

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4841 HLAB SB 146 - SB 211

SB

1 sealing or annual testing requirements by AS 45.75.080 or by a
2 regulation adopted [OF THE DIRECTOR ISSUED] under AS 45.75.050;

3 (3) disposes of a rejected or condemned weight or measure
4 in a manner contrary to law or regulation;

5 (4) removes from a weight or measure, contrary to law or
6 regulation, a tag, seal, or mark placed on it by the appropriate
7 authority;

8 (5) sells or [,] offers [OR EXPOSES] for sale less than the
9 quantity the person represents of a commodity, thing, or service;

10 (6) takes more than the quantity the person represents of a
11 commodity, thing, or service when, as buyer, the person furnished the
12 weight or measure that the seller used to determine [BY MEANS OF
13 WHICH] the amount of the commodity, thing, or service [IS DETERMINED];

14 (7) keeps for the purpose of sale, advertises, or offers
15 [OR EXPOSES] for sale, or sells a commodity, thing, or service in a
16 condition or manner contrary to law or regulation;

17 (8) uses in retail trade, except in the preparation of
18 packages put up in advance of sale and of medical prescriptions, a
19 weight or measure that is not so positioned that a customer may accu-
20 rately read, from a position that may reasonably be assumed by a
21 customer, its indications [MAY BE ACCURATELY READ] and observe the
22 weighing or measuring operation [OBSERVED FROM SOME POSITION WHICH MAY
23 REASONABLY BE ASSUMED BY A CUSTOMER];

24 (9) hinders or obstructs the director, an inspector, a
25 sealer, or a deputy sealer in the performance of official duties under
26 this chapter;

27 (10) violates a provision of an overweight or oversize
28 vehicle permit issued under AS 44.33.020(25);

29 (11) violates a weight, load, or size limitation established

1 under AS 19.10.060 or a regulation adopted under AS 19.05.020,
2 AS 44.33.020(25), or AS 45.75.050(b)(5);

3 (12) violates a provision of this chapter or [OF] a regula-
4 tion adopted under this chapter for which a specific penalty is not
5 prescribed.

6 * Sec. 4. AS 45.75.380 is amended by adding a new subsection to read:

7 (b) Notwithstanding the maximum fine for a violation provided
8 under (a) of this section, a person who violates a regulation or
9 special permit governing the weight limit of a motor vehicle shall pay
10 a penalty of \$.05 for each pound of weight over the authorized weight
11 limit for the vehicle.

12 * Sec. 5. AS 28.40.050(e) and AS 45.75.360 are repealed.

13 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CS SB 146 LHC
Publish Date: 4-9-87

Revision Date: _____
Title: Act relating to Weights and Measures

Agency Affected: Commerce & Econ. Dev.
BRU: Consumer Protection

Sponsor: Senate Transportation
Requestor: _____

Components: Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Joe Swanson, Director Phone: 345-7750
Division: Measurement Standards Date: March 9, 1987

Approved by Commissioner: J. Anthony Smith, Commissioner Date: March 9, 1987
Agency: Department of Commerce and Economic Development

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary
0190k3987b

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE SENATE

BILL VERSION: CSSB 146(L&C) b
PUBLISH DATE: 4/9/87

REQUEST
Revision Date: _____
Title: "An Act relating to weights
and measures."
Sponsor: Transportation Committee
Requestor: Senate Labor & Commerce

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS:

No fiscal impact is anticipated.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 4/15/87

Approved by Commissioner: _____
Agency: Public Safety

Date: 4/15/87

Distribution (by preparer):

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

JMA
4/16/87



Dept. of Transportation & Public Facilities

POSITION PAPER

BILL NO: CSSB 146 (Transportation)
TITLE: An Act Relating to Weight and Measures
and Providing for an Effective Date

APPROVED: ^{MSH} Mark S. Hickey
Commissioner

DATE: 4/29/87

The department supports SB 146.

This legislation provides statutory authority for the Departments of Commerce and Economic Development and Public Safety for enforcement of vehicle size, weight and load limitations. It also provides for penalties for those who violate either the provisions of an oversize or overweight vehicle permit or the legal size, weight and load limitations adopted under Alaska Statutes.

The legislation is needed since without it there is no legal mechanism for enforcement of penalties for violations of existing vehicle size and weight regulations. States that do not provide adequate enforcement for oversize and overweight vehicles may be subject to a reduction of ten percent of the State's federal highway apportionment.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 8, 1987

SUBJECT: Sectional analysis - CSSB 146(Transportation)
TO: Senator Lloyd Jones
FROM: Michael F. Ford *M. F.*
Legislative Counsel

The following is a sectional analysis of CSSB 146(Trsp):

Section 1 - Expands the authority of the commissioner of the Department of Commerce and Economic Development to adopt regulations.

Section 2 - Creates authority for the issuance of a citation for a violation of weight, size, or load limits; overweight or oversize permits; and for vehicle equipment violations. Establishes procedures for issuance and for response to a citation. Requires the Supreme Court to establish a bail schedule and a procedure for bail forfeiture for certain violations.

Section 3 - Establishes a penalty for certain offenses. Adds violations established under AS 45.75.050(b)(5) as offenses subject to the penalty established in this section.

Section 4 - Establishes a penalty for overweight vehicles. This penalty presently exists as AS 28.40.050(e) and is being moved to add this penalty as a part of AS 45.75.380.

Section 5 - Definition.

Section 6 - Repealers.

Section 7 - Effective date.

MFF:mkr
m11/131

ALASKA STATE LEGISLATURE

Sen. Lloyd Jones, Chairman
Sen. John B. "Jack" Coghill, Vice Chairman
Sen. Mitch Abood
Sen. Bettye Fahrenkamp
Sen. Tim Kelly



P.O. Box V
Juneau, AK 99811

907-465-4921

Senate Transportation Committee

MEMORANDUM

TO: Representative Bette Cato, Chairman
House Transportation Committee

FROM: Senator Lloyd Jones, Chairman
Senate Transportation Committee

DATE: May 12, 1987

SUBJECT: CS for SB 146 (Trsp), An Act relating to weights and measures.

The Senate Transportation Committee introduced this measure so the state would have the necessary legal mechanism to protect our highways from damage. In addition, without adequate enforcement standards the state of Alaska is in jeopardy of losing ten percent of the State's federal highway apportionment.

In 1982, when the enforcement of weights and measures was transferred from the Department of Public Safety to the Department of Commerce; the penalty provisions were not transferred to commerce. During the past five years, the Department of Commerce has issued citations. However, the Alaska Supreme Court has dropped the bail forfeiture from the bail schedule because of no statutory authority.

The status quo is not in the state or industry's best interest. In Fairbanks a mandatory court appearance is necessary. This causes needless delays of truckers and overtime problems for the Department of Commerce. In Anchorage the situation is even worse, the courts are not enforcing the citations.

This bill would provide the necessary level of vehicle size, weight, and overload limitation enforcement. It provides penalties for violators of oversized or overweight vehicle permits or the legal weight, and load limitations adopted under Alaska Statutes.

I encourage the House Transportation Committee to approve this measure so there will be adequate protection of our highways in the immediate future, and to ensure we do not place our federal highway funds at risk.

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/12/87

FURTHER REFERRALS: Labor & Commerce
Judiciary

DATE: May 13, 1987

The Transportation Committee has considered CSSB 146(Trsp)

"An Act relating to weights and measures; citation authority of employees enforcing weights and measures limitations; and providing for an effective date."

RECOMMENDS:

- replace with HCS CSSB 146(Trsp) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published 4/9/87 & 4/9/87
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Kenneth [Signature]

James [Signature]

Bill [Signature]

Bette [Signature]

Bette [Signature]

 Chairman's signature

S B

187

Bill No. Senate Bill 187

Date March 23, 1987

Title "An Act relating to minimum electrical standards."

Contact: Tom Stuart
465-4870

Eileen Plate
465-2700


The National Electrical Code and the National Electrical Safety Code establish the State's minimum electrical standards.

These codes are updated every three years, and the 1987 editions are the most recent effort in this regard. The 1984 codes presently in effect for the state of Alaska are, therefore, outdated and will not be reprinted.

Adoption of the 1987 codes would bring Alaska's minimum standards into conformity with those commonly accepted and used by industry across the nation. The latest editions of the codes are also commonly adopted by political subdivisions in the state as the minimum standards enforced under their building inspection programs.

The Department supports Senate Bill 187 which provides for adoption of the 1987 National Electrical Code and National Electrical Safety Code. It will not have a fiscal impact on the Department.

APPROVED:


Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor
Hedrup

No 168

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Bill Version: SB 187
 Publish Date: 3-24-87

REQUEST: _____
 Revision Date: _____
 Title: "An Act relating to minimum
 electrical standards ..."
 Sponsor: Duncan
 Requestor: Senate Labor and Commerce

Agency Affected: Labor
 BRU: Labor Standards and Safety
 Components: Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS :

Prepared by: ¹⁰ Tom Stuart, Director *Tom Stuart* Phone: 465-4870
 Division: Labor Standards and Safety Date: 3/23/87
 Approved by Commissioner: ¹⁸ Jim Sampson *Jim Sampson* Date: 3/23/87
 Agency: Labor

Distribution (by preparer):

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

S B

199

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/6/87

FURTHER REFERRALS:

DATE: 4/26/88

The Labor & Commerce Committee has considered SB 199

"An Act relating to motor vehicle dealers; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

J. Ellis

B.A. Smith

SIGNING OTHER RECOMMENDATIONS:

Dave Douley (no rec)

W. Furnace (no rec)

Dave Douley

 Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB199
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to motor vehicle dealers
Sponsor: Duncan
Requestor: _____

Agency Affected: Public Safety
BRU: Division of Motor Vehicles
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact. There would be a slight reduction in revenue, estimated at less than \$1,000 annually.

Prepared by: Jay N. Dulany Phone: 269-5551
Division: Motor Vehicles Date: 1/12/88

Approved by Commissioner: D.A. Hartzel, Dep. Comm. Date: 1-22-88
Agency: Public Safety

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA 1987 LEGISLATIVE SESSION

FISCAL NOTE SENATE

BILL VERSION: SB 199
PUBLISH DATE: 3/26/87

REQUEST: _____

Revision Date: _____
Title: An Act relating to motor vehicle dealers
Sponsor: Duncan
Requestor: Senate Labor & Commerce

Agency Affected: Public Safety
BRU: Motor Vehicles

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-		-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact. There would be a slight reduction in revenue, estimated at less than \$1,000 annually.

Prepared by: Bill Brown
Division: Motor Vehicles

Phone: 465-4335
Date: 4-2-87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 4/2/87

Distribution (by preparer):

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

JWR
4/2/87

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 21, 1987

SUBJECT: SB 199 - Sectional analysis
TO: Senator Jim Duncan
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of SB 199:

Section 1 - Excludes from the definition of motor vehicle, trailer, or semi-trailer "dealer" a person, agent, broker, or salesman who buys or sells new or used trailers designed to carry a single boat. Dealers are subject to certain registration and bonding requirements under AS 08.66.

Section 2 - Effective date.

MFF:mkr
m11/043

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C

4-26-88

1:30 p.m.



Official Business

HOUSE LABOR & COMMERCE

DATE: April 26, 1988

SIGN-IN

- SB 309 Definition of commercial fisherman
- SB 211 Civil liability
- SB 461 Liability of hospitals for nonemployees
- HB 558 Contractor bonds/public buildings and works
- HB 544 Civil liability for plane inspection
- SB 61 Rehire of injured state employees

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT
TO TESTIFY?

SUBJECT:
BILL #

<input checked="" type="checkbox"/> Sharon Anderson	Humana Hospital		H W 276-1131	Yes	SB 461
<input checked="" type="checkbox"/> Adrienne Anderson	Nat'l Campaign Against Toxic Hazards	1266 Cook St. Denver Colorado 80206	H W 303-333-9714	YES	SB 211 SB 461
Jeff Stepan	BIT & PF	P.O. Box 2 Juneau	H W 465-2151	IF NEEDED	HB 558
Karl Ohls	Sen. Zharoff	P.O. Box V, Juneau	H W 465-4922	Yes, if needed	SB 309
<input checked="" type="checkbox"/> David McBride	Citizens Coalition for Reform	4001 Laurel	H 349-1752 W 562-4142	Yes	SB 211 SB 461
AV GROSS	ATL	8470 N. Doyles	H W	Yes	SB 211
Paul ROLLER	D.O.I		H W 465-2518	Yes	
RICHARD RITTER	AMERICAN INST. of ARCHITECTS	800 GLACIER AVE., JUNEAU	H W 586-1371	YES, IF NEEDED	SB 211
MARY KANCEWICK	AFL	Assembly Bldg	H W	yes	SB 211
			H W		

NEEDS TO TESTIFY TODAY IN JUNEAU WON'T BE 4/27
Must also testify today before 5

S B

2 11

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/31/88

FURTHER REFERRALS:

Judiciary
Finance

DATE: 5/3/88

The Labor & Commerce Committee has considered CSSB 211(Fin)am

"An Act relating to civil liability; and providing for an effective date."

RECOMMENDS:

- replace with HCS CSSB 211 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Dave Donley (as amended)

Jim Ellis no rec
Nick Reporew in rec
W.A. Bunker re amended

Dave Donley
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: 5/4/88 Agency Affected: Commerce & Econ. Dev.
 Title: An Act relating to civil liability BRU: Division of Insurance
 Sponsor: Labor and Commerce Components: Public Protection
 Requester: Labor and Commerce

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	350.0	300.0	250.0	250.0	250.0	250.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	350.0	300.0	250.0	250.0	250.0	250.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of dollars)

GENERAL FUND	350.0	300.0	250.0	250.0	250.0	250.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULLTIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The analysis required in Section 5 for the Director's Annual Report involves a legal and actuarial review of court decisions and an analysis of rate changes resulting from those decisions. This requires a review that present

(CONTINUED - NEXT SHEET)

Prepared by: Donald P. Koch Phone: 465-2571
 Division: Insurance Date: 5/5/88

Approved by Commissioner: J. Anthony Smith Date: 5/5/88
 Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

ANALYSTS - (CONTINUED)

staff does not have the needed expertise to conduct. The scope of the analysis is not sufficiently clear to give great precision to the fiscal impact of this proposal. We estimate that a review could be done by an independent actuarial firm with legal assistance. The depth of review would be subject to negotiation and design. We have estimated \$250,000 per year for this work. The remaining \$100,000 in FY 88 and \$50,000 in FY 89 is for participation in the effort required in Section 6. This section requires a report by the Department of Law, which will need the assistance of the Division of Insurance. This participation will require a substantial data collection and analysis effort by the division which it is not geared to accommodate. We expect also to contract for the necessary assistance to develop and implement methods to acquire the data and analyze same.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 4, 1988

SUBJECT: Civil liability - HCS CSSB 211(L&C)
TO: Representative Dave Donley
FROM: Michael F. Ford *M.F.*
Legislative Counsel

I wanted to bring two issues to your attention regarding HCS CSSB 211(L&C). First, AS 09.17.080(d)(2)(M) in section 4 of the bill appears to require certain environmental damages be awarded under a modified joint and several liability rule. In that same section, these damages appear to fall under a rule of pure joint and several liability under AS 09.17.-080(d)(1). It may be necessary to further amend (d)(1) to provide an exception for (d)(2)(M) if that is the intention of the committee. Second, the language in section 5 regarding insurance rate changes violates the single subject and title requirements of Article II, section 13 of the Alaska Constitution. The analysis of insurance rate changes resulting from changes in statutes is clearly not within the title of the bill. It includes subjects not necessarily related to civil liability, which creates a double subject problem.

Please contact me if you have further questions.

MFF:bb
b5/095

Original sponsors: Faiks, Abood,
Bennett, et al.

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 211 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability; and providing
7 for an effective date."

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

9 * Section 1. AS 09.17.030 is amended to read:

10 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
11 person who suffers personal injury or death may not recover damages
12 for the personal injury or death if the injuries or death occurred
13 while the person was engaged in the commission of a crime [FELONY],
14 the person has been convicted of the crime [FELONY], including con-
15 viction based on a guilty plea or plea of nolo contendere, and the
16 crime [FELONY] substantially contributed to the injury or death. This
17 sub section [SECTION] does not affect a right of action under 42 U.S.C.
18 1983.

19 * Sec. 2. AS 09.17.030 is amended by adding new subsections to read:

20 (b) The provisions of (a) of this section do not apply to a
21 person who suffers personal injury or death if the person liable for
22 the damages

23 (1) was engaged in the commission of a crime at the time
24 the personal injury or death occurred; and

25 (2) has been convicted of the crime, including conviction
26 based on a guilty plea or plea of nolo contendere.

27 (c) If a party recovers damages for personal injury or death and
28 the person liable for the injuries or death was engaged in the commis-
29 sion of a crime at the time the personal injury or death occurred, has

1 been convicted of the crime, including conviction based on a guilty
2 plea or plea of nolo contendere, and the acts constituting the crime
3 substantially contributed to the injury or death, the court shall

4 (1) triple the damages awarded to the party; and

5 (2) award actual costs and attorney fees.

6 (d) In this section "crime" has the meaning given in AS 11.81.-
7 900(b).

