: 1985 Underwriting Results Other Liability

FROM: Donald DeMuth
Chief Financial Examiner

You have asked me to review the underwriting results of approximately the 10 leading writers of the line "Other Liability" "(17)" in the State of Alaska. The results of my study follow.

You will note that I have actually supplied statistics on 13 companies. The reason for the three additional companies are: You stated that you did not want companies like "State Farm" - companies that are not traditionally considered to be writers of Other Liability included. For this reason, I did not know if you wanted ARECA Insurance Exchange included or not. I added one company and you may exclude "ARECA" if you wish. I also question the accuracy of the Continental Insurance Company's Alaska direct losses incurred figure, and both noted a probable aberration in schedule "P" figures and am aware that CIGNA made some big reserve adjustments which may well be without basis at year-end, and which may have skewed Alaska Pacific Assurance Company's figures. You may, hence, eliminate the figures for these two companies if you wish and still be left with the statistics on 10 companies. I also eliminated the figures for the Insurance Company of North America as their page 14 figures for this line are probably erroneous and meaningless.

The first area of experience that I looked at was the company's direct underwriting results in Alaska. The results are summarized as follows:

Rank by Premium Written In Alaska		Alaska Direct Premium Written	Alaska Direct Premium Earned	Alaska Direct Losses Paid	Alaska Direct Losses Incurred	Alaska Loss Ratio
12	Federal Insurance Company	$ 759,348	$ 556,132	$ 4,380	$ 32,347	5.8%
13	The Continental Ins. Co.	552,533	558,869	299,050	(387,290)	*
10	Pacific Marine Insurance Co. of Alaska	792,416	808,528	150,530	245,804	30.4%
2	Alaska National Ins. Co.	3,938,343	2,703,705	1,581,666	2,173,774	80.4%
1	AK Pacific Assurance Co.	4,148,556	4,329,380	1,845,266	2,960,272	68.4%
7	Freemont Indemnity Co.	1,581,809	1,600,374	283,530	856,617	53.5%
9	ARECA Insurance Exchange	975,398	975,398	50,849	175,312	18.0%
6	Providence Washington Insurance Co. of Alaska	1,827,910	2,424,073	4,275,334	2,817,529	116.2%

5	Industrial Indemnity Company of Alaska	1,838,269	1,842,175	1,226,617	1,423,207	77.3%
4	Alaska Insurance Company	1,870,196	1,539,729	576,349	896,926	58.3%
3	Nat'l Union Fire Ins. Co.	3,732,736	2,636,895	170,668	577,159	21.9%
11	Employers Insurance of Wausau, A Mutual Company	759,889	675,147	124,435	.992,116	147.0%
8	General Accident Ins. Company of America	1,004,405	996,593	22,857	733,766	73.7%
		$23,781,808	$21,649,998	$10,621,731	$13,497,538	62.3%

* Meaningless

The column above entitled "Alaska Direct Losses Paid" is not of much significance. I included it only to illustrate the great disparity between losses paid and losses incurred in certain cases. There are a number of possible reasons for this disparity, but I cannot identify which reason is responsible for the cases reflected in the above exhibit.

For comparative purposes, I attempted to develop the same information for the same companies on a national basis. The companies are not required to provide this information on a national basis, but a few companies volunteer and, hence, complete page 14 of the annual statement on a national basis. The results of this comparative study does not reveal very much information, but the results are as follows:

Rank by Premium Written In Alaska		National Direct Premium Written	National Direct Premium Earned	National Direct Losses Paid	National Direct Losses Incurred	National Loss Ratio
12	Federal Insurance Company	Information not available.				
13	The Continental Ins. Co.	Information not available.				
10	Pacific Marine Insurance Co. of Alaska	Information not available.				
2	Alaska National Ins. Co.	Information not available.				
1	AK Pacific Assurance Co.	Information not available.				
7	Fremont Indemnity Co.	$31,645,042	$34,211,163	$25,679,707	$53,934,431	157.6%
9	ARECA Insurance Exchange	National experience same as Alaskan experience.				
6	Providence Washington Insurance Co. of Alaska	Information not available.				
5	Industrial Indemnity Company of Alaska	Information not available.				
4	Alaska Insurance Company	National experience same as Alaskan experience.				
3	Nat'l Union Fire Ins. Co.	Information not available.				
11	Employers Insurance of Wausau, A Mutual Company	Information not available.				
8	General Accident Ins. Company of America	Information not available.				

In an attempt to get some kind of comparative information - Alaska vs. National - I then decided to take a look at the same companies' net national business. This is not a direct comparison due to the fact that net business is net of assumed and ceded reinsurance, but the annual statement does not reflect direct national premium earned, only written, so I had no choice.

The result of this study is as follows:

Rank By Premium Written In Alaska		National Net Premium Written	National Net Premium Earned	National Net Losses Paid	National Net Losses Incurred	National Net Loss Ratio
12	Federal Insurance Company	$223,854,784	$166,392,450	$ 42,483,524	$ 85,539,884	51.4%
13	The Continental Ins. Co.	38,763,790	32,026,227	19,576,743	30,650,173	95.7%
10	Pacific Marine Insurance Co. of Alaska	Not Applicable				
2	Alaska National Ins. Co.	2,077,778	1,547,010	222,217	1,051,634	68.0%
1	AK Pacific Assurance Co.	3,834,456	3,271,679	3,995,018	5,151,751	157.5%
7	Freemont Indemnity Co.	33,624,745	26,542,239	11,277,702	36,844,818	138.8%
9	ASECA Insurance Exchange	823,895	823,895	50,649	175,312	21.3%
6	Providence Washington Insurance Co. of Alaska	Not Applicable				
5	Industrial Indemnity Company of Alaska	Not Applicable				
4	Alaska Insurance Company	Not Applicable				
3	Nat'l Union Fire Ins. Co.	357,841,310	283,621,245	80,724,016	222,277,500	78.4%
11	Employers Insurance of Wausau, A Mutual Company	112,716,611	104,759,066	73,570,266	73,177,983	69.9%
8	General Accident Ins. Company of America	31,868,701	29,249,804	10,955,921	20,886,903	71.4%
		$805,656,070	$648,233,815	$242,856,200	$475,756,156	73.4%

I also felt that it might be interesting to make a similar review on an accident year basis rather than on a calendar year basis. The reason for this comparative review is that reserve changes made during 1985 applicable to prior year business is reflected in the calendar year 1985 experience, but not in the 1985 accident year experience. The accident year business only reflects the company's experience on accidents that actually happened during 1985. The result of this review is as follows:

Rank By Premium Written In Alaska		Nat'l Net 1985 Accident Year Premium Earned	Nat'l Net 1985 Accident Year Loss Payments	Nat'l Net 1985 Accident Year Losses Incurred	Nat'l Net 1985 Accident Year Loss Ratio
12	Federal Insurance Company	$166,392,450	$ 8,109,100	$ 77,210,574	46.4%
13	The Continental Ins. Co.	32,026,247	1,618,902	24,550,326	76.7%

10	Pacific Marine Insurance Co. of Alaska	Not Applicable			
2	Alaska National Ins. Co.	1,547,010	34,420	1,012,476	65.5%
1	AK Pacific Assurance Co.	3,271,679	414,259	2,790,689	85.3%
7	Fremont Indemnity Co.	26,542,239	1,605,638	26,435,512	100.0%
9	ARECA Insurance Exchange	823,895	30,435	362,361	44.1%
6	Providence Washington Insurance Co. of Alaska	Not Applicable			
5	Industrial Indemnity Company of Alaska	Not Applicable			
4	Alaska Insurance Company	Not Applicable			
3	Nat'l Union Fire Ins. Co.	283,521,245	7,168,480	211,149,406	74.5%
11	Employers Insurance of Wausau, A Mutual Company	104,759,072	6,085,504	50,311,511	48.0%
8	General Accident Ins. Company of America	29,249,801	1,126,201	16,247,129	55.6%
		$645,233,536	$ 26,192,939	$410,070,584	63.3%

Overall, in spite of all the tears that the insurance industry is shedding, it appears to me that the insurance industry is doing quite well for this line. Unfortunately, accident year direct statistics are not available for Alaska, but I would guesstimate that if they were, they would reflect a loss ratio down around 50%. I also note that the paid loss ratio for accident year 1985, on a national basis, is down around 4%. Fat city on investment income coming up in 1986, particularly in those states that do not allow pre- and postjudgment interest.

