ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
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Hawaii. In these states, the rate of premium increases has been more rapid than those in California, and rates for all of these states but Idaho are now higher than those in California.[2] According to Mr. Neupauer, the MIEC believes that California's tort reforms "have had a significant moderating effect" on the rate of increase in malpractice premiums for California doctors.[3]

Regulation of Insurance Rates in Alaska

In response to your request for information on regulation of insurance rates in Alaska, we provided your office with a copy of House Research Agency memorandum 85-239, "Regulation of the Insurance Industry in Alaska." As that memo points out, AS 21.39.010 gives the Alaska Division of Insurance rate-regulating authority. Each insurer must file its proposed rates and supporting data with the division, which can disapprove rates deemed excessive, discriminatory or inadequate to make a reasonable underwriting profit.

In addition, the division allows "deviations" from the approved rates. The majority of insurers are members of an approved rating organization (such as the Insurance Services Office, Inc.), which files standard rates on members' behalf. Alaska Statute 21.39.070 provides that rating organization members may apply to the Division of Insurance for a deviation from the standard rates. The division approves requests for deviations if they meet the same general standards required in rate filings (excessiveness, etc.). According to Don Koch, Chief of Market Surveillance for the division, there is no limit to deviations, but each must be justified by the insurer and approved by the Division of

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[2]Mr. Neupauer stated that the rates MIEC charges Alaska's doctors now exceed MIEC's California rates by an average of 32 percent. At one time, MIEC's rates for Alaska and California were identical.

[3]"Tort reforms" includes other provisions of the 1975 act. For example, the act provides that evidence of collateral sources of benefits available to the injured party may be admitted by the court. Lawyers argue that this encourages juries to reduce an injured party's award accordingly.

Insurance.[4] Insurers may request a deviation on all insurance they sell or may limit deviations to a specific class within one line of insurance. According to Richard Block of the Alaska National Insurance Company, many insurers sold insurance below filed rates until recently.

Correlation Between Damage Awards and Insurance Premiums

You asked if there is any correlation between the size of damage awards and insurance premium rates. Insurance companies generally set rates by determining the amount needed to pay for claims and for "loading," which is intended to cover the insurer's sales expense, overhead and profit. Losses include payments for settlements and court-awarded damages. Although the size of damage awards affects the extent of a company's underwriting losses, an insurance company may decide not to adjust premiums if its return on invested funds compensates for the losses.

For example, liability insurance premiums decreased in the late 1970s and early 1980s while underwriting losses during this same time increased steadily. Note, however, that interest rates were at record high levels during this period. Lower interest rates in recent years have reduced investment income causing insurance companies to pay more careful attention to underwriting losses and increasing premiums when underwriting losses are experienced.

Impact of Insurance Rates on State Commerce

You asked us to determine the impact of rising insurance rates on business activity in the state, specifically, the number of jobs lost, businesses closed, or professions changed to reduce liability risks. To the best of our knowledge, there is no method to separate the effects of insurance rates from the effects of other economic factors which influence a business's ability to make a profit. These other factors include the number of competitors, demand for business services, regulatory impacts, and operating costs.

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[4] In addition, insurers may request "schedule ratings" which allow further deviation from the rate filing. These deviations apply to specific factors such as safety or business location. According to Mr. Koch, insurers must document and justify deviations allowed buyers. Mr. Koch stated that the division can make field investigations and declare rate law violations for unjustified deviations. Because of staff shortages, the division has made no field investigations during the past two years.

We contacted 13 state commercial air and surface carriers and asked each to assess the impact of insurance rates on their business activity.[5] One of the 13 companies--Seair--stated that they stopped operations specifically because of unavailability of insurance.[6] The other companies have continued operations although some have laid off employees who have not normally been laid off. The owners of companies affected by lay-offs stated that these were caused by a number of factors, including increased competition (resulting in less revenue) and rising operating costs. In addition, all of the contacted companies stated that insurance costs were a major factor affecting operating costs.[7]

We contacted Martha MacDermaid, Executive Director of the Alaska State Medical Association (ASMA), to ascertain the impact of insurance costs on the medical profession. Ms. MacDermaid stated that the ASMA recently surveyed members to determine the effect of insurance costs on business. Although the results of the survey are incomplete, Ms. MacDermaid stated that some obstetricians are quitting the obstetric practice because of insurance costs. Moreover, some doctors have "gone bare," that is, they have decided to practice without insurance protection. We will send the results of the ASMA survey when it is received.

Impact of insurance rates on tourism. Like other businesses, those involved in tourist-related enterprises (boating, aviation) are paying more for liability insurance than was required in prior years. Some of these businesses cannot get the amount of coverage which they previously purchased; others cannot afford it. According to Mr. Hank Rust of Rust's Air Taxi in Anchorage, his business paid $100,000 in 1985 for insurance on six airplanes. Mr. Rust has been told that identical coverage could double when the policy is renewed in 1986.

Mr. Rust further stated that the additional insurance costs must either be absorbed as an additional cost or passed on to customers via more expensive fares. Mr. Rust said that profits could be affected in either case because the demand for services is roughly the same each

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[5]Attachment A includes the companies contacted.

[6]According to Seair's President Al Gay, the company can get insurance for five of the airline's 32 planes.

[7]As you know, the rising cost and unavailability of liability insurance is a nationwide phenomenon. For example, the American Trucking Association recently claimed that 100 companies failed financially because of increased insurance costs.

year, and competition has increased because of the recent deregulation of the Alaska Transportation Commission. Mr. Rust noted that increased fare prices could 'scare away' potential customers.[8]

Insurance Rate Increases During the Past Two Years. According to Richard Block, the only way to accurately determine insurance cost increases for businesses and professionals is by individual survey. As noted, insurance companies file rates with the Division of Insurance. However, insurers usually deviate from the filed rates based upon the particular risk involved and competition for the business. In recent years, insurance premiums were often 20 to 50 percent below filed rates. Currently, premiums are at or slightly above filed rates. In other words, premiums for many buyers can more than double with no change in the standard rate filing. This makes standard rate filings of little value in an attempt to determine premium increases. Moreover, the Division of Insurance does not keep usable records on deviations.

Premium increases for some businesses have been proportionately larger than increases for others. For example, the American Medical Association reported that average increases for general practitioners--considered a low risk segment of the medical profession--increased 31.4 percent during the past two years. However, average premiums for all physicians increased by 44.8 percent during the same period.

As another example, the National Society of Professional Engineers reported that average premiums for engineers and architects increased by 15 percent in 1984 and 35 percent in 1985. However, the average premium increases for structural engineers has been higher because they have experienced the worst loss records in the profession in recent years.

Impact of Tort Claims on the State Treasury.

You asked us to find out the number of tort claims filed against the State in 1985, the number of cases the State lost, payments on these cases, and the range of damage awards paid by the State. According to information supplied by the Department of Law, 120 tort complaints were filed against the State of Alaska during fiscal year 1985, and 78 complaints have been filed during fiscal year 1986. These complaints include physical injury cases and nonphysical injury claims such as sexual harassment or wrongful termination. A list of these cases is

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[8]We contacted Dave Stewart of the Alaska Division of Tourism. According to Mr. Stewart, the division received no complaints related to insurance from businesses involved in the tourist industry.

included as Attachment B. The Department of Law does not record whether it wins or loses a case; nor does it keep records of damages awarded. However, the Department of Administration's Division of Risk Management compiles data on all claims filed by third parties against the State. These records include the legal complaints handled by the Department of Law. In addition, the data include claims for physical and nonphysical injuries, with no available breakdown between the two types. Attachment C contains tables from the Division of Risk Management. These tables contain historical data on third-party claims filed against the State. Those categories which contain predominantly third-party physical injury claims include general liability, malpractice and auto liability. Attachment C also contains a table showing frequency, severity and average of general liability claims paid since 1980. Note that most claims incurred are in the $0-$50,000 range.

The following table shows total State losses for primarily third-party physical injuries in fiscal years 1983 to 1986. Outstanding reserves are estimated amounts needed to pay on unsettled claims. Loss and expense payments include amounts paid for claims and related litigation expenses during the year. Recoveries include amounts received from other insurance sources. As the table illustrates, the State has incurred almost $8,000,000 for filed injury claims during the past four years.[9]

TABLE 1
SUMMARY OF LOSSES
GENERAL LIABILITY, AUTO LIABILITY AND MALPRACTICE

Fiscal Year	Outstanding Reserves	Loss Payments	Expenses Payments	Recoveries	Net Incurred
1983	$1,726,290	$810,034	$477,807	$7,448	$3,021,579
1984	1,165,907	551,688	294,546	9,306	2,021,447
1985	1,562,392	401,734	214,586	241	2,178,953
1986	624,545	58,806	8,095	0	691,446
Total	$5,079,134	$1,822,262	$995,034	$16,995	$7,913,425

[9]Note that some injured parties with potential claims against the State have probably not filed their claims. In addition, recoveries lag losses and reserves may not necessarily equal losses paid. The actual net incurred loss will not be known until all cases are settled.

Tort Reform in Other States and Congress

In order to address your question on tort reform activity in other states during the past five years, we sent requests for information to all 49 states and a number of congressional committees. When the information is received, we will forward our findings.

In addition, Attachment D contains a list of medical malpractice legislation enacted between 1971 and 1985. During this time, eight states placed statutory caps on malpractice damages while thirteen states limited attorney contingency fees. Moreover, the statutes in 12 states allow periodic payments on damage awards.[10]

Congressional Bills. There are a number of insurance-related bills pending in Congress; Attachment E provides a summary of the proposed legislation. Please contact our agency if you wish to review copies of these bills.

I hope that this information is helpful to you. Please call me if you have additional questions.

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Attachments

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[10]States with damages caps are California, Indiana, Louisiana, Nebraska, New Mexico, South Dakota, and Virginia. States with limits on contingency fees include California, Florida, Indiana, Iowa, Michigan, Nebraska, New Jersey, New York, Oregon, South Dakota, Tennessee, Virginia, and Utah. Periodic payments are allowed in Alaska, Arkansas, California, Delaware, Florida, Indiana, Louisiana, Maine, Maryland, New York, South Carolina and Wisconsin.

Attachment A

Businesses Contacted for this Memorandum

	Location
Air Carriers	
Alaska Aeronautical Industries	Anchorage
Rust's Air Taxi	Anchorage
Seair	Anchorage
Wilbur's Flying Service	Anchorage
Harold's Air	Fairbanks
Cook Inlet Aviation	Homer
Channel Flying	Juneau
Trucking Firms	
Big State Trucking	Anchorage
Carlisle Enterprises	Anchorage
Frontier Transportation	Anchorage
Lynden Transport	Anchorage
Air Land Transportation	Fairbanks
Weaver Brothers Trucking	Kenai

ATTACHMENT B

Special Tort Report
February 11, 1986

FY '85

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
33000185	2602	BILLINGSLEY V SMITH (_____--DCAK)	840702	850919
33000285	1801	SMITH D&E V ST (PROP DAMAGE--TRCT)	840724	840904
33000385	1603	POLLARD V KALWARA & ST (UNLAWFUL SEIZURE--TRCT)	840724	850424
33000485	9987	DAVIDSON V ST (NEGLIGENT DESIGN--TRCT)	840730	000000
33000585	3806	URQUHART V ST & DON FRANK (GRAVEL OVERLOAD--TRCT)	840803	841231
33000685	2602	MCWAIN V WOOTEN & ST (DOT/PF IMPROPER GRADING--TRCT)	840810	000000
33000785	2602	SOUZA V ENDELL & ST (1983 FINGER INJURY--USDC)	840810	000000
33000885	1603	STANDBERG V ST (KLEHINI DROWNING--TRCT)	840813	000000
33000985	2601	GOVT EMPL INS CO V HOWELL (PD--TRCT)	840820	840829
33001085	2602	DEWITT V ST (FAIL TO PROVIDE MED ASST--TRCT)	840821	000000
33001185	9915	MYERS V ST (FOSTER CARE PLACEMENT--TRCT)	840829	000000
33001285	9994	BICKMORE V ST (1983--TRCT)	840829	840919
33001385	3806	YODER V ST (INTENTNL TORT OF CO-WORKER--TRCT)	840829	850403
33001485	2602	LOCKHART V BETZ (1983 RACE DISCRIM--TRCT)	840829	850814
33001585	9902	ROBERTS V ST (UNSWTH)	840914	000000
33001685	9950	MORONEY V ST (NEG SUPER KOR--TRCT)	840906	000000
33001785	3806	CRANE V WILKIE & ST (RAPE IN STA PK LOT--TRCT)	840906	000000
33001885	3806	NORMAN V NC MACHINERY (FAIL TO INSPECT VEHICLE--TRCT)	840906	850701
33001985	1318	SKULTKA V ST (FISHERMAN--TRCT)	840919	860131
33002085	2601	LOCKHART V BETZ (1983 RACE DISCRIM--DCAK)	840919	841114
33002185	2422	K & R ENTERPRIES, INC V ST (NEG RECORDKEEPING--TRCT)	840920	850828
33002285	2602	PRZYBYLA V JOHNSTON (HARRASS ST TROOPER--TRCT)	840925	000000
33002385	9955	NICKERSON V ST (1983--TRCT)	840928	860131
33002485	3806	HOLZHEIMER V CLARK (CIV RTS '83--TRCT)	840928	000000
33002585	3806	SCHEIBL V CLARK & ST (EXCESS FORCE--TRCT)	841012	000000
33002685	9989	VANDER SLOOT V VAN GELDER (EXCESS FORCE--TRCT)	841012	851107
33002785	3806	STRACK V ST (NEG HWY MAINT--TRCT)	841012	841231
33002885	3806	L&H ENTERPRISES V ST (DETRIMENTAL REL--TRCT)	841012	000000
33002985	2316	MANCUSO V ST (DAMAGE TO SEIZED VESSEL--TRCT)	841026	841114
33003085	9953	FAIKS V PITTMAN (SLANDER--TRCT)	841026	000000
33003185	9955	SANFORD, M V ST (IMPROPER GAS DISPOSAL--TRCT)	841102	000000
33003285	2804	SHADE, A V ST (DEFECTIVE PLANE TIEDOWN--TRCT)	841102	000000
33003385	9989	DARBYSHIRE, I V ST (4TH AMEND/1983--TRCT)	841102	000000
33003485	4005	NEWSOM, P V DICKENS, H (CIVIL RIGHTS/1983--DCAK)	841102	850513
33003585	9953	LUPRO, INC (CAP. OFFICE SUPPLY) V ST (ANTITRUST--TRCT)	841121	000000
33003685	9994	ST V MORRISON (JAIL SUPERVISION--_____)	841121	000000
33003785	9945	NELSON, J V ST (UNSWTH--TRCT-WA)	841220	000000
33003885	2602	ST V DUFRY, M (WC--TRCT)	841220	000000
33003985	9902	RYAN, A V. ST (UNSWTH--TRCT-WA)	841220	000000
33004085	9915	RICHEY, B V ST (FAILURE TO MONITOR--TRCT)	841220	000000
33004185	9945	DONALDSON, M V ST--(BREACH OF WC SETTLEMENT--TRCT)	841224	000000
33004285	9955	RECTOR V ST (EDDIE--TRCT)	841224	850919
33004385	9989	JUDICIAL MISCONDUCT	841224	000000
33004485	2602	ANDERSON V WILSON (1983 COPYRIGHT INFRINGE--FED.)	850104	000000
33004585	9989	BENKA, J V AK POWER AUTHORITY (WRONGFUL TERM--TRCT)	850108	850429
33004685	9989	KIDWELL, S V AK POWER AUTHORITY (WRONGFUL TERM--TRCT)	850108	000000
33004785	9989	ARMOUR, C V. AK POWER AUTHORITY (FAIL TO INSPECT--TRCT)	850108	000000
33004885	2602	WILSON V. MCCONNELL (PI--TRCT)	850108	851231
33004985	1603	BOEING JETFOIL CONTRACT NEGOTIATION	850111	850111

