BACKGROUND PAPER 87-5

THE LIABILITY INSURANCE ISSUE

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REPORT TO NEVADA'S LEGISLATIVE COMMISSION ON THE LIABILITY INSURANCE ISSUE

The liability insurance issue and the associated issue of tort reform, or reforms of the civil justice system, are probably the most significant and controversial issues to face state legislatures during the mid-1980's. According to the National Conference of State Legislatures (NCSL), the 44 state legislatures in session during 1986 considered some 1,400 bills introduced to address some aspect of the liability insurance "crisis."

The purposes of this report are (1) to provide an overview and general background information concerning the causes and other facets of the liability insurance problem, (2) to review and highlight actions taken and recommendations considered in other states, and (3) to furnish information about the liability insurance situation in Nevada.

I. OVERVIEW AND BACKGROUND INFORMATION

General liability insurance provides protection for the potential compensation for economic and physical injuries that may result from the activities of private and public individuals, organizations or businesses. (Jones, p. 21)

The current problems with liability insurance essentially began in mid-1985 as the insurance industry made rapid and widespread adjustments to its pricing mechanisms and risk assessment practices within the marketplace for property/casualty insurance. These adjustments impacted on both the private and public sectors and include state and local governments, professionals, manufacturers and businesses of all kinds.

A. THE PROBLEM

The availability and affordability of general liability insurance from the property/casualty insurance industry is the basic problem facing both private and public sectors. This industry provides several lines, or categories, of insurance coverage such as automobile liability, workers' compensation and others including general liability and medical malpractice insurance. According to the United States General Accounting Office (GAO), the major current problem line--general liability--does not represent a major portion of the total property/casualty insurance business since it accounts for only about 7 percent of all property/casualty premiums written in 1985. (Finch, 1986) Medical malpractice insurance accounts for 1.6 percent of all premiums in the industry.

These lines of insurance are significant, however, because they provide protection for a wide range of businesses, professionals and governments. General liability and medical malpractice lines are problems because they account for disproportionate shares of the underwriting losses within the insurance industry. The general liability line accounted for 21.5 percent of total underwriting losses in 1985 while the medical malpractice line accounted for 6.5 percent. (Finch, 1986)

Since the middle of 1985, many insurance companies have refused to write or renew certain kinds of liability insurance policies. Some insurance companies also canceled liability policies in midterm or offered reduced coverage at increased rates. Numerous examples from throughout the country may be cited to indicate the extent of the availability and affordability problem. These examples include governments and businesses which have chosen to "go bare" without insurance, self-insure themselves, reduce services or activities to limit their risks or accept large premium increases which may range from 100 to 1,000 percent or more than the previous year's rates.

According to a survey conducted by the Small Business Service Bureau, Inc., as reported in the Wall Street Journal (October 8, 1986), 46 percent of small business owners are responding to increases in liability insurance rates by paying higher premiums and raising prices, 25 percent are going without coverage, 11 percent are closing their business, 7 percent are using self-insurance, 4 percent are dropping products or services and 7 percent are responding in other ways.

B. THE CAUSES

Two major causes generally are cited for the liability insurance problem:

- The insurance industry's own practices; and
- Changes within the civil justice system.

1. Insurance Industry Practices

Insurance industry officials and critics generally agree that the industry itself is in large part responsible for the current situation.

The insurance industry is highly competitive and insurance companies essentially operate in two different businesses--underwriting and investment. (Jones, 1986, p. 48) Underwriting is the process of assessing the risk and pricing, or establishing the premium rate, of an insurance policy. Insurance companies invest premiums and other income to provide additional funds for profits, reserves for known and anticipated losses, and expanded capacity to write more insurance policies.

During the late 1970's and early 1980's, insurance companies readily offered low premium rates to attract more money for investments at the high interest rates which then were available. Insurance companies practiced "cash flow underwriting" and based their business on the income they earned from investments. The insurance industry relied on investment income to provide profits rather than charge adequate premiums to cover insurance underwriting losses and thus guarantee profits. (NCSL, 1986) In effect, investment income was subsidizing income from premiums which allowed insurance companies to engage in intense competition by offering low premium rates.

When interest rates declined in 1984, investment income no longer made up for underwriting losses from claims and other expenses. Insurers found it necessary to raise premiums to cover these losses. The losses also severely limited capacity, or the ability of insurers to provide coverage.

2. Reinsurance

In addition to the practices previously cited, liability insurance became less available due to the withdrawal of reinsurers. The reinsurance mechanism allows the original insurer to transfer part or all of the liability to a second insurer. Reinsurance expands the capacity of an insurance company to write insurance. State insurance regulators normally require a company to maintain a minimum surplus ratio of 3 to 1. Reinsurance allows an insurance company to reduce its reserve liabilities and thereby increase its surplus and expand its capacity to underwrite policies.

Reinsurers in the liability area are mostly foreign-based companies which share part of the risk with domestic insurance firms. Claim losses and a strong dollar have caused many of these companies to withdraw from the U.S. market since 1985. This action has further limited the ability of U.S. insurance firms to offer coverage.

3. The Underwriting Cycle

The property/casualty insurance industry historically has undergone profit and loss cycles at fairly regular intervals. These cycles primarily are due to the highly competitive and flexible nature of the industry.

During profitable periods, insurance companies can increase their capacities to write insurance policies, take more and greater risks, and lower their premium rates to obtain a larger share of the market. These actions result in price competition as other insurance companies reduce their premium rates to retain their share of the market. (Finch, 1986) The price competition leads to excessive losses which limit profitability. At the low end of the cycle, insurers then must increase premiums and limit their underwriting to more stable, predictable risks so that they may return to profitability.

Insurance industry trade associations admit that part of the recent problems of liability insurance availability and affordability are due to the workings of the underwriting cycle. (Alliance, 1986, p. 55) They also indicate that it is extremely probable that the current underwriting cycle will run its course over the next couple of years and problems of insurance availability and affordability will decline. (Alliance, 1986, p. 64)

Insurance industry data indicate that the low point of the last two major cyclical "crises" occurred in 1969 and 1975. These cycles followed familiar patterns by lasting from 5 to 6 years and involving insurance for medical malpractice and certain products. The current cycle appears to differ because it has lasted longer than previous cycles and has involved entire lines of insurance. However, a spokesman for the GAO stated that available estimates by the industry and others indicate that the loss cycle bottomed out in 1985 and that the cycle now has turned upward. (Finch, 1986)

The insurance industry contends that the current cycle is unique because it is more "loss driven" than previous cycles. The industry suffered record losses in 1985 and the current cycle also has impacted reinsurers and commercial lines insurers. The property/casualty insurance industry had an underwriting loss--the difference between premiums and loss/expenses--of $24.6 billion in 1985; and an operating loss--underwriting losses plus investment income--of $5 billion in 1985. The previous record year was 1975 when the underwriting loss was $4.2 billion and operating loss was $300 million. (Alliance, 1986, p. 59)

The loss trends and length of the current underwriting cycle indicate to the insurance industry that larger tort liability awards and expanded tort liability doctrines are exerting a long-term impact on insurance costs. (Tort law is explained in the following section.) The industry believes that these factors are a more permanent cause of the availability and affordability problems in the property/casualty insurance business. (Alliance, 1986, p. 64)

4. The Civil Justice System

The focus of much of the current debate concerning the liability insurance problem centers on changes in tort law and the civil justice system. The insurance industry, business groups and others believe that tort reform is necessary to restore balance in the civil justice system and to provide some measure of predictability for insurers. Consumer organizations, trial lawyers and others believe that no real linkage exists between the liability insurance problem and tort reform, and that the liability insurance "crisis" is being used as justification to place limits on the rights of injured people to sue for and recover damages.

