

ATLANTA COURTS - 1900 7/00

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# CITIZENS COALITION FOR TORT REFORM, inc.

"voices raised in unison.."

TO: ALL LEGISLATORS

FROM: CITIZENS' COALITION FOR TORT REFORM

SUBJECT: ENCLOSED DATA FOR YOUR USE AND REVIEW

Thanks,

Al Tamagni, Sr.  
Chairman

<u>MUNICIPALITY</u>	<u>LAST YEAR PREMIUM/COVERAGE</u>	<u>THIS YEAR PREMIUM/COVERAGE</u>	<u>% of budget</u>	<u>JOIN/ SUPPORT POOLING</u>
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  
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Civil Justice Roundtable is a monthly newsletter from The Institute for Civil Justice. It is, in part, an "opinion exchange" for policymakers, practitioners, and researchers concerned with problems of the civil justice system. Roundtable also provides brief updates on the ICJ's research and reactions to it, and announcements of future activities. We invite letters expressing opinions from diverse perspectives that contribute to the informed debate of civil justice issues. Roundtable is mailed to nearly 7,000 business executives, judges, lawyers, legislators, court executives, researchers, and federal, state, and local government leaders. We welcome your contribution to the debate and offer this forum for your opinions— excerpts from letters we receive may be reproduced to facilitate communication among ICJ's diverse audiences.

## ROUNDTABLE DISCUSSION

On February 27, 1986, ICJ researcher Deborah Hensler testified before the **U.S. Senate Commerce Committee** on the results of ICJ research relevant to the **tort liability system**. Below we reprint portions of that testimony; the full report on which this statement was based will be available as P-7210-ICJ.

The ICJ has assembled a statistical database that tracks the results of all civil jury trials held in Cook County, Illinois and San Francisco, California from 1960 to 1979. Analyses of these data show that: The typical jury award for personal injury cases is modest in amount (less than \$20,000 in recent years). Amounts awarded for typical cases remained roughly the same over the twenty year period. The typical award for seriously injured plaintiffs doubled or tripled, and the typical wrongful death award doubled during the 1970s. Juries increased awards in medical malpractice, defective products and street hazard cases, regardless of the seriousness of injuries. The changes in the amount of money awarded for serious injuries and the amount awarded for medical malpractice, product liability and street hazard cases contributed to a growing number of exceptionally high awards. The amount of money litigants could expect to win or pay out depended on their own characteristics. When sued, businesses paid 1 1/2 times the amount paid by individual defendants. Jury awards also appeared to be sensitive to the race of the litigant. In Cook County, during the 1970s, blacks lost more frequently than whites; when they were successful, they received less than white plaintiffs. The number and size of punitive damage awards increased substantially during the past twenty-five years. Typical punitive damage awards remained small. Most awards involved intentional torts rather than personal injury cases.

Punitive damage awards against businesses increased in number and amount, particularly in recent years. A substantial number of punitive damage awards are reduced after trial, as a result of settlement or judicial action.

In 1982 the ICJ conducted a study on how the current product liability system affects corporate behavior. The study involved interviews with corporate product safety officials in nine large manufacturing firms generally recognized as leaders in the safety field. The researcher drew the following conclusions:

"It is clear from these interviews that . . . product liability is the most significant influence on product safety efforts. Product liability, however, conveys an indistinct signal. The long lags between the design decision and the final judgment on product liability claims (frequently five or more years), the inconsistent behavior of juries, and the rapid change in judicial doctrine in the area, all tended to muffle the signal. . . . That is to say, firms learned little from the results of particular litigation about either specific design decisions or the process of design decisionmaking. The frequency of suits and the level of awards provide some idea of the costs of failing to design a safe product and hence the level of effort that should be devoted to assuring a safe design. Nevertheless, considerable uncertainty remains about the most appropriate method of assuring safety in product design."

According to ICJ studies, an estimated \$320 million was expended nationwide in federal and state trial courts to process personal injury cases in 1982. The typical public expenditure to try a personal injury suit in the federal courts was about \$9200. The costs in state trial courts varied substantially depending on judge salaries and other expenses; costs ranged from about \$4000 to \$8000 per case. Public costs to process cases depend not only on whether a case goes to judge or jury trial but on the amount of judge time spent hearing discovery and other motions and presiding over pretrial conferences.

An ICJ study of the largest and one of the busiest state trial courts in the nation, the Los Angeles Superior Court, found that the civil case load is increasingly dominated by complex personal injury litigation that places heavy demands on judge time. By comparison with earlier periods, current civil cases are characterized by a greater use of discovery as well as more papers filed, appearances made, and motions requested. This increased activity means that even cases that settle rather than go to trial take longer to reach settlement than in earlier years. It is these increases in case complexity, rather than an increase in litigiousness, that have contributed to increased congestion and delay on the civil calendar.

The ICJ's studies of asbestos personal injury litigation highlight the problems posed by mass toxic torts. These studies have shown that: Most courts have had serious problems disposing of cases; plaintiffs wait a minimum of three years and as long as five or more years until their cases are resolved. The costs of asbestos litigation are higher than for any other kind of personal injury case for which transaction costs have been estimated; about \$1 billion was paid to compensate and litigate asbestos claims between 1970 and 1982. The latent nature of asbestos-related diseases and the manufacturing context in which they occurred raise issues on the timing of filing claims, determining causation, determining liability and apportioning damages that have been dealt with inconsistently by various state appellate courts and local trial courts, resulting in increased uncertainty in case value, delays in processing, increased transaction costs, and inconsistent outcomes.

Finally, the ICJ has conducted a series of studies on the outcomes of court-annexed arbitration programs in state trial courts. These studies consistently indicate that such alternatives to traditional settlement and trial can provide acceptable outcomes to plaintiffs and defendants with a reduction of time and litigation expense, and that such procedures may be perceived by litigants to be as fair as the traditional system.

#### ICJ UPDATE

The **Thirteenth Semiannual Meeting of the Board of Overseers** was held on February 21. An overview of the Institute's research agenda was presented by ICJ Deputy Director Stephen Carroll, and five research briefings were featured: *Bad Faith Punitive Damages*; *Wrongful Termination*; *Private Costs of Civil Litigation*; *New Research Issues in Civil Jury Verdicts*; and *Judicial Arbitration in New Jersey*.

ICJ researcher James Hammitt spoke on "Modeling Compensation for Auto Accidents" at the February 21 conference of the **Insurance Consumer Action Network** and the **National Insurance Consumer Organization** in Los Angeles. On February 27, ICJ Director Gustave Shubert testified in Topeka before the **Insurance Joint Subcommittee of the Kansas State Legislature** considering the **problems of availability in insurance**. On the same day, he addressed the **Kansas Tort Reform Coalition** in Topeka. On March 5, Stephen Carroll, Gustave Shubert, and ICJ researcher Mark Peterson testified before the **White House Tort Policy Working Group** in Washington. Marianna Smith, Executive Director, and Robert Habush, President-Elect, of the **American Trial Lawyers Association** visited the ICJ on March 6 to discuss possible collaborative research efforts. Stephen Carroll addressed a meeting of the **Council of Medical Specialty Societies** on March 10 in Chicago. Mark Peterson will testify before the **Subcommittee on Oversight of the House Ways and Means Committee** hearings concerned with the costs and availability of health insurance on March 13 in Washington. Stephen Carroll will testify before the **National Commission on Jobs and Small Business** on March 14 in San Francisco. ICJ consultant Patricia Danzon will testify on March 26 in Washington before the **Senate Judiciary Committee** hearings on tort reform. Her topic will be "The Effects of Tort Reform on the Frequency and Severity of Medical Malpractice Claims." ICJ researcher Allan Lind contributed an article, "Alternative Dispute Resolution in the Federal Courts: Public and Private Options," to the March issue of the *Federal Bar News and Journal*.

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The Institute for Civil Justice, established within The Rand Corporation in 1979, performs independent, objective policy analysis and research on the American civil justice system. The Institute's principal purpose is to help make the civil justice system more efficient and more equitable by supplying policymakers with the results of empirically based, analytic research.

*For information on the Institute's program, and for published research findings as they become available, please contact:*

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Chairman  
Senate Judiciary Committee  
State Capitol  
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## A RAND NOTE

LIMITING LIABILITY FOR AUTOMOBILE ACCIDENTS:  
ARE NO-FAULT TORT THRESHOLDS EFFECTIVE?

James K. Hammitt, John E. Rolph

October 1985

N-2418-ICJ

Prepared for

The Institute for Civil Justice



THE  
INSTITUTE FOR  
CIVIL JUSTICE

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## The Institute for Civil Justice

The Institute for Civil Justice, established within The Rand Corporation in 1979, performs independent, objective policy analysis and research on the American civil justice system. The Institute's principal purpose is to help make the civil justice system more efficient and more equitable by supplying policymakers with the results of empirically based, analytic research.

Rand is a private, nonprofit institution, incorporated in 1948, which engages in nonpartisan research and analysis on problems of national security and the public welfare.

The Institute examines the policies that shape the civil justice system, the behavior of the people who participate in it, the operation of its institutions, and its effects on the nation's social and economic systems. Its work describes and assesses the current civil justice system; analyzes how this system has changed over time and may change in the future; evaluates recent and pending reforms in it; and carries out experiments and demonstrations. The Institute builds on a long tradition of Rand research characterized by an interdisciplinary, empirical approach to public policy issues and rigorous standards of quality, objectivity, and independence.

The Institute disseminates the results of its work widely to state and federal officials, legislators, and judges, to the business, consumer affairs, labor, legal, and research communities, and to the general public.