I would suggest that you have your market conduct "rate section" follow-up on this memo - perhaps doing some research work in some of the companies offices. I hope to take a look at Providence Washington Insurance Company of Alaska and Industrial Indemnity Insurance Company of Alaska shortly, as both are overdue for an examination.

I would also suggest that you have your rate people perhaps take a look at 1984 experience for comparative purposes. It might also be interesting to do a policy year review of the same companies for 1984. This information should now be available but it is not reported in the annual statement. It would entail a special statistical call.

All figures reflected in this memo were taken from filed annual statements, but I have no idea how accurate the information is.

DD/mst3523m
031786b

ALASKA ACADEMY OF TRIAL LAWYERS

1015 W. 7th Ave.

Anchorage, AK 99501

FOR IMMEDIATE RELEASE

April 22, 1986

FOR MORE INFORMATION CALL:

Ames Luce 276-1191

STATE MEMO SAYS INSURANCE COMPANIES

VERY PROFITABLE IN ALASKA

Counter to unsubstantiated claims by the insurance industry, a memo written by the state's Chief Financial Examiner for insurance indicates that Alaska insurers are in excellent financial shape. The top 13 regulated insurance companies doing business in the state maintained loss ratios 20% better than the conventional break-even point for the "Other Liability" line during 1985, and performed better in Alaska than they did nationally. The businesses most hard hit by the recent round of rate increases are covered by "Other Liability" line policies.

"Overall, in spite of all the tears that the industry is shedding, it appears to me that the insurance industry is doing quite well for this line," concluded Donald DeMuth, author of the memo. DeMuth also called on Division of Insurance Director John George to conduct followup investigations on company rate-setting.

— more —

"The greediness of the insurance industry in this state appalls me," asserted Ames Luce, an Anchorage attorney. "The figures indicate that companies were making sizeable profits BEFORE they began imposing massive increases. Businesses and consumers have been bludgeoned by rate hikes in the last 6 months, and all that money is going straight into the companies' pockets."

"I want to know why the industry is trying to pull off this charade, I want to know why the Division of Insurance continues to approve the rate increases without adequate substantiation, and I want to know when Alaskans can expect rate relief on insurance policies," Luce said.

The Division of Insurance memo indicates that the top 13 insurance companies had an average "loss ratio" of 62.3%, compared to a national average for those companies of 73.4% during calendar year 1985. (The "loss ratio" is the industry benchmark for profitability and is calculated by dividing "losses incurred" by "premiums earned". According to industry analysts, a company breaks even, including a healthy profit, with a loss ratio of 70%. Lower loss ratios mean higher profits for the company.)

A more accurate picture of the industry's health is found if statistics are compiled on an accident year basis (accidents that actually occurred in 1985). The same 13 companies averaged a

— more —

63.3% loss ratio if nationwide business is taken into account, while DeMuth "guesstimates" that their Alaska business alone generated a very profitable 50% loss ratio.

"The insurance industry has nearly two dozen lobbyists in Juneau pushing to reduce wrongdoers' responsibility, pushing to reduce victims' rights and pushing to increase company profits," said Luce. "I think it's time our legislators called a halt to this charade."

The line of insurance analyzed in the memo covers municipalities, day care centers, non-profit boards of directors, errors and omissions insurance for architects and engineers and malpractice insurance for attorneys. Excluded are auto, Workers' Compensation, aircraft and medical malpractice insurance.

-END-

COALITION FOR CONSUMER JUSTICE

WHAT HAPPENS TO INSURANCE RATES

WHEN "TORT REFORM" LEGISLATION IS ENACTED?

Virtually every "tort reform" measure the industry is seeking is currently the law in Ontario, Canada. Yet the insurance industry is raising premiums by 400 percent, cancelling coverage in mid-term and refusing to provide coverage at any price in Ontario, Canada just as it is in the United States. For Example:

* The insurance industry has refused to provide insurance at any price for Ontario day care centers.

* The insurance industry has refused to provide insurance at any price to all but 1 of 121 Canadian School Boards responding to a questionaire.

* The insurance industry has refused to provide liability insurance for Toronto and many other cities.

* The insurance industry has raised premiums 1000 percent and at the same time reduced coverage for the Ontario intercity bus industry.

* Hospitals in Toronto can still get insurance, but only at "greatly increased" premiums.

* An insurance company renewed the Ontario School Bus Operators Association's policy on December 1, 1985 -- at 400 percent more than it charged the year before.

If any of the organizations denied coverage were ever sued -- and many of them have never been sued in the past -- they would be sued under the laws of Ontario, where pain and suffering awards are capped at $185,000, punitive damages are virtually non-existent, contingency fees are prohibited and the plaintiff must pay the defendant's attorney's fees if he loses. Yet the insurance industry is raising its rates 400 percent and more, cancelling policies in mid-term and refusing to provide coverage at any price both in the U.S., which has not enacted the tort provisions the industry seeks, and in Ontario, Canada, where such provisions have long been in the law.

215 Pennsylvania Ave., S.E., Washington, D.C. 20003, (202) 546-4996

FACT SHEET ON THE INSURANCE CRISIS

1. The insurance crisis is due primarily to the cyclical nature of the insurance industry.

Insurance companies cut their prices when interest rates, and thus their income from investing the premiums they collect, are high; they raise their prices when interest rates, and thus investment income, are low. They overreact at both the top and the bottom of the cycle. (See Chart 1.)

Wall Street understands the insurance industry cycle: while the price of insurance rises and falls, insurance stock prices just keep on rising. For example, since 1975 the property/casualty insurance stock index rose almost 500%, while the Dow Jones Industrial Average did not even double. And during 1985, as insurers complained of their dire financial condition, the property/casualty index rose by 50%, almost twice the rise in the Dow. (See Chart 2.)

2. The special privileges enjoyed by the insurance industry are largely responsible for the insurance cycle. For example:

A. The insurance industry is exempt from the antitrust laws. This allows insurance companies to agree to raise their prices without fear of antitrust prosecution. Executives in other industries who act in concert to raise prices can go to jail.

B. The insurance industry is exempt from federal regulation. In all other cases, when the federal government exempted an industry from the antitrust laws it substituted regulation for antitrust enforcement, as it did with trucking, railroads and utilities. The insurance industry is unique: that it is exempt from both antitrust enforcement and federal regulation, leaving the federal government impotent to deal with the dramatic price rises, mid-term cancellations and refusals to insure at any price so prevalent today.