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
33005085	1603	BARRETT V ST (PI S&F--_____)	850111	850111
33005185	1603	ZABEK, B V. ST (SEX HARASSMENT--TRCT)	850115	000000
33005285	9953	NICK, E V. ST (API NEG RELEASE--TRCT)	850123	000000
33005385	9955	HOFF, J V. ST (HWY MAINT--TRCT)	850123	000000
33005485	1603	HAMMOND V ST (NEG HWY MAINT--TRCT)	850123	850123
33005585	9989	WILLMARTH, R V ST (FALSE ARREST--TRCT)	850123	000000
33005685	9905	DORIS, C V. API (NEG RELEASE--TRCT)	850123	000000
33005785	1417	BULCOA V. O/S SMARAGD & ARC (WRGFUL DEATH/ADMIR--TRCT)	850123	000000
33005885	9953	AGF CONSTR. INC V. ST (NEG SUPER IC--TRCT)	850131	000000
33005985	2601	1985 SERVICE RECEIPT (ADMIN. FILE--ADMIN)	850131	850227
33006085	2602	SPECIAL LITIGATION MISC (ADMIN FILE--ADMIN)	850131	851118
33006185	1318	MASON V LYNCH V NANGLE (NEG RECORDKEEPING--TRCT)	850201	000000
33006285	1603	ALMONTE, L V ST (S&F--CLAIM)	850214	860114
33006385	1603	HEUSSLER V HOLBROOK (HWY MAINT--CLAIM)	850214	000000
33006485	2420	EITEL, G V HUNT (JUDICIAL ABUSE--DCAK)	850219	000000
33006585	1603	CHURCH, K V ST (NEG DESIGN -CLAIM)	850227	850802
33006685	9911	BROWNE, S V COTTLE, A & ST (SEXUAL HARASSMENT--TRCT)	850228	000000
33006785	9953	CHRISTIAN, C V ST (HWY MAINT--TRCT)	850301	000000
33006885	9950	HANSON V ST (NEG BLASTING--TRCT)	850301	000000
33006985	3806	CONSUMERS INSURANCE CO V ST (HWY MAINT--TRCT)	850308	000000
33007085	1801	LOY V ST (TRESPASS--TRCT)	850308	000000
33007185	3806	GALLAHAN, R V ST (MALPRACTICE-TRCT)	850308	850730
33007285	3806	YODER V ST (APPEAL)	850308	000000
33007385	3806	CONRAD V ANDERSON & ST (PI/HWY MAINT--TRCT)	850312	000000
33007485	9996	SAHM V ST (SEXUAL HARASSMENT--TRCT)	850320	851227
33007585	1603	BAUDER, B V ST (NEG INVESTIGATION--CLAIM)	850328	000000
33007685	3019	BLAKE, S V HALL, J (FALSE ARREST--TRCT)	850328	860122
33007785	1603	DELANEY, L V ST (EMPLOYEE SANCTION--CLAIM)	850328	000000
33007885	1603	[illegible]HN, M V LARSON, R (INMATE PROPERTY LOSS--TRCT)	850403	000000
33007985	1603	[illegible]UNTZ, J V ST (FALSE ARREST--TRCT)	850403	000000
33008085	2602	TETLIN VILLAGE COUNCIL V THORSRUD (TRESPASS-TRCT)	850405	000000
33008185	9991	BOUFFIOUX, T V ST (FAILURE TO WARN-SUICIDE--TRCT)	850405	850725
33008285	9987	KALLSTROM-DAVISCOURT CONST V ST (CONTRACT NEG--TRCT)	850410	000000
33008385	4014	MCBETH, J V ENDELL, R (1983 CIVIL RIGHTS--TRCT)	850410	850904
33008485	2601	LACK, J V ST & LACK, L (PFD GARNISHMENT--TRCT)	850410	850828
33008585	9915	BEISH V ST (NEG LICENSING--TRCT)	850410	000000
33008685	3013	RUBALACAVA V ST (APPEAL--USDC-AK)	850417	851121
33008785	1603	WILLARD, K V JAMES, J (NEG RELEASE FROM API--TRCT)	850424	000000
33008885	9900	KELLY V ST (C & U PUNISHMENT--USDC-AK)	850424	000000
33008985	9955	Q.C. COMPANY V ST (FAIL TO DO PLAN REVIEW-TRCT)	850424	000000
33009085	9989	JOHNS V JOLIKER (FALSE ARREST--TRCT)	850424	000000
33009185	9987	BLACKBURN V ST (FERRY S&F--TRCT)	850509	000000
33009285	1603	DUNNING, R ST (FALSE ARREST--USDC-AK)	850509	000000
33009385	3013	STEPHENS, C V. ST (WRONGFUL COLLECTION--TRCT)	850509	000000
33009485	9987	CAMERON V. ST (INMATE INJURY--TRCT)	850509	000000
33009585	4004	COSTLOW V ST (1983--USDC-WA)	850509	000000
33009685	2602	HAUSE, S V. ST (INMATE SUICIDE ATTEMPT--TRCT)	850509	000000
33009785	1211	KING V. ST (FALSE CERTIFICATION--TRCT)	850517	000000
33009885	3013	REYNOLDS, C V ORTON, J (ILLEGAL S&S--TRCT)	850528	851010

***** SPECIAL TORT REPORT ***** AS OF 02/11/86

WMNO	ATTY	TITL	ODAT	CDAT
33009985	1603	STATON, J V ST (1983--TRCT)	850528	000000
33010085	1603	JEPPSEN, D V ST (SEXUAL DISCRIM--TRCT)	850528	851218
33010185	1603	STOTT, C V ST (S&F ON DOCK--CLAIM)	850528	000000
33010285	9902	WASHBURN V ST (ASBESTOSIS--TRCT-WA)	850531	000000
33010385	9962	BAUMER V ST (S&F--TRCT)	850531	000000
33010485	1603	YOUNG V ST (SLOPE FAILURE--CLAIM)	850531	851107
33010585	9970	CORNELL V ST (NEG CONSTR/MAINT-AIRPORT--TRCT)	850531	000000
33010685	9970	SOUTHCENTRAL AIR V KOREAN AIR ' ST (NEG CONSTR-AIRPT--TRCT)	850531	000000
33010785	9955	BURNS V ST (NEG HWY DESIGN- RCT)	850531	000000
33010885	9989	JONES V ST (NEG POLICE INVESTIGATION--_____)	850531	000000
33010985	3806	GLOVER, D V. ST (NEG HWY MAINT--TRCT)	850605	000000
33011085	3806	COMMEAN, C V ST (AUTO PI CLAIM--CLAIM)	850605	000000
33011185	9915	COOPER V ST (IMPROPER DETENTION--TRCT)	850605	000000
33011285	9915	HOWELL V ST (NEG PROSECUTION--USDC-AK)	850605	851227
33011385	3013	LANTZ, R. V. ST (WITHHOLDING OF FUNDS--TRCT)	850605	850718
33011485	1211	RENAUD, C V. ST. (SEX/AGE DISCRIM--TRCT)	850607	000000
33011585	9970	PEDERSEN V ST (NEG. DESIGN, OP, & MAINT--TRCT)	850613	000000
33011685	3806	QUINLAN V PIONEER HOME (NEG. SUPERVISION--TRCT)	850613	000000
33011785	1603	COHERN M. V. ST (PD-CLAIM)	850613	850718
33011885	1603	EMARD V ST (FALSE ARREST--CLAIM)	850613	851015
33011985	1603	DAVIS D V ST (APPEAL--APCT)	850613	000000
33012085	1603	O'CONNOR V ST (SEX HARRASSMENT--TRCT)	850613	000000

***** TORT CASES FY 86 ***** AS OF 02/12/86

WMNO	ATTY	CDAT	TITL	BLN
33000186	1604	851107	DOVER V STATE (NEG. INSPECTION--CLAIM)	
33000286	3806	000000	GREENE V MAMMOTH OF AK & ST (HGWY MAINT--TRCT)	
33000386	3013	000000	STEARNS, T. V. WILLIAMS, J. & BAINBRIDGE R. (1983--TRCT)	
33000486	9955	000000	ADAMS V. STATE (ROADSIDE OBSTACLE--CLAIM)	
33000586	9989	860131	DENARDO V WILLIAMS (WRONGFUL TERMINATION)	
33000686	9962	000000	O'BRIEN V ST (NEG DRIVING--TRCT)	
33000786	9962	000000	KNIGHT V PARKER (SLANDER--TRCT)	
33000886	9914	000000	VANDERSLOOT V VANGELDER (DEFAMATION--DCAK)	
33000986	9994	000000	MCCUTCHEON V ST (DEFAMATION--TRCT)	
33001086	1603	851107	PETERS V ST (WRONGFUL TERMINATION--CLAIM)	
33001186	9953	000000	ASPEN EXPLORATION CORP V SHEFFIELD (EXEC TORT--TRCT)	
33001286	9962	000000	FELTHAUSER V ST (SAFE WORK PLACE--TRCT)	
33001386	9912	000000	DANIELS V JONES (WHISTLEBLOWER--TRCT)	
33001486	9914	000000	AK ENVIRON INDUSTRIES V ROSS (SLANDER--TRCT)	
33001586	3806	000000	BRIGGS V ST (NEG HWY MAINT--TRCT)	
33001686	2420	000000	EITEL V HOLLAND (WRIT OF MANDAMUS APPEAL--9TH CIR)	
33001786	3019	000000	LEMON V ST (FALSE IMPRISONMENT--TRCT)	
33001886	1318	860128	GOODLATAW V ST (WRONGFUL DEATH--USSUPCT)	
33001986	1318	860206	MASON V LYNCH V ST (PT REV CONTRUCTIVE NOTICE--APCT)	
33002086	3806	000000	BLAKE V RICHARDS (FALSE ARREST--TRCT)	
33002186	9945	000000	CITY OF HAINES V HESS (CONTRIBUTION--TRCT)	
33002286	4009	000000	FRAZIER V ST (FALSE ARREST--TRCT)	
33002386	9905	000000	ISACKSON V ST (HWY MAINT--TRCT)	

***** TORT CASES FY 86 ***** AS OF 02/12/86

WMNO	ATTY	CDAT	TITL	BLN
33002486	1603	000000	ST V ALYESKA (INDEM APPEAL--APCT)	
33002586	9915	000000	WHEELER VID (FAIL TO MONITOR/INTERVENE--TRCT)	
33002686	9950	000000	BEARD V ST (FAIL PROVIDE SAFETY DEVICE--TRCT)	
33002786	9970	000000	FOSTER V ST (AIRPORT MAINT--TRCT)	
33002886	9991	000000	TAYLOR V PETER KIEWET SONS, INC (SAFE WORKPLACE--TRCT)	
33002986	9945	000000	LARSON V ST (JONES ACT--DCAK)	
33003086	9987	000000	LIPSCOMB V DONNELLY (INMATE BATTERY--TRCT)	
33003186	9913	860131	EDWARDS V FABE (LEGAL MALPRACTICE PD--TRCT)	
33003286	9955	000000	HACKATHORN V ST (HWY MAINT--TRCT)	
33003386	9915	000000	TRONICK (MISHANDLING OF BODY--CLAIM)	
33003486	9987	000000	EVAN (JAIL SUICIDE--CLAIM)	
33003586	1211	000000	JENKINSON V ST (WRONGFUL TERMINATION--TRCT)	
33003686	9995	000000	WHITESIDES ENTERPRISES V ST (BULLDOZER RENTAL--TRCT)	
33003786	1603	851218	CARLSON V CLERK OF SUPERIOR COURT (COURT CLERK NEG--TRCT)	
33003886	9902	000000	OSBORN V AK MARINE HWY SYS (JONES ACT ASBESTOSIS--TRCT-WA)	
33003986	9905	000000	HARDMAN V ST (SUICIDE/NEG INMATE SUPRV--TRCT)	
33004086	9953	000000	CWC FISHERIES V ST (SET NET RIGHTS--TRCT)	
33004186	1603	851218	MORINO V ST (NEG RECORDKEEPING--TRCT)	
33004286	4014	000000	SPRINGER V COREY (ASSAULT/1983--DCAK)	
33004386	4005	000000	LIPSCOMB V ENDELL (ASSAULT/COND OF CONFINE--TRCT)	
33004486	3013	000000	MANTEI V CRAIG (FAIL REMOVE HWY OBSTACLE--TRCT)	
33004586	1603	851126	ELROD (TRAILER SPACE/EVIDENCE--CLAIM)	
33004686	9950	000000	MOTOROLA, INC. V KOREAN AIR LINES CO. (AIRPORT NEG--TRCT)	

***** TORT CASES FY 86 ***** AS OF 02/12/86

WMNO	ATTY	CDAT	TITL	DLN
33004786	3013	000000	HOLZHEIMER V CLARK (ATTY FEES/COSTS--APCT)	
33004886	1603	000000	CARNEY V ST (QUASI JUDICIAL NEG--TRCT)	
33004986	9989	000000	ZAHARI V AK POWER AUTHORITY (FAIL REQUIRE INSURANCE--TRCT)	
33005086	9962	000000	ANDREWS V ST (TORT--TRCT)	
33005186	9962	000000	BENTLEY V HUDSON (MALPRACTICE--DCAK)	
33005286	9950	000000	APPLIED MAGNETICS CO V KOREAN AIR (AIRPORT MAINT--TRCT)	
33005386	3806	000000	FINCH V ST (PETITION FOR REVIEW--APCT)	
33005486	1603	000000	DEMEO V HOEY (S&F--TRCT)	
33005586	3013	000000	GEE V ST (INMATE PI--TRCT)	
33005686	9955	000000	BURTON V ST (NEG DESIGN--TRCT)	
33005786	3806	000000	FINCH, ST V (PETITION FOR REVIEW--APCT)	
33005886	3806	000000	L&H ENTERPRISES V ST (APPEAL--APCT)	
33005986	9999	000000	MCCLURE V EVERGREEN HELICOPTERS (CONTRIBUTION--DCAK)	
33006086	9999	000000	ROX V ST (NEG SUPERVISION--TRCT)	
33006186	9999	000000	UNDERWRITERS AT LLOYDS V ST (NEG AIRPORT MAINT--TRCT)	
33006286	9999	000000	MCKINLEY V DAHLBERG (NEG HWY MAINT--TRCT)	
33006386	9989	000000	JONES V ST (WRONGFUL TERMINATION--TRCT)	
33006486	1603	000000	FLETCHER V BURNHAM (JUDICIAL IMMUNITY--DCAK)	
33006586	1211	000000	WALT V ST (WRONGFUL DISCHARGE/CIVIL RIGHTS--APCT)	
33006686	9999	000000	REDMOND V ST (HWY MAINT--TRCT)	
33006786	9955	000000	SCHUMACHER V CLARK (AST EXCESS FORCE--TRCT)	
33006886	9950	000000	NAHORNEY V KOREAN AIR LINES (AIRPORT MAINT--TRCT)	
33006986	9950	000000	VICKERS V KOREAN AIR LINES (AIRPORT MAINT--TRCT)	