## PREFACE

This Note is a reprint of an article that appeared in *Law & Policy*, Volume 7:4, 1985. Using insurance claims data, the authors analyze the effectiveness of no-fault tort thresholds in limiting the number of automobile accident victims who seek compensation through the tort system.

The analysis contained in this Note is described in greater detail in the first two volumes of a four-volume study on automobile accident compensation, conducted by the authors for The Institute for Civil Justice. These four reports are included in a listing of current ICJ publications at the back of this Note and can be obtained from the Institute.

## Limiting Liability for Automobile Accidents: Are No-Fault Tort Thresholds Effective?

JAMES K. HAMMITT and JOHN E. ROLPH\*

*"No-fault" automobile insurance plans are designed to supplant the tort system by requiring motorists to purchase no-fault insurance and allowing victims to file liability insurance claims and tort suits only if their injuries exceed a legislated "tort threshold." While thresholds vary among states, many are satisfied if the victim incurs medical expenses as low as a few hundred dollars. Using insurance claims data, we estimate the effectiveness of several states' thresholds. We find that tort thresholds are surprisingly effective: modest tort thresholds reduce the number of successful tort claimants by half, and the strictest thresholds may exclude nine-tenths of potential claimants. Moreover, we find little evidence of claimants "padding" their claims to exceed the dollar thresholds.*

No-fault compensation plans for automobile accident victims were developed to replace the traditional tort liability system. Early no-fault advocates criticized the tort system under which the motorist who is legally at fault or his liability insurance company compensates the accident victims as providing "too little, too late, unfairly allocated, at wasteful cost, and through means that promote dishonesty and disrespect for the law." (Keeton and O'Connell, 1965: 3). In contrast, no-fault plans establish mandatory "no-fault" insurance that reimburses the policyholder, his passengers, and any pedestrians he may injure, without regard to who "caused" the accident. No-fault insurance is intended to provide quicker and more certain compensation, at less cost, because there is no need to ascertain legal responsibility for the accident.

No state has yet adopted a no-fault plan that totally replaces the tort system. All no-fault states attempt to prevent certain automobile accident victims—those with less severe injuries—from using the tort law to obtain compensation, but allow more seriously injured victims to pursue tort compensation in addition to collecting no-fault insurance benefits. The two classes of victims are defined by whether their injuries exceed a "tort threshold," which may be either a "dollar" or "verbal" threshold.<sup>1</sup>

Under a dollar tort threshold, accident victims are not entitled to tort compensation unless their medical expenses exceed the threshold value.

\* The Institute for Civil Justice, The Rand Corporation. We thank Joseph Ferreira, Robert Houchens, Sandra Polin, Timothy Quinn, Donald Segraves and three anonymous reviewers for their contributions to this research.

Thresholds range from \$200 (net of hospital and diagnostic expenses) in New Jersey to \$4,000 in Minnesota. To breach a verbal threshold, victims must have suffered one of a specified set of injuries. Verbal thresholds are typically quite stringent, requiring permanent and significant disfigurement, disability, or death. In a few states, however, the verbal threshold is satisfied by less serious injuries: a fracture (Massachusetts), or any injury not confined to soft tissue (New Jersey).<sup>2</sup>

All states with dollar thresholds also have verbal thresholds, but three no-fault states (Florida, Michigan and New York) have only verbal thresholds. In these states, regardless of medical expenses incurred, a victim is not entitled to tort compensation unless his injuries exceed the stringent verbal threshold.

Whether an accident victim is entitled to tort compensation or must be satisfied with no-fault insurance benefits can have a substantial effect on the amount of compensation he or she receives. No-fault insurance pays only for a victim's economic losses (called "special damages"), primarily medical expenses and lost wages.<sup>3</sup> In contrast, under tort law the victim can potentially collect compensation for "pain and suffering" and other nonpecuniary losses (called "general damages") as well as for special damages. Although payments for general damages differ widely between accident victims, they often exceed the victim's special damages. For automobile accident victims with \$500 in medical expenses the median payment for general damages in our data (described below) is about \$1,000. For those with \$5,000 in medical expenses the median payment for general damages is about \$6,500. (Hammit, 1985, see figure 1.) Thus the lure of compensation for general damages provides a substantial incentive for a victim to seek tort compensation if another motorist is arguably liable for his injuries.

Because payments for general damages can be so large relative to the compensation a victim can obtain from no-fault insurance, one would expect accident victims to file lawsuits or claims against another driver's liability insurance in all but minor cases. Indeed, one might expect that some victims would attempt to circumvent the tort threshold either by fraudulently claiming medical expenses in excess of the dollar threshold, or by incurring additional, unnecessary, medical treatment in order to surmount the threshold. In some cases accident victims do receive liability insurance payments, including compensation for general damages, even though their injuries may not have exceeded the tort threshold. These payments are made because almost all automobile liability claims are settled without recourse to trial. In cases where it is not clear whether a claimant could prove that his injuries exceed the tort threshold the liability insurer may offer some payment to settle the claim and avoid further expense.

Because the possible gain in seeking compensation from a liability insurer is so large, there is some debate about how effectively tort thresholds, especially low-to-moderate dollar thresholds, reduce the

number of victims who file liability claims.<sup>4</sup> In this article we present an analysis of insurance claims data designed to address this issue. In the states studied, we find that even relatively weak thresholds appear to prevent a large proportion of accident victims from obtaining tort compensation. For example, we estimate that the \$500 tort threshold in Massachusetts reduces the number of victims who are paid under automobile liability insurance there by more than half. Stricter tort thresholds, such as the verbal one in Michigan, appear to prevent about 90 percent of auto accident victims from obtaining tort compensation. We surmise that the much smaller chance of recovering compensation if one's injuries do not exceed the tort threshold discourage large numbers of victims from filing liability claims and lawsuits. Interestingly, we find no evidence to suggest that victims systematically exaggerate their expenses, or incur additional medical expenses, to surmount dollar tort thresholds.

We turn now to describing the closed automobile insurance claims data that we analyze. We then describe our two methods for estimating the proportion of automobile accident victims excluded from tort claims by the tort threshold. Finally we present our analysis of claims to determine whether they have been padded or exaggerated in an effort to surmount the tort threshold.

#### DATA

The data we analyze consists of claims paid by automobile insurers under the Bodily Injury (BI) and Personal Injury Protection (PIP) coverages. BI insurance is liability insurance; it pays damages to a third party (the accident victim) for which the policyholder is liable. PIP insurance is no-fault insurance; it pays benefits to the policyholder, his passengers, and pedestrians without regard to legal fault.

The data were collected by the All-Industry Research Advisory Council (AIRAC), an insurance-industry association, and include all claims that were closed with some payment to the claimant by the participating insurers during a two-week period in autumn, 1977; claims that were denied payment are not included. At the time of the survey, the twenty-nine participating insurers had a 62 percent share of the national market for private passenger automobile insurance. For each closed claim, insurance company claims adjusters and supervisors provided detailed information on the claimant's personal characteristics, medical and other economic losses, type and severity of injury, and the payment made by the insurer. The data are described more fully in AIRAC (1979).

As part of a study of compensation under tort and no-fault rules (Hammit, 1985; see also Rolph et al., 1985), we selected four no-fault states for analysis—Massachusetts, New Jersey, Pennsylvania and Michigan. Generalization of results from one state to another is always problematic; however, based on the frequency with which claimants retain attorneys and file

Table 1. Cumulative Distribution of Total Payments

Payment Less than	Personal Injury Protection		Bodily Injury	
	Michigan	Massachusetts <sup>a</sup>	California	Massachusetts
Percentage of Claimants Paid				
\$100	34	40	12	6
\$300	59	65	29	13
\$500	69	72	37	18
\$1,000	80	82	51	28
\$5,000	95	100	89	74
\$15,000	98	100	98	93
\$50,000	100	100	100	100
Percentage of Dollars Paid				
\$100	1	4	0	0
\$300	5	12	1	0
\$500	8	18	3	1
\$1,000	15	32	7	2
\$5,000	42	94	42	32
\$15,000	64	100	70	64
\$50,000	100	100	88	100

<sup>a</sup> PIP policies in Massachusetts are required to provide for medical benefits of at least \$2,000; additional coverage is available as an option.

lawsuits, these four states appear to be more litigious or claims-conscious than most other states. Consequently the proportions of accident victims that the thresholds prevent from recovering tort compensation in these states is likely to be smaller than the proportion that similar thresholds would bar in other, less claims-conscious, states.<sup>5</sup> There may be other states however, that are even more claims-conscious than the four we analyze. For example, knowledgeable insurance industry followers assert that the original \$1000 tort threshold in Florida had almost no effect on the number of BI claims paid there; it was not until Florida established an entirely verbal threshold, and an anti-fraud bureau, that the number of victims receiving tort compensation declined (Personal communication; see also O'Connell, 1977: 159-60, and U.S. Dept. of Transportation, 1977). Thus there may be some states where our conclusions do not hold. However, we believe our analysis is based on assumptions that apply in all but exceptional circumstances.

Table 1 presents an overview of claims payments under both PIP and BI insurance, for three representative states. The majority of claims are quite modest; as shown in the first panel of the table, more than half the PIP claimants are paid less than \$300, while about four-fifths receive less than \$1,000. BI payments are somewhat larger, because they usually include payments for general damages in addition to economic loss. Even so, half of the California BI payments are less than \$1,000. The Massachusetts BI payments are much higher than the California payments, because the Massachusetts tort threshold excludes claimants with relatively mild injuries.

As a result, only 28 percent of Massachusetts BI payments are less than \$1,000.

