ALASKA LEGISLATURE COMMITTEE FILES 1987-88 8672
4469 HCRA HB 227

41

- o authorizes, through a "sunshine" provision, the Insurance Superintendent to report financial and loss data and codefendants in suits regarding recreational, childcare, dram shop, municipalities, owners, landlords and tenants. etc.

- o expedites access to provision of excess and surplus lines.

- o appropriates $3 million to enhance the Insurance Department's regulatory authority.

- o A. 10664 and S. 9391A, "toxic tort" legislation (CH. 682, Session Laws 1986) includes the following proposals related to toxic torts and torts generally:

  - o extension of statute of limitations for filing toxic tort actions from 3 years after exposure to 3 years after discovering an injury; with one year revival of claims.

  - o in personal injury actions, joint and several liability is inapplicable for noneconomic losses if the defendant is less than 51% liable (with some exceptions).

  - o authorization of structured settlements when awards exceed $250,000.

  - o A. 11584 and S. 9470 (CH. 226, Session Laws, 1986) affect medical malpractice as follows:

    a) allow the Insurance Superintendent to establish medical malpractice rates.
    b) phase in issuance of claims - made policies.
    c) require certificates of merit and encourage arbitration in order to discourage frivolous suits.
    d) enhance examination processes regarding physician misconduct.

NORTH CAROLINA

1986 Regular and Special Session Completed

Enacted

- o SB 873 will require insurers to provide additional data based on North Carolina and/or regional experience, to support rate increase requests.

- o SB 873 restores the Insurance Commissioner's rollback authority on rates found to be excessive. Challenges to rollback decisions can be made and, when filed, rate amounts purported to be in excess will be placed in an escrow account. Refunds would be made with interest (computed at the prime rate plus 3%).

  The same legislation calls for two non-voting members to serve on the state's Rating Bureau, and places additional burdens on plaintiff's attorneys in proving they have meritorious claims. It requires 45 day notice of policy cancellations, nonrenewals and premium increases and authorizes formation of local government self-insurance pools.

- o SB 873 amends rules of civil procedure so that in matters in controversy stemming from all negligent actions where the damages sought exceed $10,000, pleadings for an unspecified amount over $10,000 shall be sought.

- o HB 2103 establishes a 1.75% premium tax rate for domestic and foreign insurors, said rate to sunset 1-1-88.

- o Authorized the Insurance Commissioner, on a standby basis, to establish joint underwriting associations.

- o Authorized the Insurance Commissioner to extend the state's FAIR plan to all areas of the state.

- o Called for a referendum on a state radioactive repository site act.

OHIO

Enacted

- o HB 875 permits political subdivisions to participate in joint liability insurance pooling arrangements.

- o SB 366 grants immunity from civil action damages with specific conditional exceptions, for volunteers of nonprofit or charitable associations. Immunity relates to liability arising from civil actions for injury, death or loss to persons or property.

Under Consideration

- o SB 330 has been assigned to a conference committee, conferees have been designated, and an informal review and discussion process will commence in the latter part of September. SB 330 propose the following insurance reforms:

  - o requiring advance notice of policy nonrenewals;

  - o authorizing the establishment of joint underwriting associations;

  - o prohibiting mid-term policy cancellations;

  - o permitting banks to invest in the reinsurance market;

  - o formalizing mechanisms for existing market assistance plans; and

  - o expanding the Insurance Department's powers to include subpoena of insurer records and standby authority for prior approval of rates.

- o SB 330 proposes the following civil justice reforms:

  - o deducting benefits and/or payments from collateral sources from awards;

  - o permitting structured settlements when awards exceed $100,000;

- o modifying the allocation of damages under joint and several liability when certain damages are not collectable;
- o authorizing hearings to determine if suits are frivolous; and
- o authorizing pre-trial settlement offers which would require non-judicial settlement when offers exceed plaintiff's demands.

OKLAHOMA

1986 Session Completed

Enacted

SB [illegible] accomplishes the following insurance regulation changes:

- o requires the 10 largest P/C insurers to annually submit reports on premiums, losses, settlements, judicial dispositions, etc. among 11 coverage categories.
- o requires the 50 largest P/C insurers to annually submit data on premiums, losses, judgments over $250,000, etc. on a less detailed, more restricted basis than for the 10 largest insurers.
- o implements unfair claims settlement practices statutory language and permits the Insurance Commissioner to require periodic reports from violators.

SB 488 accomplishes the following civil justice system changes:

- o limits punitive damages to actual damages and applies a stricter standard for justifying consideration of punitive damages.
- o allows judges to direct juries to itemize verdicts (constitutional prohibition on a mandate).
- o allows prevailing parties to recover up to an aggregate of $10,000 in attorneys fees and court costs in judicially-determined frivolous suits.
- o amends the interest payable on actual damages sought from 15% to the T-Bill rate plus 4%.

HB 1983 authorizes the Insurance Commissioner to establish a market assistance plan.

Interim

SB 488 creates an 18-member (10 legislators - 8 public members) Select Committee on Insurance Rates and Tort Claims.

OREGON

Not In Session in 1986

Interim

A liability insurance interim committee has recently and unanimously endorsed a proposal that would make punitive damages non-insurable as a matter of public policy. Additional recommendations may surface in early fall.

PENNSYLVANIA

Enacted

- HB 1391 provides for 30 day notice of cancellation and 60 day notice of premium increase.
- HB 1625 provides for immunity for referees.

Under Consideration

- Senate Bills 1392-95 have been introduced. Collectively, they propose to accomplish the following:
  1) authorize establishment of a joint underwriting association for all lines of unavailable liability coverage.
  2) require 60 days notice of insurance premium rate increases.
  3) require disclosure of insurance company loss experience within the state.
  4) establish a central risk management agency - provide advice to local governments.
  5) establish a joint self-insurance fund for municipalities and authorize cities to join.
- SB 1513 proposes major medical malpractice modifications.
- The House has completed a comprehensive hearing process, begun last September, which has looked at key problems, major causes and options to resolve the crisis. Major tort and product liability reform legislation, HB 2425 and 2426, are in committee. The legislature reconvenes in September.

RHODE ISLAND

1986 Session Completed

Enacted

- S. 2891, Sub B and HB 8534, Sub A - (related to medical malpractice) establish reporting requirements for every insurer providing professional liability insurance to licensed physicians, dentist or dental hygienists as to any settlement or arbitration award of claim or any action for damages for death or personal injury. This legislation

also establishes a joint underwriting association for the provision of medical malpractice coverage.

SOUTH CAROLINA

1986 Session Completed

Enacted

- HB 2266 restores some of the state's sovereign immunity by reestablishing approximately 20 categorical, qualified immunities.

  It also places monetary liability limits on the state and its political subdivisions of $250,000 per incident and $500,000 per occurrence.

Legislation Considered - Not Passed

- SB 895, originally calling for numerous medical malpractice tort reforms, was revised to limit punitive damages to actual damages; establish preaction discovery and set up a certification process determining whether suits are frivolous. Final passage did not occur.

Previous Action

- South Carolina's Insurance Commissioner has been empowered to establish a joint underwriting association for any professional group unable to secure liability insurance coverage. This authority was previously restricted to j.u.a. formation for health care providers.

SOUTH DAKOTA

1986 Session Completed

Enacted

- SB 280 which will require pre-discovery, fact-finding hearings before a judge to prove, by clear and convincing evidence, that there was willful and malicious conduct in order to file for punitive damages.

- SB 281 authorizes structured settlements for awards exceeding $100,000.

- SB 282 will cap medical malpractice awards at $1 million. (Includes all recoverable damages).

- SB 216 permits establishment of self insurance pools for public entities for purposes of securing liability coverage. This can occur only if a master insurance contract is not purchased.

- HB 1106 revises provisions relating to property insurance policy nonrenewal notice. Increases notice time from 20 days to 30 days, effective 7-1-88 and from 20 days to 45 days for the period 7-1-86 to 6-30-88.

- o Waiver of sovereign immunity for public entities, other than the state, will occur only to the extent that said entities have purchased liability coverage (SB 233).

Legislation Considered - Not Passed

Bills which were introduced but were not passed included legislation abolishing the doctrine of joint and several liability (HB 1261), limiting punitive damages (SB 269), reforming the tort system as it pertains to public entities (HB 1278), mandating an offset for payment of special damages in certain circumstances (SB 279), creating a joint underwriting association for medical malpractice (HB 1269) and requiring insurers to file case reports with the Insurance Division (HB 1281).

Interim

1986 Summer Interim Judiciary Committee - A study of the entire area of liability insurance, including relative legislation considered by the Sixty-First Legislative Session; a review of what information is needed by the division of insurance to regulate insurance companies' rates; and a study of alternative ways to regulate costs of defending tort claims lawsuits. The committee has met once with a second scheduled for early July.

TENNESSEE

1986 Session Completed

Enacted

- o HB 1582 (Public Chapter No. 650) will prohibit cancellation of or failure to nonrenew commercial risk insurance policies with some exceptions.

- o Immunity from suit for directors of nonprofit organizations (exempt from federal taxation), of governing bodies of electrical cooperatives and electrical membership corporations is authorized in HB 1940.

- o Regarding dram shop, HB 1199 prohibits any judge or jury from pronouncing any damages against an alcohol seller unless it is ascertained that the sale of intoxicating beverages was the proximate cause of subsequent injury or death.

SB 1702 (Public Chapter No. 726) - all members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity, created by public or private act, whether compensated or not, shall be immune from suit arising from activities of the entity unless conduct amounts to willful, wanton or gross negligence.

SB 1854 (Public Chapter No. 730) - provides immunity for local educaton agency employees, including board members, superintendents, teachers and nonprofessional staff members for suits arising from detection, management or removal of asbestos.

HB 1199 (Public Chapter No. 519) - prohibits any judge or jury from pronouncing damages against an alcohol seller unless it is ascertained that the sale of intoxicating beverages was the proximate cause of subsequent injury or death.

SB 1458 - (Public Chapter No. 535) raises the capital and surplus requirements of insurance companies in Tennessee.

Interim

SR 43 directs a special committee to study liability insurance issues including (but not limited to) availability, coverage cost, liability limits and litigation.

TEXAS

Not In Regular Session in 1986

Interim

- A market assistance plan for hard-to-get lines of liability coverage has been established.
- A joint legislative committee on Liability Insurance and Tort Law and Procedure Reform has been established and conducted several meetings. Additional meetings are currently scheduled with November 15, 1986 targeted as a final reporting date.
- The State Board of Insurance has initiated a closed claims survey that will review about 73% of the liability coverage provided in the state for the years 1983-1985.
- Examination of the state's ability to create a state insurance pool for governmental units is underway by the State Board of Insurance.

UTAH

1986 Session Completed

Enacted

- Repealed joint and several liability (SB 64).
- Established a $100,000/$300,000 cap on dram shop liability and set a 2-year statute of limitation (SB 182).
- Authorized establishment of market assistance plans and joint underwriting associations (SB 91).
- SB 111 limits noneconomic damages to $250,000 in medical malpractice judgments while SB 155 establishes structured settlements for medical malpractice judgments only.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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- SB 111 limits noneconomic damages to $250,000 in medical malpractice judgments while SB 155 establishes structured settlements for medical malpractice judgments only.

- o Limited directors' and officers' liability through revamped standards of care (SB 214). Governor vetoed.

Legislation Considered - Not Passed

- o Modifications to statutes of limitation, mandatory arbitration and establishment of pretrial screening panels were introduced but failed to pass.

Interim

- o An interim committee tackled this subject in 1985 and another has been formed for 1986.

VERMONT

1986 Session Completed

Enacted

- o Pooling by municipal governments is authorized via HB 8641.
- o HB 8657 empowers the Insurance Commissioner to establish a joint underwriting association for a broad array of hard-to-get lines of liability insurance coverage.

Legislation Introduced - Not Passed

Unsuccessful attempts to cap attorneys' contingency fees and limit noneconomic damages were made.

Prior Action

A market assistance plan was established in January.

VIRGINIA

1986 Session Completed

- o No major action in 1986 session.
- o An interim study committee has been established and is reviewing the entire liability insurance issue.
- o A joint underwriting association for provision of medical malpractice coverage has been created by the State Corporation Commission.

WASHINGTON

1986 Session Completed

Enacted

SB 4630 - accomplishes the following:

- o Caps, noneconomic damages per a statutory formula. The estimated cap range is $117,000 - $493,000. The formula is .43 x average annual wage (currently $18,029) x plaintiff's life expectancy (no less than 15 years; use Insurance Commissioner's mortality table).

- o Abolishes claims involving joint and several liability except for the following:

  a) hazardous waste and solid waste disposal sites;
  b) business torts; and
  c) manufacturers of generic products.

- o Accelerates the statute of limitations for contractors.

- o Authorizes structured settlements for all judgments exceeding $100,000.

- o Establishes a voluntary market assistance plan requiring participation of 25 admitted or non-admitted companies.

HR 2080 and 2083 - respectively authorize the establishment of a joint underwriting association and self-insurance mechanism for provision of liability coverage for day care providers.

SB 3636 - enables the Insurance Commissioner's office to be funded from dedicated rather than General Revenue sources.

HB 1972 - authorizes local governments to self-insure.

SB 4541 - requires prior notice to policyholders of cancellation and further requires 20 days prior notice of rate and form changes before policy renewal anniversary dates.

Legislation Considered - Not Passed

Among the bills failing to pass was legislation giving the Insurance Commissioner additional time to review rate applications and to base rates on Washington State experience; authorizing establishment of joint underwriting associations for any hard-to-get line of coverage; memorializing Congress to modify the McCarran-Ferguson Act; and compelling all insurance companies to file all financial information with the National Association of Insurance Commissioners.

WEST VIRGINIA

1986 Session and Special Session Completed

Enacted

- o Regular session legislation (SB 714) caps noneconomic damages awards in medical malpractice judgments at $1 million per incident. HB 149 (special session) permits a judge, with discretionary power, to instruct a jury regarding these caps.

- o SB 714 prohibited insurers from cancelling or nonrenewing health care provider policies unless insurers could prove that the risk of loss had increased or that they could not back up their own risk with reinsurance. HB 149 removes most causal and durational restrictions on nonrenewals.

- o SB 714 required expanded disclosure of claims, investments, judicial dispositions, etc. related to West Virginia. The legislation further required the Insurance Commissioner to conduct public hearings whenever rates were expected to increase 10% or more with verification of past loss experience in medical malpractice settlements and judgments required. HB 149 reduced reporting requirements to profit and loss, reserve and surplus data on an aggregate rather than company basis. Public hearings on rate increases exceeding 10% must be held within 60 days or the rate filing.

- o HB 149 eliminates joint and several liability for individual defendants who are 25% or less responsible.

- o Other special session legislation, SB 3, authorizes the following regarding the state's political subdivisions:

  - o individual or collective self-insurance; and
  - o purchase of liability insurance through the State Board of Insurance and Risk Management.

- o SB 3 also limits noneconomic damages in suits involving political subdivisions to $500,000, deploys the 25% rule (see HB 149 above) regarding joint and several liability and lays out standards for liability immunity of political subdivision employees.

Interim Studies

A legislator/citizen interim committee on liability insurance will be organized in late June.

WISCONSIN

1986 Regular Session and Special Session Completed

Enacted

The legislature approved medical malpractice legislation during its special session. Major ingredients of the medical malpractice legislation include:

- o $1 million cap on noneconomic damages;

- o sliding scale for attorney contingency fees (from 1/3 of first $1 million if proving negligence, to 25% of damages if defendant admits negligence, to 20% of damages exceeding $1 million).

- o elimination of pretrial screening panels to be replaced with a voluntary, non-binding mediation process.

Special session legislation (AB 8) also accomplishes the following:

- o authorizes the establishment of risk sharing pools for liability insurance coverage for public and private sector entities. Risk sharing pools cannot be authorized to produce coverage for risks the Insurance Commissioner determines to be "uninsurable".
- o increases minimum capital and surplus requirements.
- o increases, from 30 days to 60 days, the notice period for mid-term cancellations.

Interim

A final report from an Insurance Commissioner's Task Force on Property/Casualty Insurance was due in July, 1986. The final report will include recommendations. Three subcommittees, on Civil Justice Reform, Pools and MAPs and Industry Actions, have already reported.

The Legislative Council is considering an interim study of the civil justice system.

WYOMING

1986 Session Completed

Enacted

- o HB 12 will modify the standards of care used to determine medical malpractice.
- o HB 13 will remove individuals legally supplying alcoholic beverages from liability for resultant damages caused by individuals consuming the alcoholic beverages.
- o HB 14 will authorize courts to determine frivolous suits. Plaintiffs in frivolous suits could be made liable for payment of reasonable court expenses and attorneys fees.
- o HB 15 provides for an affidavit of non-involvement as a summary means to obtain early dismissal of suits against defendants who are clearly not involved in the occurrence giving rise to the tort claim.
- o HB 38 creates statutory definitions of unfair insurance claims practices.
- o HB 39 grants any officers, commissioners or board members of government and nonprofit entities immunity from liability for any action, omission or inaction of the respective government or corporate body.
- o HB 40 establishes pretrial screening panels for medical malpractice suits.
- o HB 44 modifies the state's sovereign immunity and liability limits.

- HB 59 makes certain entities not liable for injuries incurred at amateur rodeos unless there is willful neglect.

- SF 17 repeals the doctrine of joint liability.

- SF 21 and SF 26 respectively create state and local government self-insurance programs and establish pools for state and local government entities.

- SF 69 prohibits midterm cancellations with some exceptions, such as nonpayment of premiums. Authorized cancellations must be preceded by a 10-45 day notice to policyholders. A 45-day notice with statement of reasons is required for nonrenewals.

Legislation Considered - Not Passed

Bills restricting punitive damages, capping awards, limiting noneconomic damages, restricting attorneys fees, placing moratoria on suits against the state and authorizing joint underwriting associations were introduced but did not pass.

ATTACHMENT B

OPTIONAL INSURANCE MECHANISMS

A) OPTIONAL INSURANCE MECHANISMS

I. SELF-INSURE AND/OR GROUP PURCHASE

ARIZONA	(Nonprofits; Municipalities; Schools)
GEORGIA	(Municipalities; School Boards)
INDIANA	(State-Administered Pools)
IOWA	(Local governments; public sector entities)
MARYLAND	(Local governments; Nonprofits)
MINNESOTA	(State Risk Management Fund)
SOUTH DAKOTA	(Public Entities)
VERMONT	(Municipal governments)
WASHINGTON	(Day care providers; Local governments)
WISCONSIN	(Risk Retention Pooling - Public/Private Entities)
WYOMING	(State and local governments)

II. JOINT UNDERWRITING ASSOCIATIONS

ARIZONA	
HAWAII	(Child care providers)
MINNESOTA	
MONTANA	
NORTH CAROLINA	
VERMONT	
UTAH	
WASHINGTON	

III. MARKET ASSISTANCE PLANS

Majority of States

IV. CAPATIVE LICENSURE/OPERATION

HAWAII

Prepared by NCSL, 1986

ATTACHMENT C

INSURANCE REGULATION REFORM

B) INSURANCE REGULATION REFORM

I. EXPANSION OF DATA SUBMITTED BY INSURERS

ALABAMA
ARIZONA
COLORADO
CONNECTICUT
GEORGIA
WEST VIRGINIA

II. PERMIT POLICY CANCELLATION ONLY WITH CAUSE

ARIZONA
CONNECTICUT
KANSAS
TENNESSEE
MAINE
WEST VIRGINIA
WYOMING

III. MANDATORY NOTICE OF NONRENEWALS/CANCELLATION/RATE INCREASES

COLORADO	
CONNECTICUT	(60 days)
KANSAS	(60 days)
MAINE	(30 days)
NEW HAMPSHIRE	(60 days)
WASHINGTON	(20 days)
WISCONSIN	(60 days)
WYOMING	(10-45 days)