C. The insurance industry is protected from competition by state regulation. Many state laws prohibit businesses, as well as consumers, from joining together to buy insurance at a lower rate, and state and federal laws prohibit other financial institutions from selling insurance.

D. The insurance industry is exempt from Federal Trade Commission scrutiny. In 1979, after the FTC published a study critical of the life insurance industry, Congress prohibited the FTC from ever again studying -- let alone prosecuting -- any sector of the industry.

3. The property/casualty insurance industry is exempt from federal taxation.

According to the General Accounting Office, the property/casualty insurance industry earned a profit of $75.2 billion during the period 1975-84, yet paid no federal income tax. The industry's tax exemption is due primarily to three insurance industry accounting privileges: the most significant such privilege is the provision allowing insurance

In my opinion

by L. Ames Luce

IT IS UNFORTUNATE that Brad Bradley in his "Assembly report" of April 2 has chosen to utilize his column to advocate "tort reform" and to support such advocacy with half-truths and innuendos and a total absence of objectivity. This perhaps is not surprising considering his acknowledged source of information — that being the "Citizens Coalition for Tort Reform," a group supported and principally funded by the insurance industry and other vested interests.

In the March 10 issue of Business Week, a publication dedicated to a reporting of activities within the United States business community, in a lead editorial on page 140 the following comments are found, which factually summarizes the reason for our "insurance crises."

"For many years, insurance carriers slashed premium prices and wrote as much insurance as they could get. Many companies abandoned traditional underwriting standards and competed fiercely for premium dollars they could invest in high-yield debt. This so-called cash flow underwriting is probably responsible for most of the damage to company balance sheets today.

"With careful management, these mistakes can be corrected. But instead, the industry has spent most of its time and energy lately mobilizing attacks on the U.S. tort system....

"It is likely that the risks that society agrees must be insured will gradually be spread among insurance carriers, insurance users, and where appropriate, government. That is a better way to deal with liability claims than restricting the rights of injured people to their day in court."

MR. BRADLEY ASSERTS that some of the causes of the problem are the increasing trends for larger non-economic awards, the lottery mentality of injured plaintiffs and that contingency fee arrangements encourage frivolous lawsuits. Neither fact nor reason support such assertions.

The extensive hearings which have recently been concluded by the House Labor and Commerce Committee in Juneau did not disclose that jury verdicts in Alaska were running wild, or have even exceeded inflation during the past five years. Reason further asks, if a plaintiff's counsel is to be only compensated under the contingency fee system if he wins, how then does such a system induce him, or his client, to file frivolous lawsuits? Only if payment is to be made to the attorney by the hour, as insurance defense lawyers are compensted by their masters, is frivolous activity monetarily rewarded.

Mr. Bradley then proceeds in his "Assembly report" to catalog his remedies to the "tort crises" which have been drafted and sponsored by the insurance industry, and which are the most comprehensive assault on the rights of injured people in our state's history. These solutions are a rehash of SSHB532 and provide:

- Structured payments — This would allow an insurance company to pay an injured victim damages which a jury would award, not in a lump sum, but over time, ignoring the eroding fact of inflation and putting the investment proceeds from the delay in paying the victims award into the insurance company's own pocket.
- Attorneys fees — This would restrict plaintiff's attorneys fees so that in many cases claims which would be expensive to pursue, such as those resulting from product liability or medical malpractice, could not be maintained, placing no limitations on the amount that an insurance company could spend for its attorneys.
- Punitive damages — This would require the recovery of all punitive damages by a plaintiff to be paid to the state. Since no plaintiff would derive benefit from receiving such damages, they would never again be sought.
- Death benefits only to be paid to economic dependants — This would deny a mother's right to recover for the death of her child killed by a drunken driver (the mother is not a dependent of her child), but allow the mother to be compensated for the death of a family dog killed in the same accident, because the dog would be considered as property.
- A two-year statute of limitations from the time of the act or omissions. Such a restriction precludes recovery in many accidents where a defect in design or manufacture of a product more than two years old caused the accident.

IN EACH SECTION out of SSHB532, there is a systematic and devastating assault upon the rights of the citizens of this state which will not only affect their interests, but the interests of their children and their children's children.

We are experiencing an insurance crisis, and legislation is urgently needed to correct the many insurance abuses which have caused this problem, and which are presently being permitted to go unchecked.

The question is simple. Do we, as citizens, wish to continue in our democratic society to place our confidence and trust in our fellow citizens? These citizens are the members of our juries who decide what is fair and just compensation. Or do we wish that those decisions be made for us by the insurance industry and other vested-interest groups?

The answer to this very important question will probably be resolved by our legislature before it recesses this session. If the citizens do not now make their wishes heard, the decision will be made for them by the hoards of insurance lobbyists who have now descended upon our legislators in Juneau.

L. Ames Luce is a member of the Board of Governors of the American Trial Lawyers, a member of the Alaska Academy of Trial Lawyers, and a 20-year resident of Alaska.

Quotes

"America geared up to meet the Soviet challenge of being the first into space, then pursued an all-out effort to go to the moon. Unfortunately the momentum of the Apollo program was not sustained, resulting in what has been called the lost decade of progress."

— From a report on the future of the U.S. space program by business and education leaders

Anchorage Times 4/5/86

Chugiak-Eagle River

Chamber of Commerce

P.O. Box 770353 / Eagle River, Alaska 99577

"PLACE OF MANY PLACES"

April 11, 1986

Senator Tim Kelly
Post Office Box V
Juneau AK 99811

Dear Senator Kelly,

On April 11th the Chugiak - Eagle River Chamber of Commerce Board of Directors unanimously approved the following resolution:

> "Be it resolved the District 15 Legislators be requested to vote against C.S.S.S.H.B. 532."
>
> "Be it further resolved that legislation which lessons the rights of injured persons should only be approved if there are guarantees that the reduction of these rights will substantially reduce liability premiums."

I am submitting this letter at the direction of the Board of Directors and request that you keep the Chamber advised on developments.

Respectfully,

Edgar W. Smoot
President

EWS:azh

A look at the other side of liability issue

WASHINGTON — In recent months the insurance industry has launched an impressive campaign of public relations. The idea is to justify the industry's role in what is widely described as "the crisis" in liability coverage. There's another side to the story — the lawyers' side. It deserves a fair shake.

The industry contends that in 1984 it suffered an underwriting loss on property/casualty policies of more than $20 billion. Its experience last year was better, but not much better. The industry's position is that two factors have compelled a sharp increase in premiums. Sympathetic juries, overwhelmed by persuasive lawyers, have awarded undeserved millions of dollars in damages. In what is known as "long tail liability," companies face huge outlays in cases involving toxic wastes or time-delayed drugs. The industry is lobbying Congress and state legislatures to put ceilings on damages and to make other changes in the area of "tort reform."

What about all this? The Association of Trial Lawyers of America is fighting back.

The lawyers contend, to begin with, that the insurance lobby has clouded the industry's books with blue smoke. Insurance companies derive their income from two broad sources — premium payments and investments. If one looks only at the operating side, yes, the companies have suffered operating losses. But when account is given to investment income, and to capital gains from the sale of stock, a quite different picture emerges. Over the past 20 years, the lawyers observe, property and casualty assets have grown from $22 billion to $265 billion — a growth that hardly suggests an industry in terrible trouble.

What about these multimillion dollar judgments? The insurance lobby quotes figures from Jury Verdict Research Inc., of Solon, Ohio, indicating an average award in product liability cases in 1984 of $1.07 million and an average award in malpractice cases of $950,000.