Tort law is difficult to define, but one common element of all torts is that someone has been harmed or has suffered a loss as a result of an act or failure to act by another person. (Kionka, 1977, p. 2) Tort law has three main functions:

- To compensate persons who suffer harm or a loss;
- To place the cost of that compensation on the responsible persons; and
- To prevent future losses and harms. (Kionka, p. 6)

The principles and rules of tort law have evolved from English common law and primarily are based on court decisions in individual cases rather than on general rules found in statutes. Until around the middle of the 20th century, tort liability was limited by various legal doctrines. Those doctrines imposed stringent burdens of proof on the plaintiff (the person who claimed to be injured or harmed). For example, the rule of contributory negligence prevented a plaintiff from recovering damages if his own negligence contributed even slightly to his injury. The rule of assumption of risk prevented recovery if the plaintiff was aware of the risks of his conduct which resulted in the injury. In addition, the doctrines of charitable immunity and sovereign immunity protected governments and charitable organizations from actions under tort law.

In the last few decades, as a result of changes in economic and social values, many of these restrictive legal doctrines have been abandoned. The burden of proof required of plaintiffs has been reduced, and greater duties of care are imposed on defendants in tort cases. Comparative negligence generally has replaced the rule of contributory negligence, and the doctrines of charitable and sovereign immunity have been eliminated almost everywhere.

These changes in legal doctrines primarily have evolved through case law. Tort law traditionally has developed through judicial declarations and reinterpretations of legal principles in individual lawsuits. Legislatures only occasionally have established policies in certain particular subject areas of tort law such as workers' compensation, automobile no-fault and rules affecting liability for medical malpractice. (Jones, p. 127) During the current liability insurance situation, state legislatures are being asked to set policy by codifying certain legal doctrines to reform the application of tort law.

C. STATE JURISDICTION

The liability insurance debate has centered in state legislatures because state governments traditionally have exercised authority to regulate the insurance industry, and state courts independently establish tort law doctrine.

The U.S. Congress formally delegated authority to the states to regulate the insurance industry with the enactment of the McCarran-Ferguson Act in 1945. This act exempted the insurance industry from federal antitrust laws and allowed the states to regulate the industry without any federal monitoring or standards.

The McCarran-Ferguson Act provides for federal intervention if coercion, intimidation or an insurance boycott is suspected. During the current liability insurance cycle, consumer organizations have called for federal investigations of the insurance industry based on charges of illegal price collusion. The Federal Trade Commission completed an investigation and found insufficient evidence to support the charges. (NCSL, 1986) The U.S. Justice Department also concluded that an investigation of illegal collusion within the insurance industry is not warranted at this time.

More than 50 pieces of legislation were introduced in the 99th Congress to deal with various aspects of the liability insurance and civil justice system issues. No hearings or actions were taken on most of this legislation. The only measure enacted by Congress in 1986 was legislation to expand the Risk Retention Act originally adopted in 1981. This new legislation is designed to facilitate the formation of self-insurance and/or collective purchasing groups for virtually all commercial risks. (NCSL, 1986) Existing state antigrouping laws are preempted and the new law permits private and public sector entities to self-insure through groups operating on an interstate basis.

II. STATE RESPONSES IN 1986

Most states are considering and taking a wide variety of actions to deal with the liability insurance problem. These actions generally are classified as tort or insurance regulation reforms. One of the major debates that has emerged from this issue pertains to the linkage between insurance costs and tort reform.

A. SUMMARY

The NCSL reported that at least 41 states responded with a variety of legislation and regulations to ease the liability insurance problem during 1986. A survey conducted by Business Insurance newspaper (Geisel, 1986) indicates that 35 states have enacted tort reform measures to reduce liability exposures and make insurance more available and affordable. However, only nine states have enacted what generally are considered to be extensive tort reform measures. These states are Alaska, Colorado, Connecticut, Florida, Hawaii, Michigan, New Hampshire, New York and Washington.

The degree of reform varies significantly among the states. Many states have sought to combine tort reforms with changes and reforms of insurance regulation. At least 23 states have established study committees or commissions to review the liability insurance situation and provide further information and recommendations.

Appendix 1 is a chart prepared by the NCSL which shows the actions taken in state legislatures during the first 6 months of 1986 in the areas of tort reforms and insurance industry regulations. The most popular tort reform actions include:

1. Limit liability or establish immunities for certain groups--23 states;

2. Modify dram shop (liquor server) laws--16 states;

3. Limit noneconomic damages--16 states (limits in six of these states apply to medical malpractice only);

4. Modify the doctrine of joint and several liability--13 states;

5. Penalize frivolous lawsuits--11 states; and

6. Provide for structured awards or periodic payments--10 states.

The most popular insurance regulation actions include:

1. Establish market assistance plans--27 states;

2. Provide for self-insurance--22 states;

3. Establish joint underwriting associations--18 states;

4. Prohibit midterm cancellation or extend notice requirements--18 states;

5. Strengthen rate regulation--13 states; and

6. Establish pooling mechanisms--12 states.

B. MAJOR ISSUES OF THE DEBATE

States have little, if any, influence upon the international and national forces and events, both economic and social, which affect the insurance industry. Therefore, the debate over the liability insurance issue has focused in state legislatures primarily on changes within the civil justice system and insurance regulation. The major issues in this debate include:

1. Whether a "lawsuit crisis," or litigation "explosion" exists with excessive liability awards; and

2. Whether a link exists between tort reform and the insurance crisis.

There appears to be no direct or definitive evidence available at this time to resolve these issues. Evidence presented concerning a lawsuit crisis is conflicting and refuted by other evidence from certain states and other jurisdictions which indicate no substantial increase in liability suits. For example, the U.S. Attorney General's Tort Policy Working Group found that "* * * in the past decade there has been a veritable explosion of tort liability in the United States." The group's report concluded that "tort law appears to be a major cause of the insurance availability/affordability crisis." (Willard) In contrast, the Report of the National Association of Attorneys General found that there is no evidence that society has "suddenly become much more litigious" and that "changes in the civil justice system are not likely to solve the current or future problems in availability and affordability of liability insurance." (Bellotti)

State legislatures have sought to determine the link between insurance costs and tort reform, or how insurance rates would be decreased as a result of tort reforms. The insurance industry admits that it is extremely difficult, if not impossible, to quantify savings due to tort reforms because of uncertainties concerning judicial interpretations of the changes, the effects on actual loss experiences and numerous other economic variables which make it difficult to isolate direct effects. The insurance industry views meaningful tort reform as a long term solution which eventually will translate into lower insurance costs when loss trends begin to reflect the impact of the reforms. (Alliance, p. 68)

There is no reliable research currently available to establish a quantitative link between insurance rates and tort reform primarily because there has been little general tort reform available to study. Critics of the insurance industry believe that tort reform will not affect the cyclical nature of the industry. They contend that policymakers should not limit the rights of injured persons based on unproven assertions of future rate reductions.