8 * Sec. 3. AS 09.17.050(a) is amended to read:

9 (a) Unless the act or omission constituted gross negligence, a
10 person may not recover tort damages for personal injury, death, or
11 damage to property for an act or omission to act in the course and
12 scope of official duties, from [ONE OF] the following:

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

15 (2) a member of the board of directors of a public or
16 nonprofit hospital, or a member of a citizen's advisory board of any
17 hospital;

18 (3) a member of a school board of a school district;

19 (4) a member of the governing body, a commission, or a
20 citizen's advisory committee of a municipality of the state;

21 (5) a member of the board of directors or an officer of an
22 electric or telephone cooperative organized under AS 10.25.

23 * Sec. 4. AS 09.17.080(d) is repealed and reenacted to read:

24 (d) The court shall enter judgment against each party liable on
25 the basis of

26 (1) joint and several liability if the action involves an
27 intentional tort, toxic or hazardous waste, environmental pollution or
28 damage, a violation of state or federal antitrust statutes, a party
29 who acted in concert or conspired with another party, or where the

1 plaintiff is fault-free;

2 (2) joint and several liability, except that a party who is
3 allocated less than 50 percent of the total fault allocated to all the
4 parties may not be jointly liable for more than twice the percentage
5 of fault allocated to that party, if (1) of this subsection does not
6 apply and the damages result from

- 7 (A) breach of a contract;
8 (B) the manufacture and sale of a defective product;
9 (C) operation of an aircraft or a motor vehicle;
10 (D) a land sale practice;
11 (E) a transaction involving a security;
12 (F) medical malpractice;
13 (G) medical expenses;
14 (H) an injury for which the party is strictly liable;
15 (I) vicarious liability imposed on the party;
16 (J) an administrative hearing;
17 (K) a construction project;
18 (L) injury to an employee and the party is not the
19 employer; or

20 (M) mitigation and clean-up of toxic or hazardous
21 waste or environmental pollution by planning and design profes-
22 sionals;

23 (3) several liability, if the party is not jointly and
24 severally liable under (1) or (2) of this subsection.

25 * Sec. 5. AS 21.06.110 is amended to read:

26 Sec. 21.06.110. DIRECTOR'S ANNUAL REPORT. As early in each
27 calendar year as is reasonably possible the director shall prepare and
28 deliver an annual report to the legislature and the commissioner,
29 showing, with respect to the preceding calendar year,

1 (1) a list of the authorized insurers transacting insurance
2 in Alaska, with such summary of their financial statement as the
3 director considers appropriate;

4 (2) the name of each insurer whose business was closed
5 during the year, the cause of the closing, and the amount of ascer-
6 tainable assets and liabilities of each closed business;

7 (3) the name of each insurer against which delinquency or
8 similar proceedings were instituted, and a concise statement of the
9 facts with respect to each proceeding and its present status;

10 (4) a statement in regard to examination of rating organi-
11 zations, advisory organizations, joint underwriters, and joint rein-
12 surers as required by AS 21.39.120;

13 (5) the receipts and expenses of the division for the year;

14 (6) recommendations of the director as to amendments or
15 supplementation of laws affecting insurance, or the office of direc-
16 tor;

17 (7) other pertinent information and matters the director
18 considers proper;

19 (8) an analysis of rate changes for commercial and profes-
20 sional liability and workers' compensation insurance occurring as a
21 result of any recent changes in law, including court decisions in the
22 state involving personal injury or death, and actions or suggested
23 actions to mitigate such rates.

24 * Sec. 6. REPORT. The Department of Law, with the assistance of the
25 Department of Commerce and Economic Development and with the cooperation of
26 all state agencies, shall report to the legislature by the 30th day of the
27 Second Session of the Sixteenth Alaska State Legislature on closed insur-
28 ance claims and insurance company finances. The report must consist of

29 (1) a study of closed insurance claims to identify
HCS CSSB 211(L&C)

1 (A) the extent to which the legal system has affected
2 liability insurance and coverage in crisis lines in the state;

3 (B) if the implementation of this Act has resulted in a
4 measurable effect on insurance rates in the state;

5 (2) a study of insurance company finances to determine the
6 extent to which

7 (A) dramatic liability insurance rate increases and cover-
8 age limitations in the state are, or are not, cost-justified in re-
9 lation to awards, settlements, and relevant court decisions in the
10 state involving personal injury, death, or property damage based on
11 fault; and

12 (B) legislative or regulatory actions affecting the tort
13 system in the state are necessary to resolve the state's liability
14 insurance rate increases;

15 (3) a status report on any pending civil cases filed by the
16 state against liability insurers; and

17 (4) recommended changes to state occupational licensing laws
18 that are intended to reduce civil litigation based on malpractice.

19 * Sec. 7. APPLICABILITY. Sections 1 - 5 of this Act apply to causes of
20 action accruing on or after the effective date of this Act.

21 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).
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1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 211 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability; and providing
7 for an effective date."

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

9 * Section 1. AS 09.17.030 is amended to read:

10 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
11 person who suffers personal injury or death may not recover damages
12 for the personal injury or death if the injuries or death occurred
13 while the person was engaged in the commission of a crime [FELONY],
14 the person has been convicted of the crime [FELONY], including con-
15 viction based on a guilty plea or plea of nolo contendere, and the
16 crime [FELONY] substantially contributed to the injury or death. This
17 subsection [SECTION] does not affect a right of action under 42 U.S.C.
18 1983.

19 * Sec. 2. AS 09.17.030 is amended by adding new subsections to read:

20 (b) The provisions of (a) of this section do not apply to a
21 person who suffers personal injury or death if the person liable for
22 the damages

23 (1) was engaged in the commission of a crime at the time
24 the personal injury or death occurred; and

25 (2) has been convicted of the crime, including conviction
26 based on a guilty plea or plea of nolo contendere.

27 (c) If a party recovers damages for personal injury or death and
28 the person liable for the injuries or death was engaged in the commis-
29 sion of a crime at the time the personal injury or death occurred, has

1 been convicted of the crime, including conviction based on a guilty
2 plea or plea of nolo contendere, and the acts constituting the crime
3 substantially contributed to the injury or death, the court shall

4 (1) triple the damages awarded to the party; and

5 (2) award actual costs and attorney fees.

6 (d) In this section "crime" has the meaning given in AS 11.81.-
7 900(b).

8 * Sec. 3. AS 09.17.050(a) is amended to read:

9 (a) Unless the act or omission constituted gross negligence, a
10 person may not recover tort damages for personal injury, death, or
11 damage to property for an act or omission to act in the course and
12 scope of official duties, from [ONE OF] the following:

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

15 (2) a member of the board of directors of a public or
16 nonprofit hospital, or a member of a citizen's advisory board of any
17 hospital;

18 (3) a member of a school board of a school district;

19 (4) a member of the governing body, a commission, or a
20 citizen's advisory committee of a municipality of the state;

21 (5) a member of the board of directors or an officer of an
22 electric or telephone cooperative organized under AS 10.25.

23 * Sec. 4. AS 09.17.080(d) is repealed and reenacted to read:

24 (d) The court shall enter judgment against each party liable on
25 the basis of

26 (1) joint and several liability if the action involves an
27 intentional tort, toxic or hazardous waste, environmental pollution or
28 damage, a violation of state or federal antitrust statutes, a party
29 who acted in concert or conspired with another party, or where the

1 plaintiff is fault-free;

2 (2) joint and several liability, except that a party who is
3 allocated less than 50 percent of the total fault allocated to all the
4 parties may not be jointly liable for more than twice the percentage
5 of fault allocated to that party, if (1) of this subsection does not
6 apply and the damages result from

7 (A) breach of a contract;

8 (B) the manufacture and sale of a defective product;

9 (C) operation of an aircraft or a motor vehicle;

10 (D) a land sale practice;

11 (E) a transaction involving a security;

12 (F) medical malpractice;

13 (G) medical expenses;

14 (H) an injury for which the party is strictly liable;

15 (I) vicarious liability imposed on the party;

16 (J) an administrative hearing;

17 (K) a construction project;

18 (L) injury to an employee and the party is not the
19 employer;

20 (3) several liability, if the party is not jointly and
21 severally liable under (1) or (2) of this subsection.

22 * Sec. 5. AS 21.06.110 is amended to read:

23 Sec. 21.06.110. DIRECTOR'S ANNUAL REPORT. As early in each
24 calendar year as is reasonably possible the director shall prepare and
25 deliver an annual report to the legislature and the commissioner,
26 showing, with respect to the preceding calendar year,

27 (1) a list of the authorized insurers transacting insurance
28 in Alaska, with such summary of their financial statement as the
29 director considers appropriate;

1 (2) the name of each insurer whose business was closed
2 during the year, the cause of the closing, and the amount of ascer-
3 tainable assets and liabilities of each closed business;

4 (3) the name of each insurer against which delinquency or
5 similar proceedings were instituted, and a concise statement of the
6 facts with respect to each proceeding and its present status;

7 (4) a statement in regard to examination of rating organi-
8 zations, advisory organizations, joint underwriters, and joint rein-
9 surers as required by AS 21.39.120;

10 (5) the receipts and expenses of the division for the year;

11 (6) recommendations of the director as to amendments or
12 supplementation of laws affecting insurance, or the office of direc-
13 tor;

14 (7) other pertinent information and matters the director
15 considers proper;

16 (8) an analysis of rate changes for commercial and professional
17 liability and workers' compensation insurance occurring as a result of
18 any recent changes in law, including court decisions in the state
19 involving personal injury or death, and actions or suggested actions to
20 mitigate such rates.

21 Department of Commerce and Economic Development and with the cooperation of
22 all state agencies, shall report to the legislature by the 30th day of the
23 Second Session of the Sixteenth Alaska State Legislature on closed insur-
24 ance claims and insurance company finances. The report must consist of

25 (1) a study of closed insurance claims to identify

26 (A) the extent to which the legal system has affected
27 liability insurance and coverage in crisis lines in the state;

28 (B) if the implementation of this Act has resulted in a
29 measurable effect on insurance rates in the state;

1 (2) a study of insurance company finances to determine the
2 extent to which

3 (A) dramatic liability insurance rate increases and cover-
4 age limitations in the state are, or are not, cost-justified in re-
5 lation to awards, settlements, and relevant court decisions in the
6 state involving personal injury, death, or property damage based on
7 fault; and

8 (B) legislative or regulatory actions affecting the tort
9 system in the state are necessary to resolve the state's liability
10 insurance rate increases;

11 (3) a status report on any pending civil cases filed by the
12 state against liability insurers; and

13 (4) recommended changes to state occupational licensing laws
14 that are intended to reduce civil litigation based on malpractice.

15 * Sec. 7. APPLICABILITY. Sections 1 - 5 of this Act apply to causes of
16 action accruing on or after the effective date of this Act.

17 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).
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HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

Chairman-Representative Dave Donley

(907) 465-3892

May 3, 1988

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Explanation of proposed CS for SB 211

Before you today is a proposed House Labor and Commerce CS for SB 211, drafted in response to public testimony received during the last week of public hearings before our Committee and testimony received during the interim public hearing and statewide teleconference we hosted on November 13, 1988.

The changes in the proposed CS from the version of SB 211 that passed the Senate are:

1. Deletes Section 1. (lowered the cap on noneconomic damages from \$500,000 under current law to \$100,000).
2. Deletes Section 2. (limits the standards for award of punitive damages to only cases involving fraud, malice, gross negligence, or reckless disregard).
3. Leaves Section 3 unchanged - becomes Section 1 of the proposed CS. (plaintiff cannot receive damages if they were involved in a crime (FELONY) at the time they were injured and the crime (FELONY) substantially contributed to the injury or death).
4. Leaves Section 4 unchanged - becomes Section 2 of the proposed CS. (allows plaintiff to recover damages if person liable for their injuries was engaged in the commission of a crime or has been convicted of the crime).
5. Deletes Section 5. (allows either party to request periodic payments rather than only the plaintiff, as under current law).
6. Deletes Section 6. (amends section of law governing payment of damages by requiring judgement to include any increases in future payments for anticipated inflation).
7. Leaves Section 7 unchanged - becomes Section 3 of the proposed CS. (extends immunity from liability to members of the board of directors or an officer of an electric or telephone cooperative except for gross negligence).

8. Deletes Section 8. (repeals and reenacts collateral benefits language in existing statute).
9. Rewrites Section 9 (becomes Section 4 of the proposed CS) to establish three tiers of liability:
 - (1) Strict joint and several liability if action involves an intentional tort, toxic or hazardous waste, environmental pollution or damage, violation of state or federal antitrust statutes, a party who acted in consort or conspired with another party, or where the plaintiff is fault free.
 - (2) Modified joint and several liability if damages result from a breach of contract, manufacture and sale of a defective product, operation of an aircraft or motor vehicle, a land sale practice, a transaction involving a security, medical malpractice, medical expenses, an injury for which the party is strictly liable, vicarious liability imposed on the party, a construction project, an injury to an employee and the party is not the employer, and administrative hearings.
 - (3) Strict several liability, if the party is not jointly and severally liable under (1) and (2).
10. Deletes Section 10. (definition of economic and noneconomic losses).
11. Deletes Section 11. (attorney fees may not be awarded to a party in a civil action (UNLESS THE CIVIL ACTION IS CONTESTED WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT)).
12. Rewrites Section 12. (becomes Section 5 of the proposed CS) relating to the Division of Insurance Directors annual report to the Legislature to include an analysis of rate changes for commercial and professional liability and workers' compensation insurance occurring as a result of any recent changes in law, including court decisions in the state involving personal injury or death, and actions or suggested actions to mitigate such rates.
13. Deletes Section 13. (repeals AS 09.17.010(c) - limits on noneconomic damages do not apply to disfigurement and severe physical impairment, and AS 09.17.040(c) - rules governing determining computation of future economic damages).
14. Rewrites Section 14. (becomes Section 6 of the proposed CS) relating to an annual report to the Legislature from the Department of law, with assistance of the Department of Commerce and Economic Development in cooperation of all state agencies, to delete ambiguous language and to include a report on the status of pending civil cases filed by the state against liability insurers and recommended changes to state occupational licensing laws that are intended to reduce civil litigation based on malpractice.

15. Leaves Section 15 unchanged - becomes Section 7 of the proposed CS. (applicability).
16. Deletes Section 16. (Severability clause).
17. Leaves Section 17 unchanged - becomes Section 8 of the proposed CS. (Effective date).

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to civil liability
amending Civil Rule 82
Sponsor: Senate Judiciary
Requestor: Senate Finance

Agency Affected: Commerce & Econ. Dev.
BRU: Division of Insurance
Components: Public Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	25.0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	25.0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	25.0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Malford*
Division: Senator Rick Malford, Co-chairman
Senate Finance Committee

Phone: 465-4958
Date: 3/23/88

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to Civil Liability
Sponsor: Falks, Abood, Bennett, et al.
Requestor: _____

Agency Affected: Department of Administration
BRU: Division of Risk Management
Components: Risk Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
TOTAL	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The final benefit is impossible to accurately project, given that it will only affect liability not yet incurred. Based on the State's past liability claims experience, we project a 20% reduction in estimated ultimate loss and loss expense per fiscal year. The attached projection details the calculations using the State of Alaska's actuarial experience.

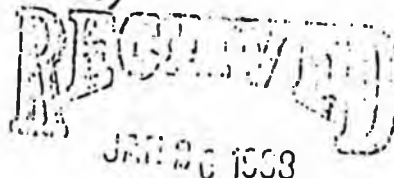
Prepared By: Don Hitchcock
Division: Risk Management

Phone: 465-2180
Date: January 18, 1988

Approved by Commissioner: John M. Andrews
Agency: Department of Administration

Date: 1/23/88

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)



FISCAL NOTE ANALYSIS
FOR SB 211

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

	YEAR OF OCCURRENCE						TOTAL
	1988	1989	1990	1991	1992	1993	
FY 88	-0-						
FY 89		306.0					306.0
Y E A R O F S A V I N G FY 90		274.0	384.0				658.0
FY 91		360.0	342.0	480.0			1,182.0
FY 92		336.0	448.0	428.0	600.0		1,812.0
FY 93		252.0	420.0	558.0	534.0	750.0	2,514.0
FY 94			316.0	526.0	698.0	668.0	
FY 95				394.0	656.0	872.0	
FY 96					492.0	820.0	
FY 97						616.0	
Future		<u>874.0</u>	<u>1,092.0</u>	<u>1,366.0</u>	<u>1,706.0</u>	<u>2,132.0</u>	
TOTAL		2,400.0	3,000.0	3,750.0	4,686.0	5,858.0	

These represent estimated future payments pattern over a twelve year payout period, i.e., each year.

12 months	12.8%
24 months	11.4%
36 months	14.9%
48 months	14.0%
60 months	10.5%
Balance	36.4%

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: CS SB 211(Fin)
Publish Date: *Senate 3/24/88*
Revision Date: Agency Affected: Alaska Court System
Title: An act relating to civil liability... BRU: Trial Courts
Sponsor: Faiks, Abood, et al Components:
Requestor: Judiciary

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL
REVENUE

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:
Full-time
Part-time
Temporary

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg* General Counsel Phone: 264-8228
Division: Alaska Court System Date: 03/05/88
Approved by: *Arthur H. Snowden, II* Administrative Director Date: 03/05/88
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

MAR 18 1988
LEGISLATIVE FINANCE

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Law
 Title: Relating to civil liability BRU: Legal Services
and amending Civil Rule 82
 Sponsor: Senate Judiciary
 Requestor: Senate Finance Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford*
 Division: Senator Rick Halford, Co-chairman
Senate Finance Committee

Phone: 465-4958
 Date: 3/23/88

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

**Wayne
Anthony
Ross**

ATTORNEY AT LAW

LAW OFFICES OF
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A PROFESSIONAL CORPORATION
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ANCHORAGE, ALASKA 99501
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WAYNE ANTHONY ROSS
THOMAS S. GINGRAS
WILEN M. BAILEY
ED L. MINER
CHER C. JACOBUS

OF COUNSEL
DONALD J. MILLER

March 31, 1988

Representative Dave Donley
P.O. Box V
Juneau, AK 99811

Dear Representative Donley:

On April 21, 1987, this office sent you a letter and memorandum reviewing Senate Bell 211 and HB 250. We urged your defeat of that unjust legislation.