The second panel of the table reveals that the distribution of dollars paid by insurers is dominated by the larger claims. While most claims paid are modest, these account for only a small share of total payments. As shown in the second panel, both the two percent of Michigan PIP claimants and of California BI claimants who were paid more than \$15,000 each received about one-third of the total dollars paid.

#### METHODS

Our strategy for estimating the effect of tort thresholds in each of the four states studied is to generate independent estimates for each state. When we compare these states to states without tort thresholds using the "BI-file method" (described below), we also generate independent estimates for each comparison pair of states. This disaggregated estimation approach is appropriate here in view of the diversity of the states we are comparing. The alternative of simultaneously estimating the effects of tort thresholds for all states with a statistical model (like regression) that shares information about relationships across states is not feasible without comprehensive and comparable data for litigation affecting factors in each state. Such data are needed to statistically adjust for differences between states that might affect how tort thresholds operate. We have not been able to locate such sufficiently comprehensive data.

We estimate the fraction of accident victims who are denied tort compensation because of tort thresholds using two different methods and compare the results. First, we use the "PIP-file method" to compare the number of PIP claimants who are eligible to obtain BI compensation (as reported by the survey respondents) to the number who would have been eligible prior to the adoption of the tort threshold in their state. Since PIP pays all victims without regard to fault or injury severity the PIP claims file includes most types of accident victims (the main exception is uninsured motorists and their passengers). The fraction of PIP claimants who would have been eligible for BI payments prior to the threshold, but who are no longer eligible, is our PIP-file method estimate of the effect of the tort threshold in reducing the number of successful BI claimants in that state. Note that this method estimates only the number of potential claimants that are no longer entitled to tort compensation, but does not account for their likelihood of actually filing BI claims.

Our second method, the "BI-file estimate," is based on a comparison of the populations of claimants who are paid by BI insurance in the no-fault state and in a reference state that has no tort threshold. The validity of this estimate depends on the extent to which the distributions of accident victims in the no-fault and the reference state are similar, with respect to economic loss, type of injury, legal fault, propensity to file insurance claims

and to retain an attorney, and other factors that might affect the number of successful BI claimants. We attribute the difference between the numbers of successful BI claimants to the tort threshold. Unlike the PIP-file method, the BI-file method does account for victims' likelihood of filing BI claims. However, it does not allow for the estimation of any separate effect (in addition to the tort threshold) that the existence of no-fault insurance has on the number of liability insurance claims filed. (Since victims can almost always collect under PIP, they may be less likely to also file a BI claim.) However, since the results of both of our estimation methods are in general agreement, we conclude that tort thresholds are the primary cause of fewer liability insurance claims in no-fault states.<sup>6</sup>

To determine the accuracy of the BI-file method we generate independent estimates of the tort-threshold effect using several different reference states. If the potential-claimant populations are distributed identically in all states, the estimates would be the same for all reference states up to statistical fluctuations. The extent to which the choice of reference state affects the estimate is an indication of the degree to which the populations differ, and thus is a measure of the precision of the method.<sup>7</sup>

Some commentators have suggested that the adoption of a no-fault system will increase the number of automobile accidents, since drivers may be less careful when the deterrent of tort liability is removed.<sup>8</sup> Others doubt such an adoption will have a significant effect, since the tort deterrent is largely diluted by liability insurance, and other factors are probably more important influences on driving behavior. Our estimates do not take account of this effect, should it exist. We estimate the change in the proportion of accident victims who are paid by BI insurance; if the adoption of a no-fault plan increases the number of accident victims our estimates will overstate the reduction in BI claims paid. We describe both our methods and results in more detail below.

#### ANALYSIS AND RESULTS

A large proportion of accident victims in the four no-fault states we studied did not seek or were denied payment under BI insurance because of a tort threshold. Our estimates of the fraction affected by the threshold vary, depending on the method used and the reference state chosen. But, as shown below, the order of the estimates is consistent with the order defined by the apparent stringency of the thresholds.

Table 2 gives our estimates of the proportion of BI claimants excluded by the thresholds using both the PIP-file method and the BI-file method with our four reference states. The New Jersey threshold (\$200 medical loss, net of hospital and diagnostic expenses) was the weakest of the four.<sup>9</sup> We estimate that roughly half of the potential claimants were excluded by this threshold. Stated another way, the number of accident victims obtaining compensation from another motorist's liability insurance company

Table 2. Estimated Percentage of Potential BI Claimants Excluded by Tort Thresholds

No-fault State (threshold)	PIP-file Method	BI-file Method			
		Reference State			
		California	Washington	North Carolina	Maryland
New Jersey (\$200)	48%	39%	51%	66%	41%
Massachusetts (\$500)	60%	50%	64%	76%	69%
Pennsylvania (\$750)	72%	—	—	—	—
Michigan (verbal)	89%	—	—	—	—

Note: We did not calculate BI-file estimates for Pennsylvania and Michigan because too few BI claimants were paid in those states to generate reliable estimates.

would have been about twice as large if there were no threshold. We estimate that Massachusetts' \$500 threshold excluded roughly 60 percent of potential claimants, Pennsylvania's \$750 threshold excluded about 70 percent, and Michigan's verbal threshold excluded almost 90 percent of all victims who would otherwise have been paid under BI.<sup>10</sup> (We did not calculate BI-file method estimates for Michigan and Pennsylvania because the number of BI claimants in our sample is too small to give reliable estimates.)<sup>11</sup>

While there is substantial variability among the estimates for each state, the relative ordering of the no-fault states is the same for each set of estimates. The exact percentages differ with the method, but all of our estimates suggest that even modest tort thresholds have a large (if not precisely known) effect on the number of BI claims paid.

Large decreases in the number of BI claims paid do not, however, translate to equally large effects on total BI payments. Because the claimants who are prevented from making claims are those with the smallest economic losses and least serious injuries, they account for a relatively small share of all BI payments. By comparing the total BI payments to reference-state claimants, classified by whether or not they exceeded the no-fault states' thresholds, we estimate that total BI payments are about 7 to 16 percent lower in New Jersey (compared to 39 to 66 percent of claimants excluded) and 15 to 31 percent lower in Massachusetts (compared to 50 to 76 percent of claimants excluded), than they would be in the absence of a threshold.<sup>12</sup> Moreover, because of inflation in the costs of medical care, the fixed-dollar thresholds in New Jersey, Massachusetts and Pennsylvania are undoubtedly less effective in reducing both the number of BI claims and claims costs today than they were in 1977, the year to which our estimates apply. We turn now to a discussion of the details of each of the analyses.

## PIP-FILE ESTIMATES

The PIP-file method for estimating the number of potential claimants who were denied BI compensation because of a state's tort threshold is based on data for victims who filed claims under a no-fault (PIP) policy. For each PIP claimant, claims adjusters reported 1) whether the claimant qualifies for a BI or tort payment under his state's current no-fault law, and 2) whether the claimant would have qualified prior to the imposition of the law. Although the instructions that accompanied the survey forms do not define "qualification," respondents seem to have interpreted the question as asking whether the claimant would be likely to obtain some payment if he filed a BI claim.<sup>13</sup>

The PIP-file estimate of the proportion of potential BI claims that were either denied or not filed because of the tort threshold is the number of PIP claimants no longer qualifying for BI recovery divided by the number who would have qualified before the threshold was imposed. That is:

$$\text{PIP File estimate of fraction denied} = 1 - \frac{\text{Number of PIP claimants eligible for BI with threshold}}{\text{Number of PIP claimants eligible for BI without threshold}}$$

Although a claimant who qualified for BI recovery would not necessarily have filed a BI claim, the direction in which this factor would bias our estimate is unclear. Our PIP-file estimate is based only on victims who filed PIP claims. The incentives to file BI claims are in some respects stronger than the incentives to file PIP claims, and in other respects weaker.<sup>14</sup> On balance, we believe that the PIP-file estimates are more reliable than the BI-file estimates since they rely solely on data for the particular no-fault state in question. As a comparison of the two sets of estimates shows, however, the two methods produce roughly consistent results.

## BI-FILE ESTIMATES

To estimate the proportion of potential claimants denied payment because of a tort threshold using the BI-file method we categorize potential BI claimants in no-fault states into three groups, as illustrated in Figure 1. Claimants in Group 1 have injuries greater than the tort threshold and are paid by BI insurance. Claimants in Group 2 have injuries that are not serious enough to breach the threshold, but nevertheless these claimants also obtain BI payments, presumably because the BI insurer would rather make some payment to settle the claim than continue to defend it. Claimants in Group 3 have injuries that do not exceed the threshold and are unable to obtain BI payments. As a result, Group 3 claimants are not included in our sample; it is their number that we estimate.<sup>15</sup>

The successful BI claimants in a reference (tort or add-on) state include all three groups, though we cannot, of course, distinguish between Group 2

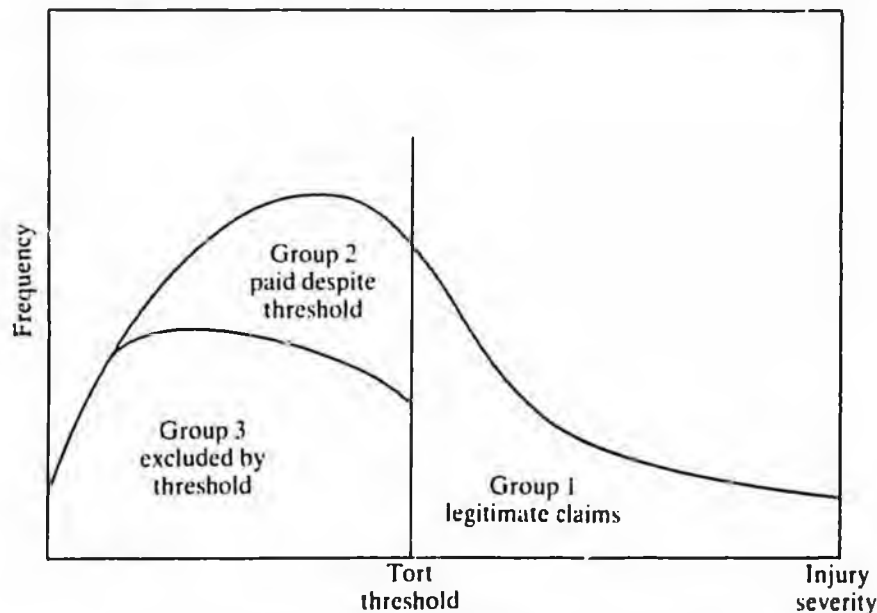


Figure 1. BI Claims Excluded by the Tort Thresholds

and 3 claimants in these states. If the populations of potential claimants are distributed similarly in the no-fault and reference states, the ratio of the number of successful no-fault-state claimants whose injuries exceed the threshold (Group 1) to the total number of potential no-fault-state claimants (all three groups) is equal to the corresponding ratio in the reference state. We use this relationship to derive our estimate of the size of Group 3, the claimants excluded by the threshold.

