ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

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Maryland		1				1				2		
Massachusetts		2			2					2		
Michigan	1	2		1	3	1	1	2	2	2	1	
Minnesota		1	1	1	1		1					
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Montana		2							2			
Nebraska				1			1					
New Hampshire	1	1	1	1				2	2	2	1	

Table A.1 – continued

STATE	CN	JSL	DAM	PUNI	AFMS	CSR	PPJ	INTX	DRAM	GOV	MMPL	MISC
New Mexico			2		2				2			
New York		1			1	1	1				2	1
New Jersey												2
Ohio											2	2
Oklahoma				1	1			1				
Rhode Island					2	2					2	
South Carolina			2							2		
South Dakota		2	2	1			1			2	2	
Tennessee									2	2	2	2
Utah		1	2				2		2		2	
Virginia			2	2				2		2		
Washington		1	1		1		1			2	2	1
West Virginia		3	2		2					2	2	
Wisconsin			2		3						2	
Wyoming		1			1				2	2	2	2

NOTE: 1 = Applicable to most tort suits, 2 = applicable only to particular case types or parties, 3 = applicable to most tort suits and specifically to particular case types or parties

ABBREVIATIONS:

CN = Comparative/Contributory Negligence
JSL = Joint and Several Liability
DAM = Limits on Damage Awards
PUNI = Punitive Damages
AFMS = Attorney's Fees/ Miscellaneous Sanctions
CSR = Collateral Source Rule Changes
PPJ = Periodic Payment of Judgments
INTX = Interest and Taxes on Judgments
DRAM = Dram Shop Liability Reform Legislation
GOV = Government Liability
MMPL = Medical Malpractice and Professional & Director's/ Officer's Liability
MISC = Miscellaneous Provisions

FLORIDA	SB 465—Joint and several liability has been severely restricted in cases involving over $25,000 in damages. No joint and several liability for noneconomic damages in negligence actions and likewise for economic damages for those defendants less at fault than the plaintiff. Itemization of damage awards is also required. No modification of the rule for: (a) action seeking economic damages for pollution incidents (b) intentional torts (c) actions governed by a specific statute providing for joint and several liability
HAWAII	SB S1(SS)—Joint and several has been eliminated for low fault defendants (less than 25 percent); this limit on joint and several does not apply to (1) economic damages, (2) automobile accident cases, (3) product liability cases, (4) property damage cases, or (5) environmental pollution cases.
ILLINOIS	SB 1200—Joint and several liability has been eliminated in negligence and strict liability product liability actions for low fault defendants (less than 25 percent). This does not apply to (1) medical malpractice cases, (2) environmental liability cases, and (3) medical expenses specifically awarded as damages in any action.
MICHIGAN	HB 5154—Joint and several liability is now limited, except in (1) product liability actions, (2) actions involving a blame-free plaintiff. Defendants are only severally liable for damages, but Michigan has the Orphan Share Clause, (i.e., any uncollectible shares of a judgment can be proportionately reallocated between solvent codefendants). Joint and several liability is now abolished for municipalities.

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NEW HAMPSHIRE	HB 513—Apportionment of damages between codefendants is now allowed.
NEW YORK	SB 9391—Joint and several liability is now eliminated for noneconomic damages for low fault defendants (50 percent or less at fault). The limitation does not apply for: (a) contract cases (b) indemnification by public employee claims (c) administrative proceedings (d) workers' compensation claims (e) intentional torts on actions alleging reckless disregard for rights of others (f) motor vehicles or motorcycle accident cases (g) actions involving absolute liability resulting from construction (h) toxic tort cases (i) product liability actions where the manufacturer could not be joined (j) and certain other actions The law also requires the itemization of verdicts for personal injury, property damages, and wrongful death.
UTAH	SB 64—Outright abolition of joint and several liability has been approved.
WASHINGTON	SB 4630—Except as follows, joint and several liability has been abolished. The exceptions include: (a) where defendants act in concert or a servant acts for a master (b) where a plaintiff is entirely fault-free (c) where toxic substances or solid waste disposal is involved (d) tortious interference with contract or business relations (e) where specified types of fungible products are involved
WEST VIRGINIA	HB 149—Joint and several liability has been abolished for defendants less than 25 percent at fault.

WYOMING	SB 17—The doctrine of joint and several liability is abolished; a party may request or a court may require apportionment of damages, and a defendant's liability is then limited to that share apportioned to him, her, or it.

2. Particular Suits or Parties

NEW HAMPSHIRE	HB 513—Just and several liability only applies to municipality when they are over 50 percent at fault.
SOUTH DAKOTA	SB 216—Joint and several liability is now modified in respect to actions against local governments.
WEST VIRGINIA	SB 714, HB 149X—Joint and several liability has been eliminated in medical malpractice actions for low fault defendants (less than 25 percent negligent).

C. LIMITS ON DAMAGE AWARDS (DAM)

1. All Tort Suits

ALASKA	SB 377—A cap on noneconomic damages of $500,000 is now provided. However, the cap does not apply to damages resulting from severe physical impairment or disfigurement. Also provided for the itemization of damages between economic and noneconomic losses.
COLORADO	SB 67—$250,000 cap on noneconomic damages, unless a court finds clear and convincing evidence that the damages exceed the cap raising the ceiling to $500,000. Eliminates awards for derivative noneconomic loss except when the court finds "clear and convincing evidence."
FLORIDA	SB 465—A cap of $450,000 on noneconomic damages in all personal injury, wrongful death, and property damage actions.
HAWAII	SB S1(SS)—A $375,000 cap has been provided on damages awarded for pain and suffering (but not other types of noneconomic losses such as loss of consortium or emotional distress) in certain tort actions. Additionally, awards for mental anguish

are unavailable in actions seeking recovery for property damage only; provides standard for determination of loss or impairment of earning capacity.

MARYLAND — SB 558—A cap of $350,000 on all noneconomic damage.

MINNESOTA — SB 2078—A cap has been enacted on "intangible losses," (embarrassment, emotional distress, and loss of consortium) exclusive of pain and suffering and disfigurement; the cap is set at $400,000.

NEW HAMPSHIRE — HB 513—A cap on noneconomic damages has been set at $875,000.

WASHINGTON — SB 4630—All noneconomic damages are capped based upon a measure of economic damages and the Washington average annual wage; a portion of this amount (.43) is used as a base figure and is adjusted to reflect life expectancy of a plaintiff (estimated to be somewhere between $177,000 and $493,000).

2. Particular Suits or Parties

COLORADO — SB 86—A $50,000 cap on damages in dram shop actions has been passed.

KANSAS — HB 2661—Noneconomic damages have been capped at $250,000 and all damages at $1,000,000 in medical malpractice actions; the cap on noneconomic damages will be annually adjusted to reflect the consumer price index. Mandatory itemization of noneconomic damage awards has been instated in such cases. "Pinhole" provision to allow courts to award supplementary medical benefits up to $3 million also instated.

MASSACHUSETTS — HB 5700—Unless special circumstances are demonstrated indicating a plaintiff will not be justly compensated, noneconomic damages in medical malpractice actions are now capped at $500,000.

MICHIGAN — HB 5154—A cap of $225,000 on noneconomic damages in medical malpractice actions that

	will be adjusted to reflect the C.P.I. has been enacted. (This cap does not apply in wrongful death actions, actions involving reproductive system injuries, and actions for loss of a vital bodily function.)
MISSOURI	SB 663—Noneconomic loss in medical malpractice actions has been capped at $350,000; the cap amount is the limit that may be awarded against each individual health care provider.
MONTANA	SB 22XX—The liability of the state and its political subdivisions has been capped at $750,000 per claimant and $1,500,000 per incident.
NEW HAMPSHIRE	HB 513—The liability of governmental subdivisions is now limited to a cap on all civil damages that has been set at $150,000/$500,000.
NEW MEXICO	NM HB 244—A $50,000/person, $100,000/incident, cap on personal injury/death damages in dram shop actions has been passed, $20,000 for property damage.
SOUTH CAROLINA	HB 2266—Limits liability of state and its subdivisions to $250,000/incident and $500,000/occurrence.
SOUTH DAKOTA	SB 282—The existing cap on noneconomic damages in medical malpractice actions has been changed to a cap of $1,000,000 covering all damages. Additionally, the cap was broadened to include actions against all health care providers.
UTAH	SB 111—Noneconomic damages in medical malpractice actions are capped at $250,000, but specifically included are damages for pain and suffering and inconvenience; punitive damages are specifically excluded.
UTAH	SB 182—A cap on damages in dram shop actions has been enacted; liability is limited to $100,000/$300,000.
VIRGINIA	HB 624—A cap of $25,000 or the amount of insurance coverage carried is provided in actions against transportation districts.

WEST VIRGINIA	SB 714, HB 149X—A $1,000,000 cap on noneconomic damages has been enacted on medical malpractice damages.
WEST VIRGINIA	SB 3—Noneconomic damages are limited to $500,000 when involving political subdivisions.
WISCONSIN	AB 4—Damages in medical malpractice actions have been capped at $1,000,000.

D. PUNITIVE DAMAGES (PUNI)

1. All Tort Suits

ALASKA	SB 377—Clear and convincing evidence is required before punitive damages can be awarded.
COLORADO	HB 1197—Punitive awards may not exceed the amount of compensatory damage award; one-third of a punitive damage award goes to the State General Fund; proof of malice, fraud, or willful and wanton conduct is required; court has ability to reduce punitive awards if deterrent effect is accomplished, or to increase them up to three times the amount of actual damages if misbehavior continues during trial.
FLORIDA	SB 465—Punitives cannot exceed three times the compensatory damage award unless clear and convincing evidence is shown; 60 percent of any punitive damage award goes to the Public Medical Assistance Trust Fund or the State's General Fund.
HAWAII	SB S1(SS)—Punitive damages are now uninsurable unless an inclusion is specifically provided by an insurer.
ILLINOIS	SB 1200—Plaintiffs would no longer be able to plead for punitive damages in their original complaint; subsequent motion to amend is granted only following a hearing where the plaintiff stands a chance to win the punitive award at trial. Defendant must be shown to have acted in a willful and wanton manner. Court has discretion to distribute punitive award among the plaintiff, his or her attorney, and the State's Department of Rehabilitation Services; applies to negligence actions and product liability actions based on a strict liability theory.

IOWA	SB 2265—Willful and wanton disregard for the rights and safety of another must be proven prior to an award of punitive damages. 75 percent or more of a punitive award must be paid to the State's Civil Reparations Trust Fund, except where the action resulted from a tort specifically directed at the particular plaintiff; no discovery of a defendant's wealth is permitted prior to establishment of a prima facie case.
MINNESOTA	SB 2078, HF 1950—Pleas for punitive damages are no longer permitted in their complaint; a prima facie showing of defendant's liability is required before an amendment of pleadings.
NEW HAMPSHIRE	HB 513--Punitive damage awards are now prohibited.
OKLAHOMA	SB 488—Punitive damage awards have been capped; no punitive award may exceed the amount of actual damages awarded; the level of proof required raised also.
SOUTH DAKOTA	SB 280—Punitive damages must be proved by clear and convincing evidence of willful, wanton, or malicious conduct on the part of the defendants.

2. Particular Suits or Parties

IOWA	SB 2265—Limits liability of municipal officers and employees for punitive damages.
VIRGINIA	HB 624—Punitive damage awards are prohibited in actions against transportation districts.

E. ATTORNEY'S FEES/MISCELLANEOUS SANCTIONS (AFMS)

1. All Tort Suits

ARIZONA	HB 2377—Establishes penalties for unjustified actions.
CONNECTICUT	HB 6134—A contingent fee scale limiting attorney's fees is now required (1/3 of 1st $300K, 1/4 of next $300K, 20 percent of next $300k, 15 percent of next $300K, and 10 percent of rest). Also creates sanctions (which could include defense costs) for frivolous behavior for filing in absence of probable cause.

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GEORGIA	HB 1146 HB 1185—Parties filing frivolous suits to pay defendants fees and cost; dismissals of action for frivolous suits.
HAWAII	SB S1(SS)—Any party may request court review or their attorney's fees; compensation is limited to a "reasonable amount"; attorneys' fees are now available as a sanction for frivolous defenses as well as frivolous actions (not to exceed 25 percent of prayer).
IDAHO	HB 1469—Places limits on attorney contingent fees.
ILLINOIS	SB 1200—Sanctions may be assessed against parties, attorneys, and insurers for frivolous pleadings, defenses, and motions; attorneys' fees would be available as a sanction.
INDIANA	SB 393—Courts may impose attorneys' fees as a sanction against parties who bring frivolous actions or defenses.
IOWA	HB 2265—Authorizes the court to stay actions if past actions by the party have been frivolous. Requires certification of pleadings and motions and provides sanctions for violation.
KANSAS	HB 266—Modification of civil procedures for determination of frivolous suits.
MICHIGAN	HB 5154—Awards of attorneys' fees are now available as sanctions for frivolous suits and defenses.
MINNESOTA	HF 1950—Allows the award of costs in frivolous suits.
NEBRASKA	LB 298—Allows the award of prejudgment interest as a sanction for unreasonable failure to settle (offers of settlement are compared to the judgment to determine reasonableness).
NEW HAMPSHIRE	HB 513—All contingent fee arrangements must be filed with the court and those in actions where the damage award is over $200,000 are subject to court review. Allows the court to assess costs and attorneys' fees from frivolous suits and defenses.

NEW YORK	SB 9351—Attorneys' fees and costs are now available as sanctions for frivolous suits and defenses.
OKLAHOMA	SB 488—Attorneys' fees are now available as sanctions for frivolous suits and defenses up to an aggregate of $10,000.
WASHINGTON	SB 4630—New law provides for the discretionary review of contingent fee contracts by courts; also, attorneys' fees are now available as sanctions for frivolous suits and defenses.
WYOMING	HB 14, HB 15—Courts authorized to determine frivolous suits and make plaintiffs liable for sanctions.

2. Particular Suits or Parties

HAWAII	SS S1—All fees in medical malpractice cases are subject to court approval.
KANSAS	HB 2661—Courts are now able to review attorneys' fee arrangements in medical malpractice cases.
MAINE	SB 958—Establishes an attorneys' contingent fee scale in medical malpractice actions.
MASSACHUSETTS	HB 5700—Establishes fee limits in medical malpractice cases.
NEW MEXICO	SB 1110—Caps fees for workers' compensation cases according to a sliding scale.
RHODE ISLAND	SB 2891—Attorneys' fees and costs are now available as sanctions in frivolous medical malpractice actions.
WEST VIRGINIA	SB 714—Frivolous suit sanctions are provided in medical malpractice actions.
WISCONSIN	AB 4—Attorney's fees have been regulated in malpractice actions.

F. COLLATERAL SOURCE RULE CHANGES (CSR)

1. All Tort Suits

ALASKA	SB 377—Introduction and limited offset are now provided for collateral sources that do not have statutory or contractual rights of subrogation.

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COLORADO	SB 67—Admissibility and offset with broad exclusions or sources with subrogation rights.
CONNECTICUT	HB 6134—Expansion of application of the collateral source rule modifications for malpractice actions to all civil actions; admission and offset are provided, but sources having rights of subrogation are excepted from offset.
FLORIDA	SB 465—The traditional collateral source rule to allow admission of evidence of collateral source benefits; offset is provided, but benefits having a right of subrogation are not offset; those seeking subrogation are required to share the attorneys' fees and costs incurred by the plaintiff.
HAWAII	SB S1(SS)—Court is required to determine the validity of liens and rights of subrogation; such valid liens are to be paid from special damages recovered.
ILLINOIS	SB 1200—The collateral source rule is modified in that only benefits in excess of $25,000 can be offset and no more than 50 percent of a tort judgment can be reduced by offset of duplicative sources, but sources having rights of subrogation cannot be offset.
INDIANA	SB 394—The traditional collateral source rule has been abolished; evidence of collateral sources of payment is now admissible; a court may reduce excessive awards to reflect collateral sources at its discretion as well as reducing subrogation liens under certain circumstances.
MICHIGAN	HB 5154—The traditional collateral source rule has been abolished; the court may consider evidence of collateral benefits; offset of collateral sources is provided, but such offset cannot reduce a plaintiff's damages by more than the amount awarded for economic losses, and the offset is first reduced by the sum of any premiums paid for their benefit by either plaintiff, his or her family or employer. Sources having statutory liens cannot be offset; sources with contractual liens are required to act to assert the lien or lose it.

MINNESOTA	SB 2078, HR 1950—The traditional collateral source rule has been abolished; while evidence of collateral source payments is now admissible, only the court may review such evidence; offset is provided for, but all collateral sources having rights of subrogation are excluded.
NEW YORK	SB 9351—Abolition or traditional collateral source rule; admission of evidence and offset of collateral benefits are now provided; offsets are reduced by last two years premiums and future premiums necessary to secure collateral payments; sources with mandatory liens and workers' compensation, life insurance, and certain social security benefits may not be offset.