C. SPECIFIC ACTIONS

The liability insurance crisis has spawned an extensive list of actions which have been recommended for consideration by state legislatures to help resolve the problem. The following list provides a brief review and explanation of the major actions taken or under consideration throughout the states. No state has adopted all of these actions and there are variations to many of these proposals. The following order of these proposals is based on the perceived importance and need to define the concepts rather than the number of states which have taken such action.

1. Tort Reforms

a. Joint and Several Liability.

The doctrine of joint and several liability, also known as the "deep pockets" doctrine, provides that if a person is injured due to the negligence of two or more individuals, they are jointly and individually liable for damages. A plaintiff may sue any or all of the possible defendants for the full amount of the damages. The defendant with the most resources--"deep pockets"--may be required to pay the entire award regardless of his degree of fault. That defendant then would be forced to recover from the other defendants. Corporations, governments and insurers apparently are targeted in lawsuits because they often are viewed as having unlimited resources. If one defendant cannot pay, this doctrine allows the burden of payment to be transferred to the other parties who are at fault to some degree.

Recommendations concerning joint and several liability include:

(1) Abolishing the doctrine;

(2) Allowing the plaintiff to recover damages only if the defendant's negligence is greater than the plaintiff's;

(3) Making each defendant liable only for their proportionate share of the damages based on their degree of fault; and

(4) Reallocating any uncollectible amount among the other parties based on their percentage of fault.

During 1986, 13 states modified the doctrine of joint and several liability. In June 1986, voters in California adopted Proposition 51 by a margin of 62 to 38 percent to limit the doctrine so that defendants will be liable for noneconomic damages based only on their share of the blame.

b. Limits on Noneconomic Damages.

Economic damages under tort law pertain to direct, objective costs such as medical expenses, loss of earnings, costs of repair and replacement, and other verifiable monetary losses. Noneconomic damages are subjective losses such as pain and suffering, mental anguish, injury to reputation and humiliation.

Noneconomic damage awards in tort cases vary widely from one jury to the next because it is difficult to assign dollar amounts to these damages. It is believed that the unpredictability of jury awards for noneconomic damages contribute to higher insurance premiums. Critics contend that limits are arbitrary and may be unfair to victims whose quality of life is irreparably affected by someone's negligence.

Sixteen states adopted limits on noneconomic damages in 1986, but the limits in six of these states only apply to medical malpractice cases. The U.S. Supreme Court, in October 1985, upheld a $250,000 cap on noneconomic awards for medical malpractice suits enacted in California.

The limits for medical malpractice cases range from $225,000 in Michigan to $1 million in South Dakota, West Virginia and Wisconsin. Among the 10 states which enacted caps applying to all tort cases, the limits range from $250,000 in Colorado to $875,000 in New Hampshire. The State of Washington enacted a cap on noneconomic damages based on a statutory formula which uses average annual wage and the plaintiff's life expectancy. This cap is estimated to range from $117,000 to $493,000.

c. Punitive Damages.

Punitive damages are awarded to punish a defendant for malicious or irresponsible acts. Punitive damages are awarded in addition to economic and noneconomic damages.

It is believed that punitive damages contribute to the unpredictability and size of awards in tort cases. Critics contend that punitive damage awards are necessary to deter manufacturers and others from irresponsible behavior. Alternatives include abolishing punitive damages, placing caps on awards, redefining standards of conduct and shifting the burden of proof for such awards.

At least six states abolished or enacted limits on punitive damages in 1986.

d. Collateral Source Rule.

The collateral source rule provides that damages awarded to a plaintiff will not be reduced by any amounts received from another, or collateral, source such as health insurance. The rule prevents juries from hearing evidence of other compensation provided to a plaintiff for an injury. Thus, a plaintiff may be doubly compensated since other sources of compensation are not considered in a tort case.

Alternatives include abolishing the rule, allowing consideration of all sources of payments for an injury, and providing a mandatory offset for any collateral payments. At least nine states modified the collateral source rule in 1986.

e. Contingency Fees.

Lawyers in tort cases generally work for a contingency fee which is a percentage of the amount awarded to the plaintiff, rather than working for an hourly rate or some predetermined amount. Contingency fees range from 25 to 50 percent of the settlement, but no fee is received if the case is lost.

Some believe that the contingency fee arrangement encourages demands for higher settlements and that the fee may not reflect the value of the service. Critics contend that this arrangement allows victims without significant financial resources to have access to the tort system. This arrangement also provides an incentive for attorneys not to handle frivolous or weak tort cases. Consumer organizations argue that if attorneys' fees are to be limited, they should be limited on both sides since defense costs are directly related to insurance rates.

Some states have adopted sliding fee schedules to regulate contingency fees. At least eight states took action in 1986 to limit attorney contingency fees or modify payments for legal services.

f. Structured Settlements.

Structured settlements, or periodic payments, allow damage awards to be paid by installments, rather than in lump sum payments. These payments are less burdensome for the liable party and provide a measure of long term financial security to the injured person.

At least 10 states enacted measures during 1986 to require structured settlements. Some states have established a limit to require periodic payments for awards greater than a certain amount, such as $250,000.

g. Itemized Verdicts.

One method suggested to deal with the unpredictability of awards by juries is to require the jury to itemize damages into categories. These categories would include amounts awarded for medical expenses, lost wages, noneconomic damages and other specific items. Proponents contend that this requirement would provide a framework for the jury and a more consistent standard. Several states have enacted measures to require itemized jury verdicts.

h. Other Measures.

Other tort reform suggestions include the following:

(1) Penalties for frivolous lawsuits (enacted in at least 11 states in 1986);

(2) Modification of the doctrine of sovereign immunity to provide more protection for governments (enacted in at least seven states in 1986);

(3) Limit liability or grant immunity to certain groups such as directors and officers of nonprofit organizations (enacted in at least 23 states in 1986);

(4) Modify statute of limitations to provide a more reasonable period of time (generally shorter) for the discovery of an injury and the filing of the claim (enacted in five states in 1986);

(5) Modify dram shop laws to limit the liability of liquor servers (enacted in at least 16 states in 1986); and

(6) Establishment of alternative dispute resolution such as voluntary arbitration to provide a more efficient mechanism to resolve less complex cases.

i. Evaluation of Reforms.

It is suggested that states which enact significant tort reforms also establish a system to collect data to measure the effectiveness of the reforms since so little evidence currently exists. Data would include statistics on the number of suits filed, the number of lawsuits settled out of court, the size of judgments and subsequent revisions of jury verdicts.

2. Insurance Reforms

a. Market Assistance Plan.

Many states--at least 27 in 1986--established market assistance plans to help specific groups or types of businesses obtain insurance coverage. These plans generally involve the state insurance department requesting insurance companies within the state to voluntarily write certain types or lines of insurance. The insurance department then establishes a hot line to connect those who need insurance with the companies who are willing to underwrite such business.

b. Joint Underwriting Associations (JUA's).