IV. ESTIMATE TORT REFORM SAVINGS

WASHINGTON

ATTACHMENT D

LEGISLATION SUBJECT SUMMARY

06/30/86
BILP200R

LEGISLATION SUBJECT SUMMARY

R01-33F-3045

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTED BY	CURRENT STATUS
HYDROELECTRIC PROJEC	HB 219	POWER DEV'T LOANS/JOINT OPERATING AGENCIES	STATE LOANS		CHAPTER 80 SLA 85
	HB 351	FEDERAL ALASKA POWER ADMINISTRATION	PIGNALBERI		(H) L&C
	HB 389	DIRECT SERVICE CHARGES FOR APA POWER SALES	RULES	THE GOVERNOR	(H) C&RA
	HB 477	REAPPROPRIATING SUSITNA/BRADLEY/POWER FUNDS	RULES	GOV	CHAPTER 41 SLA 86
	HJR 16	LICENSING OF BRADLEY LAKE HYDRO PROJECT	NAVARRE		(S) RES
	SB 27	APPROP: STATEWIDE CAPITAL PROJECTS	FAIKS		CHAPTER 96 SLA 85
	SB 123	POWER DEVELOPMENT FUND & APA REPORT	RULES	THE GOVERNOR	(S) RES
	SB 338	REAPPROPRIATING SUSITNA/BRADLEY/POWER MONEY	STURGULEWSKI		(S) FIN
	SB 342	REAPPROPRIATING SUSITNA/BRADLEY/POWER FUNDS	RULES	THE GOVERNOR	(S) L&C
	SB 395	ADVISORY VOTE ON SUSITNA PROJECT FUNDING	FISCHER,V		(S) RES
	SB 454	APPROP: UTILITIES, MUNICIP'S, HYDRO PROJ'S	FERGUSON	BY REQUEST	(S) L&C
	SB 476	ENERGY PROJECTS FOR RAILBELT; APA DESIGN & POWER	FINANCE		(H) LOAN
IMPLACHMENT	HB 516	IMPEACHMENT & DISQUALIFICATION OF JUDGES	GRUENBERG		(S) RLS
IMPLIED CONSENT	HB 394	INTOX. TEST; OPERATORS OF BOATS/AIRPLANES	PIGNALBERI		(H) SA
	SB 20	INTOX. TEST; OPERATORS OF BOATS/AIRPLANES	RAY		CHAPTER 76 SLA 85
	SB 74	DRUNK DRIVING; DRUGS, SENTENCES, BREATH TEST	ABOOD		(H) JUD
	SB 76	ATTORNEY CONTACT ONLY AFTER EVIDENCE SEIZED	ABOOD		(S) JUD
INITIATIVES	HB 270	MUNIC. RECALLS/REF'DUMS/INITIATIVES/ELECTNS	LARSON		(H) C&RA
	HJR 28	CONST'L AMENDMENT & APPROP. BY INITIATIVE	HARROU		(H) JUD
INJUNCTIONS	HB 544	CORPORATE & BUSINESS NAMES; INJUNCTIONS	PHILLIPS		(S) FIN
INSURANCE	HB 56	PROOF OF INSURANCE WHEN REGISTERING VEHICLE	COLLINS		(H) L&C
	HB 68	MANDATORY INSURANCE FOR LICENSED DRIVERS	SHULTZ		CHAPTER 69 SLA 86
	HB 77	CAPITAL FUNDS REQUIRED OF INSURERS	CATO		CHAPTER 5 SLA 85
bills	HB 80	INCREASING FEES PAID BY INSURANCE COMPANIES	RULES	THE GOVERNOR	CHAPTER 26 SLA 85
	HB 162	DISPOSITION OF UNCLAIMED PROPERTY	RULES	THE GOVERNOR	CHAPTER 133 SLA 86
	HB 277	ALLOW INVESTMENTS IN AFRICAN DEV'MENT BANK	JUDICIARY	BY REQUEST	(S) L&C
	HB 313	INS. POLICIES; MENTAL HEALTH COVERAGE REQRD	DAVIS		(H) FIN
	HB 356	ASSIGNMENT OF GROUP INSURANCE POLICIES	GRUENBERG		CHAPTER 4 SLA 86
	HB 358	NONPROBATE TRANSFERS	GRUENBERG		(H) JUD
	HB 437	PREFERRED/EXCLUSIVE PROVIDER INSURANCE	JENKINS		(H) L&C
	HB 476	NOTICE OF INCREASE IN CAR INSURANCE PREMIUM	MILLER,MM	BY REQUEST	(S) RLS
NOOC →	HB 481	VERDICTS/DAMAGES/LIABILITY IN CIVIL ACTIONS	RIEGER		(H) L&C
4 →	HB 490	PERIODIC PAYMENT OF JUDGMENTS	SZYMANSKI		(H) L&C
	HB 506	REINSURANCE FUND AND INSURANCE POOLING	TAYLOR		CHAPTER 136 SLA 86
←	HB 522	UNFAIR INSURANCE CLAIMS SETTLEM'T PRACTICES	SUND		(S) RLS
	HB 535	INSURANCE REQUIRED FOR VEHICLE REGISTRATION	RIEGER		(S) RLS
NOOC →	HB 540	ASSIGNED RISKS; CREDIT LIFE MORTGAGE INSUR.	SUND		(H) L&C
	HB 547	HEALTH INSURANCE POOL FOR HIGH RISK PEOPLE	SUND		(H) L&C
11 →	HB 585	JOINT SELF-INSURANCE FOR SCHOOL DISTRICTS	WALLIS		(H) L&C
	HB 589	GROUP LIFE & HEALTH INS. FOR RESIDENTS	SUND		(S) L&C
	HB 654	STATE MOTOR VEHICLE INSURANCE PROGRAM	KOPONEN		(H) L&C
	HB 657	CREATE STATE WORKERS' COMP FUND	KOPONEN		(H) L&C
11 →	HB 702	STATE REINSURANCE FUND	LABOR&COMMERCE		(H) JUD
	HB 710	PREMIUM TAX FOR DOMESTIC INSURERS	LABOR&COMMERCE		(H) L&C
11 →	SB 88	AK LIFE/DISABILITY INSURANCE GUAR ASSOC	RULES	THE GOVERNOR	(S) L&C
	SB 116	ALLOW INVESTMENTS IN AFRICAN DEV'MENT BANK	RODEY		(S) L&C
4 →	SB 156	FORM OF PAYMENT FOR INSURANCE SETTLEMENTS	RODEY		(S) L&C
	SB 222	INSURANCE BENEFITS; PSYCHOLOGICAL SERVICES	JOSEPHSON		(S) HESS
6 →	SB 288	LIQUOR LICENSE HOLDERS' INSURANCE CORP.	JOSEPHSON		(S) L&C

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTED BY	CURRENT STATUS
INSURANCE	SB 295	MENTAL HEALTH DISABILITY INSURANCE	FAIRS		(H) RLS
	SB 340	SURPLUS LINES INSURANCE BROKERS	RULES	BY REQUEST	(S) L&C
	SB 365	BROKER AS INSURER'S AGENT FOR PREMIUMS	RULES	THE GOVERNOR	(H) L&C
	SB 366	CANCELLATION OF INSURANCE POLICIES	RULES	THE GOVERNOR	(S) L&C
	SB 379	PREMIUM TAX DOMESTIC AND FOREIGN INSURERS	RULES	THE GOVERNOR	CHAPTER 118 SLA 86
	SB 380	MINIMUM INSURANCE FOR COMMERCIAL VEHICLES	RULES	THE GOVERNOR	(S) L&C
	SB 404	JOINT INSURANCE ARRANGEMENTS	JOSEPHSON		(S) FIN
	SB 440	USE OF BLOOD TESTS BY INSURERS	DEVRIES		(S) L&C
	SB 442	MARINE INSURANCE; RECIPROCAL INSURERS	ELIASON		CHAPTER 48 SLA 86
	SB 443	SURPLUS LINES INS. BROKERS MONTHLY REPORTS	HALFORD		(S) JUD
	SB 445	MISCELLANEOUS CHANGES IN INSURANCE LAWS	FISCHER,V		(S) L&C
	SB 455	REDUCED AUTO INS RATES/PERSONS OVER 55	LABOR&COMMERCE		(S) L&C
	SCR 20	AVAILABILITY OF MARINE INSURANCE	ZHAROFF		(S) FIN
	SCR 35	URGING NATIONAL REGULATION OF INSURANCE	FISCHER,V		(S) RLS
	SJR 45	FISHERMEN'S INJURIES COMPENSATION	LABOR&COMMERCE		LEGIS RESOLVE 49
INTEREST	HB 20	INTEREST ON PUBLIC UTILITY DEPOSITS	GOLL		CHAPTER 50 SLA 86
	HB 51	INTEREST ON ESCROW ACCTS FOR MORTGAGE LOANS	DUNCAN		(H) FIN
	HB 109	SETTING INTEREST RATES FOR STATE LOANS	RULES	THE GOVERNOR	(H) LOAN
	HB 161	STUDENT LOANS; ELIGIBILITY/INTEREST RATES	BINKLEY		CHAPTER 65 SLA 86
	HB 217	INTEREST RATES FOR VARIOUS LOANS/CONTRACTS	DUNCAN		AWAITING CONC/RECLD
	HB 378	INTEREST RATE ON STATE LOAN PROGRAMS	ADAMS		(H) LOAN
	HB 459	USE OF INTEREST EARNED ON GRANT MONEY	MARTIN		(H) FIN
	HB 501	AK POWER AUTHORITY; REPORTS, FUND INTEREST	RULES	THE GOVERNOR	(H) LOAN
	HB 557	INTEREST ON ATTORNEY TRUST ACCOUNTS	DUNCAN		(H) RLS
	HB 622	INTEREST RATE ON DELINQUENT TAXES	PIGNALBERI		(H) JUD
	SB 6	INTEREST ON ESCROW ACCTS FOR MORTGAGE LOANS	RAY		(S) L&C
	SB 216	INTEREST RATE ON AGRICULTURAL LOANS	COGHILL		(S) RES
	SB 281	INTEREST RATE ON STATE LOAN PROGRAMS	HALFORD		(H) LOAN
INTERNATIONAL RELATI	HB 465	STATE FISCAL INVOLVEMENT IN SOUTH AFRICA	CLOCKSIN		(H) FIN
	HB 633	ALASKA EXPORT DEVELOPMENT AUTHORITY	MARTIN		(H) L&C
	HCR 7	JOINT SPECIAL COMMITTEE ON FOREIGN TRADE	RULES		LEGIS RESOLVE 5
	HCR 10	SUPPORTING INTERNATIONAL YOUTH YEAR	CLOCKSIN		LEGIS RESOLVE 13
	HCR 17	END STATE INVESTMENTS RELATED TO S. AFRICA	DUNCAN		(H) SA
	HJR 13	SISTER STATE RELATION WITH HEILONGJIANG	RULES	THE GOVERNOR	LEGIS RESOLVE 2
	HJR 15	EXPORT OF ALASKA OIL	MARTIN		(H) O&G
	HJR 23	RETENTION OF WEST COAST U.S. CUSTOMS OFFICE	MARTIN		LEGIS RESOLVE 14
	HJR 37	AMERICANIZATION OF ALASKA'S FISHERIES	GOLL		(H) RES
	HJR 39	EXPORT OF ALASKA OIL	OIL AND GAS		LEGIS RESOLVE 25
	HJR 43	HIGH SEAS SALMON INTERCEPTION	GOLL		LEGIS RESOLVE 24
	HJR 52	URGING NUCLEAR-FREE SUBARCTIC AND ARCTIC	KOPONEN		RETURN TO (H) RLS
	HJR 53	US/USSR BOUNDARY DISPUTE IN BERING SEA	JENKINS		LEGIS RESOLVE 37
	HJR 55	PROMOTING SOUTHEAST INTERTIE WITH CANADA	GRUSSENDORF		(H) RLS
	HJR 56	U.S. SENATE CONSENT TO GENOCIDE CONVENTION	CRUEMBERG		(H) HESS
	HJR 60	INTERNATIONAL YEAR OF PEACE	MILLER,HM		LEGIS RESOLVE 55
	HJR 65	FOREIGN MARKETING OF PINK SALMON PRODUCTS	HERRMANN		(S) RLS
	HJR 68	HIGH SEAS INTERCEPTION OF SALMON	RULES	BY REQUEST	(H) RLS
	HJR 72	AK, YUKON & N.W. TERR. LEG./JOINT MEETING	C&RA		LEGIS RESOLVE 47
	HJR 74	FRIENDSHIP WITH HEILONGJIANG PROVINCE	RULES	THE GOVERNOR	LEGIS RESOLVE 48
	HR 8	SISTER STATE RELATIONSHIP WITH TAIWAN	RINGSTAD		HOUSE RESOLVE 5
	SB 59	PACIFIC RIM FELLOWSHIP PROGRAM	RULES	THE GOVERNOR	(S) FIN
	SB 328	STATE FISCAL INVOLVEMENT IN SOUTH AFRICA	FISCHER,V		(S) HESS
	SCR 14	END STATE INVESTMENTS RELATED TO SO. AFRICA	FISCHER,V		(S) SA
	SJR 7	COOPERATION BETWEEN AK & FOREIGN NATIONS	COGHILL		(S) JUD

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTED BY	CURRENT STATUS
TEACHERS	HB 234	RETIREMENT CREDIT FOR MILITARY SERVICE	HESS		(H) SA
	HB 289	TENURE & REDUCTIONS-IN-FORCE BY SCHOOL BDS	FULLER		(H) HESS
	HB 674	CERTIFICATION REQUIREMENTS FOR TEACHERS	NAVARRE		(H) HESS
	HR 10	TEACHERS CONTRACT NEGOTIATION	FURNACE		(H) HESS
	SB 85	TEACHER TRAINING ABOUT ABUSE OF MINORS	DEVRIES		(S) SA
	SB 121	MISC. CHANGES IN VARIOUS RETIREMENT LAWS	RULES	THE GOVERNOR	(S) FIN
	SB 145	TRS POST-RETIREMENT PENSION ADJUSTMENTS	FISCHER,V		(S) SA
	SB 192	LIMITS WAIVED ON TEACHERS' SICK LEAVE BANKS	ELIASON		CHAPTER 21 SLA 86
	SB 217	NEGOTIATING UNITS FOR PRINCIPAL-TEACHERS	SACKETT		(H) HESS
	SB 230	TENURE & REDUCTIONS-IN-FORCE BY SCHOOL BDS	FERGUSON		(S) HESS
	SB 266	CERTAIN TEACHERS PLACED IN EXEMPT SERVICE	RULES	THE GOVERNOR	CHAPTER 50 SLA 85
	SB 385	LIMITING CERTAIN RETIREMENT CREDITS	KERTTULA		(S) HESS
	SB 420	ENDS TEACHER OUTSIDE SERVICE CREDIT	FISCHER,P		(S) HESS
	SJR 4	ALASKAN TEACHER TRAVELING ON SPACE SHUTTLE	FERGUSON		(S) HESS
TOBACCO	HB 249	CIGARETTE EXCISE TAX; HEALTH PROGRAMS	ADAMS		(H) HESS
	SB 94	CIGARETTE EXCISE TAX; HEALTH PROGRAMS	FISCHER,V		CHAPTER 24 SLA 85
TORTS	HB 97	COVT LIABILITY; HAZARDOUS REC ACTIVITIES	DUNCAN		(H) JUD
	HB 368	UNIFORM COMPARATIVE FAULT ACT	GRUENBERG		(H) JUD
	HB 418	LIABILITY FOR EMERGENCY MEDICAL CARE	HARROU		CHAPTER 122 SLA 86
	HB 481	VERDICTS/DAMAGES/LIABILITY IN CIVIL ACTIONS	RIEGER		(H) L&C
	HB 532	LIMITATIONS ON CIVIL LIABILITY	COTTEN		(H) JUD
	HB 660	TRESPASS AND USE OF LAND	BINKLEY	BY REQUEST	(H) RES
	HCR 65	SUSPENDING UNIFORM RULES - SB 377	RULES		LEGIS RESOLVE 58
	SB 307	HAZARDOUS SEWAGE TREATMENT FACILITIES	ELIASON		(S) RES
	SB 377	CIVIL LIABILITY/TORT REFORM	KELLY		CHAPTER 139 SLA 86
	SB 382	LIMITING CIVIL ACTIONS	KERTTULA		(S) L&C
	SB 392	ANNUITY CONTRACTS FOR PERIODIC PAYMENTS	JOSEPHSON		(S) L&C
	SB 444	CAP ON AWARDS, ATTY FEES; PERIODIC PAYMENTS	FISCHER,V		(S) L&C
	SB 451	COMPARATIVE FAULT AND SEVERAL LIABILITY	HALFORD		(S) L&C
TOURISM	HJR 20	TOURISM - INTERNATIONAL AIRLINE TRAVELERS	RIEGER		LEGIS RESOLVE 15
TRADE PRACTICES	HB 125	CONSUMER PROTECTION ACT EXTENDED TO BUSINESSES	RULES	THE GOVERNOR	(S) JUD
	HB 138	REGULATING SALE OF RESIDENTIAL TIME-SHARES	RULES	THE GOVERNOR	(H) L&C
	HB 315	MANDATORY PRICE LABELING & UNIT PRICING	DAVIS		(H) L&C
	HB 517	ARTISTS AND WORKS OF ART	GRUENBERG		(S) RLS
	HB 544	CORPORATE & BUSINESS NAMES; INJUNCTIONS	PHILLIPS		(S) FIN
	HB 551	COMPETITION IN MOTION PICTURES DISTRIBUTION	SHULTZ		(H) JUD
	SB 138	ALCOHOLIC DRINK DISCOUNTS AND CONTESTS	FISCHER,V		CHAPTER 68 SLA 86
	SB 363	COMPETITION IN MOTION PICTURES DISTRIBUTION	JUDICIARY		(S) L&C
	SB 416	LIMITED WARRANTIES FOR USED MOTOR VEHICLES	JOSEPHSON		(S) TRSP
TRAILS	HB 111	LOCAL SERVICE ROADS AND TRAILS	RULES	THE GOVERNOR	CHAPTER 5 SLA 86
	HB 291	APPROP: LOCAL SERVICE ROADS AND TRAILS	TRANSPORTATION		(H) FIN
	SCR 4	STATEWIDE TRAILS DEVELOPMENT PLAN	FISCHER,V		(S) FIN
	SJR 10	ROADS/TRAILS; ANILCA CONSERVATION UNITS	COGHILL		(H) FIN
TRANSPORTATION	HB 24	REGIONAL ORGANIZATION OF DOT/PF	CATO		(H) TRSP
	HB 55	WARNING SIGNS/TAXIS FOR INTOXICATED PERSONS	COLLINS		(S) RLS
	HB 60	APPROP: FY86 OPERATING BUDGET/LOAN PROGRAMS	RULES	THE GOVERNOR	CHAPTER 98 SLA 85
	HB 113	REGULATING SAFETY OF MOTOR/AIR CARRIERS	RULES	THE GOVERNOR	CHAPTER 104 SLA 85
	HB 224	MANDATORY SEAT BELTS FOR ALL CAR OCCUPANTS	MILLER,MH		FAILED (H) ON RECON
	HB 258	REDUCING AIRLINE FARES	C&RA		(H) C&RA

court action. Allows a person to claim escheated real property for seven years after the court judgment of escheat. (SCS CSHB 182(Fin))

Effective Date: September 7, 1986

Chapter 134 STATE GUARANTY OF BONDS FOR VETERANS LOANS

Provides that the state will guarantee revenue bonds of the Alaska Housing Finance Corporation, the proceeds of which are to be used for residential mortgages for certain veterans. Requires the question of the state guaranty of the bonds to be submitted to the voters. Authorizes the corporation to issue not more than the principal amount of $600,000,000 of these bonds if the question is approved. (HB 533)

Effective Date: June 10, 1986

Chapter 135 ALASKA WATER USE ACT

Makes miscellaneous changes in the Alaska Water Use Act (AS 46.15), relating to permits, appropriations of water, administrative and judicial adjudications, options of the Commissioner of Natural Resources in litigation involving water rights, federal reserved water rights, enforcement, and the data collection authority of the commissioner. (HCS CSSB 150(Res))

Effective Date: June 10, 1986

Chapter 136 INSURANCE FOR SCHOOLS AND MUNICIPALITIES

Allows municipalities, school districts, and REAA's to join together to buy insurance coverage or to group self-insure. Does not apply to certain types of insurance. Specifies certain procedures and financial requirements for these joint insurance arrangements. (SCS CSSSHB 506(Jud))

Effective Date: June 10, 1986

Chapter 137 BARBERS, HAIRDRESSERS, AND COSMETOLOGISTS

Extends the termination date of the Board of Barbers and Hairdressers to June 30, 1989, and makes various changes in the licensing laws for barbers, hairdressers, and cosmetologists. Requires the board to establish instructors licensing requirements. Increases the number of hours an apprentice in barbering must complete. Prohibits practitioners from practicing outside of a licensed shop or school except in certain limited cases. (SCS CSHB 305(L&C) am S)

Effective Date: June 10, 1986

Chapter 138 FINANCIAL ADMINISTRATION - PROGRAM RECEIPTS

Establishes a uniform system of accounting and budgeting for program receipts of state agencies. Provides for setting of charges for miscellaneous state services, including publications and information, medical and institutional care, probation supervision, and intragovernmental technical assistance. Authorizes the sale of miscellaneous state property, including surplus hatchery broodstock and eggs. Prohibits a state agency from charging for a service after June 30, 1987, unless the charge is authorized by statute.
(SCS CSHB 696(Fin) am S)

Effective Date: Section 1 takes effect July 1, 1987; section 102 takes effect June 10, 1986; remainder of Act takes effect July 1, 1986

Chapter 139 TORT REFORM

(1) Establishes limits regarding the recovery of damages in a civil action. (2) Provides for itemization of the verdict and for reduction of future damages to a present value. (3) Requires apportionment of damages for multiple defendants, and limits the joint liability of certain parties. (4) Changes the period during which an offer of judgment may be made, and (5) increases the interest rate on certain offers of judgment. (6) Establishes a period during which prejudgment interest will accrue. (7) Prohibits the court award of attorney fees in certain civil actions unless specifically allowed by statute or agreement between the parties. Applies to actions accruing after June 11, 1986. (CCS SB 377)

Effective Date: June 11, 1986

Chapter 140 ADOPTION

Requires the state registrar of vital statistics to release the name and address of an adopted person's biological parents if the person is at least 18 years of age and requests the information. Provides for similar disclosure of medical, social, and other information about an adoptee's biological parents. Requires disclosure of adopted person's name and address to the biological parents on request, if adopted person is 18 or older and has filed written consent. Allows courts to grant a biological parent or other relatives visitation rights with an adopted child as part of the adoption decree. Allows parties who were denied adoption visitation rights by a court since January 1, 1984, to ask courts to reconsider the denial. Requires persons consenting to adoption to be informed of certain legal rights and makes other requirements regarding consents. Allows notice of

04/29/86	(H)	2993	TRANSMITTED TO (S)
04/30/86	(S)	2533	READ THE FIRST TIME - REF
04/30/86	(S)	2533	HESS REFERRAL WAIVED
05/12/86	(S)	2873	FIN RPT SCS 3DP 2DNP
			RULES

HB 521

AN ACT RELATING TO THE ISSUANCE OF MUNICIPAL GENERAL OBLIGA
PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: RULES COMMITTEE BY REQ OF THE GOVERNO
CO-SPONSORS:

CURRENT STATUS: (H) FIN

DATE		PAGE	ACTION
01/27/86	(H)	1901	READ THE FIRST TIME - REFERRAL
01/27/86	(H)	1901	GOVERNOR'S TRANSMITTAL LETTER
01/27/86	(H)	1901	ZERO FISCAL NOTE
01/27/86	(H)	1901	2 ZERO FISCAL NOTES/ANALYSIS H
02/26/86	(H)	2231	LOAN RPT CS(LOANS) 1DP 4NR
04/14/86	(H)	2699	C&RA RPT CS(C&RA) NEW TITLE 5
			FINANCE
			RULES

HB 522
CSHB 522 JUD

AN ACT RELATING TO AN INSURANCE BROKER'S RECEIPT OF PREMIUM PAYMENTS, THE CANCELLATION OR NONRENEWAL OF INSURANCE POLICIES, THE COMPOSITION OF THE BOARD OF THE MEDICAL INDEMNITY CORPORATION OF ALASKA, AND THE PROVISION OF MEDICAL MALPRACTICE INSURANCE FOR NURSES AND NURSE MIDWIVES.