Table 2 above presents our estimates of the proportion of all potential no-fault state claimants (Groups 1, 2 and 3) that are excluded by the tort threshold (Group 3). We calculate these estimates as follows. Let  $r$  be the proportion of paid reference-state claimants whose injuries exceed the no-fault state's tort threshold  $r$  is equal to the ratio of the number of Group 1 claimants to the total number in Groups 1, 2 and 3 in the reference state). Similarly, let  $p$  be the proportion of no-fault-state claimants in our data whose injuries exceed the tort threshold  $p$  is equal to the number of Group 1 claimants divided by the number of Group 1 and Group 2 claimants in the no-fault state). Let  $x$  be the unknown ratio of the number of Group 3 claimants to the number of paid (Groups 1 and 2) no-fault state claimants. We wish to estimate  $\beta$ , the proportion of all potential claimants excluded by the threshold (the ratio of the number of Group 3 claimants to the total number in all three groups), where

$$\beta = \frac{x}{1+x} \tag{1}$$

We assume that the distribution of injuries in the no-fault and reference states is the same, or, more specifically, that the proportion of potential

claimants in each state whose injuries exceed the no-fault state's threshold is the same,

$$r = \frac{p}{1+x}. \quad (2)$$

Combining equations (1) and (2), we obtain our estimate

$$\beta = \frac{x}{1+x} = 1 - \frac{r}{p}.$$

As shown in Table 2, the estimates using different reference states differ by as much as 27 percent, reflecting differences between the potential-claimant populations in the different states. These differences arise for various reasons, including differences between states in the mix of accident types, victim characteristics, and the cost of medical care. In addition, potential BI claimants may be less likely to file BI claims in a state such as Maryland where PIP insurance is required if they can more easily obtain compensation from their PIP coverage. If this effect were large, it could affect the estimates of tort-threshold effects that use Maryland as the reference state. As Hammitt (1985) reports, however, comparisons between BI-claimant populations do not provide any evidence that the availability of PIP benefits in Maryland reduces the number of BI claimants in that state, and the tort-threshold estimates that use Maryland as the reference state are comparable to those derived using other reference states.

In addition to differences between accident-victim populations in different states, our BI-file estimates are affected by the difficulty of determining which reference-state claimants would have satisfied a particular tort threshold, that is, distinguishing Group 1 claimants from the others. For the no-fault-state claimants, the survey forms record whether the tort threshold was exceeded, allowing us to distinguish between Group 1 and Group 2 claimants. But for the tort-state claimants we had to estimate, using reported medical expenses and injury severity, whether the claimant's injuries would have exceeded the no-fault state's tort threshold. In order to make the comparison between tort and no-fault states consistent, we considered claimants in both states to have exceeded the threshold (Group 1) only if their recorded injuries exceeded the threshold.

We could not determine unambiguously whether a claimant exceeded the tort threshold from the recorded injury descriptions. For example, the Massachusetts threshold is exceeded if the claimant suffers permanent and serious disfigurement, but the questionnaire we used does not ask about the severity of a permanent disfigurement. Somewhat arbitrarily, we define all claimants with permanent disfigurement to have exceeded the threshold.<sup>16</sup>

We check the accuracy of this classification procedure by comparing the proportions of no-fault-state claimants recorded as having exceeded the threshold to the proportions estimated by our method of classifying claimants using their reported injuries; this is presented in Table 3. Our classification procedure labels more claimants as being over the threshold in both

Table 3. Percentage of All Paid BI Claims that Exceed the Tort Threshold

	NJ	MA
Recorded over threshold	88%	76%
Classified over threshold	89%	80%
Either recorded or classified over threshold	97%	88%

New Jersey and Massachusetts. However, the differences between proportions are small—at most 4 percent. The discrepancies probably result from two factors. First, our classification procedure counts too many claimants over the threshold because of the ambiguity in the injury descriptions (some of the permanently disfigured claimants were not sufficiently disfigured to exceed the threshold). Second, the proportion recorded in the questionnaire as having exceeded the threshold is probably too small. The multiple-choice question from which this proportion is derived asks how the claimant exceeded the threshold but does not ask whether he did so. We assume that all claimants for whom no answer was given (and whose medical expenses did not exceed the dollar threshold) did not exceed the tort threshold, but there are surely some claimants who exceeded the threshold but for whom, for whatever reason, the question was not answered.

Although our classification procedure is not perfect, the effect of the imperfections on our estimate of the proportion of claimants excluded by the tort thresholds is unclear. Since we use the same classification method for both no-fault and reference states the errors should be offsetting. The similarity of the BI-file and PIP-file estimates suggests that the effect of the classification errors is not large, relative to the other inaccuracies of the procedure.

#### CIRCUMVENTING THE TORT THRESHOLD

Do claimants in some no-fault states inflate their medical expenses, either by incurring needless treatment or by claiming (perhaps with the assistance of an unscrupulous doctor) to have incurred such treatment? We find no evidence of such padding in our data.

Claimants face a strong incentive to breach the threshold because doing so enhances the possibility of their receiving payments for general damages, which are not covered by PIP insurance. Moreover, by breaching the threshold, claimants may be able to recover for their economic losses twice: once from their PIP insurers, and once under their BI claims. This double recovery may be possible if the PIP insurer does not require reimbursement from the BI payment, or if the insurer fails to enforce the reimbursement provision.

If a significant number of claimants whose injuries do not exceed the threshold manage to obtain BI payment by "padding" their claims, we would expect to find a "hump" in the distribution of medical losses—a dis-

proportionately large number of claimants whose reported medical expenses exceed the tort threshold by only a little. To assess how many Massachusetts and New Jersey claimants overcome the tort thresholds by padding their medical expenses, we compare the proportion of claimants whose injuries exceed the dollar threshold by no more than \$100 and \$500 to the proportion predicted in each of the four states without thresholds. In total, we make sixteen comparisons (two no-fault states times two medical expense intervals times four reference states). In twelve of the sixteen cases, fewer claimants have recorded medical expenses in the interval just above the threshold than predicted. In the other four cases, using the above method, the estimate of the number of paid claimants who exaggerate their injuries in order to breach the threshold is between 2 and 16 percent of all claimants who appear to exceed the threshold.<sup>17</sup>

Because twelve of our sixteen comparisons provide no evidence of padding, we conclude that the data give little support to the notion that claims are systematically padded to circumvent tort thresholds. Further, since these states are more litigious than most, as discussed above, we would expect to find more evidence of padding claims here than in most other no-fault states. Alternatively, the effect of any padding that does occur may be offset by other factors such as other claimants' reluctance to file BI claims when they have already been compensated under PIP, or their uncertainty about the definition of the tort threshold and whether they are eligible to make BI claims.

#### SUMMARY

Contrary to what one might expect, modest tort thresholds appear to have a substantial effect on the number of accident victims who obtain compensation from liability insurance, at least in the states we studied. The availability of first-party insurance benefits probably contributes to this reduction, but our data do not allow us to estimate this effect separately in the four no-fault states.<sup>18</sup> Stringent tort thresholds, like the Michigan verbal threshold, deny tort compensation and, with it, compensation for pain and suffering to nine out of ten automobile accident victims. Also, contrary to some reports, we find little evidence in the states studied to support the view that many accident victims incur unnecessary medical treatment as a means of circumventing the tort threshold. The thresholds appear to serve their purpose of acting as gates to limit the number of automobile accident victims who enter the tort system and they thereby defeat the no-fault reforms.