A joint underwriting association is a statutory plan to require mandatory participation by a number of insurance companies to serve as carriers for particular lines of insurance. At least 18 states have established JUA's or provided standby authority for the insurance department to require a JUA for critical areas in which liability insurance is not available.

c. Notice Requirements and Midterm Cancellations.

During the current liability insurance situation, many insurance companies canceled existing policies in the middle of the term and failed to provide adequate notice of cancellations and nonrenewals. At least 18 states in 1986 adopted legislation to extend notice requirements (commonly to 60 or 90 days) and to prohibit midterm cancellations except for legitimate reasons, such as failure to pay the premium.

d. Strengthen Rate Regulation.

State insurance departments generally ensure that insurance companies are solvent and provide oversight so that rates are adequate. Much attention has been focused on state insurance departments to determine if they are adequately staffed and funded and if they have sufficient legal authority to accomplish these purposes. At least 13 states took action in 1986 to strengthen rate regulation.

States basically have one of the following types of rating laws:

(1) Prior approval--the insurance commissioner must approve proposed rate changes before they may be used;

(2) File and use--the proposed rates may be implemented immediately but the insurance commissioner generally has 60 to 90 days to approve the continued use of the new rate (this method is used in Nevada); and

(3) Open competition--the company uses the rate that it chooses.

A recent innovation established by legislation in New York is a flex-rating system. This system requires the superintendent of insurance to set certain percentage bands within which insurance rates may fluctuate. Any actual rates that fall outside the band must receive prior approval from the superintendent.

e. Other Measures.

Other measures of insurance reform under consideration among the states include;

(1) Enacting legislation to allow governments and businesses to self-insure and to facilitate efforts to establish insurance pooling mechanisms;

(2) Appointing a consumer advocate for insurance to ensure that consumers are adequately represented;

(3) Enhancing risk management programs;

(4) Establishing a state reinsurance fund and/or providing statutory authority for banks to enter the reinsurance industry;

(5) Creating a state insurance fund to provide essential coverage for certain groups;

(6) Requiring insurance companies to refile rates to reflect the effects of significant tort reforms; and

(7) Establishing data reporting requirements to improve monitoring of the insurance industry.

III. THE LIABILITY INSURANCE SITUATION IN NEVADA

A. EXTENT OF LIABILITY INSURANCE PROBLEM IN NEVADA

According to the insurance division of Nevada's department of commerce, obtaining affordable liability insurance is a widespread problem for virtually all commercial insurance buyers in Nevada. (Knaus) This national problem is affecting almost every government agency and business in the state.

The results of a survey conducted by the Nevada Independent Insurance Agents (NIIA) were released to Nevada's insurance commissioner on August 20, 1986. (Barriage) This survey of independent insurance agents in Nevada reveals that contractors, bars/taverns and any commercial property located beyond city fire protection are having extreme difficulty in purchasing liability insurance. The agents also indicated that they are having significant difficulty placing liability insurance for county and municipal governments, casinos, commercial automobiles, homeowners living outside of city fire protection areas, hotels/motels and many professional occupations.

In addition, the survey reveals that some agents have found liability premium increases up to 300 percent as being common while many insurance underwriters are not interested in renewing policies for businesses. Insurance agents working in the public entities and municipalities market indicated that most carriers are denying insurance coverage to Nevada's local governments, even with their excellent loss history.

One apparent surprise coming out of the survey is that many insurance agents are having trouble with "dram shop" exposures. It appears that any establishment serving alcoholic beverages has difficulty in renewing its liability insurance policy despite the fact that Nevada has never had a real problem with its liquor liability laws.

Since September of 1985, it is estimated that Nevada's insurance division has handled approximately 100 cases of general liability insurance policy terminations in the commercial or business area. Because the number of cases represents only those policy terminations which businesses brought to the division, it is not possible to determine the exact number of such policy terminations occurring in Nevada. Policy terminations include the following:

1. Renewal of policy with drastically altered terms such as a significant increase in the premium rate and/or reduced coverage and/or higher deductible;

2. Late delivery--at or close to renewal deadline--of notice of policy renewal, usually with altered terms and a significant rate increase; and

3. Nonrenewal notice by either (a) anniversary date cancellation notice or (b) midterm cancellation notice. (Knaus)

Although the division successfully intervened in the majority of these cases, about 30 percent were not resolved because the insurance companies followed the letter of the law in terminating policies.

The liability insurance problem in Nevada can be broken down into three areas: business, public entities and professional.

1. Business

A July 20, 1986, Reno newspaper article pointed out that almost all of Nevada's businesses "from small service stations to large grocery stores" have encountered skyrocketing insurance premiums which result in cost increases that are passed on as higher prices for the consumers. (Reno Gazette-Journal) The same article stated that insurance on tour buses has risen as much as 1,000 percent. In addition, insurance premiums for ski resorts have increased up to 400 percent, thus causing some ski operators to raise ski lift prices.

Late last year, the Nevada Business Outlook magazine reported the president of the company which owns Carson City's Ormsby House and Casino saying that casinos are in "pretty bad shape" concerning liability insurance. (Funk) It included his observation that small to moderate size casinos were experiencing increases of 200 to 500 percent in liability insurance premiums or from $50,000 to $150,000 in increased insurance costs.

On September 26, 1985, Nevada's division of insurance held a public hearing in Carson City, Nevada, on essential commercial insurance coverage availability and affordability. Although the hearing focused primarily on the availability of child care liability insurance, some of the other businesses identified as having liability insurance problems were any business requiring environmental liability coverage; asbestos-removal contractors; bars; certain associations providing services for senior citizens and retarded persons; chimney sweeps; crop dusters; general contractors; liquified petroleum dealers; mobile home parks; motels; private schools; restaurants; retail sellers, including food warehousing; and welding shops. (State of Nevada)

Testimony at the insurance division's hearing reveals that last year many child care centers either could not find insurance companies willing to write liability insurance policies for them or experienced premium increases of 300 to 2,700 percent higher than the previous year. In addition, most of the child care policies were written with much less coverage and many exclusions for such things as off-premise activities and sexual abuse. Representatives of child care associations from all parts of the state expressed their concerns over the inability of many child care centers to remain open without affordable liability insurance. Furthermore, it was pointed out that state and local authorities require licensed child care facilities to maintain liability insurance at specified limits of coverage.

The bureau of services for child care in the youth services division of the department of human resources advises that affordable liability insurance for licensed child care continues to be a problem in Nevada. (Frazzini) Even licensed family day care for six or fewer children may require liability insurance premiums of $700 or more.

2. Public Entities

The State of Nevada, counties, cities, school districts, special districts and virtually all public agencies have been hit hard by the liability insurance crisis. Nevada's public entities either have been unable to obtain any liability insurance coverage since last year or have been faced with tremendous increases in premium rates with decreased coverage.

The following are examples of the problem:

- Carson City dropped liability coverage early in 1986 when the only policy it could find would have cost 450 percent more than last year's policy;

- Clark County was forced to insure itself when its main insurance carrier canceled its liability policy this year;

- The City of Sparks accepted a general liability policy that cost almost $209,000, an increase of 230 percent over the previous year, but without coverage beyond $1 million; and

- The White Pine County sheriff's department was informed last year that its insurance premium would double while its liability limit would be cut in half.