***** TORT CASES FY 86 ***** AS OF 02/12/86

WMND BLN	ATTY	CDAT	TITL
33007086	9999	000000	GORDON V ST (NEGLIGENCE--TRCT)
33007186	9999	000000	CARSON V AVILA (NEGLIGENCE--TRCT)
33007286	99 9	000000	ZIEMANN V MUNICIPALITY OF ANCHORAGE (PEDESTRIAN--TRCT)
33007386	1006	000000	BAKKE V BAKKE (NEGLIGENCE--TRCT)
33007486	9999	000000	CHANNEL CONSTRUCTION V ST (NEGLIGENCE--TRCT)
33007586	9999	000000	RICHARDS V ST (NEG FRISK--TRCT)
33007686	9999	000000	SAILOR V ST (SNOWBLOWER--TRCT)
33007786	9950	000000	SCHAPS V ST (AIRPORT MAINT--TRCT)
33007886	9950	000000	BAIRD V KOREAN AIR LINES (AIRPORT MAINT--TRCT)

ATTACHMENT C

Summary of Losses
December 31, 1985

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	CLAIMS TOTAL	CLAIMS OPEN	OUTSTANDING RESERVES	+ LOSS PAYMENTS	+ EXPENSE PAYMENTS	= TOTAL INCURRED	- RECOVERIES	= NET INCURRED
COVERAGE: MARINE P&I - FERRY EMPL (17)								
1980	1			5,850		5,850		5,850
1981	1			18,598	963	19,561		19,561
1982	2			10,000	1,841	11,841		11,841
1983	74	10	252,385	44,345	22,303	319,034	924	318,110
1984	284	24	114,176	470,098	43,652	627,926	73,961	553,965
1985	232	15	250,165	555,232	17,417	822,815	65,278	757,537
1986	133	75	97,150	106,982	91	204,223	1,078	203,146
TOTAL	727	124	713,876	1,211,106	86,268	2,011,250	141,240	1,870,010
COVERAGE: TRAVEL ACCIDENT (18)								
1979	1			35,000		35,000		35,000
1981	1			18,598	1,331	19,929		19,929
1982	1			75,000		75,000		75,000
1984	1			75,000		75,000		75,000
TOTAL	4			203,598	1,331	204,929		204,929
COVERAGE: GENERAL LIABILITY (20)								
1978	231	2	4,652	980,952	457,708	1,443,312	123,422	1,319,890
1979	289	4	115,823	909,895	474,685	1,500,404	21,048	1,479,355
1980	267	10	733,635	691,491	420,916	1,846,041	15,607	1,830,435
1981	211	13	1,750,370	3,017,498	791,351	5,559,219	1,283,301	4,275,918
1982	217	13	197,161	1,609,421	566,906	2,373,488	442,159	1,931,329
1983	311	35	1,566,192	504,733	474,865	2,545,789	6,900	2,538,890
1984	339	42	995,482	336,466	269,387	1,601,336		1,601,336
1985	449	49	778,463	181,730	176,014	1,136,208		1,136,208
1986	121	34	582,783	28,810	8,095	619,688		619,688
TOTAL	2,435	202	6,724,562	8,260,997	3,639,927	18,625,486	1,892,437	16,733,050

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	CLAIMS TOTAL	CLAIMS OPEN	OUTSTANDING RESERVES	+ LOSS PAYMENTS	+ EXPENSE PAYMENTS	= TOTAL INCURRED	- RECOVERIES	= NET INCURRED
COVERAGE: AUTO LIABILITY			(50)					
1978	114			156,007	20,026	176,032		176,032
1979	111		-200	1,335,605	50,500	1,385,905	806,501	579,404
1980	82			497,423	27,197	524,620	70,049	454,571
1981	131			128,248	3,460	131,707		131,707
1982	177	1	20,854	170,825	5,530	197,209		197,209
1983	188	3	160,098	302,937	2,122	465,157	548	464,609
1984	214	5	117,903	209,508	2,820	330,231	8,306	321,925
1985	274	13	779,743	217,649	12,152	1,009,543	241	1,009,302
1986	88	19	41,762	26,246		68,009		68,009
TOTAL	1,379	41	1,120,160	3,044,445	123,807	4,288,412	885,644	3,402,768
COVERAGE: AUTO PHYSICAL DAMAGE			(51)					
1978	7			1,604	56	1,660	427	1,233
1979	28	1	2,315	35,001	1,398	38,714	7,108	31,606
1980	306	4	358	173,658	14,839	188,855	39,293	149,562
1981	299	10	89	254,748	13,149	267,986	43,541	224,445
1982	420	4	965	434,184	15,465	450,614	62,892	387,722
1983	427	6	113	340,707	16,818	357,637	25,249	332,389
1984	114	1	6,000	72,140	4,895	83,035	1,639	81,396
1985	38	1	585	19,616	55	20,256	41	20,216
1986	7	2	913	3,434	275	4,622		4,622
TOTAL	1,646	29	11,338	1,335,091	66,950	1,413,379	180,189	1,233,190
COVERAGE: REAA PROPERTY			(70)					
1978	6			142,398	601	142,999	11,403	131,596
1979	8			2,407,922	483	2,408,405	740,224	1,668,181
1980	2			12,193		12,193		12,193
1981	2			225,073		225,073	205,073	20,000
1982	2			621,290		621,290		621,290
1983	1			850		850		850
TOTAL	21		0	3,409,725	1,085	3,410,809	956,700	2,454,110

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	CLAIMS TOTAL	CLAIMS OPEN	OUTSTANDING RESERVES	+ LOSS PAYMENTS	+ EXPENSE PAYMENTS	= TOTAL INCURRED	- RECOVERIES	= NET INCURRED
COVERAGE: GENERAL LIABILITY-ST ADM (21)								
1978	1			403		403		403
1979	2			1,500		1,500		1,500
1980	2			147		147		147
1981	5			39,169	481	39,650		39,650
1982	2	1	15,000			15,000		15,000
1983	3			2,364		2,364		2,364
1984	9			5,714	16,880	22,595	1,000	21,595
1985	13	4	3,586	2,355	20,977	26,918		26,918
1986	4			3,750		3,750		3,750
TOTAL	41	5	18,586	55,402	38,339	112,326	1,000	111,326
COVERAGE: MAR P&I - FERRY 3RD PARTY (23)								
1978	62			170,029	42,206	212,235	131,325	80,910
1979	72	2	7,600	376,947	54,671	439,218	342,169	97,049
1980	71	3	9,930	572,049	31,064	613,043	450,545	162,498
1981	155	5	54,188	635,716	74,392	764,296	79,605	684,691
1982	292	7	260,526	657,838	94,380	1,012,745	161,892	850,853
1983	270	4	32,511	531,976	28,529	593,016	76,919	516,097
1984	74	1	5,000	27,288	188	32,476		32,476
1985	66	4	11,082	20,076	5	31,162		31,162
1986	30	5	10,925	9,659		20,584		20,584
TOTAL	1,092	31	391,763	3,001,579	325,435	3,719,776	1,242,454	2,476,322
COVERAGE: MARINE P&I - OTHER (24)								
1978	3			29,042	2,680	31,722	8,469	23,252
1979	2			1,446	250	1,696	207	1,489
1980	3			3,403		3,403	1,275	2,128
1981	4			9,300	125	9,425		9,425
1982	1			275		275		275
1983	2			351		351		351
1985	3			5,373		5,373		5,373
TOTAL	18		-0	49,189	3,054	52,243	9,951	42,292

STATE OF ALASKA
SUMMARY OF LOSSES
AS OF 12/31/85

FISCAL YEAR	CLAIMS TOTAL	CLAIMS OPEN	OUTSTANDING RESERVES	+ LOSS PAYMENTS	+ EXPENSE PAYMENTS	= TOTAL INCURRED	- RECOVERIES	= NET INCURRED
COVERAGE: AIRPORT LIABILITY			(27)					
1978	13			177,099	45,314	222,413	197,089	25,324
1979	43			266,423	219,493	485,916	415,293	70,623
1980	24	3	740,000	111,989	7,568	859,557	94,644	764,913
1981	31	2	87,336	74,809	75,358	237,503	34,517	202,986
1982	36	1	331,923	222,903	83,111	637,937		637,937
1983	28	2	19,009	298,190	11,135	328,333	1,537	326,796
1984	22	6	594,525	8,720	118,473	721,717		721,717
1985	17	4	17,173	10,392	13,717	41,282		41,282
1986	6	5	322,129		1,961	324,090		324,090
TOTAL	220	23	2,112,094	1,170,524	576,129	3,858,747	743,080	3,115,667
COVERAGE: AIRCRAFT LIABILITY			(28)					
1981	1							
1982	4			23,500	529	24,029		24,029
1983	2	1	12,374	767	2,626	15,767		15,767
1985	4	2	36,058	71,892	4,163	112,112		112,112
TOTAL	11	3	48,432	96,159	7,317	151,908		151,908
COVERAGE: MISCELLANEOUS			(29)					
1979	5			59,139	131,286	190,426	639	189,786
1982	3			687,000	61,109	748,109	79,056	669,052
1983	1			75,000		75,000		75,000
1985	1	1	893		14,107	15,000		15,000
TOTAL	10	1	893	821,139	206,503	1,028,534	79,696	948,839
COVERAGE: MALPRACTICE			(40)					
1982	1				18,225	18,225		18,225
1983	1				820	820		820
1984	4	2	52,522		5,459	57,981		57,981
1985	2	1	600		5,083	5,683		5,683
TOTAL	8	3	53,122		29,587	82,709		82,709

STATE OF ALASKA
RANGE TABLE SHOWING
FREQUENCY, SEVERITY, AND AVERAGE
FOR TOTAL INCURRED CLAIMS WITHIN SPECIFIED RANGES
VALUED AS OF: 02/11/86

COVERAGE IS: GENERAL LIABILITY

FISCAL YEAR	0 - 50,000	50,001- 100,000	100,001- 150,000	150,001- 200,000	200,001- 250,000	250,001- 300,000	300,001- 500,000	500,001- ALL
1981								
TOTAL $	672,079	269,404	110,000	153,367			1,734,379	2,619,995
FREQ.	198	4	1	1			4	3
AVG LOSS	3,394	67,351	110,000	153,367			433,594	873,331
1982								
TOTAL $	797,736	428,353	122,530	357,962	237,409		673,109	670,174
FREQ.	212	6	1	2	1		2	1
AVG LOSS	3,762	71,392	122,530	178,981	237,409		336,554	670,174
1983								
TOTAL $	734,035	318,290	501,503	200,000	202,672	270,000		520,000
FREQ.	302	4	4	1	1	1		1
AVG LOSS	2,430	79,570	125,375	200,000	202,672	270,000		520,000
1984								
TOTAL $	865,934	597,034	240,000			300,000		
FREQ.	337	8	2			1		
AVG LOSS	2,569	74,629	120,000			300,000		
1985								
TOTAL $	949,585	150,000	125,000					
FREQ.	456	2	1					
AVG LOSS	2,082	75,000	125,000					
1986								
TOTAL $	258,997	150,000				300,000		
FREQ.	157	2				1		
AVG LOSS	1,646	75,000				300,000		
TOTAL								
TOTAL $	4,276,256	1,913,071	1,099,033	711,329	440,081	870,000	2,407,488	3,810,169
FREQ.	1,661	26	9	4	2	3	6	5
AVG LOSS	2,575	73,580	122,115	177,832	220,041	290,000	401,248	762,034

ATTACHMENT D

Medical Malpractice Legislation Enacted in the U.S. 1971 - 1985

¢ - Dr. McConnie
¢ - Marilyn - Coalition

MEDICAL MALPRACTICE LEGISLATION

ENACTED IN THE UNITED STATES 1971 - 1985

STATES SURVEY UPDATE 1985

Deborah R. Siegel, Director
Long-Range Planning
Medical Society of the State
of New York

MEDICAL MALPRACTICE LEGISLATION
ENACTED IN THE UNITED STATES 1971 - 1985

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
ALABAMA	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments
ALASKA	Claims Made & Occurrence policies Collateral Sources Periodic Payments *	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees

* Jury cannot be advised of periodic payments use.

Highest premium $5 mil/$5 mil is $40,246 annually.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
ARIZONA	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees Periodic Payments

Highest premium ($3,000,000 coverage) is $30,000 annually. $5 mil/$5 mil coverage available.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
ARKANSAS	Claims Made & Occurrence policies Collateral Sources Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees

Average premiums range between $900 and $7,000. $7,000 highest in the state.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
CALIFORNIA	Claims Made & Occurrence policies Caps on Awards Collateral Sources Contingency Fees Periodic Payments	Caps on Physicians' Personal Assets

The highest premium ($1 mil/$3 mil coverage) is $51,920 for Neurosurgeons. $10 mil/$10 mil is available. $2 mil/$4 mil is the most common, but there are a large number of $5 mil/$5 mil policies.

Have had a cap on pain and suffering (non-economic damages) since 1975 ($250,000). It was upheld by the Supreme Court this year. They feel, as far as it's effect on premium costs, that it will be felt more now and in the next few years than it had been previously. While it is believed to be of value, no empirical data will be available before November or December, 1985. There are already signs that the trial lawyers will go for higher economic damages and will try to undo what's been done-there have been proposals to this effect and also to raise the level of the cap.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
COLORADO	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

Average premiums range from $1,600 - $26,000. $26,000 highest.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
CONNECTICUT	Claims Made Policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets

Contingency Fees (not mandated but are used).
Periodic Payments (not mandated but are used in large settlements).

Highest premium (for Neurosurgeons, Cardiologists, Orthopedics) is $27,000, but will rise to $31,800 after an 18% increase. The highest coverage is $1 mil.

DELAWARE	Claims Made policies Collateral Sources Contingency Fees * Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets

* The contingency fee schedule is 35% on first $100,000; 25% on next $100,000; and 10% on the balance.

Average premiums range between $5,000-$10,000. The highest is $21,000 for fourth year OB/GYN's.

FLORIDA	Claims Made & Occurrence policies Contingency Fees * Periodic Payments **	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources

* Contingency fee scale (subject to Supreme Court changes). The sliding scale ranges from 15% - 45% depending upon the point at which the case is settled. 15% on awards in excess of $2 mil.

** On awards over $500,000.

Highest premium (OB Surgeons and Neurosurgeons) $78,450 ($100,000/$300,000). Highest coverage: $1 mil/$3 mil.

GEORGIA	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

Highest premium is $37,000. Highest coverage is $10 mil/$10 mil.

HAWAII	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments

* Attorney fees must be approved by the court.

Highest premiums are $33,000 annually. Total physician liability: $5 mil/$5 mil.

IDAHO	Claims Made & Occurrence policies	Caps on Awards * Caps on Physicians' Personal Assets Collateral Sources * Contingency Fees * Periodic Payments

* Caps, collateral sources and contingency fees had statutes but were declared unconstitutional several years ago.