On the last page of our letter we described "tort reform (as) a phony issue raised by the insurance companies to increase their already substantial profits."

We stated: "We hope you are not misled by the insurance companies and their well-financed lobbying efforts..."

It appears that our comments about the tort reform movement may be proven right shortly. On Wednesday, March 23, 1988, both Anchorage newspapers reported that eight states have sued the insurance industry for conspiring to create the insurance liability crisis. Those states' Attorneys General have alleged that the liability insurance crisis was artificially created by the insurance companies to drive up rates, change policies to provide less coverage for higher premiums, and restructure the civil justice system to obtain more protection from lawsuit judgments. The Texas Attorney General calls the insurance companies conduct "the most insidious consumer fraud that's taken place by American companies in modern times."

Clearly then, it would be irresponsible for you to pass tort reform legislation until this lawsuit is resolved lest it appear that, despite our warnings, the Alaskan Legislature was misled into reducing victims rights by this "most insidious consumer fraud."

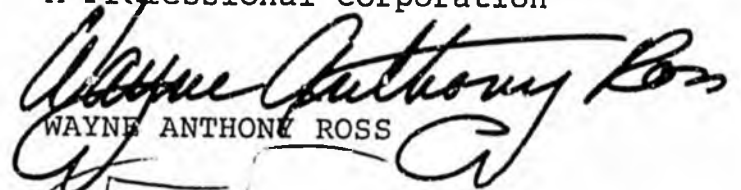
March 31, 1988
Page 2

We have enclosed some articles from Consumer Reports and Business Week, and a script from 60 Minutes further exposing this phony issue.

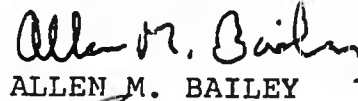
Thank you for your continued attention to this matter.
We are,

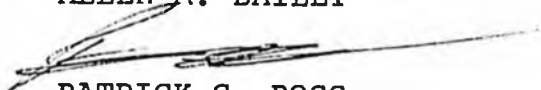
Sincerely,

ROSS, GINGRAS, BAILEY & MINER
A Professional Corporation


WAYNE ANTHONY ROSS

THOMAS S. GINGRAS


ALLEN M. BAILEY


PATRICK G. ROSS

WAR:amf
Enclosures

leg1/MARI



Alaska State Legislature

SENATE

Office of the President

6
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3755

April 1, 1988

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Senator Jan Faiks
President of the Senate *Jan Faiks*

SUBJECT: CSSB 211 (Fin) am "An Act relating to civil
liability; and providing for an effective date."

CSSB 211 (Fin) am has been referred to the House Labor and Commerce Committee for consideration. The purpose of this bill is to improve the tort liability system in Alaska.

Specifically, the bill proposes the following:

Section 1. NONECONOMIC DAMAGES. Amends AS 09.17.010(b) by reducing the maximum amount of noneconomic damages which may be awarded for personal injury based on negligence.

The present statute has a limit of \$500,000 for such damages; CSSB 211 (Fin) proposes a maximum of \$100,000 for noneconomic damages, which are defined as subjective, nonpecuniary damages including pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, and all other nonpecuniary damages.

Section 2. PUNITIVE DAMAGES. Amends AS 09.17.020 by requiring clear and convincing evidence of specific conduct by the defendant before the court may award punitive damages.

The present statute has the same burden of proof (clear and convincing evidence), but does not specify the type of conduct which will trigger the award. CSSB 211 (Fin) provides that fraud, malice, gross negligence, or reckless disregard by the defendant may result in the award of punitive damages.

Section 3. DAMAGES RESULTING FROM COMMISSION OF A CRIME. Amends AS 09.17.030 by expanding the class of persons who may not recover damages for personal injury or death if the damages were incurred while the person was engaged in the commission of a crime.

The present statute provides that a person may not recover damages for injury or death if the damages were incurred while the person was engaged in the commission of a felony which substantially contributed to the injury or death.

CSSB 211 (Fin) replaces "felony" with "crime". This has the additional effect of precluding persons convicted of a misdemeanor from recovering damages for personal injury or death if that crime substantially contributed to the injury or death.

Section 4. LIABILITY OF CRIMINAL DEFENDANTS. Further amends AS 09.17.030, to provide that a person convicted of a crime that substantially contributed to the person's injury or death can recover damages from the wrongdoer if the wrongdoer has also been convicted of a crime in which he/she was engaged at the time of the injury or death.

Section 5. AWARD OF DAMAGES. Amends AS 09.17.040(d) by allowing any party, not just the injured party, to request the court to enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump sum payment.

The present statute allows only the injured party to make such a request.

Section 6. INCREASES IN PERIODIC PAYMENTS. Amends AS 09.17.040(f) to make it clear that if the payment of future damages is made periodically rather than in a lump sum, the court may order increases in future payments for anticipated inflation.

Section 7. LIMITED LIABILITY OF CERTAIN DIRECTORS AND OFFICERS. Amends AS 09.17.050 to include members of the board of directors or an officer of an electric or telephone cooperative organized under AS 10.25.

Section 8. COLLATERAL BENEFITS. Repeals and reenacts AS 09.17.070, replacing it with language similar to that found in present statute AS 09.55.548(b) relating to collateral sources in malpractice actions.

This section of CSSB 211 (Fin) provides that a person may only recover damages that exceed amounts that he/she has already

received from a collateral source, whether it be a private, group, or governmental source, either contributory or noncontributory. The only exceptions are where the collateral source by law or contract must seek subrogation, or from death benefits paid under life insurance.

This section further provides that the trier of fact shall be informed of the tax implications of an award of damages. The court may also take into account the value of the person's right to coverage which may have been exhausted or depleted by payment of these collateral benefits, and add a reasonable estimate of their probable value to the award.

Section 9. APPORTIONMENT OF DAMAGES. Amends AS 09.17.080(d) by modifying the theory of joint and several liability.

Under the present statute, a party can be held liable for all of the damages, even if that party has been allocated a certain percentage of the fault. The exception under the present statute is that where a party has been allocated less than 50% of the total fault allocated to all of the parties, that party may not be jointly liable for more than twice the percentage of fault allocated to that party.

CSSB 211 (Fin) establishes full joint and several liability in cases involving hazardous waste, environmental pollution, or violation of state or federal antitrust laws.

In all other cases, CSSB 211 (Fin) has the effect of eliminating joint liability, and making each defendant liable only for the share of the damages for which he/she is personally responsible.

Section 10. DEFINITIONS. Amends AS 09.17.900 by adding new definitions for "economic losses" and "noneconomic losses".

Section 11. COSTS ALLOWED PREVAILING PARTY. Amends AS 09.60.010 by eliminating the language "unless the civil action is contested without trial, or fully contested as determined by the court."

This has the effect of allowing the supreme court to determine the costs which may be allowed a prevailing party in a civil action. However, unless attorneys fees are authorized by statute or by an agreement between the parties, they may not be awarded in actions for personal injury, death, or property damage relating to fault.

Section 12. DIRECTOR'S ANNUAL REPORT. AS 21.06.110 currently requires the director of the Division of Insurance

to submit an annual report to the legislature. CSSB 211 (Fin) requires this report to include an analysis of medical malpractice insurance rate changes occurring as a result of court decisions in the state.

Section 13. REPEALERS. 1) AS 09.17.010(c) would be repealed, to make the limit on noneconomic damages in section 1 applicable to all injuries. Currently, the limit on noneconomic damages does not apply to damages for disfigurement and severe physical impairment.

2) CSSB 211 (Fin) also repeals AS 09.17.040(c), which allows parties to agree to compute the award of future damages under the rule adopted in Beaulieu v. Elliott, 434 P. 2d 665 (Alaska 1967). That case held that income taxes should be deducted from the allowance for past lost wages, but not from the allowance for inflation or for future lost wages. It further made no allowance for inflation or for future normal wage increases and approved the use of a per diem formula in computing damages for pain and suffering.

Section 14. REPORT. CSSB 211 (Fin) requires the Department of Law, with the assistance of the Department of Commerce and Economic Development, to report annually to the legislature on closed insurance claims and insurance company finances.

Section 15. APPLICABILITY OF ACT. This Act applies to all causes of action which accrue after the effective date.

Section 16. SEVERABILITY. If any provision of this Act is held invalid, the remainder of the Act is not affected.

Section 17. EFFECTIVE DATE. This Act takes effect immediately.

Please contact my office if you have any questions or comments.

Thank you.



Insurance Industry Profitability

Nationwide, property/casualty insurance industry profitability hit a record high in 1986, and another record high in 1987. In fact, in 1987 the industry set at least four all-time profitability records:

- * Highest net profit, \$13.7 billion (See Attachment I);
- * Highest operating profit, \$13.7 billion (See Chart I);
- * Highest year-end surplus, \$98 billion (See Chart II);
- * Highest premiums written, \$192 billion (See Chart III).

P-C Insurers Report Dramatic Income Gains

BY SUSAN NAROD

The property-casualty insurance industry recorded a dramatic improvement in operating income in 1987.

Insurers reported pre-tax operating

Pre-Tax Operating Income More Than Doubled In 1987

income of \$13.7 billion last year, according to preliminary data compiled by A.M. Best Co. This contrasted sharply with operating earnings of \$5.4 billion in 1986 and operating losses of \$4.0 billion and \$5.6 billion in 1984 and 1985, respectively.

"The improvement in profitability reflected basic economics—revenues increased faster than claim costs," said Dr. Sean Mooney, economist and senior vice president of the Insurance Information Institute.

In 1987, revenues earned from premiums rose 13.3 percent, while claims costs increased at a slower rate of 8.6 percent. As a result, the underwriting loss declined from

Cont'd on Page 39

P-C Insurers Report Dramatic Income Gains

Cont'd from Page 1

\$15.9 billion in 1986 to \$9.8 billion in 1987.

In addition to underwriting results, investment income, interest and dividends earned from assets in 1987 increased 7.3 percent to \$23.5 billion.

Net written premiums rose 8.7 percent in 1987—less than half the 22 percent increases reported for 1985 and 1986.

The stock market plunge on Oct. 19 didn't result in large realized losses for the p-c industry in 1987 because realized capital gains or losses are reported only when a stock is sold, according to Dr. Mooney.

"Most insurance companies hold stocks for a long time and probably didn't sell a large proportion of their portfolio in a weak market," said Dr. Mooney.

Sales can result in realized capital gains as long as the selling price is above the purchase price, he noted, adding that many stocks were purchased by insurance companies years ago.

Moreover, realized capital gains or losses also occur when bonds are sold. Bonds generally constitute the major portion of an insurance company's portfolio and have contributed to capital gains in the past few years.

Unrealized capital losses of \$6.0 billion were reported for the industry in 1987. Since stocks on the balance sheet were reported at market value, the drop in the stock market is recorded as an unrealized capital loss.

Figures on capital values are pre-

liminary estimates. No actual data have been reported for the fourth quarter of 1987, when the stock market plunged.

The unrealized loss was the major factor explaining the small growth in policyholder surplus for the industry in 1987.

Despite \$13.7 billion reported for net income after taxes, policyholder surplus increased by only \$3.9 billion, from \$93.6 billion at the end of

Investment Income Grew 7.3 Percent To \$23.5 Billion

1986 to \$97.5 billion at the end of 1987.

There is nothing disastrous on the p-c financial horizon at the moment, although "there are some clouds," observed Dr. Mooney.

The negative signs, according to Dr. Mooney, include stock market weakness, pressure on claims from auto accidents, higher medical care costs and increased litigation, in addition to rising competition.

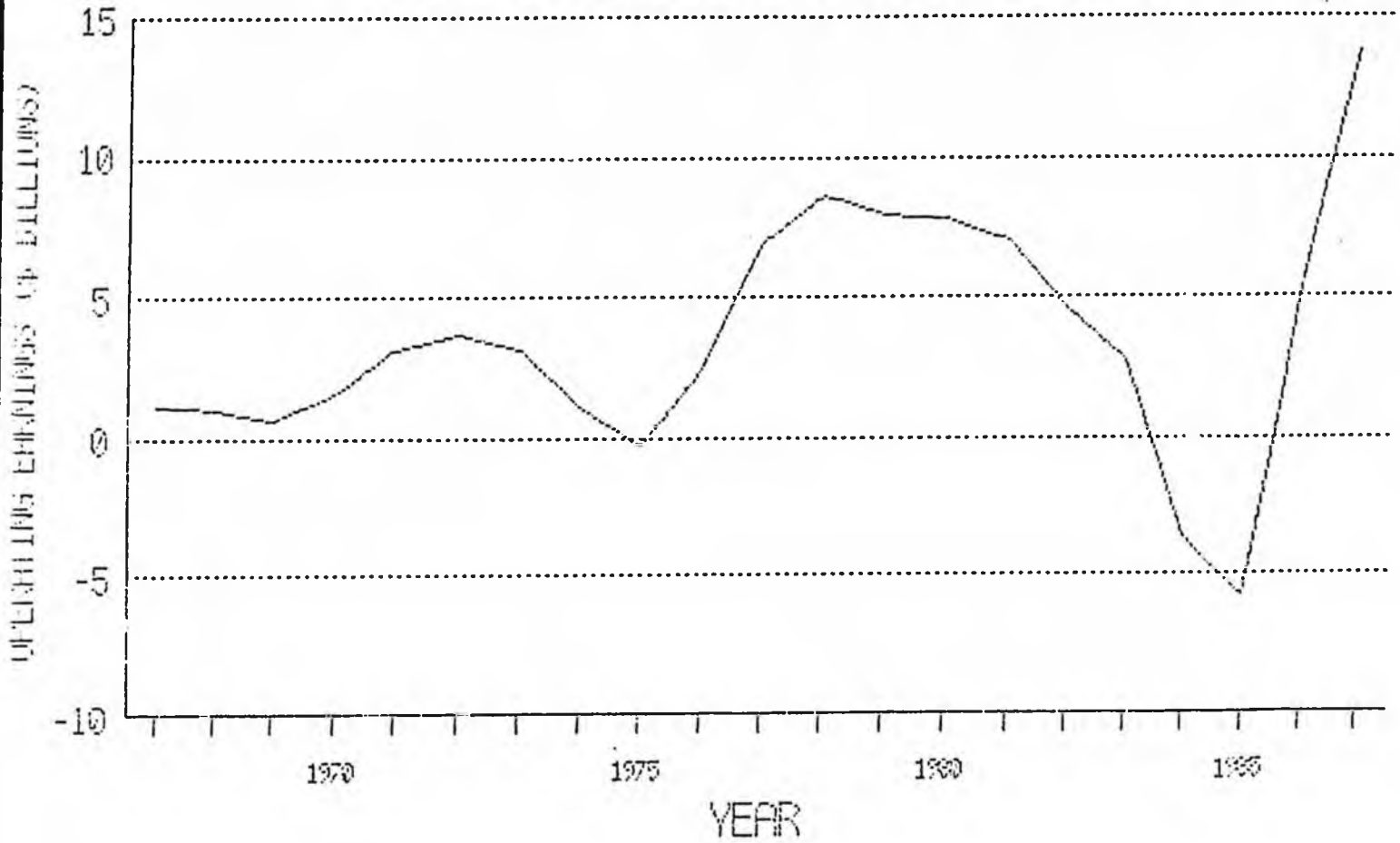
Dr. Mooney expects 1988 to culminate with claims growing faster than premium growth, with the result that net income will probably deteriorate.