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NOTES

1. States are classified as tort, add-on, and no-fault. No-fault insurance is not sold in tort states. In add-on states, insurers are required to offer and motorists may be required to buy no-fault coverage. In no-fault states, motorists are required to buy no-fault insurance and accident victims are not entitled to tort compensation unless their injuries exceed the tort threshold.
2. In 1983 New Jersey adopted a law allowing automobile insurance buyers to choose the threshold to which they will be subject if injured. Buyers can elect either the \$200 threshold which applied to all motorists from 1973 to 1983, or a new, higher threshold of \$1500 in medical expenses, net of hospital, x-ray and other diagnostic expenses, to be adjusted annually in accordance with the Consumer Price Index. The verbal portion of the new threshold is also stricter than the old. Under the old threshold, a victim could sue for tort compensation if his injuries were not confined to "soft tissue," but this language has been omitted from the new threshold.
3. Most no-fault plans further limit compensation for each type of loss. Maximum policy limits on medical benefits range from \$2,000 to unlimited, while wage-loss policy limits on benefits are often 75 or 85 percent of lost wages, up to only \$100 or \$200 per week.
4. An accident victim may file a claim directly with another party's liability insurer, may file a lawsuit against the other party and/or his insurer, or do both. Because of filing fees and other costs, only about one-fifth of those who file liability claims (primarily those with larger claims) also file suit (see Hammitt, 1985).
5. The proportion of claimants denied BI compensation in a claims-conscious state will be a lower bound for the proportion that would be denied in a less claims-conscious state if claims-consciousness disproportionately increases the number of claims filed by victims with relatively mild injuries, that is, if severely injured victims in the less litigious state are as likely to file claims as those in the more litigious state.
6. Using a similar method, we estimate that the availability of no-fault insurance alone has little effect on the number of liability claims filed in Maryland, an add-on state that requires motorists to carry no-fault insurance (see Hammitt, 1985).
7. As reference states, we used the four other states—California, Washington, North Carolina, and Maryland—that we had selected for our larger study (Hammitt, 1985). The first three are tort states, while Maryland is a mandatory add-on state, meaning that motorists are required to carry PIP insurance.
8. Landes (1982) analyzed fatal accident rates across states and years. She asserts that, after controlling for other factors, fatalities are more numerous in states with higher thresholds, and that comparatively strict thresholds may increase the fatal-accident rate by 10 to 15 percent.
9. The New Jersey tort threshold was \$200 at the time the claims data were collected, but was changed in 1983. See note 2 *supra*.
10. The tort thresholds are defined as follows:  
New Jersey: (1) \$200 medical expenses net of hospital and diagnostic expenses, (2) death, (3) permanent disability, (4) permanent significant disfigurement, (5) partial or total loss of body member, (6) any injuries not confined to soft tissue.  
Massachusetts: (1) \$500 medical expense, (2) death, (3) loss of body member, (4) permanent serious disfigurement, (5) loss of sight or hearing, (6) any fracture.  
Pennsylvania: (1) \$750 medical expense net of diagnostic x-ray and rehabilitation costs in excess of \$100, (2) death, (3) serious permanent injury, (4)

permanent, irreparable, severe cosmetic disfigurement. (5) total disability exceeding 60 days.

Michigan: (1) death, (2) serious impairment of bodily function, (3) permanent, serious disfigurement.

11. Our estimates are consistent with those available from other sources. According to a study by Thomas Jones, then Michigan Insurance Commissioner, BI claims in that state declined 87 percent after no-fault insurance was adopted. It is not clear whether this figure refers to claims filed or paid (see Widiss et al., 1977: 383). The U.S. Department of Transportation published ratios of paid BI claims to insured cars for fourteen no-fault states covering the years 1969 to 1975. These data were obtained from the State Farm Insurance Companies, which had a 14 percent national market share at the time. By comparing the average paid claim frequencies for all reported years before and after no-fault was adopted, we calculate that BI claims declined 62 percent in New Jersey, 82 percent in Pennsylvania, and 88 percent in Michigan (see U.S. Department of Transportation, 1977: 26-28).
12. The share of total BI payments made to claimants whose injuries do not exceed the New Jersey tort threshold is 7 percent in California, 8 percent in Maryland, 9 percent in Washington, and 16 percent in North Carolina. The share of payments to claimants whose injuries do not exceed the Massachusetts threshold is 15 percent in California, 18 percent in Washington, 25 percent in North Carolina, and 31 percent in Maryland. These estimates assume that none of the claimants whose injuries do not exceed the threshold would be paid, and that they consequently overstate the reduction in claims payments. In contrast, our procedure for estimating the number of claimants that are excluded because of the threshold accounts for the fact that some are paid, even though their injuries do not exceed the threshold (see the "BI-File Estimates" subsection). As shown by Table 3 *infra*, as many as one-quarter of paid claimants in the no-fault states may have injuries that do not exceed the threshold.
13. See AIRAC (1979) for the actual questionnaire. Although all claimants would "qualify" before the threshold was established, in the sense that they were not barred from filing a claim because of a tort threshold, only those to whom another motorist was likely to be liable were described as qualifying for recovery. Thus drivers in single-car accidents were not included in this definition. Because PIP compensation is available to nearly all accident victims the proportion of PIP claimants who would have qualified for BI compensation prior to the imposition of the tort threshold is an estimate of the proportion of accident victims who are injured in circumstances that allow compensation under tort liability. The proportion is close to two-thirds in each of our four no-fault states: Michigan—56 percent, Pennsylvania—64 percent, Massachusetts—65 percent, New Jersey—69 percent.
14. Filing a BI claim will not affect one's own insurance rates, as filing a PIP claim might, and the victim may file a BI claim as retribution. On the other hand, a victim may feel that he must retain an attorney to handle a BI claim, he may find it more unpleasant to negotiate with an adversary insurance firm, or he may pity the at-fault driver.
15. There is also a fourth group—accident victims whose injuries exceed the threshold but who do not file BI claims, or whose claims are denied for other reasons. Because we are interested in the number of potential claimants excluded by the threshold, this group does not concern us. We assume that the number of eligible claimants who do not file claims, or whose claims are incorrectly denied, is the same fraction of claims that are properly paid in each state. That is, we assume that no claims are incorrectly denied for not exceeding the threshold when the claimant's injuries do exceed the threshold.

16. The tort thresholds are reported at note 10 *supra*. We assume that the claimant exceeded the Massachusetts threshold if his medical expenses exceeded \$500, he died, or he suffered permanent disability or a fracture. The New Jersey threshold is deemed to be satisfied if medical expenses net of hospital and x-ray expenses exceeded \$200, the claimant suffered permanent disability or a fracture, or he died.
17. More precisely these are estimates of the percentages of "excess" claimants—the data do not indicate the reasons. In Massachusetts, the estimates of the percentage of "excess" claimants between the dollar threshold (\$500) and \$100 higher (\$600) is 13, 2 and 2 percent using California, Washington and Maryland respectively as reference states. In New Jersey the corresponding percentage is 16 percent using a \$500 range and California as the reference state.
18. As described at note 6 *supra*, using our BI-file method we found little evidence that the availability of PIP benefits alone significantly reduces the number of BI claims in Maryland.

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A. Lipson  
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E. S. Rolph, D. R. Hensler  
1984

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P. A. Ebener, D. R. Betancourt  
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**Punitive Damages: Preliminary Empirical Findings**  
M. A. Peterson  
1985

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D. R. Hensler  
1986

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**Court-Annexed Arbitration in the State Trial Court System**  
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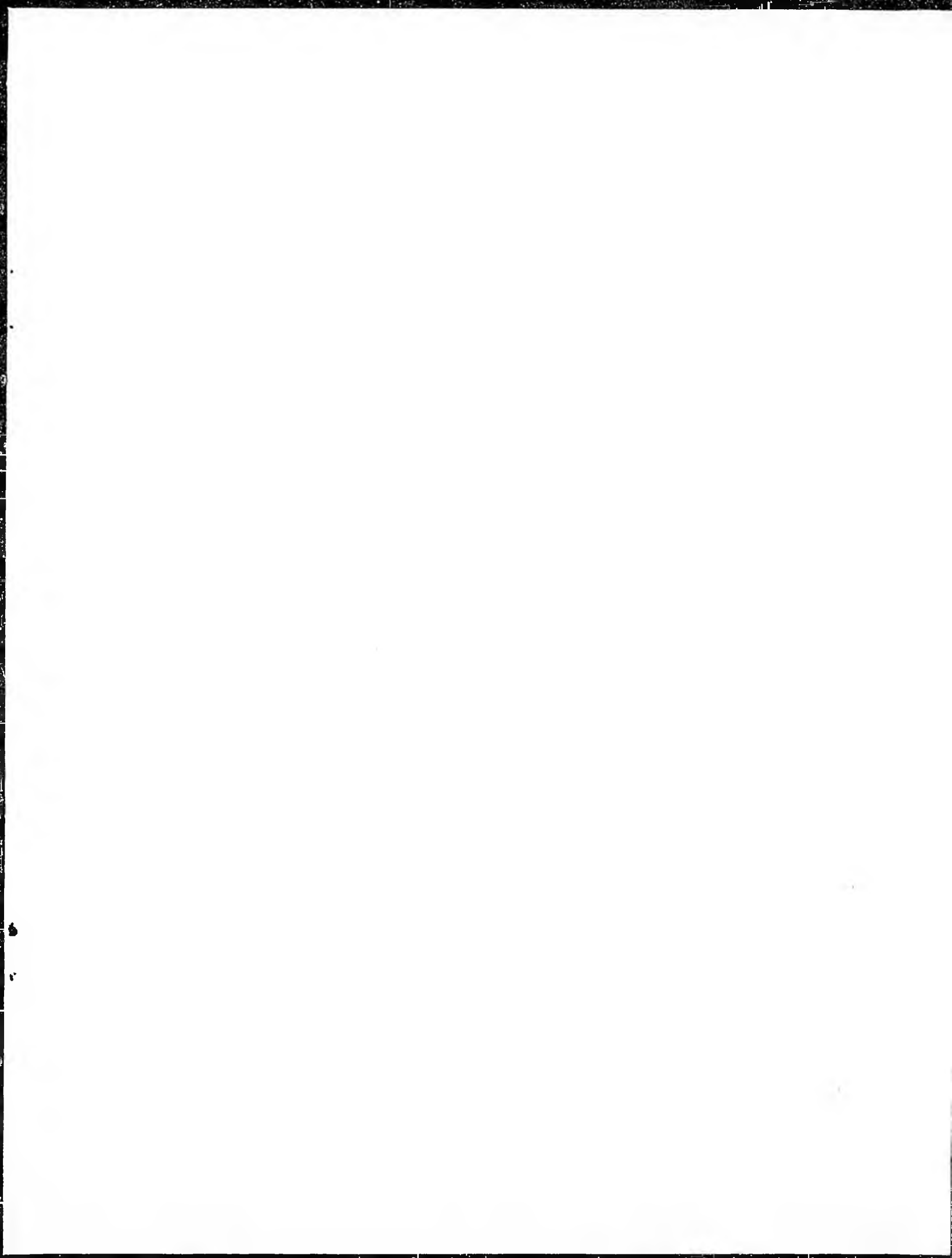
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H. Kritzer, W.L.F. Felstiner,  
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**Some Observations on the Need for Tort Reform**  
G. H. Shubert  
1986