Views expressed here do not necessarily represent those of the Daily News-Miner

The data show 360 verdicts in 1984 alone of more than $1 million.

The lawyers respond that the statistics are seriously flawed. They are not based on a random sample of awards nationwide. They are not confined solely to property/casualty cases. The data do not reflect reductions on appeal. Neither do these "averages" take into account the great majority of claims that are settled out of court. Studies in Wisconsin, Massachusetts and California provide no confirmation for the high averages reported by Jury Verdict Research.

In any event, the trial lawyers contend, the rare multimillion dollar verdicts are abundantly deserved. These come in cases involving permanent paralysis, permanent brain damage, multiple amputations or patently wrongful death. In such cases a surviving plaintiff's life has been ruined; the death of a young and successful breadwinner imposes painful hardship on a family. To "cap" awards for pain and suffering, the lawyers say, is grossly unfair in these instances.

The insurance industry suggests that trial lawyers are more concerned with their high "contingent fees" than with the pain and suffering of their clients. These fees typically range from 30 percent to 50 percent of an award. The lawyers respond by saying that if the defendant wins, the plaintiff's lawyer gets nothing — and doctors win about 75 percent of the malpractice suits brought against them. If lawyers are denied generous compensation when they win a plaintiff's case, fewer lawyers will take the close cases; well-heeled doctors, manufacturers and municipalities will be overly protected.

Who's right? My own conclusion is that "the crisis," for whatever reason, is real. Liability insurance in many fields has become virtually unavailable at any affordable cost. The evidence persuades me, as it persuaded an advocacy commission in New York, that the insurance industry's wounds "are largely self-inflicted." The industry greedily competed for cut-rate business when interest rates were high; now that interest rates are falling, their investment income is insufficient to offset operating losses. Much tighter state supervision of these matters will be required.

Some proposals for reform of tort law strike me as desirable, but I put these off for another day. The insurance industry has had its day in the court of public relations. The trial lawyers deserve a hearing in their own defense.

James Kilpatrick's column, "A Conservative View," is syndicated by Universal Press Syndicate.

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

Vol. 132 WASHINGTON, TUESDAY, MARCH 25, 1986 No. 38

House of Representatives

SOLUTIONS TO THE LIABILITY INSURANCE CRISIS

Mr. LAFALCE. Mr. Speaker, it is not often that a problem reaches crisis proportions, but thousands of businesses, municipalities and individuals across the country will attest to the existence of an insurance liability crisis. Without insurance, many segments of our society cannot function. Yet, during the past year, premium costs have escalated to the point where liability insurance has become unaffordable to many. And, even those who can afford liability insurance find that they cannot buy it at any price. Unless this crisis, and that is exactly what it is, of affordability and availability is resolved, we will soon find ourselves in a state of economic paralysis.

Crises in the insurance industry are neither new to me, nor surprising. As early as 1978, I stated that "we have seen severe problems with medical malpractice insurance; today we are having difficulties with product liability insurance. Tomorrow, we are likely to have problems in other lines of insurance." Tomorrow is today. The next crisis in the insurance industry has arrived.

Our constituents are demanding relief, and rightfully so. They are caught in an insurance crunch, which leaves them either completely without coverage, or coverage that is obtainable only at astronomical premiums. There is no single solution to a problem of this magnitude. Rather, what is required is a comprehensive multifaceted approach which acknowledges the complexity of the problem. The package of reforms that I am introducing today offers precisely such an approach.

During my time today, I would like to address the following topics: my previous involvement with this issue as chairman of a Small Business Subcommittee, the problems within the insurance industry which my subcommittee uncovered, and proposed solutions which I am introducing in this Congress.

A. SUBCOMMITTEE INVESTIGATION INTO THE INSURANCE CRISIS—LATE 1970'S

If we put these issues into a historical perspective, it quickly becomes apparent that what we are facing today is essentially a replay of a similar insurance crisis that occurred a decade ago. Indeed, it was during the fall of 1976 that I first became aware of the problem of product liability insurance, and insurance coverage generally, when I started receiving complaints concerning unbelievably high premium increases from small businesses within my congressional district in western New York.

Several months later, in February 1977, I was elected chairman of the Small Business Subcommittee on Capital, Investment and Business Opportunities. In that capacity, I started receiving complaints similar to that which I had been receiving from my constituents regarding premium increases, only this time not just from western New York, but from across the country. I then decided to initiate a series of hearings regarding the impact that the product liability insurance shortage was having on the small business person. I did so, and to make a long story short, conducted 16 days of hearings, gathering 5 volumes of testimony from over 75 witnesses.

During the course of this investigation, I also worked very closely with the interagency task force on product liability, led by the Department of Commerce, whose chairman was Prof. Victor Schwartz.

My subcommittee heard testimony from trade associations representing all types of businesses, and the story was always the same: Their members were experiencing not 100-percent increases, but very often 500-percent increases, 1,000-percent increases, and even 10,000-percent increases in their premiums. Many companies were simply unable to afford the extraordinary high premiums for product liability insurance, and chose to "go bare," that is, without coverage. If these stories sound familiar, they should.

Invariably, these trade associations claimed that premiums charged were arbitrary, capricious and unfairly high; and that they bore no relationship either to historical experience or to quality control standards. They also proposed "the solution." In a unanimous vote, they stated, "we need tort reform; we must have drastic changes in our tort laws."

Although certain changes in tort law, for example, uniform product liability standards, seemed to make sense, tort reform alone did not seem likely to achieve a solution. The premiums being charged were unfair, arbitrary and capricious, and this situation could not be rectified through tort reform, but rather required an indepth examination of the insurance industry itself.

B. PITFALLS OF THE INSURANCE INDUSTRY

My inquiry took me through the looking glass, so to speak, because I quickly found out that in the insurance industry appearances can often be deceiving. I quickly found out that the vocabulary of the insurance industry differs markedly from the vocabulary that you and I ordinarily use. Their definition or use of a word would often differ from our definition of that same word. For example, the word "losses." You and I might think that we know what a loss is: It means something that has been lost, rather simple. Well, not so within the insurance industry.

In the insurance industry, the definition of "loss" varies depending upon the context in which it is used. If you use the word "loss" in connection within financial reporting to the States, it means one thing. If you use the word "loss" in connection with ratemaking, it means something quite different. Thus, when the insurance industry for purposes of State financial reporting uses the word "loss," it means that which it paid out in settlement of a given claim or jury verdict. But the industry also means that which it has set aside as reserves for those claims that have been reported to it. In other words, "loss" in this context includes not just what is actually paid out, but estimates of future pay outs as well.

Furthermore, the insurance industry also includes within its definition of "loss," reserves that have been set aside for claims that it says probably have occurred, but of which it has absolutely no knowledge whatsoever. It calls these losses IBNR (incurred but not reported). However, when it uses the word "loss" within the context of ratemaking, it does not include IBNR because it is deemed statistically unreliable—and that's putting it mildly. We'll get back to IBNR a little bit later, but I merely wanted to set the stage for the importance of examining with a critical eye and ear virtually every piece of information you get from the insurance industry.

Gaining an appreciation of insurance industry vocabulary was not all that my subcommittee learned from its exhaustive hearings. We also learned that less than 10 percent of all product liability premium dollars were manually derived—that is, based upon a manual for which there is some actuarial predicate for the rates. This means that in excess of 90 percent of the premium dollars for product liability insurance were not primarily based on actuarially determined rates. Of this 90 percent, a substantial portion were based on the subjective judgment of the individual insurance underwriter. Now that's a fact, and a disturbing one at that.