Nevertheless, Dr. Mooney said that, "it's a general feeling that the industry is going through a fairly stable period, so that 1989 will probably look the same as 1988." □

NATIONAL UNDERWRITER

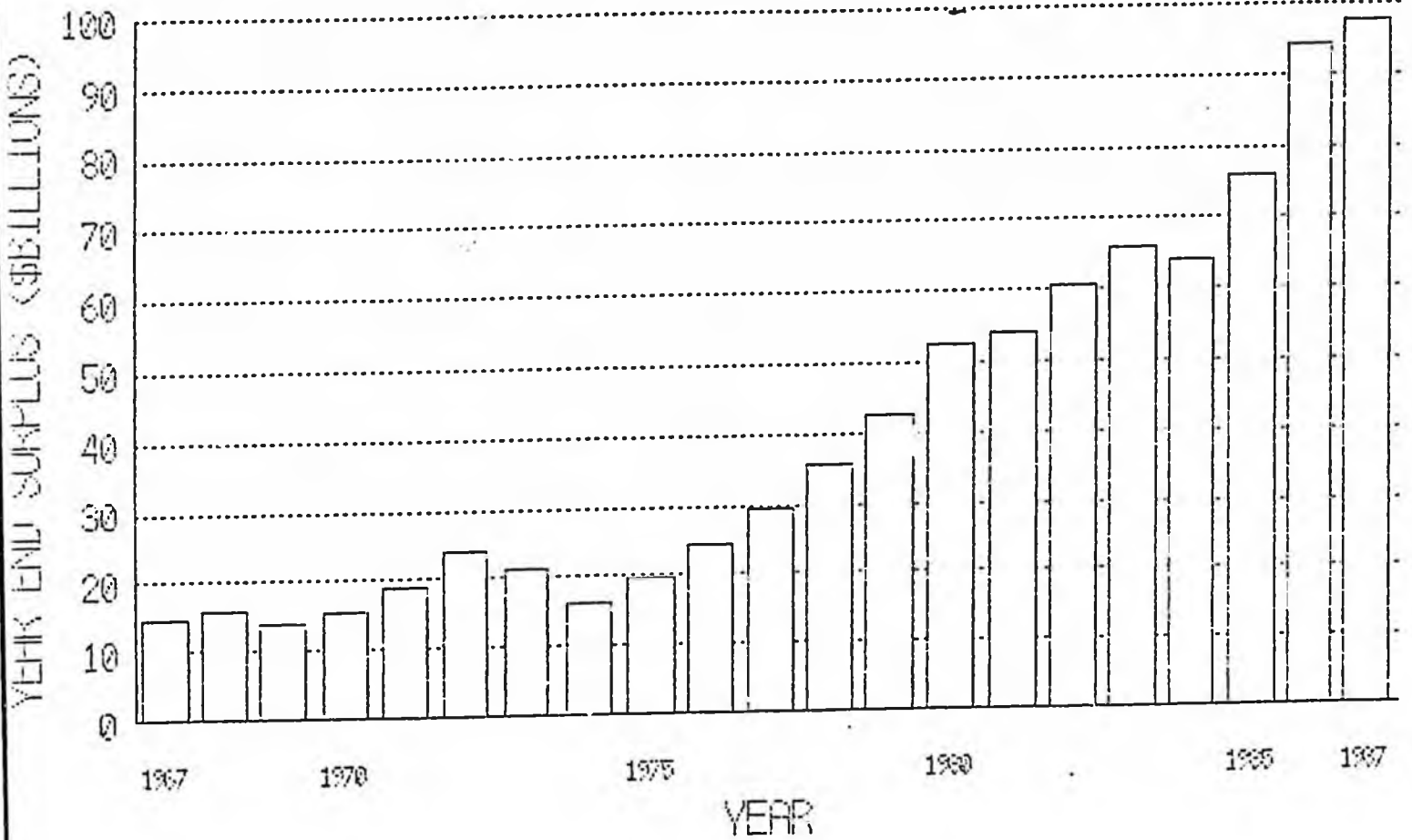
JANUARY 11, 1988

PROPERTY/CASUALTY OPERATING EARNINGS



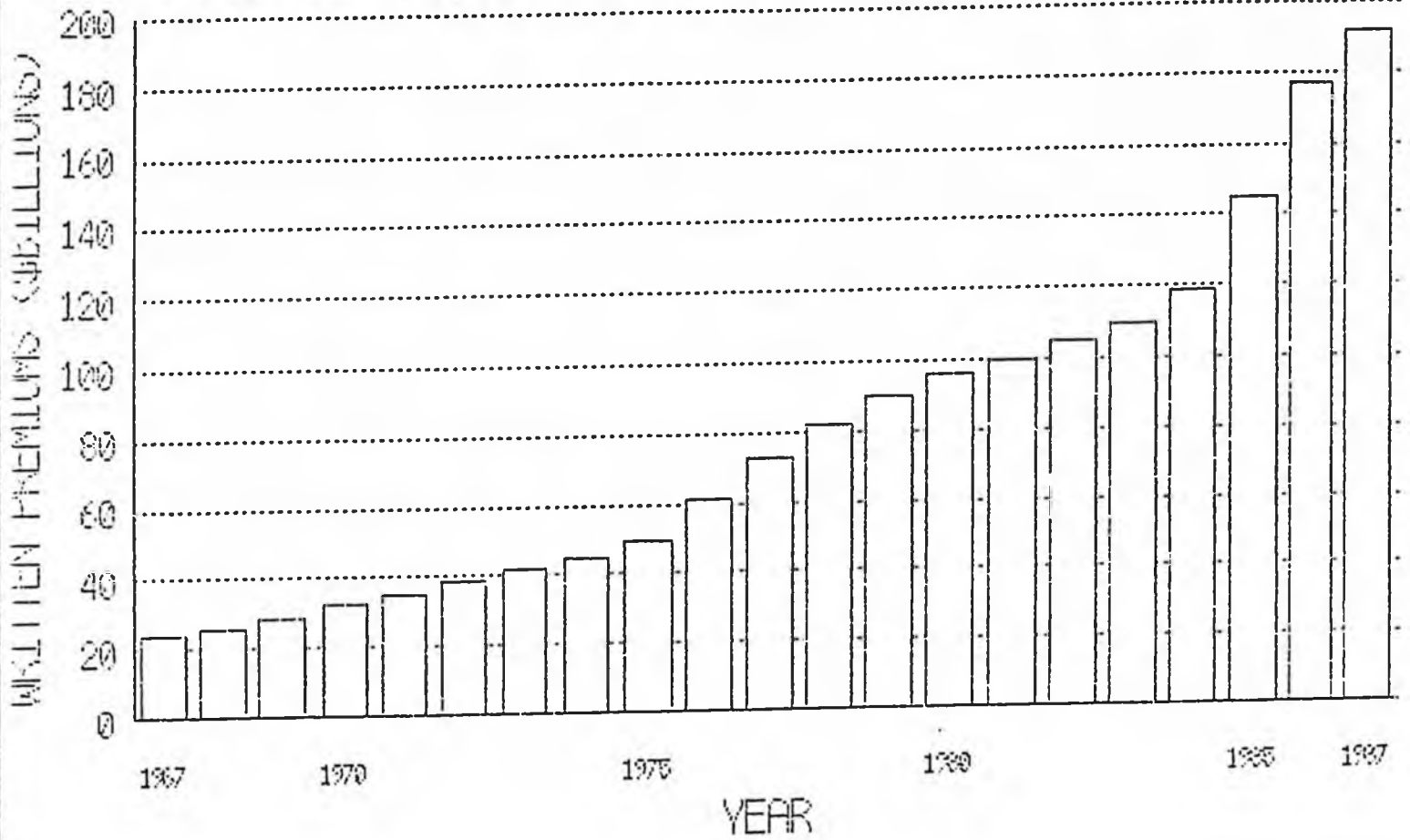
Source: Best's Insurance Management Reports; Insurance Information Institute, Insurance Services Office.

PROPERTY/CASUALTY YEAR END SURPLUS



Source: Best's Insurance Management Reports; Insurance Information Institute; Insurance Services Office.

PROPERTY/CASUALTY WRITTEN PREMIUM



Source: Best's Insurance Management Reports; Insurance Information Institute; Insurance Services Office.



Note on the Property/Casualty Industry's Record \$13.7 Billion Profit in 1987

The property/casualty insurance industry earned a record net profit of \$13.7 billion in 1987, after having earned a then-record profit of \$12.7 billion in 1986.

The industry has emphasized, however, that its \$12.7 billion net profit in 1986 is really not as great as it appears, since only \$5.4 billion of that profit, or 44%, is operating profit -- profit from its insurance operations. The bulk of its profit, the industry has stressed, came from realized gains -- sales of stock in an unusually inflated stock market. See Insurance Information Institute, The Executive Letter, "Earnings Improve, But Asset Sales Remain Primary Income Source," March 23, 1987. The industry pointed out that its capital gains were extraordinarily high in 1986, and that those high capital gains could not be expected to continue.

In 1987 those high capital gains did not continue, yet the industry made more money than it ever had before -- \$13.7 billion. That \$13.7 billion consisted entirely of operating profit -- profit from insurance operations -- up 154% from its \$5.4 billion operating profit in 1986. If the stock market had not crashed in October, its net profit would have been even higher.



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April 7, 1988

Dave Donely
Chairman
House Labor & Commerce Committee
P.O. Box V
Juneau, Alaska 99811

RECEIVED
APR 11 1988

Dear Mr. Chairman:

I enclose the ICC's position paper on tort reform for inclusion in the public record and for consideration by the members of the State House who will be reviewing this piece of legislation.

I will be out of the state and unable to present this position paper during the hearing scheduled for April 22, 1988.

If you or your staff have any questions regarding the enclosed document, please do not hesitate to contact me at the ICC Alaska Office, 258-6917, in Anchorage. I will be back from vacation beginning the week of April 25.

Thank you for your time and consideration of our views.

Sincerely,

A handwritten signature in cursive script that reads 'Dalee Sambo'.

Dalee Sambo
Special Assistant

DS/ds

INUIT CIRCUMPOLAR CONFERENCE

POSITION PAPER ON PROPOSED TORT REFORM

One of the primary purposes of the Inuit Circumpolar Conference (ICC) is to promote the interests of the native people living in the world's Arctic region.

Legislation has been introduced in the Alaska Legislature, which would severely limit the rights of native people of Alaska, who are injured through the fault or negligence of someone else, to seek fair compensation for their injuries.

Some specific measures in the legislation which we feel will unfairly impact the native people of Alaska are:

Non-Economic Damages

SB 211 and HB 250 would place a limit on so-called non-economic damages available to an injury victim, which is much lower than the current limit which was passed by the legislature only two years ago. Under the current law, severely disabled and disfigured victims are exempted from this limit, however, the proposed legislation will limit non-economic damages for even the most severely injured victims.

Native people who live a subsistence lifestyle will be harmed by this limit, as will women, children and the elders in particular, since they have less measurable "economic value" (ie. lost wages

and future earnings) for which they can be compensated.

Some people who are in favor of these limits say they are fair because non-economic damages for pain and suffering are hard to measure, unlike the documented loss of a wage paying job due to an injury. They may be more difficult to add up on a balance sheet but they are very real nonetheless.

Good physical health is crucial to the ability to live a traditional subsistence way of life and a disability or serious injury can easily deprive a native person of their traditional way of life. Another aspect of the subsistence tradition is to provide not only for one's own family, but also for other members of the community as whole. An inability to participate with friends and neighbors, in providing for the group as a whole would create another hardship for the injury victim.

Obviously, the cultural values associated with a subsistence way of life, and the ability to pass on those values to future generations cannot be measured in strictly economic terms and limiting non-economic damages, therefore, discriminates against a large number of native people in Alaska.

Another unfair and arbitrary facet of the proposed limits on non-economic damages is that they mainly impact the injury victims who are the most severely disabled and disfigured. These are also the people who need compensation for their injuries the most, to pay medical bills and provide for their families.

Punitive Damages

These bills will make it more difficult for parties causing injuries to be assessed for punitive damages. The level of proof needed to punish a knowing wrongdoer would be made higher. The ICC opposes these changes proposed for punitive damages. Environmental pollution of water resources, subsistence habitats, and even school playgrounds is a grave problem in villages throughout Alaska. The threat of punitive damages must be preserved as an important economic incentive for hazardous waste producers to dispose of their wastes safely; and for manufacturers to produce safe products.

Periodic Payments

Instead of allowing the injury victim to decide on the method of payment, whether it be a lump sum payment or periodic payments made over decades, these bills would force the injury victim to accept periodic payments. This will deprive victims of receiving the full intended value of their compensation by allowing insurance companies to collect the interest on the bulk of the victim's money for years. The ICC opposes this blatantly unfair proposal and finds it particularly unfair to the elders who are victims.

Joint and Several Liability

With regard to joint and several liability, we support the exemption for hazardous waste and environmental pollutions.

However, we only, in general, support the concept of joint and several liability and don't believe it should be repealed or limited in other cases.

Who benefits from this legislation? Its proponents have argued that this legislation is a necessary answer to the problem of rising insurance premium rates and of lack of availability of insurance in some areas. Yet the fact is, other states which have already passed similar legislation have seen insurance rates continue to rise and availability has continued to be a problem.

The ICC is very concerned about the effect of rising medical malpractice premiums on the continued availability of adequate medical care in rural Alaska. However, we do not believe that these anti-victim proposals are the answer to the problem.

We believe there are other measures which would much more effectively bring down medical malpractice rates without depriving victims of their rights. Some Proposals ICC would like to make are:

1. Require insurance companies to experience rate doctors. Drivers who have been involved in several serious accidents pay more, and drivers who have never had an accident pay less. Yet doctors found liable for malpractice several times pay the same as doctors who have never been sued. Good doctors should pay less, and doctors liable in malpractice cases should pay more.

2. Reduce the number of categories of doctors and increase the number of doctors in each category. This is better risk management than having doctors spread out through many categories.

3. Charge malpractice occurring in doctors' offices to doctors and charge malpractice occurring in hospitals to hospitals. This will maximize the incentive to hospitals to police doctors and will spread risk more evenly.

4. Require insurance companies to stop subsidizing doctors who have larger practices. Under the current system, the doctor who delivers a handful of babies in a small city like Nome pays as much as a doctor in Anchorage who delivers hundreds of babies each year.

SPECIAL REPORT: INSURANCE ANTITRUST CASE

Three Men Got Lawsuit Rolling

By MARK MAGNIER

LAFAYETTE, Calif. — Richard Holmes, the mayor of Lafayette, Calif., in 1985 and 1986, says he smelled a rat early in his term when told that 80 insurance companies had turned down a request for municipal liability coverage.

"I got to thinking this simply can't be right," the former mayor and current city councilman says. "It can't be a coincidence. Five companies maybe. But if over 80 insurance companies are not offering insurance, what the hell are they going to offer — soap?"

His outrage prompted a fiery letter and several follow-up calls to California Attorney General John Van de Kamp. Those efforts reportedly catalyzed an investigation into possible insurance industry collusion spearheaded by the attorney general and Thomas Dove, the state's assistant attorney general.

"Dick (Holmes) is a very persistent guy," Mr. Dove explains.

Two weeks ago, seven states filed suit in California and one filed in Texas charging 31 U.S. and British insurance companies with conspiring to restrict the coverage available to cities and counties under their standard commercial liability policies.

Related Stories On Page 9A

- A key player in an antitrust case reports a coincidence in his auto insurance since the suit was filed.
- The liability crisis has affected huge areas of American life.

Other states could follow the lead in what is being called the largest U.S. antitrust case in history. Some say more than 20 states in all might file within a matter of weeks.

Robert Vagley, president of the American Insurance Association, says the accusations contained in the suit are preposterous and motivated by attorneys general seeking political attention and personal injury lawyers fighting to preserve their fee structure.

What follows is a look at the role played by three men, Mr. Holmes, Mr. Van de Kamp and Mr. Dove, in the filing of this historic lawsuit.

"They've called me the punk that set off the fireworks," Mr. Holmes says. "Apparently few

SEE THREE, PAGE 9A



HOLMES: Three decades in the oil business made him very sensitive to even the faintest suggestion of collusion.



VAN DE KAMP: He authorized the investigation after reading Mr. Holmes' letter and reviewing the evidence.

States Assert Legitimacy Of Insurance Lawsuits

By PAULA L. GREEN

State law enforcers around the country say the antitrust lawsuits they have lodged against the insurance industry are not political vendettas, as insurers have claimed.

"Anyone would have to have their head examined to engage in this lengthy, extensive and expensive litigation without good reason," said James M. Shanahan, the Democratic attorney general of Massachusetts. "This is a suit filed by nine states, bipartisan, Republicans and Democrats, after a long investigation over the last two years."

The American Insurance Association has labeled the lawsuits a "coordinated, political, public relations exercise by a few attorneys general." Other industry-supported groups say

the suits are the legal community's latest assault against insurers' attempts to reform the civil justice system.

But armed with 100,000 pages of documents and interviews with nearly 200 people on two continents, law enforcers say they are confident and ready to tackle the multibillion-dollar insurance industry.

"The case will be successful. The companies thought they were so well protected under the McCarran-Ferguson Act that they did most of what they did in the open," said Texas Attorney General Jim Mattox, also a Democrat. "But McCarran-Ferguson says you may not boycott, intimidate or coerce. And that's exactly what they (insurers) did as an industry."

Two weeks ago, officials in nine states took the first step in a nationwide offensive against

The Letter That Started It



the industry when they accused more than 30 major U.S. and British insurers and reinsurers with conspiracy, boycott and other violations of antitrust laws.

McCarran-Ferguson exempts

the insurance industry from federal antitrust laws except in cases of boycott, coercion or intimidation. The federal act allows the national property/casualty, life and

SEE STATE, PAGE 10A

Where Plot May Have Been Hatched

By EDWIN UNSWORTH

LONDON — "All the World's a Stage" is the motto emblazoned on the architrave above most of the principal doorways of the Garrick Club, one of the band of select gentlemen's clubs established in London.

It might well have been noticed by the group that met in the club on July 4, 1984, allegedly to hatch the plot involved in the antitrust suits launched two weeks ago by eight U.S. states against U.S. and British insurers.

The mid-19th century club building is the most impressive on the narrow street of the same name as the club. It was built on a palatial scale, with the Italianate facade leading to an entrance hall capped by a large domed fanlight. Around the hall a wide oak staircase whose walls are lined top-to-bottom with paintings of past theater personalities leads up to the club's smoking room, reading

The Garrick Club, like the other old and established London clubs, is a place for professional men to meet, to dine, to socialize, and to make contacts.

room, bar, billiard room and library.

While the scale is grand, the interior of the club has the well-used and slightly downtrodden look to which so many of the English upper classes are accustomed in their own historic mansions.