A special bibliography (SB 1064) provides a list of other Rand publications in the civil justice area. To request the bibliography or to obtain more information about The Institute for Civil Justice, please write the Institute at this address: The Institute for Civil Justice, The Rand Corporation, 1700 Main Street, P.O. Box 2138, Santa Monica, California 90406-2138, (213) 393-0411.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: May 7, 1986

REQUEST  
Bill/Resolution No.: House CS for  
SSSB 377 (JUD)  
Title: An act relating to civil  
actions, etc.  
Sponsor: Kelly, Abood, Bennett, et al.  
Requestor:  
Date of Request: May 7, 1986

FISCAL DETAIL  
Agency Affected:  
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	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary House CS for SSSB 377 (JUD) removes or modifies the original bill language to delete any fiscal benefit to the State of Alaska's estimated ultimate loss and loss expense, i.e., "noneconomic damages" limit changed from \$250,000 to \$1,000,000, "punitive" damages not mentioned in revised bill, "periodic payment" provision changed, "joint and several" provision change, "release or covenant not to sue" provision change, "offers of judgment" provision change.

Prepared By: Donald Hitchcock, Director  
 Division: Risk Management

Phone: 465-2180

Date: May 7, 1986

Approved by Commissioner: Eleanor Andrews  
 Agency: Department of Administration

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

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

Original sponsors: Kelly, Abood,  
Bennett, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 377 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil actions; amending Alaska  
7 Rules of Civil Procedure 49, 52, 58, and 68; and  
8 providing for an effective date."

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

10 \* Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has  
11 generally been developed by the courts on a case-by-case basis. While this  
12 process has resulted in some significant changes in the law, including  
13 amelioration of the harshness of many common law doctrines, the legislature  
14 has periodically intervened in order to bring about needed reforms. The  
15 purpose of this Act is to enact further reforms in order to create a more  
16 equitable distribution of the cost and risk of injury and increase the  
17 availability and affordability of insurance.

18 (b) The legislature finds that boroughs, cities, and other  
19 governmental entities are faced with increased exposure to lawsuits and  
20 awards and dramatic increases in the cost of insurance coverage. These  
21 escalating costs ultimately affect the public through higher taxes, loss of  
22 essential services, and loss of the protection provided by adequate  
23 insurance. In order to improve the availability and affordability of  
24 quality governmental services, comprehensive reform is necessary.

25 (c) The legislature also finds comparable cost increases in  
26 professional liability insurance. Escalating malpractice insurance  
27 premiums discourage physicians and other health care providers from  
28 initiating or continuing their practice or offering needed services to the  
29 public and contribute to the rising costs of consumer health care. Other

1 professionals, such as architects and engineers, face similar difficult  
2 choices, financial instability, and unlimited risk in providing services to  
3 the public.

4 (d) The legislature also finds that general liability insurance is  
5 becoming unavailable or unaffordable to many businesses, individuals, and  
6 nonprofit organizations in amounts sufficient to cover potential losses.  
7 High premiums have discouraged socially and economically desirable  
8 activities and encourage many to go without adequate insurance coverage.

9 (e) It is the intent of the legislature to reduce costs associated  
10 with the tort system, while ensuring that adequate and appropriate  
11 compensation for persons injured through the fault of others is available.

12 \* Sec. 2. AS 09 is amended by adding a new chapter to read:

13 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

14 Sec. 09.17.010. NONECONOMIC DAMAGES. In an action to recover  
15 damages for personal injury based on negligence, damages for  
16 noneconomic losses shall be limited to compensation for pain, suffer-  
17 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-  
18 ment of life and other nonpecuniary damage.

19 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not  
20 be awarded in an action, whether in tort, contract, or otherwise,  
21 unless supported by clear and convincing evidence. Fifty percent of  
22 any punitive or exemplary damages that may be adjudged against the  
23 party defending the claim shall be awarded to the benefit of the state  
24 and when paid deposited in the general fund.

25 (b) The amount of punitive damages awarded to the state shall be  
26 considered a part of the amount recovered by the claiming party for  
27 purposes of calculating an award of attorney fees.

28 (c) Except for purposes of seeking execution on a judgment, the  
29 state may not bring or be joined in an action based on punitive

1 damages that may be awarded under this section.

2 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMIS-  
3 SION OF A CRIME. A person who suffers personal injury or death may  
4 not recover damages for the personal injury or death if the person is  
5 determined by the fact finder to be more than 50 percent responsible  
6 for the injuries or death and the person was

7 (1) intoxicated or under the influence of a controlled  
8 substance listed in AS 11.71.140 - 11.71.190; or

9 (2) engaged in the commission of a felony, if the felony  
10 was causally related to the injury or death in time, place, or activi-  
11 ty; however, nothing in this paragraph shall affect a right of action  
12 under 42 U.S.C. 1983.

13 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages  
14 for personal injury are awarded by the court or jury, the verdict  
15 shall be itemized between economic loss and noneconomic loss, if any,  
16 and economic loss shall be further itemized by category. Itemization  
17 of economic loss by category includes: (1) amounts intended to com-  
18 pensate for reasonable expenses that have been incurred, or which will  
19 be incurred, for necessary medical, surgical, x-ray, dental, or other  
20 health or rehabilitative services, drugs, and therapy; (2) amounts  
21 intended to compensate for lost wages or loss of earning capacity; and  
22 (3) all other economic losses claimed by the plaintiff or granted by  
23 the jury. A verdict shall further determine the amounts intended to  
24 compensate for injury or losses incurred before the verdict and  
25 amounts intended to compensate for losses that will be incurred in the  
26 future.

27 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the  
28 attorney of the party filing a complaint, answer, cross-claim, or  
29 counterclaim shall sign and verify the pleading and shall state in

1 the verification that the signatory believes the statements made in  
2 the pleading are true. If the court finds that the signatory know-  
3 ingly made a false statement in the pleading, upon motion of a party, the  
4 court shall order the signatory to show cause why the signatory should  
5 not be held in contempt of court.

6 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action  
7 based on fault seeking to recover damages for injury or death to a  
8 person or harm to property, contributory fault chargeable to the  
9 claimant diminishes proportionately the amount awarded as compensatory  
10 damages for the injury attributable to the claimant's contributory  
11 fault, but does not bar recovery.

12 Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder  
13 has rendered an award to a claimant, and after the court has awarded  
14 costs and attorney fees, a defendant may introduce evidence of amounts  
15 received or to be received by the claimant as compensation for the  
16 same injury from collateral sources that do not have a right of subro-  
17 gation against the claimant by law or contract.

18 (b) If the defendant elects to introduce evidence under (a) of  
19 this section, the claimant may introduce evidence of

20 (1) the amount that the actual attorney fees incurred by  
21 the claimant exceed the amount of attorney fees awarded to the claim-  
22 ant; and

23 (2) the amount that the claimant has paid or contributed to  
24 secure the right to an insurance benefit introduced by the defendant  
25 as evidence.

26 (c) If the total amount of collateral benefits introduced as  
27 evidence under (a) of this section exceeds the total amount that the  
28 claimant introduced as evidence under (b) of this section, the court  
29 shall deduct from the amount awarded the claimant, the amount by which

1 the value of the benefits under (a) of this section exceeds the amount  
2 of payments under (b) of this section.

3 (d) Notwithstanding (a) of this section, the defendant may not  
4 introduce evidence of

5 (1) benefits that cannot be reduced or offset by federal  
6 law;

7 (2) a deceased's life insurance policy; or

8 (3) gratuitous benefits provided to the claimant.

9 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions  
10 involving fault of more than one party to the action, including third-  
11 party defendants and persons who have been released under AS 09.17.-  
12 070, the court, unless otherwise agreed by all parties, shall instruct  
13 the jury to answer special interrogatories or, if there is no jury,  
14 shall make findings, indicating

15 (1) the amount of damages each claimant would be entitled  
16 to recover if contributory fault is disregarded; and

17 (2) the percentage of the total fault of all of the parties  
18 to each claim that is allocated to each claimant, defendant, third-  
19 party defendant, and person who has been released from liability under  
20 AS 09.17.070.

21 (b) In determining the percentages of fault, the trier of fact  
22 shall consider both the nature of the conduct of each party at fault  
23 and the extent of the causal relation between the conduct and the  
24 damages claimed. The trier of fact may determine that two or more  
25 persons are to be treated as a single party if their conduct was a  
26 cause of the damages claimed and the separate act or omission of each  
27 person cannot be distinguished.

28 (c) The court shall determine the award of damages to each  
29 claimant in accordance with the findings, subject to a reduction under

1 AS 09.17.070, and enter judgment against each party liable. The court  
2 shall also determine and state in the judgment each party's equitable  
3 share of the obligation to each claimant in accordance with the  
4 respective percentages of fault.