PRIME SPONSOR: SUND
CO-SPONSORS: KOPONEN,GRUENBERG,TAYLOR

CURRENT STATUS: (S) RLS

DATE		PAGE	ACTION
01/29/86	(S)	1918	READ THE FIRST TIME - REFERRAL(S)
04/15/86	(H)	2722	L&C RPT CS(L&C) NEW TITLE 3DP 2NR
04/15/86	(H)	2723	ZERO FISCAL NOTE
04/28/86	(H)	2938	JUD RPT CS(JUD) NEW TITLE 5DP 1NR
04/29/86	(H)		RULES TO CALENDAR 4/30/86
04/30/86	(H)	3014	READ THE SECOND TIME
04/30/86	(H)	3014	JUD CS ADOPTED UNAN CONSENT
04/30/86	(H)	3014	AM NO 1 FAILED Y5 N32 A3
04/30/86	(H)	3015	ADVANCED TO THIRD READING UNAN CONSENT
04/30/86	(H)	3015	READ THE THIRD TIME CSHB 522(JUD)
04/30/86	(H)	3015	PASSED Y33 N1 A6
04/30/86	(H)	3028	TRANSMITTED TO (S)
05/01/86	(S)	2555	READ THE FIRST TIME - REFERRAL(S)
05/10/86	(S)	2740	L&C RPT SCS 2DP 1NR NEW TITLE
05/10/86	(S)	2776	JUD REFERRAL WAIVED
			RULES

now → HB 71

HB 523

AN ACT ESTABLISHING THE SMALL BUSINESS LOAN GUARANTEE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: SUND
CO-SPONSORS: TAYLOR,GRUSSENDORF,THOMPSON

ATTACHMENT E

ALASKA STATUTE 21.88.010-900

(1) AS 21.03
(2) AS 21.06
(3) AS 21.09, except AS 21.09.090
(4) AS 21.18.010
(5) AS 21.18.030
(6) AS 21.18.040
(7) AS 21.18.120
(8) AS 21.21.321
(9) AS 21.36
(10) AS 21.69.400
(11) AS 21.69.520
(12) AS 21.69.600, 21.69.620, and 21.69.630
(13) AS 21.78
(14) AS 21.90
(15) AS 21.42.345 and 21.42.355
(16) AS 21.89.040
(17) AS 21.89.060. (§ 1 ch 120 SLA 1966; am § 1 ch 92 SLA 1974; am § 2 ch 95 SLA 1975; am § 2 ch 84 SLA 1976; am § 24 ch 40 SLA 1981; am § 3 ch 45 SLA 1981)

Effect of amendments. — The first 1981 amendment added "and AS 21.42.355" in paragraph (15). The second 1981 amendment added paragraph (17).

Sec. 21.87.350. Existing certificates of authority. A health care service contractor registered to do business in this state on July 1, 1966, is entitled to be registered under this chapter, whether or not it meets the requirements of this chapter. (§ 1 ch 120 SLA 1966)

Chapter 88. Health Care Providers Insurance.

Article
1. Purpose (§ 21.88.010)
2. Medical Indemnity Corporation of Alaska (§§ 21.88.020 — 21.88.095)
3. Loan Fund (§ 21.88.210)
4. General Provisions (§ 21.88.900)

Cross references. — For severability provisions of 1976 Act, see § 48, ch. 102, SLA 1976, in the Temporary and Special Acts; for purpose of 1976 amendatory Act, see § 1, ch. 177, SLA 1978 as amended by § 7, ch. 46, SLA 1982, in the Temporary and Special Acts; for affect of 1978 Act on certain policies, see § 21, ch. 177, SLA 1978 as amended by § 8, ch. 46, SLA 1982, in the Temporary and Special Acts.

Article 1. Purpose.

Section
10. Purpose of this chapter

Sec. 21.88.010. Purpose of this chapter. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence. (§ 41 ch 102 SLA 1976)

NOTES TO DECISIONS

Chapter 102, SLA 1976, enacted in violation of Alas. Const., art. II, § 14. — Where the free conference committee recommended adoption of a version of ch. 102, SLA 1976 (which, inter alia, enacted AS 21.88), that differed in many respects from the version originally passed by the house; the free conference committee's bill was passed by the senate by a recorded vote; but in the house there was no roll call or recorded vote and the free conference committee bill was passed there by a simultaneous voice vote, this voice vote constituted "final passage" of ch. 102, SLA 1976, and thus violated the recorded vote requirement of Alas. Const., art. II, § 14. Plumley v. George E. Hale, M.D., Inc., Sup., Ct. Op. No. 1847 (File Nos. 4014, 4017), 594 P.2d 497 (1979).

But this holding is to be applied prospectively. — Although the supreme court held that ch. 102, SLA 1976 (which, inter alia, enacted AS 21.88), was enacted in violation of the recorded vote requirement of Alas. Const., art. II, § 14, the supreme court held that its holding in this case should be applied prospectively in light of its conclusions that its decision was one of first impression, that substantial reliance had followed from the legislature's alternative interpretation of law, that undue hardship would have resulted from retroactive application of its holding, and that the rationale of the holding did not compel retroactivity. Plumley v. George E. Hale, M.D., Inc., Sup. Ct. Op. No. 1847 (File Nos. 4014, 4017), 594 P.2d 497 (1979).

Article 2. Medical Indemnity Corporation of Alaska.

Section
20. Corporation created
30. Corporation board of governors
40. Corporation plan of operation
50. Powers and duties of the corporation
55. Termination
60. Premium tax
70. Statistics
80. Rates
90. Payment of premiums; cancellation of insurance
95. Transfer of corporate assets and liabilities

Sec. 21.88.020. Corporation created. There is created the Medical Indemnity Corporation of Alaska which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state. (§ 41 ch 102 SLA 1976)

Sec. 21.88.030. Corporation board of governors. (a) The corporation shall exercise its powers through a board of governors which is

appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) four physicians licensed in the state and engaged in private practice in the state; no more than two of the physicians shall practice or live in a municipality having a population of more than 100,000, and two of the physicians must be indemnified against loss by reason of liability for an act or omission in the delivery of professional health care by the Medical Indemnity Corporation of Alaska;

(2) an administrator or senior executive officer employed by a hospital licensed in the state;

(3) two professionals from the insurance industry who are authorized or licensed to do business in the state;

(4) two persons who are not health care providers or financially interested in the field of health care or representatives of the insurance industry.

(b) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years. Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (a) of this section as the governor whose term has expired.

(c) Upon a governor's early resignation, death or inability to serve, the governor of the state shall appoint a successor from the same class defined in (a) of this section as the terminating governor, who shall serve for the unexpired term.

(d) The director or a designee of the director is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(e) Members of the board of governors receive compensation from the corporation and necessary travel expenses according to a policy approved by the director.

(f) A governor, officer, or employee or former governor, officer, or employee of the corporation is not liable for damages or other relief in any action by reason of the person's actions or inactions as a governor, officer, or employee of the corporation, or by reason of the actions or inactions of the corporation, its board of governors, officers or employees unless the person acts with actual knowledge that the person was acting outside the scope of the person's authority, or unless at the time the person was acting for a purpose which the person knew was not in the best interests of the corporation, or with respect to any criminal action the person had actual knowledge or should have known the person's action was unlawful. If a claim or action is brought against a person entitled to the protection of this subsection, the claim or action shall be defended by the state. If it is established that the person was acting with actual knowledge that the person was acting outside the

scope of the person's authority, or at the time was acting for a purpose which the person knew was not in the best interests of the corporation, or with respect to any criminal action the person had actual knowledge or should have known the person's action was unlawful, then the person shall reimburse the state for the cost to the state of the person's defense. (§ 41 ch 102 SLA 1976; am §§ 4, 5 ch 177 SLA 1978; am § 2 ch 103 SLA 1980; am § 1 ch 46 SLA 1982)

Effect of amendments. — The 1980 amendment deleted "of $100 per day when the board meets" following "the corporation", and added "according to a policy approved by the director", both in subsection (e).

The 1982 amendment substituted "the insurance industry who are authorized or licensed to do business" for "insurance companies authorized" in subsection (a)(3).

Sec. 21.88.040. Corporation plan of operation. (a) Within 30 days after May 29, 1976, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair and reasonable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in AS 21.88.050 shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular times and places for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in AS 21.88.050 and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the corporation. (§ 41 ch 102 SLA 1976)

Sec. 21.88.050. Powers and duties of the corporation. (a) The corporation shall

(1) in the form approved by the director, issue to all physicians and hospitals who are found to be acceptable risks under standards

developed under (5) of this subsection, and who pay the premiums for it, a contract or contracts indemnifying physicians and hospitals and their employees who are health care providers against loss by reason of liability for covered claims for an act or omission in the delivery of professional health care in this state, and agreeing to tender on behalf of the physicians and hospitals and their employees who are health care providers a defense to a covered claim in a proceeding brought under AS 09.55.530 — 09.55.560; the limits of liability for policies issued by the corporation shall be approved by the director; the contract shall cover the defense against but need not indemnify liability for punitive damages arising from a covered claim; at the option of the corporation, if approved by the director, and for an additional premium the contract may cover claims against the physician or hospital that arise out of professional services performed by the physician or hospital for any period before the contract is issued, except that coverage will not be provided for a claim already filed or of which the physician or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued by the corporation which shall be determined by the board of governors in accordance with AS 21.88.080 and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 — 21.09.200, 21.09.260, 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(4) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) establish standards for the acceptability of risks; in establishing these standards the corporation may exclude an applicant for insurance based on individual risk selection factors, but may not exclude an applicant based only on the classification of the applicant.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) negotiate for and procure reinsurance from private casualty insurers or reinsurers for any and all liability incurred by contracts issued by it;

(3) provide coverage to insureds for other hazards customarily included in medical malpractice insurance policies when there is a

finding by the director that this coverage is not available to insureds of the Medical Indemnity Corporation of Alaska in the private insurance market at a competitive price;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to hospitals;

(8) negotiate and become a party to contracts for management services for the corporation;

(9) perform all other acts necessary and proper to carry out the duties of the corporation;

(10) in a form approved by the director and for an additional premium determined under AS 21.88.080, issue endorsements which provide indemnity for claims not yet reported which arise out of professional services rendered during a period of continuous coverage under the originally issued contract, to physicians and hospitals who pay the premium for it and who are terminating their original covered claims contract with the corporation for a period of not less than one year;

(11) subject to approval by the director, extend coverage to a person, entity, or facility that renders health care services in the state under the supervision of a physician. (§ 41 ch 102 SLA 1976; am §§ 6 — 10, 40 ch 177 SLA 1978; am §§ 3, 4, 7 ch 103 SLA 1980; am §§ 2 — 4 ch 46 SLA 1982)

Revisor's notes. — In 1984, in subsection (a), former paragraphs (4), (5), (6), and (8) were renumbered as present paragraphs (2), (3), (4), and (5), respectively, and, in subsection (b), former paragraphs (11) and (12) were renumbered as present paragraphs (10) and (11), respectively.

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "the limits of liability for policies issued by the corporation shall be approved by the director" for "the minimum limit of liability issued to physicians shall be $200,000 per occurrence and $600,000 aggregate liability per year, and the minimum limit of liability provided in contracts issued to hospitals shall be $200,000 per occurrence and an annual aggregate liability of $1,000,000 minimum plus an additional $20,000 per bed for each occupied bed over 50" near the middle of paragraph (1). The amendment, in paragraph (8) (now (5)) of subsection (a), substituted "an applicant for insurance" for "a physician", "an applicant" for "a physician", and "applicant" for "physician"; and repealed former paragraph (10) of subsection (b) (since deleted).

The 1982 amendment, in paragraph (1) of subsection (a), substituted "corporation, if approved by the director" for "physician or hospital" and substituted "before the contract is issued" for "after December 31, 1974, if the coverage is issued before January 1, 1977." The amendment also rewrote paragraphs (3) and (12) (now (11)) of subsection (b).

Sec. 21.88.055. Termination. (a) If at any time the corporation posts written premiums for two consecutive years of less than 35 per cent of all premiums written in Alaska for physicians' medical malpractice insurance or posts written premiums for one calendar year of less than 20 per cent of all premiums written in Alaska for physicians'

medical malpractice, the director may hold a public hearing in accordance with AS 21.06.130 — 21.06.230 to determine whether the business of the corporation should be terminated.

(b) Upon the effective date of an order of termination issued by the director under (a) and (d) of this section, the terms of the governors appointed under AS 21.88.030 expire, and the corporation, its governors, officers and employees are relieved of all further liabilities for all their obligations to the creditors and policyholders of the corporation, and the business of the corporation shall be liquidated according to AS 21.78.

(c) At any time after termination of the corporation by the director, the director may, after public hearing hold in accordance with AS 21.06.130 — 21.06.230 and (d) of this section, order reactivation of the corporation if the director finds that malpractice insurance is unavailable for physicians and hospitals on the voluntary market. The business of the corporation shall commence operation upon appointment by the governor of new governors to the board.

(d) In determining whether to terminate or reactivate the business of the corporation the director shall consider the following:

(1) the level of expected premiums and losses for continued operation;

(2) the requirement for state funds to support continued operation;

(3) the availability of alternative markets for coverage to a substantial majority of physicians and hospitals in the state;

(4) the costs of continued operation of the corporation;

(5) the impact that the continued operation of the corporation will have on rates charged for coverage by the corporation or by alternative markets; or

(6) the expected number of physicians or hospitals who would participate if the operations were continued.

(e) If after public hearing held in accordance with (a) and (c) of this section the director determines that continuing the business of the corporation would result in substantial underwriting loss unless excessive premiums are charged to participating physicians and hospitals, the director may order termination of the corporation. (§ 11 ch 177 SLA 1978)

Sec. 21.88.060. Premium tax. (a) The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

(b) The corporation is exempt from taxation under this section for a period of five years starting from July 1, 1978. (§ 41 ch 102 SLA 1976; am § 12 ch 177 SLA 1978)

Sec. 21.88.070. Statistics. The corporation shall collect, maintain and report information concerning claims against health care providers which it insures. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, a report that becomes available to the public may not include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All statistics including the supplemental reports shall be made available to the State Medical Board. (§ 41 ch 102 SLA 1976; am § 14 ch 177 SLA 1978)

Sec. 21.88.080. Rates. The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

(1) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(2) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which is actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(3) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including covered claims paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(4) rates may not be unfairly discriminatory;

(5) rates shall be adjusted annually;

(6) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(7) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(8) income from the investment of reserves shall be considered;

(9) individual risk underwriting factors shall be considered;

(10) disciplines and classifications within the license categories of health care providers shall be considered;

(11) amounts sufficient for repayment of loan obligations shall be considered;

(12) if the earned premiums of the corporation for any given year are less than the incurred claims, claim expense, underwriting expense, reserves for that year and provision for repayment of any loans, the corporation may, subject to the prior approval of the director, levy an assessment upon the insureds who held policies during that year; the assessment, which may be made in periodic installments, shall be made within three years and may not exceed 150 per cent of the insured's premium for that year; the termination of any policy does not relieve the insured of contingent liability for the insured's proportionate share of the obligations to the corporation which accrued while the policy was in force;

(13) if the earned premiums of the corporation for any given year exceed its incurred claim expense, underwriting expense, reserves for that year and provision for repayment of any loan, the corporation may, subject to the prior approval of the director, apportion and pay or credit its insureds who held policies during that year; a payment or credit shall be proportionate to the insured's earned premium for that year;

(14) upon application by any person, the director may issue a certificate authorizing the corporation to extinguish all or a portion of an assessment levied, or which could be levied, under (12) of this section for all insureds with policies in force when the certificate is issued, and to omit provisions levying an assessment under (12) of this section in all policies delivered or issued for delivery after the certificate is issued, if the director determines that there is a sound actuarial basis for the extinguishment; the director may at any time revoke the certificate; a policy in force at the time of revocation is not subject to the revocation of the certificate for the remainder of the period for which the premium has been paid, but after revocation a policy may not be issued or renewed without providing for an assessment of the insured. (§ 41 ch 102 SLA 1976; am §§ 13, 15, 40 ch 177 SLA 1978; am § 5 ch 103 SLA 1980; am § 5 ch 46 SLA 1982)

Revisor's notes. — In 1984, former paragraphs (1), (2), and (14), repealed in 1978, were deleted and the remaining paragraphs were renumbered accordingly.

Effect of amendments. — The 1980 amendment substituted "insured's" for "physician's" near the middle of paragraph (15) (now (12)).

The 1982 amendment rewrote paragraph (17) (now (14)).

Sec. 21.88.090. Payment of premiums; cancellation of insurance. The corporation may provide for installment payment of premiums in which case each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice of cancellation. Cancellation is not effective until 30 days after the date notice is posted by the corporation. (§ 41 ch 102 SLA 1976)

Sec. 21.88.095. Transfer of corporate assets and liabilities. (a) The corporation may, subject to the prior approval of the director, transfer its assets and liabilities to a company which meets all of the following conditions:

(1) the company possesses a valid certificate of authority to transact casualty insurance business in the state; in evaluating the capital and surplus of the company for qualification for a certificate of authority, the value of the assets and liabilities transferred by the corporation may not be considered;

(2) the company pays to the corporation the full value of any surplus in the corporation not represented by any unrepaid proceeds of loans by the loan fund to the corporation;

(3) the company executes a complete reinsurance and hold harmless agreement in a form approved by the director covering all of the obligations of the corporation to its creditors and policyholders; and

(4) the company executes modifications of loan agreements with the loan fund by which the company agrees

(A) to assume the obligations;

(B) that, if at any time the company writes less than the premium levels provided in AS 21.88.055(a), the director may determine that the loan provisions shall be modified to provide a scheduled amortization repayment of the principal over a period not to exceed 10 years and at an interest rate of four points above the federal discount rate, as that rate is adjusted from time to time; and

(C) that the provision for repayment provided in AS 21.88.210(b)(1) shall be modified to provide for annual installments of at least 25 per cent of the excess of premium and investment income collected over the total of claims, reserves and expenses on the Alaska medical malpractice book of business or 25 per cent of the excess of premiums and investment income collected over the total of claims, reserves and expenses on the corporation's total book of business, whichever is greater;

(5) the company meets such other requirements as the director may reasonably require to protect the interests of the state, the health care provider insureds, the involved company, and the public;

(6) the company provides the board of governors with a written statement from the director that the company qualifies under (1) — (5) of this subsection.

(b) If and while the company to which the assets and liabilities of the corporation are transferred in the manner provided in (a) of this section continues to write premiums in excess of the levels provided in AS 21.88.055, it shall enjoy the benefit of the following provisions:

(1) the company is entitled to carry forward and offset against its premium tax obligation to the state the amount by which the aggregate claims paid on reinsurance assumed under (a)(3) of this section exceeds aggregate reserves on the same business established at the date of the reinsurance agreement; and

(2) the obligation to repay to the loan fund loans assumed by the company at the time of transfer of the assets and liabilities of the corporation need not be shown as a liability on the books of the corporation. (§ 16 ch 177 SLA 1978)

Secs. 21.88.110 — 21.88.180. Joint Underwriting Association. [Repealed, § 40 ch 177 SLA 1978.]

Article 3. Loan Fund.

Section
210. Fund established

Sec. 21.88.210. Fund established. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans may be made from the fund to the corporation upon certification by the director that a loan is necessary and under the following circumstances:

(1) to provide surplus in respect to policyholders which may not exceed a total of $3,000,000 outstanding at any time; these obligations shall be subordinated to all other obligations of the corporation; loans made under this paragraph shall be repaid to the fund in annual installments of at least 25 per cent of the excess of premiums earned over the total of claims, reserves, expenses, and assessments made by the association, if any; interest shall be paid on the outstanding balance at a rate equal to seven per cent a year;

(2) if the director determines that the corporation is unable to procure reinsurance from a private casualty insurer or reinsurer for any liability incurred by contracts issued by it, additional loans up to an aggregate of $6,000,000 when taken together with loans made under (1) of this subsection to compensate for fluctuations in loss experience; loans made under this paragraph shall be in parity with all other obligations of the corporation except that they shall be subordinated to obligations of policyholders and claimants for indemnity of loss; these loans shall be repaid within five years at an annual interest rate of six per cent.

(c) If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund as evidence of the loan.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $6,000,000. (§ 41 ch 102 SLA 1976; am §§ 17, 18 ch 177 SLA 1978; am § 6 ch 103 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "earned" for "collected" near the middle of paragraph (1) of subsection (b).

Article 4. General Provisions.

Section
900. Definitions

Sec. 21.88.900. Definitions. In this chapter

(1) "chiropractor" means a person licensed under AS 08.20;

(2) "continuous coverage" means one or more successive policy periods which is uninterrupted by cancellation or failure to renew for any reason;

(3) "corporation" means the Medical Indemnity Corporation of Alaska;

(4) "covered claim" means

(A) a claim by an injured patient reported to the corporation during the period of continuous coverage by the corporation of the insured health care provider for an act or omission in the delivery of health care services; and

(B) additional claims as defined in the policy, with the prior approval of the director, and which are reported within specified periods after the expiration of the policy;

(5) "dental hygienist" means a person licensed under AS 08.32;

(6) "dentist" means a person licensed under AS 08.36;

(7) "dispensing optician" means a person licensed under AS 08.71;

(8) "governor" means a member of the board of governors of the Medical Indemnity Corporation of Alaska;

(9) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned

or operated hospital; a corporate entity covered under AS 21.88.050(b)(11); an employee of a health care provider acting within the course and scope of employment;

(10) "hospital" means an institution licensed under AS 18.20;

(11) "nurse" means a person licensed under AS 08.68;

(12) "optometrist" means a person licensed under AS 08.72;

(13) "pharmacist" means a person licensed under AS 08.80;

(14) "physical therapist" means a person registered under AS 08.84;

(15) "physician" means a person licensed under AS 08.64;

(16) "psychologist" and "psychological associate" means a person licensed under AS 08.86. (§ 41 ch 102 SLA 1976; am §§ 19, 20, 40 ch 177 SLA 1978; am § 6 ch 46 SLA 1982)

Revisor's notes. — Reorganized in 1984 to alphabetize the defined terms.

Effect of amendments. — The 1982 amendment deleted "during the same period of continuous coverage" following "delivery of health care services" in paragraph (17)(A) (now (4)(A)).

Chapter 89. Miscellaneous Provisions.

Sec. 21.89.010. Settlements. A settlement made under a motor vehicle liability insurance policy of a claim against an insured arising under that policy from an accident or other event insured against for damage to or destruction of property owned by another person shall not be construed as an admission of liability by the insured, or the insurer's recognition of that liability, with respect to any other claim arising from the same accident or event. The settlement shall be inadmissable in evidence in any legal action. (§ 1 ch 123 SLA 1966)

Sec. 21.89.020. Required motor vehicle coverage. (a) An automobile liability policy that insures an owner or operator of a motor vehicle against loss resulting from liability for bodily injury or death, or for property injury or destruction, or both, that is sold in the state, shall contain limits in at least the amount prescribed for a motor vehicle liability policy in AS 28.20.440 and AS 28.22.010.

(b) This section may not be construed to apply only to automobile liability policies obtained to satisfy a requirement of AS 28.20.

(c) An insurance company offering automobile liability insurance in this state for bodily injury or death shall offer coverage prescribed in AS 28.20.440 and 28.20.445, or AS 28.22.010 — 28.22.130, with limits equal to at least the limit purchased voluntarily to cover the insured person's liability for bodily injury or death, for the protection of the

persons insured under the policy who are legally entitled to recover damages for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles. The limit written may not be less than the limit in AS 28.20.440 or AS 28.22.010.

(d) An insurance company offering automobile liability insurance in this state for injury to or destruction of property shall offer coverage prescribed in AS 28.20.440 and 28.20.445, or AS 28.22.010 — 28.22.130, with limits not less than those prescribed in AS 28.20.440 or AS 28.22.010, to cover the insured person's liability for injury to or destruction of property, for the protection of the persons insured under the policy who are legally entitled to recover damages for injury to or destruction of the covered motor vehicle from owners or operators of uninsured or underinsured motor vehicles.