2. Particular Suits or Parties

MASSACHUSETTS	HB 5700—Rule on collateral source modified in medical malpractice cases.
MICHIGAN	HB 5154—Admission of collateral sources and offsets by court in medical malpractice cases.
RHODE ISLAND	SB 2891—In malpractice cases, collateral source rule has been modified to provide for introduction of evidence of additional sources of a recovery and an offset of such sources.

G. PERIODIC PAYMENT OF JUDGMENTS (PPJ)

1. All Tort Suits

ALASKA	SB 377—Periodic payment of judgments for future damages is now permitted in certain circumstances.
CONNECTICUT	HB 6134—Mandatory provisions for periodic payment of judgments have been enacted when noneconomic damages exceed $200,000, unless the parties agree otherwise.
FLORIDA	SB 465—Periodic payments are now mandated where a party requests such a plan and where future damages for economic losses exceed $250,000.

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IOWA	SB 2265—Periodic payment of awards is permitted at the court's discretion following petition of a party.
MARYLAND	SB 558—Periodic payments of awards are permitted at the discretion of the court.
MICHIGAN	HB 5154—Periodic payment of judgments for future damages over $250,000 is now mandated.
NEW YORK	SB 9391—Periodic payment of future damages over $250,000 is mandated if a party requests them.
SOUTH DAKOTA	SB 281—Periodic payment of future damages in bodily injury actions is permitted where a good faith claim for such damages of $100,000 or more is shown; provisions for election and objection have been enacted.
WASHINGTON	SB 4630—The court is required to order the payment of judgments by means of a periodic payment plan upon a party's request.

2. Particular Suits or Parties

HAWAII	SB S1(SS)—The state and its subdivisions now have the option of paying judgments against them in excess of $1,000,000 by means of periodic payments.
KANSAS	HB 2661—All medical malpractice settlements are to be paid periodically.
MAINE	SB 958—Mandates periodic payments of future medical malpractice awards in excess of $250,000.
UTAH	SB 155—Periodic payment of damages in medical malpractice actions is now mandated where either party so requests.

H. INTEREST AND TAXES ON JUDGMENTS (INTX)

1. All Tort Suits

ALASKA	SB 377—Establishes prejudgment interest accrual principle.
INDIANA	SB 39[illegible]-Upon the request of any party, an instruction to jury that it may not consider tax consequences of its verdict is available.

MICHIGAN	HB 5154—Prejudgment interest on awards for future damages is now prohibited; the rate of interest on judgments has been changed to 1 percent above the yield on five-year U.S. Treasury bills.
MINNESOTA	SB 2078—Any award of interest on damages for future loss is prohibited.
NEBRASKA	LB 298—The rate of interest on judgments is now tied to the rate of return on 52-week U.S. Treasury obligations plus 1 percent; the award of prejudgment interest as a sanction for unreasonable failure to settle is now available (offers of settlement made are compared to the judgment to determine reasonableness).
OKLAHOMA	OK SB 488—Prejudgment interest on awards for punitive damages is now prohibited, the rate of interest on judgments has been changed to 4 percent above the U.S. Treasury bill rate.

2. Particular Suits or Parties

VIRGINIA	HB 624—Awards of prejudgment interest damages are prohibited in actions against transportation districts.

I. DRAM SHOP LIABILITY REFORM LEGISLATION (DRAM)

ARIZONA	HB 2170—Liability may be imposed only where the liquor licensee serves an obviously intoxicated person; liability of servers is several only.
COLORADO	SB 86—Dram shop actions are now capped at $150,000; liability for servers is limited to circumstances where a licensee or social host serves a visibly intoxicated person or minor.
CONNECTICUT	HB 6134—Sellers to intoxicated persons are liable up to $20,000/party, $50,000/incident. Rebuttable presumption of such sole liability is established.
IDAHO	SD 1439—Limits dram shop and social host liability.

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INDIANA	SB 85—Dram shop liability is now abolished except where a defendant furnishes alcohol to a visibly intoxicated person or where a plaintiff can show that service was a proximate cause of injury.
IOWA	SB 2265—Liability of servers has been limited to only those licensees who knew or should have known that a person consuming alcohol was already intoxicated; servers other than licensees or permittees may not be held liable for injuries resulting from a person's intoxication; consumption rather than service is legislatively declared the proximate cause of injury.
LOUISIANA	ACT 18—Those who sell, serve, or furnish alcoholic beverages generally not liable.
MAINE	LD 2080—Immunity to servers unless minors can prove negligent service. Does not apply when adult was visibly intoxicated. $250,000 cap exclusive of medical expenses.
MICHIGAN	HB 455—The liability of retail servers of alcohol has been limited to injuries resulting from service to a minor or visibly intoxicated person.
NEW HAMPSHIRE	HB 513—Limitations on dram shop liability have been enacted. Intoxicated drivers need to show gross negligence in future suits; defines "good business practices" for defense purposes.
NEW MEXICO	HB 244—Personal injury/death damages in dram shop actions is capped at $50,000/person, $100,000/incident, $20,000 for property damage. Establishes certain limitations of such liability.
TENNESSEE	HB 1199—Dram shop liability has been abolished except where a defendant serves an intoxicated person or a minor or where injury was caused by such service.
UTAH	SB 182—Liability in dram shop actions is limited to $100,000/$300,000 and is subject to one-year statute of limitations.
WYOMING	HB 13—Dram shop suits now may be brought only in circumstances where a licensee or other person sells or provides alcohol in violation of law.

J. GOVERNMENT LIABILITY (GOV)

ALABAMA	HB 178, SB 369—Grants immunity to certain members and associated 178 parties of various staff boards and commissions.
COLORADO	HB 1185-1187, HB 1196—Various limits on municipal liability including that arising out of water flow; clarifies immunity of public entities and employees.
CONNECTICUT	HB 6134—A measure limiting liability for acts of municipal employees has been enacted.
GEORGIA	HB 1471, HB 1549, HB 1526—Clarifies sovereign immunity of municipal corporations and establishes immunity for government employees and officials.
HAWAII	SB S1(SS)—The state and its subdivisions now have the option of paying judgments against them in excess of $1,000,000 by means of periodic payments.
HAWAII	HB 1993-86—Provides for additional exemptions to the state's tort claim act.
ILLINOIS	SB 1200—Public officials and employees are free from punitive damages claims when they arise from conduct of their official activities; the statute of limitations period in actions brought against public entities is shortened from two years to one year; local government liability is limited in actions arising from provision of traffic control devices and certain police, fire, and emergency services; local government liability is limited where a person is injured as the result of a hazardous recreational activity or on waterways adjacent to public property; local governments would no longer waive immunities by the purchase of insurance.
IOWA	SB 2265—Actual malice or a criminal offense must be proved for liability to be imposed upon officers and employees or municipalities and limits their liability for punitive damages; liability is limited regarding licensing decisions, the granting of permits, inspections, and financial regulatory activities.

MAINE	SB 700—Immunity is now provided to mediators under contract with the state judicial department.
MICHIGAN	HB 5154, HB 5163—Joint as several liability is completely eliminated for municipalities; limits liability of the state and its subdivisions when engaged in the exercise of its governmental functions.
MISSISSIPPI	SB 2166—Sovereign immunity has been totally reinstated.
MISSOURI	SB 647—Reestablishes sovereign immunity with several exceptions.
MONTANA	SB 22XX—The liability of the state and its political subdivisions is capped at $750,000 per claimant and $1,500,000 per incident.
NEW HAMPSHIRE	HB 513—All civil damages against governmental subdivisions are limited to $150,000/$500,000. Joint and several immunity only applies against municipalities when over 50 percent at fault. Acts of a government unit or employee that result in a pollutant incident are conclusively presumed to be reasonable; this presumption applies where the unit acted in accordance with state-of-the-art technology; strict and absolute liability is not available in such actions.
SOUTH CAROLINA	HB 2266—Restores some of the state's sovereign immunity by reestablishing about 20 categories of qualified immunities and limited liability of the state and its subdivisions to $250,000/incident and $500,000/occurrence.
SOUTH DAKOTA	SB 216—Joint and several liability was modified in actions against local governments; sovereign immunity for public entities applies only to the extent of their liability insurance coverage.
TENNESSEE	SB 1701—Except where conduct amounts to willful, wanton, or gross negligence, members of boards of governmental entities are now immune from civil suit.
VIRGINIA	HB 624—A cap of $25,000 or the amount of insurance coverage carried is provided and awards

	of prejudgment interest and punitive damages are prohibited in actions against transportation districts.
WASHINGTON	SB 4630—Immunity has been provided for school board members and directors of hospitals.
WEST VIRGINIA	SB 3—Limits noneconomic damages in suits involving political subdivisions to $500,000, deploys 25 percent rule regarding joint and several liability, lays out standards for liability immunity or political subdivisions employees.
WYOMING	WY 39—Grants officers and board members of governmental entities immunity.

K. MEDICAL MALPRACTICE AND PROFESSIONAL & DIRECTORS/OFFICERS LIABILITY (MMPL)

ALASKA	AK SB 377—Civil liability has been limited for members of boards of not-for-profit organizations, hospitals, school boards, and municipalities.
COLORADO	SB 1201—Limits liability for mental health professionals when they use an accepted standard of care but fail to anticipate a patient's violent behavior.
CONNECTICUT	HB 6134—Plaintiffs in malpractice action are required to file a certificate of merit with their complaints indicating that another provider believes their claims have merit. Also limits liability of directors and officers of nonprofit organizations.
DELAWARE	SB 533—Except for breaches of loyalty, bad faith acts, intentional misconduct, and wrongful transactions from which a director derives personal benefit, shareholders of a corporation may now limit the liability of directors.
HAWAII	SS S1—All attorneys' fees in medical malpractice cases are subject to cost approval; also provides for a statute of limitations of two years after discovery or six years after act (except for minors).

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ILLINOIS	SB 1200—Immunity would be provided for officers and directors of certain not-for-profit corporations.
INDIANA	HB 1284—Directors of not-for-profit corporations have been given immunity for acts and omissions not covered by liability insurance coverage.
IOWA	SB 2265—Expert witnesses in medical and dental malpractice actions must have qualifications directly related to problems or treatments at issue; new requirements for disclosure of expert witnesses in professional liability actions; restricts the discovery and use of medical malpractice peer review and disciplinary proceedings; expands use of voluntary agreements.
KANSAS	HB 2661—Noneconomic damages are capped at $250,000 and all damages at $1,000,000 in medical malpractice actions; the noneconomic damage cap will be annually adjusted to reflect the consumer price index; new expert witness requirements; pretrial settlement conferences are now required; courts are now able to review attorneys' fee arrangements in malpractice actions. Mandatory itemization of noneconomic damage awards and period payment of all settlements; "pinhole" provisions for court award of supplemental medical expenses up to $3 million.
MAINE	SB 958—Mandatory prelitigation screening by mediation panels in malpractice actions; three-year statute of limitations for actions for professional negligence; prohibits wrongful birth and wrongful life actions; mandatory periodic payments of future awards in excess of $250,000; establishes an attorneys' contingent fee scale in malpractice actions.
MARYLAND	SB 600—Personal immunity for directors of charitable organizations if the organization is insured.
MASSACHUSETTS	HB 5700—Noneconomic damages in medical malpractice actions are now capped at $500,000 unless special circumstances are demonstrated indicating a plaintiff will not be justly compen-

	sated. Collateral source rule modified. Attorney fees limited in medical malpractice cases.
MICHIGAN	HB 5154—Noneconomic damages in medical malpractice actions are capped at $225,000 and the cap will be adjusted to reflect the C.P.I. (this cap does not apply in wrongful death actions, intentional torts, foreign objects left inside, actions involving reproductive system injuries, and actions for loss of a vital bodily function and a few other exemptions); stricter standards for expert witnesses, and a prohibition contingent fee on compensation of expert witnesses; option for defendants to file an affidavit of noninvolvement rather than an answer; itemized damages; collateral source rule modifications; a new mediation system for medical malpractice actions; a statute of limitations is now six years regardless of when injury was discovered, and other miscellaneous provisions.
MISSOURI	SB 663—A cap of $350,000 has been enacted on damages for noneconomic loss in medical malpractice actions; the cap amount is the limit that may be awarded against each individual provider. Requires submission of an affidavit that the action is not frivolous.
NEW HAMPSHIRE	HB 513—Directors' and officers' liability is now limited; the burden of proof in medical malpractice actions has been revised.
NEW YORK	SB 9740—Medical malpractice plaintiffs are now required to file a certificate of merit with their pleadings and a new arbitration procedure is available in medical malpractice actions when defendants concede liability; new provisions for monitoring professional competence and investigating misconduct are provided.
	SB 9351—The liability of directors, officers, and trustees of not-for-profit corporations is limited to cases of "gross negligence."
OHIO	SB 366—Immunity has been extended to uncompensated members of boards of directors of charitable organizations.

RHODE ISLAND	SB 2891—Attorneys' fees and costs are now available as sanctions in frivolous malpractice actions; additionally, the collateral source rule has been modified to provide for introduction of evidence of additional sources of a malpractice plaintiff's recovery and an offset of such sources.
SOUTH DAKOTA	SB 282—The previous cap on noneconomic damages in medical malpractice actions has been changed to a cap of $1,000,000 covering all damages; the cap was broadened to include actions against all health care providers.
TENNESSEE	SB 1701—Except for willful, wanton, or gross negligence, directors and members of boards of not-for-profit entities are immune from suit.
UTAH	SB 111—Noneconomic damages in medical malpractice actions are capped at $250,000 (specifically included are damages for pain and suffering and inconvenience; punitive damages are specifically excluded from the cap). SB 155—Periodic payment of damages in medical malpractice actions is now mandated upon request of either party.
WASHINGTON	SB 4630—Immunity has been provided for school board members, directors of hospitals, and officers and directors of nonprofit organizations.
WEST VIRGINIA	SB 714—A $1,000,000 cap on noneconomic damages has been enacted on medical malpractice damages; the use of ad danmum clauses is now prohibited in medical malpractice pleadings; a two-year malpractice statute of limitations includes a discovery standard for accrual; all medical malpractice actions must be brought within 10 years of the injury; the period for which minor causes of actions are preserved has been shortened; medical malpractice actions accruing for a minor under 10 years of age must be brought within two years or by the child's twelfth birthday, whichever is later; greater peer review powers have been granted to the Board of Medicine; mandatory pretrial conferences are now required;

frivolous suit sanctions are provided; expert witness standards are specified; joint and several liability has been modified in medical malpractice actions; joint and several liability applies to defendants who are 25 percent or more negligent; several liability applies to defendants who are less than 25 percent negligent.

WISCONSIN — AB 4—Damages in medical malpractice actions have been capped at $1,000,000; attorney's fees have been regulated in malpractice actions; tougher medical disciplinary standards have been enacted.

WYOMING — HB 12, HB 40—Modifies the standard of care used to determine medical malpractice; pretrial screening panels.

HB 39—Grants nonprofit officers and board members of nonprofit entities immunity.

L. MISCELLANEOUS PROVISIONS (MISC)

ALASKA — SB 377—The definition of fault used in the state's comparative fault language has been expanded to include reckless actions, strict liability, and product liability. Bars a party from recovering losses for personal injury or death if it occurs during his or her commission of a felony.

ARIZONA — HB 2377—Raises limits for mandatory arbitration.

COLORADO — SB 69—A measure has been enacted shortening the statute of limitations period for the bringing of civil actions from four years to two years (intentional torts are one year).

SB 76—A Good Samaritan provision has been enacted.

SB 1192—Limits liability for the manufacturing of firearms.

SB 1205—Limits a homeowner's liability when the property is entered illegally.

HAWAII	SB 1(SS)—An arbitration provision has been enacted applicable to actions seeking damages up to $150,000. Punitive damages are now uninsurable unless specifically provided. Also abolishes cause of action for serious emotional distress arising from damage to property or material objects.
INDIANA	HB 1284—Good Samaritan Rule applies to volunteers unless entity assisted has insurance.
IOWA	SB 2265—Plaintiffs found to have prosecuted three or more frivolous actions within five years may be required to post security. Ad damnum clauses have been prohibited in personal injury and wrongful death actions. The liability of non-manufacturers for product liability injuries has been limited. Creates state-of-the-art defense in P.L. suits. No discovery of a defendant's liability permitting prior establishment of a prima facie case.
KANSAS	SB 668—Evidence of product improvements may not be introduced in product liability actions; design feasibility evidence may be used only to impeach a witness who has denied feasibility.
LOUISIANA	ACT 952—Provides for limited civil liability connected with hazardous waste and asbestos abatement and cleanup.
MICHIGAN	HB 5154—A new mediation system for civil actions other than medical malpractice actions is now provided (this system is parallel to, but separate from, the medical malpractice mediation system described in Section II C).
	HB 5154—Reforms have been enacted in rules determining proper venue.
NEW YORK	A 10664, S 9391A—Statute of limitations extends from three years after exposure to three years after discovering an injury with a one-year revival of claims.
NEW HAMPSHIRE	HB 513—The statute of limitations period for personal injury actions has been shortened from six years to three years.