STATE	HAVE PROVISIONS FOR:	DO NOT H. · PROVISIONS FOR:
ILLINOIS	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

The highest premium is $83,000 (Neurosurgeons) and total physician liability is $5 mil/ $5 mil. Most physicians in state carry $1 mil/$3 mil.

INDIANA	Claims Made & Occurrence policies * Caps on Awards Caps on Physicians' Personal Assets Contingency Fees ** Periodic Payments	Collateral Sources

* Four companies writing occurrence policies and one writing claims made (with a long tail).

** Via a statute created patients compensation fund.

Feel very strongly that their $500,000 cap on awards has helped keep premiums down.

IOWA	Claims Made & Occurrence policies ** Collateral Sources * Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Periodic Payments

* Modified collateral sources provision and contingency fees are not statutorily mandated, but are used.

** Are moving towards claims made only.

The highest coverage is $5 mil.

KANSAS	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Contingency Fees * Periodic Payments

Physicians' Personal Assets and Awards beyond coverage are covered via a "health care stability fund". This adds a 110% surcharge on premiums.

* Attorneys fees are not covered by statute, but are expected to be "reasonable" - the courts don't like to get involved - generally 25% - 50% of settlement.

Premiums for physicians who can't get coverage through two companies, possibly get it through JUA - if they pass personal interview which determines the physicians willingness to properly inform patients.

Have a cap on punitive damages.

Premiums are very variable.

KENTUCKY	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
LOUISIANA	Claims Made & Occurrence policies Caps on Awards Periodic Payments *	Caps on Physicians' Personal Assets Collateral Sources Contingency Fees

* Periodic payments are used via authority of the Attorney Generals office.

Since 1975 have three caps of $500,000 each:
Medical malpractice - private physicians; medical malpractice - employers of physicians in Louisiana; state liability for all other tort actions.

The highest premium is in the range of $21,000.

MAINE	Claims Made Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees

Have instituted monthly meetings with trial lawyers in response to their liability crisis.

Highest premium $40,000 (Neurosurgeons).

MARYLAND	Claims Made & Occurrence policies Contingency Fee * Periodic Payments **	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources

* Contingency fee statute allows judge to review attorney's fees.

** Periodic payments optional, not mandated.

The highest premium (OBGYN) is $35,000 for $1 mil/$3 mil. Highest coverage is $1 mil/$3 mil with a $5 mil excess.

MASSACHUSETTS	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments

* Though no statutory provision for contingency fees, they are used: 33 1/3% - 50%.

The highest premium is $15,300 (Orthopedics, Plastic Surgeons, Neurosurgeons, OBGs).

MICHIGAN	Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments

* Court rule allows 33% contingency fees.

Highest premium $55,000 (OBGs', Neurosurgeons). $1 mil/$1 mil highest coverage.

MINNESOTA	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

Highest policy is $20,000. Total physicians liability $4 mil/$5 mil.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
MISSISSIPPI	Modified Claims Made policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments *

* Contingency fees and periodic payments are used.

Highest premium (Neurosurgeons/Anesthesiologists) $31,000. $5 mil/$5 mil highest coverage available.

MISSOURI	Claims Made & Occurrence policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments **

* Are moving to claims made only.

** Although not statutorily mandated the judge may opt for it.

The range of premiums is $1,200 - $34,000. $34,000 is the highest. Total physicians' liability is $5 mil/$5 mil.

MONTANA	Claims Made policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

The highest premium is $20,000.

NEBRASKA	Claims Made & Occurrence policies Caps on Awards * Collateral Sources Contingency Fees	Caps on Physicians' Personal Assets Periodic Payments

* Caps on awards are covered via a participating voluntary state fund. The cap is $1 mil.

The highest premium is about $11,000. Total physician liability is $1 mil/$3 mil.

NEVADA	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments

* Contingency fees are used - generally 30% - 40% but can go up to 50%.

The highest premium is $44,160 for $1 mil/$3 mil coverage The highest coverage available is $5 mil/$7 mil.

NEW HAMPSHIRE	Occurrence policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

* Moving towards Claims Made.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
NEW JERSEY	Claims Made & Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments

* Sliding scale contingency fees.

Average premium is $9,000; the highest is $30,000 (Neurosurgeons) $1 mil/$1 mil coverage. The highest coverage is $5 mil.

Currently before legislature is a four part bill which includes caps on awards, collateral sources, periodic payments, expert witness and certificate of meritorious claim.

NEW MEXICO	Claims Made policies Caps on Awards * Caps on Physicians' Personal Assets	Collateral Sources Contingency Fees Periodic Payments

* Caps on awards excluding punitive damages.

Have since 1976 a $500,000 cap (excluding punitive damages). Feel it has had somewhat of an effect on premium costs. The courts are very conservative - only two cases have been awarded the $500,000. The conservative climate, the cap and the whole malpractice bill are what keeps the premiums low.

NEW YORK	Claims Made & Occurrence policies Collateral Sources Contingency Fees * Periodic Payments	Caps on Awards Caps on Physicians' Personal Assets

* Contingency Fees: 33 1/3 - 30% of first $250,000; 25% next $250,000; 20% next $500,000: 15% next $250,000; and 10% of any further amount.

Highest premium is $83,000 for Neurosurgeons - $1 mil/$3 mil.

New York physicians pay the highest premium rates overall in the country. Downstate especially so.

NORTH CAROLINA	Claims Made policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees * Periodic Payments

* Contingency fees are not a statutory provision, though they are used - average is 20%-30%.

The highest premium is $17,000 (Neurosurgeons). $5 mil/$5 mil coverage is available.

NORTH DAKOTA	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees *

* Contingency fees are not a statutory provision, though they are used - generally 33 1/3%.

The average premium is very variable and the highest is $45,000 (Neurosurgeon). Highest coverage is $10 mil.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
OHIO	Claims Made & Occurrence policies Collateral Sources	Caps on Awards Caps on Physicians' Personal Assets Contingency Fees Periodic Payments

Current bills will attempt for a cap on punitive damage and certain economic damages, contingency fees and periodic payments. Feel the "situation is deteriorating rapidly." Major hospital carriers are requiring hospital medical staffs to change bylaws to include as criteria for membership that a physician carry $1 mil coverage. Feel this will only encourage larger awards.

Highest premium is $17,000 for Neurosurgeon -- $1 mil/$3 mil. The highest coverage is $5 mil. There is a $250,000 cap on pain and suffering and collateral sources provision.

Have had a $250,000 cap since 1975 on non-economic damages - no cap on economic or punitive damages.

OKLAHOMA	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments *

* Neither contingency fees or periodic payments are statutorily mandated but can be used (contingency fees are generally 40 - 50% of award).

Average premium is $4,000. The highest premium is $12,000 (OBGs , Neurosurgeons, Plastic-Surgeons) $1 mil/$3 mil.

OREGON	Claims Made & Occurrence policies Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Periodic Payments

* Contingency fees: 35% on first $100,000; 35% on next $100,000 and 10% on balance.

Highest premium, $5 mil coverage: $40,000. Going to $64,000 in 1986 (Neurosurgeon).

PENNSYLVANIA	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

No limit to amount of insurance physician can buy, a catastrophic loss fund covers $1 mil. including personal assets.

RHODE ISLAND	Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments *

*Periodic payments not statutorily mandated, in actuality, they are used.

Highest premium is $30,000 ($1 mil/$3 mil coverage).

STATE	HAVE PROVISONS FOR:	DO NOT HAVE PROVISIONS FOR:
SOUTH CAROLINA	Periodic Payments Caps on Physicians Personal Assets *	Caps on Awards Collateral Sources Contingency Fees

* Physicians Personal Assets are covered through a patients compensation fund (no cap).

Highest premium ($1 mil/$3 mil) is $5,600 for a Neurosurgeon.

SOUTH DAKOTA	Claims Made & Occurrence policies Caps on Awards Collateral Sources Contingency Fees	Caps on Physicians' Personal Assets Periodic Payments

Have had a $500,000 cap on general damages since 1974-75. Feel it hasn't made any difference on premium costs as premium rates continue to go up.

The highest premium is $32,000 for Orthopedic Surgeons and Neurosurgeons. Can buy as high a policy as they wish.

TENNESSEE	Occurrence policies Collateral Sources Contingency Fees *	Caps on Awards Caps on Physicians' Personal Assets Periodic Payments **

* Contingency fees maximum is 33%.

** No provision for periodic payments but judge can use.

Highest premium approximately $30,000.

TEXAS	Claims Made & Occurrence policies** Caps on Awards *** Caps on Physicians' Personal Assets* Collateral Sources	Contingency Fees ** Periodic Payments **

* Homestead rule covers physicians' personal assets.

** Contingency fees and periodic payments are not statutorily mandated, but are used.

*** A $500,000 cap on awards since 1975. This cap is now being challenged. Feel the cap has had a positive effect on keeping premium costs down.

** Moving towards claims made policies.

$1 mil/$3 mil is the highest coverage.

UTAH	Occurrence policies * Collateral Sources Contingency Fees **	Caps on Awards Caps on Physicians' Personal Assets Periodic Payments

* Moving towards claims made policies.

** Contingency fees - 33 1/3%.

Highest policy is $18,600.

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
VERMONT	Claims Made	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees * Periodic Payments

* Contingency fees not mandated but used.

Rural community and general conservative climate keep situation under control.

The highest premium for $1 mil/$3 mil coverage (Neurosurgeons) is $10,889 or $24,622 depending on company (mature rates). Highest coverage is $1 mil/$3 mil with a $9 mil excess.

VIRGINIA	Claims Made & Occurrence policies Caps on Awards * Contingency Fees	Caps on Physicians' Personal Assets Collateral Sources Periodic Payments

* Caps on awards $1 mil.

Highest premium is $42,000 (Neurosurgeon). Highest coverage is $5 mil.

WASHINGTON	Claims Made policies *	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

* Claims made policies only starting in 1986.

Average premium $8,500. Highest premium $25,690 ($1 mil - Neurosurgeon). Highest coverage available $5 mil/$7 mil.

WEST VIRGINIA	Claims Made & Occurrence policies	Caps on Awards Caps on Physicians' Personal Assets Collateral Sources Contingency Fees Periodic Payments

The average premium is $11,700. The highest is $48,000 (Neurosurgeon). $10 mil coverage available.

WISCONSIN	Claims Made & Occurrence policies ** Caps on Physicians' Personal Assets* Periodic Payments ⁂	Caps on Awards Collateral Sources Contingency Fees ***

* A physician is required to purchase $200,000 coverage which makes him eligible for a patients compensation fund. Awards beyond his coverage and personal assets are handled via this fund.

** 85-90% are occurrence policies.

*** Contingency fees are not statutorily mandated, but are used.

⁂ A modified periodic payment rule is used for awards of future damages of $1 mil.

The highest premium is $44,600 (Neurosurgeon).

STATE	HAVE PROVISIONS FOR:	DO NOT HAVE PROVISIONS FOR:
WYOMING	Claims Made & Occurrence policies Collateral Sources Structured Awards *	Caps on Awards Caps on Phy icians' Personal Assets Contingency Fees

* Structured awards are not consistently recognized by the courts.

Highest premium ($1 mil coverage) under $20,000.

Attachment E

Insurance-Related Legislation: A Roundup

While federal regulation of the insurance industry is blocked by the McCarran-Ferguson Act of 1945 (PL 79-15), there are a number of bills in the 99th Congress that address specific insurance problems. Following is a roundup of their status:

Product Liability

Manufacturers hope recent concern over the availability of business insurance will rekindle interest in legislation to set federal standards to govern product-liability lawsuits. They contend that such standards, which they have been seeking since the late 1970s, would reduce exorbitant settlements.

Sen. John C. Danforth, R-Mo., chairman of the Commerce, Science and Transportation Committee, has promised early action on a bill (S 1999) to establish federal standards and set up a new system to allow victims to recover damages without going to court.

An earlier version without the compensation system (S 100), which had been pushed for several years by Sen. Bob Kasten, R-Wis., died in the committee last May on an 8-8 tie vote. *(1985 Weekly Report pp. 2730, 1586)*

Trial lawyers heatedly oppose the concept of uniform tort-law standards, and so do many state officials. Consumer groups and organized labor are fighting provisions that they say would make it difficult for victims of unsafe products to recover damages.

In the House, leaders of the Energy and Commerce Committee, which has jurisdiction over the matter, are interested in product-liability legislation but are waiting for the Senate to take the lead.

Pollution Liability

Insurers failed to obtain major relief from liability for hazardous-waste cleanup costs in a bill (HR 2005) to reauthorize the "superfund" cleanup program.

The House and Senate each passed versions of the reauthorization bill, and a conference to settle differences will probably take place early in the new session.

In neither bill did insurers get their prime objective: relaxation of the "strict, joint and several liability" standard that can hold them responsible for toxic-waste problems decades after a policy lapsed, regardless of how small a share of responsibility they carry.

They could yet win some relief, however, through a House provision that would make it easier for the Environmental Protection Agency to make out-of-court settlements to release from liability parties who have contributed only small amounts of waste to a dump site. *(1985 Weekly Report p. 2619)*

Vaccine Compensation

Legislation (S 827) to compensate people injured by adverse reactions to some vaccines remains stalled in the Senate Labor and Human Resources Committee.

Sen. Paula Hawkins, R-Fla., says the bill is needed both to help victims and to ensure the availability of vaccines. Some pharmaceutical companies have stopped making certain vaccines, such as DPT (diptheria, pertussis and tetanus), because of the risk of lawsuits on behalf of children who suffer rare but severe side effects.

Opponents of the bill object to a provision that would require victims to give up their right to sue if they want to receive compensation from the government. *(1985 Weekly Report pp. 2742, 1594)*

Medical Malpractice

The American Medical Association is backing a bill (S 1804) by Sen. Orrin G. Hatch, R-Utah, to spur states to revise their medical malpractice laws.

The bill would offer states up to $4 million as an incentive to enact specific changes in malpractice laws, such as limiting attorneys' fees and putting a cap of $250,000 on awards for pain and suffering.

The bill is pending in the Senate Labor and Human Resources Committee, which Hatch chairs.

Another approach was offered by Reps. Richard A. Gephardt, D-Mo., and W. Henson Moore, R-La., in HR 3084. Their bill would set up an alternative to lawsuits, featuring a combination of binding arbitration by an independent body and judicial review of claim amounts.

Other bills would set up screening boards to examine claims (S 175, HR 2659), make it easier for doctors to insure themselves (S 1357, HR 2261), and make it possible for military personnel to sue for malpractice in military hospitals (HR 3174).

Antitrust Exemption for Insurance

House Judiciary Committee Chairman Peter W. Rodino Jr., D-N.J., says his panel will re-examine the antitrust exemption the industry enjoys as a result of the McCarran-Ferguson Act. *(Background, p. 149)*

The law exempts the insurance industry from federal regulation so long as it is regulated by the states, and it allows insurance companies to share information and set joint rates without violating antitrust laws.

The insurance industry generally opposes efforts to limit its privileges. A few executives of larger companies, however, have said they would be willing to give up the antitrust exemption, which they feel protects smaller, less efficient companies.

Taxation

The property-casualty insurance industry would be hit hard by the tax-reform bill (HR 3838) passed by the House Dec. 17. That segment of the industry has paid little tax in recent years because of its investment and accounting practices.

The House bill would tax the companies' income from currently tax-exempt securities, and would impose a 20 percent minimum tax on property-casualty companies beginning in 1988.