With local governments in Nevada unable to find insurance or facing premium increases ranging from 200 to 1,000 percent, several have chosen to go without liability insurance. These include Carson City, Clark County, Douglas County, Henderson, Las Vegas, North Las Vegas, Reno and Washoe County. (Carlson) These entities are now either self-insured, partially self-insured, and/or are planning to join the local government risk pool which will be operating later this year.

A 1985 survey of Nevada's school districts--for the National School Boards Association's Center for State Legislation and School Law--reveals that liability insurance premiums increased well over 100 percent from 1982 to 1985 for the school districts in Churchill, Clark, Douglas and Mineral counties. (Etchemendy) During the same time period, premiums increased 379 percent in the Humboldt County School District and 275 percent in the Washoe County School District.

The school district survey also indicates that at least four of Nevada's school districts experienced reduced coverage with increased premium rates.

Because of problems in obtaining excess liability insurance beyond the self-insured coverage, the State of Nevada became completely self-insured at the beginning of 1986.

The liability insurance crisis also has made public entities reconsider many of their activities. Local governments and school districts are reevaluating the risks associated with athletics and recreational programs, and government agencies are taking a close look at restricting employee use of agency-owned motor vehicles.

3. Professional Liability

In testimony earlier this year before a U.S. Senate Subcommittee in Washington, D.C., a Las Vegas architect said that insurance premiums for architects have doubled or tripled and that the rising rates are causing one-fourth of all architectural firms in the U.S. to operate without insurance. (Nevada Appeal) Architects are not the only group of professionals experiencing problems in obtaining affordable liability insurance.

A Nevada newspaper reported this past summer that a Las Vegas banker was organizing a self-insurance trust to assist bank directors and officers who have been unable to obtain liability insurance coverage. (Las Vegas Review Journal) As an example of the scope of the current problem, the directors and officers of an insurance association in Nevada have experienced difficulties in securing liability insurance for their own operations.

According to the Nevada Independent Insurance Agents, the liability insurance premium for their board of directors went from approximately $1,000 in 1984 to over $9,000 in 1985. The 1986 premium for renewing the policy for the association's directors was quoted at almost $21,000 with a substantially increased deductible. (Barriage)

Probably the most recognized group of professionals experiencing problems with liability insurance are physicians. It is reported that general practitioners in rural Nevada may make house calls but seldom deliver babies because of the possibility of malpractice suits. During the mid-1970's, many Nevada physicians experienced malpractice insurance premium increases of several hundred percent. Although the crisis eased somewhat between 1976 and 1983, the premiums started once again to increase dramatically beginning in 1984. (Legislative Counsel Bureau) The insurance division's 1985 hearing also heard evidence that dentists were experiencing problems in obtaining liability insurance.

B. ORIGINS OF LIABILITY INSURANCE PROBLEMS IN NEVADA

Nevada's liability insurance problems are merely a reflection of the national situation. The problem in this state is a result of the same factors operating in other states. Except for a few unique features of the insurance market, the situation in Nevada appears to be no different than elsewhere.

The major cause of Nevada's liability crisis is the poor financial condition of the insurance industry, and one of the contributing factors may be increasing costs associated with tort claims in the civil justice system.

1. Insurance Industry in Nevada

The Insurance Services Office, Inc., (ISO) 1985 report, entitled Report On The Insurance Liability Crisis in Nevada, indicates that Nevada's general liability losses and expenses have significantly outstripped premiums since 1979. Moreover, the report states that the growth in paid losses in Nevada was considerably higher than the national average for commercial liability (U.S.--179 percent; Nevada--364.1 percent) and general liability and medical (U.S.--234 percent; Nevada--687.3 percent) between 1979 and 1985.

According to Nevada's insurance commissioner, commercial and personal liability insurance policies in the state total approximately $597 million but only comprise about four-tenths of 1 percent of the national market. (Gates) Nevada's small market size has contributed to the state's liability insurance problems because some insurance companies have found that it is too expensive to service such a small population. When the financial crunch hit the insurance industry in 1985, insurance companies started eliminating small policies and small producers to save on administrative costs. Because approximately 75 percent of the businesses in Nevada are considered small businesses, it became extremely difficult to obtain commercial liability insurance in Nevada.

The insurance industry is avoiding insuring public entities in Nevada because of the risks associated with government bodies throughout the country. Local governments in Nevada and in other states are engaged in a wide range of hazardous activities from street repair to fire protection, and many insurers are no longer willing to insure against these functions. Law enforcement agencies present an even more difficult problem because of potential lawsuits involving violations of federal civil rights laws. In addition, the insurance industry recognizes that public entities are particularly vulnerable to insurance claims and lawsuits because they are perceived as having unlimited resources.

2. Tort Claims and Jury Verdicts

The insurance industry argues that one of the primary reasons for the liability insurance crisis is the high cost of tort claim settlements and jury verdicts in the civil justice system. Although the insurance industry and the trial lawyers have presented contradictory statistics concerning tort claims and damage awards in the country, neither side has yet produced data on claims and awards in Nevada.

After Nevada's office of court administrator advised that no statewide data has been compiled on tort claims and jury verdicts in the state, the research division of the legislative counsel bureau requested information from all of the state district courts. The judges, or their clerks, were asked to provide data on the number of tort case filings and jury verdicts, including amounts of damage awards, in their courts since 1980.

Unfortunately, most of the courts advised that they have either not kept records which distinguish one type of case from another or have not compiled the data from existing records. It was not until Senate Bill 483 (chapter 602, Statutes of Nevada, 1985) became effective on January 1, 1986, that the court clerks were required to "obtain and file information regarding the nature of each civil case filed in the district court."

A summary of the data obtained from responding courts is as follows:

- The Second Judicial District Court, which includes all district courts in Washoe County, reports filings of 307 tort cases concerning general negligence (airplane, marine, vehicle, and so forth) and 147 tort cases concerning professional negligence (medical and other professional malpractice) from January 1, 1986, through August 31, 1986.

- Department One of the Second Judicial District Court reports that out of a total of 134 trials by jury between January 1, 1985, and October 1, 1986, 27 cases involved medical malpractice or automobile collisions. Of the 19 automobile cases, 10 resulted in verdicts for the plaintiff with damage awards ranging from $2,806 to $500,000, and $94,288 being the average of the awards. Of the eight medical malpractice cases, only one resulted in a plaintiff verdict ($10,000).

- The Fifth Judicial District Court (Esmeralda, Mineral and Nye counties) reports only two 1985 tort cases and no jury award for the plaintiff in either case; and two 1986 tort cases, both of which are pending.

- The Sixth Judicial District Court in Lovelock (Humboldt, Lander and Pershing counties) reports very few tort cases filed and no jury verdict awards in any such case since 1980.

- The Seventh Judicial District Court (Eureka, Lincoln and White Pine counties) reports that of 22 tort cases filed since 1980, 12 cases were dismissed, five cases had damage awards ranging from $500 to $35,000 ($10,000 average), two cases had no damage awards, and three cases are still pending as of September 1986.