NEW JERSEY	SB 1678—Provides immunity to volunteer unpaid athletic coaches under certain circumstances.
OHIO	SB 366—Immunity to volunteers of nonprofit or charitable associations (some exemptions).
TENNESSEE	SB 1854—Asbestos removal immunity for local education agency employees.
WASHINGTON	SB 4630—Voluntary intoxication of a plaintiff by means of alcohol or drugs that is responsible for more than 50 percent of an injury is now a complete defense in wrongful death actions; defendants are protected from liability if the injured party was engaged in the commission of a felony.
WYOMING	HB 59—Makes certain entities not liable for injuries at amateur rodeos absent willful neglect.

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

NATIONAL INSURANCE
CONSUMER ORGANIZATION

Statement of

J. ROBERT HUNTER, PRESIDENT
NATIONAL INSURANCE CONSUMER ORGANIZATION

Before: The Joint Hearing
of the
House Labor and Commerce Committee
and the
House Judiciary Committee
of the
Alaska State Legislature

April 25, 1989

Mr. Chairman and members of the Committee, it is a great pleasure to be back in Alaska.

I have a question: Why are you still considering so-called "tort reform" when everywhere else the issue is now insurance reform and "tort reform" is a dead issue? There is a good reason for the change. Consider these facts:

*20 States, including Alaska, have sued insurers alleging collusion to create the liability insurance crisis of the mid-1980's --- the predicate for "tort reform."

*California citizens adopted Option 103, wisely recognizing the need to tame the monumental (and uncontrolled) insurance industry.

*We now know that tort reform doesn't lower insurance rates but insurance reform does!

*Key insurance reform proposals have gained widespread support (for example, the effort to repeat the anti-trust exception insurer enjoy in the McCarran-Fergusen Act is supported by both ABA's (Bar and Banker), small businesses, the American Nurses' Association, the National Association

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of Attorneys General), AARP, all consumer groups, environmental groups, civil rights groups, the FTC and the Ford, Carter and Reagan Justice Departments).

I. FROM A CONSUMER VIEWPOINT, WHAT'S WRONG WITH TORT REFORM?

A. "Tort Reform" doesn't lower prices

Given this history, any adoption of Tort Reform without mandatory lower insurance rates is surely buying 'a pig in a poke.'

1. The Aetna and St. Paul Filings. Aetna Casualty and Surety Co. and St. Paul Fire and Marine Co. have undertaken closed claim studies purposing to demonstrate that the savings resulting form five major tort reforms enacted in Florida -- eliminating the collateral source rule, capping non-economic damages, restricting joint and several liability, limiting punitive damages, and requiring periodic payment of future economic damages -- would be negligible. See attachments 1A and 1B.

2. The State Farm letter. State far has corroborated the Aetna and St. Paul results. In a letter to the Kansas Insurance Department State Farm concludes, on the basis of "a sampling of commercial liability claims," that the following tort reforms would bring about the following savings:
   a. eliminating the collateral source rule -- "about 1%";
   b. non-economic cap -- "will not exceed 1%";
   c. restricting joint and several liability -- "in our sample of liability claims, no claim was found that would have been affected by the joint and several restriction";
   d. limiting punitive damages -- "in our sample, no punitive damage awards were found";
   e. alternative payment of future economic losses - savings "would be negligible."

State Farm also emphasized that "it will probably be several

years before any effect from tort reform legislation can be expected to influence our experience." See Attachment 2.

3. The Florida Insurance Department data. 277 rate filings purporting to calculate the effect of the Florida tort reforms are on file with the Florida Insurance Department. 175, or 63%, showed no effect from the Florida tort changes, and the average reduction in all 277 filings was 1.2%. See Attachment 3. By way of contrast, insurance companies increased premiums in Florida by 62% in 1985, according to NAIC data, and by a similar amount in 1986.

4. The Great American West letter. In Washington state, which enacted perhaps the most comprehensive tort reform package in the nation in 1986, Great American West, Inc. calculated that the new law would, if anything, raise insurance rates. Great American West concluded:

"It does not appear that the 'tort reform' law will serve to decrease our losses, but instead it potentially could increase our liability. We elect at this point, however, not to make an upward adjustment in the indications to reflect the impact of the 'tort reform law." See Attachment 4.

5. The ISO Chief Executive Circular. Perhaps most disturbing, the Insurance Services Office has announced that it is issuing "advisory" rates that show no reduction resulting from tort reform, and has emphasized to its member companies that "any beneficial effects of tort reform cannot be quantified with any degree of accuracy" (emphasis ISO's). See Attachment 5. Yet when in 1975 New York enacted tort reform that would expand liability by replacing contributory negligence with comparative negligence, with comparative negligence, and would through raise insurance costs, ISO immediately raised its advisory rates by 5%,

and provided full actuarial justification for the increase. See Attachment 6. It is not readily apparent why ISO can tell us how much rates should rise when tort law expands, but can't tell us how much rates should fall when tort law is limited.

Whether it is good public policy to reduce insurance rates by limiting compensation to seriously injured people is a question on which reasonable minds can differ. But it is clearly not good policy to limit compensation to injury victims and get nothing in return.

B. "Tort Reform" lowers consumer rights and gives them nothing in return.

"Tort reform" takes away from the victim of negligence. It grants nothing in return for this reduction in rights. There should be a quid-pro-quo if Alaska's citizens are to be denied their rights.

C. "Tort Reform" is not based on careful analysis of need.

There have been few careful studies of how victims are treated under the current liability system to determine if there is a problem that needs fixing.

For Texas, where a closed claim study was undertaken, it showed no need for changes in the legal system

To try to find something without understanding what, if anything, is wrong with it, makes no sense.

D. "Tort Reform" lowers the deterrance effect of the legal system.

How could copying the liability of Exxon's oil transport strike you? Or Ford in building Pintos? Or A.F. Robbins in building Dalcom Shields?

America's consumers need the protection of the legal system to deter inappropriate behavior; to stop "crime in the suites."

E. The need for flexibility

People are not chattle. They are not fenders bumped or houses burned. When a drunk driver runs over a bread-winner, or a little girl, or a underwater reef, the penalty must fit the circumstances, both in terms of the victim and the wrongdoers act.

II. WHY DO CONSUMERS WANT INSURANCE REFORM?

A. Insurers are grossly inefficient

"Republican or Democrat, liberal or conservative, there is one thing we can agree on --- waste is bad, inefficiency robs us all."

Andrew Tobias
The Invisible Bankers

"Tobias says we are inefficient and he's right. We spend too much on distribution, overhead and just plain waste."

John Cox, President
Insurance Agency of North America

One of the best service auto liability insurers, USAA, delivers the product at a total overhead cost of twenty cents on the premium dollar. The average insurer requires over thirty-five cents. Prices could fall by 19% if the average insurer becomes as efficient as USAA.

B. Insurers are not well regulated.

Alaska's insurance regulation has historically been, to put it in its most favorable light, non-existant. Often bragging about the highest profits in the nation in its annual report, the Department has not historically protected consumers in this state.

When last I appeared here, I challenged then Director George by saying I doubted that the Department had ever

disapproved a rate. He responded by pointing out that he had too disapproved a rate -- an automobile rate for State Farm -- a decrease!! He said he was afraid State Farm would attract too much business if their rates went down.

How's that for consumer protection?

I don't mean to pick on Alaska, particularly State regulation generally is awful. I am encouraged by the neew Director Roller. The U.S. General Accounting Office found "a lack of arms-length relationship between the regulators and the regulated" and that consumers were, generally, not protected by the state insurance departments of the nation.

C. Insurers are not fully competitive

In most states, insurers are structured comparatively. In auto insurance, for instance, 29 states have low concentration (Herfindahl-Hirschman Index below 1000), 21 are moderately concentrated (HHI between 1000 and 2000) and one, Alaska is heavily concentrated (HHI greater than 1000).

So, you have a problem with relying on competition, even in the best of competitive worlds.

But insurance is hardly "the best of competitive worlds," viz:

*it is largely exempt from anti-trust laws (Alaska exempts it from state anti-trust law and the McCarran-Fergusen Act exempts it from federal anti-trust law).

*it is the last bastion of fair trade laws (the Alaska anti-rebate law makes it unlawful for agents to offer discounts).

*there are prohibitions on group sales

*insurance price and service information is hard to understand, if you can find it at all.

Combining these comparative impediments with weak regulation guarantees two things:

- inefficiency and/or
- excessive profits

D. Alaska's profits are excessive

We know insurers are inefficient so profits can be hidden. But profits are too high in Alaska. According to the National Association of Insurance commissioners, Alaska's property/casualty insurance profits are among the highest in the country.

Here are the overall profits for the last decade:

	Premium Earned	Operating Profit	Total Return on Equity Ø	Premium Earned*	Operating Profit	Total Return on Equity
1978	$285 Million	6.3%	17%	$80 Billion	5.9'1	16'1.
1979	258	9.1	23	89	4.7	14
1980	257	6.8	19	95	4.6	15
1981	264	3.5	13	97	3.3	13
1982	332	18.0	43	103	0.7	8
1983	412	4.8	17	111	-0.2	7
1984	443	3.1	14	121	-3.2	1
1985	537	-1.9	4	140	-4.1	-
1986	642	3.4	15	176	2.0	13
1987	636	7.1	23	197	3.1	15
Total	$4,066 Million	5.4%	18%	$1,209 Billion	1.4%	10'1.

*Source: National Association of Insurance Commissioners, Profitability by line, by state, ten most recent editions.

Ø Estimated by assuming equity to premium rates of 2:1; investment income on equity of 9% latest year decreasing by 0.5'1. by year.

And this national 10% return understates the real economics vitality of their industry. during the same 10 years, the property/casualty industry's common stock have risen by 308'1. vs. 163'1. for the NYSE Composite Index (Source: Bests' Insurance Management Regents, January 1988.

Profitability in 1987 in Alaska for Medical Malpractice was over 50'1. return on equity and for other liability was over 40%r e-turn. But this was a high profit compared to other recent years. Medical malpractice profits in Alaska mirror the national aver-ages over a ten-year review. When the General Accounting Office discounted reserve method of measuring profits is used, the return is about 30% over 10 years. The other liability return in Alaska was lower than the national average of GAO, 26% It was about 12% a good, not excessive return (if you ignore expense inefficiencies).

In 1987, Alaska's leading writers did well, viz:

Leading Medical Malpractice Writers:

		Loss Rates*
1.	Medical Indem. Alaska	50.8%
2.	Medicine/N.S. Exch.	34.0
3.	CNA	66.5
4.	Health Care Indem.	56.6
5.	Amer. International	53.0

A profitable loss ratio would be about 90%. This shows remarka-ble profits in 1987.

*Source: Best's Executive Data Service

Alaska's Leading Other Liability Writers

		Incurred/Earned Less Ratio
1.	American International	62.9%
2.	Alaska National Insurance	33.8
3.	Crum & Forster	64.8
4.	Nationwide	50.3
5.	CNA	50.6

A loss ratio of the order of 85% should be profitable. Again, 1987 was a remarkably good year for insurers in Alaska.

1988 was better, nationally. I do not have 1988 Alaska data as yet.

III. THE SPECIFIC PROBLEM - MEDICAL MALPRACTICE FOR DOCTORS DELIVERING BABIES IN RURAL AREAS

A. A real problem

No one should minimize the serious nature of unaffordability of malpractice insurance in rural areas for doctors delivering babies. Alaska is not alone in having this problem.

B. The Medical Malpractice "Crisis" in Alaska is NOT Due to an Expensive Aggregate System Cost.

If you look at the total costs of the Medical Malpractice system in Alaska it is an inexpensive system. For example, the latest data from the National Association of Insurance Commissioners (NAIC) shows total premiums in Alaska of $13.6 million during 1987. That's $28.00 per person (The statistical Abstract of the United States shows 481 Thousand people in Alaska in 1984).

For perspective, the average American spends $133f per year on tobacco products.

Another way to look at system cost is vis-a-vis total medical costs in the state. According to the Alaska Department of Health, Alaska spent $2,763 per capita health care costs by 1.0% ($28.00 divided by $2,763). I dare say that if you had no system to compensate the victims of malpractice and someone offered to do it for you for a percentage this small, you'd probably grab it.

C. Allocation is the Problem.

The problem is cost allocation, not total system costs. There are only about 550 doctors in Alaska (Statistical Abstract, 1986). This drives the cost very high, to about $25,000 per doctor on average, some of which may

be positive (because of deterrence effects), but some of which is likely inappropriate.

If you think of the medical profession as a pyramid, with the relatively many G.P.'s at the bottom and the relatively few specialists at the top, I think the problem becomes easier to visualize.

If I wake up in the morning with a bad back and go to my G.P., the likelihood of a major malpractice suit arising is negligible. But if my back is a serious medical problem, I will be referred up the specialty ladder until I get to the neurosurgeon.

At the top of the pyramid, where the number of insureds is least, the risk is greatest. Bad outcomes become more likely. The chance of lawsuit rises, and the cases are much more complex.

I believe it violates insurance spread-of-risk principles to force so much through such a narrow base. (Even though neurosurgeons net income, after med mal premiums, is excellent according to medical economics).

For one thing, why should the defense costs for the complex suits neurosurgeons win be forced to be spread through only the neurosurgeons? Why shouldn't the referring physician and the hospital granting privileges bear some of the cost of successful suits (as incentives for safer referrals/privilege granting)?

The overall system cost is reasonable in your state. Your focus should be on the allocation process, in my estimation.

IV. REINSURANCE PROBLEMS

A. Lloyds of London, the dominant reinsurance company with approximately 25% of the world-wide market, has been wracked by scandals in recent years.

For example:

o Between 1973 and 1982, two Lloyd's underwriters, Peter Cameron-Webb and Peter Dixon, siphoned off for their own use $55 million belonging to 1,500 Lloyd's members. Investigators say they used the money for yachts, corporate aircraft, a French orange juice company and a pornographic movie entitled "Let's Do It." see Chicago Tribune, Oct. 20, 1985, at 5; Business Week, Aug. 5, at 57.

o Many of the 1,500 swindled by Cameron-Webb and Dixon are suing Lloyds (although Parliament immunized Lloyds from lawsuits in 1982, the 1.500 are claiming that the immunity doesn't apply to events occurring before 1982). Lloyds, on the other hand, is claiming that the 1.500 owe Lloyds another $180 million. 100 members face bankruptcy and 200 have been suspended for failing to meet Lloyds' solvency test. See Chicago Tribune, Oct. 20, 1985; Business Week, Aug. 5, 1985.

o Lloyds has grown too fast. In the last decade the number of Lloyds' members has more than tripled to 26,000. Chicago Tribune, Oct. 20, 1985. Since 1981 alone, Lloyds has added 7,000 new members, including "newly rich doctors, lawyers, accountants and rock musicians . . . lured by the hope of annual returns to members that topped 100% some years." Business Week,. Aug. 5, 1985. Its total premium writing capacity rose from $3.4 billion to $9.4 billion. Id.

B. In 1982, Lloyds was granted immunity from lawsuits by the British Parliament. Business Week, Aug. 5, 1985, at 58.

C. Lloyds has threatened, coerced and intimidated both insurers and insureds -- such as states -- in order to keep insurance rates high, as the following statements indicate:

o You may recall this statement:

> "If you change your tort laws in Alaska, you will have a market here when the rest of the United States will not. Lloyds is pulling out of the United States as a reinsurer -- they have already pulled out of Connecticut, New York and New Jersey
>
> -- and they're continuing to pull out of more states."
>
> Statement of Jeff Johnson, Partner, LeBoeuf, Lamb, Lieby and McCrae (U.S. counsel for Lloyds), at the Casualty Insurance Colloquium, Anchorage, Alaska, Sept. 17, 1985.

Alaska is not alone:

o ". . . in order to keep [Lloyds] participation on cover we had to accede to some strong suggestions from the reinsurers to beef up the rate charged to the OB's."

> Statement of John Spinella, President, Medical Mutual Liability Insurance Society of Maryland, before the Governor's Task Force on Medical Malpractice, Oct. 22, 1985.

o "[reinsurance brokerage head Thomas A.] Green said that beginning in 1986, Lloyd's syndicate would 'simply not write reinsurance for the American casualty industry.'"