In determining whether premiums not based primarily on actuarial data are fair or arbitrary and capricious, we have to look at whether the insurance industry's subjective judgment that is both adequately and appropriately informed.

Hopefully, our perception of reality and reality itself are one. Subjective judgments can often be good judgments, informed judgments, even appropriate judgments. If there is a difference, however, between our perception of reality and the reality itself, then the judgment may be erroneous, perhaps arbitrary, even capricious.

One of the most important factors that the underwriter must consider is the frequency of claims—the number of claims th[illegible] are occurring per exposure unit. Any [illegible] you read circa 1976 and 1977, co[illegible] in it the truism that we had gone [illegible] a handful of claims in the late 1950's and early 1970's, to the point where we then had 1-million product liability claims per year. Information put out by the Insurance Information Institute and the testimony of many of the trade associations that came before my subcommittee, started out with the fact that there were now 1-million product liability claims per year. That was the perception of reality. But what was reality?

The Insurance Services Office [ISO], a ratemaking and service organization with 4,000 employees, owned by all the major insurance companies—they're able to do this because of the antitrust exemption for the insurance industry under the McCarran-Ferguson Act—made a closed-claim study. It studied approximately 24,000 claims that were closed during an 8½-month period spanning 1976 and 1977. It said that in its judgment this study represented 70 percent of all claims that were closed in the United States during that timeframe. And it was the best judgment of the Insurance Services Office that the range of product liability claims per year was from 60,000 to 140,000. The insurance underwriter's perception of reality was inflating reality by anywhere from 700 to 800 percent.

About 4 months after ISO testified before my subcommittee on this point, two insurance companies—Aetna and Crum Forster—ran advertisements in national journals still using the 1-million figure. However, when you look to the number of claims, you can see that the perception of reality and reality itself differed markedly. And it is on the basis of reality, not anecdotal conjecture, that the insurance industry should set rates and Congress should legislate.

A distinction between reality and the insurance industry's perception of reality regarding the fairness or unfairness of the law also exists. Even though I favor a uniform Federal product liability law because the present law is too murky, I do not subscribe to the view that tort law as presently construed is responsible for escalating premium costs. Indeed, of all claims going through to verdict, in 75 percent of the cases where the law was applied to the facts by a jury, the plaintiff got no recovery. And this was not based on conjecture, but upon the insurance industry's own ISO closed-claim study.

The amount of the award constitutes another factor that goes into the judgmental process. In the national media, we read continually about multimillion dollar settlements and verdicts. Yet, the ISO reported in its testimony before my subcommittee that of all those 24,000 claims that were closed, the average payment for bodily injury claims is $13,911. That's a tremendous difference from millions of dollars, or even hundreds of thousands of dollars. This $13,911 figure did not receive widespread publicity, so few people even knew of it. But even this low figure was, upon very close analysis by my subcommittee, most misleading.

Although the study was a closed-claims one, that $13,911 did not represent the average payment that was made. It was a figure that used trended data. That is, what would be paid in the future as if the accident happened today. In determining their trended data, the insurance industry also used an inflation factor of 25 percent per year. The use of these statistical devices greatly inflated the so-called "average" payout figure. Not only did statistical gimmickery create a misleading average, but the ISO also failed to factor in unsuccessful claims which were closed without any payment by the insurer whatsoever.

If you use the true facts, you would see that the average payment for a bodily injury claim was not in the millions, nor even $13,911. In a study that included 70 percent of all the product liability claims closed in the United States, 24,000 during an 8½-month period, the average payment for bodily injury claims was in reality, $3,592. If you compared the amount that was actually paid out in claims with the total amount of premiums paid in to purchase product liability insurance policies, you would find an excessively large spread in favor of the industry.

The insurance industry's IBNR figures—losses incurred but not reported—also require close scrutiny. In this area, there is no effective way to monitor the insurance industry. Formerly, the IRS was able to do at least some monitoring of the reserves since they were audited on a line-by-line basis. When, however, the IRS did this subsequent to the medical malpractice crisis, it discovered that the insurance industry was overreserving its medical malpractice line by approximately 30–45 percent.

Regrettably, the IRS procedure has now changed. It no longer audits on a line-by-line basis so it can make [illegible] determination as to the validity of reserves for any given line—including that with the product liability experience, an area which no State insurance department in the entire United States monitors. Finally, in a detailed questionnaire that I sent out to the insurance industry, I discovered wide variations in IBNR among insurers. The lowest percentage of losses attributable to IBNR was 22 percent by Travelers, whereas Crumm and Foster was the highest, with its IBNR accounting for 71.4 percent of all its reported losses.

In short, the frequency of claims, the size of the payouts, the misleading use of statistics and various accounting devices which overstate actual loss experience all indicated that the premiums you and I were being charged were unfair, arbitrary and capricious and should have been lowered.

C. THE INSURANCE CRISIS TODAY

History really does repeat itself—but this time it has done so with a vengeance. The crisis which I addressed years ago was primarily centered on problems identified with product liability insurance. Today, those problems remain, but the crisis has now spread throughout the liability insurance industry.

The parameters of the 1986 crisis are boundless. Far more than manufacturers are affected this time. The unavailability or unaffordability of insurance coverage has permeated every sector of society. It determines whether our children can participate in after-school activities; whether we will have day care centers open to care for the young of working parents; and even whether doctors will be able to deliver babies.

This litany does not even come close to describing the disaster that this situation has created for small businesses across America. Because these companies are forced to "go bare," they are extremely vulnerable to big lawsuits or jury awards. Large corporations are also experiencing dramatic increases in premium costs or outright cancellation of coverage. Service sector businesses such as restaurants, bars and ski resorts are also feeling the insurance crunch.

Across the country, businesses of all sizes are facing premium increases ranging from 25 percent to more than 1000 percent for property and casualty insurance—if they can get any coverage at all. Experts predict that the escalating crisis in the availability of insurance will consid[illegible]bly worsen in the months ahead.

Surveys of members of small business organizations reveal high percentages of business owners who have had their policies canceled or have been refused coverage—30 percent of NSB members. Ninety-two percent of the companies surveyed which were able to renew their policies had their rates increased. All this despite the fact that 81 percent of the respondents have never had a case against them.

The picture is indeed bleak. Unfortunately, based on my previous experience with this issue, I am not confident that State insurance commissioners will be able to adequately handle the problem. Generally, state regulatory schemes focus principally on assuring the solvency of insurers; they are not designed to deal with overpricing, or the unavailability of insurance for consumers or businesses. In fact, in 1979, officials from the General Accounting Office testified before my subcommittee, citing their study of the State regulation of the insurance industry. The study found "serious shortcomings in state laws and regulatory activities with respect to protecting the interest of insurance consumers." Nothing has happened in the intervening period to alter this conclusion that a State-by-State approach to the insurance crisis simply is not adequate, and that a Federal response is warranted.

D. PROPOSED SOLUTIONS

The package of bills which I am introducing today is aimed at the many components of the insurance crisis. This comprehensive approach, much of which is based on reforms which I advocated 8 years ago, will serve to stimulate debate as to what Federal response is required to aid the businesses and individuals that are so desperately in need of assistance.