Life and health insurance companies were generally relieved that the House bill ignored proposals to tax employees' health insurance and the increase in the value of life insurance policies.

Blue Cross and Blue Shield companies would have to pay $1.7 billion in taxes, however, because of a provision that would tax them as if they were profit-making companies *(1985 Weekly Report pp. 2690, 2705)*.

ATTACHMENT E

Insurance-Related Legislation

Attachment to OSPIRG Testimony
February 25, 1986

COMPARISONS BETWEEN "TORT REFORMS" SOUGHT BY THE INSURANCE INDUSTRY AND THE LAW OF ONTARIO, CANADA

In most of the 50 states, the insurance industry is seeking legislation that would make it more difficult for injured people to win lawsuits and would limit the amount of money they could recover if they do win. The law of Ontario, Canada (where the insurance industry is raising rates just as it is in the United States, see Chart 2) already contains the provisions the insurance industry seeks, as the following chart shows:

The insurance industry wants:	Ontario, Canada has:
A. Caps on compensation for pain and suffering -- e.g., for quadriplegia or brain damage -- typically of $250,000.	A. Caps on compensation for pain and suffering. Ontario has a cap of $100,00 in 1978 Canadian dollars ($185,000 in current Canadian dollars). See Andrews v. Grand and Toy Alberta Ltd., 2 S.C.R. 229 (1978); Ontario Law Reform Commission Report on Products Liability, at 62 (1979) (hereinafter "Ontario Law").
B. Restrictions on punitive damages: e.g., limiting punitive damages to a specific amount or a specific multiple of the compensatory award, or absolutely prohibiting punitive damages.	B. Restrictions on punitive damages. In Canada, punitive damages are virtually unknown in tort cases. They are allowed only for intentional torts. Ontario Law at 75; Linden, Canadian Tort Law, at 49-51 (1977).
C. A prohibition on injured people specifying the amount they seek in the complaint (in legal jargon, eliminating the *ad damnum* clause).	C. A prohibition on injured people specifying the amount they seek in the complaint. In Ontario, the plaintiff is not permitted to demand a specific amount in the complaint. See Gray v. Alanco Development, Inc., 1 O.R. 597 (1967); Ontario Law at 75.
D. Restrictions on contingency fees -- e.g., by establishing a sliding scale that reduces the percentage of the award the lawyer can receive as the award gets larger.	D. No contingency fees. In Ontario, contingency fees are prohibited. Ontario Law at 72, 75.
E. Restrictions on the role of the jury -- e.g., taking the authority to determine the amount of punitive damages away from the jury, or requiring the jury to answer detailed interrogatories that limit its discretion.	E. Restrictions on the role of the jury. There is no constitutional right to a jury trial in Canada. Most trials are judge trials. Ontario Law at 74, 102-04.

F. Penalties for "frivolous" suits -- e.g., requiring the plaintiff to pay the cost of defending such a suit.

F. Penalties for "frivolous" suits. In Ontario, if the plaintiff loses he must pay the defendant's attorney's fees, as well as his own. Ontario Law at 72, 76.

WHAT HAPPENS TO INSURANCE RATES WHEN "TORT REFORM" LEGISLATION IS ENACTED?

Virtually every "tort reform" measure the insurance industry is seeking is currently the law in Ontario, Canada (See Chart 1). Yet the insurance industry is raising premiums by 400%, cancelling coverage in mid-term and refusing to provide coverage at any price in Ontario, Canada just as it is in the United States. For example:

- The insurance industry has refused to provide insurance at any price for Ontario day care centers (See Exhibit 1).

- The insurance industry has refused to provide insurance at any price to all but 1 of 121 Canadian School Boards responding to a questionnaire (See Exhibit 2).

- The insurance industry has refused to provide liability insurance for Toronto and many other cities (See Exhibit 3).

- The insurance industry has refused to provide liability insurance at any price to the Canadian national ski teams, which have never had a major claim against them (See Exhibit 4).

- The insurance industry has raised premiums 1000% and at the same time reduced coverage for the Ontario intercity bus industry (See Exhibit 5).

- Hospitals in Toronto can still get insurance, but only at "greatly increased" premiums (See Exhibit 6).

- An insurance company renewed the Ontario School Bus Operators Association's policy on December 1 -- at 400% more than it charged the year before (See Exhibit 1).

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

Exhibit 1

Toronto Star
Friday, January 10, 1986

Liability coverage crunch may shut day-care agencies

By Elaine Carey Toronto Star

Two of the largest day-care agencies in Metro may be forced to close down next month because they have been unable to renew their liability insurance.

Family Day Care Services, which provides care for about 600 children through home care and a school-age centre, and Cradleship Creche, which cares for another 550 children, say they can't get insurance at any cost.

Cradleship's policy expires Jan. 31 while Family Day Care has until the end of February to try to find some solution, said John Pepin, its executive director.

"But our agent and two others have been trying everywhere and there just isn't anything," he said. "If it's hitting us this way, it will eventually hit the others as well."

'Pay 1,000 per cent'

Family Day Care, one of the oldest registered charities in Canada, has been in operation for 135 years and has never had an insurance claim, he said. Its premiums rose 65 per cent last year to about $2,500 but this year the insurer refused to renew the policy.

"At this point we are willing to pay 1,000 per cent more if necessary, but we can't even get a quote," he said.

Dr. Myrna Francis, executive director of Cradleship Creche — which has operated for almost 50 years without a claim — said their insurer refused to renew their policy when it expired Dec. 31, but granted them a month's extension to try to find other insurance. But insurers simply say they will no longer issue policies to day-care centres.

The provincial Day Nurseries Act requires day-care centres to have liability insurance to operate, she said, and they have informed the province of the situation.

'Deficit financing'

"We are just waiting to hear form the government and we will very shortly have to decide what course of action to take," she said.

Pepin said the implications of putting 1,150 children out of day care are "horrendous. Most of these people are low-income and without day care they would lose their jobs.

"Even if we do get some kind of ministerial approval to operate without insurance, if there was ever a suit and we're not protected, we put ourselves in a very vulnerable position," he said. "We can't afford to self-insure — we have barely enough funds as it is and we end up deficit financing every year. Where would we find the funds to cover it?"

The liability insurance industry in Canada has hit a crisis because of skyrocketing court awards and falling interest rates. Many companies have simply refused to issue policies for vulnerable groups, including four of Metro's municipal governments and the Metro School Board, which are now self-insuring.

Insurers cite problems in the United States, where several day-care centres have been charged with sexually abusing children in their care, as one reason for their unwillingness to renew day-care policies.

Umbrella Day Care Coalition, which arranges insurance for 165 non-profit day-care centres in Metro, did manage to get insurance Oct. 1 for only a slight premium increase, "but we had to stay away totally from American insurance companies," director Jane Hall said.

The U.S. company they had been dealing with for years refused to renew at all, she said, and up until a week before the policy expired "no one would touch it." The coalition eventually found a British insurer who was willing to take on the policy.

But Pepin said that company and others willing to renew policies two months ago are now flatly refusing, claiming that one suit involving a small child could cost them millions.

"I think, as all these day-care organizations come up for renewal, they will find enormous problems," he said.

Higher insurance rates hit school bus operators

By Kim Zarzour Toronto Star

School bus companies and school boards are bracing themselves for hefty vehicle insurance increases that threaten to put some smaller bus operations out of business.

If school boards don't take the brunt of the increase, officials say, parents may have to find another way to get their children back and forth to school.

Metro area boards spent about $70 million transporting more than 123,000 students last year. Board officials say the cost of that service will increase considerably when the new busing contracts are negotiated in the spring.

Insurance companies blame the higher rates — which are also causing problems for municipalities, school boards and trucking companies — on increasing frequency and cost of claims and higher court awards to accident victims.

Bus operators and school boards said yesterday that the situation took them by surprise.

"It just seemed to hit us in November and December," said Ted Moorhead, president of the School Bus Operators Association of Ontario. Moorhead said he was shocked by a 400 per cent increase when he renewed his insurance Dec. 1.

Charter bus companies have already been hit with big jumps in insurance rates. Gray Coach Lines Ltd. recently hiked the price of monthly commuter passes to cover higher liability insurance premiums. The Ontario Motor Coach Association has called for an investigation by a legislative committee.

Moorhead said most school bus operators haven't yet been hit by the increases, but they fear it's inevitable.

While some operators say the increases will be no more damaging than the soaring gas prices of recent years, others, especially the smaller companies, are worried.

"I can't take any large increases without going bankrupt. If it goes up 100 or 200 per cent, then I'll have to think about closing my doors," said Ronald Young, who operates a fleet of 50 buses for the Peel Board of Education. "The school board is going to have to bear the brunt of the increase, and they in turn will have to pass it on to the taxpayers."

William McWhirter, transportation officer with the Toronto board, said school boards will just have to find the money somewhere.

"If we don't realize that the whole industry is in trouble and try to help them out, then we're not going to have any transportation service at all."

The bus operators association has scheduled a meeting to discuss the insurance problem next week.

Exhibit 2

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Ministry of
Consumer and
Commercial
Relations

BACKGROUND NOTES - January 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: SCHOOL BOARDS

121 of the 167 boards (excluding Canadian Forces Board and Treatment Centres) responded to an insurance questionnaire distributed in early December 1985 and at this time only one board has been unable to obtain liability insurance coverage at all. The board is the Moose Factory Island District High School Area.

Several boards have had to reduce the maximum liability insurance coverage that was available to them last year.

The premium increases have ranged from a low of 12% to a high of 563% over the previous year's premium.

Several boards have indicated that new exclusions have been imposed on them by the insurance industry, such as sports related activities, shop programs, and environmental issues. At this time the only boards to have advised us that this has been given to them in writing by their insurance broker are the Wellington County Board of Education and the Kirkland Lake Board of Education. The Wellington County Board of Education has halted all physical education programs until further notice.

We are currently working with the Ontario Association of School Business Officials to review that options are available to school boards to solve this problem.

No board is expected to close because of a lack of insurance.

The Ontario Association of School Business Officials has been trying for some time to arrange a co-operative for school boards under which they would insure each other. Planning for this continues, and OASBO has asked for Ministry of Education assistance in collecting the required data. The Ministry is considering this request, which includes a request for financial assistance (about $25,000).

An inter-ministry work group has been formed to examine the entire insurance situation, led by Consumer and Commercial Relations. The Ministry of Education has representation on this committee.

Exhibit 3

Toronto Star
Friday, January 10, 1986

'Crisis' team to investigate soaring price of insurance

By Denise Harrington Toronto Star

A provincial task force will look at government-run coverage and tougher insurance regulations in a bid to solve the crisis of soaring premiums facing Ontario cities, school boards and hospitals.

"This government is not prepared to stand aside while this crisis threatens some elements of our economic and social system," Consumer Minister Monte Kwinter told the Legislature yesterday.

The task force, under former Economic Council of Canada chairman David Slater, will examine the costs and availability of liability insurance in Ontario and whether rules governing the industry could be improved to ensure stable rates.

Kwinter also announced yesterday a new plan to pay limited compensation to customers of bankrupt insurance companies.

The government will help hospitals pay for massive premium increases if they face "true financial hardship," Kwinter promised.

Replying to questions in the Legislature, Kwinter said the Liberal government is not considering offering automobile insurance or public sickness and disability insurance.

☐ Metro day-care agencies may close without insurance. Page A4

"At the present time the government's preference is not to be in the insurance business," Kwinter added outside the Legislature.

"On the other hand, if the case can be made, and if it can be documented that this would be the route to go and makes economic sense and provides the kind of services required, we would certainly look at it."

Metro and the municipalities of Toronto, York, Etobicoke and East York have been unable to get any insurance coverage against personal injury for 1986. The province is encouraging municipalities to set up insurance pools to handle soaring rates and lack of coverage.

'Doing nothing'

Opposition Leader Larry Grossman complained that Kwinter has, "after six months of literally doing nothing," decided to appoint a task force "that will take a minimum of another three months before anything happens."

New Democratic Party leader Bob Rae said the government should introduce a sickness and disability insurance plan for all Ontarians, as well as an auto insurance scheme similar to those in Manitoba and Saskatchewan.

But Kwinter pointed out public insurance plans in those two provinces were facing deficits this year. He said the problem of soaring premiums was worldwide because of high court awards, low interest rates paid on investment on premiums, and competitive cut-rate premiums offered several years ago.

Outside the Legislature, Kwinter said the government will set up a plan to provide a maximum of $200,000 in coverage to customers of companies that go bankrupt. All panies will be asked to pay into und at rates to be set later.

Exhibit 4

Globe Mail
Jan. 15/86

...urance problems may curtail season for Canadian skiers

Special and Canadian Press

OTTAWA

Canada's national ski teams may have to leave the World Cup circuit at the end of this month because of an insurance problem that could also cripple competitive skiing across Canada.

Ron Payment, executive director of the Canadian Ski Association, says the inability to get sufficient liability insurance may force the association not only to call home its national teams but also to cancel all domestic competitions.

Most provincial ski programs and some club programs would also be affected, since they are tied to the CSA's insurance policy. The CSA executive plans an emergency meeting on Jan. 25 in Ottawa.

Glenn Wurtele, the national head coach, said yesterday in Kitzbuehel, Austria, that he hadn't been told that the teams might be called home or even that there is an insurance problem.

"It certainly is news to me. I find it extremely hard to even envision it happening; I really can't imagine something happening on that scale."

Mr. Wurtele said he could not see Sport Canada, with its huge investment in Olympic sports, allowing the teams to be called home.

The association is one of a growing group of sports organizations finding it difficult to purchase liability insurance at an affordable cost.

The CSA says it was first told that the price of liability insurance would double, and then found that coverage was unavailable at any price.

The association's current coverage on national alpine, cross-country, jumping, free-style, biathlon and nordic combined skiers, coaches and staff ends on Jan. 29, after several extensions by the New York-based American Home Assur-

SKI — Page A2

Ski teams can't get liability insurance

● From Page One

ance Co.

"I'm not sure what will happen after that," Mr. Payment said yesterday. "The odds are good we won't have insurance. The executive must decide what to do.

"If we don't find re-insurers ... it could mean recalling all the teams and it could affect all of our developing teams leading to 1988," the year of the Winter Olympics in Calgary.

Mr. Payment said he understands that U.S. teams may also be having insurance problems. He said, however, that European ski teams don't face the sort of problem confronting Canadian teams, at least in part because accident settlements tend to be lower in Europe.

He said he has been trying to get more information on the European situation to see if he can glean any pointers to help Canadian ski teams deal with their difficulties.

CSA was first advised by its insurance agent it could expect to pay between $80,000 and $160,000 for $10-million in liability insurance for 1986. Mr. Payment said the CSA, which has never had a major liability claim against it, was willing to pay that amount, but later found that insurance companies had backed away from offering liability insurance at any price.

In 1984, the CSA paid $7,000 for liability insurance, with the premium rising to $47,000 last year.

Mr. Payment said the association has been unable to find coverage from any of about 100 companies it has approached. That leaves the association with the option of going through the remaining three months of the season without liability insurance.

"If we had no insurance, it would expose the coaches and staff to (possible) lawsuits and we could have mass resignations," Mr. Payment said. "Some volunteers have indicated they will resign if there is no insurance."