(e) The coverage required under (c) and (d) of this section may be waived in writing by the insured in whole or in part. After selection of the limits by the insured or the exercise of the option to waive the coverage in whole or in part, the insurer is not required to notify any policy holder in any renewal, supplemental or replacement policy, as to the availability of the coverage or optional limits, and the waived coverage may not be included in any renewal, supplemental or replacement policy. The insured may, at any time, make a written request for additional coverage or coverage more extensive than that provided on a prior policy. (§ 1 ch 105 SLA 1968; am §§ 2, 3 ch 70 SLA 1984)

Revisor's notes. — Subsections (a), (c) and (d) of this section are amended effective January 1, 1989 by §§ 18-20, ch. 70, SLA 1984. Until 1989, for the text of the subsections as amended by §§ 18-20, ch. 70, SLA 1984, see those provisions in the Temporary and Special Acts.

Effect of amendments. — The 1984 amendment, effective January 1, 1985, added subsections (c)—(e) and, in subsection (a), deleted "after January 1, 1969, by an insurance carrier authorized to transact business in this state" following "state," substituted "AS 28.20.440 and AS 28.22.010" for "AS 28.20.440(b)(2), and meet the requirements of AS 28.20.440(b)(3) unless waived as provided in that paragraph," and made a series of related technical changes.

Editor's notes. — Prior to January 1, 1985, subsection (a) read as follows: "An automobile liability policy that insures an owner or operator of a motor vehicle against loss resulting from the insured's liability for bodily injury or death, or for property injury or destruction, or both, which is sold in this state after January 1, 1969, by an insurance carrier authorized to transact business in this state, shall contain limits in at least the amount prescribed for a motor vehicle liability policy in AS 28.20.440(b)(2), and meet the requirements of AS 28.20.440(b)(3) unless waived as provided in that paragraph."

NOTES TO DECISIONS

This section does not require stacking in the single policy context. This conclusion follows from the fact that uninsured motorists insurance may be waived in Alaska. Curran v. Fireman's Fund Ins. Co., 393 F. Supp. 712 (D. Alas. 1975).

Insured was allowed to "stack" the uninsured motorists coverage provided him in a single multivehicle policy where the insured, under the interpretation of the contract propounded by the insurer, would receive absolutely no additional coverage for his premium dollars paid for uninsured motorists coverage on the vehicles other than the one involved in the accident and where the only possible interpretation of the contract was that the

ATTACHMENT G

WHAT STATES SHOULD DO--
DIFFERENT VIEWS ON TORT, INSURANCE REFORMS

from State Government News
Council of State Governments
March/April 1986

State Government News

The Council of State Governments

March/April 1986

THE LIABILITY CRISIS: Who's To Blame?

'hat States Should Do— Different Views on

\ Small Business View

:t Reforms

ave alternative dispute resolution mechanisms.
imit class action suits.
etain contributory negligence.
odify comparative negligence to require an establish-
l level of fault to trigger liability.
educe lawyers' fees or adopt a sliding scale.
mit the discovery process.
olish or limit prejudgment interest awards.
evelop even-handed jury instructions.
olish or limit noneconomic and punitive damages.
niform national product liability legislation or com-
ehensive state reform.
olish or modify joint and several liability.
mize jury awards.
mit liability in dram shop cases.
eserve the exclusive remedy doctrines in workers' com-
nsation and abolish co-employee and dual capacity
ts
fset collateral source awards or inform juries of col-
eral sources.
quire the judge, rather than the jury, set dollar
ounts in damages.
y damages in installments
vide pre-trial proceedings
ve plaintiffs pay defendants' attorney fees when litiga-
n is frivolous or if court awards are less than offered
tlements

e Insurance Reforms

ew mandatory insurance coverage imposed by
ernment, excluding workers' compensation.
blish state reinsurance programs.
w state governments to underwrite insurance if
rage is unavailable in the private sector.
w businesses to establish risk retention pools for cer-
types of insurance coverage.
mit state workers' compensation funds to offer other
s of liability coverage.
nit mid-term cancellation of policies except for good
e
ire advance notice of nonrenewal of insurance
ire prior approval of insurance rates by state
latory agencies
ire or encourage insurance companies to establish
ket Assistance Programs (MAPs)
ss made terms used in policy forms

- Require insurance companies to form assigned risk pools to force insurers to provide coverage.
- Eliminate barriers to financial institutions entering the insurance business.

Source: Wayne L. Campbell, National Federation of Independent Business. NFIB does not necessarily endorse any of these proposed solutions.

The Health Professions' View

Tort Reforms

- Require medical expert witnesses to be teachers or practitioners and not experts for hire.
- Require itemizing of economic damages.
- Cap medical malpractice awards and require court review of excessive awards.
- Require pretrial screening of claims filed.
- Admit evidence of funds from other sources.
- Limit or adopt a sliding scale for attorney contingency fees.
- Apportion liablity based on degree of negligence.
- Ban requests for specific dollar amounts.
- Require plaintiffs to pay court costs in case of frivolous claims and untrue allegations.
- Require a health professional's affidavit with filing of a malpractice complaint.
- Permit nonbinding arbitration.
- Permit payment of future damages on a periodic basis, rather than a lump sum.
- Adopt a two-year statute of limitations on medical malpractice and related suits.
- Require notice of intent to sue.

Discipline, Regulation

- Require hospitals to conduct risk management programs.
- Require hospitals to report disciplinary actions and potential malpractice physicians.
- Establish a Patient's Compensation Fund to finance awards in excess of $100,000.
- Require health care providers to carry malpractice insurance coverage.
- Require insurance companies to document that the increase in malpractice premiums is supported by claims experience.
- Require the state medical board to investigate reports of possible malpractice.
- Require continuing medical education.

Tort, Insurance Reforms

- Increase physician license fees to support disciplinary efforts

Source: The State Issues Forum of the American Hospital Association and the American Medical Association's model state laws. Note: This is a combined and abbreviated listing. The two group's individual recommendations differ in various details.

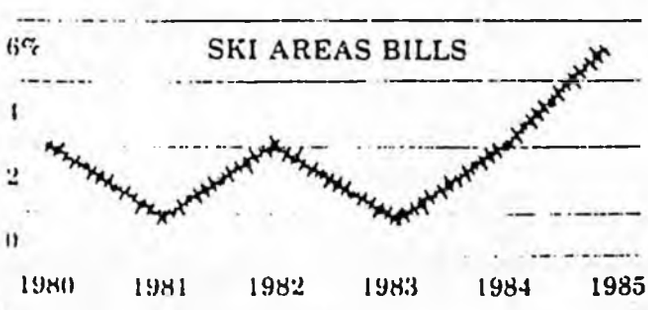
A Consumer View

- Repeal statutes that prohibit businesses and consumers from joining together to buy insurance in groups so that the price of liability insurance will fall.
- Prohibit rate increases from taking effect until such increases are approved by the insurance commission. Because insurance commissions do not have the staff to analyze many rate filings, most increases automatically take effect.
- Allow greater consumer representation before regulatory bodies. States should authorize citizens insurance boards or offices of public advocates to intervene in rate cases. In New Jersey, the insurance company seeking the rate increase pays the public advocate's cost.
- Require that insurance rates be based on experience. Because insurance companies today often lump all insureds in a category together, regardless of how often any individual insured has been sued, good risks currently subsidize bad risks. Experience rating would help bring down premiums for medical malpractice insurance.
- Enact tough conflict-of-interest statutes to close the "revolving door" of state regulators with the industry.
- Require that insurance companies disclose their loss data on a line-by-line basis. Disclosure would enable regulators to better discern whether rates are excessive, inadequate or unfairly discriminatory.
- Establish state reinsurance programs.

Source: The National Insurance Consumer Organization.

Higher Premiums Mean Higher Costs

Percentage of gross income spent on premiums.



Source: National Ski Areas Association

An Insurance View

Tort Reforms

- Use arbitration and mediation as an alternative lengthy and costly litigation.
- Make modified comparative negligence, where plaintiffs recover only if their negligence is less than the defendants', the standard instead of pure comparative negligence, which allows recovery even if plaintiffs are more responsible for their injuries than the defendants.
- Replace joint and several liability, which can hold a defendant who is only marginally responsible for injuries liable for the full amount of damages. Current courtroom tactics seek out "deep-pocket" defendants by their ability to pay.
- Restore state-of-the-art defenses. Judge product manufacturers and professionals by standards in effect at the time a product was made or an action was taken.
- Repeal the collateral source rule and allow the introduction of evidence of other sources of damage payments to plaintiffs.
- Abolish or reduce punitive damages which have become windfalls for plaintiffs and their attorneys. Punitive damages are a criminal-trial punishment mechanism.
- Place ceilings on noneconomic damages. These damages include "pain and suffering," "loss of consortium," "loss of companionship," among others. Plaintiffs' actual damages, such as lost wages and medical expenses, would not be affected.

Market/Regulatory Actions

- Adopt a "claims-made" general liability policy which would cover only claims made during the term of the policy.
- Balance the rights of consumers with the insurers' need to reach changes in risk or financial status in covering cancellations, nonrenewals and policy changes.
- Set up Marketing Assistance Programs as a short-term means of making certain lines of coverage more available. Insurance buyers should monitor and minimize losses in hard-to-insure lines, to improve chances of obtaining coverage.
- Recognize that risks posed by toxic substances, asbestos and chemical wastes are too difficult for the private insurance industry and group self-insurance to cover. It is impossible for the insurance industry to cover these exposures under the current liability rules, and these risks may have to be funded by public revenues.

Source: The Alliance of American Insurers, including the views of the American Insurance Association and the National Association of Independent Insurers.

What States Are Considering To Solve the Insurance Liability Crisis

gulatory Initiatives

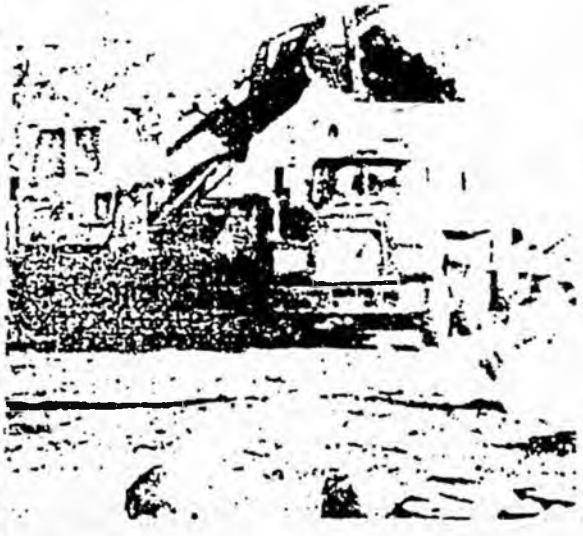
ohibitions and restrictions on midterm cancellations
d nonrenewals
quiring prior approval of rates rather than file and
e arrangements.
int Underwriting Associations.
arket Assistance Plans.
odification of open competition rating acts.
grading state insurance department manpower and
sources.
quiring rates to reflect loss experience.
laims made" rather than "occurrence based" policies.
proved regulation of new entrants.
gulation of surplus line providers.
quiring submission of data regarding incidence and
verity of claims losses.
wering "surplus" ratios for specific lines of coverage.
miting the percentage amount which an insurer can
ry rates from the fixed rate.

k Management

tablish risk retention pools for certain lines of
verage.
engthen disciplinary procedures in all state agencies
gulating professions.
hance hazard management and public safety.
engthen risk assessment techniques.

rketplace Intervention

mit policy exclusions.
thorize banks and thrifts to engage in insurance
tivities.
iew the need for mandatory coverage and mandated
ds of coverage.



ers won't touch toxic cleanup.

- Restrict annual premium increases/decreases based on evidence of change in risk.
- Require notice to insureds regarding cancellations and/or nonrenewals.
- Provide excess profits standards
- Establish or expand risk pooling authority.
- Establish or expand state reinsurance, backup insurance and self-insurance programs.
- Prohibit surplus line providers unless appropriately licensed.

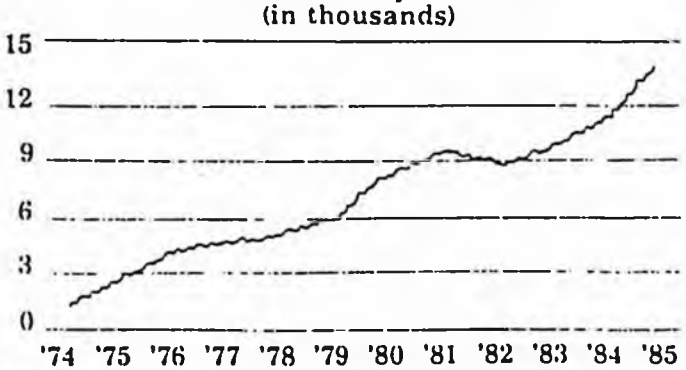
Tort Reforms

- Establish courts of claims to hear suits against government defendants.
- Establish pretrial screening panels to determine validity of suits.
- Impose penalties for filing frivolous suits.
- Abolish/limit prejudgement interest awards.
- Cap noneconomic and punitive damages.
- Cap attorneys'-fees.
- Abolish or modify the collateral source rule and joint and several liability.
- Authorize structured settlements and itemized jury verdicts.
- Redefine standards of care.
- Revitalize a restricted form of sovereign immunity.
- Modify statutes of limitation.
- Authorize judges only to determine damage and award amounts.
- Adopt comparative negligence standards.
- Limit the discovery process.

Source: Statement by Vermont Rep. Edward R. Zuccaro on behalf of the National Conference of State Legislatures before the U.S. House Subcommittee on Commerce, Transportation and Tourism. NCSL does not necessarily endorse any of these proposed solutions.

Litigation Explosion

Product Liability Lawsuits (in thousands)



Source: Administrative Office of U.S. Courts

The number of product liability lawsuits filed in U.S. district courts has risen more than eight-fold since 1974.

ATTACHMENT F

CAN ANY OF THESE LAWS SOLVE THIS PROBLEM?

CONFERENCE OF INSURANCE LEGISLATORS
TASK FORCE ON AVAILABILITY AND AFFORDABILITY
OF LIABILITY INSURANCE

NOVEMBER 11, 1986

6. ARBITRATION

PURPOSE:

To speed settlements and lower court costs, legislators have established panels which hear arguments and render decisions and awards in "uncomplicated cases."

BACKGROUND:

Arbitration has been one of the most talked of remedies in regard to easing liability insurance problems but only three responding states, Michigan in 1975,[85] Washington in 1979,[86] and Utah in 1983[86] established arbitration in medical malpractice cases. In each, Insurance Department sources believed the measure to have been ineffective.[87] Utah raised its arbitration threshold to $2,500 in 1985.[88] It is too early to judge the results.

SUB-SUMMARY:

No definite beneficial results to date.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	0	6	1	7
AFFORDABILITY	0	0	6	1	7

IV.

INSURANCE REFORMS

Insurance reforms generally fall under two headings: those that intervene in the insurer's decision making process, such as laws that prohibit cancellation and non-renewal, and those that allow greater freedom to buyers and/or insurers or others to arrange for coverage outside traditionally regulated insurance structures.

12. NON-CANCELLATION/NON-RENEWAL AND NOTICE OF POLICY TERMINATION REQUIREMENTS

PURPOSE:

To cut down the exposure and/or disruption of business caused by sudden cessation of liability coverage, many states have enacted laws to bar mid-term cancellation, non-renewal, and provide advance notice that coverage stopped well in advance of the termination date.

BACKGROUND:

Nearly all non-cancellation laws enacted before 1986 applied only to personal lines. In general, the experience has been that when underwriters are forced to retain a risk they become very selective about the risk they accept. That has the effect of assuring reasonably priced coverage to good risks while forcing high risks into assigned risk and FAIR plans.

Oregon, in 1985, adopted a noncancellation/non-renewal rule covering all commercial insurance.[135] It is too early to judge its long term effectiveness in terms of availability and affordability.

However, Maryland enacted a non-cancellation law in 1973.[136] But, according to the Maryland Insurance Department, the law has provided no availability or affordability change in the 12 years since its enactment.[137]

Nevada tried to accomplish the same thing by regulation,[138] with no definitive results.[140]

Notification that the insurer intends to get off the risk has been effective in relieving commercial auto liability insurance problems in Indiana and Hawaii.[140] But, Maryland enacted just such a law[141] and Department sources say it brought "no change."[142]

SUB-SUMMARY:

There is too little commercial insurance experience on which to draw to know how effective non-cancellation policies will be in making non-personal liability coverage available and affordable.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	4	2	5	3	14
AFFORDABILITY	0	3	7	4	14

13. AUTHORIZING GROUP INSURANCE

PURPOSE:

To end the prohibitions against sales of group insurance which affords economies of scale in marketing and in shared claims information and loss experience, legislation has been proposed authorizing corporations, governments or professionals to buy group insurance.

Washington, has authorized group professional and commercial insurance. Washington's law[143] has been perceived as effective in encouraging availability of medical malpractice and government liability, as well as for cooperative and fraternal insurance, according to legislative respondents.[144] The measure has also been judged effective in helping make government liability rates affordable.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	1	3	2	6	12
AFFORDABILITY	0	1	4	7	12

14. AUTHORIZING POOLS

PURPOSE:

To allow an opportunity to self-insure and realize economies of scale through pooling their own risks, legislation has authorized municipalities and others to pool their risks.

BACKGROUND:

Municipalities and others have flocked to join pools or form new ones to share risks because they cannot find or afford coverage and don't want to self-insure alone.[145]

WHAT WORKED:

Early reports indicate large savings from what they had been paying for liability coverage.[146] In Tennessee, legislative sources report that a pooling measure[147] proved "very effective" in regard to medical malpractice and "effective" in regard to the affordability and availability of government liability insurance.[148]

Michigan Department sources believe the state's 1982 pooling statute eased the problems in 1985-86.[149]

But in Utah, State Insurance Department sources view pooling legislation enacted in 1976 [150] as having affected "no change" in the availability or price in any major line of liability insurance.[151]

SUB-SUMMARY:

In general, pools have been effective. Buyers have obtained high amounts of coverage in a single policy. Pools have enabled smaller municipalities to insure at rates lower than those that would otherwise

be available to them on a individual basis. The question: do pool managements have what it takes for the long haul? They had better because they are without guaranty fund protection. And while they essentially are self-insurance mechanisms the real challenge can be in paying third party claims -- where the beneficiary is not a pool member.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	2	5	3	4	14
AFFORDABILITY	2	3	5	4	14

15. BROADENED SELF INSURANCE AND CAPTIVES

To allow more opportunities for self-insurance, three states have authorized the setting up of captive insurance companies which can be in-house insurers (pure captives) or entities which serve the insurance needs of several companies, generally in the same business (association captives).

BACKGROUND:

Captives are providing cover now for an estimated 2200 U.S. corporations.[152] The number of U.S. owned captives has increased from some 1250 in 1980.[153] No one knows or will say how many commercial premium dollars have been diverted from the normal insurance market into captives and other forms of self-insurance but, according to one industry source, close to one-third of commercial premium dollars have gone the self-insurance route.[154]

Most captives are located overseas and have been providing coverage without the help of one single state legislative act.

WHAT WORKED BEST:

Vermont,[155] Colorado,[156] and Tennessee[157] have authorized captive formation.

Vermont premium volume had increased to $47 million by year end 1985, up from $22 Million in 1984 and from $13 million in 1983.[158] Some of the largest U.S. corporations including Boeing Aircraft Co, CitiCorp and Westin Hotel Cc. contributed to that volume.[159]

WHAT WORKED LESS:

Colorado captive activity has leveled,[160] with no new captives formed last year.[161] Still the law, like Vermont's, cannot help but be judged effective in easing availability and affordability problems. Colorado 1985 premium volume was $49.2 million.[162]

ONE REASON WHY:

Sources point to the fact that Vermont's requirements are less stringent.[163] Its capitalization requirements are low compared to the other two states with single parent captives needing capital and paid-in surplus of $250,000 and association captives, $500,000. Both Colorado and Tennessee requiring $750,000 for one company captive and $1 million for groups.[164]

CAUTION:

When it comes to captives and self-insurance the effectiveness of state law has to be qualified because the "insurance" captives provide is not the same as normal insurance. Captives are not required to meet the same state capital and surplus, or financial reporting requirements as normal insurers, although they are subject to state insurance department's oversight. As far as claim payments go, the same caveats that apply to pools apply to captives, especially on third parties' claims. Then the beneficiary may not be within the captive's corporate or association "family." Also the comfort factor is less. Guaranty Fund legislation does not cover captives.

SUB-SUMMARY:

From the experience of two states, Vermont and Colorado, it would be difficult to say that these statutes have not been effective in regard to availability and affordability.

Worth considering also, is that when large insurance buyers have the option of going the captive route, it cannot help but make traditional insurers more agreeable to make insurance available at affordable prices.

When it comes to off-shore captives there is no state insurance department regulation at all. Also, in determining the effectiveness of captive laws, insurers have cautioned that the captive management has not lived through the ups and downs of insurance cycles. At the same time, it is also fair to note the fact that the management of many captives is handled by some of the world's largest insurance brokerage with long histories in the insurance business. Captives may be only a good as their <u>own</u> money and someone else's ability to manage it.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	2	1	1	4
AFFORDABILITY	0	2	2	0	4

16. JOINT UNDERWRITING ASSOCIATIONS

PURPOSE:

To provide for coverage of risk that individual insurers do not want to cover, joint underwriting associations have been authorized. In regard to liability insurance in responding states, they have mainly, but not exclusively, been used in medical malpractice.[165]

BACKGROUND:

By their nature joint underwriting associations cannot help but make insurance more available than it would be without them.