> Journal of commerce, June 18, 1985.

o "Mr. Wakefield conceded that Lloyds cannot dictate to American regulators on Policy approval, but he wryly

said that if the new form is not approved, Lloyds will not reinsure American liability underwriters."

Journal of Commerce, July 26, 1985, citing C.T. Bowing & Co. Chief Executive Gerald Wakefield, presenting Lloyds' views to 17 insurance commissioners.

- "A Lloyd's of London delegate who flew over expressly for the [insurance commissioner's] meeting added that unless the U.S. industry was permitted to adopt the new form, the lloyds reinsurance market would discontinue backing American underwriters forthwith."

Journal of Commerce, July 27, 1985.

D. Neither the U.S. government, the states, or the British Parliament regulate Lloyds.

E. The British pound, which was worth $2.80 in the mid-1960's has been worth less than half that for most of the last two years and fell to $1.05 in February 1985. Thus, whereas Lloyds would need to pay only 10,000 pounds to satisfy a $28,000 claim in 1963, today it must pay 20,000 pounds to satisfy the same claim and in February 1985 -- when the pressure first started to build for tort reform -- it had to pay 26,600 pounds.

V. SOLUTIONS

A. How to Solve the Insurance Crisis -- What Alaska Should Do

1. Repeal Alaska's Anti-trust Exemption
2. Repeal statutes that prohibit businesses and consumers from joining together to buy insurance in groups. Today, in most states, group health and life insurance is available, but group liability insurance is illegal. If laws prohibiting such group insurance were repealed, the price of liability insurance would fall.

3. Prohibit rate increased from taking effect until such increases are approved by the insurance commission. Today, in most states, increases automatically take effect unless disapproved within a certain number of days; because the burden is on the insurance commission to disapprove a rate, and because insurance commissions do not have the staff to analyze even a fraction of rate filings, most increases automatically take effect. Shifting the burden of proof to the insurance company to demonstrate that a rate increase is justified would limit such increases.

4. Allow greater consumer representation before regulatory bodies. Typically, only regulators and insurance companies participate in rate cases. to increase citizen participation in the ratemaking process, states should authorize Citizens' Insurance Boards, groups of insurance consumers who would intervene on their own behalf. In the alternative, states could establish Offices of Public Advocates to intervene in rate cases, as new Jersey and some other states have. In New Jersey when the Public Advocate intervenes in a rate case the cost of that intervention is billed back to the insurance company seeking the rate increase, thus discouraging insurers from seeking exorbitant increases.

5. Require that insurance rates be based on experience. Because insurance companies today often lump all insureds in a category together, regardless of how often any individual insured has been sued, good risks currently subsidize bad risks. Experience rating would go along way toward bringing down premiums for medical malpractice insurance, in which experience rating is now virtually non-existent.

6. Enact tough conflict-of-interest statutes to close the "revolving door." As the U.S. General Accounting Office has found, 50% of state regulators come from and return to the industry; the relationship between the industry and the regulators is not an arms-length relationship.

7. Require that insurance companies disclose their loss data on a line-by-line basis. Such disclosure would enable regulators to better discern whether rates are excessive, inadequate or unfairly discriminatory.

8. Establish state reinsurance programs.

9. Beef up the Insurance Department both authoritatively and with resources.

10. Repeal the state anti-rebate law.

11. Publish buyers guides with price and service information.

B. Medical Malpractice

Render the above:

1. Lessen the number of classes.

2. Let hospitals bear part of the cost for adverse procedures in the hospital. Consider channeling doctors malpractice costs through hospitals.

3. Consider a specific subsidy in rural areas for physicians consider additn a malpractice charge on all health insurance premium as a subsidy dollar base.

4. Attract more physicians to Alaska to normalize the patient/doctor ratio.

VI. WHY CONSUMERS OPPOSE HOUSE BILL NO. 166

Generally:

1. We lose rights.
2. We get nothing in return (such as a victim's reparations regime).
3. It treats us like a fender, not a person.
4. It won't work to lower rates and make insurance more available.
5. It lowers deterrance.
6. There is no study showing need for change.

It specifically has these problems, among others.:

1. Lets faulty product manufacturers or bad surgeons off the hook if six years go by before the product blows up or the sponge works its way into someone's heart.

2. Fixes the possibly real problem of collateral source in exactly the opposite (and wrong) way. While no one should collect twice for the same injury, the wrong doer should pay, not our policies. Our rate should go down, not drunk drivers.

   mandate subrogation and order lower health insurance rates.

3. Creates inter-family problems by limiting a baby's right to sue to two years ending special treatment for minors.

4. It limits our freedom to choose the sort of settlement we want, lump sum or structured.

5. It creates a disincentive for insurers to pay (as if they needed any more) by charging them below market interest if they delay.

6. It caps non-economic damages in wrongful death cases at a pitiful $50,000.

VI. CONCLUSION

Alaska needs reform that works -- Alaska needs insurance reform. Like other smaller population states, large multi-national insurers can hold you hostage. You may well need consider working for interstate compacts with larger states to avoid the kind of under pressure Lloyds and others have brought to bear here. And other states are moving. Almost every state has insurance reform bills before the legislature. Little New Mexico voted to repeal that state's anti-trust exemption, but the governor vetoed it under intense pressure from the insurers. Arizona has many reform bills before it. South Carolina is moving a bill. Maryland returned to prior approval. The Texas Senate late last week voted to repeal that state's anti-trust exemption. The Chairs of the U.S. Senate and House Judiciary Committees have introduced bills to end McCarran's broad anti-trust immunity.

Now is the time for insurance reform. I pledge NICO's assistance to you in achieving such real reform.

Thank you. I would be happy to answer your questions when that is appropriate.

Attachment 1A
FCC 86-2172

Commercial Insurance Division
151 Farmington Avenue
Hartford, CT 06156
(203) 273-0123

August 8, 1986

Honorable Bill Gunter
INSURANCE COMMISSIONER
Florida Department of Insurance
Tallahassee, FL 32301

ATTN: Mr. Charlie Gray, Chief
Bureau of Policy and Contract Review

Dear Mr. Gray:

RATE REVISION
CONTRACTORS LIABILITY POLICY PROGRAM
THE AETNA CASUALTY AND SURETY COMPANY
THE STANDARD FIRE INSURANCE COMPANY
THE AUTOMOBILE INSURANCE COMPANY OF HARTFORD, CONNECTICUT

In accordance with your Insurance Laws, our Companies file a revised liability rate level which results in an overall selected premium increase of 17.2% with an annual premium effect of $622,250.

Our Companies' decision to revise rates results only after a thorough and comprehensive analysis. We evaluated our experience, market conditions, tort reform, and other relevant factors as they affect the establishment of adequate rate levels. The enclosed exhibits prepared by actuarial unit are submitted in support of our rate filing decision, and demonstrate that the resultant rates are neither excessive, inadequate, nor unfairly discriminatory.

We propose to implement this filing with respect to all policies written on or after January 1, 1987. So as to not delay the filing of our rate level decision, revised rate pages will be forwarded under separate cover when available.

A stamped, self-addressed envelope is enclosed for your convenience in responding.

Sincerely,

Thomas L. Rudd

Thomas L. Rudd, Superintendent
Insurance Department Affairs - Commercial Lines

BODILY INJURY CLAIM COST IMPACT OF FLORIDA TORT LAW CHANGE

Summary

The following table summarizes the expected impact of the new Florida law on bodily injury claims costs (including Allocated Loss Adjustment Expenses). The impacts shown were developed from data gathered via a special claim study conducted by the AEtna. The claim study and the analysis are detailed in the succeeding sections of this memorandum.

Impact of Tort Law Changes

Impact of Tort Law Changes

Tort Law Change	Line of Business: Products Bodily Injury	Line of Business: All Other General Liability
Collateral Source Offset	0	(0.4%)
Joint & Several	0	0
Limitation of Noneconomic Damages to $450,000	0	0
Punitive Damages	0	0
Future Economic Damages over $250,000 Paid at Present Value	0	0

All Other General Liability includes the bodily injury liability portion of package policies, SMP Section II, and monoline General Liability policies. The analysis as shown is based solely on AEtna data and, therefore, is applicable only to AEtna's book of business.

Claim Study

The attached special claim analysis form, designed to gather data on the impact of the tort reforms, was completed by experienced Branch Office claim personnel. Claims eligible for analysis were selected according to the following criteria:

1. Commercial Casualty claims (excluding National Accounts business) for policy years 1981 through 1985
   a. reported prior to January 1, 1986
   b. open as of May, 1986
   c. closed during the last six months

2. All claims in category (1) with indemnity payments or reserves over $25,000 were analyzed (total of 55 claims).

3. Fifty closed claims with indemnity of less that $25,000 were randomly selected.

The completed forms were reviewed for internal consistency prior to coding and analysis.

Collateral Source Analysis

Exhibits I and II detail the analysis of the revision in the collateral source rules. Exhibit I is for claims over $25,000 indemnity. Exhibit II is for claims under $25,000 indemnity.

Exhibit I shows that since the right of subrogation exists for many collateral sources available to the plaintiff, the economic losses incurred are not expected to be substantially reduced due to the law change. Furthermore, current AEtna claim settlement practices recognize, in part, the existence of collateral sources as part of the negotiating process used in arriving at a mutually satisfactory damage value with the plaintiff.

Exhibit II shows that for claims under $25,000, no additional savings are expected due to the change in Florida law.

Joint and Several Analysis

Exhibit III details the analysis of joint and several additional payments made by AEtna. Total joint and several payments were 4.5% of indemnity payments over $25,000. A review of each claim generating additional payments due to joint and several liability indicated no reduction in those payment due to the interaction of economic damages sustained by the plaintiff, the percentage of liability assigned to AEtna's insured, and the policy limits purchased.

Analysis of Limitation of Noneconomic Damages to $450,000

Nine claims had the potential for coming under the new limitation for noneconomic losses. The nine cases were identified on the basis of full liability value—not our insured's share of the liability. Data in the above format allowed for a review of whether total claim value could be reduced and whether such a reduction would impact on AEtna's incurred claim cost.

The review of the actual data submitted on these cases indicated no reduction of cost. This result is due to the impact of degree of disability on future losses, the impact of policy limits, and the actual settlement reached with the plaintiff; all seemed to reduce the expected noneconomic component of damages to less than $450,000.

Analysis of Punitive Damages

Only two cases were found where punitive damages had an impact on the claim settlement value. The total impact was estimated at less than $15,000 or less than 0.1% of total indemnity payments. Consequently, it appears that there will be no impact on AEtna's claim values due to changes in the allocation of the punitive damages awarded.

Analysis of Installment Payment of Future Economic Damages Over $250,000

Ten claims had the potential for coming under this section of the law. The review of individual cases indicated no net savings to AEtna for the following reasons:

1. interaction of policy limits, past economic losses, and future economic losses

2. settlement value of the case

3. apparent implicit recognition of the periodic nature of future damages

Overall Summary

The expected net reduction in claim costs is based on an analysis of AEtna claims. As such, the analysis is applicable only to AEtna's book of business.

Due to the level of detail of the historical claim data, informed claim judgement was required in some instances to ascertain some of the detail required for the analysis. The judgement, if any, was exercised by experienced claim adjustors and is implicit in the analysis.

The analysis shown represents the best estimate of future cost reductions if the law as currently structured remains in effect. However, the sunset provision of the law takes effect in four years. Furthermore, the law applies only to cases filed under the law, and the Florida statute of limitations is four years. Consequently, it is possible that any plaintiff who might be severely impacted by the provisions of the law would delay filing until after the law expires. If this situation arises, then the expected reductions will be lower than those indicated in this memorandum.

St. Paul Fire and Marine Insurance Company
St. Paul Mercury Insurance Company
Medical Professional Liability
State of Florida

ADDENDUM

In 1986, Florida passed a number of changes to the tort system. We have reviewed the tort changes and their potential effect on our medical professional liability experience. Our review is based on a study of over 300 Florida closed claims. The total effect of the bill based on this evaluation was very small.

Evaluation:

Of the 313 closed claims that were studied, only four claims would have been effected by the law for a total effect of about 1% savings. (Exhibit A) Furthermore, all of these savings would have been eliminated if the courts had assigned only 10% more of the blame on our insureds than our claim department had estimated. It's highly likely that there would have been no savings on these claims had the bill been in effect. (Exhibit B)

Our study covered all of our Florida physicians, surgeons and hospital claims that closed in 1983 and 1984. Economic loss was determined based on the plaintiff's medical loss, weekly wage, and time lost from work. These losses were reduced for the time value of money.

We added the noneconomic loss cap to the total economic losses. The cap is $450,000 times the portion of negligence assigned to our insured. We compared this maximum award under the new law to the amount that the St. Paul actually paid on behalf of our insured.

The conclusion of the study is that the noneconomic cap of $450,000, joint and several liability on the noneconomic damages, and mandatory structured settlements on losses above $250,000 will produce little or no savings to the tort system as it pertains to medical malpractice.

Comments on other provisions of the bill:

a. Collateral source offset

The medical malpractice provisions prior to this act provided for subrogation against collateral providers. The effect of this subrogation would be similar to the effect of the collateral source rule. Therefore, the net effect of eliminating the subrogation and allowing collateral sources is negligible.

b. Itemization of Damages

Damages were itemized in our evaluation of this tort reform and no savings were shown. They are probably already implicitly itemized by either juries or our claim department when settling claims. We expect no savings from this provision.

St. Paul Fire and Marine Insurance Company
St. Paul Mercury Insurance Company
Medical Professional Liability
State of Florida

ADDENDUM
(Continued)

c. Frivolous Suit Protection

This provision can either work for or against us depending on who wins the case. No savings are expected from it.

d. Additur/Remittitur

This provision can also work for or against us. No savings are expected.

e. Punitive Damages

The legislation reduces the monetary incentive for punitive damage cases, but not total award amounts. Since these cases often have a retaliatory incentive, no savings are expected.

f. Timing of Effects

The tort changes made in Florida apply to losses occurring on or after July 1, 1986. On a claims-made policy, they will effect only the portion of our expected losses with accident date after July 1, 1986. This will impact the equivalent of our first year losses.

g. Conclusion

The tort law changes effective July 1, 1986 in Florida will, hopefully, have a positive impact on loss costs for occurrences after that date. However, to forecast the effect is highly speculative. Our evaluation of prior losses showed little or no savings under key provisions of the law and our analysis of other provisions show no expected savings. Our best estimate is no effect from the tort changes.

It can be hoped that the adoption of these tort changes will have an intangible effect on society, and further work to mitigate future loss trends. However, the trends in medical malpractice have been very high. The effect of the reform needs to be very strong to stem such trends.

Attachment 2

State Farm Fire and Casualty Company

State Farm General Insurance Company

112 E. WASHINGTON ST.
BLOOMINGTON ILLINOIS 61701

October 21, 1986

Mr. Ray Rathert
Kansas Insurance Department
420 S. W. 9th Street
Topeka, Kansas 66612

Ray:

Before any discussion of State Farm and tort reform, it must first be clearly understood that most of the problems in the liability field are in lines which State Farm does not write. Because of this, the impact of tort reform on our book of business is going to be considerably different from that of a major liability writer.

We have been requested by several insurance departments to come up with some estimate of the effect of newly passed tort reform legislation on our rates in their states. We know of no way this can be done actuarially. Consequently, we resorted to judgement.

The few enacted tort reform statutes usually include items such as:

1) Collateral source of indemnity

2) A non-economic cap

3) Joint and several restriction

4) Punitive damage limitation

5) Alternate methods of payment.

A sampling of commercial liability claims provided the following:

1) Collateral source of indemnity. The sample indicated that approximately 7% of our total indemnity losses were potentially subject to a collateral source. Only about a quarter of these reflected a known collateral source. In our judgement, 50% would be a very liberal estimate of the success in reducing damages due to the existance of a collateral source. The net savings from the collateral source change is thus about 1% (7% X 25% X 50%).

2) Non-economic cap. Non-economic caps are established at such a level that our sample indicated only very few claims would exceed the cap. It is our judgement that the loss savings resulting from the non-economic cap will not exceed 1% of our total indemnity losses.

3) Joint and several restriction. In our sample of liability claims, no claim was found that would have been affected by the joint and several restriction.

4) Punitive damage limitation. Again, in our sample, no punitive damage awards were found.

5) Alternative methods of payment. On our book of business, the savings due to alternative payment methods on future economic losses would be negligible in relation to our total indemnity losses.

Although we believe the effect of tort reform on our book of business would be small, we do believe that effective tort reform legislation can have a positive impact on not only pricing but also availability. It is important to keep in mind that tort reform, or absence thereof, is only one of many factors which influence pricing and availability. Any of these other factors can produce an opposite effect which could equal or outweigh any positive effect of tort reform.