The CSA is considering buying accident insurance for the skiers, but that is expensive and it does not cover the volunteers, coaches, staff and the association.

"If a skier becomes paralyzed, accident insurance may pay $250,000, but he may decide to sue. A settlement of a few million isn't unusual."

The increased difficulty of getting adequate liability insurance, a result of large claim settlements in North America, has affected all Canadian amateur sports organizations.

Hugh Glynn, president of the National Sport and Recreation Centre, had no instant remedy, but said the problem needs immediate attention. He said he informed Otto Jelinek, the Minister of Fitness and Amateur Sport, about the situation before Christmas, but has not had a reply.

"One thing is for certain: the Government must step in. They will bring volunteer organizations to a standstill. If they keep this up it appears to be a pressure tactic (by the insurance companies) to bring action from the Government.

"Our organizations have gone as far as Lloyds of London and they have turned us down."

Rob Toller, a spokesman for Mr. Jelinek, said on Monday that the minister was extremely concerned about the situation and was "seeking the best advice he could find" from the sports community and the insurance industry.

"But really, he doesn't know just what he can do to ease the situation."

Barbara McDougall, Minister of State for Finance, indicated in Parliament on Monday that she will be bringing in new policies to deal with the general problem of liability insurance, but she did not elaborate on what those initiatives would be. A special committee of the Ontario Legislature already has been struck to study the situation.

Exhibit 5

416/963-0311

555 Yonge Street
Toronto, Ontario
M7A 2H6

Ministry of
Consumer and
Commercial
Relations

BACKGROUND NOTES - JANUARY 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: BUSES

Since the OMCA wrote the Premier on September 18the, senior staff from MTC and CCR have been involved in meetings and initiatives aimed at assisting the bus industry. Notably, arrangements were made with the Facility Association to provide insurance coverage for this industry, the Honourable Ed Fulton has met with the OMCA and has gained insight into the insurance crisis from the industry's perspective, and the Deputies from MTC, CCR, and Tourism and Recreation have met to seek solutions to this problem.

The Deputy Minister of CCR met with representative from the Ontario Motor Coach Association on November 23, 1985.

EFFECTIVE IMMEDIATELY bus carrier tariff increases will be approved by the Minister MTC without referral to the OHTB. This will allow tariff increases due to insurance premium increases to be approved in a week instead of the previous 30-60days.

The intercity bus industry in Ontario is facing increased costs of liability insurance. Premiums have increased ten-fold from levels of $2000-3000 per coach to $20000-24000 per coach for much less coverage.

Exhibit 6

416/963-0311

555 Yonge Street
Toronto, Ontario
M7A 2H6

Ministry of
Consumer and
Commercial
Relations

BACKGROUND NOTES - January 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: HOSPITALS

In June of 1985, the Ministry of Health became aware of a major price increase in hospital liability insurance.

July 8, 1985, the staff of the Ministry of Health met with representatives of the Ontario Hospital Association and their insurance brokers.

Both the Ministry of Health and the O.H.A. met with the Superintendent of Insurance subsequently to review options/alternatives that might be available.

The Ontario Hospital Association has established a Task Force, including an observer from the Ministry of Health to review the alternatives available to the industry. The review will include examination of options such as self insurance, change in coverage from occurrence to claims made, etc.

A group of 20 Metro Toronto hospitals are conducting a similar, but independent, review.

The hospitals of the Province are still able to purchase liability insurance, although at a greatly increased premium.

In terms of the increased premiums, the Ministry of Health has not made any overall provision for the costs but is reviewing each hospital's overall financial position and is prepared to provide additional funds in cases of true financial hardship.

April 21, 1987

MEMORANDUM TO THE MEMBERS
OF THE ALASKA STATE LEGISLATURE
REGARDING TORTS IN GENERAL AND
GENERAL COMMENTS WHY SENATE BILL
NO. 211 AND HOUSE BILL NO. 250
SHOULD NOT BE ENACTED *

FROM: WAYNE ANTHONY ROSS, PATRICK G. ROSS,
THOMAS S. GINGRAS, ALLEN M. BAILEY
EDWARD L. MINER

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HISTORY

A tort is a term that is generally applied to a miscellaneous group of civil wrongs other than a breach of contract, for which a court of law will afford a remedy in the form of an action for damages. The Law of Torts is concerned with the compensation for losses suffered by private individuals through conduct of others which is regarded as socially unreasonable.

As previously stated and very broadly speaking, a tort is a civil wrong, other than breach of contract, for which the law will provide a remedy in the form of an action for damages. A tort is therefore nothing more than one kind of

*

Specific comments on why Senate Bill 211 and House Bill 250 should not be enacted are the subject of a separate memo to you.

legal wrong for which the law will give a particular redress to the individual that has been wronged.

Included under the general heading of torts are civil wrongs consisting of direct interferences with the person, such as assault, battery, and false imprisonment. Also included are direct interferences with property such as trespass or conversion as well as various forms of negligence and damages to reputation. These individual wrongs have very little in common with, and are entirely unrelated to, one another except by historical accident. The only principle that can tie all these various wrongs together is the principle that an individual who is injured should have his injuries compensated and anti-social behavior is to be discouraged.

The previously mentioned torts are basically the original common law torts that have been recognized through the years. In addition, as we become more civilized, new torts are recognized from time to time by the courts which create new causes of action where none had been recognized before. Several examples include the intentional infliction of emotional distress, the obstruction of an individual's right to go where he likes, invasion of an individual's right to privacy, denial of an individual's right to vote, the infliction of prenatal injuries to an unborn child, and the alienation of affections of a parent, to name only a few examples.

The Law of Torts is not static or limited and the limits of its development are consistently being refined as society evolves.

The historical origins of tort law still influence the Law of Torts substantially. When the common law of England first emerged, a plaintiff could have no cause of action for harm that he suffered unless his claim fit into the form of some existing and recognized writ. By the middle of the 19th century, this concept had been modified and replaced to a great extent by the modern procedural codes of law.

Gradually, as time passed, the concept of tortious contact or conduct and actionable damages has expanded. Many believe that such access to legal remedies are a mark of a government of laws and prevent the "self help" of the past wherein private parties and even families would feud and physically clash to settle their differences.

INTENTIONAL TORTS

Intentional torts, such as assault and battery, trespass, intentional infliction of emotional distress, and false imprisonment, by their definition require an intent on the part of the actor or doer. This intent does not mean that the individual must intend that result that flows from his actions. It merely means that the individual must intend to achieve some result when he acts for the purpose of accomplishing that result, or believes that the intended result is

substantially certain to follow from his act. The intent is not necessarily a hostile intent or a desire to do any harm. Therefore, the mere intent to place ones foot off of a sidewalk onto the grass of a neighbor's yard would be a sufficient intent for the intentional tort of trespass. It is merely an intent to bring about a result which will invade the interests of another in a way that the law will not sanction.

The defendant may be liable even though he has meant nothing more than a good natured practical joke or earnestly believed that he would not injure the plaintiff. The defendant would also be liable even in the event that he felt that he was seeking to protect the plaintiff's own good.

In other words, the defendant's act must be a voluntary act. A contraction of muscles will suffice. The movement of a finger on the trigger of a gun is sufficient.

The individual's state of mind may involve many things: He may intend to move his finger for the purpose of pulling the trigger, for the purpose of causing the bullet to strike a man, for the purpose of merely causing the bullet to exit the barrel, for the purpose of killing a man, for the purpose of revenge, for the purpose of defending his country, or for the purpose of protecting himself against attack. Intent would thus be commonly used to describe the desire to bring about physical consequences of an action up to and including the death.

The mental concept which inspires the act is called a motive. Motive is only one step removed from the muscular contraction. Each (intent and motive) has its own importance in the Law of Torts and a justifiable motive such as that of self-defense, may avoid liability for the intent to kill.

The "Intent concept" in Tort law is, however, broader than a desire to bring about physical results. It extends beyond those consequences which are desired, to consequences that the actor believes are substantially certain or should believe are substantially certain to follow from what he does. For instance, an individual who throws a bomb into a crowd of people may wish to only kill the president and no one else. But since he knows that the death of others is substantially certain to follow, or should know that the death of others is substantially certain to follow, it must be said that he intends to kill them. In addition, the individual who fires a bullet into a dense crowd may earnestly and diligently hope and pray that no one will be hit. But since he must believe and know that someone is substantially certain to be hit, he intends the result.

CAVEAT

The mere knowledge and appreciation of a risk, though short of substantial certainty, is not the equivalent of intent. Therefore, the individual who acts in the belief or consciousness that he is causing an appreciable risk of harm to

another may be negligent. If the risk is great, his conduct may be characterized as reckless or wanton, but it is not classified as an intentional wrong. However, it would still remain an actionable tort under the theories of negligence.

Very few intentional torts cases exist cases in Alaska. However, the general principles applicable to Tort law remain the same, with exception of the area of vicarious liability, which is discussed below.

One intentional tort recognized in Alaska is assault and battery. Assault and battery occurs if one acts intending to cause a harm of offensive contact with a person of another, and if the latter is put in an immediate apprehension of such contact, and such contact results. Liability will attach regardless of whether the actor acted with a feeling a hostility or ill will toward the other. In addition, punitive damages may only be awarded where the plaintiff has in fact suffered actual damages.

In addition, the intentional tort of false imprisonment or false arrest is recognized in Alaska. False imprisonment consists generally of a situation in which the actor confines the victim within some boundaries fixed by the actor, without legal justification, by either an intentional act or an omission intended to result in such confinement. The tort of false imprisonment is generally meant to protect an individual's interest in freedom from restraint of movement. The

boundary does not have to be a stone wall or fence. The boundary can readily be a body of water if it would be unreasonable for the victim to be required to cross that boundary. In addition, a victim may be restrained and imprisoned when his movements are restrained in an open street, in a travelling automobile, or if he is compelled to go along with the actor against his will. All that is really required is a mere obstruction of the right to go where the victim pleases. However, the victim may not merely be inconvenienced; he must be blocked from all reasonable exit.

In addition, the intentional tort of intentional infliction of emotional distress is available in Alaska, but usually only where the actor has acted in an outrageous or especially flagrant manner. However, common carriers have an elevated duty of care to their passengers such that insults to the passenger may suffice.

VICARIOUS LIABILITY FOR INTENTIONAL TORTS

Generally an employer is not liable for the intentional torts and actions of his employees. However, in the event that the duties of the employee such that an intentional tort could be committed by the employee and furtherance of the employer's interests, vicarious liability will attach. Likewise, with regard to employers employing independent contractors.

physical propensity to be harmed that is unknown to the actor will not limit the actor's liability.

BRIEF OVERVIEW OF NEGLIGENCE

Negligence

For a cause of action to exist in negligence, there must be four elements. First, the actor must owe a legal duty of some type to conform to a standard of conduct recognized by society as a whole for the protection of others against an unreasonable risk. Secondly, there must be a breach of that duty, i.e. a failure to conform to the standard of conduct. Third, there must be a reasonably close connection of a causal relationship (substantial factor) between the conduct of the actor and the resulting injury. Fourth, there must be actual loss or damage resulting to the interests of another from the breach of this duty.

Negligence is thus based simply upon conduct. However, if any one of the four elements are missing, a cause of action for negligence does not exist.

In the concept of negligence, an intentional act on the part of the actor is not required. A failure to act will suffice, if that failure to act would breach a duty of care owed by the actor to the injured party. The duty of care would exist because of some special relationship between the parties

which imposes a duty to act such as parent-child, attorney-client, physician-patient, teacher-student, etc.

As previously stated, there must be some duty owed to the plaintiff. Generally the duty of care would be one of reasonableness; i.e. that standard of care that a person of ordinary prudence would exercise under the circumstances.

However, if the tortfeasor is proven to have violated a statute, ordinance, or rule that embodies a reasonable standard of care, the plaintiff will have established a prima facie case of negligence, legally called "negligence per se." The burden is then placed on the defendant to show reason or excuse for his violation.

Several classes or groups of defendants are held to a higher standard of care than that of ordinary care of a prudent person. Common carriers (airlines, buslines, taxicabs) are held to the highest degree of care with respect to their passenger's safety. Healthcare providers are held to that degree of knowledge or skill possessed or the degree of care ordinarily exercised by providers practicing in the same speciality or in the same field. Insurance companies are held to a duty not to act negligently in the conduct of defending the insured under an insurance policy. In addition, suppliers of chattels (rental agencies) must inspect for defects and inform of those defects if found. In each of these situations,

the actor is held to a higher degree of care than mere reasonableness.

As previously stated, for a cause of action in negligence to lie, there must be legal cause of the harm that resulted. This legal cause must be causation in fact. In other words, a defendant will not be liable to the plaintiff's injury unless he has in fact caused that injury. This does not mean, however, that a situation that would appear remote to the layman would preclude recovery.

If the act or omission of the defendant was a substantial factor in bringing about the result, it will be regarded as a cause in fact and therefore a legal cause of the harm. Ordinarily, it will be a substantial factor if the result that occurred would not have occurred without it.

In order to satisfy the substantial factor test, it must be shown that the accident would not have happened "but for" the actor's negligence and that the negligent act was so important in bringing about the injury that reasonable men would regard it as a cause and attach responsibility to it. Thus, there must be some reasonable connection between the act or omission of the defendant and the damage which the plaintiff has suffered.

This can be illustrated with a stack of dominoes that have been lined up on edge, each domino being placed so that in the event the preceding domino topples, the secondary domino

will topple in turn. As can readily be seen with the first domino representing the act or omission and the last domino representing the harm, the force exerted on the first domino to topple it will eventually cause the last domino to topple. The act of the individual pushing over the first domino did not actually cause the last domino to fall. Instead, the act of the individual pushing over the first domino set in force a chain of events that reasonably led to the falling of the last domino. A reasonable person of ordinary prudence would believe that the action of pushing the first domino caused the falling of the last domino, or that the act of pushing over the first domino would be reasonably certain to cause the fall of the last domino.

However, this causal connection is tempered within that which is forseeable. In the event that the harm caused is so far remote from the act or omission of the actor to be unforeseeable, then liability will not lie.

For instance, a defendant railway company maintains a station platform with a hole in it. A passenger descending from the train, steps into the hole and sprains her ankle. The sprain develops into inflammatory rheumatism, which become endocarditis, and the woman dies.

The defendant could reasonably have foreseen that the hole might cause some injury to a passenger. However, upon no ordinary basis of human experience could it anticipate that it

would cause death from inflammation of the heart. Is the defendant liable for the death? In 1899, the Minnesota Supreme Court in the case of Keegan v. Minneapolis and St. Paul R. Co., 76 Minn. 90, 78 N.W. 965, ruled that the plaintiff could recover for the death caused by the hole in the station platform.

As previously stated, if the defendant could not reasonably foresee any injury as the result of his act, or if his conduct was reasonable in light of what he could anticipate, there is no negligence and no liability attached. However, if he does unreasonably fail to guard against harm which he could foresee, then liability will attach, provided that plaintiff had a duty to act in the first place.