WHAT WORKED:

Both Insurance Department and legislative sources in responding states which adopted them, view them as "very effective."[166] Responding states reported that of 28 JUA laws and statutory applications, 14 were perceived as being either "very effective" or "effective" in regard to availability,[167] and 12 were perceived as being either "very effective" or "effective" in regard to affordability. Most applications were in medical malpractice.[168]

Obviously, medical malpractice JUAs have not helped "lower" premiums prices, especially in medical malpractice.[169] Some sources point out, however, that JUAs have helped make the insurance more "affordable" than it would have been without them.[170]

Question: does what makes insurance more affordable for health care providers, make it not affordable for insurers, their policyholders, and the society? Answer: Yes. Insurance industry sources say JUAs were

designed to be self-supporting,[171] but earlier this year most of the 12 JUA's in the nation were facing large deficits.[172] Some wanted to expand their "base" by increasing their membership.[173] In other words, they were seeking subsidization from other insurers through legislation. Relatedly, physicians mutuals which wrote "long-tail" coverages have flirted with insolvency.[174] Among the most troubled has been Medical Liability Mutual Insurance Company (MLMIC) in New York, whose "shortfall" was close to $750 million.[175]

SUB-SUMMARY:

JUAs have worked for medical malpractice availability. But the price has been very high. And when it comes to making medical malpractice liability "affordable," the first answer has been some form of subsidy.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	6	8	9	5	28
AFFORDABILITY	6	6	11	5	28

CONCLUSION ON INSURANCE REFORMS:

Non-cancellation laws are an effective quick fix but can eventually be counter productive. JUAs work very well in assessing coverage, but they involve subsidization of one commercial enterprise by anotner raising fundamental questions of fairness. So do pools and captives. But with each there is some kind of trade off: Drying up of the normal market in the case of non-cancellation laws and JUAs; less solvency regulation and the third party claims question in the case of pools and captives; and, in the case of offshore captives, there are alien jurisdictions over whom U.S. based insureds and state governments have little regulatory clout in the event of claims disputes and/or insolvencies.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	13	20	20	20	73
AFFORDABILITY	8	14	31	20	73

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135. O.R.S. 836-85001-85040

136. M.I.L 48A, 547A.

137. Response to Question 16, note 3 supra.

138. Nevada Insurance Department Regulations.

139. Note 137, supra

140. H.R.S. 294.9-C; responses to Question 16, note 3, supra.

141. M.I.L. 48A, 547A.

142. Response to Question 16, note 3 supra.

143. Washington Insurance Code 48.62-120W, 1979

144. Response to Question 16, note 3 supra.

Reform

VI.

REGULATORY REFORMS

When it comes to regulatory reforms the question focuses quickly on rating laws. But despite the focus, a wide universe of opinion remains as to which kind of rating law best promotes availability and/or affordability of insurance. In the crisis of 1985-86 it has not been unusual for a legislator and regulator to question the rating law in his or her state and to contemplate the alternative. As Mississippi Insurance Commissioner George Dale said in a follow-up interview:

"All the file and use states are looking at prior approval and all the prior approval states are looking at file and use."[176]

At the same time, Commissioner Dale and others who have worked with insurance regulation have for years pointed out that rating laws cannot change prices overall, that premium levels will move where they will regardless of rating laws.[177] But, study has shown that where rate changes do not need government approval or sanction, rates can change more quickly to serve the availability needs of the real world market.[178]

17. FILE AND USE/USE AND FILE/NO FILE ("Open Competition")

PURPOSE:

About half the states have laws designed to encourage competitive behavior and allow each company to set the own prices without State approval. The same laws do, however, require that rates not be excessive, inadequate, or unfairly discriminatory.

WHAT WORKS:

Among respondent states which have an open competition rating law, sources in only one, Tennessee,[179] believe its rating statute was effective in promoting availability and affordability of liability insurance.[180]

In New York where file and use had been in effect since 1970,[181] one legislative source qualified his enthusiasm for the statute this way:

"Open rating, where working, works great, however in a tight market, it has been used to create great instability in the marketplace."[182]

In response to tight markets in the late 1960's, New York switched from prior approval to competitive rating.[183] In the after shock of price increases and dropped coverages of 1985-86, the State adopted, "flex rating."[184] So has Oregon.[185]

And in California where the nation's classic "no file" law, the McBride-Grunsky Insurance Regulatory Act,[186] has been in effect some 40 years, Insurance Commissioner Roxani Gillespie has changed "no file" to "flex file." The Department now requires insurers to submit data

supporting rate increases of more than 25 per cent for liability insurance.[187]

In promulgating the new rule, the Commissioner said:

> "Historically, competition has been a strong regulatory force--to the benefit of the insurance buying public. However, due to significant operating deficits caused by extreme competition and rapidly increasing loss costs during the early 1980s, commercial liability insurers have imposed, in the last two years, substantial rate increases which have caused hardship in many cases for commercial insureds and their customers. Given these recent conditions, some regulatory method is therefore necessary whereby the Commissioner can be informed in a timely manner of substantial rate increases in commercial liability insurance."[188]

(SUB-SUMMARY ON FILE AND USE AND PRIOR FOLLOWS PRIOR APPROVAL SECTION.)

DOES NO LAW WORK BEST?

Ironically, some definite information regarding non-personal liability insurance costs from Illinois, which has no rating law. In Illinois, combined ratios (losses plus expenses divided by premium) for commercial insurance lines, as well as for other liability and medical malpractice lines, show that Illinois insurers of outgo to income is consistently higher than the regional and countrywide ratios.[189] Insurers' losses are as high or higher in Illinois as in other states which have rating laws.[190]

In other words, Illinois businesses and professionals are getting more for their money than their neighbors in Iowa, Indiana, Wisconsin, Missouri, and Michigan.[191]

The following charts track those ratios.[192]

18. PRIOR APPROVAL

PURPOSE:

To meet the same statutory mandate, the laws in some other states provide that the rate changes cannot go into effect without approval of the Insurance Commissioner.

BACKGROUND:

Half the states have prior approval rating laws.

WHAT WORKED:

Sources in only two respondent jurisdictions, Hawaii and Puerto Rico, saw their prior approval laws[193] as "very effective" in fostering both availability and affordability.[194]

WHAT DIDN'T

From that point the cheers subside. Nebraska sources say that the state's prior approval law, in effect since 1947, has produced "no change" in liability insurance availability and/or affordability.[195]

In South Carolina, which has had prior approval for the same 40 year period, sources also say there has been no difference from what would have happened anyway.[196]

In other jurisdictions, sources did not say if the law had any effect, positive or negative. In three states, Alaska, Washington, and West Virginia, there have been a total of more than a century of rating law years, but no responses as to whether those laws had been effective.[197]

SUB-SUMMARY:

In regard to both kinds of laws, recurring availability and affordability crises speak for themselves. Under both forms of law, rates have gone up and insurance prices have risen sharply.

Assessing the past (or future) effectiveness of insurance rating law is not easy.

The sudden skyrocketing of prices beginning in late 1984 proved that insurance buyers could be subject to fearsome increases. But low prices, whether produced from private competition or government suppression, are only one test of a laws effectiveness. Another test is whether the law permits the industry to respond to changes, such as a serious capacity shortage, produced from one or several causes e.g. falling investment yields, underwriting losses, herd driven premium prices. Under more permissive rating laws like the file and use statutes, the industry has been able to begin to restore that capacity rather quickly, albeit painfully, in many cases. Increases such as took place in early 1985, would have been much more difficult and might have not been so widespread under a system where the full exercise of prior approval laws was dominant.

But still another test is the law's ability to discourage irresponsible price cutting or "price war," especially the kind such as took place in the late seventies and the first half of the present decade. While that memory is still fresh it may be worthwhile to note that the possibility of price wars had been dismissed not so long ago. In 1969, as New York began consideration of "open" rating, then New York Superintendent of Insurance Richard E. Stewart wrote:

"Important segments of the insurance industry have urged until recently that if rates were left to the forces of open competition, the economic law of the jungle would apply and produce chaos. They assert that unbridled competition would unleash rate wars and ruinous competitive practices...

"There is no evidence in the past two decades that greater reliance on the forces of the marketplace to set rates results in price wars...."

But the price wars did come, brought on by changes that no one could have predicted when that statement was made nearly 20 years ago. Competitive rating laws did not prevent the price war. But neither did prior approval. Prior approval may be the law in half the states but well over half the states have experienced availability and affordability problems in 1985-86. In rate regulation, the search continues.

FILE & USE

	VE	E	NC	NK/DA	CP	TOTAL
AVAILABILITY	2	3	7	5	4	21
AFFORDABILITY	2	2	8	5	4	21

PRIOR APPROVAL

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	5	0	3	17	25
AFFORDABILITY	3	3	3	16	25

19. FLEX RATING

PURPOSE:

To realize the benefits of sensible competition, while maintaining a degree of control, New York and Oregon have adopted flex rating in nearly all commercial lines and most professional liability lines, except medical malpractice.[198] It is too early to judge the effect.

20. EXCESS PROFITS

PURPOSE:

To keep insurers from taking advantage of their advantage in selling what many consider to be essential to personal, professional, public, and corporate well being, curbs on profits have been proposed.

Nebraska, New York (commercial and private passenger auto), North Carolina and South Carolina have excess profit provisions.[199] Nebraska and New York report that the measures have effected "no change."[200] South Carolina sources said the effect was not known.[201]

Few question the value of excess profits provisions. But they can be relied on only where there is adequate funding to investigate, document and prosecute possible abuses.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	0	2	2	4
AFFORDABILITY	0	0	2	2	4

21. INCREASED DATA TO INSURANCE DEPARTMENTS

PURPOSE:

To better understand what is really happening in regard to insurance profits, premiums, losses etc., legislators and insurance commissioners have been asking for more data from insurers.

BACKGROUND:

Many insurance law changes in recent years have included a provision that companies furnish specific data to State Insurance Departments. The legislation seldom, if ever, provides for additional personnel and computer resources to handle the additional data.

WHAT WORKED AFTER A WHILE:

Oregon's experience provides an example. Closed claim data, filed pursuant to the state's 1975 medical malpractice reform law,[202] remained unused until the State Medical Association refined the data.[203] Now the sorted and refined data has helped the Department spot and review claim and loss trends and establish a climate where medical malpractice liability insurance is available in the private voluntary market.[204] The Oregon Department reports that "there is no availability problem" in medical malpractice insurance in Oregon.[205]

Sources in Tennessee report that its 1977 law[206] requiring the filing of closed claims data to the department was effective in regard to medical malpractice.[207]

But favorable opinions in regard to increased data are not universal. Michigan reports that information furnished to the Department

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But favorable opinions in regard to increased data are not universal. Michigan reports that information furnished to the Department

in regard to medical malpractice, government and commercial liability yielded "no change."[208]

SUB-SUMMARY:

Quality data like that produced from closed claim studies can help enhance availability. The key is having the staff and equipment to refine and apply the needed information.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	3	5	2	10
AFFORDABILITY	0	3	5	2	10

CONCLUSION ON REGULATION:

"Open" rating has enabled the market to recover faster and respond to its environment, with price moving up or down -- as experience has shown all too clearly. But prior approval has not kept rates down for long. It remains to be seen whether flex rating will offer the best -- or worst -- of both worlds. Both excess profits laws and measures requiring increased data can help if legislators provide regulators with the resources for implementation.

	VE	E	NC	NK/DA	CP	TOTAL
AVAILABILITY	7	6	17	26	4	60
AFFORDABILITY	5	8	18	25	4	60

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176. Telephone interview with George Dale, Commissioner of Insurance, State of Mississippi, July 1986.

VI.

ADMINISTRATIVE ACTION

In the crisis of 1985-86, several Commissioners were able to effect significant relief in some lines of insurance -- especially when the legislature had already given them the powers they need to bring about industry cooperation.

22. MARKET ASSISTANCE PROGRAMS**

To establish an additional, medium of communication between buyers and sellers of insurance in a tight market, Insurance Commissioners, acting as motivators, have established so called Market Assistance Programs (MAPs).

BACKGROUND:

During the crisis of 1985-1986, Market Assistance Programs have proved themselves an effective catalyst to availability in some lines of liability insurance.

Where MAP programs have been most effective, notably in New Hampshire and North Carolina, the legislature had already passed "stand-by JUA" legislation,[209] meaning that the commissioner could mandate the establishment of a JUA to write insurance in a troubled line.

With over 90 per cent of the applications received actually placed, New Hampshire Commissioner Bergeron sees the eventual phasing out of the MAP, with the risks it covers -- municipal, day care, and liquor liability placement going back to the normal market or self-insurance.[210]

North Carolina Commissioner James E. Long reports an equally high percentage of placement of risks handled through his Department's MAP Program.[211]

Several respondent states were divided on whether the MAPS were effective.

As with other areas of inquiry, several states declined to offer answers regarding the effectiveness of their MAP programs.

OTHER ADMINISTRATIVE ACTIONS:

In Oregon, Commissioner Josephine M. Driscoll used administrative powers, as noted earlier in this report, to ban cancellations in commercial insurance and to initiate flex rating.

SUB-SUMMARY

There is little question that a MAP can be effective in making insurance available, especially when the Commissioner has a JUA among his persuasive assets. One caution: different MAPs have addressed different lines of insurance in different states. It is also fair to say they have been successful in lines where at least part of the problem was not related to reality but only perception, as has been the case with day-care. No one is beating the drums for proposed MAPs for such real

lingering availability and affordability problems such as hazardous waste, medical malpractice, asbestos removal liability.

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208. N.C.I.C. 58-4500-460.

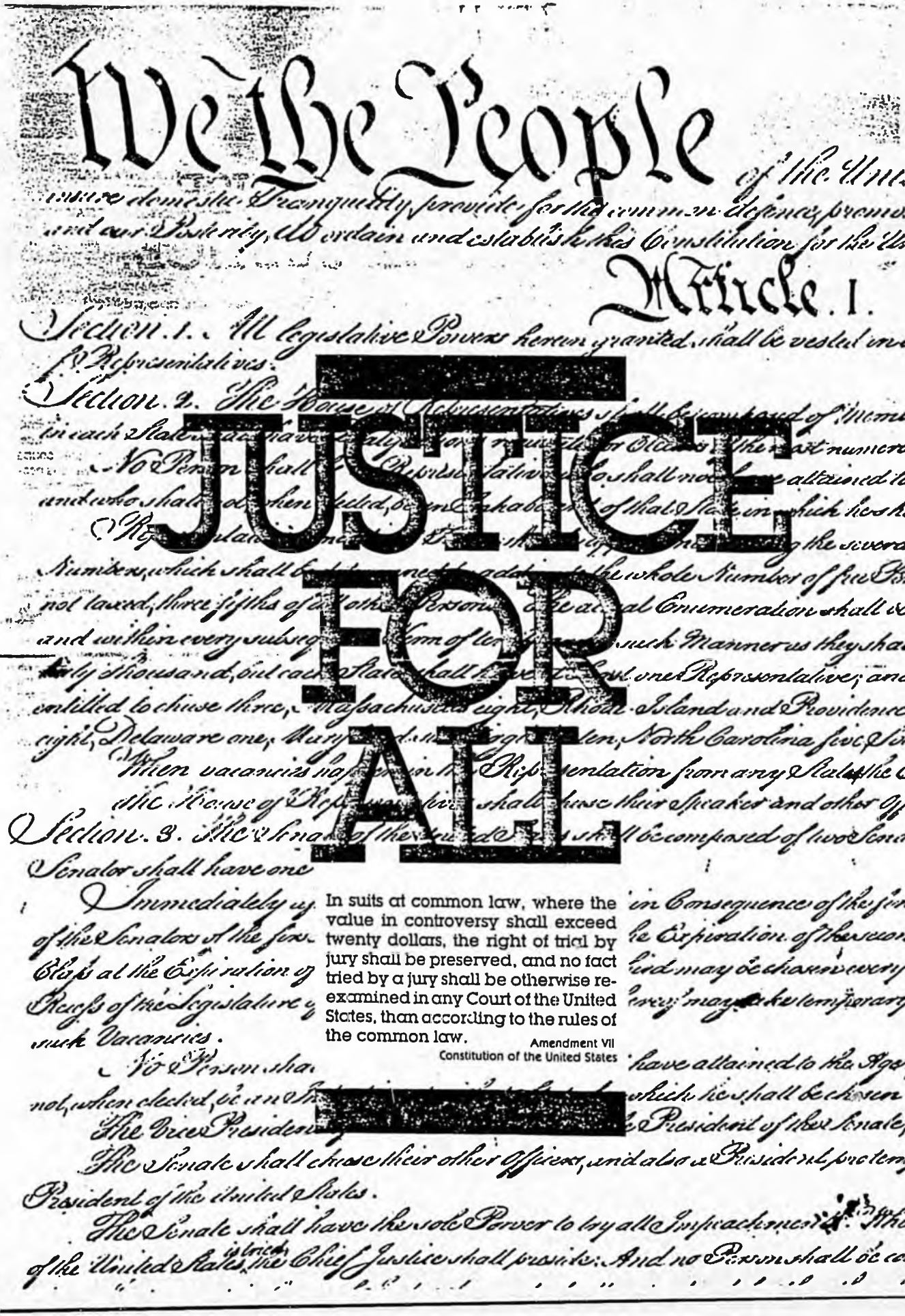
209. Remarks by Louis E. Bergeron, COIL Seminar, note 1, supra

210. Remarks by James E. Long, Insurance Commissioner, State of North Carolina, COIL Seminar note 1, supra.

** The survey responses for MAPs are not included in any above tabulations. Map experience is still very new, while some MAPs may be phased out as the need becomes less acute. However, there is little doubt that standby JUA law, not included in the Questionnaire provides Commissioner with formidable leverage in encouraging insurers to cooperate with MAP programs.

Also worth noting is the fact that from early indications, it is apparent that MAPs have been effective in lines of insurance affecting smaller businesses and institutions such as dram shop and day care liability as distinct from larger long tale and "open ended" risks like hazardous waste liability.

(4) HB 227


We The People
of the Uni
more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote
and our Posterity, do ordain and establish this Constitution for the Un
Article. I.
Section. 1. All legislative Powers herein granted shall be vested in
of Representatives.
Section. 2. The House of Representatives shall be composed of Mem
in each State shall have Qualifications requisite for Electors of the most numerous
No Person shall be a Representative who shall not have attained to
and who shall not, when elected, be an Inhabitant of that State in which he sh
Representatives and direct Taxes shall be apportioned among the several
Numbers, which shall be determined by adding to the whole Number of free Per
not taxed, three fifths of all other Persons. The actual Enumeration shall be
and within every subsequent Term of ten Years, in such Manner as they shall
every thousand, but each State shall have at least one Representative; and
entitled to chuse three, Massachusetts eight, Rhode-Island and Providence
eight, Delaware one, Maryland
When vacancies happen in the Representation from any State, the E
the House of Representatives shall chuse their Speaker and other Of
Section. 3. The Senate of the United States shall be composed of two Senat
Senator shall have one
Immediately
of the Senators of the first
Class at the Expiration of
Years of the Legislature of
such Vacancies.
No Person shall
not, when elected, be an In
The Vice President
The Senate shall chuse their other Officers, and also a President pro tem
President of the United States.
The Senate shall have the sole Power to try all Impeachments. When
of the United States is tried, the Chief Justice shall preside: And no Person shall be con
JUSTICE FOR ALL
In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.
Amendment VII
Constitution of the United States
in Consequence of the first
the Expiration of the second
Third may be chosen every
every may make temporary
have attained to the Age of
which he shall be chosen.
President of the Senate,

The Association of Trial Lawyers of America was founded as the National Association of Claimants' Compensation Attorneys in 1945. The objectives and goals of the Association are to uphold and defend the principles of the Constitution of the United States; to advance the science of jurisprudence; to train in all fields and phases of advocacy; to promote the administration of justice for the public good; to uphold the honor and dignity of the profession of law; and especially to advance the cause of those who are damaged in person or property and who must seek redress therefor; to encourage mutual support and cooperation among members of the bar; and to uphold and improve the adversary system and trial by jury.

Voting membership in the Association is open only to those who represent plaintiffs in civil trials and defendants in criminal trials. Voting members must be "committed and devoted to the concept of a fair trial, the adversary system, and a just result for the injured, the accused, and those whose rights are jeopardized."

The Jury Speaks for the American People

Juries embrace community values, give ordinary citizens a vital role in government, and apply their collective wisdom to the fair resolution of hard cases. They do a good job, too. A study by the Institute of Civil Justice of the Rand Corporation says, "Our research shows that juries are usually sensible and that their decisions have been remarkably stable over 20 years." The jury, says Chief Justice Rehnquist, "represents the laymen's common sense."

You'll find the facts on pages 4 and 5.

> Equal and exact justice to all men, of whatever state or persuasion, religious or political.
>
> Thomas Jefferson
> First Inaugural Address, March 4, 1801

Court Filings Keep Pace With Population Growth

The National Center for State Courts in a recent study found "no evidence to support the existence of a national 'litigation explosion' in state courts." The National Association of Attorneys General reports, "The facts do not bear out the allegations of an 'explosion' in litigation." Researchers at the University of Wisconsin point out that Americans do not litigate any more than people in England or Denmark or New Zealand—and they sue even less often than Yugoslavians. Americans go to court when they need to, because they believe in the system.

There are more facts on pages 6 and 7.

> Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit.
>
> James Madison
> The Federalist No. 51 (1788)

The Insurance Industry Hides in a Fog of Statistics

In 1985, insurers' net income, according to the United States General Accounting Office, soared to an astonishing $19 billion. This was during the period when the industry was bemoaning the "fact" that it was suffering record losses.

Insurers put money into a loss reserve not only to pay claims filed that may never be paid but also to pay claims that *might* be filed—and deduct the loss reserves, which are available for investment, as a business expense. Then, the insurers are allowed to claim—as individual investors cannot do—that the money they make on investments is not really income.

The details are on pages 8 and 9.

Juries Help Make Life Safer for All of Us

Doctors don't discipline their colleagues who do harm to patients, manufacturers sacrifice safety to profit, employers hire people who are a menace to the public—and juries tell all of them that this just won't do.

Jurors, seeking nothing for themselves, seek only to ensure that all citizens are treated fairly and that wrongdoers are held to account.

The jury has been rightly called the conscience of the community. Jurors ensure that community standards of justice are maintained.

The story begins on pages 10 and 11.

Manufacturers Listen When Juries Speak Out on Safety

Humidifiers don't scald children any more, drain-cleaner cans don't blow out people's eyes any more, tractors don't geyser burning gas onto farmers any more, and children's clothes don't catch fire the way they used to. Each time, a jury spoke—and each time a manufacturer got the message.

Oil companies have heard, too: oil spills are down dramatically, and the theory is that damage awards for the harm done to the environment have made the companies more careful. Is this bad?

Pages 12 and 13 will help you decide.

Insurance Reform Legislation Would Improve the System

Long ago, a lone person hurt by a corporation could do nothing but lick his wounds—and the corporations liked it that way. So did their insurers. They like to keep the money they take in.

Now a David who's wronged can take on a Goliath with some hope of winning—and the corporations and their insurers don't like it a bit. They're fighting back, by fair means and too often foul. And unlike other trades, insurers aren't regulated by federal antitrust laws. They can gang up on consumers without fear. Maybe there ought to be a law against it.

Some arguments are found on pages 14 and 15.

The Press Has Commented on the Insurance Crisis

Read all about it on page 16.

'THE JURY SPEAKS FOR THE AMERICAN PEOPLE.

Anti-Jury Fun with Numbers

The insurance industry and the Justice Department have relied heavily in their attack on the law on reports produced by Jury Verdict Research, Inc. (JVR). Unfortunately, according to Philip J. Hermann, chairman of the board and founder of JVR, his company's work does not support that reliance. "A number of highly publicized news articles quoting our statistics have grossly misstated them," he said in testimony before the Subcommittee on Economic Stabilization of the House Committee on Banking, Finance, and Urban Affairs.