1. FEDERAL INSURANCE COMMISSION

First, to address the inadequacies of State regulatory schemes in dealing effectively with this issue, many of which were revealed by the GAO several years ago, I have proposed the establishment of an agency within the Federal Government with expertise in insurance that can adequately guard against future difficulties. A Federal Insurance Commission will, in general, defer to continued St[illegible] regulation of the insurance industry, but would retain the power and duty to act in those instances where State regulation is deficient. The Commission will be structured along lines similar to the Federal Trade Commission, and will be given the broad grant of powers needed to perform its role.

Under this legislation, the FIC would be able to prevent persons from engaging in unfair insurance practices. More specifically, the Commission will have the authority to issue cease and desist orders to those insurance companies whose activities are not in the public interest and not necessary to promote their solvency. These powers will prevent insurers from charging excessive premiums and from canceling insurance contracts without justification. As such, the Commission will be able to address directly the principal factors that have contributed to the current crisis of unaffordability and unavailability.

2. REEXAMINATION OF THE MCCARRAN-FERGUSON ACT

Second, I am also calling for a reexamination of the McCarran-Ferguson Act, which exempts the insurance industry from Federal anti trust laws and oversight. The 1945 act was hastily conceived and was enacted with scant legislative history. Thus, the McCarran-Ferguson Act has been the source of much justified criticism. I am introducing five alternative bills which merit careful scrutiny. The bills would: First, repeal the McCarran-Ferguson Act; second, amend the act to require effective State regulation to qualify for an exemption from Federal oversight, third, clarify that the exemption from Federal regulation pertains only to insurance matters—not to extraneous matters such as advertising, investment, and so forth; fourth, eliminate those portions of the McCarran-Ferguson Act that exempt the insurance industry from Federal oversight, but retain the part of the act that permits State taxation of the industry, and fifth, define the business of insurance.

The broad-based exemption from the antitrust laws accorded the insurance industry has long been subject to serious criticism. In 1978 and 1979, the National Commission for the Review of the Antitrust Laws and Procedures concluded that the immunity granted by the McCarran-Ferguson Act is overly broad and should be repealed.

As the Commission noted, "where members of a competitively structured industry are allowed collectively published industrywide rates—often without effective State supervision—in an regulatory environment that encourages uniform pricing, insurance premiums are likely to be higher than under a system that relies more heavily on independent pricing decisions." My proposed legislation will bring the antitrust laws to bear upon the insurance industry, thereby permitting competition to drive down the exhorbitant premiums which have so contributed to the current crisis.

3. FEDERAL PRODUCT LIABILITY ACT

Third, equitable tort reform will also promote a resolution of the insurance crisis. However, I am fearful that this cannot be brought about at the State level, where any changes are likely to be overly restrictive of the rights of injured persons. My proposal for Federal Product Liability Law would achieve equity, but not at the expense of an injured party, by creating a much needed single cause of action.

Right now a plaintiff can proceed on theories of breach of warranty, negligence, strict liability, absolute liability, and any of a number of different defenses might or might not be applicable. A single cause of action distinguishes among liability arising out of a defect in construction—that is, where a product is not manufactured in accordance with the manufacturer's own specifications—and liability arising out of other unsafe conditions or situations where appropriate warning or instructions were allegedly not given.

In all three classes, liability will result for bodily injury proximately caused by a defect. In the latter two cases, however, where liability arises from unsafe conditions or the failure to provide appropriate warnings, the trier of fact will be required to balance the foreseeability and seriousness of the injuries proximately caused, with the utility of the product to society, and the cost that would have been incurred by the manufacturer to have avoided the risk.

My bill also calls for a statute of limitation that would expire 3 years after the time the claimant discovered or should have discovered harm. Some industry spokesmen have argued that the statute should run from the date of manufacture or sale, rather than the date of injury. In my judgment, such an approach would be harsh and unreasonable. However, in order to alleviate what is a real problem, I have proposed an amendment to the statute of limitations that would provide that 10 years after the product has been in use, the burden of proving fault should rest exclusively on the plaintiff, without the benefit of any presumptions such as the failure to comply with ordinances on statutes, and such doctrines as res ipsa loquitor.

Finally, my proposal would clarify that the state of the art at the time of manufacture is relevant to the unsafe condition of the product. Moreover, we would clarify that the [illegible] would have the power to appoint its own expert witnesses. It would also provide for pure comparative responsibility. Responsibility would be apportioned among plaintiff and all defend[illegible]. These proposed reforms will provide a [illegible] degree of rationality, consistency and balance to our tort laws. They recognize the need to provide uniformity and certainty to those manufacturers whose products are [illegible] not locally, but in interstate commerce. They do not, however, unfairly restrict the rights of individuals to seek redress through the courts for injuries caused by the negligent conduct of a manufacturer.

4. EXPANSION OF THE PRODUCT LIABILITY RISK RETENTION ACT

Fourth, in 1981, President Reagan signed into law the Product Liability Risk Retention Act of 1981, a bill based on one I had introduced in past Congresses. The stated purposes of this law were to ensure the prompt payment of legally valid claims, to promote competition among providers to product liability coverage, and to reduce the outflow of capital to offshore captive insurance companies. One additional feature of the act was that it had the effect of preempting State laws which prohibited selling product liability insurance to fictitious groups. Removing this impediment greatly facilitated the ability of groups of manufacturers to obtain insurance in the commercial marketplace.

In light of our current liability insurance crisis, we need to enact amendments to this law which will expand its coverage to general liability insurance rather than exclusively product liability, and I am introducing a bill that will do just that.

E. CONCLUSION

Mr. Speaker, the liability insurance cr[illegible] continue to haunt us if we don't act re[illegible]bly and take action now. The insuran[illegible] which I investigated during the late 197[illegible]s has returned, and will continue coming back unless something is done to bring effective accountability to the insurance industry.

My proposed reforms are a starting point. For example, the Federal Insurance Commission will ensure, for the first time, effective regulation of the insurance industry. Repeal of or amendm[illegible] the McCarran-Ferguson Act will stimula[illegible] needed competition in the industry. A uniform Federal product liability statute along the lines I have suggested will provide predictability and certainty to business, while not unfairly infringing upon the rights of injured individuals. Finally, expansion of the Product Liability Risk Retention Act to cover all lines of [illegible]ability insurance will create new options for those businesses that are unable to obtain insurance in the current market.

I hope that my colleagues have the courage necessary to stand up for their constituents in the face of admittedly heavy opposition. I invite each of you to join with me in a search for lasting solutions to the liability insurance crisis.

Congress must be willing to admit that this problem is beyond the ability of the States to handle, and initiate debate on the subject.

WALL ST JN
3/24/86

Enterprise Liability

The cable tram to Roosevelt Island in New York City stopped for two weeks recently because the insurance company refused to renew the policy. It looked like another victim of the litigation explosion set off by activist judges. But the residents of the island got the New York State Legislature to become the new insurer. The tram is running again. Now it's the taxpayers who are being taken for a ride.

So it goes in the world of American torts, or personal injury, law. There hasn't been a single accident in the 10 years of operating the tram, but insurance companies fear the possibility of multimillion-dollar verdicts even where there is no fault. Insurers are getting out of underwriting entire activities, like trams, day-care centers and midwifery. Consumers pay the bill, either through taxes as in the tram case, or through higher prices or through the unavailability of goods and services. Faced with this litigation explosion, about half the states are considering bills to get tort liability under control.

A Justice Department report on torts last week said that reinstituting the fault standard was the single most needed change. The current Journal of Legal Studies, published at the University of Chicago, describes how fault has been replaced by a notion called "enterprise liability." This scheme, devised by liberals in the early 1960s, says that business enterprises should be responsible for *any* injuries caused by products they introduce into commerce, no matter if the products were as safe as technology allowed or were misused. This is entirely different from the age-old view of the common law that with few exceptions there is no liability without fault.