Attached are liability rate comparisons for Kansas and surrounding states. As you know, we use ISO rates for monoline policies. Even in our package policies, the original liability loadings were also derived from ISO rates.

Again, as you know, we do review our rate levels at least annually. It will probably be several years before any effect from tort reform legislation can be expected to influence our experience. Anyway, hope these brief comments will be of some use to you in your discussions of this subject.

Best regards,

Bob

Robert J. Nagel
Assistant Vice President
State Filings Division

RJN:kc/1021

Attachment 3

NATIONAL INSURANCE
CONSUMER ORGANIZATION

Effect on Insurance Rates of Florida Tort Reforms -

for all companies filing as of 11/01/86

% Reduction	Number of Filings				
	Commercial General Liability	Commercial Package	Auto	Other	Total
0	72	28	31	44	175
0-2.5%	12	25	5	3	45
2.5-5%	18	14	6	0	38
5-7.5%	7	1	7	1	16
7.5-10%	2	1	0	0	3
Over 10%	0	0	0	0	0
Total number of filings	111	69	49	48	277
Average Reduction	-1.3%	-1.5%	-1.5%	-0.2%	-1.2%

Average calculated by assuming all filings are of equal premium weight. Companies that filed rates and did not calculate the effect of the new tort reforms are not included.

Source: Florida Department of Insurance

121 N. Payne Street
Alexandria, Virginia 22314
(703) 549-8050

Attachment 4

GREAT AMERICAN · WEST, INC.

100 S. MANCHESTER AVENUE
ORANGE, CA 92668
714/634-4600

April 23, 1986

Mr. Norman Figon
Rate Analyst
Washington Insurance Department
Insurance Building
Olympia, WA 98504

Re: American National Fire Insurance Company
Select Driver I Program
Select Driver II Program
Private Passenger Automobile
Rate and Rule Revision

Dear Mr. Figon:

In your letter of March 25, 1986, you indicated that we need to place a provision in our ratemaking to reflect the impact of the "tort reform" law. As an attempt to quantify, we reviewed twenty-four claim files, which represented all of our Private Passenger Automobile claims over $50,000 in the state of Washington since 1983. Of these twenty-four claims, we believe that the new law could have an impact on three claims. One claim involved a driver that was intoxicated. We estimate that we would not have paid $20,000 of the claim. On the other hand, there were two claims in which American National Fire would see an increase in its loss liability. These are contributory negligence cases in which our percent of the entire loss liability would increase. The impact of the law on these two is at least $100,000 on each of them.

From the above study, it does not appear that the "tort reform" law will serve to decrease our losses, but instead it potentially could increase our liability. We elect at this point, however, not to make an upward adjustment in the indications to reflect the impact of the "tort reform" law.

We request, therefore, that you reconsider the original filing of January 19, 1986, with an amended effective date rule of:

"For all policies written on or after June 2, 1986".

In our telephone conversation you mentioned a concern that we are selecting an increase less than our indications. Our plan of action is to take this increase, which we estimate to be slightly more than 14%, and to review the rates in the near future, such that we can effect a rate change six months after the effective date of this revision. We believe that this method will prove to be less disruptive on our book of business than other courses that we might have chosen.

We hope the above includes all the information that you need to expedite an approval of the filing.

Sincerely,

Kevin J. Kelley
Director of Actuarial

KK/nk

CHIEF EXECUTIVE
circular

Attachment 5

October 3, 1986

ISO POLICY DECISION ON TORT REFORM ANNOUNCED

Chief Executive CE-86-31

BACKGROUND

Various tort reform measures have been enacted or are still under active consideration in many states. It is clear that meaningful tort reform will have a favorable, prospective impact on loss severity and/or frequency, variable by state and line of insurance which, ultimately, will be reflected in state loss experience.

However, in some jurisdictions, an immediate rate reflection in response to tort reform is being demanded. Statutes in Florida, New York and Hawaii mandate that insurers reflect tort reform legislation in their filings. The New York Insurance Department has already advised companies of its estimates of the cost reductive effects of tort reform. Florida has mandated a 1987 rollback to adjusted 1984 rates, unless companies file 1987 rates reflecting the impact of tort reform by October 15, 1986. Hawaii has mandated a 10% decrease in rates on October 1st to reflect tort reform, with further reductions required in future years. The Washington Insurance Department is requiring that future rate filings reflect enacted tort reform even without a specific statutory requirement.

Insurance Services Office, Inc. 160 Water Street, New York, New York 10038 (212) 487-5000

ISO POSITION

ISO is unable to quantify, and to reflect in its filings with a reasonable degree of certainty, any immediate cost effects of tort reform. ISO believes that the reflection of any beneficial effect of tort reform on insurance pricing, where mandated, is a matter of individual insurer judgment and not a precise actuarial exercise. Such judgment is consequently more properly applied by individual insurers, rather than by ISO in its role of acting on behalf of those affiliated insurers which elect to use ISO's services.

Therefore, the ISO Board of Directors has established — as ISO policy — that, inasmuch as ISO cannot immediately reflect any cost effects of tort reform in its filings, any such effects are best determined by the judgment of each insurer, taking into account the distribution by coverage, class, and limits on its own book of business.

ISO ACTION

Consistent with this policy, ISO advisory rates will not reflect tort reform and each company must make its own assessment as to the immediate effect, if any, of tort reform on its book of business.

In New York, in order to assist companies in complying with the refiling requirements of the new law, ISO released Commercial Lines Circular CL-86-29 which contained revised manual rules utilizing the cost reductive effects promulgated by the Superintendent of Insurance, without commenting on their appropriateness.

In Florida, ISO has developed a filing procedure -- which has been approved by the Insurance Department -- whereby individual companies must supplement the ISO filing with their own individual estimates of the impact of tort reform. At the direction of the Insurance Department, ISO will collect these individual estimates and file them on behalf of each insurer. Refer to ISO Commercial Lines Circular CL-86-33 for specific details.

ADDITIONAL INFORMATION

ISO plans to shortly provide insurers with information which could be considered by each company in reflecting any effect of tort reform, including an analysis of the tort reform measures enacted in individual states.

Within the next several days, ISO will release such information to insurers via Commercial Lines and Technical Services Circulars. In anticipating receipt of this material, each insurer should note ISO's strong belief that any beneficial effects of tort reform cannot be quantified with any degree of accuracy. Accordingly, providing any quantitative information does not imply that any actuarial precision can be applied to what is -- in effect -- an imprecise subject. However, the information may aid individual insurers in supplementing their judgment which, ultimately, will be the major factor in determining any beneficial pricing effect of tort reform.

CAUTION

In Circular CL-86-33 we detailed the Florida filing procedures which must be completed by October 15th. Since -- to avoid the rollback -- Florida rate filings require individual insurer estimates of the cost effects of tort reform and, since the judgment of each insurer will be the major component in arriving at these estimates, we urge individual insurers to promptly begin developing their own estimates, without waiting for the ISO material on tort reform which, as heretofore mentioned, will not produce precise results.

Daniel J. McNamara
President

cc: ISO Board of Directors
Actuarial Committee
Commercial Lines Committee
Personal Lines Committee

Attachment 6

INSURANCE SERVICES OFFICE

160 WATER STREET NEW YORK, N. Y. 10038

TELEPHONE: (212) 487-5000

COMMERCIAL CASUALTY ACTUARIAL DIVISION
RICHARD B. BIONDI, ASSOCIATE ACTUARY & MANAGER

October 15, 1975

Mr. Stanley A. Dorf, Chief Actuary
New York Insurance Department
2 World Trade Center
New York, New York 10038

Re: Comparative/Contributory Negligence -
Automobile Liability Rate Change Proposal

Dear Mr. Dorf:

Because of the change in the New York law from contributory negligence to comparative negligence, I.S.O. proposes to increase Automobile Liability (including Uninsured Motorists) rates by 5%. This proposed increase is based on a study of closed Automobile Liability claims in California, comparing the actual settlement under the comparative negligence law with the estimate of what it would have been under the earlier contributory negligence law. Enclosed is Exhibit 1 displaying the indicated rate changes by line and coverage based on the survey, and also the proposed changes of 5% for the liability coverages and "no change" for Personal Injury Protection. Exhibit 2 details the results of the claim study survey, showing number of claims, losses under both negligence laws, and comparative/contributory ratios, by line and coverage.

We have also enclosed a copy of the "Call" letter used for this survey; in it can be found a sample copy of the questionnaire form and the general instructions for completing the form. The companies participating in the study write approximately 75% of the Automobile Liability premiums written by Insurance Services Office affiliated companies. All claims reported to us were settled very shortly after the changeover in negligence laws in California; thus, claims personnel completing these forms were in a good position to compare comparative vs. contributory settlements for their claims.

Very truly yours,

George Burger

George Burger
Actuarial Assistant

GB:cm
Enc.

New York

Automobile Liability Insurance

I.S.O. Proposed Rate Increases to Reflect the Change from Contributory to Comparative Negligence*

Coverage	Indicated Rate Change	Proposed Rate Change
Private Passenger		
Residual Bodily Injury	+ 4.1%	+ 5.0%
Personal Injury Protection	-	0.0
Property Damage	+ 4.6	+ 5.0
Uninsured Motorists	+13.0	+ 5.0
Total	+ 4.8	+ 4.4
Commercial		
Residual Bodily Injury	+ 6.8%	+ 5.0%
Personal Injury Protection	-	0.0
Property Damage	+ 6.9	+ 5.0
Uninsured Motorists	+ 0.1	+ 5.0
Total	+ 6.5	+ 4.7
Grand Total	+ 5.4%	+ 4.4%

*Note that all percent changes are weighted on New York's premium distribution.

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FROM FIGURES

BEST'S EXECUTIVE DATA SERVICE

1987
ALASKA

EXPERIENCE BY STATE
OTHER LIABILITY

AS-OL-17

COMPANY	MKT SHR	DIRECT PREMIUMS WRITTEN a	DIRECT PREMIUMS EARNED b	DIVIDENDS TO POLICYHOLDERS DIRECT d	DIRECT LOSSES PAID e	DIRECT LOSSES INCURRED f	Δ%	LOSS RATIOS g	LOSS RATIOS Adj	Group Rank Prem	Group Rank Ratio	Overall Rank Prem	Overall Rank Ratio
AETNA LIFE & CAS GRP	1.4	1 168	1 166		67	864	7.5	61.1	63.1	8	9	15	30
AMER FINANCIAL GROUP	1.2	793	896		211	312	26.6	34.8	34.8	10	9	20	13
AMER GENERAL GROUP		4	8			3		32.0	32.0	23		71	
AMER INTERN GROUP	23.2	15 139	13 187		5 750	8 294	38.0	62.9	62.9	1	8	1	29
ATLANTIC MUTUAL COS								-99.9	-99.9	28		91	
CHUBB GRP OF INS COS	1.7	1 255	1 144			222		14.1	18.1		3	14	
CIGNA GROUP	6.9	4 509	4 282		-1 325	-3 209	-29.4	-74.9	-74.9	2		3	
CNA INS COMPANIES	4.4	2 878	3 111	7	481	1 571	16.7	50.5	50.5	4	6	6	22
COMM UNION INS COS		2	2			-14		-99.9	-99.9	26		86	
CONTINENTAL INS COS	1.5	997	960		1 515	-1 265	156.7	-99.9	-99.9	9		38	
CRUM & FORSTER COS	6.2	4 047	4 175		2 427	2 704	60.0	64.8	64.8	3	10	4	32
FIREMAN'S FUND COS	3.8	2 457	2 491	1	457	1 805	18.4	72.5	72.5	5	11	7	33
GENERAL ACC GROUP		1	11		1 865	1 155	999.9	999.9	999.9	27		89	
HANOVER INS COS		4	4					7.6	7.6	25		82	
HARTFORD INS GROUP	.9	565	618		2 581	3 880	510.3	628.2	628.2	12	16	24	42
HOME INS GROUP	1.1	739	566		4 359	1 789	569.5	316.2	316.2	11	15	22	41
KEMPER GROUP	.2	156	144			21		14.0	14.0	17	1	43	3
LINCOLN NAT GROUP		1								29		92	
NORTHWESTERN NAT GRP					-95	-100	999.9	999.9	999.9				
ORION GROUP	2.3	1 479	1 418			-54		-3.8	-3.8	6		11	
RELIANCE INS COS	.1	72	73		31	10	43.5	14.1	14.1	21	2	53	*
ROYAL INS GROUP	.5	348	297		1	-152	.3	-51.2	-51.2	14		27	
SAFECO INS COMPANIES	.3	170	134		27	75	15.9	56.0	56.0	15	7	40	21
ST PAUL GROUP	.1	74	106			34		31.8	31.8	19	6	51	10
TRANSAMERICA INS GRP	.2	133	105		12	78	9.3	74.3	74.3	18	12	44	34
TRAVELERS INS GROUP	.3	184	159		1 215	-523	738.8	-99.9	-99.9	16		41	
UNIGARD INS GROUP		5	24							24		80	
UNITED STATES F&G GR	.6	418	643		122	782	29.1	121.6	121.6	13	14	25	38
UTICA NATIONAL GROUP		11	6			2		32.7	32.7	22		68	
ZURICH INS GROUP-U S	.1	72	149			124		82.9	82.9	20	13	52	35
MAIL.AGENCY COS 30	57.6	37 635	36 106	8	20 021	18 394	53.2	51.0	51.0				
ALASKA NATIONAL INS	11.8	7 706	7 917		1 736	2 672	22.5	33.8	33.8	1	6	2	11
AMER MODERN HOME GRP	.1	63	63			9	7.0	13.9	13.9	27	2	55	2
AMERICAS INS CO	.3	215	266			604		227.0	227.0	14	18	32	40
W R BERKLEY CP GROUP	1.3	1 288	1 897		751	328	59.2	17.3	17.3	5	3	13	6
BERKSHIRE HATHAWAY	.5	345	543		7	75	2.0	13.8	13.8	11	1	28	1
CLARENDON INS GROUP	.1	42	42			52		123.4	123.4	28		56	
ELITE INS CO USB	.1	40	34			-1		-2.2	-2.2	29		58	
EMPLOYERS CAS GRP IX		14	24							34		66	
EMPLOYERS RE GROUP	.5	319	323		121	115	38.0	35.5	35.5	12	8	29	14
EVANSTON GROUP	1.5	1 009	1 231		282	481	28.0	39.1	39.1	7	9	17	15
FOREMOST CORP GROUP		32	45		32	14	98.5	30.3	30.3	30		60	
FREMONT INS GROUP		17	31		321	1 444	999.9	999.9	999.9	33		65	
GENERAL AGENTS GROUP	.3	177	187		4	-113	2.4	-60.5	-60.5	19		37	
GUARANTY NAT CORP GR	.3	175	96			33		34.8	34.8	10	7	39	28
HIGHLANDS INS GROUP	1.7	1 088	1 105		-157	-130	-14.4	-11.7	-11.7	6		16	
ILL. EXCH. COMPOSITE	.3	193	227			-190		-83.6	-83.6	18		36	
IMPERIAL CAS & INDEM		23	4		-5	-3	-20.6	-77.1	-77.1	32		63	
INTEGON CORP GROUP		14	1				1.0	32.1	32.1	35		67	
NORTH ATLANTIC C & S	.1	69	43			10		24.0	24.0	26		54	
NORTHLAND GROUP	2.3	1 522	1 200		7	737	.4	61.4	61.4	3	14	10	27
OLD REPUBLIC GROUP	1.2	775	1 329		567	1 401	73.1	105.4	105.4	8	16	21	36
PACIFIC MARINE GROUP	.9	582	979		294	-364	50.5	-37.2	-37.2	9		23	
PENN-AMERICA INS CO	.1	82	99		25	-6	30.3	-3.9	-3.9	25		50	
PROGRESSIVE GROUP	.2	103	76			44		58.1	58.1	22	12	47	24
PROVIDENCE WASH GRP	2.1	1 399	1 380		2 346	254	167.7	18.4	18.4	4	4	12	8
RLI GROUP	.1	96	59			66		111.6	111.6	23	17	48	37
ROCKWOOD GROUP	.6	377	443		25	203	6.5	45.9	45.9	10	11	26	17
SAFETY MUTUAL CAS CP	2.6	1 687	1 679		91	1 031	5.4	61.4	61.4	2	13	8	26
TOKIO MAR & FIRE GRP	.3	205	182		4	117	2.1	64.0	64.0	16	15	34	31
TOPA INS CO		11	40		14	65	122.1	160.9	160.9	36		69	
UMIALIK INS CO	.3	203	188		681	54	335.8	28.7	28.7	17	5	35	9
UNITED CAPITOL INS	.4	267	200			90		44.7	44.7	13	10	31	16
UNITED NATIONAL GRP	.2	110	85		600	761	454.3	895.9	895.9	21	20	46	44
WESTCO INS GROUP	.3	212	304		3 135	2 610	999.9	858.3	858.3	15	19	33	43
WILLIS FABER GROUP		25	39			4		11.4	11.4	31		62	
YASUDA FIRE & MARINE	.1	92	21			9	.1	41.6	41.6	24		49	
OTHER COS 33	-.1	-76	-231		6 473	-1 745	-99.9	526.9	526.9				
STATE AGENCY CO 69	31.3	20 479	22 052		17 258	10 733	84.3	48.7	48.7				
ALLSTATE INS GROUP	.5	298	275		50	168	16.9	61.1	61.1	6	6	30	25
COLONIAL PENN GRP		11	28		11	487	102.2	999.9	999.9	12		70	
CUNA MUT INS GROUP		32	32			3		3.7	8.7	10		61	
GEICO CORP GROUP		2	3					-8.1	-6.1	20		85	
GENERAL RE GROUP	2.6	1 671	1 616			1 006		62.2	62.2	2	7	9	28
JOHN DEERE GROUP	.3	174	144		13	83	7.3	57.6	57.6	5	5	38	23
LIBERTY MUTUAL GROUP	.3	164	170		61	27	37.2	15.9	15.9	6	1	42	5
MOTORS INS GROUP		21	23			29		125.7	125.7	11		64	
NATIONWIDE GROUP	5.9	3 826	3 774		2 115	1 898	55.3	50.3	50.3	1	3	5	19
NAVIGATORS INS CO	.1	41	19			13		65.0	65.0	8		57	
PRUDENTIAL OF AM GRP	.1	34	4		2	-93	7.1	-99.9	-99.9	9		59	
SENTRY INS GROUP		8	7					4.3	4.3	13		72	
STATE FARM GROUP	1.3	864	759		468	435	54.2	57.3	57.3	3	4	19	22
USAA GROUP	.2	115	123	8	4	56	3.3	45.8	49.2	7	2	45	18
OTHER COS 14		-14	483		586	-335	-99.9	-99.2	-99.2				
DIRECT WRITERS 28	11.1	7 247	7 440	9	3 310	3 776	45.7	50.6	50.7				
TOTAL 127	100.0	65 361	65 618	17	40 589	32 904	62.1	50.1	50.2				