It is unashamedly a masculine club, with the large proportions of the rooms accentuated rather than lightened by the dark walls — brown in the smoking room and burgundy in the dining room — and an abundance of over-stuffed leather armchairs. The atmosphere is often smoky, a place for men uninhibited by the presence of women.

Like the other old and estab-

lished London clubs, it is a place for professional men to meet, to dine, to socialize, and to make contacts. Women, although allowed in as guests, are not accepted as members.

Even if this rule were to change it could be some years before a female were to join the ranks, because the club has an eight-year waiting list.

Unlike the other select gentlemen's clubs, the Garrick is not located in fashionable Mayfair or Belgravia but in Covent Garden, a location suitable to its role as a club whose first members came largely from the world of the nearby theaters.

The Duke of Sussex founded the Garrick in 1831 for actors, painters, writers and other artists, and members over the

years have included the likes of Charles Dickens, William Thackeray and Washington Irving.

Many of the club's near-1,000 members still do come from the performing and the creative arts. Among them are Sir John Gielgud and Sir Lawrence Olivier. Writers and journalists also favor the club.

If reinsurers from Lloyd's of London and the company market did meet Insurance Services Office staff at the club to discuss means of restricting insurance cover in the U.S. market, they may well have been in the proximity of some of Britain's top legal and political figures.

Chancellor of the Exchequer Nigel Lawson, Foreign Secretary Sir Geoffrey Howe, the country's top legal adviser, Attorney-General Lord Havers, and numerous other politicians, judges and lawyers are members. Even Prince Charles belongs to the Garrick, and his father, Prince Philip, is its patron.

The Journal of Commerce
and Commercial

The Sparks That Lit the Antitrust Suit Fires

Three Men Got Lawsuit Rolling

CONTINUED FROM PAGE 1A

people did anything but wring their hands."

Lafayette is a typical, albeit prosperous, U.S. town 25 miles from San Francisco. The commercial center is clustered around the on- and off-ramps of the highway, and the town's 23,000 people live on tree-lined streets leading into the hills.

Mr. Holmes became a city councilman in 1981 shortly after retiring. The official says his three decades in the oil business, most recently with Chevron Corp., made him very sensitive to even the faintest suggestion of collusion, and with 60 companies acting in concert, "it clearly looked like antitrust."

The gray- and white-haired official says he wondered for several months after sending his letter whether the attorney general would take on the case, given all political disincentives. The insurance companies make up one of the largest and richest lobbying forces in California politics.

After several months of telephone calls, however, Mr. Holmes said he was told that a state investigation had begun. A few months later he was told that witnesses were being subpoenaed under a court order.

Mr. Holmes, who comes from a family with a long history of public service, says he is a strong believer in the system. When he heard that, he says, he knew things were working the way they were supposed to.

John Van de Kamp

John Van de Kamp, 52 years old and California's attorney general since 1983, says he authorized the investigation after reading Mr. Holmes' letter and reviewing the evidence.

Mr. Van de Kamp, a former district attorney for Los Angeles county, is known in California as an ethical, straight-shooting official with aspirations to the governor's office. A graduate of Dartmouth College and Stanford Law School, he was re-elected by a greater than 2-to-1 margin in 1986.

Mr. Van de Kamp, who comes from a wealthy family, is known as a serious and reserved

'It was an amazing development We went off to London as grade schoolers and came back as freshmen in college.'

—Tom Dove, Assistant Attorney General, California

person with a record as a moderate liberal.

In 1986 he opposed a tort reform initiative supported by the insurance industry, which earned him a reputation as an insurance-basher. He says this is undeserved. He knew little about insurance or antitrust before becoming attorney general, he says, and became "tough" only after he understood the issues.

Mr. Van de Kamp says his office became involved in the insurance antitrust investigation in 1986 in part because the Reagan administration has done little in the area of trust busting and this left the responsibility with the states.

He is quick to point out that some of those most hurt by the insurance companies by the alleged collusion were the industry's own agents and brokers. "Companies within the industry were victimized," he said.

Thomas Dove

Where Mr. Van de Kamp appears reserved by nature, his assistant attorney general, Tom Dove, seems diametrically opposed. "This is an industry that was dumb enough to insure the Titanic after it sank," he says, walking down a hallway. He gives the impression he is comfortable at the center of a controversy.

Mr. Dove graduated from Berkeley Law School in 1971 and worked for the law firm of Paul Weiss, Rifkind, Wharton & Garrison in New York where he cut his teeth doing litigation and antitrust work. In 1973 he was drawn back to the West Coast where he joined the criminal division of the attorney general's office.

He handled civil rights cases and an anti-marijuana campaign before becoming head of the state's antitrust division in 1985. Mr. Dove says his investigation into the insurance industry started in early February of

1985, although it took until May to understand some of its complexity.

The early months were spent talking to voluntary witnesses, he says. He called up brokers and agents until one source told him curtly he'd just answered the same questions for the attorney general's office in Texas, tipping him off that other states were also interested.

He started working closely with Texas and was joined in the fall by New York and Massachusetts. "We discussed what angle works, compared how to phrase questions, corrected each other's misapprehensions," he says.

Mr. Dove said his real break came in October 1986 when Peter North Miller, the chairman of Lloyd's of London, came to San Francisco to give a speech on, of all things, the liability insurance crisis. Mr. Dove served him with a subpoena.

"He was somewhat surprised," Mr. Dove says. "No one had ever done that to the chairman of Lloyd's."

In exchange for delaying Mr. Miller's appearance, Mr. Dove was given permission to conduct voluntary interviews in London over a four-week period. He likens this agreement to swapping a whole tribe of Indians for a chief.

What followed was 170 hours of taped interviews with brokers, agents, reporters, book authors, accountants, former and disgruntled Lloyd's employees, and "anyone I could get my hands on," which produced a wealth of evidence.

"It was an amazing development," he says. "We went off to London as grade schoolers and came back as freshmen in college."

In the course of the investigation, Mr. Dove says, his attention kept returning to the reinsurance side of the business.

He says he soon came to the conclusion that Lloyd's and a

few other reinsurers wielded tremendous influence well beyond the actual volume of business underwritten and that this influence was being used to control the market.

Although Lloyd's and North American Re, two parties named in the suit, may only underwrite a small portion of the overall business, their leverage is enormous because other companies won't act without their leadership, he says. "It's a little like saying you only sell 2% of the paint in the world but if you want red you'll have to come to me," he says.

The attorney, who sports a mustache and wears an ornate gold and diamond ring on one hand, says the case has left him 25 pounds overweight. He says he spent 117 days out of the state last year gathering evidence.

"It's been incredibly tough," he says. "I missed both my children's birthdays and missed my anniversary. At times I wondered, are you ever going to make this come together?"

Mr. Dove declined to elaborate on the evidence he has amassed but said he believes his office has a very solid case. "We'd like to push it to trial as fast as we can."

Although some point out that colluders don't refuse to sell their product at any price, as the insurance industry often did, Mr. Dove says the industry's strategy was to hold off selling until it could raise premiums substantially and bring about major reductions in the scope of their responsibilities.

"Then the cost is down, the risk is down, the handling is down and profits are up. What a wonderful way to go. Too bad it's illegal."

Mr. Dove said most of the cases were filed in California because of the amount of evidence collected in the state and the laws available in the 9th Circuit. "I can assure you if the law was superior in Charleston, West Va., we'd all be there," he says.

He says they have filed suit against the most provable cases. Others fall into gray areas, he said, and it remains to be seen how many additional defendants may be named.

Cover Inquiry Leads to Peculiar Incident

By MARK MAGNIER

JOURNAL OF Commerce Staff

LAFAYETTE, Calif. — Richard Holmes, the former Lafayette mayor whose letter may have prompted the largest antitrust case in history, says he doesn't know what the insurance companies feel about him.

But he says he may have received one small indication recently.

Mr. Holmes says his personal automobile insurance was due to expire and he faced a substantial increase from his insurance company, so he decided to look around for an alternative carrier.

Over the past several years he had received letters from the Hartford Fire Insurance Co. soliciting his business and offering lower premiums. Several weeks ago he called Hartford's toll-free number to get more infor-

mation. A representative said the offer was still valid if the policy was completed by March 29.

Mr. Holmes also found that Hartford had a file on him from an accident several years earlier. At that time he had been hit broadside by another car whose driver was insured by Hartford, and as a result of paying the claim to Mr. Holmes, the company had extensive information on him.

On the telephone, the Hartford representative verified much of the information and promised to send him the necessary forms so Mr. Holmes could sign up before March 29.

Over the next few weeks, Mr. Holmes' role as a catalyst in the huge antitrust suit became better known, but he never received the promised forms. Finally on March 30, Mr. Holmes

said, he called Hartford back.

In that second phone call a new Hartford representative told him the company had no record of Mr. Holmes at all and told him to look for coverage elsewhere.

"Isn't that an odd coincidence," he said. "Now they can't find me by name, by quotation number, by telephone number or by U.S. mail zip code. They didn't offer to send me a new (form), they didn't offer to check with the supervisor, they just told me to do my business elsewhere. It's pure coincidence, of course, and you'd never be able to prove anything, but isn't that interesting?"

Mr. Holmes says he has since gone back to his old insurance company. A family member told him it is probably a better idea anyway.

A Hartford spokesperson said

the incident did sound a little peculiar on the surface but that the company would look into the matter further.

Hartford could not provide comment by late Monday.

Although Mr. Holmes' role in the antitrust lawsuit may not have endeared him to the insurance industry, it has won praise among businessmen and other members of his community, he says.

"I would like to express my great thanks to you for being the catalyst that precipitated filing the class action suit against the insurance industry," wrote one businessman in Lafayette. "You should feel very satisfied that your time investment in sitting down to write to (California Attorney General) Van de Kamp achieved your interest. Your value to the city speaks for itself."

States Assert Legitimacy Of Insurance Lawsuits

CONTINUED FROM PAGE 1A

health insurance industries to operate under a system of state regulation.

Seven states, Alabama, California, Minnesota, Massachusetts, New York, West Virginia and Wisconsin, filed suit in U.S. District Court in San Francisco on March 22. Texas filed its own suit in State District Court in Travis County because state officials believe the state has tougher antitrust and consumer protection laws.

Arizona joined the federal suit a day later. Several other states, including Florida, New Jersey, Ohio, Maryland, Connecticut and Washington, are considering filing similar legal actions.

Mr. Mattox, whose second four-year term ends in 1990, said he expects about 10 other states to join the group of attorneys general that has closely followed the insurance industry's actions since the commercial liability crisis of the mid-1980s.

The civil complaint alleges that insurers used their market power and coercive and manipulative practices during the hard market to raise prices and restrict the limits of coverage available to insureds. The suit, which includes names, dates and places, outlines how officials from major insurance and reinsurance companies allegedly met during this period to manipulate the market.

The insurance industry has labeled the charges "meritless," "unfounded" and "preposterous."

During the insurance crisis, the industry launched a massive campaign to reform the civil justice system. State legislatures in more than 40 states approved tort reform measures, which restrict injured people's ability to recover damages in court. Most legal groups and attorneys adamantly opposed the industry campaign and the tort reform measures.

Insurers have said the skyrocketing awards that accident victims receive through the court system contributed to the unavailability and unaffordability of insurance during the liability crisis.

State law enforcers aren't surprised by the industry's attempt to dismiss the antitrust lawsuit as another round in the tort reform battle.

"There's a saying that when the law and the facts are against you, you attack the prosecutor," said a spokesman for California Attorney General John Van de Kamp, a Democrat. "They're (insurers) trying to explain away the allegations."

"It's very shallow to think that nine attorneys general in nine different states, most of whom are not up for re-election, would file suit for political reasons," said Darrell Daniels, a spokesman for the West Virginia attorney general. "That's like saying anything government does is political. You have to consider the context in which it (insurers' remarks) were given."

The group of nine attorneys general that filed suits include seven Democrats and two Republicans. Two officials, Charles "Charlie" G. Brown of West Virginia and Hubert H. Humphrey of Minnesota, are running for office. Mr. Brown, a

Democrat who began his first four-year term in January 1985, is seeking re-election and Mr. Humphrey, who began his second four-year term in January 1987, is running for U.S. Senate this November.

Mr. Humphrey, a Democrat, said Minnesota's suit was not motivated by political interests but by the numerous complaints the state received from constituents who couldn't get insurance coverage between 1984 and 1986.

"Businesses and municipalities couldn't get insurance because it was up so high. They had to cut out activities or reorganize their way of doing business," Mr. Humphrey said.

He added that insurers forgot where the lines of McCarran-Ferguson ended.

"The industry narrowed their risk of coverage while sustaining prices at the same level, or higher, to preserve their profit structure," Mr. Humphrey said. "People forgot the clear lines of where the (McCarran-Ferguson) exemptions apply, that there are things they cannot do, and that the law will be aggressively enforced. They have to live like every other industry does in the marketplace."

Mr. Shannon, Massachusetts' attorney general, agreed that insurers thought they were shielded by the federal act.

"The arrogance of the industry is shown in that they left such a paper trail. They thought they were protected from any antitrust scrutiny. They made some arrogant and stupid mistakes," Mr. Shannon said.

The investigation jelled in November 1986 during a regular meeting of the antitrust committee of the National Association of Attorneys General, said Lloyd Constantine, chief of the antitrust bureau in the New York Department of Law. The department is run by New York Attorney General Robert Abrams, who will serve as association president this June.

During that meeting, the repeated liability horror stories that municipalities and businesses were reporting from around the country provided the spark for a focused investigation.

A core of states, including New York, California, Texas and Massachusetts, led the inquiry, which was patterned after previous investigations conducted under the aegis of the association of attorneys general. Staff members zero in on problem areas during the regular association meetings. Then a group of states that have the financial and staff resources devote the necessary time and money to lead an investigation.

"It's the magnitude of the case, not the process, that's remarkable," Mr. Constantine said.

After the initial states file a suit, other states become privy to the information and make their own decisions about joining the litigation, he added.

Officials believe the federal suits will be consolidated. Although a timetable is difficult to predict, most officials expect pretrial proceedings to take up to two years before jury selection begins.

"I'm sure there will be some industry heavyweights and some highly paid legal minds involved," said Mr. Brown, who was West Virginia's first antitrust director.

WEDNESDAY, MARCH 23, 1988

WALL STREET JOURNAL

Four Big Insurers Charged With Scheme To Limit Commercial Liability Coverage

By PETER WALDMAN
And BEATRICE E. GARCIA

Staff Reporters of THE WALL STREET JOURNAL

Seven state attorneys general, citing dozens of alleged secret meetings, dinner parties and behind-the-scenes threats, charged four of the nation's largest insurers with conspiring to manipulate the availability and cost of commercial liability coverage.

In separate antitrust lawsuits filed in federal court in San Francisco, the top prosecutors of Alabama, California, Massachusetts, Minnesota, New York, West

Virginia and Wisconsin alleged that a conspiracy of giant insurance companies caused the so-called liability crisis earlier this decade by colluding to jack up prices and limit the scope of insurance coverage. The basic thrust of the accusations is that a few of the largest insurers jointly pressured the rest of the industry to go along with certain policy-writing changes that made it much tougher for public agencies, businesses and nonprofit organizations to buy liability insurance.

Named as defendants in the suits were Hartford Fire Insurance Co., Hartford Conn., a unit of ITT Corp.; Allstate Insurance Co., Northbrook, Ill., a unit of Sears, Roebuck & Co.; Aetna Life & Casualty Co., also in Hartford, and Cigna Corp., Philadelphia. Also named were the Insurance Services Office Inc., a New York-based trade group, and a number of major London-based reinsurance companies and their U.S. brokers.

In news conferences across the country, the seven attorneys general denounced the alleged conspirators, blaming them for afflicting day-care centers, recreational facilities and other public and private services with unnecessary anguish and in some cases, bankruptcy.

"International conspiracies resulted in policies so shrunken in scope, so reduced in value to the customer, that they can hardly be described as insurance at all," said New York Attorney General Robert Abrams.

California's attorney general, John Van de Kamp, said: "It was the public and the consumer who paid the price for this collusive exercise in corporate greed."

Companies Respond

A spokesman for Aetna Life called the action "another political move by political officeholders who have consistently opposed any and all efforts to address the real problems of the nation's liability system." The spokesman added that "any business decisions made by Aetna executives are made independently."

A spokesman for Allstate said the company hadn't seen the suit but stressed that "Allstate is not now, and never has been, involved in a conspiracy to fix prices or constrain the market."

A Cigna spokesman said the company doesn't comment on litigation, but pointed out that Cigna's policy is to conduct business "in conformity with all state, federal and foreign antitrust laws."

Stephen Martin, vice president for government relations at Hartford, said, "These charges are totally without substance."

In New York, a spokesman for the Insurance Services Office, the trade group that coordinates industrywide policy standards and that is alleged in the suits to have been a focal point of the conspiracy, called the accusations "unfounded and meritless." He added that the group has "conducted its operations properly and legally."

THE JOURNAL OF COMMERCE, Thursday, March 24, 1988

Those Named in Suit

Journal of Commerce Staff

The U.S. and British insurers, reinsurers, trade associations and insurance brokers named in the federal antitrust lawsuit include: Hartford Fire Insurance Co., Hartford, Conn.; Allstate Insurance Co., Northbrook, Ill.; Aetna Casualty & Surety Co., Hartford, Conn.; and Cigna Corp., Philadelphia. The Texas suit also includes: Fireman's Fund Insurance Co., Novato, Calif.; Liberty Mutual Insurance Co., Boston; St. Paul Fire and Marine Insurance Co., St. Paul, Minn.; Travelers Insurance Co., Hartford, Conn.; and USF&G Corp., Baltimore.