District Judge Joseph O. McDaniel of the Fourth Judicial District Court in Elko, Nevada, is the past president of the Nevada District Court Judges Association. Judge McDaniel advised that there are few tort case filings and damage awards to plaintiffs in Elko County. He also indicated that he does not see the tort issue in relation to liability insurance as a problem in Nevada's rural counties. (McDaniel)

District Judge Miriam Shearing is the Chief Judge of the Eighth Judicial District Court (Clark County) and the current president of the Nevada District Court Judges Association. According to Judge Shearing's experience in the court since 1983, the majority of the jury verdicts have been for the defense and the awards in the plaintiffs' verdicts have been very low. (Shearing) She gave as a typical example a case where a plaintiff's attorney argued for a $50,000 verdict and the jury awarded $5,000 instead. Moreover, she stated that the highest personal injury verdict in her court was $50,000 for the death of an 8-year-old boy when liability was clear.

Nevada's state library and archives assisted the research library of the legislative counsel bureau in researching Nevada newspaper articles during 1985 and 1986 for information on recent jury verdicts for awards in personal injury and related tort cases. What follows is a description of the newspaper articles found on this subject:

- Nevada Appeal, September 12, 1985--article mentioned a woman's $319,000 personal injury award for injuries suffered in a 1982 automobile accident in Nevada.

- Nevada Appeal, September 23, 1986--article stated that a Washoe County, Nevada, jury awarded a Sacramento, California, woman more than $3 million--$2.25 million in punitive damages and $835,000 in general damages--in her lawsuit against a pharmaceutical company in a case involving her husband's death from complications caused by medical tests using a dye manufactured by the company.

These were the only newspaper articles which were found relating to actual damage awards in recent cases. A related issue, however, involves tort claims and future damage awards arising out of incidents of child abuse at two Reno, Nevada, day-care centers. A September 5, 1985, newspaper story in the Nevada Appeal indicated that these child abuse cases may cost insurance companies several million dollars. Furthermore, Mary Alice Foley with the San Francisco Office of the American Insurance Association, an insurance trade association, said that the tort claims involving just one of the day-care centers are estimated to total approximately $10 million. (Foley)

C. NEVADA'S LEGAL AND REGULATORY ENVIRONMENT

1. Insurance Laws and Regulations

Under Nevada Revised Statutes (NRS) 679B.120, the commissioner of insurance of the insurance division of the department of commerce, is responsible for enforcing the provisions of the Nevada Insurance Code (Title 57 of the NRS) and conducting examinations and investigations to ensure that the code is enforced. The commissioner regulates the insurance industry and collects taxes and fees associated with insurance. Among the many institutions and persons which he has authority to license and regulate are accident and health, casualty, fire, life, and title insurance companies; adjusters; agents; brokers; and solicitors.

The commissioner reviews the financial statements of all insurance companies each year to ensure that they are solvent. He responds to consumer complaints and reviews all applications for state increases for casualty, health and property insurance. In addition, he investigates charges against the institutions and persons he regulates and levies fines or imposes other penalties on those who violate the insurance code.

The commissioner of insurance is appointed by the director of the department of commerce, with the consent of the governor (NRS 232.250). The commissioner must have at least 2 years' experience in the field of insurance but may not hold stock in any insurance company or participate in the management of its affairs (NRS 679B.030).

As chief of the insurance division, the commissioner has approximately 32 employees to assist him in his duties. The division's budget for the current fiscal year (1986-1987) is $1,145,284, which includes $916,784 in general funds and $228,500 in interagency transfers from the various insurance funds which the division administers.

According to Mary Alice Foley with the American Insurance Association, Nevada's insurance commissioner has much broader authority to regulate insurance companies than insurance commissioners in most states. Nevada's commissioner of insurance has confirmed that he currently has sufficient authority to require all types of reports and financial data from insurance companies.

Absent statutory authority, the insurance division has no ability to force any individual or insurance company to engage in a certain type of conduct. For example, the insurance commissioner cannot force an insurance company to write insurance in this state nor can he issue an order that is effective retroactively.

a. Market Assistance Program.

At the insurance division's public hearing on September 16, 1985, the commissioner and his staff stated that the insurance code allows the division and the insurers in the state to set up a voluntary risk sharing plan or market assistance program (M.A.P.) to assist a line of insurance or insurer who has problems obtaining insurance.

b. Essential Insurance Program.

The division has the authority to establish a mandatory residual market program once it determines that there is an essential line of insurance. Under the provisions of NRS 686B.180 through NRS 686B.200, an essential insurance program can be established for one particular line of insurance after the commissioner finds that the insurance is essential: that it is required by a statute or regulation; that the consumer must have it; and that the insurance is not available in the voluntary market among insurance companies. A plan for essential insurance coverage may be promulgated by regulation of the commissioner or he may call upon insurers to prepare plans for his approval.

c. Joint Underwriting Association.

If property and casualty insurers in Nevada refuse to cooperate in a voluntary program of providing liability insurance, the commissioner may bring all licensed property and casualty insurers into a joint underwriting association (J.U.A.) where all insurers share profits, losses and administrative expenses.

d. Midterm Cancellation.

In response to the liability insurance crisis, the insurance division's actuary, and its consumer services section, have assisted individual consumers on cancellation and nonrenewal notices that they received from insurers. Under NRS 687B.320, the commissioner has the authority to prohibit the midterm cancellation of policies except in cases where a premium is not paid when due or on grounds specified in the policy. On June 20, 1985, the commissioner of insurance enacted an emergency regulation which prevented insurance carriers from canceling commercial insurance policies midterm.

e. Other Regulatory Action.

The insurance division held a hearing on September 3, 1986, to review the rates charged by commercial lines of insurance in Nevada and to determine whether those lines are competitive. The division also reviewed whether the profit received by insurers from those rates is unreasonable in relation to the riskiness of the class of business. In the hearing, the commissioner directed his staff to draft proposed regulations concerning excess profits by insurance companies.

2. Tort Laws

The major tort provisions in Nevada law are contained in Chapter 41 of NRS, "Actions And Proceedings In Particular Cases Concerning Persons."

a. Collateral Source Rule.

The state does not have a collateral source rule.

b. Contingency Fees.

Attorneys' fees are not limited under Nevada law.

c. Joint and Several Liability.

Nevada's statutes on joint and several liability are NRS 41.141, "Comparative Negligence," and NRS 17.225 through 17.305, inclusive, "Contribution Among Tortfeasors." Subsection 3 of NRS 41.141 reads as follows:

> Where recovery is allowed against more than one defendant in such an action, the defendants are jointly and severally liable to the plaintiff,

except that a defendant whose negligence is less than that of the plaintiff or his decedent is not jointly liable and is severally liable to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to him.

d. Limitation of Civil Actions.

Chapter 11 of NRS contains provisions for the limitation of civil actions. Paragraph (e) of subsection 4 of NRS 11.190 provides for a 2-year statute of limitation for commencing actions regarding personal injury or wrongful death. Nevada Revised Statutes 11.207 provides, with some exceptions, for a 4-year statute of limitation for commencing malpractice actions against accountants, attorneys and veterinarians.

e. Limits on Noneconomic Damages.

Nevada law does not specifically limit the amount one can collect for noneconomic damages, such as pain and suffering, in tort cases.

f. Medical Malpractice.

Chapter 41A of NRS is the medical malpractice statute, and the licensing statutes for the respective health professions in Title 54 of NRS also make some provision for malpractice.