5 (d) The court shall enter judgment against each party liable on  
6 the basis of joint and several liability, except that a party who is  
7 allocated less than 50 percent of the total fault of all the parties  
8 may not be jointly liable for more than twice the percentage of fault  
9 allocated to that party.

10 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to  
11 sue, or similar agreement entered into by a claimant and a person  
12 liable discharges that person from liability to the claimant, but it  
13 does not discharge another person liable upon the same claim unless  
14 the release, covenant not to sue, or similar agreement provides for  
15 discharge. However, the claim of the releasing person against other  
16 persons is reduced by the dollar amount of the release, covenant not  
17 to sue, or similar agreement.

18 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes  
19 acts or omissions that are in any measure negligent or reckless toward  
20 the person or property of the actor or others, or that subject a  
21 person to strict tort liability; the term also includes breach of  
22 warranty, unreasonable assumption of risk not constituting an  
23 enforceable express consent, misuse of a product for which the  
24 defendant otherwise would be liable, and unreasonable failure to avoid  
25 an injury or to mitigate damages; legal requirements of causal  
26 relation apply both to fault as the basis for liability and to  
27 contributory fault.

28 \* Sec. 3. AS 09.10 is amended by adding a new section to read:

29 Sec. 09.10.075. ACTIONS THAT MUST BE ARBITRATED. A person may

1 not bring an action for damages based on injury to person or property  
2 when the amount in controversy is less than \$75,000, exclusive of  
3 costs, interest and attorney fees, unless the controversy is first  
4 arbitrated under AS 09.43.

5 \* Sec. 4. AS 09.30.065 is amended to read:

6 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 30  
7 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE  
8 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING  
9 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party  
10 making a claim or the party defending against a claim may serve upon  
11 the adverse party an offer to allow judgment to be entered in complete  
12 satisfaction of the claim for the money or property or to the effect  
13 specified in the offer, with cost then accrued. If within 10 days  
14 after the service of the offer the adverse party serves written notice  
15 that the offer is accepted, either party may then file the offer and  
16 notice of acceptance together with proof of service, and the clerk  
17 shall enter judgment. An offer not accepted within 10 days is con-  
18 sidered withdrawn and evidence of that offer is not admissible except  
19 in a proceeding to determine the form of judgment after verdict. If  
20 the judgment finally entered on the claim as to which an offer has  
21 been made under this section is not more favorable to the offeree than  
22 the offer, the interest awarded under AS 45.45.010(a) and accrued up  
23 to the date judgment is entered shall be adjusted as follows:

24 (1) if the offeree is the party making the claim, the  
25 interest rate shall be reduced by five [TWO] percent a year;

26 (2) if the offeree is the party defending against the  
27 claim, the interest rate shall be increased by five [TWO] percent a  
28 year.

29 \* Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:

1 (b) Except when the court finds that the parties have agreed  
2 otherwise, prejudgment interest accrues from the day the cause of  
3 action accrues.

4 \* Sec. 6. AS 09.43.110 is amended to read:

5 Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of  
6 a party, the court shall confirm an award unless

7 (1) within the time limits imposed by AS 09.43.120 and  
8 09.43.130 grounds are urged for vacating or modifying or correcting  
9 the award, in which case the court shall proceed as provided in  
10 AS 09.43.120 and 09.43.130; or

11 (2) an appeal is taken under AS 09.43.160(c).

12 \* Sec. 7. AS 09.43.160 is amended by adding a new subsection to read:

13 (c) An award made as a result of arbitration required by AS 09.-  
14 10.075 may be appealed to the proper court. The appeal shall be filed  
15 within 60 days after notice of an award is made under AS 09.43.080.  
16 The court shall grant a trial de novo if an appeal is filed under this  
17 subsection.

18 \* Sec. 8. AS 09.55.548 is repealed and reenacted to read:

19 Sec. 09.55.548. AWARDS. Except as provided in AS 09.17, damages  
20 in a malpractice action shall be awarded in accordance with principles  
21 of the common law.

22 \* Sec. 9. AS 09.60.010 is amended by adding a new subsection to read:

23 (b) The court may, upon petition by a party to a civil action,  
24 determine the reasonableness of that party's attorney fee agreement.  
25 The court shall take into consideration

26 (1) the time and labor required, the novelty and difficulty  
27 of the questions involved, and the skill requisite to perform the  
28 legal service properly;

29 (2) the likelihood, if apparent to the client, that the

1 acceptance of the particular employment will preclude other employment  
2 by the attorney;

3 (3) the fee customarily charged in the locality for similar  
4 legal services;

5 (4) the amount involved and the results obtained;

6 (5) the time limitations imposed by the client or by the  
7 circumstances;

8 (6) the nature and length of the professional relationship  
9 with the client;

10 (7) the experience, reputation, and ability of the attorney  
11 or attorneys performing the services;

12 (8) whether the fee is fixed or contingent;

13 (9) whether the fixed or contingent fee agreement was in  
14 writing and whether the client was aware of the right to petition the  
15 court under this section.

16 \* Sec. 10. AS 09.60 is amended by adding a new section to read:

17 Sec. 09.60.035. COSTS AND ATTORNEY FEES ALLOWED FOR ARBITRATION  
18 APPEAL. If a party appeals an award made as a result of arbitration  
19 required by AS 09.10.075, and the appellate court increases or de-  
20 creases the award by more than 10 percent, the prevailing party on  
21 appeal shall also be awarded actual costs and attorney fees incurred  
22 as a result of the appeal.

23 \* Sec. 11. AS 22.10.020(d) is amended to read:

24 (d) The superior court has jurisdiction in all matters appealed  
25 to it (1) from a subordinate court; (2) by a party to an arbitration  
26 award under AS 09.43.160(c); [,] or (3) an administrative agency when  
27 appeal is provided by law. The hearings on appeal from a final order  
28 or judgment of a subordinate court or administrative agency shall be  
29 on the record unless the superior court, in its discretion, grants a

1 trial de novo, in whole or in part.

2 \* Sec. 12. AS 22.15.030(a) is amended to read:

3 (a) The district court has jurisdiction of civil cases and  
4 proceedings as follows:

5 (1) for the recovery of money or damages when the amount  
6 claimed exclusive of costs, interest and attorney fees does not exceed  
7 \$25,000;

8 (2) for the recovery of specific personal property, when  
9 the value of the property claimed and the damages for the detention do  
10 not exceed \$25,000;

11 (3) for the recovery of a penalty or forfeiture, whether  
12 given by statute or arising out of contract, not exceeding \$25,000;

13 (4) to give judgment without action upon the confession of  
14 the defendant for any of the cases specified in this section, except  
15 for a penalty or forfeiture imposed by statute;

16 (5) for establishing the fact of death of any person in the  
17 manner prescribed in AS 09.55.020 - 09.55.060;

18 (6) for the recovery of the possession of premises in the  
19 manner provided under AS 09.45.070 - 09.45.160 when the value of the  
20 property or of the arrears and damage to the property does not exceed  
21 \$25,000;

22 (7) for the foreclosure of a lien when the amount in con-  
23 troversy does not exceed \$25,000;

24 (8) for the recovery of money or damages in motor vehicle  
25 tort cases when the amount claimed exclusive of costs, interest and  
26 attorney fees does not exceed \$25,000;

27 (9) over civil actions for taking utility service and for  
28 damages to or interference with a utility line filed under AS 42.20.-  
29 030;

1 (10) over cases involving injunctive relief for domestic  
2 violence under AS 25.35.010 and 25.35.020;

3 (11) over an appeal by a party to an arbitration award under  
4 AS 09.43.160(c) when the amount claimed exclusive of costs, interest,  
5 and attorney fees does not exceed \$25,000.

6 \* Sec. 13. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050,  
7 and 09.16.060 are repealed.

8 \* Sec. 14. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act  
9 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring  
10 the jury to answer the special interrogatories listed in AS 09.17.060  
11 regarding the amount of damages and the percentages of fault to be allo-  
12 cated among the parties and to itemize the verdict regarding economic and  
13 noneconomic loss as specified in AS 09.17.030.

14 \* Sec. 15. AS 09.17.060 enacted in sec. 1 of this Act has the effect of  
15 amending Alaska Rule of Civil Procedure 52 by requiring the court to make  
16 specific findings regarding the amount of damages and the percentages of  
17 fault to be allocated among the parties.

18 \* Sec. 16. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act  
19 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring  
20 the court to include a specific item in its judgment.

21 \* Sec. 17. AS 09.17.040 enacted in sec. 1 of this Act has the effect of  
22 amending Alaska Rule of Civil Procedure 11 by requiring verification of  
23 pleadings.

24 \* Sec. 18. AS 09.30.065 as amended by sec. 4 of this Act has the effect  
25 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment  
26 interest accrues from the day the cause of action accrues.

27 \* Sec. 19. APPLICABILITY. Sections 1 - 13 of this Act apply to all  
28 causes of action accruing after the effective date of this Act.

29 \* Sec. 20. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

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# 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	1,236,617	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	22,957	733,765	75.7%			
					\$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	Freemont Indemnity Co.	\$31,645,042	\$34,211,163	\$25,679,707	\$53,934,431	157.0%
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	1,051,834	68.0%
1	AK Pacific Assurance Co.	3,884,456	3,271,879	3,995,018	5,151,751	157.5%
7	Freemont Indemnity Co.	33,824,745	26,542,239	11,277,702	36,844,816	138.8%
9	ARECA Insurance Exchange	823,895	823,895	50,849	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	283,621,243	80,724,078	222,277,500	78.4%
11	Employers Insurance of Wausau, A Mutual Company	112,716,611	104,759,066	73,570,268	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	\$242,856,260	\$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.	3,271,879	414,259	2,790,689	85.3%	
7	Freemont Indemnity Co.	26,542,239	1,605,638	26,435,512	100.0%	
9	ARECA Insurance Exchange	823,895	30,435	362,961	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.	283,621,245	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	<u>29,249,801</u>	<u>1,126,201</u>	<u>16,247,129</u>	<u>55.6%</u>	
		\$548,233,838	\$ 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.