"JVR," he went on, "has neither asserted nor published any conclusions that the average size of jury verdicts has recently skyrocketed." His conclusions are that verdicts for the plaintiff have increased at an average rate of 15.23% over the past 10 years, and that the largest increases in verdicts coincided with the highest increases in the Consumer Price Index and with studies by the U.S. Health Care Financing Administration of the average annual growth rate for health care between 1978 and 1984.

Mr. Hermann emphasized that JVR reports do not cover verdicts for the defense, which would, of course, mean zero for the plaintiff. In medical malpractice cases that go to trial, for example, plaintiffs recover in far less than half the cases.

As for million-dollar verdicts, he told the subcommittee, "The increase in the number of million-dollar verdicts may be the result of the inflation factor and not necessarily because jurors have simply decided to award larger amounts."

JVR statistics, Mr. Hermann said, are based on what the juries say the awards should be—not on what the plaintiffs receive after appeal, settlement, or remittitur.

Mr. Hermann had criticisms of insurance companies that went beyond their misuse of JVR statistics. "The number of insurance companies," he stated, "that depend on the partially educated guess in evaluating their claims is startling."

> One unusually large verdict can skew the numbers. The JVR statistics took in the first Pinto verdict—more than $127 million—in 1978, but it was later reduced to $6.7 million.
>
> *Consumer Reports*, August 1986

Of juries, on the other hand, he said, "I must confess that I have been impressed, with few exceptions, by the ability of the juries to resolve personal injury disputes in a fair and evenhanded manner. Juries reflect the community's prevailing social and cultural concerns and standards in their application of the law to the circumstances of each litigant in each individual case."

Sylvia Webb

Would You Pay This Price For A Ticket To The "Lottery"?

Of 1,642 million-dollar verdicts between 1962 and 1985:

Permanent paralysis	362
Permanent brain damage	338
Wrongful death	362
Amputations	161
	1,223

Cool analysis is discrediting last year's horror stories about an epidemic of multimillion-dollar jury awards for relatively little cause. In a sample of 359 cases in the 1982-1985 period, mostly involving product liability, punitive damages were "insignificant," according to a study published by the American Enterprise Institute. "The civil litigation system is stable," says Mark Peterson of the Rand Institute for Civil Justice.

"The Crisis Is Over—But Insurance Will Never Be the Same"
Business Week, May 25, 1987

It is important to recognize that the costs of injury and illness are not created by scientific knowledge but are revealed by it. These costs always existed; they simply were hidden by ignorance.

Cooper, "Trends in Liability Awards," 1986

The most troubling aspect of the current debate is the way all respect for the system—and especially for juries—seems to have evaporated in favor of finding ways to intervene on behalf of defendants and their insurance companies, as if there's a lynch mob out to get them.

As reporters who often study jury deliberations, we find the jury process more often than not to be an awe-inspiring, downright throat-lumping testimony to the common man's devotion to the value of law in a democracy. Most juries we've studied act not infallibly but rationally.

American Lawyer, May 1988

Not surprisingly, a jury of peers tends to increase awards over time by no more than the rise in medical costs, general inflation, and the value of lost work. Recent changes in average jury awards and numbers of lawsuits filed mirror increases in average wages, medical costs, life expectancy, and population growth.

Cooper, "Trends in Liability Awards," 1988

The Chief Justice and Trial by Jury

Chief Justice William Rehnquist has spoken to the importance of the jury system. In a 1979 case he said, "The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the sovereign, or, it might be added, to the judiciary."

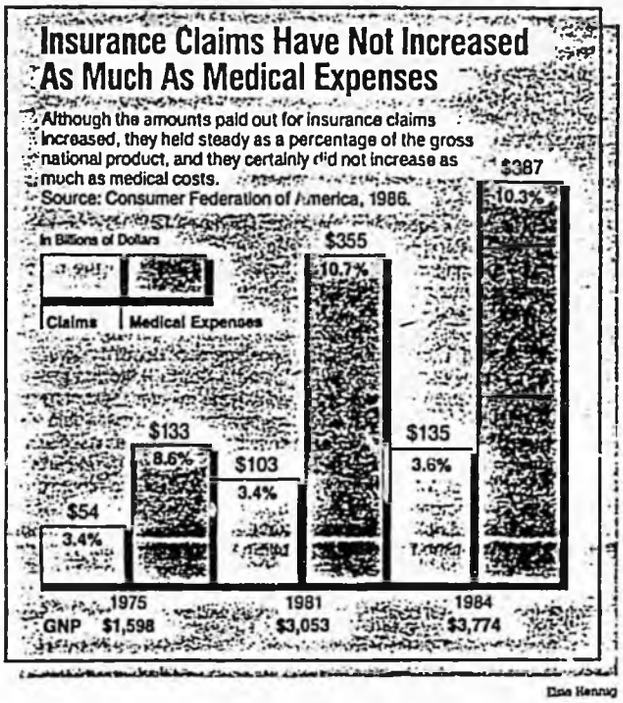
"Trial by a jury of laymen rather than by the sovereign's judges," he said further, "was important to the founders because juries represent the laymen's common sense, the 'passional elements in our nature,' and thus keep the administration of law in accord with the wishes and feelings of the community."

Why There Are More Million-Dollar Suits

The million-dollar verdict is still a freak occurrence, but it is true that there are more of them these days. Here are some of the reasons why:

- Inflation: In the past 20 years, the amount a dollar will buy has dropped by about two-thirds; it takes $3 now to buy what $1 would buy in 1965.
- Earning Power: The average American can now earn 30% more a year than he was able to earn 20 years ago.
- Life Expectancy: People now live longer than people used to 20 or even 10 years ago.
- Increased Medical Costs: In the past ten years the cost of hospital care alone has increased 56% faster than the Consumer Price Index has.
- Medical Breakthroughs: People with catastrophic injuries can now be saved, and sometimes even partially rehabilitated, but the technological costs of helping them to a viable life are high.

The Insurance Crisis: Real Solutions for Real Problems—A Consumer Perspective, p. 14



Elsa Hennig

Have Juries Run Wild?

That was the question the Consumer Federation of America (CFA) asked itself. It was answered in a CFA study of "Trends in Liability Awards" directed by Dr. Mark Cooper and released in May 1986. The answer summarized:

> Far from running wild, juries have adjusted their awards to reflect the basic social and economic changes that have taken place in the past decade. They are making awards to their peers that are consistent with the increasing economic output of society and the value placed on life.

Dr. Cooper points out further in the section "How Juries Should Behave" that "juries can be expected to decide the magnitude of awards according to their experience with inflation and their knowledge that income and productivity grow over time and that medical costs have increased sharply in recent decades. The number of cases brought can be expected to reflect the number of people in society and the . . . risks to which they are exposed."

The study shows that between 1975 and 1984 real income increased 17%, life expectancy 3%, and elderly income 10% compared to average income. As a result, there is an expected increase in lifetime income *after inflation* of 25% to 30%. At the same time, health care costs increased by 23% more than inflation, and hospital costs increased almost 56% more than inflation, and these factors must be considered in redressing wrongs that require extensive medical care.

Changes in median awards are generally smaller than changes in average awards. Cooper's report says. Average awards count money; median awards count people.

Medians thus represent typical awards. They show what juries are likely to do—what they do most often. Averages indicate that juries occasionally make much larger awards than they usually do.

What do juries factor into awards? Here are some facts from the Consumer Federation survey:

- Productivity of workers has increased dramatically over the past 20 years, and incomes have increased in response.
- Therefore, the loss of income suffered by an interruption of work in 1985 is larger not only because of inflation, but because of increases in real productivity.
- People are living longer, so the lifetime loss will be higher.
- While population has increased by 23% over the last 20 years, work force participation has increased by 52%—which means that many more people are exposed to hazards in the workplace.

What Juries Can Do

Juries fairly chosen from different walks of life bring into the jury box a variety of different experiences, feelings, intuitions, and habits. Such juries may reach completely different conclusions than would be reached by specialists in any single field, including specialists in the military field. On many occasions, fully known by the Founders of this country, jurors—plain people—have manfully stood up in defense of liberty against the importunities of judges and despite prevailing hysteria and prejudices. The acquittal of William Penn is an illustrious example. Unfortunately, instances could be cited where jurors have themselves betrayed the cause of justice by verdicts based on prejudice or pressure. In such circumstances independent trial judges and independent appellate judges have a most important place under our constitutional plan since they have power to set aside convictions.

Justice Hugo L. Black
Toth v. Quarles, 350 U.S. 11, 18-19 (1955).

In Tennessee, between 1980 and 1985: "The average plaintiff award per year fluctuated, peaking in 1984 at $61,765 and decreasing to $21,384 in 1985. In contrast, the median plaintiff award per year remained fairly stable between 1980 and 1985, not exceeding $9,000 in any year except 1984, when it was $20,617. Median award figures tend to give a more accurate picture than averages, because they ignore the effect of extreme values."

Tennessee Insurance Department
Performance Audit, 1987

What Happens After the Verdict

Remittitur—The trial judge reduces the jury verdict. The first multi-million-dollar verdict, won by actor John Henry Faulk for being blacklisted, was $3.5 million dollars; it was reduced by the trial judge to $450,000.

Appeal—The appeals court may reduce the award, or overturn it totally.

Settlement—To avoid the uncertainty and added expense of an appeal, some plaintiffs and defendants agree to an immediate post-trial settlement, which can be significantly lower than what the jury awarded.

COURT FILINGS KEEP PACE WITH POPULATION GROWTH.

Some States Think Before They Act . . . Some After

While some state legislatures rushed to recreate their legal systems in response to insurance company needs, others took the time to study the problem first, and some that had passed new laws had second thoughts.

In 1986, the **Connecticut** legislature enacted one of the most sweeping "tort reform" statutes in the entire United States.

In May 1987, the Connecticut legislature repealed major portions of that 1986 bill. The repeal restored joint and several liability and did away with mandatory structuring of awards made by juries.

The legislature decided to reconsider the law because insurance affordability and availability did not improve significantly.

In April of 1987, the State of **Tennessee** issued a report of the performance audit of its own Department of Commerce and Insurance. Interestingly, given the size and sophistication of the insurance industry, the Tennessee Audit Division said: "Although audit work showed fluctuations in the number of civil suits and the size of jury awards, available data do not support contentions that the crisis is the direct result of a substantial increase in litigation and could, thus, be solved by enacting tort reforms."

Michigan did enact substantial restrictions on individual rights, but then the Michigan House of Representatives asked Casualty Actuaries, Inc. to study the profitability of commercial liability insurance. The study report was released on November 10, 1986, and made some unexpected statements: "Insurers often do not follow the advice of their own actuaries, and reserving and pricing policies are often instead established at the executive level of the company"—and executives have their own ideas of what the traffic will bear.

Among its conclusions, the Michigan study says clearly: "The effect of tort reform legislation, if there is to be any effect, has yet to emerge in the data . . . . It is doubtful that such legislation will eliminate or soften competition, and hence eliminate or soften the insurance cycle."

Other states were thinking first. In the spring of 1987, the **Wyoming** House Rules Committee killed a proposal to place on the ballot a constitutional amendment that would allow the legislature to limit non-economic damages for personal injury or death.

And a **South Dakota** legislative committee rejected most of the tort "reform" proposals it was created to consider, because, as a legislative staffer said, none of the experts the committee called upon could prove that tort "reform" measures would have a quantifiable impact in stabilizing insurance rates.

State bar associations (which include insurance and corporate lawyers as well as trial lawyers) in **South Carolina** and **North Dakota** studi jury trials and verdicts in their sta courts. The bar association in Sou Carolina found that when awar were discounted for inflation the had been no increase in dollar awards during the 10 years fro 1976 through 1986. It also repor ed that although there were mor and larger punitive damage awards the median amount for verdicts has remained constant.

The State Bar Association of North Dakota in a similar 10-year study found that about half the verdicts were under $15,000, and only six verdicts were above a million dollars. The immediate past president of the state bar, David Peterson, said, "This tells me that North Dakota juries, contrary to common thinking, are not out of control."

"We think the report had a significant impact on the legislature," he went on.

"The insurance industry," he said, "used vague generalities, and we presented specifics."

"We're Not a Litigious Society"

"The facts do not support the rhetoric surrounding the litigation explosion," said Stephen Daniels in the *Judge's Journal* (Spring 1985).

"The message provided by the past," he said, "is that trial courts in different locales, even within a state, may show different patterns over time, but probably not the simple, upward trend line implied by the litigation explosion idea.

"We must be prepared for the possibility that research into patterns and changes in court activity over time may well show that there is little factual basis for all of those dire predictions."

Similarly, quoting a breakdown of the 1984 claims against Southern California Physicians Insurance Exchange (SCPIE), California Assistant Commissioner of Insurance Roth said that of 1,180 claims, 72 percent were closed without indemnity. The 324 claims paid averaged about $80,000, and over two-thirds were for $50,000 or less (*California Lawyer*, March 1986, p. 41).

Startling new evidence suggests that the "lawsuit crisis" may not even exist:

"The insurance industry has fostered these misperceptions with a phenomenally successful campaign that blames the 'lawsuit crisis' for shocking premium increases and a paralyzing insurance shortage. The rate hikes, however, result largely from the insurance industry's own mismanagement."

The often-cited litigation explosion thus appears to be exaggerated with respect to the total number of civil filings. The source of the perception that there is a litigation explosion may be founded in a changing mix of civil cases, increased complexity of the cases being filed, and widespread media reports of enormous awards in relatively few civil cases.

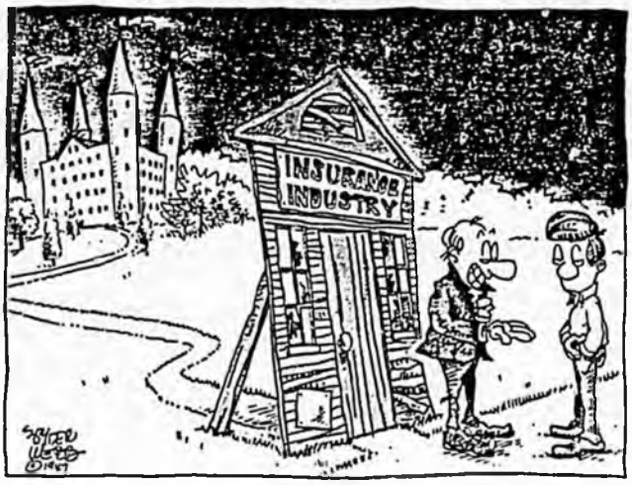
National Center for State Courts, *A Preliminary Examination of Available Civil and Criminal Trend Data in State Trial Courts*, April 1986.

To the extent that there is an increase in certain types of litigation, one has to wonder why that's a bad thing. Imagine having a "crisis in confidence" in a branch of government in which the crisis was that people have *too much* confidence. How many other societies wouldn't relish that kind of problem, in which people reduce their arguments to paper and bring the papers to a courthouse precisely because they believe in the system.

American Lawyer, May 1986

The facts do not bear out the allegations of an "explosion" in litigation or in claim size . . . Instead, the available data indicate that the causes of, and therefore the solutions to, the current crisis lie with the insurance industry itself. Thus, to the extent that civil justice reform may be desirable, it would be for reasons entirely separate from the liability insurance "crisis." The rush to put such civil justice changes in place is therefore uncalled-for and potentially quite harmful, since these changes would remain in place, while providing little relief from any cyclical "crisis" period the insurance industry might pass through in the future. In particular, implementation of such damages at the federal level would create inflexibility and would eliminate states' abilities to make their own judgments. . . .

National Association of Attorneys General, Report, May 1986



Spyder Webb

Why Federal Court Filings Rise

If we break down the overall increase we notice that the increase in filings over the nine years (1975-84) is heavily concentrated in a few areas. . . .

Half the total increase is accounted for by two giant increases—recovery cases and social security cases. Each is the result of deliberate and calculated official policy—to recover overpayment of veterans' benefits by litigation and to curtail disability benefits by summarily removing beneficiaries from the rolls. Is the 412% increase in social security cases to be understood as an outbreak of litigiousness among social security claimants? Does it make sense to take the 668% increase in recovery cases as evidence of an outbreak of litigiousness among federal officials? Like social security recipients whose disability payments were terminated, federal officials were confronted with a problem and turned to the courts to solve it because nothing better was at hand.

Professor Marc Galanter,
"The Day After the Litigation Explosion"

Statistics from State Courts

In **Colorado**, the population increased 37.9% between 1972 and 1985, but personal injury suits increased by less than 31%.

In **Connecticut** in 1984-85, there were only 3 awards of $1,000,000 or more. Of the 12 product liability cases, the plaintiff won in 7; of 23 medical negligence cases, only 5 plaintiffs won.

The **Delaware** Superior Court in New Castle County found only 3 jury awards of $1,000,000 or more between 1980 and 1985, and two of these were in libel cases. The Annual Report of the Delaware Judiciary states that total damage claims from 1984-85 were down by 4%, and 1985 had 421 fewer claims than 1980.

In **Florida**, defendants won almost half of all torts verdicts, and more than 85% of the awards for plaintiffs were less than $50,000. The number of medical negligence cases dropped from 6% of total filings in 1983 to 1.8% in 1984 and 1985.

In **Georgia**, defendants won a majority of cases; the highest award to a plaintiff in 1985 was $78,500.

In **Indiana**, the Supreme Court upheld only 4 awards of punitive damages in the 35 years between 1950 and 1985.

In **Iowa**, tort filings decreased by 12% from 1981 to 1985. Medical negligence and product liability cases accounted for only 3% of total tort awards.

The **Maine** 1986 Judicial Department Report revealed that since 1980, civil filings have steadily decreased, with a total decrease of 17.4%.

In **Minnesota**, statewide data indicate that less than 20% of all civil filings are personal injury actions; jury verdicts remained relatively constant in Hennepin County (Minneapolis-St. Paul) and were lower in 1985 than in 1981.

A study in **New Jersey** of jury verdicts from January 1980 through February 1984 showed that verdicts of over $300,000 were awarded in only 43 cases.

The **South Carolina** Jury Verdict Research Project has concluded that in that state product liability cases accounted for only 2% to 5% of all verdicts.

In **Texas**, there were only 16 medical negligence jury verdicts in 1984; and in 1985 there were only 15; in 1984 there were 24 jury verdicts in product liability cases, and in 1985 only 12.

In **Washington State**, tort filings per 10,000 persons have held steady since 1976.

The Supreme Court of **Vermont** reported a 2.3% increase from June 30, 1985 to June 30, 1986 in all civil suits.

Legislature Reaches End of Its Rope

New Mexico enacted a number of laws some time ago that it supposed would solve the problem of availability and affordability of insurance. In January 1987, an interim legislative committee reported to the 38th Legislature. That report was eloquent in its frustration.

The committee was charged with examining whether changes in the laws governing the civil-justice system solve the problem of increased insurance premiums in all aspects of our society. Among the committee's findings:

- There is an insurance premium crisis in New Mexico evidenced by massive increases in premiums in all areas of tort liability insurance.

As early as 1976 New Mexico had enacted changes which the advocates of tort reform designated as the most important requirements to stem the tide of insurance premium increases.

In 1976, governmental liability was capped at $300,000 per person and $500,000 per accident—among the most restrictive in the nation. Similar caps were placed on non-medical damages in medical negligence awards, and both kinds of cases were given new, shorter statutes of limitation. In 1986 New Mexico limited dram shop liability; the New Mexico courts had earlier abolished joint and several liability and instituted a system of proportioned negligence.

- Despite all these "tort reform" changes, New Mexico was experiencing skyrocketing insurance premiums (insurance for the city of Roswell jumped from $87,000 per year to $677,000 per year).
- There has been no demonstrable evidence that enacting tort reforms results in rate relief.
- New Mexico's tort reforms have not reduced insurance rates for general liability insurance.
- The committee found no evidence of a litigation explosion in New Mexico, nor was there any evidence of excessive judgments in tort cases.
- New Mexico is the eighth most profitable state in the nation for insurance carriers as expressed in the ratio of insurance premiums earned by general liability carriers to claims paid by those carriers. New Mexico premium payers, therefore, are in the unenviable position of subsidizing claimants in other states.
- Thus, what the insurance industry appears to be doing is attempting to keep its economic portfolio current by raising rates not in response to casualty losses, but rather in response to the downtrend in investment profitability.

The New Mexico committee concluded:

1. There is no litigation crisis or "tort reform" crisis in New Mexico.
2. There is an insurance premium crisis in New Mexico that is unrelated to the amount or quality of tort litigation in this state.

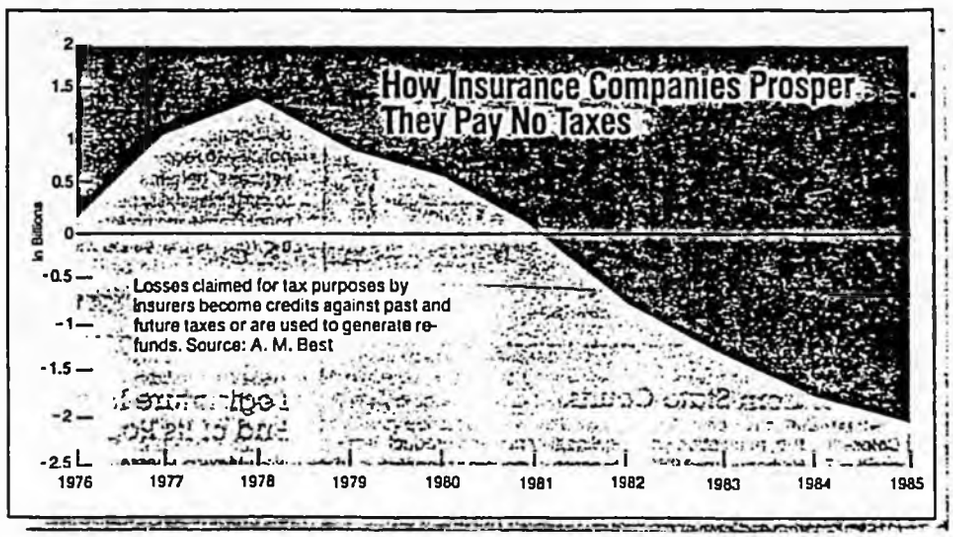
THE INSURANCE INDUSTRY HIDES IN A FOG OF STATISTICS.