George Priest, a Yale law professor, traced the history of enterprise liability to a desire on the part of some academics and judges for torts to become a system of national insurance, not just a forum for fairly resolving disputes. Mr. Priest says the impetus for holding defendants strictly liable was the New Deal notion of law as "social justice." Liberal judges embraced broader liability to pick the deep pockets of corporate defendants.

The judges appointed themselves as income redistributors. Canadian lawyer Ernest Weinrib points out that it's only in the U.S. that judicial fiat could create strict liability. Elsewhere, courts are supposed to resolve disputes between the opposing parties, not redistribute wealth according to their idea of social justice. Mr. Weinrib described how the Australian High Court refused to abandon the fault standard. Strict liability should be adopted "if at all, openly and after adequate public inquiry and parliamentary debate and not worked towards covertly, in the course of judicial decision, by the adoption of policy factors which assume its desirability as a goal."

Judges make lousy social engineers. Costs of goods rise with insurance premiums, hurting the poor and defeating the very purpose of the judicial activism. The result can be that only industries with wealthy consumers survive huge new premiums. A modest ski lodge in Tennessee may not be able to pay its premiums, but you can bet the slopes will still be full in Aspen. It may be hard to find an insured family doctor in Harlem, but richer Americans can still pay higher fees to cover higher premiums.

When judges start acting like politicians, it's time for the politicians to remind them of the separation of powers. State legislators can undo strict liability by passing statutes requiring that a party actually be at fault to be held liable for damages. This would not be revolutionary. It is the common law in the rest of the world, and was our law until the Great Society invaded the courts.

Insurance
Information
Institute

110 William Street
New York, N.Y. 10038
(212) 669-9200

RECEIVED
DIV. OF INSURANCE
MAR 11 1986
ALASKA DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT

The Executive Letter

March 3, 1986 Vol. 18 No. 42

ADMINISTRATION GIVES A PREVIEW OF ITS TORT REFORM VIEWS

Assistant Attorney General Richard Willard last week gave the Federal Bar Association a preview of the Reagan administration's review of tort law problems. Willard heads the interagency task force which is producing a series of reports, the first of which is due in mid-March.

He said the current liability insurance crisis is due to two factors: insurers' cash-flow underwriting in the past and the "explosion of civil liability." The latter is due to the combined effects of three changes in the law: the trend to no-fault liability; the erosion of the doctrine of causation, including the rise of joint liability; and sharp increases in the size of damage awards. He warned that "tort liability cannot be a constantly expanding concept" and indicated that the Justice Department will recommend efforts to change overall public attitudes rather than pursue specific tort reform proposals.

The task force is not likely to recommend indemnification of federal contractors, because that would merely transfer the cost rather than solve the tort law problem, Willard said. It is looking at the liability problems of federal government employees and also the impact of federal civil rights laws on local government liability. While endorsing federal product liability law in concept, the administration is not embracing any specific legislation at this point.

PRODUCT LIABILITY LEGISLATION DEBATED

Insurers, consumer groups, manufacturers and attorneys last week presented to the Senate Commerce Committee their views on new product liability legislation. The bill (S.1999), introduced by Committee Chairman Sen. John C. Danforth (R-MO), will establish a uniform federal liability standard which would incorporate a no-fault victim compensation system. Danforth admitted that his bill is "not perfect and leaves room for improvement." Consumer advocates said they would favor an incentive system which would award those manufacturers who work out a prompt settlement with victims and punish those who carry on with unreasonable litigation.

Federal Team Urges Tort Law Reforms

Liability Lawsuits Seen Prime Cause Of Insurance Crisis

A top level federal government policy working group issued a list of recommendations March 19 calling for extensive reform of the country's tort laws in order to alleviate the current liability insurance crisis.

The group, made up of representatives from 10 federal agencies and headed by U.S. Assistant Attorney General Richard K. Willard, was appointed by Attorney General Edwin Meese last October and asked to take a close look at the crisis in liability insurance affordability and availability.

The investigation led the group to the conclusion that insurance industry losses alone are not the cause of the recent massive increases in premiums. "To the contrary, indications are that developments in tort law are a major cause of the sharp premium increases," the report stated.

The federal study team said it "was

(See TORT REFORM, p. 5)

ort Reform

(Continued from page 1)

ticularly struck by the extraordi-y growth over the last decade of · number of tort lawsuits and the rage award per lawsuit." For exam-, it cited a survey of punitive nage awards in Cook County, Ill., licating the average personal injury nitive damage award increased m $40,000 in 1970-74 to $1,152,174 1980-84.

he group said its information emonstrates that the insurance ustry was selling coverage at con-nt or even reduced cost over a iod of years during which tort lia-ity was undergoing a dramatic ansion."

This suggests that a major factor derlying the availability/affor-ility crisis is the industry's attempt ring premiums quickly back into with rapidly growing liability s," it added. "The high — and in ne areas unaffordable — insurance miums reflect the fact that tort law is placing a massive compensa-n burden on the private sector."

One serious contributing factor is fact that the "rules of the game" in t law standards for liability and sation continue to change rapidly, ecting "tremendous uncertainty" l thus making it virtually impossi-for insurers to assess future risks y may face, the group reported.

t recommended a series of eight tort law reforms that it "should significantly alleviate the crisis in insurance availability and affordability." These are:

- Return to a fault-based standard for liability. For non-product liability cases, negligence should remian the applicable standard of liability.
- Base findings of causation on credible scientific and medical evidence and opinions.
- Eliminate joint and several liability in cases where defendants have not acted in concert.
- Limit non-economic damages (such as pain and suffering, mental anguish or punitive damages) to a fair and reasonable maximum dollar amount.
- Provide for periodic — instead of lump sum — payments for damages for future medical care or lost income.
- Reduce awards in cases where a plaintiff can be compensated by certain collateral sources to prevent a windfall double recovery.
- Limit attorneys' contingency fees to reasonable amounts figured on a sliding scale.
- Encourage use of alternative dispute resolution mechanisms to resolve cases out of court.

At a press conference last week, Mr. Willard said: "The working group does not at this time recommend how these reforms should be implemented — whether at the federal or state level, or through legislative or judicial modification of the law — nor are these reforms meant to be an exhaustive list of potential reforms."

The study group rejected the concept of federal government-provided insurance coverage as unaffordable and unworkable. It also said it "found nothing to support the suggestion that this crisis should be remedied through federal regulation of the insurance industry or of state insurance regulators."

The group warned that "significant, long-term reform cannot and should not come solely from the federal government. Ultimately, state governments and courts must address the current excesses of tort law. Their active participation is essential to finding workable solutions to the increasingly debilitating problems of tort law."

City, seawall engineers sued for $1 million over summer drowning

by Bobbie Garthwaite

Arvin Dull, representing the estate of Abraham James, is seeking in excess of $1 million in a wrongful death suit filed this month against the city of Bethel and the engineering firm of Galliett & Silides.

Seventeen-year-old Abraham James fell into the Kuskokwim River from a floating dock below the intersection of First and Main on July 28, 1985 and drowned. He was reportedly with two female companions at the time, and the women later said that he had been pretending to throw one of them into the water when he and one of the women fell in.

The other woman reportedly jumped into the water and both women attempted to assist James, but could not. His body was recovered later that day.