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TORT REFORM  
Workload Impact on the Court System  
[CSSB 377 (L & C)]

OVERALL IMPACT

Increased litigation. Could require the equivalent of one judge and related staff in Anchorage alone, which would increase the time to trial in civil cases from 3 to 4 years (assuming no new judge position).

Provisions which will result in more hearings.

1. Periodic payments for awards of \$50,000 or more will be mandatory if requested by the judgment creditor (09.17.030(a) - page 2). Requires court to find debtors in contempt if they show a pattern of failing to make payments (.030(c)). Puts court in position of monitoring installment payments. Many new hearings when defaults occur. Defendant will have right to jury trial on contempt issue. Paragraph (c) also requires court to determine damages related to failure to make timely payments. This is yet another issue to be litigated.
2. Apportionment of damages between parties (09.17.050 - page 3) including persons who have been released from liability. Litigation will result as defendants attempt to transfer liability to persons who have previously settled and who are not present at trial.
3. Mandatory arbitration for claims under \$100,000 (09.10.075 - page 5). Bill provides for a trial de novo, leading to duplicative hearings (09.43.160 - page 6).

Provisions which raise interpretation problems and therefore will be extensively litigated

1. Periodic Payments. Bill provides that when judgment debtor dies, payments must be made to "persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death." (09.17.030(b) - page 2). Litigation will result because it is unclear how this provision relates to probate of an estate and to a judgment debtor's will.
2. The bill abolishes joint liability. It requires the court to determine each party's "equitable share of the obligation" (09.17.050(c) - page 4). This phrase is open to interpretation and will lead to litigation.
3. Definition of fault (09.17.900(1) - page 4). The definition includes concepts which are not traditionally associated with fault, such as strict liability and breach of warranty. This whole section will lead to litigation.

Provisions which diminish the incentive to settle a case

1. \$250,000 cap on non-economic loss (09.17.010(b) - page 1). Does not create an incentive to settle, because bulk of damages in large monetary cases come from lost wages, not non-economic loss.
2. Periodic payments diminish the present value of an award because the award is paid out over time. This will encourage defendants to go to trial, since it will be economically beneficial to make payments over time rather than settle for a lump sum.
3. The bill eliminates attorney's fees unless the party at fault acted with malice, in bad faith or with reckless disregard of the rights of another (09.60.010 - page 6). Attorney's fees are an incentive to settle.

### Other Problems

1. Periodic payments. Inappropriate for court to be in position of monitoring these payments, because it puts the court in the collection business.
2. Arbitration. Many problems in this area. Who pays costs for indigent parties? Who are the arbitrators? There are very few potential arbitrators in rural areas. Even in urban areas, the pool of experienced litigation attorneys is quite small. Arbitration also means that a final decision in a case will be greatly delayed.
3. Litigation challenging constitutionality. Judge Serdahely believes there may be constitutional problems with the \$250,000 cap on non-economic loss and that a constitutional challenge will be mounted.

KF/k1

TORT REFORM AND RELATED INSURANCE ISSUES  
FOR DISCUSSION IN CONNECTION WITH SB 377

I. Background

The prime impetus behind the escalating plea for "tort reform" on both a national and state level is the rapidly increasing cost of insurance premiums. In some cases, premiums have risen 500 to 600% to renew coverage with the same carrier and as much as 800% if a new carrier is chosen. The impact on the business insurance consumer ranges from a decreased ability to compete in the marketplace to a decision to forego coverage or terminate the business enterprise.

Insurers admit that to some extent the higher premiums reflect the industrywide decision several years ago to cut radically premium prices in light of the substantial interest income then being realized on their investments. With the fall in interest rates, the industry suffered substantial losses which it is now seeking to recover.

In addition, aspects of the civil justice system, including contingent attorney's fees, large lump-sum non-economic awards, and the doctrine of joint and several liability among tortfeasors, have been identified as potential contributors to the current problem. The

insurance industry stresses a need for "predictability" in designing its rates which is hampered by the existing system.

Delineated below are a list of potential areas of "tort reform" which might be considered in addressing the issue. Alternatives to traditional insurance coverage, such as a state reinsurance program or the use of reciprocals are also listed.

II. Potential Areas for Change in the Civil Justice System Highlighted in CS SB 377 (L & C)

A. Non-economic damages. Proposal to cap the award at a specific figure, e.g., \$250,000 to \$500,000, or to set it at a percentage of the annual wage and life expectancy of the claimant. See Washington State Senate legislation, SB No. 4630, Sec. 301.

B. Itemized verdicts. A requirement that juries itemize each verdict in which an award of economic and non-economic damages is rendered.

C. Periodic payments. Various proposals to allow the plaintiff, the defendant or the court to provide for the periodic payment of damages over the life of the claimant rather than as a lump sum at the time of award.

D. Comparative fault. A proposal to reduce or eliminate the claimant's right of recovery based on his degree of fault. Under a "pure" comparative system, if the plaintiff were 25% responsible for his injury, he could recover no more than 75% of his damages from the defendant. Under the "modified" comparative system, the plaintiff could recover even if he is partially negligent, but only if he is no more negligent than the defendant.

E. Joint and several liability. Under current law, in cases of multiple tortfeasors, a defendant who is only 1% responsible for a claimant's damages may be required to pay 100% of the award, if his co-defendants are insolvent. This so-called "deep pocket" rule is viewed as the main reason plaintiffs' lawyers seek to bring the state or a municipality into a lawsuit as a defendant.

A proposal to reduce the utility of the "deep pocket" rule is a combination of the comparative fault rule and modified use of the joint and several liability concept. For example, a claimant 25% responsible for his damages could only recover a total of 75% of his damages. Assume two defendants, one of whom is 65% responsible but is insolvent, and the other who is 10% responsible but a "deep pocket." Under one version of the proposal, the 10% responsible defendant would pay no more than 50% of the damages for which the claimant was not responsible. Thus,

in this example, 50% of 75% = 37.5% of the total damage sustained by the plaintiff. Although still skewed in favor of the plaintiff, a procedure of this type would substantially reduce liability of "deep pockets."

F. Effect of release. A proposal to reduce the plaintiff's potential damage award from non-settling defendants by the amount of the released defendant's equitable share of the obligation.

G. Arbitration requirement. A proposal to require arbitration of tort claims prior to instituting a civil action when the amount in controversy is less than a specific dollar amount, e.g., \$100,000. A further proposal is to require arbitration of contribution claims among joint tortfeasors.

H. Offers of judgment. One proposal eliminates prejudgment interest from the date of a settlement offer if the plaintiff refuses the offer and ultimately collects less damages at trial. A second proposal involves modifying the interest rate on an award depending upon who prevails at trial following a rejected settlement offer.

### III. Other Areas of Potential Civil Justice Reform

A. Attorney contingent fee awards. Proposals to limit the amount of a plaintiff's attorney's fees. Suggestions include a limit of 1/3 of the total award, with specific approval by the court to exceed that amount, and a graduated system, e.g., 50% of the first \$50,000, 25% of the next \$100,000, and 15% of anything exceeding these amounts. Another proposal simply requires judicial approval of the party's attorney's fees. See, Washington State Senate legislation, SB 4630, Sec. 201.

B. Collateral source rule. To the extent a plaintiff recovers damages from a source other than the named defendants, his damage award for economic losses should be reduced, e.g., self-insurance.

C. Verification of claims. Proposal to have claimants sign their complaints under penalty of perjury.

D. Penalty for frivolous suits or motions. Proposal for a penalty for non-meritorious lawsuits or motions.

E. Punitive damages. Proposals range from elimination of punitive damages to payment of these awards to a state fund rather than to the claimant.

F. Repeal of Civil Rule 82. This rule was adopted to apply in certain public interest lawsuits and allows the court to increase attorney's fees up to 10% above the agreed upon level.

G. Plaintiff's intoxication. If a plaintiff's intoxication or illegal drug use is more than a 50% cause of his damages, he should be barred from recovery.

#### IV. Changes in the Insurance Industry

A. Disclosure of information. Proposal to require insurance companies to disclose data to the Division of Insurance on a closed claim basis.

B. Premiums based on experience. Proposal to have insurance premiums based on the insured's track record. Premiums should be higher for repeat claimants than for those who never make claims. Alternatively, premiums could be lowered for those who maintain claimless records.

C. Notice for cancellation of policies. Notice for cancellation of policies should be increased to sixty days and unused premiums simultaneously returned to the premium holder to provide the consumer a reasonable opportunity to obtain other coverage. See SB 404.

D. Insurance premiums. Proposal for a limitation on increases in premiums on an annual basis, e.g., 10%.

E. Information on claims of professionals. Proposal to have either the Division of Insurance, the relevant insurance company or the insured provide information concerning the number and amount of successful claims against him to the relevant professional licensing board.

V. Alternatives to Traditional Insurance Coverage

A. State reinsurance program. Establishment of a state reinsurance plan such as that incorporated in HB 589 with respect to state disability insurance.

B. Reciprocal insurance arrangements. Establish reciprocal insurers which consist of unincorporated groups of subscribers operating collectively through an attorney-in-fact to provide reciprocal insurance among themselves, e.g., the Alaska Timber Exchange.

C. Pooling arrangements. Establish pooling arrangements among groups such as municipalities or school districts.