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FROM FIGURES

BESTS EXECUTIVE DATA SERVICE

1987 ALASKA

EXPERIENCE BY STATE
- MEDICAL MALPRACTICE

A2-02-40

COMPANY	MKT SHR	DIRECT PREMIUMS WRITTEN a	DIRECT PREMIUMS EARNED a	DIVIDENDS TO POLICYHOLDERS DIRECT d	DIRECT LOSSES PAID p	DIRECT LOSSES INCURRED i	LOSS RATIOS D/W	LOSS RATIOS D/E	LOSS RATIOS Adj	Group Rank Prem	Group Rank Ratio	Overall Rank Prem	Overall Rank Adj
AETNA LIFE & CAS GRP	.8	130	130		500	-279	383.4	-99.9	-99.9	4		8	
AMER INTERN GROUP	2.9	447	298			158		53.0	53.0	2	2	5	5
CHUBB GRP OF INS COS					116	25							
CIGNA GROUP	.1	10	8		33	-379	345.2	-99.9	-99.9	8		15	
CNA INS COMPANIES	10.7	1 670	1 670		590	1 129	35.3	66.5	66.5	1	3	3	7
CONTINENTAL INS COS	.4	66	65			16		36.1	36.1	5		10	
CRUM & FORSTER COS		-2				-183		-99.9	-99.9				
FIREMAN'S FUND COS	.4	66	59			-21		-36.3	-36.3	6		11	
HARTFORD INS GROUP		2	6					.1	.1	9		19	
HOME INS GROUP													
ST PAUL GROUP	1.0	162	96			3		3.6	3.6	3	1	7	1
TRAVELERS INS GROUP	.4	59	59		-1	51	-1.7	86.3	86.3	7	4	12	9
MAFL.AGENCY COS 12a	16.7	2 608	2 398		1 238	521	47.5	21.7	21.7				
W R BERKLEY GP GROUP	.2	34	31			25		82.3	82.3	2		13	
DOCTORS CO INTER EX		2	2							7		20	
EVANSTON GROUP	1.1	174	668			521		78.0	78.0	1	1	6	8
ILL. EXCH. COMPOSITE		6	11							6		18	
JEFFERSON INS GROUP		2	2			1		48.1	48.1	8		21	
MMI COMPANIES GROUP		5	2			1		68.0	68.0	5		17	
RLI GROUP	.1	9	8			8		96.1	96.1	4		16	
WESTCO INS GROUP	.1	13	18			-13		-72.9	-72.9	3		14	
OTHER COS 2a													
STATE AGENCY CO 10a	1.6	242	731			542		74.1	74.1				
ALLSTATE INS GROUP						773							
HEALTH CARE INDEMN	5.9	920	964		152	545	16.5	56.6	56.6	3	4	4	6
MEDICAL INDEMN ALASK	44.6	6 937	6 937		5 928	3 524	85.5	50.8	50.8	1	3	1	4
MEDICAL INS EXCH CAL	30.7	4 777	3 724		1 281	1 265	26.8	34.0	34.0	2	1	2	2
NAT CHIROPRACTIC MUT	.5	55	77			31		41.0	41.0	4	2	9	3
OTHER COS 1a						-1							
DIRECT WRITERS 6a	81.7	12 719	11 701		7 362	6 130	57.9	52.5	52.5				
TOTAL • 28a	100.0	15 569	14 831		8 599	7 201	55.2	48.6	48.6				

Wall Street/Diana B. Henriques

Those Newly Cash-Rich Insurers

A FEW months ago, two law professors started a stir in the insurance industry with a study that showed that defendants have been faring better in product liability cases. The widely reported findings, by James A. Henderson Jr. and Theodore Eisenberg, both of the Cornell Law School, suggested to some analysts that big liability insurers might soon be able to move unneeded reserves back into profits.

Indeed, the St. Paul Group, one of the nation's leading liability insurance carriers, had already boosted its 1988 profits by moving $14.5 million from reserves set aside to cover past claims. Richard Paulsen, president of Paulsen Securities in Boston, was predicting that the company's results for last year would show a similar, perhaps stronger trend.

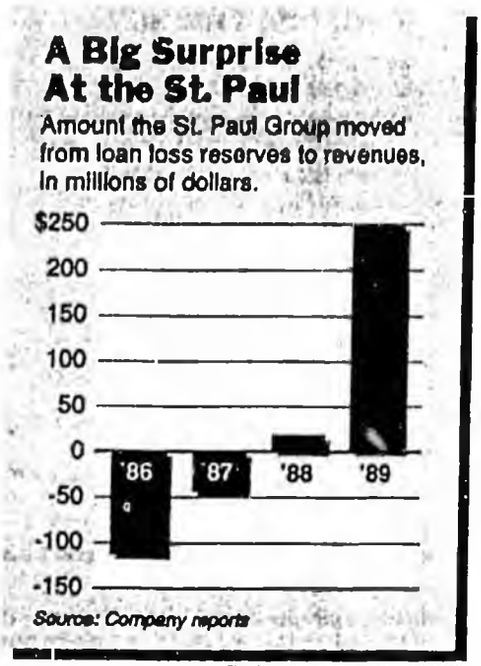
Trend? More like a tidal wave. A whopping $250 million was released from reserves for old claims and moved to revenues.

Wall Street doesn't like surprises, of course, and even apparently positive ones can be unsettling. Analysts began to fret that such profit-boosting moves were unsustainable and would lead to disappointment in the future. St. Paul's share price shuddered a bit, then steadied. The current philosophy seems to be "wait and see."

But for Mr. Paulsen, the movement — while far beyond his expectations — lends additional support to his thesis that liability insurance carriers will benefit from fundamental changes in the legal environment.

"The only surprise is that the level of release is surprisingly high," he said. "Because we feel that a fundamental change is taking place that favors defendants, earnings power going forward will be enhanced by lower reserve additions." He added: "Clearly, the St. Paul must have found that cases are settling out at much less than originally anticipated. Otherwise they would not have released $250 million."

Mr. Paulsen doesn't expect to see movements of this magnitude become routine. But he said he does believe the company will continue to find that its reserve levels are overly generous, and that it will be able to reduce them in the future.



THE ECONOMIC PULSE

TRENDS

Remember the Crisis In Liability Insurance?

It dissolved in a flood of profits from premiums

By Nancy L. Ross
Washington Post Staff Writer

Whatever happened to the liability insurance crisis? A year ago, it was being compared to the Arab oil embargo that devastated the world economy. A lack of insurance for municipalities threatened services such as police and fire protection. Unable to afford coverage for malpractice, some obstetricians stopped delivering babies.

News pages overflowed with stories of day-care centers and bars, midwives and manufacturers, accountants and truckers who were unable either to afford a doubling or tripling of their insurance premiums or to obtain coverage at any price. Some businesses were forced to close; others stayed open without insurance, hoping they wouldn't be sued.

Blame for the crisis, in the insurance industry's version, was laid on juries and judges who made multimillion-dollar awards to plaintiffs suing everyone in sight. Economists, on the other hand, faulted the carriers for engaging in cut-throat rate competition during the early 1980s until mounting losses forced them to raise premiums.

The industry lobbied state legislatures vigorously to restrict the scope of liability to cut the companies' losses. Consumer advocates demanded that tort reform be accompanied by a rollback in rates. Dozens of bills were introduced in Congress to deal with tort reform and product liability. Yet, by fall, the great liability insurance crisis had vanished from the headlines.

The emergency, it seems, has dissolved in a flood of insurance company profits.

According to the Insurance Services Office (ISO), which advises carriers on rates, operating profits tripled during the first nine months of this year, compared with the same period last year. Earnings rose from $1.2 billion in 1985 to $3.6 billion. Underwriting losses will be cut back by almost a third to $12.2 billion this year.

A major factor in the renewed profitability has been huge rate increases. Premium income for all types of property-casualty insurance rose 24.5 percent in the first three quarters to $131.5 billion, according to A.M. Best Co., the authoritative source on industry data. Premiums for commercial liability insurance—which had accounted for 25 percent of the losses but only 12 percent of the revenue—rose an average of 79 percent in 1985, after only nominal increases in the early 1980s. Best projects that this year's premium increases will amount to 72.5 percent.

While the shock of premium increases that averaged 100 percent in 1985 has made 40 percent to 50 percent increases of 1986 seem mild by comparison, rates still appear to be going up briskly.

A benefit of returning profitability has been increased availability. A report issued at a recent meeting of the National Association of Insurance Commissioners stated, "Problems of insurance availability may have eased since 1985 and early 1986 in certain lines or coverages, yet problems continue in several lines." Last May, 43 of the 50 states, the District of Columbia and Puerto Rico reported that municipalities were having trouble obtaining insurance and 42 reported difficulty with professional insurance for physicians.

By December, 55 percent of reporting states indicated slight improvement, while 43 percent saw no significant change in availability for day-care, nurse-midwives, liquor shops, governmental entities and truckers. Three found the situation greatly improved, while one judged it worse.

However, availability is sometimes a tradeoff for affordability. The Northern Virginia Regional Juvenile Detention Center, for example, which had been paying $1,400 annually for $1 million in general liability coverage, contacted 50 companies to replace its canceled policy before finding one that was willing to write $500,000 in coverage—at a $12,268 annual premium, an increase of 1,500 percent.

Besides higher premiums for lower coverage, companies are tightening underwriting requirements by setting higher deductibles, limiting legal defense costs and loading policies with exclusions. As a result of widespread publicity about physical abuse, the average annual premium per child at day-care centers has risen from $7 in 1984 to between $8 (in Wyoming) and $153 (in New York City), according to James Strickland of Austin, Tex., chairman of the Day Care Liability Task Force. By excluding abuse as an insurable event, one company has "reduced" the average cost per child to $50 annually, he says.

The industry hopes that future profitability will be enhanced as the result of limits on the breadth and depth of legal liability. Although Congress failed to pass insurance legislation this year, many states took action. The American Tort Reform Association says 20 states made "significant" changes in 1986, while the Insurance Information Institute lists 32.

Of those states that acted, just seven—Colorado, Connecticut, Florida, Michigan, New York, Washington and West Virginia—went the whole way and limited joint and several liability, sewing up the "deep pockets" of corporations and municipalities into which plaintiffs were thrusting their hands, or limited the amount they could recover in damages.

"The industry pressed hard, but got only bits and pieces of what it wanted," says Richard M. Page, chairman of the insurance brokerage Fred S. James & Co. in New York. The Florida experience has dampened the cry for more tort reform in other states.

There the industry's efforts misfired. The legislature in Tallahassee voted to limit joint and several liability and to cap awards. At the same time, it mandated a rollback to 1984 rates unless companies could prove hardship. The industry sued the state, claiming the law was unconstitutional. The case will soon be decided by the Florida Supreme Court.

Tort reform has made a difference for nurse midwives in states that have set limits on recovery, says Karen Bodenhorn, acting director of the American College of Nurse-Midwives. While their colleagues in other parts of the country must pay $3,500 annually for $1 million in coverage—compared with premiums of $800 to $1,000 three years ago—a few midwives will need only $500,000 worth of coverage.

Tort reform advocates had expressed hope that it would reduce rates. In general, however, it is too early to assess its impact; some laws haven't taken effect yet, and insurance rates are calculated on experience, not projections.

"I am not sure that tort reform will have an impact on insurance pricing for some time to come," says Page. "Underwriters tell us they don't know if it will reduce claims."

Jay Angoff, general counsel of the National Insurance Consumer Organization, reports that interviews with insurance commissioners in 15 states revealed no difference in availability or rates because of tort reform.

The Washington Post contacted insurance commissions in 10 states, half of which had passed some version of tort reform. New York and Florida reported smaller increases in premiums than would have occurred had there been no legislation in their states. For example, Florida's general liability rates will go up 5 percent in January, instead of 10 to 12 percent. Officials in Michigan, which made significant changes in its liability laws, indicated rates had stabilized, as did officials in Nevada, which made no changes.

Officials in Wyoming, a tort reform state, said companies were still hesitant to write policies there, while officials in the District of Columbia, where there was no legislation, reported scattered problems, but no crisis. In Vermont—a nonreform state—liability premiums are still rising by between 50 percent and 60 percent, faster than other lines. Yet, most state commissions saw a moderating trend. "If we see an increase of 10 to 20 percent, that's stability," says Harold Hendrick, a Michigan analyst.

The liability insurance crisis may be resolving itself, but the turmoil has taken its toll.

Some of the insured have rebelled. Last April, the tiny community of Norwood, Ohio, took on giant Home Insurance Co. in the courts and forced it to roll back a $205,000 premium to its 1984 level of $30,000. "We were able to buy time, but now we're in the same situation as before—shopping for insurance," says Frances Lah, the town's assistant law director. Eight other Ohio municipalities also sued Home for reductions.

Increasingly companies, professionals and localities are seeking alternatives to commercial insurance in the form of self-insurance and insurance pools. Arlington, Tex., facing annual liability premiums more than triple the $209,000 it paid three years ago, established a nonprofit corporation to insure itself and proceeded to raise $9 million in bonds for a loss reserve.

Risk manager Peter Potemkin estimates the annual cost of insurance will be $550,000 to $600,000 for $3 million in coverage, substantially less than the $760,000 demanded by its commercial insurers.

National Small Business United, a trade group that is concerned about the growing number of businesses going "bare"—without insurance—recently announced a legal referral program for those that are sued.

Self-insurance is an option for about a fifth of the largest trucking companies. But an estimated 16,000 small trucking firms—about a third of the industry—instead have leased their rigs to larger companies that have insurance, according to Kenneth Pierson, director of the Transportation Department's office of motor carrier standards. In the meantime, the industry is still waiting for the Interstate Commerce Commission to approve pool coverage.

Although there are scant data on self-insurance, Page estimates that it now amounts to $34 billion annually. If the current trend continues, he says he expects that figure to climb to $77 billion annually by 1989. That would mean 35 percent of the business community is self-insured, up from about 20 percent in 1980.

"And these clients are not eager to go back to that marketplace," he adds, noting that self-insurance provides protection against availability crises. So, warns Angoff of the insurance consumer group, while the insurance industry is enjoying prosperity again, it may end up a loser as its market share shrinks. ■

Wall Street/Diana B. Henriques

Friendlier Legal Climate for Insurers

WHAT happens if you have been saving for a string of rainy days only to see the climate get steadily drier? When the hard times don't materialize, you obviously will find yourself with an unexpected surplus of cash.