Nevada Revised Statutes 41A.097 limits actions for medical malpractice to 4 years after the date of injury or 2 years after the plaintiff discovers the injury, whichever occurs first. Subsection 3 of NRS 41A.097 extends the period of limitation in certain cases of children with birth defect, brain damage, or sterility.

Nevada Revised Statutes 42.020 requires a reduction of damages in actions against providers of health care if the provider has made any prior payment to the injured person.

g. Punitive Damages.

Nevada Revised Statutes 42.010 allows exemplary and punitive damages to be awarded in certain cases involving "oppression, fraud or malice" and driving while intoxicated.

h. Structured Settlements.

The periodic payment of damage awards is neither specifically allowed nor prohibited by statute.

i. Sovereign Immunity.

In chapter 41 of NRS, the State of Nevada waives its immunity from suits and declares that its civil liabilities, and those of its political subdivisions, are to be determined in the same manner as those of private parties (NRS 41.031). Certain exceptions and limitations are provided. The State of Nevada and its political subdivisions are exempt from liabilities arising from the exercise of discretion by officials or employees (NRS 41.032) or caused by failure to inspect and discover hazards (NRS 41.033). The state is not liable for action taken by the Nevada National Guard in training or performing its duties (NRS 41.0333).

j. Limitation of Awards Against the State.

The limitation on awards for damages in tort actions brought against the state or any political subdivision is $50,000, exclusive of interest (NRS 41.035). To date, court tests have upheld the $50,000 statutory limit but have expanded it to provide a limit of $50,000 to each party or claimant when there are more than one. The statutory limit does not apply in federal courts where civil rights cases are heard nor does it apply outside the state.

3. State and Local Programs

Effective July 1, 1985, all tort claims against the State of Nevada are paid by the risk management division of the department of administration. As was previously stated, the state became completely self-insured against tort claims effective January 1, 1986.

The risk management division's most recent analysis of tort claims filed against the state was completed on December 1, 1985. This analysis indicates that the number of claims filed increased from 70 in fiscal year 1974-1975 to 245 in fiscal year 1984-1985. Although over $1.3 million have been paid in claims since 1974, there are still 450 unresolved claims among the 1,200 filed in this time period. (Finnell)

Assembly Bill 360 of 1985 (chapter 204, Statutes of Nevada, 1985) authorizes, among other things, local governments to enter into cooperative agreements to purchase marine and transportation insurance, property insurance, surety insurance and casualty insurance other than workman's compensation and employer's liability. With the enactment of this legislation, the Nevada League of Cities and the Nevada Association of Counties (NACO) are cooperating to form a local government risk pool to assist those cities and counties which have been unable to afford or obtain liability insurance.

According to Wayne Carlson, Risk Management Consultant, with NACO, the initial risk pool will include about a dozen small to moderate size cities and counties. This pool should be completed around November 1, 1986. Because of greater potential risks and different insurance needs, a second pool will be formed at a later date for the large jurisdictions such as Las Vegas, Reno and Clark and Washoe counties.

4. Short-Term Outlook

The commissioner of insurance sees liability insurance rates stabilizing in the near future, and reports that there have been a few cases where commercial insurance premiums have actually decreased this year. (Gates) Likewise, NACO has discovered that the insurance market for county and municipal governments has stabilized over the past year. (Carlson)

Although it appears that the liability insurance crisis in Nevada has reached its peak, high premium rates still exist and some businesses and public entities remain unable to obtain insurance. The American Insurance Association confirms that liability insurance availability is improving while prices are softening, but it sees a possible problem if Nevada adopts an excess profits regulation which is being considered by the insurance commissioner. (Foley)

D. PROPOSALS FOR LEGISLATIVE CONSIDERATION

Assembly Concurrent Resolution No. 53 of the 63rd session of the Nevada legislature (File No. 106) directed the legislative commission to study insurance against medical malpractice in Nevada. The subcommittee appointed by the legislative commission has prepared a report which presents recommendations for legislation. (Legislative Counsel Bureau) In addition, the research division of the legislative counsel bureau solicited recommendations regarding general liability insurance from attorneys, businesses, insurers, judges, and state and local officials.

1. Medical Malpractice Subcommittee

Among the recommendations made by the legislative commission's subcommittee studying insurance against medical malpractice are the following legislative proposals:

- Limit recovery against a defendant whose negligence is less than 50 percent of the total negligence which contributed to an injury or death;
- Tie the limit on prejudgment interest rates to the rate paid on Treasury bills or similar instruments;
- Establish an office of public advocate within the office of the attorney general to intervene in rate cases on behalf of consumers of insurance;
- Change insurance ratemaking procedures to provide that rate increases will not go into effect until a public rate hearing is held, if such a hearing is requested by the public advocate or other party; and
- Amend NRS 686B.050 and NRS 686B.060 to remove the presumption that rates set by insurance companies in a competitive market are reasonable.

2. <u>Statewide Coalition for Affordable/Available Insurance</u>

The Coalition for Available/Affordable Liability Insurance is a broad-based nonprofit organization, located in Nevada, with members representing over 21 organizations in such fields as business, construction, education, health care, insurance and local government. The Chambers of Commerce in Las Vegas and Reno-Sparks were active in the formation of the coalition, and Nevada Attorney General Brian McKay serves as its chairman.

The coalition has made the following recommendations for legislation in 1987:

- The Nevada legislature should pass legislation requiring that all damage awards be reduced to reflect the collateral sources available to the plaintiff;
- The Nevada legislature should pass legislation limiting joint and several liability patterned after California's Proposition 51;
- The Nevada legislature should pass legislation placing a reasonable limit on the amount of noneconomic damages that a plaintiff can recover;
- The Nevada legislature should pass legislation requiring judgments to provide for the periodic payment of future damages. The legislature should allow a court to require a guarantee of payment of these damages (e.g., annuities if the circumstances warrant); and

- The Nevada legislature should consider increasing funding to the state's insurance division if there is a demonstrable need for such funding. (Davis)

3. Nevada Trial Lawyers Association

The Nevada Trial Lawyers Association supports the following legislative proposals for the 1987 session:

- Price regulation of the insurance industry;
- Prohibiting unjust cancellations of coverage;
- Beefing up the Nevada insurance division's power to control the insurance industry;
- Enacting legislation to encourage municipalities and others to "pool" risks;
- Abolition of the industry's federal exemption from price-fixing laws;
- Establishment of an "insurance consumer advocate" to represent all Nevada buyers of insurance in rate hearings on insurance;
- Abolition of anticonsumer language contained in newer types of professional, household and automobile liability insurance;
- The setting of rates in accordance with risks and losses occurring in Nevada; and
- The repeal of the presumption that rates are not excessive as set forth in NRS 686B.050. (Cashill)

4. Issues Under Debate

District Court Judge Miriam Shearing, identified earlier in this report, is opposed to most of the measures labeled as "tort reform." She writes that Nevada has an excellent tort system that "provides access to courts to the poorest person, that assigns responsibility equally and that has a positive impact on society." (Shearing) Judge Shearing further expresses the opinion that the public is served by products liability and malpractice judgments which make "manufacturers and providers of service cautious about what they unleash on the public." In summation, she states the belief that Nevada does not have a problem with its tort law.