Police Chief Kevin Clayton said that at the time of the accident, the young women said that they and James had been drinking.

In the suit, Dull states that the dock is attached to the Bethel seawall and is owned and operated by the city of Bethel.

He further states that the dock and seawall were designed by Galliett and Silides.

And, he claims that neither the seawall nor the floating docks had life rings, life ropes, guard rails, or warnings to the public concerning the use of the docks.

"As a direct and proximate result of the negligent design, construction, and maintenance of the Bethel Seawall and the floating docks, Abraham James drowned," Dull claims in the suit.

Dull is asking the court to award in excess of $1 million to the estate of Abraham James. James was Dull's brother-in-law, according to Dull's attorney, Cathleen Connolly of the Angstman Law Offices.

Attorneys, who have been at odds with Congress over federal product liability legislation, remained firmly opposed to any changes in the current system. Manufacturers, while acknowledging their reservations about the bill, generally favor the idea of a uniform law in the hopes it would improve the affordability and availability of liability insurance. Les Cheek of Crum & Forster offered specific suggestions for changes in the legislation, indicating that the standard of liability in the alternative claims mechanism was unworkable.

HIGH COURT LETS CITIES OFF THE ANTITRUST HOOK

The Supreme Court last week eased the threat of antitrust lawsuits against local governments that regulate economic activities. In an 8-to-1 decision, the Court said municipal rent control laws do not violate federal antitrust statutes. By extension, the ruling also validates local zoning laws, taxicab regulation, cable TV franchises and other rules that were under legal challenge. The decision clarifies a 1978 case in which the Court ruled that local governments could be held liable under antitrust law for economic regulation that exceeded authority granted to them by the state. The latest decision came in Fisher vs. City of Berkeley (Docket No. 84-1538).

HAZARDOUS WASTE OPERATORS DEBATE INSURANCE DEADLINE CHANGE

Representatives of the hazardous waste management industry last week presented opposing views on legislation (HR.3917) which would extend the period allowed for compliance with federal financial responsibility requirements. Testifying before the Senate Environmental Pollution Subcommittee, small hazardous waste management companies said the unavailability of adequate liability insurance made it impossible to meet the Nov. 1, 1985, deadline. Extending the deadline, they added, would allow them to develop alternatives to commercial insurance. Technically, those not in compliance are operating illegally.

Representatives of larger companies noted, however, that the insurance problem will not disappear in a year and that granting an extension will not help resolve the problems of those who are unable to comply with financial responsibility requirements. They said an extension of the deadline would be unfair to those companies which did meet the compliance deadline. The bill was passed by the House of Representatives last December and awaits action by the Senate.

PENNSYLVANIA GOVERNOR VETOES BILL TO RETAIN GENDER-BASED RATING

Insurers are considering their options following Pennsylvania Gov. Dick Thornburgh's veto of a bill (HB.452) which would have retained gender-based rating for auto insurance (see ExL 2/18/86). The governor said he could not support legislation "which affords less protection against unfair sexual classifications than is (legally) afforded against unfair classifications based upon race, religion or national origin." He said what should be identified are underlying rating factors which better reflect actual variations in driving and safety records of many males and females. "While such factors might coincide with the sex of the insured, rates should be based on those underlying factors and not per se on sex."

Since the bill was passed by more than a two-thirds margin in both houses and a veto can be overturned by such a majority, insurers may lobby for that to be done. Another possibility is lobbying for Senate concurrence with the House-passed bill (SB.1037), which would, among other things, postpone implementation of unisex rating for 18 months while the State Government Commission -- a legislative body -- develops a plan for implementation. Some insurers believe the commission might find that the problems of unisex outweigh the supposed benefits, resulting in a commission recommendation for a modification of the unisex directive. The governor said he could support legislation to delay unisex implementation while a "legislative-executive inquiry" seeks alternative methods for determining auto insurance rates, but his veto message seems to flatly rule out use of sex as a rating classification.

COOK COUNTY SUIT AGAINST ASBESTOS MANUFACTURERS DISMISSED

A Cook County Circuit Court (Chicago) judge has dismissed lawsuits filed by 34 school districts in Illinois against dozens of asbestos manufacturers seeking to force the companies to pay the cost of removing the substance from school buildings. Judge Richard Curry rejected the suits (Cook County Circuit Court 85-CH-811, 812 and 3905) ruling the school districts, including the Chicago school system, failed to prove the companies knew of the dangers of the substance when they sold it to the schools. The cost of removing the asbestos, he ruled, should be paid by the school districts or the state under the Illinois Asbestos Abatement Act. Only about $3 million has been appropriated for the act, however, significantly less than the $55 million expected cost for removal of the asbestos from the schools. The suits were filed last year against 78 firms that mine, manufacture, sell and install the material. An appeal is expected.

INSURERS AND INDUSTRY CRITICS CLASH AT ICAN MEETING

Industry critics such as Ralph Nader, Robert Hunter and several trial lawyers clashed with insurance industry representatives in Los Angeles Feb. 21 and 22 at a meeting of the Insurance Consumer Action Network (ICAN). Most of the approximately 100 persons attending were plaintiff attorneys, with representatives from government and insurance companies and some consumers also present. Insurance Information Institute spokespersons represented the industry on two panels: one dealing with insurance company profits, and another dealing with auto insurance questions including territorial rating and compulsory insurance. ICAN, which bills itself as "a network of consumer insurance advocates ... dedicated to defining and protecting insurance consumers' rights," received its start-up funds from a past president of the California Trial Lawyers Association.

TRIAL LAWYER TOURING COUNTRY TO PROMOTE BOOK

William M. Shernoff, a past president of the California Trial Lawyers Association and a force behind the Insurance Consumer Action Network (see item above), is on a 15-day tour promoting through television appearances his new book, "Payment Refused." Published by Richardson & Steirman of New York, the book reviews in detail "bad faith" claims brought by Shernoff involving all lines of insurance. The Insurance Information Institute and the American Council of Life Insurance are arranging for industry representatives to appear with Shernoff, as was the case last week in New York City where he kicked off his tour with appearances on two stations.

MICHIGAN'S AUTO LAWS GET MODIFIED

Efforts to modify the auto insurance provisions of Michigan's Essential Insurance Act (EIA) appear headed for success. Unlike last year's package, the 1986 version apparently has Gov. James Blanchard's support. The major thrust of the reform measure is to relieve the onerous rating provisions of the old law, allowing rates outside of Detroit to be set competitively while retaining some restrictions on Detroit rates.

The law also mandates a 20% discount for personal injury protection rates after Feb. 1, 1987, to reflect the state's seat belt usage law. Other sections of the proposed law deal with auto theft, including the establishment of an auto theft authority.

R.I. GOVERNOR NAMES INDUSTRY PANEL ON AVAILABILITY

Rhode Island Gov. Edward D. DePrete has established a 25-member Governor's Insurance Council, made up of insurance industry executives, to address problems of availability and affordability in the current insurance market. The governor, a former insurance agent, has targeted three main purposes for the Council: to ensure that the needs of the insurance consumer are being met; to establish communications between the insurance industry and state government; and to retain existing jobs as well as to create new employment.

VERMONT BANKING AND INSURANCE COMMISSIONER NAMED

Vermont Gov. Madeleine Kunin has named Thomas P. Menson, former executive vice president and chief operating officer of the Bank of Vermont, as the new banking and insurance commissioner. He succeeds David Bard, who resigned to become president of the New England IBM Credit Union.

Carl C.A. Lee, Editor