An intriguing new academic study of judicial trends in product liability cases suggests that this is just what is in store for some of America's largest insurance carriers. That could mean that, despite the adverse effects of last fall's spate of natural disasters, the insurance industry's future profits may be stronger than a wary Wall Street anticipates.

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The study, published in the February issue of the University of California in Los Angeles Law Review, was written by two professors at the Cornell Law School, James A. Henderson Jr. and Theodore Eisenberg. After examining hundreds of product liability cases decided since 1976, the two professors conclude that sometime around the midpoint of the past decade, the judicial tide began to turn in favor of defendants.

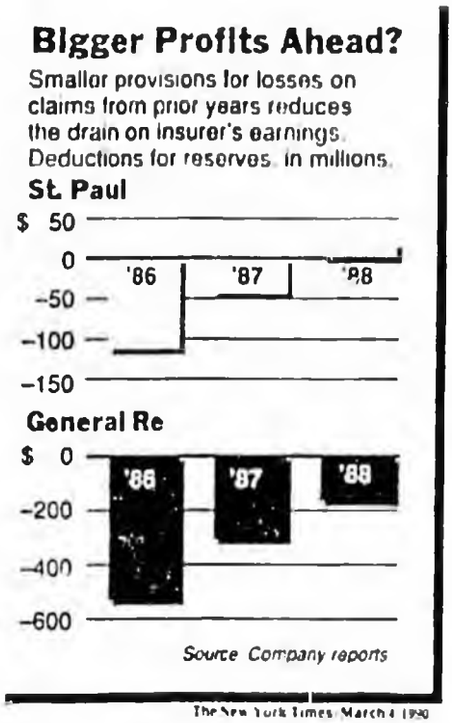
"At least since the mid-1980's," the authors reported, "published opinions have moved toward benefiting defendants over plaintiffs, have increasingly demanded dismissal of plaintiffs' claims as a matter of law, and have tended increasingly to break new legal ground for defendants."

While the study included only cases decided by the end of 1988, Professor Henderson said last week that the 1989 cases he has started to examine confirm the trend. "The results are all, quite remarkably, in the direction we have already identified," he said.

Aside from its fascination for judicial scholars and defense lawyers, the Cornell study also has important implications for those defendants' insurance carriers, which set money aside as a matter of course to pay claims that are working their way through the court system.

"If I were an insurer, all else being equal, I would expect a better-than-expected earnings performance, because I would have a reserve based on judicial experience that has now changed," said Professor Henderson.

Given that happy prospect, why aren't insurers broadcasting these findings from the rooftops? Politics, apparently. Insurers are among those campaigning at the state and Federal level for sweeping legislative and judicial changes that would reduce their exposure to huge punitive damage awards in liability cases. Moreover, insurers may find it harder to raise rates if customers and regulators suspect that higher premiums are contributing to overly generous reserve accounts whose chief beneficiaries may turn out to be the insurers' shareholders.



The New York Times: March 4, 1990

But while the insurance executives' current political agenda may require that they pooh-pooh the Cornell results in public, they are poring over the study in private. "We've even gotten calls from Europe," Professor Henderson said. "Lloyd's of London called asking for 100 reprints. It's a novel phenomenon for those of us whose work is usually of interest primarily to other academics."

It is also Professor Henderson's impression that major insurers are unlikely to alter their current reserve patterns until there is more evidence to support the Cornell thesis.

So much the better for investors, said Richard Paulsen, president of Paulsen Securities, a small institutional research firm in Boston. The longer that insurers continue to set aside loss reserves based on what may be an overly pessimistic reading of the judicial climate, the bigger the pool of "redundant" cash that will be available to boost future earnings. Even when insurers do adjust, Mr. Paulsen added, they are likely to do so by reducing the amount they deduct from profits for contributing to their reserves. Either way, their bottom lines will benefit.

Last year Mr. Paulsen was one of the first insurance industry analysts to recognize that the trend in medical malpractice cases, an important subset of liability law, had begun to shift in favor of malpractice insurers. "But this is even more significant than the medical malpractice data," he said. "This cuts across all lines of insurance. Product liability is both one of the most complex and expensive to deal with, and insurers have traditionally set aside large reserves in anticipation of difficult decisions."

The Federal form 10-K filings by the St. Paul Group and General Re Corporation, two of the major liability carriers likely to benefit from this trend, suggest that the Cornell professors' thesis is already apparent to the bean-counters in the back office.

Both firms are scheduled to release details of their 1989 results in the next few weeks. At first glance, the 1988 reports show that the St. Paul Group's additions to its total loss reserves — made up of funds earmarked for claims arising in both current and past years — varied only slightly between 1986 and 1988. The amount set aside by General Re remained constant between 1986 and 1987, although the figure did fall by 21 percent in 1988.

•

On closer inspection, however, both reports show that the portion the companies have set aside for past claims alone have plummeted. In fact, in 1988 St. Paul's profits included more than $15 million that had been transferred from its reserves. Similarly, General Re set aside $529.5 million for estimated losses on past claims in 1986. That amount declined to $305.5 million in 1987 and to just $164.4 million in 1988.

These figures suggest to Mr. Paulsen that the reported 1987 and 1988 profits for those two companies already reflect the "salutary effect" of the judicial changes cited in the Cornell report.

Professor Henderson said he is not surprised at those corporate developments, although he had not anticipated them. "It's the academic's curse," he joked. "When we had this data on our computer screens, we should have run out and taken positions in these stocks. We didn't, of course. But it would be a hoot if all this has taken the Street by surprise, too."

#12 B

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TELEPHONE 272-1538
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January 10, 1990

Representative Peter Goll
Room 122, Capitol
P. O. Box V
Juneau, AK 99811

Dear Representative Goll:

In view of the continuing effort to limit victims' rights in the state of Alaska, I thought you would be interested by the attached item which was in the January 8 issue of Business Week. This article is informative for several reasons.

First, the article notes that three incidents that occurred in 1989, Hurrican Hugo, the San Francisco earthquake, and the Phillips Petroleum plant explosion, will cost United States casualty insurers about $4,300,000,000. This figure is about two times the annual budget for the state of Alaska. The figure is also the equivalent of 4,300 million-dollar verdicts. In short, only three catastrophic events during one year will cost the insurance industry a lot more than all of the verdicts and settlements paid to Alaskans since statehood. This observation simply confirms what I have said before: Insurance rates are not really affected by claims resulting from our citizens' personal injuries. Accordingly, even serious limitations on victims' rights will have little, if any, effect on insurance rates in this state.

Second, the article succinctly describes the insurance industry's recent history:

(1) In the early 1980s, the insurers slashed their premiums to gain market shares;

(2) When losses mounted, they reversed course by negotiating higher prices and eliminating coverage for everything from day-care centers to county jails;

only
Hayden
+ committee files

(3) That touched off a public outcry and led to the defection of many customers, from corporations and municipalities to merchants' associations;

(4) The defectors switched to self-insurance siphoning off one-third of all property/casualty premiums;

(5) In a desperate attempt to recoup, insurers slashed rates again in 1988, though this failed to woo back many customers.

We should not be surprised to see another "insurance crisis" in the 1990s. And we should not be surprised to hear that the "crisis" can be solved by limiting victims' rights to recover for their injuries. Because you and many other legislators in this state have taken the time to examine the insurance industry and the tort system, I trust that the next "crisis" will be better understood by the legislature.

Please keep up the good work in Juneau; your efforts are appreciated.

Very truly yours,

YOUNG & SANDERS, INC.

By
Eric T. Sanders

ETS:sg
Enclosure

INSURANCE

A CEASEFIRE MAY HELP INSURERS RECOVER

As the price war ends, revenues should rise

A hurricane, a major industrial mishap, or an earthquake is never good news for U.S. property and casualty insurers. In 1989, they had to pay big for all three—$1.9 billion for Hurricane Hugo, $1.3 billion for the Phillips Petroleum Co. plant explosion in Pasadena, Tex., and $1.1 billion for the San Francisco quake. But the disasters may set the stage for rate hikes in 1990 that will beef up sagging premium income. The insurers, whose counterparts in life insurance also are limping, expect an 8% revenue upturn—ending the property/casualty price war that has lasted for three years.

If property/casualty premiums do move up in 1990, policyholders may feel a sense of deja vu. In the early 1980s, the insurers slashed their premiums to gain market share. When losses mounted, they reversed course by negotiating higher prices and eliminating coverage for everything from day-care centers to county jails. That touched off a public outcry and led to the defection of many customers, from corporations and municipalities to merchants' associations. The defectors switched to self-insurance, paying all but the largest claims out of their own pockets—in the process siphoning off one-third of all property/casualty premiums. In a desperate attempt to recoup, insurers slashed rates again in 1988, though this failed to woo back many customers. "Insurers are like lemmings running together in a pack," says H. Felix Kloman of the Tillinghast Div. of Towers Perrin Forster & Crosby, a New York-based consultant.

A PLAGUE? So property/casualty insurers are hurting again. Last year's trio of catastrophes is expected to use up only a small fraction of their $125 billion in reserves. But that tab, combined with low premiums, cut profits in the $143 billion industry to about $5 billion in 1989, down from $15.6 billion a year earlier. As 1989 drew to a close, David A. Kocher, president of commercial insurance for Aetna Life & Casualty, was still wondering if there was "time for a plague to hit us" before yearend. Aetna's $130 million expense for catastrophes in 1989 was three times its 1988 payout.

Large hits like this may force insurers to rethink their strategies. But no one expects them to react as violently as they did in the mid-1980s. Instead, most are telling their branch offices to try to nudge up rates when client contracts expire. Hartford Fire Insurance Co.'s goal, for example, is to raise prices in 1990 by 15%. Whether it will get that much is iffy, however, because of competitive pressures. Ladenburg, Thalmann & Co., a Wall Street investment house, looks for a slower rebound. It sees the return on equity in the property/casualty insurance field edging down to 4.5% in 1990, from 5.3% in 1989, because premium boosts take a while to turn around weak balance sheets. Then, the firm says, premiums will climb back to a healthier 16.5% in 1993.

Lacking more pricing power, insurance companies also may look for better ways to shield themselves from disasters. For instance, they may assign more risk to reinsurance providers—syndicates that share insurers' liabilities. That's a reversal of the industry's recent tendency to contain costs by shouldering more risk itself. Insurers also are asking states for large rate increases for workers' compensation—policies that pay employees for on-the-job injuries. Insurers' losses on workers' comp coverage reached $7 billion in 1989 and are headed even higher in 1990. The primary battleground: Texas, where damage awards by juries led to $1 billion in losses on workers' comp coverage last year.

The Texas legislature did vote recently to limit claimants' rights to a jury trial, a victory for insurers. But that hardly counters the bad news in California, the site of 1988's Proposition 103. Its aim was to lower auto insurance rates by at least 20%. The law has been blunted somewhat by the California Supreme Court, which has ruled that insurers are entitled to a "fair and reasonable rate of return." Yet California Insurance Commissioner Roxani M. Gillespie interprets that to mean that rate increases should be limited to the rise in inflation—a cap insurers call too low.

LOOPHOLE. They continue to blame high rates on increased medical and vehicle repair costs. But while most are losing money on auto insurance, they're staying in the state. The reason: The California market for lines of business such as annuities and life insurance is too valuable to surrender. "We'd consider pulling out, but so far, the downside is worse than the upside," says Donald R. Frahm, chief executive of Hartford Insurance.

Insurers also are wary of New Jersey, whose new governor, Democrat James J. Florio, has pledged to bring down stratospheric auto rates. New Jersey's no-fault law, under which insurers pay most accident claims no matter who is responsible, was weakened by a loophole that lets drivers sue for pain and suffering if their medical costs exceed $200. Trying to contain an explosion of suits, the state now has drivers choose between an unlimited right to sue—which means a higher premium—or agreeing to sue only for fatal or disabling accidents.

Life insurers face big challenges, too. Spreads between the insurers' premium income and the return they're getting on their investments are painfully thin. Thus, many life insurers lack the capital to invest in new ventures. Experiments with selling policies through banks, stockbrokers, and by direct mail are fizzling. So insurers are using an old tactic: trying to improve their agents' selling skills. "It's back to basics," says Michael Tine, senior vice-president at Travelers Insurance Co. For the industry in general, that may be the tone for 1990.

By Larry Light in New York, with Lisa Driscoll in Hartford

INSURERS SEE A TURNAROUND

Alaska Action Trust
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Office: 540 L Street, Suite 102 • Anchorage
(907) 258-4040

Acknowledged

February 22, 1990

Rep. Peter Goll
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Rep. Goll,

In the ongoing process of keeping you informed as to current developments relating to the perceived insurance "crisis," the Alaska Action Trust has prepared this informational packet for your review.

A. MINNESOTA INJURY COMPENSATION STUDY

Commissioned by the Minnesota Legislature, this study focused on the tort system in general, including common and statutory law. The six-member study commission, appointed in 1988, held ten public hearings, beginning in January, 1989, and ending in October, 1989. The Commission made a number of recommendations for legislative change in the law governing tort claims.

Among the topics studied by the Commission:

1. Comparative Fault and Joint and Several Liability
2. Statutes of Limitation and Repose
3. Punitive Damages
4. Deductions under the No-Fault and Collateral Source Statutes
5. State and Municipal Tort Liability
6. Mandatory Automobile Insurance
7. Contingent Attorney Fees

A complete copy of the Minnesota Injury Compensation Study has been enclosed for your review.

Hayes

B. NEW YORK MEDICAL MALPRACTICE STUDY

A long-awaited study of malpractice in New York hospitals concludes that thousands of hospital deaths and tens of thousands of injuries are tied to negligence every year, though relatively few victims seek redress in courts, according to a published report.

Preliminary estimates by a research team indicate that in 1984, the year analyzed in the study, negligence by doctors or hospital workers may have contributed to about 7,000 hospital deaths and an additional 29,000 injuries, according to The New York Times.

Researchers from Harvard University concluded that 306 of the 30,195 patients studied, or just over 1%, were treated negligently; yet only 47 patients filed lawsuits, the Times said.

Dr. David Axelrod, the state health commissioner, cited the study when he called for a system of no-fault medical malpractice insurance, which would drastically change the existing legal liability system. Dr. Axelrod now says that his boss, Gov. Mario Cuomo will not propose a system of no-fault insurance this year because it needs more than a few months of study by the Legislature.

Dr. Axelrod, who has said he won't release full details of the study until next month, said the figures contained in it appear to be accurate projections. He said the longer a New Yorker is in a hospital, the greater the chance something will go wrong in their treatment. "It stands to reason that the longer you're there, the longer you're exposed to all of the risks and all of the services that are available in a hospital, the greater the likelihood that something will go wrong," he said.

Dr. Axelrod also said that fear of getting dragged into a malpractice lawsuit makes many doctors afraid to report colleagues who may be doing wrong things.

"Physicians are so concerned about what they might say about his or her colleagues that they don't participate effectively in peer review," the health commissioner said.

* The Alaska Action Trust has requested copies of the New York study and will be forwarding a copy to your office.

C. FLORIDA MEDICAL MALPRACTICE REPORT

According to a report published in the Journal of the American Medical Association (JAMA) and conducted by Frank Sloan and others of the Vanderbilt University Health Policy Center on physician claims experience in Florida, "[a]lmost all payments for compensation and associated costs went to cover losses incurred by a handful of physicians." In recent years, Florida has been the major battle ground for medical malpractice legislation, and malpractice premiums have traditionally been among the highest in the country and doctor outcry one of the loudest.

The report, "Medical Malpractice Experience of Physicians, Predictable or Haphazard?", looked at all closed claims against physicians in Florida from 1975 to the first quarter of 1985.

Among the major findings of the JAMA article:

1. Claims Experience. A small percentage of doctors were responsible for a high percentage of paid claims. Closed malpractice claims with compensation exceeding $300,000 accounted for roughly 68 percent of the total indemnity payments, but only 11 percent of the total closed claims. Among obstetricians-anesthesiologists, more than 85 percent of the closed claim payments against them were incurred by approximately 6 percent of the physicians. For surgical specialists, 75 percent of the total malpractice claims were incurred by just ".8 percent of practicing Florida surgeons.

2. Physician Characteristics. There was no conclusive link between the quality of a physician's credentials and his or her claims experience. In most cases, physicians with prestigious credentials had no better claims experience than did physicians with less credentials. In fact, board certified physicians often had a higher claims experience than did non-certified doctors. Foreign medical school graduates had about the same claims experience as other U.S.-trained physicians. Older physicians were less likely to have claims filed against them. Women physicians were more likely to have fewer claimed filed against them than their male counterparts.

3. Physicians Changing Specialties. Doctors with fewer claims against them were more likely to change specialties than physicians with more adverse claims experiences. Good doctors were also found to be more likely to retire or to change from patient to non-patient care than bad doctors.