The Insurance Services Office Inc., a New York-based rate-making and advisory trade association whose recommended policy forms are used by almost all U.S. insurers, and the Reinsurance Association of America, a Washington-based trade group for reinsurers, were named in the lawsuits.

Domestic reinsurers named in the complaint include: General Re Corp., Stamford, Conn.; Constitution Reinsurance Corp., New York; Mercantile and General Reinsurance Co. of Ameri-

ca, Morristown, N.J.; Prudential Reinsurance Co., Newark, N.J.; North American Reinsurance Co., New York; and Winterthur Swiss Insurance Co., Winterthur, Switzerland.

Lloyd's of London syndicates named in the suit include: Robln A.G. Jackson; Merrett Underwriting Agencies Mgt. Ltd.; Three Quays Underwriting Management Ltd.; Janson, Green Ltd.; R.A. Edwards and Payne Ltd.; C.J. Warrillow-Hine & Butcher Ltd.; Harvey Bowring Ltd.-Murray Lawrence & Partners; K.F. Alder & Others Ltd.; D.P. Mann & Others Ltd.; and Peter N. Miller, who was chairman of Lloyd's at the time.

London market reinsurers named in the suit include: Unionamerica Insurance Co. Ltd.; CNA Re Ltd.; Terra Nova Insurance Co. Ltd.; Excess Insurance Group Ltd.; Kemper Reinsurance London Ltd.; and Continental Reinsurance Ltd.

Brokers named in the complaint include: Thomas A. Greene & Co., New York; Ballantyne, McKean & Sullivan Ltd., London; and R.K. Carvill & Co., London.

THE JOURNAL OF COMMERCE, Thursday, March 31, 1988

Fla. Considers Joining Antitrust Lawsuit

Journal of Commerce Staff

TALLAHASSEE, Fla. — Attorney General Bob Butterworth and Insurance Commissioner Bill Gunter are exploring Florida's options in light of the recent antitrust lawsuit filed against several insurance entities.

The lawsuit alleges that certain insurers and foreign reinsurers conspired to narrow the types of coverage that were available to businesses and local government by revising basic forms, altering coverage dates, excluding pollution liability coverage and including costs for defending claims in coverage limits.

"If there is any evidence that indicates that the liability insurance crisis of the mid-1980s was aggravated to benefit certain members of the insurance industry, the state of Florida deserves and demands redress," Mr. Gunter said.

Although the attorney general's office is prohibited from discussing antitrust investigations, Mr. Butter-

worth said he has assembled a team of lawyers to determine whether Florida should join the eight states that have filed suit against the insurers.

"We know that during the insurance crisis Commissioner Gunter, through the exercise of his regulatory powers and his lobbying efforts with the Florida legislature, made every effort to minimize the impact of the coverage changes that are alluded to in the lawsuits. To the extent that those efforts were successful, Florida consumers may have suffered limited, if any, damages alleged in this litigation. That is one of the areas we have been and will continue to examine," Mr. Butterworth said.

In addition, Mr. Gunter said the Insurance Department will be conducting an investigation to determine to what extent Florida businesses and public bodies may have been injured as a result of the alleged conspiracy.

4 More States Debate Joining Antitrust Suit

NEW YORK — Representatives of four states met with New York officials Tuesday to discuss the antitrust lawsuits that have been filed against major insurance companies.

The states are seriously considering whether to join the lawsuits and are seeking additional information.

The New York attorney general's office briefed antitrust lawyers from Connecticut, Ohio, Maryland and New Jersey on the investigations that led to the filing of the suits last week, according to Chris Braithwaite, a spokesman for New York State Attorney General Robert Abrams.

Nine states, including New York, filed suit last week alleging that insurers conspired to restrict coverage and boost prices, resulting in severe affordability and availability problems faced by businesses, towns and other public agencies during 1985 and 1986.

Eight of the suits were filed in U.S. District Court in San Francisco. Texas filed in state district court in Austin.

"We can't speak for other states, but the door is certainly open to others who want to file," Mr. Braithwaite said.

"Most likely we will be filing" to join the other states in the antitrust

'Most likely we will be filing . . . It's just a matter of putting together the necessary information for that.'

— John R. Hagerty
Spokesman for W. Cary Edwards
New Jersey Attorney General

challenge, said John R. Hagerty, spokesman for New Jersey Attorney General W. Cary Edwards. "It's just a matter of putting together the necessary information for that."

Connecticut has requested and received investigation materials from Connecticut, said Robert Langer, Connecticut assistant attorney general in charge of antitrust and consumer protection.

Ohio wants to determine if its own state antitrust laws were broken by insurers, said Michael Webb, spokesman for Ohio Attorney General Anthony J. Celebrezze Jr.

Maryland also is asking its towns about their insurance problems in the mid-1980s, said Michael F. Brockmeyer, assistant attorney general and antitrust division chief. (AP)

City/State

B

Lawmakers weigh joining insurance suit

By Robert Laurie
Times Journal Bureau

JUNEAU — Legislators looking into the possibility of the state joining in a multi-state lawsuit against several insurance companies will hear from the insurance industry Monday.

Eight states filed suit late last month against four major U.S. insurance companies, charging them with conspiring with members of Lloyd's of London to manipulate the availability of certain kinds of commercial liability insurance.

Gov. Steve Cowper and Attorney General Grace Schaible will

State must pay some fees to collect any damages

decide later this month whether the state should join the lawsuit. The House Joint Committee on Economic Recovery is preparing a legislative resolution with its recommendations on the subject.

Craig Berrington, general counsel for the American Insurance Association, is scheduled to testify by phone before the panel.

Berrington, who appeared on PBS's "MacNeill/Lehrer NewsHour" following the filing of the lawsuit, is expected to tell

the committee that the charges are without merit. He claims, in fact, that the insurance companies were required under state laws to get together to develop policies.

Berrington says insurance companies are required by some states, permitted by others, to work together to develop common policy forms in order to cut down the confusion of a plethora of varying policies.

Committee chairman Rep.

Max Gruenberg, D-Anchorage, has drafted a resolution asking the governor and attorney general enter the lawsuit.

A decision whether to introduce the resolution will follow Berrington's testimony. The panel heard in Alaska Department of Law and Division of Insurance officials Thursday, along with California Assistant Attorney General Tom Dove.

Dove headed California's two-year investigation into the alle-

gations. He claims the four insurance companies; Allstate, Aetna, Hartford, and CIGNA, caused reduced coverage and availability of insurance to municipalities, non-profit organizations and businesses through collusion, cooperation and conspiracy.

Dove says the charges were developed after investigators sifted through a half-million pages of documents and more than 250 interviews.

Because insurance companies

are exempt from federal and state anti-trust laws, Dove said investigators had to drop about 25 charges any other industry would have faced.

Dove says 22 states, including Alaska, have requested information about the investigation and lawsuit. Alaska Department of Law attorneys are reviewing confidential information provided by California in order to make a decision on the state's participation.

Alaska Assistant Attorney General Richard Monkman said

See Suit, page B-7

Suit: State must pay to play

Continued from page B-1

after a preliminary review of the information that the suit looks promising.

"(In) my personal opinion, this lawsuit has a very sound factual basis," Monkman told the committee. "I believe legal theories on which its based are very sound. It's a very complicated and . . . very expensive and time-consuming investigation."

California and New York investigators will brief western state attorneys general in greater detail April 19.

If Alaska joins the lawsuits, it would be expected to share in the

costs of prosecuting the case. Dove estimates that would be less than \$50,000.

Another \$50,000 would be needed for staff and travel expenses next year.

Formally participating in the lawsuit is not the only option facing the state. Alaska could avoid most of the cost of the lawsuit simply by filing a friend of the court brief.

But if the court rules in favor of the states, Alaska would miss out on any damages that might be awarded.

Monkman says as a practical matter, the state could win money only for public entities like municipalities, school dis-

tricts or state agencies that may have been harmed. But a successful suit could open the door for businesses.

"If the state of Alaska gets a judgment against these companies in federal court under our state act, then any private entity that's been damaged can come forward and say 'here's the judgement, that establishes liability' and have a case," Monkman explained.

"So, by establishing liability by participating in the first part of the lawsuit, we will open the doors for injured Alaska businesses to file their own actions," he continued.

Regulators: States Were Pressured On ISO Forms

By RUSS BANHAM
Journal of Commerce Staff

Some former and current state insurance regulators say the insurance industry used pressure tactics trying to get them to approve changes in the commercial general liability forms used by insurers.

The changes in the forms, the standard liability forms used by insurance companies, are at the center of a massive antitrust lawsuit filed nearly three weeks ago by nine state attorneys general against several U.S. and foreign insurers, reinsurers, brokers and trade associations.

The lawsuits accuse the companies of conspiring to restrict the coverage available under their standard commercial liability policies and using their market power to guarantee that no competitors could sell broader coverage.

Paul A. "Pete" Synnott Jr., former deputy insurance commissioner of Virginia from 1960 to 1987, said the Insurance Services Office Inc. told him in 1986 that if the state did not approve new ISO claims-made and occurrence forms, the insurance market in the state would dry up.

ISO is the industry's New York-based rate-making bureau that allegedly buckled under a threatened industry-led boycott to make changes in its forms.

"They told us, either you approve the forms, or there's no market (left in Virginia)," said Mr. Synnott, currently an executive vice president of the Society of Chartered Property Casualty Underwriters.

Mr. Synnott added that regulators were "up against the wall" to accept ISO's changes.

An occurrence form is a liability insurance form that covers losses that occur during the policy period. The policy in force when the injury or loss occurs pays the claim, even if the claim is made after the policy has expired.

A claims-made form is a liability insurance form under which the insurer is liable only for those claims made during the policy period. It does not cover any claim that is received after the expiration date of the policy, even if the accident or event giving rise to the claim occurred during the effective dates of the policy.

Some insurers on the ISO committee examining the forms wanted the occurrence form eliminated entirely and suggested changes in the claims-made form, including the addition of a retroactive date provision, a pollution liability exclusion and a legal defense cost exclusion.

ISO's board originally rejected the changes, but after a threatened boycott by U.S. and foreign reinsurers of the previous forms, ISO in-

'They told us, either you approve the forms, or there's no market (left in Virginia).'

— Paul A. Synnott Jr.
Deputy Insurance Commissioner
For Virginia 1960 to 1987

corporated most of the insurers' changes.

Once ISO approved the new forms, staff members traveled to various states to inform regulators about the proposed changes. Some regulators say that ISO, and the industry itself, were doing more than educating regulators.

"There was tremendous pressure on my staff to accept the forms," said New York Insurance Superintendent James P. Corcoran. "We even had insureds writing us saying that they can't get insurance because we won't approve the forms . . . that writing us saying that they can't get insurance because we won't approve the forms . . . that we were hurting them."

New York is one of six states that did not approve the new claims-made form.

Mr. Corcoran added that while ISO did not threaten him into approving the forms, "it was said to my staff and innuendoed to me."

"They (ISO) took aim at this department, because of the huge market that exists in the state," Mr. Corcoran said. "But they wouldn't dare come into my office and threaten me. I'd tell them, 'If that's the way you want it, then we all sink together.'"

John G. Richards, South Carolina Director of Insurance, said that he received a "tremendous" amount of correspondence from the public about the proposed ISO form changes.

"We had many, many consumers saying to us that the reason for the unavailability and unaffordability of liability insurance coverage was because we did not approve the commercial general liability forms," Mr. Richards said. "I mean they used those words: commercial general liability forms. Where else would they get language like that than from someone in the insurance industry?"

June Bruce, an ISO spokeswoman, said, "We don't sell insurance, so we can't control insurance markets. We were bringing out a new product with more precise coverage descriptions that could be helpful in addressing availability problems."

"We weren't taking anything away, but were offering another new form — the claims-made," she said.

An Industry That's Far Too Cozy

By ROBERT HUNTER

The property/casualty insurance business is collusive and far from competitive. In "Invisible Bankers," Andrew Tobias says this industry "grew up as a massive exercise in price-fixing." Every truly independent study of insurance has found that insurers are too cozy with each other and with their state regulators.

Former President Gerald Ford's Justice Department and former President Jimmy Carter's Antitrust Commission both called for repeal of the insurer's antitrust exemp-



tion. The U.S. General Accounting Office found lack of an "arms-length relationship" between regulators and insurers. More often than not, GAO adds, state insurance commissioners come from, and return to, the insurance industry.

The last two presidents of the National Association of Insurance Commissioners returned to the industry as soon as their terms of office ended. Ed Muhl, the last association president, presided over the group's annual meeting last December after announcing he would go to work for the Royal Insurance Co. Not one of the other 49 commissioners spoke out against the implications of this behavior.

The commissioners do little to stop collusion. Price-fixing and other anti-competitive behavior, legal or illegal, is rampant.

Under the industry's exemption from the antitrust laws, insurers may meet and set prices. They can also resist entry from new competitors, split up markets, fix agents' commissions and otherwise keep prices above competitive levels. Their television ads look competitive, with slogans like "The Good Hands People" vs. "Glad I Met Ya." Behind the scenes, however, they collude.

The industry's protection from antitrust laws assures imperfect competition, producing higher consumer prices. The only chink in this armor is the legal exception allowing antitrust prosecution if insurers engage in boycott, intimidation or coercion.

Starting in late 1984, the insurers crossed even this line, accord-

ing to a recent lawsuit brought by nine state attorneys general.

The National Insurance Consumer Organization was convinced insurers were engaged in unlawful action in mid-1985 when it wrote to the U.S. Justice Department:

"Spokesmen for the reinsurance industry have told state regulators that they plan to withdraw en masse if they — the regulators — do not approve new insurance policy forms jointly developed by the insurers and the industry price-fixing agency (Insurance Services Office Inc.). These new policy forms severely narrow the protection provided to the insurers' commercial customers.

"A well-known insurance company executive has justified the mass departure of insurers from medical, toxic waste and directors and officers liability lines by 'the social good' in 'let[ting] the pressures build in the courts and state legislatures' to change laws respecting . . . liability.

"They have withdrawn from lines for risks with experience ranging from good to excellent and which even the insurers admit could, and should, be written.

"Property/casualty insurance industry conduct, as explained by industry leaders themselves, may be but a prelude to a larger campaign to force major industries . . . to bend to the interests and will of insurers. If their means include non-exempt joint anti-competitive action, however, then you may hold the key to important public protection. I urge you to investigate, to ascertain whether the federal antitrust laws are being violated."

We got no response, so we wrote again on March 31, 1986, offering considerable evidence of collusion.

On April 22, 1986, Douglas Ginsburg, the unsuccessful Supreme Court nominee, responded to the consumer group's appeal on behalf of the Justice Department's Antitrust Division. He said the Federal Trade Commission had investigated the charges in our letters and was "unable to find any evidence of collusion."

We later discovered that FTC investigators did not interview a single witness or subpoena a single document. The FTC staff said the investigation was merely a literature search.

There is no argument collusion has taken place; even the insurers admit that. The only debate is whether it was legal under the antitrust exemption. The courts must decide that. But Congress should end the debate and make anti-competitive collusion illegal by ending the antitrust exemption.

In recent congressional hearings, the industry claimed that insurance companies are fully competitive and never, never engage in anti-competitive behavior. If it wants to prove it, all insurers have to do is waive their defense that their actions were legal under their exemption from the antitrust laws. Any takers?

Robert Hunter is president of the National Insurance Consumer Organization.

The States Fight Back

Eight sue to beat the liability crisis

Richard F. Holmes had a problem, and he wrote his state attorney general for help. Holmes, the former mayor of the northern California town of Lafayette, complained that 80 companies had denied his town liability insurance for claims over \$500,000. "This strangely uniform action defied rational explanation," Holmes says. "It smacked of collusion." Another California town, Huron, also had insurance trouble. It had to shut down its police department for six months while working out a self-insurance plan. Crime rates jumped as crooks took advantage of the poky response time of the Fresno County sheriffs.

Lafayette and Huron were not alone: hundreds of other towns and cities were complaining about declining coverage. Last week the states took action. Eight attorneys general filed a massive antitrust suit against several of the biggest U.S. insurance companies, a trade association and even insurers with Lloyd's of London. The suit alleges "an international conspiracy to manipulate the insurance market," says California Attorney General John Van de Kamp. The states (Alabama, Arizona, Cali-



JAMES D. WILSON—NEWSWEEK

Leaving cops, firemen and other local employees uncovered: Huron's police department

fornia, Massachusetts, Minnesota, New York, West Virginia and Wisconsin) charge the insurance giants used illegal pressure to force the rest of the industry to curtail liability insurance to business and local governments. Insurance Services Office (ISO), the 1,400-member trade association, called the charges "meritless."

While the details of the suit are complex, the basic allegations are simple. The suit alleges that insurers used "boycotts, threats, intimidation" and other tactics to change industry practices. The companies allegedly pressured the ISO to sharply limit "long tail" claims—those that come to light long after the initial damage is done, as in toxic-waste cases. The states also charge that industry leaders, including

Hartford Fire Insurance Co., Allstate, Aetna Casualty and Surety and Cigna, strong-armed other insurers to eliminate coverage for pollution liability and reduce other forms of coverage. The states allege conspirators threatened to cut off companies' "reinsurance"—protection for their own liability risks. Proving a case could be tough, since the government has allowed a degree of cooperation among insurers since 1945, when it exempted them from federal antitrust laws. But Van de Kamp says the industry's actions have gotten "way over the line."