Why Insurers Love the Tax Code

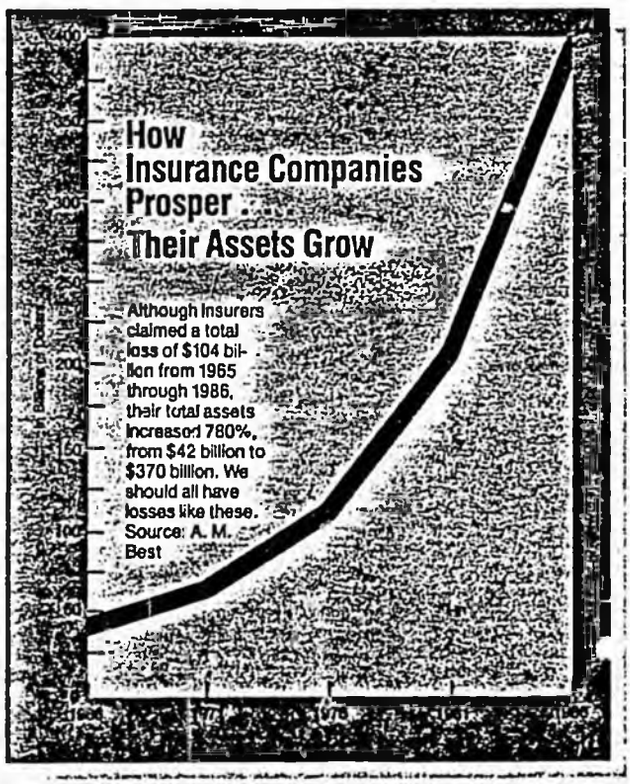
When a policyholder files a claim, the insurance company estimates what its ultimate payment will be and sets that money aside into a "loss reserve." The money may not actually be paid out for years, especially if damage disputes are dragged though the courts. Moreover, insurers may also reserve for claims that have not yet been made—and may never be made. But for tax purposes that money is deducted as an expense. Using this privilege, companies salt away billions of dollars.

Meanwhile, the insurance company invests the loss reserve in bonds, real estate, or the stock market, and garners a profit.

Consumer Reports, August 1986



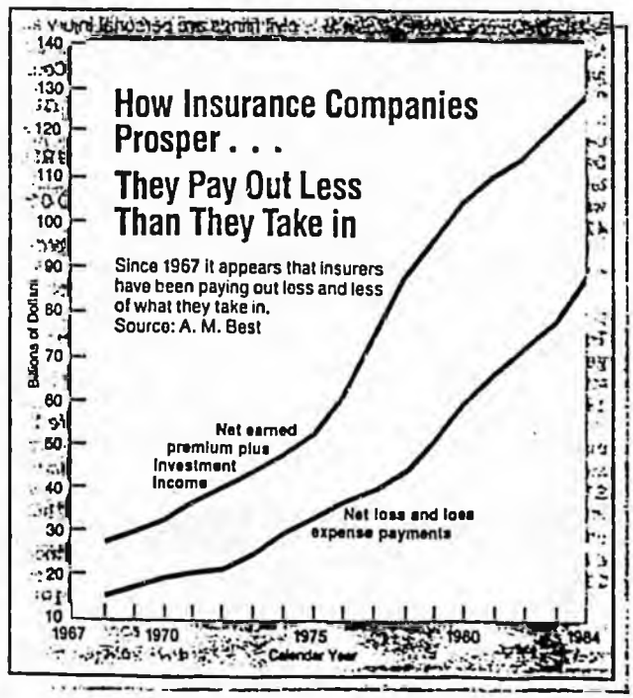
Dale Hennig



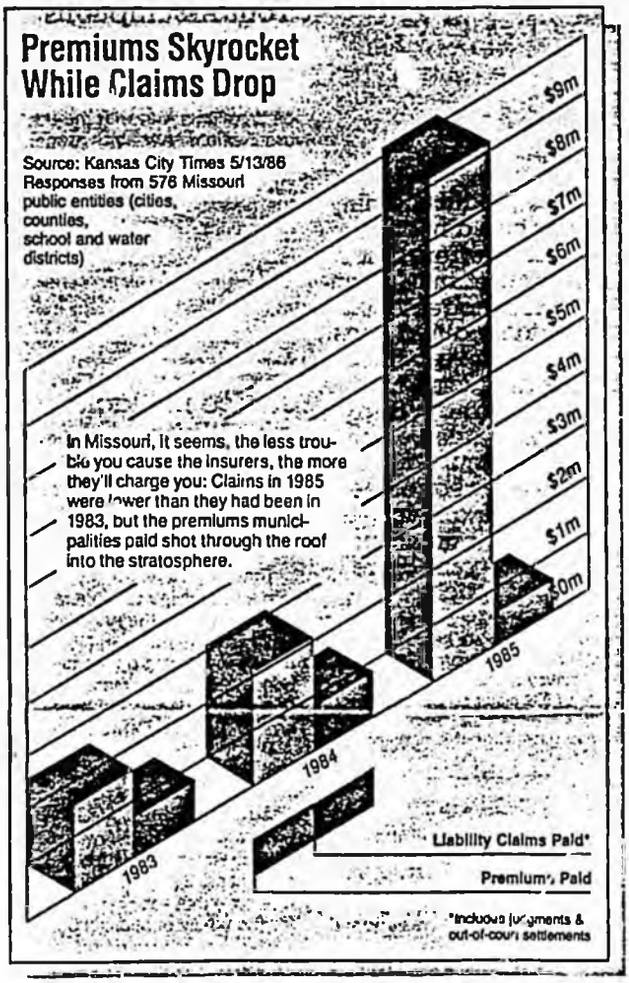
Dale Hennig

The debate has been hindered by an unwillingness on the part of the nation's insurance companies to open their books for scrutiny.

Houston Business Journal, April 27, 1987



Dale Hennig



Elsie Hennig

Elsie Hennig

Child Care a Risky Business? Not for the Insurers

In 1985, the highest claim paid out for a child care program was $15,000. In a survey by the National Association for the Education of Young Children (NAEYC) reported early in 1986, 90 percent of those surveyed had *never* had a claim. Of the few that did, 8 out of 10 had total claims of less than $500.

And what did the child care business get as a reward for such good behavior? In 1985, insurers cancelled insurance for two-thirds of the small family day care homes and one-third of the child care centers, because they were "unprofitable."

Child care, according to the report, was included among the industry's list of unprofitable businesses on the basis of statistics that merged child care with foster care, nursing home care, and a number of other businesses.

In 1985, the NAEYC was getting 200 phone calls a week about rate hikes, coverage cutbacks, and cancellations. The NAEYC decided to document the problem. To its surprise, a random, national sample of child care providers proved there *was* no problem, from a risk point of view. "The cause of the crisis in liability lies primarily within the insurance industry," the report says flatly. According to Marilyn Smith, executive director of NAEYC, "We've asked the insurance industry for evidence of large child care claims and they haven't produced it. Congressional hearings, convened to examine the evidence, came up empty-handed."

The report revealed that in 1985, claims paid out amounted to only 6 percent of total premiums. As Smith says, "Child care is a sound insurance risk—the CIGNA insurance company, which is one of the few that is still writing child care policies, has made $5 million in the last 9 months on child care. It looks to me as if we have paid for their ad campaign.

"It is tragic that parents will need to pay more for child care and quality may deteriorate in some programs because dollars that could serve children are instead going toward exorbitant and unjustified insurance premiums.

"Tort reform will not help much where there are no torts."

If the insurance industry has been profitable, what is the justification for the huge increases of the last two years? If current insurance supervision is inadequate, why is American business being crushed under huge rate increases that have questionable justification?

The Hon. James J. Florio, Chairman, House Subcommittee on Commerce, Consumer Protection and Competitiveness

How Bad Is It For Insurers?

The National Association of Attorneys General, after extensive study, came to the following conclusions in its 1986 report, "An Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance":

Conclusion #1: The property/casualty industry is in adequate and indeed improving financial condition.

Conclusion #2: There have not been vast or explosive increases in claims and payments to victims.

Conclusion #3: The cyclical nature of the industry itself, and not any change in tort claims, is largely responsible for the current "crisis."

Conclusion #4: Changes in the civil justice system are not likely to solve the current or future problems in availability and affordability of liability insurance.

JURIES HELP MAKE LIFE SAFER FOR ALL OF US.

Civil justice is one of the great triumphs of the American system. . . . It forces wrongdoers to change their products and practices or risk further liability. It forces public disclosure of defective products and dangerous practices. The civil justice system must be preserved and the rights of consumers protected. The public interest demands no less.

Joan Claybrook
President, Public Citizen
May 21, 1986

The victim should be protected, not the ones who contributed to the injury.

News-Press, Ft. Myers, Florida
January 21, 1986

The amount of oil lost worldwide in accidents fell dramatically during the past two years, a research organization says. The decline may be the result of tighter industry operating procedures, stimulated by liability concerns . . . . Richard Golob, director of the Cambridge-based Center for Short-Lived Phenomena and World Information Systems, said, "The improved record may result from the threat of high liability damage awards, particularly for harm caused to beaches, wildlife, and other natural resources."

Washington Post,
November 28, 1986

A jury, however humanly fallible, is our final repository for the expression of a personal sense of what is just and right.

Murray Kempton
Los Angeles Times
July 22, 1986

DES, Pinto, and asbestos aren't code words for the system destroying society; they're examples of the system making life safer for all of us.

"The Not-So-Simple Crisis"
American Lawyer, May 1986

Where product liability has had a notable impact—where it has most significantly affected management decision-making—has been in the quality of the products themselves. Managers say products have become safer, manufacturing procedures have been improved, and labels and use instructions have become more explicit.

Nathan Weber, "Product Liability: The Corporate Response" (Conference Board, 1987), a survey of the risk managers of 232 major corporations

When Is a Loss Not a Loss?

In 1985, the property-casualty insurance industry somehow managed to announce a $5.5 billion loss while still posting a $5 billion profit.

Charging the industry with fraud, J. Robert Hunter, president of the National Insurance Consumer Organization, explained how insurers do arithmetic—not like you and I do, believe me. Hunter described what insurers consider losses:

- $2.1 billion was dispersed as optional dividends to stockholders.
- $1.9 billion was in taxes, but the industry forgot to mention that these were rebated.
- $6.5 billion was in realized and unrealized capital gains.

The U.S. Government Accounting Office in April 1987 makes this straightforward statement:

"The property/casualty industry had a $19 billion after-tax profit for 1986 and an $81 billion profit over the ten-year period 1976 through 1985."

Don't you wish you had losses like these?

Making Good on a Prediction

"We'll see this one again," began a September 1, 1986 editorial in the *Journal of Commerce;* it went on: "Consumer advocates opposed to the insurance industry have been fond of accusing some of the industry leaders of collusion by quoting them—out of context, we think—for pronouncements they've made at insurance meetings about how the industry must move to recover." It then quoted James T. Lynn, chairman of Aetna Life & Casualty, announcing very strong results of the second quarter of 1986: "However, casualty/property earnings must continue to improve to compensate for the losses and inadequate returns of recent years."

Lynn's statement is worth remembering, so here it is again. Because, as the *Journal of Commerce* wisely pointed out, "It certainly does nothing to quiet the allegations that the insurance industry, with dramatic premium rises, is making its customers pay for its management mistakes during the cash flow underwriting years." Just what we've been saying right along.

Your Assumptions or Mine?

No one can predict precisely what the impact of tort reform would be on premiums. But with the proper assumptions, variables such as claims settlements and underwriting experience can be worked into the necessary formulas to make projections.

James K. Coyne,
Executive Director,
American Tort Reform Association
(a business group)

Justice in Black and White

On March 21, 1981, the beaten and slashed body of a black 19-year-old named Michael Donald was found hanging from a tree in a Mobile, Alabama surburb.

That day Donald's mother ran into Michael Figures, a state senator who lives in the neighborhood and who is a lawyer in Mobile. He has been working on the case pro bono ever since, in close cooperation with the lawyers of the Southern Poverty Law Center.

The two people who actually lynched Michael Donald were convicted on criminal charges—one was sentenced to a life term and one to death. But it was a civil lawsuit—a wrongful death action brought against the United Klans of America—that achieved true justice for the family of Michael Donald.

The lawyers who represent Mrs. Donald stressed to the jury that, although no amount of money would bring her son back to her, only a large verdict would bring strong enough message to the Klan that their philosophy of hatred and violence will no longer be tolerated. The all-white jury agreed. On February 12, 1987, Mrs. Donald was awarded $7 million in damages.

What Some Doctors Have to Say

The greatest cause of malpractice is malpractice. You must understand that some of the malpractice out there is so grievous, offensive, and implausible as to beggar the imagination. Without real malpractice, we would not have this problem.

Barry S. Schifrin, M.D.
Director of Maternal/Fetal Medicine
Pasadena's Huntington Memorial Hospital
AMA News, June 21, 1985

I used to go out and talk to all the hospitals around here. I told them if you have premature babies, you should send them to a center that can take care of them. Then I appeared in one case. All of a sudden, all the babies started getting sent where they should be.

David Abramson, M.D.
Washington, D.C.

The utter disregard for basic principles of ethical and safe practices is appalling.

John Adriani, M.D.,
New Orleans anesthesiologist

States are doing a terrible job in disciplining doctors. There are a few notable exceptions. Things are getting better, but not fast enough to save a lot of patients from being injured or killed by doctors who are on the loose because they haven't been disciplined.

Sidney Wolfe, M.D.

The Problems of Florida Doctors

In the spring of 1986, the *Orlando Sentinel* published an authoritative six-part series on medical negligence and malpractice litigation in Florida, with national commentary.

This is one revelation:

Five obstetricians at the University of Minnesota analyzed 220 malpractice claims nationwide involving childbirth. The claims had been paid by the St. Paul Fire and Marine Insurance Co. between 1980 and 1982. The researchers found that the doctors in those cases had mishandled 68 percent of the risks associated with delivery.

The *Sentinel* also reported on the work of Bonnie Berry, a former University of Miami sociologist who had reviewed every case of discipline against Florida doctors between 1980 and mid-1984, when insurance companies paid malpractice claims on behalf of 2,239 Florida doctors. During that period, Professor Berry's research revealed, the Department of Professional Registration had filed malpractice charges against only 45 doctors and only 21 were disciplined. "My non-scientific and gut feeling," she said, "is that the patients are not seen as important parts of this entire . . .process."

Among the cases discussed in the series was the following: "By the time state officials were told about a problem doctor at Fish Memorial Hospital in New Smyrna Beach five years ago, records showed that the physician had been seen under the influence of alcohol in the hospital many times by 14 doctors, nurses and administrators. . . . Yet the hospital reported the doctor to state officials only after being sued for not doing so."

Not Every Hospital Injury Is Caused by Malpractice—Some Are Caused by Bad Products

Only once has the Supreme Court of Arkansas allowed a jury award of punitive damages to stand in a product liability case. The product was an artificial breathing machine widely used by anesthesiologists during surgery. The case was *Airco, Inc. v. Simmons First National Bank*. The breathing machine had an unnecessary valve that increased the likelihood of operator error that would cause death or serious brain injury. Only when the punitive damage award was upheld at the Supreme Court level did the company stop selling the valves and tell users to disable all valves in place.

In May 1980, Georgia Huchingson, a woman in her mid-sixties, had surgery at a hospital in Little Rock, Arkansas, for suspected brain cancer. It turned out that she did not have a malignancy and, had things not gone awry during surgery, she would have had an excellent chance for recovery.

At times during surgery, it is necessary to apply pressure so that the lungs expand and contract as they do in natural breathing. In the course of a typical operation, the pressure is provided sometimes by a flexible bag, which the anesthetist squeezes and releases by hand, and at other times by the artificial breathing machine, a ventilator that also creates alternating pressure. It is usually necessary to switch back and forth between bag and ventilator.

The Airco ventilator used on Mrs. Huchingson had two ways to make the switch: One was by manually connecting the hose—a method that takes about 10 seconds and involves no hazard to the patient. The other relied on an optional accessory called a selector valve, a device attached to the ventilator. It had three ports, all the same size, placed very close together.

Before Mrs. Huchingson's surgery, hoses had been attached to the right-hand port on the selector valve, and, incorrectly, on the middle port, where only a bag should have been connected. Because the ports looked alike, were so close together, and lacked adequate warning labels and signs, a nurse-anesthetist mistakenly attached the hose hanging from the middle port instead of a bag during the operation. The improper connection pumped air into the lungs of Mrs. Huchingson, with no way for it to escape. The build-up of pressure and lack of oxygen severely damaged her lungs and brain.

Mrs. Huchingson lived in a coma for 16 months after the surgery and required round-the-clock nursing at a cost of more than $300,000.

At trial, expert testimony, including that of the Airco engineer who had designed the ventilator and the selector valve, showed that the company designed, manufactured, sold, and persisted in selling the valve even though it should have known the device was inherently dangerous. As the appeal court said, "The manufacturer knew from the outset, by its own testing, that an unnecessary component of the product was so deadly that it should never have been made available to the public."

Before marketing the machine, Airco had field-tested the ventilator and selector at 30 sites throughout the country. Although reports were generally unfavorable, the company manufactured and sold the product anyway.

Two members of the medical partnership that was a defendant in the case testified that they did not learn until after the Huchingson injury that the ventilator could be used without the selector valve. One of the doctors said directly that the valve "is absolutely a time bomb, and anybody that sits there and connects it a few thousand times . . . [is] going to misconnect it sooner or later."

The jury awarded compensatory damages of $1,070,000 and punitive damages of $3,000,000 against Airco, whose net worth exceeded $607,000,000.

Airco had argued that it took a combination of nine separate acts of negligence (most of which were attributed to the nurse-anesthetist) to bring about Mrs. Huchingson's injuries, but as Justice Smith said for the Arkansas Supreme Court, "That possibility of injury could have been eliminated had Airco simply put the ventilator on the market without the optional but lethal selector." When the court upheld the punitive damage award in 1982, two years after Georgia Huchingson was injured, that is exactly what Airco did.

Of the 19 million operations performed annually while Airco sold the defective ventilator, about 25,000 deaths on the operating table were listed as "cause of death unknown," and it is impossible to determine how many of these were brought about by mistakes relating to the selector valve.

MANUFACTURERS LISTEN WHEN JURIES SPEAK OUT ON SAFETY.

Consumer-initiated product safety lawsuits have been effective in modifying or pulling from the market the following products:

Asbestos

In a landmark case in Texas in 1973, the court found that Johns Manville and other companies that manufactured asbestos had failed to warn their employees of the known hazards of working with asbestos. The manufacturers of asbestos had failed to test their products and left the products on the market for 50 years knowing full well that they could cause asbestosis (a cancerous bronchial disease). Twenty-one million Americans have been exposed to asbestos in the workplace. Twenty thousand Americans die each year from cancer caused by asbestos. Federal legislation now requires that asbestos be removed from public buildings, and removal projects are currently underway throughout the country.

Blenders

Tim Little was helping his mother make brownies, when the blender unexpectedly came unscrewed from its base. Tim reached for the blender and his hand struck the whirling blades. Tim needed surgery to repair several tendons and a nerve in his hand. One tendon had been so badly shredded that it could not be repaired. Tim will never regain complete motion in all his fingers.

The design of the blender caused the container to detach from the base when sufficient torque was created inside the container. This tended to happen often when thick substances, like batter, were blended. The company knew this but failed to caution customers in the handbook for the blender.

If Tim had not been able to sue the manufacturer, his family would have had to absorb the costs of all his medical bills.

Chainsaws

Chainsaws have been redesigned as a result of product liability lawsuits. A woodcutter's family was awarded $345,000 in compensatory damages after the court determined that his death was caused by a defect in the saw. Safety devices including chain brakes and hand shields are now standard on most brands of chainsaws.

DES

DES was prescribed in the 1950s for women prone to miscarriage. It was marketed without testing by several hundred pharmaceutical firms, making it difficult, if not impossible, to identify the specific manufacturer when filing suit. The daughters of these women are prone to vaginal and cervical cancer, and many suffer sterility—an estimated 3 million women. In a leading case involving DES it was found that proper testing would have revealed the cancer problem in female offspring.

Drano Containers

Drano drain cleaner's packaging was modified after a woman lost her sight from the explosion of a Drano container with an unsafe screw top. The housewife (48) was awarded $910,000 in compensatory and punitive damages in 1970.

Flammable Children's Clothing

Lawsuits involving flammable fabrics used in making childrens' clothing have led to the strengthening of federal flammability standards. The courts exposed the fact that the manufacturers had known their dangerous products could not pass the federal safety test.

Ford Pintos

Ford testing revealed design problems in the Pinto gas tank; when the Pinto was hit from the rear at 21 mph, fuel leakage exceeded federal standards. This information was forwarded to the highest level of Ford's management, who decided to go ahead with production despite the defect. The necessary design changes would have cost Ford less than $15 a car. The decision was repeated with the Mustang II, which had similar defects. Only after successful lawsuits on behalf of injured victims were the Pinto and the Mustang II recalled and modified.

Formaldehyde

Formaldehyde is still used in wood products such as paneling and the particle board used to build mobile homes. The fumes can cause cancer and other illnesses.

One woman and her two children experienced health problems a few months after moving into their new mobile home. One child was hospitalized for chemical hepatitis. The jurors found that the home was unfit for human habitation. They also found that the manufacturer had knowingly violated the Texas Deceptive Trade Practices Act and was negligent in failing to warn of the formaldehyde content in the home. The victims were awarded $178, 904 in compensatory and $21,105 in punitive damages.

International Harvestor Tractors

The gas tanks on International Harvestor tractors had a defective vent hole which caused burning gasoline to geyser onto drivers. Even after receiving notice of severe injuries to a number of farmers, the manufacturer continued to market farm tractors with the defective fuel caps and fuel tanks. Only after juries began awarding compensatory and punitive damages did the manufacturers change the defective design.

Kissing Dolls

The kissing doll contained stuffing that had been treated with a pesticide which had chlordane in it. One doll had been left outside overnight, and the morning dew activated the pesticide. An eight-year-old girl was injured when she was exposed to the pesticide when she kissed and held the doll.

The manufacturer pulled the toy from the market when it was notified by the family's lawyer that suit would be filed for compensation for the injuries to the little girl.

Pickup Trucks

Most pickup trucks used to have their gas tanks behind the seat. In rear-end and side collisions and roll-overs, the tank often ruptured, spilling gas into the passenger compartment. If anyone was smoking or a spark ignited the fuel, the occupants were often killed or badly burned. Consumers began complaining about injuries soon after the introduction of these tanks in 1956, but they were not removed from the market until 1973, after plaintiffs were successful in a series of cases.