However, there must be some limit with respect to foreseeability. In one sense, almost nothing is quite unforeseeable, since there is a very slight mathematical chance, recognizable in advance, that even the most freakish accident will occur. For instance, in the case of Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99, (1928), the plaintiff was standing by a platform upon which rested a set of railway scales. The defendant, while boarding the train, dropped a brown paper bag full of ordinary fireworks that exploded. The explosion was alleged by the plaintiff to have jarred the platform upon which the scales sat sufficiently to topple the scale on to Mrs. Palsgraf. What is meant by the term

foreseeability is that the consequences must be a normal, substantial part of the risk, which a reasonable man would recognize as fair to be taken into account at the time of his act. Considering Mrs. Palsgraf, would it be reasonable for the man that was carrying the bag of fireworks to foresee that in the event the bag was dropped and an explosion ensued, someone in the near vicinity would be injured. If the answer is yes, liability would attach. Thus, there must be some reasonable connection between the act or omission of the defendant and the damage which the plaintiff has suffered. The New York court of appeals ordered that plaintiff's complaint be dismissed because plaintiff had failed to show defendant's actions to be rooted in a "wrong."

COMPARATIVE NEGLIGENCE

Alaska is a comparative negligence jurisdiction utilizing the concept of pure comparative negligence. What this means is that the negligence of all parties will be considered in any award of damages. If the plaintiff is contributorily negligent, this contributory negligence will not be a bar to recovery, but will be a factor by which the court will lessen the amount of damages that the plaintiff is allowed to collect. (In other words, given 100% of the total possible liability in any given case, if the plaintiff is found 50% negligent and the defendant is found 50% negligent, and the plaintiff has suffered damages of $1,000.00, the plaintiff will

be allowed on a pure comparative negligence basis to recover only half of that or $500.00).

However, in the event that the defendant acted intentionally, such as in the case of an assault and battery, then any negligence on the part of the plaintiff will not reduce the recovery at all. Therefore, negligence is not a defense to intentional torts.

VICARIOUS LIABILITY FOR NEGLIGENT TORTS

An employer is subject to liability for injuries caused by the tortious conduct of his employees within the scope of their employment.

An example of this theory could encompass the construction of the Alaska Pipeline, in which a welding company is contracted to weld joints of pipe to be utilized in the pipeline itself. The company has the right to control directly or indirectly the performance of the welding done by the employee welders of the welding company. Assuming that the employees welded in a deficient manner such as to cause substantial leaks in the pipe joints after the pressurized oil was placed in the line, the welding company would probably be found vicariously liable for the damages that resulted.

Often, in the law, there are referals to masters and servants. These are legal terms. A servant is a person employed by a master (employer) to perform service for that master, whose physical conduct and the performance of his

duties is controlled or is subject to a right to control of the master.

As can readily be seen, the employee must only be subject to a right to control of the master. The employee does not have to be under the actual control of the master.

However, where the employee, under the Doctrine of Frolic and Detour, frolics in the performance of his duties; i.e. chooses a path or course of action that is in no remote way related to his duties under the employment of the employer, the employer will not be liable. However, if the employee merely detours in his path of performing his duties, the employer will be liable. An example of a detour can be seen where a delivery boy, rather than returning from a delivery directly to the employer's offices, makes a brief detour for personal reasons and is involved in a motor vehicle accident causing death. If the employee's act is found to have been foreseeable by the employer (that the employee may detour on his way back to the employer's place of business) then the employer may be found liable. Therefore, once it has been determined that the employee is a servant, the master may be subject to vicarious liability for his servant's torts in the event that the servant was working within the scope of his employment, including brief deviations.

In addition, the master may of course be liable on the basis of any negligence of his own in selecting or dealing

with the servant, or for the acts which he has authorized or ratified the servant to do.

However, in the event that a servant commits intentional torts, a master will not be liable UNLESS the intentional tort (assault and battery, false imprisonment, malicious defamation) is of the type where the employment is likely to lead to such torts.

As previously stated, under the Doctrine of Vicarious Liability with respect to intentional torts, a shopkeeper employing an independent contractor for security purposes to preclude shoplifting, may find himself liable for the intentional torts of those security people. In the shoplifting scenario, potential intentional torts include assault and battery, false imprisonment, and possibly defamation of character.

The same would be true with respect to a bouncer employed in a bar. The bar owner could reasonably anticipate and foresee the bouncer being involved in a situation where force was used, to include physical restraint of a patron of the bar or heated arguments between the patron of the bar and the bouncer.

INDEPENDENT CONTRACTORS

The employer of an independent contractor may be liable for any negligence of his own in connection with the work to be done by the independent contractor. However, the

common law rule is that the employer will not be vicariously liable for the torts of the independent contractor, unless the independent contractor has been placed in the position of actually being a servant of the employer/master, rather than actually an independent contractor. Two examples of this include areas of work that is inherently dangerous to others, or will be dangerous unless particular precautions are taken; and where the employer has a duty that he is not allowed by law to delegate the independent contractor.

As previously stated, common carriers, to include airlines, buslines, and taxi cabs have a non-delegable duty to transport their passengers safely. In the independent contractor type scenario, the employer of the independent contractor, since it is a common carrier, has a duty to insure that this duty of safe transport of passengers is complied with. This duty cannot be delegated to the individual taxi cab drivers, airline pilots, or bus drivers and liability will attach.

In addition, under the Doctrine of Safe Place, a landowner or occupier of land must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of the respective parties of avoiding the risk. Hiring of an independent contractor to maintain the premises may not suffice if the landowner is found to have a duty to inspect and insure

the compliance of the independent contractor to keep the property in a reasonably safe condition. In addition, in accordance with Alaska landlord-tenant statutes, the landlord has specific enumerated duties with respect to the habitability and safety of any premises which the landlord rents or leases. A violation of these duties would constitute both a breach of that duty and negligence per se, whether the duty had been delegated to an independent contractor or not.

Good examples of inherently dangerous activities include blasting, construction, or any activity likely to endanger passers-by.

PUNITIVE DAMAGES

Punitive damages are sums that are awarded a part from any compensatory or nominal damages, usually as a punishment or deterrent levied because of particularly aggravated misconduct on the part of the defendant. Punitive damages are generally awarded with or a combination one of three purposes in mind·

1) Punish the wrongdoer;

2) Set an example for others;

3) Deter the defendant from similar conduct in the future.

Punitive damages are not given as a matter of right. Punitive damages will only apply in the event that the

plaintiff proves sufficiently serious misconduct on the part of the defendant, as to be deemed outrageous.

As previously stated, the main theory in support of punitive damages is punishment and setting an example that would deter similar conduct in the future.

It is usually the defendant's mental state that is said to justify a punitive award against him, rather than his outward conduct. This mental state can be characterized as maliciousness, recklessness, wanton disregard, or outrageousness. However, where the defendant has been found to have acted in good faith, punitive damages are not appropriate.

SO-CALLED TORT REFORM

Up until now, damages redressable through the courts for intentional torts and negligence have been required to bear a "reasonable" or "rational basis" relationship between the amount awarded and the harm that resulted. Recently, a move has generally surfaced on a nationwide basis (primarily backed by the insurance company lobby) to limit the amount of monetary damages that a plaintiff can receive from any given defendant or group of defendants. This movement is called "TORT REFORM." The tort reform movement has met with mixed results across the nation. According to court opinions, five states (California, Florida, Indiana, Nebraska and Wisconsin) have upheld damage limitations in medical malpractice actions while courts in seven states (Idaho, Illinois, Montana, New Hampshire, North

Dakota, Ohio and Texas) have declared such limitations unconstitutional. During the 1986 state legislative session alone, forty-one separate states passed legislation to restrict some rights of innocent victims to sue and be fully compensated for their injuries (according to a report of the National Conference of State Legislatures, July, 1986).

While the insurance industry as a whole is a substantial proponent of tort reform, they are not alone. In conjunction with the insurance industry are business and professional lobbies, including manufacturers of hazardous goods and toxic chemicals.

Among measures considered by various states and/or enacted in 1986 were arbitrary limits on pain and suffering awards, limitations on punitive damage awards, mandatory limits on lawyers' contingency fees, modification or joint and several liability so as to preclude full recovery in the event a liable party is unable to pay, restrictions on lump sum payments to the plaintiff and relaxed liability standards.

An excellent example with respect to the lack of feasibility of a realistic cap on tort damage awards, as suggested in Alaska S.B. 211 and H.B. 250 governs the application of the award of damages in medical malpractice cases. An actual case will serve as this excellent example:

The plaintiff is a minor infant, who at the time of his birth, was being delivered by cesarean section. The

physician cut the umbilical cord prior to removing the child from the womb of the mother. The physician then experienced substantial difficulties in removing the child from the womb, which resulted in a period of time passing before the child could be given adequate medical treatment. As a result, the child has suffered permanent brain damage of an irreversible nature and will require institutional care for the rest of its natural life. What can be the measure of economic damages in a case such as this? The child has never held a job and never will hold a job. The child has had no opportunity whatsoever to develop any indication, through education or otherwise, of what the child's job or vocation capabilities could have been. Therefore, there is no data that can be utilized to compute a loss of earnings. A financial cap may not provide for the medical care, treatment, and physical care that this child needs for the duration of its life expectancy. In fact, a financial cap imposed by a legislature may be substantially less than the minimum amount of money that will be required to meet the needs of this child.

In addition, it is impossible to calculate and place a monetary value on the non-economic damages that this child has suffered. Will the $100,000.00 cap on an award of damages proposed by SB 211 and HB 25 adequately make this child whole? Will it adequately compensate the child (or his parents) for pain, suffering, inconvenience, physical impairment,

disfigurement, mental anguish and emotional distress? Not likely.

In addition, another excellent example that shows the lack of feasibility of a cap on tort damage awards adequately compensating the plaintiff involves the following scenario:

A young individual, having recently graduated with a Masters Degree in psychology, but prior to an opportunity to practice in his chosen field, is involved in an automobile accident. The young psychologist is not treated for any type of medical disability because no injury is apparent. Several weeks later, the young psychologist begins experiencing loss of feeling in his extremities and severe headaches. He goes to an Osteopath, who x-rays his neck for fracture, but prior to reviewing the developed x-rays, attempts to make adjustments in the young psychologist's spinal alignment. Unbeknownst to the Osteopath and the young psychologist, the young psychologist is suffering from cracked cervical vertebrae (i.e. a broken neck). As a result of the osteopath's manipulation of the cervical vertebrae of the young psychologist, he is paralyzed and becomes a quadraplegic for life.

Will a cap on liability effectively provide for the economic damages, to include lost wages, medical care and treatment, as well as medical care in the future? Not likely. In the event that the young psychologist is in his late 20's, he will probably have a life expectancy remaining of

approximately forty years. Will a $100,000.00 cap on non-economic damages reasonably compensate our psychologist for pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish and emotional distress? This computes to only an average annual income of $2,500.00 (assuming a cap of $100,000.00) to provide for all non-economic damages! In such a situation, S.B. 211 and H.B. 250 propose to compensate our young man at the rate of less than $7.00 per day!

How can a monetary amount be placed on a total loss of feeling of the body and its limbs? How can a monetary amount be placed on the value of the deprivation of becoming a husband and parent? How can a monetary amount be placed on the value to an individual of seeing his children grow up and being able to run and play with them, help them in their schoolwork, help them tie their shoes, help them dress, etc. The young psychologist will be physically precluded from taking part in even the simplist task requiring physical ability. Will $100,000.00 compensate him for these losses? Not likely.

MYTH:

> "Casualty insurance companies are going broke because of frivolous claims and huge jury awards, encouraged by lawyers with contingency fee contracts."

FACT:

> "Casualty insurance companies are tremendously profitable because juries are usually very conservative; frivolous claims are economically discouraged by contingency fee agreements."

Where the attorney is representing an injured plaintiff, the attorney can charge the plaintiff on an hourly basis, or the attorney can charge on a contingent fee basis, i.e., by charging a percentage of any recovery.

In many cases, injured parties simply cannot afford to pay an attorney on an hourly basis for protracted litigation, especially when such other litigation is against defendants such as insurance companies or other large corporations with substantial financial resources to mount a defense. The contingent fee arrangement, therefore, allows the average person to obtain access to the courts for redress of their grievances. Otherwise, this access would be beyond their financial capabilities and would effectively deny them the right to be made "whole".

Contingency fee agreements discourage frivolous claims because of the fact that the law firms are footing the bill for the claim and are only going to advance those claims that they feel have a good opportunity to succeed on behalf of these clients. It is economically irresponsible and suicidal for a firm to advance and finance frivolous claims.

In the movie Casablanca, a French officer named Louie repeatedly utilized the ploy of "rounding up the usual suspects." When Louie was accused of knowing about gambling at Rick's (Humphrey Bogart's nightclub) - and when Ingrid Bergman and Bogart were escaping from their oppressors - Louie used his tactic of arresting his usual innocent suspects.

The insurance industry is in effect rounding up its usual suspects - people with claims, their lawyers, and the jury system - as scapegoats for unjustifiable premium increases, claiming as justification that an increase in awards is financially crippling the insurance industry.

Based on studies by the Rand Institute for Civil Justice, 10% of all malpractice incidents results in actual malpractice claims. Less than half of those claims are ever paid. Thus in only 4% of all instances of malpractice are victims compensated. In addition, less than 1% of patients, clients, or customers bring any claim against professionals such as accountants, lawyers, doctors, engineers and others.

In 1975, defendants won 81% of all court cases reported, and in 1978, defendants won 88%. (Rand Institute Statistics).

The insurance industry, through the utilization of sensational newspaper headlines, would have most people think that malpractice claims result constantly in huge payments. However, The National Institute of Trial Advocacy cites the

Rand Institute Report stating that the median settlement before trial is only $9,500.00 and median settlement during trial is $13,350.00. This does not include those cases dismissed without any award at all. Of all the claims brought before the courts and tried by a jury nationwide, substantially fewer than half result in an award to the claimant.

Insurance companies wish to restrict the rights of the injured to a jury trial. In this attempt, they ridicule juries by parading before the media the same six or seven examples of what they call "outrageous verdicts."

It would appear that insurers want the public to believe that juries always give huge sums to undeserving victims, thus driving up the cost of insurance.

In a current case that is pending in Wisconsin, a young man of approximately twenty-four years of age, with a 23 year old wife and four pre-school age children was employed in the lane of a natural gas pipeline that crossed underneath an electrical high tension feeder line. The electrical high tension feeder line carried a current of 8,000 volts. While handling a rope tied to the end of a piece of gas pipe suspended from a crane, the boom of the crane either touched or came in close proximity to the feeder line resulting in an electrical shock to the man. He was killed. Unfortunately for him and his family he was revived. We say "unfortunately" because Rodney is now a quadraplegic who will be confined to a

wheelchair for the rest of his life. His hips are totally calcified and not functional at all. He has the current mental capacity of a three year old child and will remain in institutions until the day he dies. As a result, his wife and children have been deprived of a husband and father, as well as the income that could be produced for a remaining life expectancy of 41.9 years.

In addition, plaintiff's counsel was able to prove that the electric company had knowledge of the pipeline going underneath its transmission lines and refused to take any steps to protect any workers from electrical shock.

More importantly, plaintiff's attorneys were able to prove a concerted effort on the part of the Crane Manufacturers of the United States to prevent the utilization of an invention called a proximity warning device on all cranes being manufactured. This proximity warning device enabled the operator of the crane to adjust the sensitivity of the sensor on the boom of the crane boom, to the extent that an alarm would go off in the cab of the crane when the boom came within a certain distance of the electrical feeder line (adjustable from ten to approximately forty feet). The approximate cost of this proximity warning device is around $400.00. For the expenditure of $400.00, Rodney would not be in the wheelchair - Rodney's wife would have her husband at home - and more tragically, Rodney's children would have their father.