4. Doctor Discipline. None of the doctors with adverse claims experience had their licenses suspended or revoked in Florida, and more than 90 percent of these physicians were never disciplined in any manner.

* The Alaska Action Trust has requested copies of the Florida report and will be forwarding a copy to your office.

If you or your staff should have any questions about any part of this informational packet, please contact the Alaska Action Trust office at 258-4040.

Sincerely,

Debra Gravo

Debra Gravo
Executive Director
dch/encl.

Citizens' Coalition For Tort Reform

Rep. Sam Cotten, Speaker
Members of the Alaska House
P. O. Box V
Juneau, Alaska 99811

May 4, 1989

Dear Mr. Speaker,

The oil spill in Prince William Sound has raised significant questions as to legal liability for the pollutions accident. The tort reform bill, HB166, is pending in the House. There have been allegations made that tort reform would adversely impact the ability of the residents of Alaska, and the State itself, to be compensated for the pollution incident. Opponents have raised the Prince William Sound disaster as a reason not to adopt meaningful tort law changes. The reality is tort law changes proposed in HB166 would have little if any effect on the compensation being paid by Exxon.

The issue must be viewed with historical perspective. In the 1988 session of the Alaska Legislature, Representative Mike Davis, with Representatives Koponen, Navarre, Swackhammer, Goll, Sund, Ulmer, Davidson, Brown and Donley, introduced compelling legislation (HB459) defining the responsibility for pollution and environmental damage. It passed the House. It's death in the Senate seemed certain until a Senate substitute (CSHB85) was forged which allowed passage of meaningful tort reform and strict environmental legislation. This bill passed 15 to 5. It imposed a standard of strict liability for pollution incidents.

Governor Cowper reviewed the bill and indicated he would sign the bill into law, were it to pass the House.

As a result of the plaintiff trial attorney opposition to tort reform, the environmental bill, CSHB85, was allowed to die in the House. Had that bill been passed in 1988, there would be no question as to how the liability, which stems from the pollution accident, would be settled. Simply put, under of strict liability, if the accident happens, you are responsible for it.

The irony is that the questions being raised now on HB166 are by the very people who had it within their

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Anchorage, Alaska 99520
Phone: 561-6250

power to pass environmental damage legislation in 1988. There is a self interest in the opposition to tort reform. That self interest was so compelling that they were willing to forego the opportunity to pass excellent environmental legislation. There should never be any confusion between environmental legislation delineating responsibility for pollution accidents and tort reform.

CSHB85 was reported in the House Journal, May 9, 1988. Brief excerpts from that bill are as follows:

a. The following persons are strictly liable, jointly and severally, for damages to persons or property, public or private, including damage to the natural resources of the State, and the cost of response, containment, removal or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or with respect to the response costs, the substantial threat of the release of a hazardous substance:

    1. The owner and the person having control over the hazardous substance at the time of the release or threatened release;

    2. The owner and the operator of the facility or vessel from which the release occurred....;

    3. A person who owned or operated the facility or vessel from which the release occurred....at the time the hazardous substance was received by the facility or vessel;

    4. A person who owned the hazardous substance and who arranged for disposal or treatment....;

    5. A person who transported or accepted the hazardous substance for transport to the facility, vessel or site....;

Had the House of Representatives chosen to pass CSHB85, we would have had meaningful tort reform and we would have had amongst the strictest standards in the nation for environmental pollution, as of 1988. Self interests precluded Alaska from having this legislation. We urge self interest be set aside now.

Sincerely,

David A. McGuire, M.D.

The House reverted to:

MESSAGES FROM THE SENATE

CCS SB 432

A message dated May 9, 1988, was read stating the Senate has adopted the Conference Committee with limited powers of free conference report on CSSB 432(Fin) and HCS CSSB 432(Fin), thus adopting:

CONFERENCE CS FOR SENATE BILL NO. 432
"An Act making appropriations for the operating expenses of state government; and providing for an effective date."

The House has adopted CCS SB 432 (page 3698).

CSHB 538(Fin)

A message dated May 9, 1988, was read stating the President has granted limited powers of free conference to the Senate members of the Conference Committee considering:

CS FOR HOUSE BILL NO. 538 (Finance)
"An Act relating to the Alaska Municipal Bond Bank Authority, municipal debt for development and redevelopment projects; and providing for an effective date."

The specific points for which limited powers were granted appear on page 3697.

The Speaker had previously granted limited powers of free conference as requested (page 3697).

CSHB 85(Jud)

A message dated May 9, 1988, was read stating the Senate has passed CSHB 85(Jud) with the following amendment and it is transmitted for consideration:

SENATE CS FOR CS FOR HOUSE BILL NO. 85 (Rules)
amended Senate
"An Act relating to civil liability; and providing for an effective date."

The message further stated that under Rule 43(b) of the Uniform Rules engrossment had been waived and the following certified amendment was attached:

CSHB 85(Jud)

Certified Amendment No. 1

Offered by Senator Faiks:

Page 1, line 1 through page 12, line 8:

Delete all material, and insert:

"IN THE HOUSE BY THE RULES COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 85(Rules) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

Section 1. AS 09.17.020 is amended to read:

Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence of fraud, malice, gross negligence, or reckless disregard by the defendant.

Sec. 2. AS 09.17.030 is amended to read:

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

Sec. 3. AS 09.17.030 is amended by adding new subsections to read:

(b) This section does not apply to a person who suffers personal injury or death if the person liable for the damages

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

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

CSHB 85(Jud)

(b) A zoo operator shall post signs at prominent places within a zoo and at each zoo entrance. Each sign shall include a statement warning that the zoo is not liable for injuries to person or property occurring as a result of dangers or conditions inherent in attending the zoo.

(c) In this section

(1) "inherent risk of attendance" means the dangers or conditions that are an integral part of a zoo and the physical proximity of wild animals;

(2) "zoo" means a place where wild animals are kept for exhibition to the public that is

(A) owned by the state or a municipality; or

(B) owned and operated by a nonprofit organization.

Sec. 10. AS 09.60.010 is amended to read:

Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action for personal injury, death, or property damage related to or arising out of fault, as defined in AS 09.17.900 [, UNLESS THE CIVIL ACTION IS CONTESTED WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT].

Sec. 11. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES. (a) A hospital that is required to provide services by AS 18.20 or regulations implementing that chapter, or that is subject to regulation with respect to the provision of services, is not, solely for that reason, liable for civil damages as a result of an act or omission in administering those services by a health care provider who is not an employee of the hospital.

(b) Compliance with the standards of a public or private licensing or accreditation agency with respect to provision of services or adoption of bylaws or regulations by the hospital governing provision of services, may not be construed as an assumption of civil liability by the hospital for the acts or omissions of a physician or other health care provider who is not an employee of the hospital.

CSHB 85(Jud)

(c) This section does not preclude liability for civil damages that are the proximate result of the hospital's own negligence or intentional misconduct, including negligence in contracting with a specific health care provider.

(d) In this section, "health care provider" has the meaning given in AS 18.23.070, except that it does not include a hospital or an employee of the hospital.

Sec. 12. AS 21.06.110 is amended to read:

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

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

(2) the name of each insurer whose business was closed during the year, the cause of the closing, and the amount of ascertainable assets and liabilities of each closed business;

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

(4) a statement in regard to examination of rating organizations, advisory organizations, joint underwriters, and joint reinsurers as required by AS 21.39.120;

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

(6) recommendations of the director as to amendments or supplementation of laws affecting insurance, or the office of director;

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

(8) an analysis of medical malpractice insurance rate changes occurring as a result of court decisions in the state involving personal injury or death.

Sec. 13. AS 46.03.822 is repealed and reenacted to read:

CSHB 85(Jud)

knowledge or experience the person has; the relationship of the purchase price to the value of the property if uncontaminated; commonly known or reasonably ascertainable information about the property; the obviousness of the presence or likely presence of contamination at the property; and the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility and who would otherwise be liable; however, if the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not affect the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility.

(g) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer liability under this section from the owner or operator of a vessel or facility or from a person who may be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This subsection does not bar a cause of action that an owner or operator or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against a person.

Sec. 14. AS 46.03.826 is amended by adding a new paragraph to read:

(8) "facility" includes a

(A) building; structure; installation; equipment; pipe or pipeline, including a pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; motor vehicle; rolling stock; or aircraft; or

(B) site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located.

Sec. 15. AS 47.37.170(g) is repealed and reenacted to read:

CSHB 85(Jud)

(g) A person may not bring a civil action based on the decision of a peace officer or member of the emergency service patrol to take or not to take an intoxicated or incapacitated person into protective custody or to release a person from protective custody as provided in this section, unless the decision is made maliciously.

Sec. 16. AS 09.17.010(c) and 09.17.040(c) are repealed.

Sec. 17. REPORT. The Department of Law, with the assistance of the Department of Commerce and Economic Development and with the cooperation of all state agencies, shall report to the legislature by the 30th day of the Second Session of the Sixteenth Alaska State Legislature on closed insurance claims and insurance company finances. The report must consist of

(1) a study of closed insurance claims to identify

(A) the extent to which the legal system has or has not been the cause of dramatic liability insurance increases or decreases and coverage reduction in crisis lines in the state;

(B) how victims are faring under the present system;

(C) what the various specific tort reform proposals have actually accomplished; and

(D) if the passage of this Act has resulted in a measurable decrease in insurance rates in the state;

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

(A) dramatic liability insurance rate increases and coverage limitations in the state are, or are not, cost-justified in relation to awards, settlements, and relevant court decisions in the state involving personal injury, death, or property damage based on fault; and

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

Sec. 18. APPLICABILITY. This Act applies to all causes of action accruing on or after the effective date of this Act.

Sec. 19. SEVERABILITY. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act

SCS CSSSHB 198(Rea)

The Chief Clerk was instructed to so notify the Senate.

SCS CSSSHB 198(Rea) was referred to the Chief Clerk for enrollment.

CSHB 85(Jud)

Representative Pettyjohn moved and asked unanimous consent that the House take up the Senate message (page 3700) on the following at this time:

CS FOR HOUSE BILL NO. 85 (Judiciary)
"An Act relating to reporting of unclaimed property; and providing for an effective date."

and

SENATE CS FOR CS FOR HOUSE BILL NO. 85 (Rules)
amended Senate
"An Act relating to civil liability; and providing for an effective date."

Representative Navarre objected.

Representative Gruenberg placed a call of the House.

Representative Goll rose to a point of order.

The Speaker ruled that members should confine debate to the motion.

Representative Furnace rose to a point of order regarding impugning the motives of other members.

The Speaker stated the point was well taken.

The call was satisfied.

The question being: "Shall CSHB 85(Jud) be taken up at this time?" The roll was taken with the following result:

CSHB 85(Jud)

SCS CSHB 85(RULES)AMS MOTION

Yeas:	16	Barnes, Collins, Frank, Furnace, Hanley, Hudson, Martin, Menard, Miller, Pearce, Pettyjohn, Phillips, Rieger, Shultz, Taylor, Zawacki
Nays:	24	Adams, Boucher, Boyer, Brown, Cato, Cotten, Davidson, Davis, Donley, Ellis, Goll, Gruenberg, Grusendorf, Herrmann, Hoffman, Koponen, Larson, Navarre, Pourchot, Springer, Sund, Swackhammer, Ulmer, Wallis
Excused:	0	
Absent:	0	

And so, the motion failed, and CSHB 85(Jud) remains under Unfinished Business.

The House reverted to:

MESSAGES FROM THE SENATE

CSHB 203(Fin)

The Senate message on CSHB 203(Fin) and SCS CSHB 203(Jud) (page 3769) was before the House.

Representative Gruenberg moved that the House concur in the Senate amendment to CSHB 203(Fin), thus adopting SCS CSHB 203(Jud), and recommended that the members vote yes.

The question being: "Shall the House concur in the Senate amendment to CSHB 203(Fin)?" The roll was taken with the following result:

HB

166

(FILE 3)

HOUSE JUDICIARY COMMITTEE

file #2

INDEX HB 166

1. Labor and Commerce Committee Substitute for HB 166
2. Original HB 166
3. Sectional analysis-Alaska Action Trust
4. Sectional analysis-LAA Michael Ford
5. Index to Task Force Materials
6. Summary of Data-David E. Rogers-Compiled by the House Liability Task Force
7. May 2, 1989 Letter from Attorney General-Constitutional Concerns
8. August 5, 1988 Letter from Milliman & Robertson, Inc. Actuaries projected saving from tort reform
9. House Research, March 20, 1989, Cost and Availability of Liability Insurance
10. Assessing the Effects of Tort Reforms-Stephen J. Carroll
11. Statement of J. Robert Hunter, President of the National Insurance Consumer Organization
12. Three magazine articles
13. Citizens' Coalition for Tort Reform
14. February 22, 1990 Letter from Debra Gravo, Alaska Action Trust

file #3

15. Minnesota Injury Compensation Study Commission/January 1990
16. Non economic damages-April 11, 1989 letter from Alaska Academy of Trial Lawyers
17. Statute of Repose-six items
18. Collateral Source Rule-February 16, 1990 letter from Alaska Academy of Trial Lawyers
19. Constitutional Challenges to Washington's Limit on Noneconomic Damages in Cases of Personal Injury a[illegible] Death
20. Jackson vs Power
21. Claim File Data Analysis Overview
22. Fiscal Notes

23. Correspondence and public testimony

24. Labor and Commerce Committee Minutes-1989

25.

MINNESOTA INJURY COMPENSATION STUDY COMMISSION

REPORT TO THE LEGISLATURE

JANUARY, 1990

The members of the Injury Compensation Study Commission endorse and submit this report to the Legislature, in accordance with the Act of April 12, 1988, ch. 503, s 4, 1988 Minn. Laws, 375, 378.

Robert E. Bowen

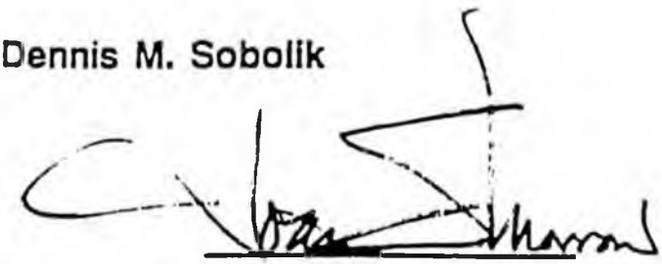
John W. Carey

James F. Hogg

Dennis J. Johnson

Joan S. Morrow

Dennis M. Sobolik



Joan S. Morrow, Chairman,

For the Commission

Michael K. Steenson, Reporter

ACKNOWLEDGMENTS

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The Commission also wishes to acknowledge the excellent research assistance provided by the following students at the William Mitchell College of Law: Ellen Sammon Carson, Rody F. D'Aigle, Joel D. Hedberg, Jon T. Lindberg, James O. Miller, Ted K. Ringsred, and Terry J. Wagener.

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I. Process, Methodology and Goals

The Legislature provided for the creation of a study commission on the civil justice system in 1988.[1] The six-member study commission, appointed in 1988, was composed of:

Robert E. Bowen, Hennepin County District Judge, retired.

John W. Carey, attorney at law, Sieben, Gross, Von Holtum, McCoy & Carey.

James F. Hogg, President and Dean, William Mitchell College of Law.

Dennis J. Johnson, President, MADD.

Joan S. Morrow, attorney at law, Rider, Bennett, Egan & Arundel

Dennis M. Sobolik, attorney at law, Brink, Sobolik, Severson, Vroom & Malm

Joan Morrow chaired the Commission. The Reporter for the Commission was Professor Michael K. Steenson, Margaret H. and James E. Kelley Professor of Tort Law, William Mitchell College of Law.

The Commission held ten public hearings, beginning in January, 1989, and ending in October, 1989. The initial hearings were held at the William Mitchell College of Law. Beginning in May, the hearings were held at the State Capitol. Notice of the hearings was given to all interested parties, including attorneys, business persons, injured and disabled persons, judges and insurers. No one who asked to testify at Commission hearings was refused that opportunity. The Commission heard testimony from over 50 witnesses during the hearings and received voluminous written submissions.

Following each hearing the Commission met in afternoon sessions, open to the public, to discuss the issues set for hearing. The Commission elicited suggestions from interested persons of topics to be covered. The hearing topics included punitive damages; joint and several liability; comparative fault; statutes of limitations and repose; alternative dispute resolution and incentives to alternative dispute resolution; alternative compensation systems and testimony from injured persons on damages; the collateral source statute and attorneys' fees; damages, additur and remittitur, caps on damages, and periodic payments; and the helmet law, seat belts, homeowners' insurance, and liquor liability. At the tenth hearing the Commission heard testimony on draft legislation addressing many of the areas of concern. In addition, the Commission held two day-long public meetings to consider its recommendations and findings.