The lawsuit is only the latest gust in the storm over liability insurance. Consumer advocates charge that the industry raised rates and canceled coverage to make up for losses that were largely self-inflicted. Through the 1970s, firms raked in profits from investments and used them to subsidize cutthroat price competition. When investment income drooped in the mid-1980s, the reduced premiums couldn't make up for the losses.

Insurers blame the liability crisis on a proliferation of lawsuits. They cite studies like a March 1987 Justice Department report that rejects collusion as a culprit. Says Blair Childs, executive director of the American Tort Reform Association, "It is ironic that the attorneys general's solution to the liability crisis is to file another lawsuit." With the industry digging in its heels, towns and cities across America may have to go partially uncovered for years as they await the outcome of the suit.

JOHN SCHWARTZ with JUDY HOWARD in San Francisco

The Boutique Banks Bag Another Big Star

On Wall Street, big doesn't seem so beautiful anymore. Battered by the market crash and bitter internal disputes, big investment



NANCY MORAN—OUTLINE

An 'intellect' hire: Stockman

banks are losing talented people—often to smaller, private investment boutiques. In early March former Federal Reserve chairman Paul Volcker snubbed major firms and joined Wolfensohn & Co. Now David Stockman, the wunderkind who went to the woodshed as Ronald Reagan's budget director, has left Salomon Brothers to join the Blackstone Group.

Blackstone, headed by former commerce secretary Peter G. Peterson, invests in friendly takeovers and corporate restructurings. Peterson recruited Stockman, says one partner, for "his

intellect." He also shares the firm's world view: that U.S. trade deficits will persist, driving the dollar down further and making U.S. assets even cheaper for Japanese investors. Blackstone hopes to capitalize on the buying binge, as it did by representing Firestone Tire & Rubber when Japan's Bridgestone bid for the U.S. firm's tire operations recently. Stockman says he will delve into "strategic issues that corporations now have to grapple with." For many U.S. firms, that means deciding when to sell out to Japan, and at what price.

CORRECTION

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

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JAMES D. WILSON—NEWSWEEK

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While the details of the suit are complex, the basic allegations are simple. The suit alleges that insurers used "boycotts, threats, intimidation" and other tactics to change industry practices. The companies allegedly pressured the ISO to sharply limit "long tail" claims—those that come to light long after the initial damage is done, as in toxic-waste cases. The states also charge that industry leaders, including

Hartford Fire Insurance Co., Allstate, Aetna Casualty and Surety and Cigna, strong-armed other insurers to eliminate coverage for pollution liability and reduce other forms of coverage. The states allege conspirators threatened to cut off companies' "reinsurance"—protection for their own liability risks. Proving a case could be tough, since the government has allowed a degree of cooperation among insurers since 1945, when it exempted them from federal antitrust laws. But Van de Kamp says the industry's actions have gotten "way over the line."

The lawsuit is only the latest gust in the storm over liability insurance. Consumer advocates charge that the industry raised rates and canceled coverage to make up for losses that were largely self-inflicted. Through the 1970s, firms raked in profits from investments and used them to subsidize cutthroat price competition. When investment income drooped in the mid-1980s, the reduced premiums couldn't make up for the losses.

Insurers blame the liability crisis on a proliferation of lawsuits. They cite studies like a March 1987 Justice Department report that rejects collusion as a culprit. Says Blair Childs, executive director of the American Tort Reform Association, "It is ironic that the attorneys general's solution to the liability crisis is to file another lawsuit." With the industry digging in its heels, towns and cities across America may have to go partially uncovered for years as they await the outcome of the suit.

JOHN SCHWARTZ with JUDY HOWARD in San Francisco

The Boutique Banks Bag Another Big Star

On Wall Street, big doesn't seem so beautiful anymore. Battered by the market crash and bitter internal disputes, big investment



NANCY MORAN—OUTLINE

An 'intellect' hire: Stockman

banks are losing talented people—often to smaller, private investment boutiques. In early March former Federal Reserve chairman Paul Volcker snubbed major firms and joined Wolfensohn & Co. Now David Stockman, the wunderkind who went to the woodshed as Ronald Reagan's budget director, has left Salomon Brothers to join the Blackstone Group.

Blackstone, headed by former commerce secretary Peter G. Peterson, invests in friendly takeovers and corporate restructurings. Peterson recruited Stockman, says one partner, for "his

intellect." He also shares the firm's world view: that U.S. trade deficits will persist, driving the dollar down further and making U.S. assets even cheaper for Japanese investors. Blackstone hopes to capitalize on the buying binge, as it did by representing Firestone Tire & Rubber when Japan's Bridgestone bid for the U.S. firm's tire operations recently. Stockman says he will delve into "strategic issues that corporations now have to grapple with." For many U.S. firms, that means deciding when to sell out to Japan, and at what price.

The Surge in Self-Insurance

Soaring rates and cancellations made firms and cities change their coverage—and improve safety

A young man was playing in the deep end of a "wave pool" at a Florida water park. Suddenly his head dropped under water. He began gasping and desperately flailing his arms in the air. Several seconds later a lifeguard noticed him, jumped in and pulled him out. Back at poolside, the young man looked much better. In fact, he was fine. He was faking.

This was no teenage prank. It was an insurance audit. The young man was a local college student hired last summer to test the water park's lifeguards. What kind of insurance company would stage a drowning? One set up by the water parks themselves. Ten of them formed the company in 1986 because they had no choice: their insurance had become too expensive or been canceled.

Stung by the insurance crisis of the past decade, thousands of other companies, cities and professionals have followed a similar route, opting for what is often called self-insurance (chart). Some companies simply "go bare," paying claims straight out of their budget. Others have banded together to form new companies or "risk-retention groups"—insurance pools for firms or professionals that share similar risks. Between 10,000 and 20,000 local governmental entities are now self-insured, two-thirds of them having switched since 1985. Four years ago about 20 percent of U.S. insurance dollars went to "nontraditional" plans. Now analysts estimate that 35 percent do, and by 1990 half the market may be self-insured. "By jacking up rates so much, the insurance companies really shot themselves in the foot," says Jay Angoff of the National Insurance Consumer Organization, a group cofounded by Ralph Nader.

Traditional insurance companies say the rate hikes and cancellations were due not to unfairness or inefficiency but to a dramatic rise in lawsuits. While they concede that the business lost to nontraditional insurance may never be recaptured, they are hoping that a recent drop in rates may stem the slide. But the insurance crunch left large gaps in coverage, and alternative



BILL GILLETTE

Safety incentives: The Kemin plant in Iowa (above), the Loma Linda day-care center

plans have been the only way to fill them. Consider the Olympics. Many who watched the freestyle skiers flipping and twisting in Calgary last week must have expected a few necks to get broken. Traditional insurance companies have had the same reaction, refusing to provide coverage for freestyle skiing even though the sport actually has a low accident rate. Until days before the 1986 world championship, the American team couldn't find insurance. "Day and night I was begging, scrambling, calling anyone out there," says Howard Peterson, secretary-general of the U.S. Ski Association. Peterson eventually got coverage, but other sports decided to avoid the hassles. In April 1986 the U.S. Olympic Committee brought together 35 athletic associations to form an insurance "captive." Instead of sending premiums to an insurance company, they pay the subsidiary, which provides them with coverage.

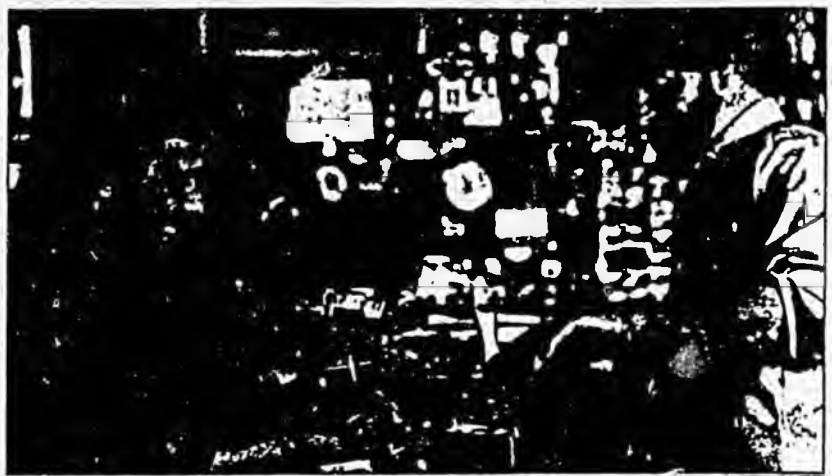
Once self-insured, companies often become safety zealots. The incentive: fear of lawsuits they will have to absorb directly.

After United Medical Corp. opted for self-insurance, it installed a safety feature on its Trotter Treadmills to prevent elderly users from losing their footing when it accelerated. Last year the Seventh-day Adventist Church began making its West Coast facilities absorb the first \$25,000 in any liability claim. It also introduced tough new safety standards. Church camps began forbidding small kids to ride large horses, and better-trained attendants were hired for day-care centers like the new facility in Loma Linda, Calif. The measures helped cut claims in half. After Dallas insured itself in May 1985, the city started checking the traffic records of all its 14,000 employees so they could keep drunk drivers from driving on city business. It removed high-diving boards from city pools, began monthly testing of fire sprinkler systems and repaired city buildings faster. "The key to being successfully self-insured is dedication to preventing loss," says Mark Ferraro, a former risk manager for Dallas. "If you're not dedicated to this, self-insur-





MICHAEL SALAS



LARRY BARRIS

Pub precautions: A N.J. bar

Risky Business

Since 1984 money spent on alternatives to traditional insurance has increased steadily.

Non-traditional Insurance

AMOUNT SPENT IN BILLIONS OF DOLLARS



ESTIMATE SOURCE: TILLINGHAST, A TOWERS PERRIN COMPANY. BLUMRICH-NEWSWEEK

ance will be the largest nightmare any city ever got itself into." Even minor changes add up. In Virginia Beach, Va., risk managers discovered that fairways at a proposed municipal golf course would make nearby houses vulnerable to aerial attack from the town's less gifted golfers. The city moved the holes.

When companies or cities join together to pool risks, peer pressure is a powerful goad to efficiency. After all, if one company in a pool gets hit with a big lawsuit, it drains the whole fund and everyone loses. Most of the groups hire consultants to assess the reliability of current and potential participants. A risk-retention group for liquid-propane-gas distributors and dealers sends inspectors to scour company parking lots for cigarette butts. "I started in the business in 1950 and I've never had as thorough an inspection as the people from the risk-retention group did," says Bill Jellison of Alliance, Ohio. Some police forces have been pressured to cut down on car crashes. "You won't see the Hollywood type of police

chase anymore," says Richard Turnlund, the city manager of Newark, Calif., which has joined a San Francisco-area pool.

Why don't all traditional insurance companies go to similar lengths? In theory, they set rates strictly according to risk. In practice, during much of the 1980s many insurance companies succumbed to "cash-flow underwriting." Maintaining a steady stream of premium payments that could be invested at a high return took priority over precise, case-by-case measurement of risks. As a result, insurance rates skyrocketed even for companies or cities that had no increase in accidents or lawsuits. The insurance industry admits such cases existed, but claims that a nationwide "lawsuit crisis" was to blame. Whatever the cause, those that have switched to self-insurance believe they are now better protected against wild insurance cycles. Sometimes it also saves money. When hundreds of uninsured New Jersey bars joined together in February 1987, their premiums were cut in half. Self-insured companies say that be-

cause they know their businesses so well, they are likely to fight frivolous lawsuits. Traditional insurers would "bungle a \$5,000 claim and make it a \$50,000 [claim]," says David Bossman, president of a group set up by companies in the feed industry including Iowa's Kem Industries, Inc.

Self-insurance can also mean self-destruction. Companies that go bare without tucking away money can be wiped out by a mammoth lawsuit. Government regulation of nontraditional plans is loose. To get tax breaks, most captives used to be established in the Cayman Islands or Bermuda, beyond the reach of U.S. laws. In 1986 Congress made forming risk-retention groups easier by allowing them to register in one state and practice nationally without adhering to other states' rules. Some state insurance commissioners warn that groups may be tempted to lower their premiums prematurely. Unlike many insurance companies, if they go belly up the state won't step in to pay injured plaintiffs. Municipal pools may also face problems. Investigations by Business Insurance magazine and a major accounting firm revealed that a huge Michigan insurance pool for 256 public entities is underfunded by as much as \$21.5 million.

For all the uncertainties, most self-insured cities and firms say they'll stay that way. They like the freedom of calculating their own risks. "The insurance companies have cast us to the wolves more than once," says Robert Esenberg, risk manager for Virginia Beach. "We've got to get control over our own destiny." As long as those memories remain strong, the market for self-insurance will keep growing.

STEVEN WALDMAN with DANIEL SHAPIRO in Houston and TOM SCHMITZ in San Francisco

The Product Liability Dilemma

By William T. Waren

Unhappy with the headline-making results of state court decisions in product liability cases over the past 25 years, many state legislators, members of Congress and businessmen are attempting to reform the legal rules that define the liability of manufacturers and merchants for product-related injuries.

Famous product liability cases of the past 25 years include the suits against the manufacturer of the Dalkon Shield, an intrauterine contraceptive device, alleged to have caused infections and spontaneous abortions resulting in thousands of injuries and many deaths. Another famous product liability case involved the alleged "exploding gas tank" of the Ford Pinto. A jury in the Pinto case levied a multimillion dollar judgment against Ford when it found a design defect responsible for the death of a woman and severe burns suffered by a child. Other well-publicized cases involved flammable baby pajamas, toxic shock syndrome resulting from an alleged design defect in tampons, and injuries resulting from alleged design defects in Japanese-manufactured, all-terrain vehicles.

Perhaps the most significant claims for deaths and injuries were raised by persons exposed to asbestos. Juries since the early 1970s have awarded large judgments to shipyard workers, asbestos workers and others exposed to the substance who subsequently developed cancer and lung diseases.

According to product liability reformers, these well-publicized cases are only part of a widespread problem. They assert that the state courts over the past 25 years have deviated from a standard of liability based on the defendant's negligence. The results are said to be unfair and excessive judgments against corporations—judgments that push small

William T. Waren is a senior program director in NCSL's Washington, D.C. office. Brenda Trolin, senior staff associate, NCSL, Denver, contributed research for this article.



Are product liability judgments excessive? Are victims' rights endangered? Is there middle ground?

firms to bankruptcy, reduce the capacity of large firms to compete internationally, and drive up the cost of property and casualty insurance for everyone.

In response to this outcry, in 1987 several state legislatures enacted statutes to protect manufacturers and sellers from what are perceived as excessively harsh common law standards of product liability. For example, the California Legislature acted to prohibit recovery based on "strict liability" as opposed to the manufacturer's negligence for injuries associated with inherently unsafe products including tobacco, alcohol, sugar and butter. The Missouri General Assembly adopted a comparative negligence standard for use in product cases and established a "state-of-the-art" defense for manufacturers and sellers. New Jersey enacted a comprehensive product liability reform bill that strengthens manufacturers' defenses and limits punitive damages, among other provisions. Ohio also enacted a comprehensive bill, limiting joint and several liability and reducing awards by the amount of benefits received by plaintiffs from collateral sources. Georgia, Montana, Nevada, North Dakota, Oregon and Texas were also among the states adopting product liability legislation in 1987. Not all of this legislation effected sweeping changes in product law, and many legislatures defeated or declined to take action on product liability bills. But, according to Diane Swensen, legislative director of the American Tort Reform Association, "In 1988 there will be at least 10 states working on product liability and I think there will be more as the battle gets going."

Congress was also busy in 1987, seriously considering legislation that would pre-empt state product liability laws. A subcommittee of the U.S. House Energy and Commerce Committee reported out a bill, H.R. 1115, in December 1987 that would set limits on the liability of manufacturers under state law. The support of the powerful chairman of the House Commerce Committee, John Dingell of Michigan,

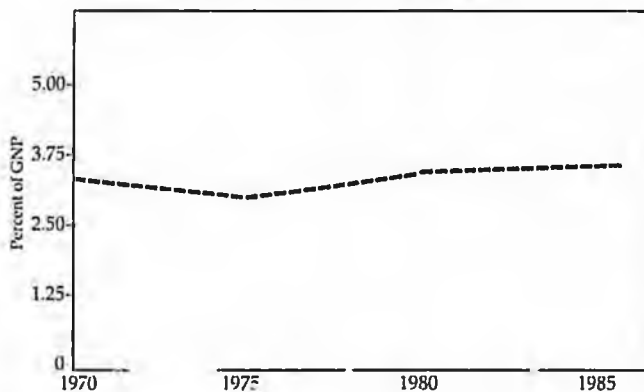
ensures that the bill will receive serious attention in Congress in 1988.

One important reason for continued legislative activity on product liability reform is the persuasive testimony presented in state legislative and congressional hearing rooms by businessmen who have been sued. What follows is the story of Robert D. Rogers, senior vice president of Lubbock Manufacturing, as told to the U.S. Senate Commerce Committee and to *State Legislatures* magazine.