Finally, preliminary computations revealed that if the cost of medical care needed by Rodney on a day-to-day basis did not increase during the 41.9 years of his life expectancy and if the cost of the nursing home did not increase at all during 41.9 years, these costs alone would total approximately 2.5 million dollars.

As can readily be seen, a cap of $100,000.00 for the damages that Rodney has received will fall far short of meeting his economic damages. Instead, Rodney's family would be required to pay at least 2.4 million dollars for Rodney's care. More than likely, Rodney would become a ward of the state and be supported by the taxpayers of Wisconsin. His non-economic damages would never be recovered at all!! This is not just unfair -- it is absurd. Yet, this is the result if the provisions of Senate Bill 211 and/or House Bill 250 are applied!

The property and casualty insurance industry claimed a 5.5 billion dollar loss in 1985. In reality, it earned 6.6 billion. According to the National Insurance Consumer Organization's president, Jay Robert Hunter (former Federal Insurance Administrator in the Ford and Carter Administration):

1) Insurance industries claim to a 1985 loss is false because losses are defined to include expenditures that are not losses, such as dividends declared by profitable companies, and

2) Income is defined in such a way as to exclude certain sources of revenue, such as realized capital gains, and

3) The stock index of property/casualty insurers rose by 46% during 1985 - almost double the rise of the general stock market - according to the January 24, 1986 issue of National Underwriter.

4) Insurance companies' net worth rose by 7.5 billion in 1985, from 62.4 billion at the end of 1984 to 71.0 billion at the close of 1985.

In June of 1986, the previously mentioned president of the National Insurance Consumer Organization, Robert Hunter, issued a report on the first quarter 1986 property casualty insurance industry profits showing industry profits rose 2.11 billion or 1,227%. In fact, the property casualty insurance industry, using its own self-serving accounting definitions, admits that net profit for the first half of 1986 totalled 5.7 billion, up from 930 million a year earlier. This would hardly appear to be an industry that is being crippled and brought to its knees by alleged damage awards to undeserving victims.

According to Mr. Hunter, the insurance industry goes in a cyclical manner. He states, "1984 was a typical bottom-of-the-cycle year. The last time it happened was in the mid-1970's. . . At that time, the country observed the precise phenomena that we see today." Hunter also noted, "at the top

of the cycle a few years ago, the now dreaded liability insurance policy rates were being slashed wildly and [insurance was] even being sold after the insured event happened, such as in the case of the MGM Grand Hotel fire where [retroactive] liability insurance coverage was written months after the fire."

By blaming the legal system for the insurance companies' own prior mistakes and mismanagement of funds, the insurance industry accomplished three goals. First, it provided a convenient scapegoat for the sudden surge in premium prices and reduction in coverage for their commercial customers. Second, it provided the excuse to lobby for limits to their own future pay-out obligations. Third, it enabled the insurance industry to enlist the support of the business and industries who were abused by the insurance companies by exploiting the business communities' natural eagerness for more limited liability from lawsuits. In other words, TORT REFORM.

The insurance industry would have the uninformed public believe that a litigation explosion is taking place. However, the best available evidence indicates that state courts, where approximately 95% of tort cases are brought, are not experiencing any litigation explosion. The National Center for State Courts compiled evidence in a most recently released report entitled "A Preliminary Examination of Available Civil and Criminal Trend Data in State Trial Courts for 1978, 1981,

and 1984 (April 1986)." The findings on tort filings are particularly interesting. Increase in tort case filings between 1978 and 1981 was only 2%, while the population growth for those states was 4% during the same time period. Between 1981 and 1984, the population grew another 4% while tort filings increased 7%. For the entire period 1978 to 1984, total tort filings increased 9% while the population increased by 8%.

In Congressional testimony on August 6, 1986, Robert T. Roper, Director of the Court Statistics and Information Management of the National Center for State Courts, told the Economic Stabilization Subcommittee of the House Committee on Banking, Finance and Urban Affairs, "<u>There is not one shred of evidence to indicate that there is a litigation explosion in the state court system</u>!" (Emphasis ours)

Statistics compiled by Jury Verdict Research (J.V.R.) are widely used by proponents of tort reform to demonstrate a lawsuit crisis. However, J.V.R. board chairman Phillip Herman has testified at the same hearing with Mr. Roper that J.V.R. data does not support any claim of recently escalating jury verdict awards. He stated that the apparent reason for this erroneous impression is that a number of highly publicized news articles quoting J.V.R. statistics have grossly misstated those statistics. J.V.R. average jury award figures, which are frequently cited to represent trends, are not typical figures

since they are skewed to the right, heavily influenced by a few large jury verdicts. The median figures which are the correct measurement to reflect typical awards have remained at approximately $8,000.00 in 1979 dollars, since 1959, according to statistics compiled by the Rand Corporation. Finally, in the April 21, 1986 issue of Business Week, an article titled "The Explosion and Liability Lawsuits is Nothing but a Myth," concluded that there is no litigation explosion in this country.

The Ad-Hoc Insurance Committee of the National Association of Attorneys General in a May 1986 report concluded,

> "The facts do not bear out the allegations of an explosion in litigation or in claim size, nor do they bear out the allegations of a financial disaster suffered by property/casualty insurers today. They finally do not support any correlation between the current crisis and availability and affordability of insurance and such litigation. Instead, the available data indicate that the causes of, and therefore the solutions to, the current crises lie with the insurance industry itself." (Emphasis ours.)

It should thus appear that tort reform is not the answer, but merely a means of the insurance industry perpetuating its grossly disproportionate profit structure, thereby insuring that the companies continue to line their pockets with gold at the expense of the man paying the premiums.

POSSIBLE SOLUTIONS

Federal Laws:

1) Congress should repeal the insurance industries' exemption from anti-trust laws, federal regulation, and Federal Trade Commission scrutiny.

2) Congress should establish a Federal Office of Insurance to monitor the industry closely and establish strict standards for state regulators to follow.

3) Congress should establish a national industry - funded reinsurance program, to compete with foreign reinsurers to exert downward pressure on foreign reinsurance rates, thus enabling domestic insurers to reduce their rates to the consumer.

4) Congress should require insurance companies to routinely disclose how much they take in on premiums and investment income, and how much they pay out in verdicts and settlements, plus reserves and other expenditures. This data should be broken down into specific categories, such as trucking concerns, daycare centers, schools, municipalities, private auto insurance, the pipeline industry, the gas industry, the oil industry, and even the welding industry.

Had such a disclosure been required in the last several years, it would have been extremely difficult for the insurance company to mislead the media and the public as they have done.

State Laws:

1) In the absence of a Federal Reporting and Disclosure Law, states should require the same information to be routinely disclosed to state insurance regulators.

2) States should consider more authority and funding to state insurance departments, thereby providing a watchdog on the insurance industry as a whole.

3) States should afford citizens greater consumer protection and representation before the insurance regulatory bodies, including direct intervention in rate proceedings similar to those now conducted with respect to utility service.

4) States should revoke or relax existing prohibitions against individuals and individual businesses from joining co-op groups to purchase self-insured liability insurance.

5) States should earnestly require that insurance companies take greater steps to engage in loss prevention efforts such as research and advancement of health and safety conditions, and to disclose evidence in their claims, files of known defective products or hazardous conditions to appropriate regulatory authorities.

The above possible solutions are frequently referred to as "Sunshine Laws" that result in full disclosure of actual

claims paid by the insurance industry, rather than the figures they choose to release.

We do not need "tort reform."

We need insurance reform - in an effort to stop price gouging as it exists today through the utilization of a phantom crisis for a basis.

It is interesting to note that during the five year period ending in December of 1983, malpractice insurance carriers took in 7 billion in premiums and 1.7 billion in investment income. This is a total income of 8.7 billion. Of this 8.7 billion, only 1.4 billion was paid in claims. This results in a gross profit of 7.3 billion dollars. This is hardly indicative of an insurance industry suffering substantial losses and brought to its knees by alleged, unjustified high jury awards to undeserving victims.

The purpose of tort law is to give a victim redress for a wrong that they have suffered. In other words, it is to make the plaintiff whole. The insurance industry, in achieving ceilings on damage awards, prevents the purpose of tort law. It prevents deserving victims who have suffered gross damage from being made whole through compensation for that damage. Ceilings on the amount of damages awarded to a victim also defeat the purpose of punitive damages with respect to punishment of the wrongdoer for his evil act or omission, detering others from acting in a similar manner, and setting an example

for others to follow in their dealings with the public as a whole.

We urge you to change the focus of your scrutiny. Instead of talking about tort reform and thus advocating a position beneficial to the wealthy, and all too often greedy insurance companies, we urge you to focus on the injured victims, the people we represent, who need your help. Examine the insurance industry. Examine it carefully. We believe only then will you find that instead of "tort reform" your constituents should be given "insurance reform."

Should you have any questions, feel free to contact us.

Sincerely,

Wayne Anthony Ross

WAYNE ANTHONY ROSS by
Patrick G. Ross

PATRICK G. ROSS

THOMAS S. GINGRAS

Allen M. Bailey

ALLEN M. BAILEY

Edward L. Miner

EDWARD L. MINER

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METHODOLOGY

During the period of July 24 through August 2, 1987, 496 residents of 51 Alaskan communities were personally contacted by telephone by professional interviewing employees of the Dittman Research Corporation of Alaska. The views and opinions of the Alaskan residents were recorded on a strictly confidential basis.

Research_Design - A random sample design was featured which provided that all adult residents of the communities included had essentially an equal chance of being interviewed.

Sample_Selection - The sample was selected through a random selection process from the most current directory for each community.

PROCESSING_THE_DATA

Dittman Research employees completed coding, editing, data entry and verification, while data processing was completed through the in-house Dittman Research Corporation Computer system featuring the Statistical_Package for the Social Sciences (SPSS/PC+) programs. The SPSS program is one of the most sophisticated research-oriented data processing and analytical systems available, and is designed specifically for the processing and analysis of survey research data.

AWARENESS

Overall, approximately two-out-of-five (39%) Alaskan residents reported they are aware of an issue called "tort reform"...

Question:

"Have you heard of an issue called 'Tort reform'?"

39%	Yes
60%	No
1%	Unsure

...with the lowest awareness levels being found in the Southcentral region (Matanuska-Susitna Valley and Kenai Peninsula), while higher awareness levels are found in Anchorage, Fairbanks and Southeastern Alaskan communities...

Region:	Yes	No
Rural	37%	61%
Central	42%	58%
Southcentral	19%	81%
Anchorage	44%	54%
Southeast	44%	54%

Demographically, higher awareness percentages are noted among 41-55 year-olds (53%), who work at degree-required white-collar jobs (67%) and/or own their own business (57%) and earn over $60,000 per year (55%).

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DEFINITION AND UNDERSTANDING

Among those who have heard of "tort reform," nearly three-out-of-four (71%) are aware of the basic elements of the issue...

Question:

(IF "YES, HEARD OF TORT REFORM," THE FOLLOWING QUESTION WAS ASKED...)

"What is it about?"

34%	Limits liability awards against professionals
20%	About lawsuits
17%	About insurance costs and availability
8%	Just heard of it
4%	Miscellaneous
18%	Unsure

Geographically, the highest awareness of the "limitation of liability" aspect is found in Fairbanks (44%) and Anchorage (39%)...

Region:	General Availability and cost of Insurance	About Lawsuits	Limit Professional Liability
Rural.....	33%	28%	28%
Central.....	11%	7%	44%
Southcentral.....	29%	36%	7%
Anchorage.....	15%	18%	39%
Southeast.....	12%	27%	23%

...while demographically, highest understanding of the "liability" element is found in upper-income ($60,000 plus @ 40%) younger and middle-aged (35-36%) males (37%) who manage a business (44%) and/or work at a college-degree-type white collar job (41%).

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SUPPORT OR OPPOSITION

Overall, by a ratio of well over 4:1 (73% to 16%), Alaskans state-wide favor tort reform...

Question:

"Tort reform is a set of proposals being put forth in many states across the nation, and the objective of Tort reform is to set some limits for a person's liability when they are sued for negligence or personal injury. Under some circumstances these proposals may limit the amount of money an injured person can currently receive from a lawsuit. Generally speaking, do you favor or oppose Tort reform?"

73%	Favor
16%	Oppose
11%	Unsure

...and following an explanation and description of what tort reform is, Fairbanks and Rural Alaskans are most likely to support the reform effort...

	Support	Oppose
Region:		
Rural.....	80%	10%
Central.....	83%	9%
Southcentral.....	68%	22%
Anchorage.....	71%	18%
Southeast.....	69%	14%

...as far as politics are concerned, Republicans are most in favor (79%), and the other demographic categories remain consistent -- 41-55 year-olds (79%), upper-income (81%) males (75%) with white-collar (79%) or owner/manager jobs (82-83%) are most likely to have a favorable point-of-view.

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STRENGTH OF SUPPORT OR OPPOSITION

The "intensity of feeling" scale is heavily weighted on the strongly favorable side of the issue...

Question:

"Do you strongly (favor/oppose) this measure, or only somewhat (favor/oppose) it?"

48%	Strongly favor tort reform
34%	Somewhat favor tort reform
9%	Somewhat oppose tort reform
8%	Strongly oppose tort reform

...with highest strongly favor ratings coming from the Fairbanks and Southeastern areas...

Region:	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Rural.....	48%	45%	5%	2%
Central.....	55%	32%	8%	2%
Southcentral...	46%	29%	8%	17%
Anchorage.....	45%	34%	10%	9%
Southeast.....	53%	31%	10%	4%

Once again, the most support is found among older (65% of 56 years and older), upper-income (57% of $60,000 plus) white-collar (52%) Republican (59%) business owners (58%) and managers (69%).

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SIGN A PETITION?

At this time, approximately three-out-of-four (74%) Alaskans reported they would be willing to sign a petition to put the tort reform issue on the ballot...

Question:

"If you were asked to sign a petition to put the issue of Tort reform on the ballot at the next election, do you think you probably would or would not?"

74% Would
16% Would not
10% Unsure

...and with the exception of Southcentral, all geographic regions are very similar in their support (71-78%)...

	Would	Would Not
Region:		
Rural.....	78%	14%
Central.....	77%	16%
Southcentral.....	65%	17%
Anchorage.....	76%	17%
Southeast.....	71%	15%

The established support pattern for tort reform remains consistent on this measurement as well -- older (80%) upper-income (80%) college-degreed (76%) Republican (78%) business owners (78%) and managers (87%) were all most likely to sign a petition.

VOTE FOR OR AGAINST TORT REFORM

At this point, if the tort reform issue were on the ballot, the ratio would be approximately 4:1 in favor of the measure...

Question:

"And if Tort reform is on the ballot, do you think you would vote for or against it?"

65% Vote for
15% Vote against
19% Unsure

...with highest "vote for" totals in the Rural region, and very similar elsewhere...

Region:	Vote For	Vote Against
Rural	76%	8%
Central	66%	11%
Southcentral	64%	21%
Anchorage	63%	17%
Southeast	66%	12%

Demographically, older (71%) male (68%) upper-income (70%) Republicans (71%) who own (70%) or manage (85%) a business remain clearly supportive, but in addition, 76% of skilled blue-collar craftsmen also said they would vote for tort reform if it were on the ballot.

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