The Nevada Trial Lawyers Association also is opposed to tort reform legislation, particularly in the areas of pain and suffering awards, joint and several liability, attorneys' contingency fees and punitive damages. The association has labeled such proposed legislation as "anticonsumer legislation" which seeks to infringe upon the right to seek redress for damages in Nevada's courts. (Cashill)

IV. SUMMARY

The liability insurance issue is a national problem which affects all of the states. The basic problem is the availability and affordability of general liability insurance from the property/casualty insurance industry. The two major causes generally cited for the liability insurance situation are the insurance industry's own practices and changes within the civil justice system. State legislatures have become the forum of debate concerning the liability insurance issue because state governments traditionally have had authority to regulate the insurance industry and state courts establish tort law doctrine.

States are considering and taking a wide variety of actions to deal with the liability insurance problem. Many states have sought to combine tort reforms with changes and reforms of insurance regulation, but the degree of reform varies significantly among the states.

Popular tort reform actions among the states in 1986 included limiting liability or establishing immunities, modifying dram shop laws, limiting noneconomic damages, modifying the doctrine of joint and several liability , penalizing frivolous lawsuits, and providing for structured awards. Popular insurance regulation actions among the states in 1986 included establishing market assistance plans, providing for self-insurance, establishing joint underwriting associations, restricting midterm cancellations and notice requirements, strengthening rate regulation and establishing pooling mechanisms.

Nevada has been stricken hard by the national liability insurance situation. Skyrocketing insurance rates have caused many commercial enterprises to pass on increased costs to their consumers, and some businesses and governments have had to risk operating without insurance because it was either not affordable or not available at any price. The situation in Nevada may have been worsened by the state's small market size which discourages some insurance companies from writing insurance in the state.

Nevada's insurance commissioner has taken steps to prevent midterm cancellations of policies and to encourage the insurance industry to voluntarily assist in providing insurance for commercial enterprises not able to obtain coverage.

Although the insurance crisis appears to be lessening in severity, the price of liability insurance will most likely remain high for several months or more. In addition, certain high-risk groups may continue to have difficulty in obtaining insurance coverage.

Recommendations for legislation in the 1987 regular session of the Nevada legislature have been proposed by the legislative commission's subcommittee studying insurance against medical malpractice, the Coalition for Affordable/Available Liability Insurance and the Nevada Trial Lawyers Association. Other recommendations from individual legislators and other entities also are anticipated.

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APPENDIX 1

These charts describe actions taken in state legislatures between Jan. 1 and June 30, 1986.

Civil Justice (tort) Reforms

	Modify Sovereign Immunity	Modify Joint and Several Doctrine	Modify Collateral Source	Limits on Non-Economic Damages	Provide for Structured Awards (Periodic Payments)	Penalties for Frivolous Suits	Modify Dram Shop Laws	Modify Statute of Limitations	Limit Attorney Contingent Fees or Modify Payment	Limit Punitive Damages	Limit Liability or Establish Immunities
ALABAMA											X
ALASKA		X	X	X	X						X
ARIZONA*						X	X				
ARKANSAS	Not in session in 1986										
CALIFORNIA**		X									
COLORADO		X	X	X			X	X		X	X
CONNECTICUT	X	X	X		X	X	X	X	X		X
DELAWARE											X
FLORIDA		X		X	X					X	
GEORGIA	X					X					X
HAWAII	X										X
IDAHO							X		X		
ILLINOIS		X	X								X
INDIANA			X			X	X				X
IOWA					X						
KANSAS				X							
KENTUCKY											
LOUISIANA							X				
MAINE				X	X		X	X	X		X
MARYLAND				X			X				X
MASSACHUSETTS			X	X					X		
MICHIGAN	X	MM X	X	MM X	X	X	X	MM X			X
MINNESOTA			X	X		X				X	
MISSISSIPPI***	X									X	X
MISSOURI				MM X		X			X		X
MONTANA							X				X
NEBRASKA											
NEVADA											
NEW HAMPSHIRE		X		X		X	X		X	X	X
NEW JERSEY											X
NEW MEXICO							X		WC X	X	
NEW YORK		X	X		X	X	X				X
NORTH CAROLINA											
NORTH DAKOTA	Not in session in 1986										
OHIO											
OKLAHOMA						X				X	
OREGON	Not in session in 1986										
PENNSYLVANIA											X
RHODE ISLAND											
SOUTH CAROLINA	X										X
SOUTH DAKOTA				MM X	X						
TENNESSEE							X				X
TEXAS	Not in session in 1986										
UTAH		X		MM X	X		X				X
VERMONT											
VIRGINIA											
WASHINGTON		X		X	X			X			
WEST VIRGINIA		X		MM X							
WISCONSIN				MM X					X		
WYOMING	X	X				X	X				X

*Arizona's tort reform package was vetoed by the governor.
**California's Proposition 51 was enacted by statewide initiative.
***Mississippi's limit on punitive damages (column 10) was vetoed by the governor.

MM = medical malpractice only
WC = workers' compensation only

Insurance Industry Regulations

	Establish State Reinsurance Fund	Establish Pooling Mechanism	Rebate on Excessive Rates	Establish Joint Underwriting Associations	Provide for Self-Insurance	Prohibit Midterm Cancellation or Extend Notice	Establish Risk Management	Strengthen Rate Regulation	Establish Market Assistance Plans	Establish Study Committee
ALABAMA					X					X
ALASKA				X	X					
ARIZONA		X		X	X	X		X	X	
ARKANSAS										X
CALIFORNIA										
COLORADO						X	X	X	X	
CONNECTICUT				X		X		X	X	X
DELAWARE						X				
FLORIDA	X		X	X	X	X		X	X	X
GEORGIA		X			X	X		X		
HAWAII				X	WC X					X
IDAHO										X
ILLINOIS						X			X	
INDIANA		X			X				X	
IOWA		X			X		X		X	X
KANSAS						X				X
KENTUCKY									X	X
LOUISIANA										
MAINE		X		X	X	X				X
MARYLAND		X		X	X					
MASSACHUSETTS				X						
MICHIGAN									X	
MINNESOTA				X	X		X	X	X	
MISSISSIPPI									X	
MISSOURI					X		X		X	
MONTANA				X	X				X	X
NEBRASKA										X
NEVADA										
NEW HAMPSHIRE						X		X	X	X
NEW JERSEY									X	
NEW MEXICO		X			X		X	X		X
NEW YORK				X	X	X		X	X	
NORTH CAROLINA				X						
NORTH DAKOTA										
OHIO		X							X	
OKLAHOMA									X	X
OREGON										X
PENNSYLVANIA						X		X	X	
RHODE ISLAND				X					X	
SOUTH CAROLINA				X						
SOUTH DAKOTA		X			X	X				X
TENNESSEE					X	X			X	X
TEXAS									X	X
UTAH				X			X	X	X	
VERMONT		X		X	X				X	
VIRGINIA									X	X
WASHINGTON			X	X	X	X		X	X	X
WEST VIRGINIA					X	X	X	X		X
WISCONSIN		X			X	X			X	X
WYOMING		X		X	X	X				

Source: NCSL survey conducted by senior research analyst Brenda Trolin