In 1977 a Texas jury returned a verdict against the Lubbock Manufacturing Company, a truck-trailer manufacturer, in a product liability action. The case arose when in 1975 the driver of a tractor-trailer carrying propane gas swerved to avoid a car. The trailer turned onto its side, smashing into a bridge abutment. When the point of the bridge pierced the tank, the propane gas exploded, killing or injuring several people.

The injured persons and the families of the deceased sued

PROPERTY AND LIABILITY PREMIUMS
As a Percent of Gross National Product



Source: Consumer Federation of America

Lubbock alleging that its transport trailer was defectively designed. According to the plaintiffs, the trailer's center of gravity was too high. These charges were denied by Rogers who says, "Lubbock trailers have the lowest center of gravity of any in the industry."

Nonetheless, Rogers testified that Lubbock Manufacturing faced a \$20 million judgment—the limit in its liability insurance policy. The cost of liability insurance and lawyers' fees after the accident, he said, ultimately drove Lubbock out of business.

"My family and I," Rogers said, "had nothing but the deepest heartfelt sympathy for the victims of this terrible tragedy. Yet the consequences to my family and our business only compounded the tragedy. The demise of Lubbock Manufacturing Co. did not benefit anyone. In my mind, it was the lawyers and our current legal system that must be held responsible for the bankruptcy of the business my family struggled to maintain for over 50 years."

Robert Rogers' story is not isolated, according to the National Association of Manufacturers. NAM says the machine tool industry has shrunk by one quarter over the past decade, in part because of product liability lawsuits. The general aviation industry has reduced employment by

66 percent, and NAM claims product liability suits are an important reason for the industry's decline. Today, there are two manufacturers of football helmets in the United States, down from 18 just a few years ago. According to NAM, product liability suits are to blame.

The Chamber of Commerce of the United States contends that product liability suits are a major cause of the liability insurance crisis. Representatives of the Chamber have testified that the affordability and availability of product liability insurance are "the result of problems that businesses face with our current tort system." While liability insurance rates have stabilized, Thomas A. O'Day, vice president of the Alliance of American Insurers, reports that commercial liability losses grew 621 percent from 1967 to 1984.

The appropriate response by state legislatures and Congress, according to associations representing manufacturers, small businesses and insurers, is general tort reform and specific reforms aimed at the product liability system.

The recommendations for general tort reform are familiar to most state legislators: caps on damage awards, limits on punitive damages, limits on joint and several liability, reduction of judgments by the amount of compensation received by plaintiffs from collateral sources and shorter statutes of limitation.

Some proposed reforms, however, are aimed very specifically at product liability actions. For example, shorter statutes of repose, which are based on the life of the product rather than the date of injury, would limit suits where a product has reached a certain age. This reform is supported by the rationale that a manufacturer ought not to be responsible for the failure of a 15- or 30-year-old product. Similarly, reforms aimed at bolstering the potential legal defenses against suits may be particularly relevant in product cases. Defenses of "contributory negligence" and "misuse or abuse of the product" may effectively limit the manufacturer's liability in many cases even where a prima facie case has been made by the plaintiff. Barring evidence of manufacturers' "subsequent remedial measures" is said to be particularly appropriate in product cases because allowing introduction of such evidence may tend to penalize firms making good faith attempts to improve the safety design of their products.

The most significant tort reform specifically aimed at product cases is a rollback of strict liability. Although product liability actions may be brought under a negligence or a warranty theory, the wave of successful product liability actions in asbestos, automobile design and toxics cases coincided with the development by state courts of a third theory of product liability, so-called strict liability for manufacturing or selling a defective product that is unreasonably dangerous.

Strict liability had its modern origins in a 1963 California case, *Greenman vs. Yuba Power Products*. The plaintiff in that case was injured severely when using a power lathe. He clamped a piece of wood into the lathe, and when he began using the machine the wood flew out and struck him on the head. The defendant failed to give notice within the time specified by California law for suit under a warranty theory. But Chief Justice Roger Traynor wrote for the

California Supreme Court that a "manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect which causes injury to a human being." The rule in *Yuba Products* was codified in Section 402A of the Second Restatement of Torts, a highly influential legal research and reference publication of the American Law Institute, and subsequently was widely adopted by state courts.

Strict liability is not supposed to be absolute liability, but the scope of liability is broader than under a negligence theory. Negligence requires some showing that the defendant knew or should have known about the danger. Strict liability avoids this difficult inquiry. It focuses on the product itself rather than the conduct or state of mind of the defendant. In most jurisdictions, the plaintiff need only establish that the product is both defective and unreasonably dangerous.

Critics of strict liability allege that as applied by judges and juries it often amounts to no-fault or absolute liability. Alabama state Representative Perry O. Hooper Jr. says that "the courts have attempted to make manufacturers, in effect, the insurers of product-related injuries. This results in an entitlement mentality. Individuals should be more self-reliant." Liability, Hooper says, should be found only where there is fault as defined by traditional concepts of negligence including the traditional concept that requires, as an element of culpability, proof that the defendant made a conscious choice resulting in the plaintiff's injury.

Frustrated by their perception that the pace of state product liability reform—on strict liability and other major reforms in particular—has been too slow, and concerned that uniform standards of product liability will never be adopted state-by-state, Hooper and many others in the tort reform movement support proposed federal product liability legislation "so long as tough tort reform laws in the states are protected."

The National Association of Manufacturers reported to Congress that "the impact of the current 50 state product liability laws has been devastating—product prices have increased, products have been discontinued, innovation has been slowed, plants have closed, and thousands of Americans have lost their jobs."

Consumer groups disagree with such criticism of state law. They assert that "state product liability law is the backbone of consumer protection in our market economy. Product liability disciplines the marketplace by forcing those who make defective products to pay for the injuries their products cause." According to Pamela Gilbert, a consumer advocate, the reforms proposed "would unfairly and cruelly deny victims . . . their rightful compensation, and it would create a more dangerous society for everybody because of reduced incentives to fix or recall defective products." These views are shared by other opponents of product liability reform often including members of the plaintiffs' bar, labor unions and victims' groups.

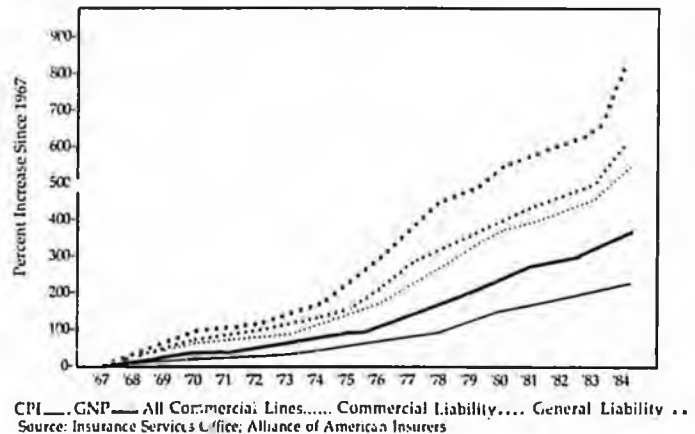
Just as the case for product liability reform is often presented in the form of case histories of individual businessmen who have suffered in product litigation, so the case against product liability reform is often presented in the form of case histories of individual plaintiffs.

Take for example *Gryc vs. Dayton Hudson*, the case of the 4-year-old girl who suffered second and third degree burns that, according to the Minnesota Supreme Court, permanently scarred her "arms, chest, breasts, stomach, back, neck and chin." She was wearing pajamas made of a cotton material called "flannelette." As the court reported the facts, when the little girl reached over an electric stove burner to turn off a ringing timer, her flannelette pajama top burst into flames.

The little girl's parents brought a product liability action against the manufacturer, claiming that because the pajama top was made with flammable cotton that had not been treated with fire retardant, it was an unreasonably dangerous, defective product. The manufacturer, they said, should therefore be strictly liable for compensatory and punitive damages.

The trial court entered a judgment on a jury verdict of \$750,000 compensatory damages and \$1 million in punitive

LOSSES AND LOSS ADJUSTMENT EXPENSES
Consumer Price Index and Gross National Product
vs. Commercial Lines



damages. In 1980, the Minnesota Supreme Court upheld the judgment. Consumer groups hailed it as a landmark decision. According to Public Citizen, a consumer group founded by Ralph Nader: "Subsequent to *Gryc* and similar cases, flannelette was taken off the market and federal law was amended to provide stronger flammability standards for children's sleepwear." State court cases like *Gryc*, according to consumer advocates, have been a major factor in the reduction of accidental deaths and injuries in the United States in recent years.

Opponents of product liability reform dispute the allegation that judgments and settlements in product liability cases have contributed significantly to the liability insurance crisis. Bob Hunter, president of the National Insurance Consumer Organization, claims that the crisis in the availability and affordability of liability insurance that struck in 1984 was "a manufactured crisis intended to bloat insurer profits and reduce victims' rights." Hunter blames the 1984-86 insurance crisis on the fluctuations in the insurance cycle, aggravated, he says, by reckless premium cuts and overreliance on investment income at the top of the cycle in 1981-82. He also believes that the industry's monopoly practices push up property and casualty insurance costs, particularly at the bottom of the cycle, and he calls for Congress to repeal the

industry's exemption from federal antitrust laws that prohibit price-fixing, market allocations and similar collusive practices. To Hunter's mind, "The crisis is within the insurance industry, not the courts."

Many product liability reform proposals are alleged to arbitrarily cut off the rights of victims. State Representative Jeffrey J. Teitz, chairman of the Rhode Island House Judiciary Committee, maintains that "of all the proposed tort reforms, caps on recovery are the most invidious because they take compensation away from the most severely injured persons who have already gone through the legal process and proven their case." Opponents say limits on punitive damages would strip the courts of an important tool for deterring corporate wrongdoing. As for limits on pain and suffering awards, a Dalkon Shield victim replies that "unless you have actually been in the situation of losing your most valuable possession as a woman, your fertility, you cannot understand that there is a great deal of pain and

safety standards, such as Food and Drug Administration approval, should not determine the issue of product safety. "Right now, evidence that a product met government safety standards is admissible. It is a tough burden for the plaintiff's attorney to get over. You have to prove that the standards were inadequate or that the hazard was outside the scope of the government regulatory process." The flannellette baby pajamas in the *Gryc* case, consumer groups point out, met government standards.

According to Doroshow, shorter statutes of limitation or statutes of repose cut off victims' rights, even where a product such as an elevator is designed or warranted to operate safely for long periods of time, or where the latency period of the harm is long, for example, where workers have been exposed to asbestos, radioactive material, or some other toxic or carcinogenic substance.

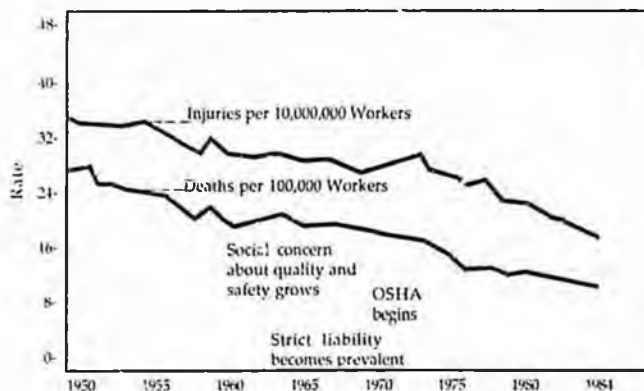
In particular, consumer groups and trial lawyers object to a rollback of strict liability. In defense of strict liability, consumer groups assert that "because the victim must prove that the product was dangerously defective in order to prevail, the product itself stands as a surrogate for the dangerous or wrongful conduct that led to the product's design, manufacture and marketing." Says Senator Ernest F. Hollings of South Carolina, "Strict liability is not absolute liability. The injured product user must prove that the product was defective in such a manner as to be unreasonably dangerous." Consumer groups maintain that a traditional negligence standard would be inadequate in product cases because of the difficulties involved in producing evidence about the manufacturer's conduct and state of mind.

Opposition to federal pre-emption of state product liability laws comes from a different quarter. Some opponents of federal pre-emption favor tort reform at the state level or may have no view on its merits. Their concern is about the effect on our federal system if the national government assumes from the states major responsibility for the law of torts. Chief Justice Harry L. Carrico of the Supreme Court of Virginia testified before the U.S. House Energy and Commerce Committee, "State courts and legislatures are well-situated to determine the social and economic impact of present law on their own communities, and many legislatures already are immersed in product liability issues."

Regardless of what happens in Washington, D.C., states will continue through 1988 to consider tort reform and product liability reform legislation. Carefully weighing the arguments of proponents and opponents of product liability reform, legislatures generally have taken an experimental approach, cautiously enacting tort reforms in the hope of helping the competitiveness of manufacturers and reducing insurance costs, while attempting to preserve the essential rights of plaintiffs. It is reasonable to expect legislatures to continue in the same mode of careful, step-by-step consideration of the issue.

Senator Robert G. Frey of Kansas perhaps spoke for many of his colleagues across the country when he noted, "The issue is not one that offers easy solutions. Responding to various constituencies through thoughtful experimentation and then waiting to observe the results of our efforts are all part of our legislative process."

INJURIES AND DEATHS ON-THE-JOB



Source: Consumer Federation of America

suffering in addition to the physical injury. The psychological effect is quite severe and it warrants attention." According to Teitz, "tort reform should be aimed at reducing transaction costs within the legal process, not reducing compensation to victims."

Jo Ann Doroshow, an associate of Ralph Nader at the Center for the Study of Responsive Law, explains that consumer groups oppose limits on joint and several liability. She says that "where you can't locate all the defendants, it is fairer for a defendant who is culpable to bear the cost of the tort than to place that burden on the victim."

According to Bob Lembo, who represents the Association of Trial Lawyers of America, additional manufacturer defenses based on misuse of the product or conformity with government safety standards would be excessively restrictive. Lembo says the current test in state law for misuse, whether it is "foreseeable" by the manufacturer, works well. It may be misuse of a product for a child, or an adult for that matter, to stick his hand in a window fan, but manufacturers can foresee the probability that people might do it unless a protective cage covers the fan. And, they say, manufacturers should be strictly liable if they fail to install such a safety device. Lembo says that "judges usually recognize misuse and deal with it by giving the jury appropriate instructions." Similarly, Lembo maintains that government

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March 11, 1988

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RE: CS For Senate Bill 211 (Judiciary)

Dear Legislator:

I have just had a chance to review the conference substitute for Senate Bill 211 passed out of the Senate Judiciary Committee and referred to the Senate Finance Committee. Though the Senate Judiciary made some changes the conference substitute is still an extremely poor piece of legislation which will have devastating effects upon any seriously injured victims of accidents in Alaska. It also adversely effects the efficient operation of the civil justice system and reduces the amount of money victims receive while increasing the amount of money spent administering liability claims.

I will attempt to give you a quick run down point by point of what the conference substitute does. Unfortunately, most of the comments that I previously made to you in my letter of February 17, 1988 sent to all legislators, are equally applicable to this conference substitute.

AS 09.17.010(b) of the proposed amendment lowers the cap of \$500,000 to \$250,000 on pain and suffering, inconvenience, loss of enjoyment of life and other non-pecuniary damages. The cap does not apply to damage awards for physical disfigurement or severe physical damages. The basic idea of placing a cap on a personal injury damage award is extremely repugnant and artificial. Why not place a cap on the amount of money a negligent person can be forced to repay if he destroys personal property. Any limitation, even the \$500,000 limitation in place under the existing law, sends a message from the Legislature to each individual Alaskan that their personal damages are not important, or at least not as important as damages to pay their doctor bills and bank mortgage payments. Who is the Legislature protecting; the individual or the economic forces in our society.

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Placing caps on individual damage awards is simply wrong. This wrongness is further exemplified by the total absence of evidence such caps are necessary to reduce insurance rates or that any insurance rates have been reduced by such caps. Passage of this legislation would send a clear message that you believe our society must make a few innocent victims who were horribly injured suffer further by limiting the compensation they may receive, in order to benefit the profit centers within the insurance industry. I strongly believe all caps on damages should be abolished, but if that does not occur, at the very least, no change in the law should be permitted.

AS 09.17.020. This effort to amend the punitive damage statute does not concern me because in reality neither the original punitive damage statute nor the proposed amendments change the law in any significant way from what it was before the statute was enacted. This is simply much adieu about nothing. However, it is baffling to me why the Legislature would wish to "seemingly" make it more difficult to obtain punitive damages where it was already very difficult to obtain punitive damages before 1986. Punitive damages are only appropriate to punish evil or malicious wrongdoers. This should be promoted by the Legislature, not made more difficult. It is the fear of punitive damage awards that forces responsibility on certain individuals, and organizations who, but for this threat, would act with reckless disregard for the rights of members of our society. Furthermore, since punitive damages are excluded from insurance coverage routinely, the award of punitive damages does not effect insurance rates.

AS 09.17.030 makes no substantive changes between SB 211 and the conference substitute; that any person who was injured while technically committing a crime, versus a felony, will be unable to recover damages for personal injury or death. It simply makes no sense to me that a person who may be violating the law in a very minor way cannot recover any damages when he suffers injuries at the hands of a wrongdoer who is much more culpable. Obviously I am not sympathetic to a thief who breaks his leg on a landowners premises while he is breaking into the landowners home. On the other hand I can't imagine a jury awarding such an individual very much money for his injuries either. He would have a difficult time finding any attorney willing to handle the case because of the unlikelihood of recovery. In looking at this proposed amendment, one must question why is it necessary. Is there really a problem which requires the substitution of crime in place of a felony that is in the current law?