Zenith TVs

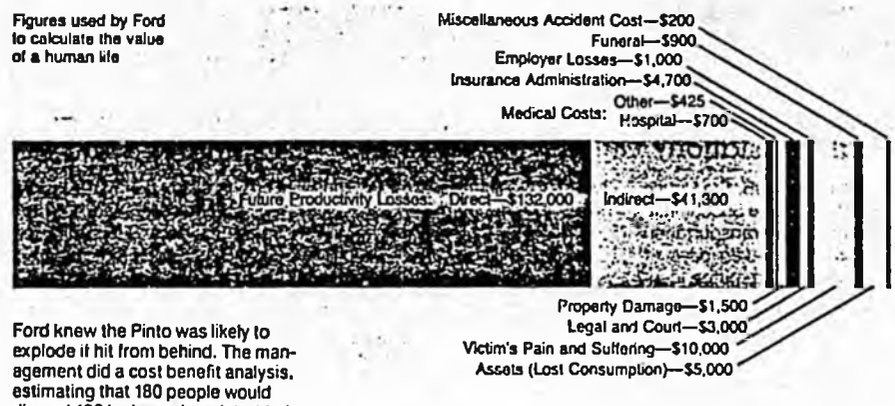
Zenith, starting in 1972, received over 300 complaints about fires caused by a defective resistor in the back of Zenith color TVs. This type of TV caused a fire in the Lieutenant Governor's apartment at the Texas State Capitol, which killed one person and seriously damaged the building. The state sued the manufacturer, the wholesaler, and the retailer under the doctrine of joint and several liability and for treble damages under the deceptive trade practices act. The state invested $100,000 in expenses (not including attorney's fees) and settled for $1.3 million in damages, or 80% of the cost of repairing the Capitol building.

FACT SHEET
PUBLIC CITIZEN OF TEXAS

What Is Your Life Worth?

1971 Costs

Figures used by Ford to calculate the value of a human life



Ford knew the Pinto was likely to explode if hit from behind. The management did a cost benefit analysis, estimating that 180 people would die and 180 be injured, and decided it would be cheaper to sacrifice those people than to fix the car.

Total per Fatality: $200,725

Table from "Pinto Madness," by Mark Dowie in Mother Jones Sept./Oct. 1977, page 18. Based on National Highway Traffic Safety Administration study used by Ford in Cost-Benefit analysis.

Dan Heaney

Punitive Damages—When the Corporation Doesn't Care

As the *American Lawyer* said, "A large company that deliberately decides, at the cost of several lives, to evade a safety regulation or market a product that its own people fear is unsafe needs to have millions assessed against it for the punishment to hurt."

Punitive damages are just that: punishment of a corporation that knows its product will hurt or kill people, and markets it anyway.

Are punitive damages actually battering corporations too much? Should they be limited by legislation? Only the U.S. Justice Department seems to think so, and in response the National Association of Attorneys General said unequivocally: "The figures presented by the Justice Department Report are meaningless."

The Rand Corporation's Institute for Civil Justice, whose board is dominated by insurance industry figures, in 1987 released a summary of its research results on "Punitive Damages . . . How Much and To Whom." Among the findings:

- The few large awards have skewed the totals.
- In 25 years the frequency of punitive awards in personal injury cases has changed little.
- Punitive damages were rarely granted in personal injury cases in any jurisdiction—they are far more frequent in business contract litigation.
- In about half the trials, punitive awards were reduced, and the reductions were greatest in personal injury trials. As a result of post-trial action, plaintiffs actually received only about half the money awarded by juries.

The Courts Clamp Down on Construction

In May 1982, Clyde McWilliams, a construction carpenter, was working on a 30-story condominium in Seattle. The core of the building—its concrete skeleton—was being constructed. During this stage, concrete is poured one floor at a time. Steel and lumber forms are used as molds and then removed when the concrete has set. Each form is about 40 feet from end to end. McWilliams's job was to unfasten the forms after the concerte hardened. As he stood on the edge of the concrete core, a tower crane, which the construction company had leased from the Mobile Crane Company, hooked on to the form and nursed it out of the core.

The tower crane had been in operation on the site daily for about two months. The deadend of the lift line that ran around the pulley at the end of the crane was secured with U-bolt clamps. With use, the lift line cable stretches like taffy. As it stretches, it defeats the clamping effect of the U-bolts.

Suddenly the lift line attaching the spreader bar to the crane gave way. The bar dropped on McWilliams, first striking his right shoulder and then his right foot. The blow severed the nerve to McWilliams' deltoid, the main shoulder muscle, and crushed the bones in his foot. He spent three weeks in the hospital and a year in rehabilitation.

His injuries are permanent. McWilliams cannot lift his arm above his shoulder and walks with a limp. He has lost his ability to balance and cannot climb. A single parent with three children, McWilliams was 36 at the time of the accident, earned $33,000 a year, and was looking forward to a bright future in Seattle's booming construction industry.

The crane company claimed the accident was due to operator error: The bolts holding the mold had not been properly released, the cement had not cured, and the crane operator had overloaded the crane.

McWilliams's lawyer studied the engineering theory involved and was able to show that the crane was not overloaded. He set out to prove that securing the cable with U-bolts was inherently unsafe because of the known stretching properties of steel cable wound around hemp. He even climbed up 180 feet onto the topmost part of the crane above the cab—the rooster tail. "I've never been so scared in my life," he says. At the boom end of the crane, he saw a simple fastening device known as a becket and thimble, which tightens the connection as the cable stretches. The cable pulls the thimble against tops inside the becket, and the more pull exerted on the cable, the tighter the connection becomes.

When the lawyer asked the crane company owner why U-bolts were not used to secure the boom, the answer was that if they were, "the whole boom would come down"—a damaging admission.

The becket and thimble was effective, economical, and well-known as a fail-safe fastening device. If the becket and thimble had been used to secure the liftline, the only way a load could be dropped would be because of cable failure.

For the two-and-a-half years the case was pending, the defendant continued to secure the deadend of the lift line on all its tower cranes with U-bolts. One week before trial, the parties agreed to settle the case for $675,000.

Within a few weeks of the settlement the Mobile Crane Company and all other lessors of cranes in the Seattle area replaced U-bolts on *all* their tower cranes with becket-and-thimble attachments. The cost per modification was less than $40.

As the lawyer for Clyde McWilliams made clear, "While the infliction of an injury on a human being often does not inspire subsequent safety measures, a successful lawsuit almost invariably does."

INSURANCE REFORM LEGISLATION WOULD IMPROVE THE SYSTEM.

Should There be Federal Legislation?

In May and June 1986, the House Energy and Commerce Subcommittee on Commerce, Transportation and Tourism held seven days of hearings. The subcommittee identified seven critical problems: widespread and substantial rate increases; insurer withdrawal from entire areas, including pollution control and child care; the sudden rash of arbitrary cancellations; restriction of coverage; inability of states to identify financially troubled insurance companies because of unreliable data; state regulation of reinsurance; and capability of states to supervise the liability insurance market.

The subcommittee chairman, James J. Florio (D-NJ), said, "It is not appropriate at this moment for the federal government to assume primary responsibility. But the public's patience is not unlimited. The states must act." The information was to have been supplied by January 15, 1987.

Florio said that there were proposals during the hearings to change the civil justice system, but "it is apparent from our hearings that no evidence is available to demonstrate that drastic restrictions on the rights of injured parties will solve the insurance crisis. The data on claims have not been forthcoming. . . . The jury verdict statistics are riddled with holes."

At the same time the Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee was also investigating the insurance crisis. The chairman of the Judiciary Committee, Peter W. Rodino, Jr. (D-NJ), had this to say:

> The companies say they are losing money on underwriting. But the facts reveal that, over the past decade, they have paid out only 29 cents to 57 cents in claims and allocated loss adjustment expenses, such as defense costs, on every premium dollar they have taken in. Actually, the cash picture is much more favorable to the industry than this because investment income has not been added in. Moreover, the payout to policyholders is lower than these figures indicate because the loss figures include some loss adjustment expenses. The so-called "losses" are really paper losses, calculated by deducting reserve amounts that the companies retain and invest. Even in the troubled lines, such as day care, the companies are taking in twice as much as they are paying out in claims. At a minimum, what this shows is that the claims of losses are almost wholly speculative.

Rodino pointed out that for product liability, of the premium dollars taken in over the past ten years, less than half had been paid back out, and the line had produced a positive cash flow of $2.6 billion, not including investment income. "In view of figures like these," Rodino said, "I question how the companies can claim they are losing money.

"Insurance companies have yet to justify their actions by producing actual payments and claims information," he said.

The More Things Change . . .

Ten years ago, during the last regularly scheduled insurance crisis, the Small Business Subcommittee in the U.S. House of Representatives was receiving complaints of unbelievably high premium increases and decided to initiate hearings. In 1986, the chairman of that committee, John LaFalce (D-NY), spoke about what he had learned in 1975.

> I quickly found out that in the insurance industry appearances can often be deceiving. I quickly found out that the vocabulary of the insurance industry differs markedly from the vocabulary that you and I ordinarily use. Their definition or use of a word would often differ from our definition of that same word.
>
> For example, the word "losses." You and I might think that we know what a loss is: It means something that has been lost, rather simple. Well, not so within the insurance industry.
>
> In the insurance industry . . . if you use the word "loss" in connection with ratemaking, it means something quite different. Thus, when the insurance industry for purposes of State financial reporting uses the word "loss," it means that which it paid out . . . . But the industry also means that which it has set aside as reserves for those claims that have been reported to it. In other words, "loss" in this context includes not just what is actually paid out, but estimates of future payouts as well.
>
> . . . The insurance industry also includes within its definition of "loss," reserves that have been set aside for claims that it says probably have occurred, but of which it has absolutely no knowledge whatsoever. It calls these losses IBNR (incurred but not reported). However, when it uses the word "loss" within the context of ratemaking, it does not include IBNR because it is deemed statistically unreliable—and that's putting it mildly.

Today, the only recourse for the victim of malpractice is the legal system: suing the doctor or the hospital. . . .

It is the failure of the state to effectively discipline bad doctors and of hospitals to effectively curb malpractice through more rigorous oversight procedures that's forced more injured patients to turn to the courts for help.

Richard Threlkeld
ABC News Closeup,
December 27, 1986

The malpractice crisis is real, but its causes have been misunderstood and the solutions have failed. The medical profession must be more conscientious about admitting its mistakes. The states must be more diligent about stopping those who are persistently guilty of them. And if the insurance companies can't give a better accounting of why their malpractice rates for doctors are so alarmingly high, then the federal and state governments will have to do it for them, and find a means to guarantee that those rates are reasonable. Even then the malpractice crisis will threaten all of us until the government, the hospitals, and the doctors themselves find the will to remedy the fundamental cause of it: malpractice itself.

Richard Threlkeld
ABC News Closeup,
December 27, 1986

I consider trial by jury
as the only anchor ever
yet imagined
by man, by which
a government can be
held to the principles
of its constitution.

Thomas Jefferson, Letters to Thomas Paine (1789)

Why I Vetoed Tort Reform

Bruce Babbitt,
former Governor of Arizona

. . . As a nation, we have traditionally chosen two ways to deter unsafe corporate behavior: regulation and the threat of litigation. The advantage the jury system has over the bureaucratic approach is, first, its thoroughness. No number of federal or state safety inspectors can hope to provide the same level of deterrence that our American jury system provides. In fact, our notions of free enterprise probably would prohibit the levels of bureaucratic intrusion that would be necessary to provide the same level of safety that the legal system does.

Second, our judicial system has an advantage of flexibility. In this age of constant development of new products and, therefore, of new hazards to both consumer and environment, the body of law that has been carefully crafted over the last two centuries to protect Americans from those corporate hazards has consistently proven more flexible, more adaptable to the changing times. This legal system has also proven to be more deliberative and more cautious in its adaptation of the law to changing concepts of justice and social responsibility.

In light of the undeniable social value of an effective civil justice system, the burden of proof must rest with those who would radically alter this carefully balanced legal system. In the 1986 legislative session, I was presented with five bills to enact such drastic changes, changes that would have severely reduced the ability of injured people to gain full compensation for their injuries. Of broader import, these bills would have eroded the system of checks and balances that keeps corporations and bureaucracies conscious of their social obligation to protect the members of the public from needless harm. All five bills would have drastically tipped the scales of justice in favor of the wrongdoer and his insurer and away from the injured victim. In so doing, these bills would have led to more unsafe workplaces, more toxic hazards, and more bureaucratic irresponsibility.

Yet, despite the radical nature of these bills, their advocates never demonstrated that they would bring relief from rising insurance costs to the businesses and municipalities in my state. Actually, what little evidence was presented indicated that the legislative changes would bring absolutely no relief to these victims of the insurance crisis.

I vetoed all five of these anticonsumer bills. The advocates of restrictions on consumer's rights simply did not prove their case . . . .

The Key to Hotel Safety

In *King v. Trans-Sterling*, the effects of the verdict were greater than the monetary award. Not only did the defendants take significant action to prevent future harm, but the verdict sent a message that was heeded by other potential defendants—in this instance the hotel industry.

On August 21, 1982, a Chicago woman, Julia King, and her mother-in-law, Dorothy Williams, were vacationing at the Stardust hotel and Casino in Las Vegas. That night they had been in the casino, and at about 10:30 Julia King went up to her room to pick up tickets for a show. Mrs. King used her room key to open the door. As she moved to turn on the light, she was grabbed by a man who held a knife to her throat and threatened to kill her if she screamed. She begged him not to hurt her. He used the knife to cut her dress and pantyhose from her body, and tied her hands behind her back with a curtain cord. He then took a washcloth, stuffed it in her mouth, and used her pantyhose to wrap the gag in place. He proceeded to rape her vaginally and rectally, tied her feet with more cord, rummaged through her purse (taking about $60 in cash), and finally left the room.

At 11 o'clock Mrs. King's mother-in-law asked a security guard to come with her to check the room, where they found Mrs. King naked; she was still bound and gagged.

At the Las Vegas hospital where Mrs. King was treated, she required more sedation, according to the emergency room nurse, than had been administered to any of the more than 100 rape victims she had treated. When Julia King returned home to Chicago, she began treatment with a psychologist and continued in treatment for several years. An expert witness testified at the trial that Mrs. King suffered permanent and chronic post-traumatic stress disorder as a result of the rape at the Stardust. She also developed a skin disorder diagnosed as a combination of lupus erythmatosis and vitigilo, both diseases of the immune system, the onset of which was found to have been precipitated by the trauma of the rape.

During the trial, a great deal of evidence proved that the security system at the Stardust was a farce. Patrols of the building were sporadic at best, despite the fact that key-clock stations supposedly insured a regular foot patrol. The stations were unused on the day of the assault, had not been in use for months, and perhaps had never been used. Although more than 125 closed-circuit video cameras were in operation at the hotel, the wing containing Mrs. King's room was totally unprotected. Guests were given a false sense of security by the strategic placement of "dummy" video cameras.

It also appeared that the Stardust lost an average of 500 guest room keys per week, and that the rooms in Mrs. King's building had not been rekeyed since construction in 1957. Management was also aware of at least 101 master keys in circulation. No records were kept of lost master keys. To make matters worse, these master keys were of a type which can override the night latch, even if a guest is in the room. Expert witnesses testified that no operation should have more than one or two emergency master keys and that these should be locked up, logged in and out, and kept under strict management control. There was no question that the lack of a key control system and the lax security policies at the Stardust was gross criminal negligence.

The lawsuit resulted on July 17, 1985, in a plaintiff's verdict in the amount of $750,000 compensatory and $2,500,000 punitive damages. Mrs. King was finally awarded $821,000 (including interest), although the punitive damage award remained at issue for some time. The question was argued before the Nevada Supreme Court in January, 1978 (Nevada has no intermediate Court of Appeals); but the parties decided to settle.

From the time of Mrs. King's rape in 1982 to the verdict—almost three years—there was virtually no change in key-control policy at the Stardust. But as soon as the verdict was handed down, the Las Vegas hotel managers got the message. The Schlage Lock Company was deluged with requests for bids. By the spring of 1986, between 15,000 and 20,000 Las Vegas hotel rooms had been rekeyed with systems meeting national industry standards. At the Stardust, the entire 1,000-room Mercury building, where Mrs. King's room was located, had brand-new hardware of the latest design installed on the doors. Says Mrs. King's lawyer, "The immediate and salutory effect on consumer safety in Las Vegas remains a source of considerable pride to me."

■

Some months later, Mrs. King's lawyer was in Chicago, checking a friend into the Palmer House. He noticed a state-of-the-art lock set prominently displayed at the registration desk to show guests how their locks worked. He asked the desk clerk why the hotel used such a technologically advanced mechanism. "The word around here," the clerk said, "is that there was some case in Las Vegas where a huge award was made."

THE PRESS HAS COMMENTED ON THE INSURANCE CRISIS.

THE KANSAS CITY STAR
MAY 8, 1986

Insurance Fog Is Hard to Penetrate

Statistics can be twisted in many different ways, and some statistics that would be relevant to the insurance debate simply haven't been gathered. But looking at the figures available and perhaps seeking some that aren't represents a better alternative than simply assuming, as Attorney General Ed Meese did recently, that there has been an explosion in certain types of lawsuits at the state level. Legislative proposals should be based on something more than statistical assumptions and horror stories.

CONSUMER REPORTS
AUGUST 1986

The Manufactured Crisis

Liability-insurance companies have created a crisis and dumped it on you. . . .

The industry's version of tort reform means placing limits on the rights of injured people to sue for and recover damages. . . .

The lawsuit crisis may be phony, but the insurance crisis is real. Towns, doctors, day-care centers and others face urgent problems of insurance a[illegible]ability and affordability. What is needed to alleviate the problem is not tort reform but better regulation of the insurance industry.

ANNISTON STAR
APRIL 13, 1987

Tort Reform in 40 States Has Failed to Cut Premiums

"Not in one state has it been demonstrated that tort reform has resulted in lower insurance premiums," said Robert Hunter, president of the National Insurance Consumer Organization.

Industry spokesmen counter that the reforms were passed too recently to have produced results. And the effect of tort reform on rates is at best speculative, they say. "There is no tie-in between tort reform and insurance rates—we've claimed that from day one," said James Purcell, regional manager for the American Alliance of Insurers in Atlanta.

HOUSTON BUSINESS JOURNAL
APRIL 27, 1987

A Very Profitable Insurance Crisis

In the midst of what most business and political leaders are calling a nationwide insurance crisis, along comes a study showing that the nation's insurance companies are experiencing record profits. . . . The debate (about tort reform) has been hindered by an unwillingness on the part of the nation's insurance companies to open their books for scrutiny. . . . If insurance companies are hurting to the extent they claim, they should prove it.

JOURNAL OF COMMERCE
OCTOBER 24, 1986

Industry Bites Customer

The insurance industry is showing signs of being its own worst enemy. How can an industry that spends millions on advertising and contributes heavily to state and federal campaigns to reform tort law not recognize the public relations debacle associated with telling a state, which reformed its tort law, that the reforms are worth zero in the pricing of insurance products?

CHICAGO SUN-TIMES
AUGUST 30, 1986

What Liability Crisis?

The profits of the property and liability insurance industry in the first half of this year were six times higher than they were last year. . . . The facts underscore the major point: Don't undertake major "reforms" that entail the loss of important individual rights until it is demonstrated that the changes are absolutely necessary. They weren't.

BUSINESS WEEK
APRIL 21, 1986

The Explosion in Liability Lawsuits Is Nothing But a Myth

Startling new evidence suggests that the "lawsuit crisis" may not even exist. . . . The insurance industry has fostered those misperceptions with a phenomenally successful campaign that blames the "lawsuit crisis" for shocking premium increases and a paralyzing insurance shortage. The rate hikes, however, result largely from the insurance industry's own mismanagement.

THE RECORD
JULY 22, 1986

Stay Out of the Jury Box

The problem is complicated and multidimensional. Yes, there are more lawyers and more lawsuits: what consumers or workers want to return to the days when they could be maimed or poisoned with no recourse?

The Association of Trial Lawyers of America
1050 31st Street, N.W.
Washington, D.C. 20007-4499
202/965-3500

(5) HB 227

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 227
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FISCAL NOTE

REQUEST:

Revision Date: 02/05/88
Title: An Act relating to joint insurance arrangements
Sponsor: Taylor
Requester:

Agency Affected: Commerce & Economic Dev.
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: February 5, 1988

Approved by Commissioner: J. Anthony Smith
Agency: Department of Commerce and Economic Development
Date: February , 1988

Distribution (by preparer):
Legislative Finance
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Alaska State Legislature

(6) HB227

(a)

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State Capitol
Juneau, Alaska 99811
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House of Representatives

Committee on
Community & Regional Affairs

M E M O R A N D U M

To: Rep. Henry Springer, Chairman
HCRA

From: HCRA Staff - Harrison DCH

Date: February 8, 1988

Subject: Bill Review
HB 227 - "An Act relating to joint insurance arrangements."

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*Section 1. AS 21.76.010(a) is repealed and reenacted to read...

Comment: This section allows not only municipalities, school districts and Regional Educational Attendance Areas (REAAs) to pool contributions, inter into cooperative insurance agreements, etc., but now includes associations, entities qualified to do business under 15 U.S.C. 3901-3904 (Product Liability Retention Act) (see attached); and groups that would be considered valid under this title for the type of insurance for which this joint insurance arrangement is established. The assumption is that the insurance would be more readily available and costs might be less.

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*Sec. 2. AS 21.76.010(b) is amended to read...

Comment: This section indicates joint cooperative insurance arrangements may be made for types of insurance defined in this title except life insurance and title insurance.

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*Sec. 3. AS 21.76.020 is repealed and reenacted to read:
....REGULATION BY DIVISION OF INSURANCE....

Comment: Repealed parts of the law concerning joint insurance approval by the director and conditions pertaining to the usual joint insurance arrangements. Please see attached 1986 SLA CH 136, page 2, Lines 4-24.

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*Sec. 4. AS 21.76.040.... (c) A joint insurance arrangement shall use a method of accounting that

conforms with generally accepted government accounting principles.

Comment: It is possible that the inclusion of this (c) can take care of some particulars under Sec. 3 AS 21.76.020.

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*Sec. 5. AS 21.76.070....
Authorizes that a board of directors can do business from an authorized insurer if the insurance is placed through a licensed surplus lines broker.

Comment: The deleted section relates to the deletion of exceptions that municipalities or school districts may purchase insurance under this section as stated. The addition of language in Line 16 probably precludes the rest of the conditions spelled out in this section; therefore deleted.

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*Sec. 6. AS 21.76.080(e) is amended to read....

Comment: Deletions are deleted to conform to previous amended sections of this section of the law.

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*Sec. 7. AS 21.76.110 is repealed and reenacted to read....

Comment: Attempts to address financial arrangements and cause for actions interrelated with joint insurance arrangements.

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*Sec. 8. AS 21.76.010(d) repealed.

Comment: Refers to a joint insurance arrangement being considered to be an association duly authorized to transact workers' compensation insurance in the state. If this is repealed this may leave workmen's compensation in uncertainties as to issues under joint insurance arrangements. Renews responsibilities of parties involved with workmen's compensation--is there sufficient insurance or protection where required for workmen's compensation.

UNITED STATES CODE ANNOTATED

Title 15
Commerce and Trade
§ 1701 to End

1987
Cumulative Annual Pocket Part

Replacing 1986 pocket part in back of volume

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99th CONGRESS, SECOND SESSION (1986)

For close of Notes of Decisions
See page III

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