Approved April 1, 1986
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Chairman Joe Knopp at
Chairperson

3:30 xxx./p.m. on March 26, 1986 in room 313-S of the Capitol.

All members were present except:

Representatives Duncan, Fuller, Luzzati and Snowbarger were excused.

Committee staff present:

Mike Heim Legislative Research Department
Jerry Donaldson, Legislative Research Department
Mary Torrence, Revisor of Statutes' Office
Jan Sims, Committee Secretary

Conferees appearing before the committee:

Richard Hite, Kansas Bar Association
Arden Bradshaw, Kansas Trial Lawyers Association
David Litwin, Kansas Chamber of Commerce and Industry
John Anderson
Jack Euler, Kansas Bar Association
Gene Ralston, Kansas Trial Lawyers Association
T.C. Anderson, Kansas Society of Certified Public Accountants
George Barbee, Kansas Association of Consulting Engineers
William Henry, Kansas Engineering Society
John Myers, Director of Policy for Governor Carlin
Ted Fay, Insurance Commissioner's Office
Rochelle Heinz, Kansas State Nurses Association

Dick Hite of the Kansas Bar Association appeared before the committee in opposition to SB 668. He stated that this bill would preclude impeachment of false testimony given in a products liability case. He pointed out that current law does not allow evidence of technicological discoveries since manufacture of the defective product to be admitted but does allow for that information to be used to impeach clearly false testimony. This bill would eliminate the impeachment procedure and for this reason the KBA opposes same (Attachment 1).

Arden Bradshaw of the Kansas Trial Lawyers Association appeared before the committee in opposition to SB 668. He stated the same objections to the impeachment provision being eliminated and related the factual situation of a Minnesota case he handled which would have had a drastically different outcome had impeachment not been allowed. He stated this is a rule of evidence and not a rule of liability.

There was discussion concerning federal legislation introduced by Dan Glickman along these same lines.

David Litwin of the KCCI appeared before the committee in support of SB 668 stating that the KCCI feels the bill speaks to the basic ideas of equity and fairness and that the bill should make insurance more available. Further the KCCI feels 668 will encourage manufacturers to continuously update and safeguard their products (Attachment 2).

SB 540 - An act relating to certain licensees, licensed or certificated by agencies of the state of Kansas; concerning misconduct or malpractice of such licensees and liability and insurance coverage therefor.

Former Governor John Anderson appeared before the committee in opposition to SB 540. He stated that with all due respect to the almost half of the Senate who authored this bill, the enactment of SB540 would open Pandora's box. He stated he feels it is merely a crutch to the medical malpractice bill. He was asked what portions of the bill had merit and was asked specifically about the provisions for itemized verdicts and settlement conferences. He responded that those were the only meritorious portions he saw in 540 and felt he could support both itemized verdicts and settlement conferences.

Jack Euler of the Kansas Bar Association appeared before the committee in opposition

to SB 540. He stated that those who want change should demonstrate that there is a clear need for the change and show how the people of Kansas will benefit from the change. He pointed out that those who are complaining are complaining about their liability insurance premiums being too high. They are not complaining about being sued too often. He said this bill will not help the cost or availability of insurance. It creates some equal protection problems and is not being done in other states. He stressed that although he is an attorney, represents an association of attorneys, and the provisions of this bill would protect attorneys, this is a bad bill. The KBA opposes it. He stated that the bill is antibusiness in that businessmen will be some of the plaintiffs who will be denied their claims. Mr. Euler also responded to questions concerning the itemized verdict and settlement conference portions of the bill and stated that those are good provisions (Attachment 3).

Gene Ralston of the Kansas Trial Lawyers Association appeared before the committee in opposition to SB 540 (Attachments 4, 5 and 6). He stated that this bill limits the rights of the citizens of Kansas to hold those who are responsible for their injuries to account for their actions and it further limits the access of the people to the courts. The only merits of the bill are the itemized verdict and settlement conference portions of the bill.

T. C. Anderson of the Kansas Society of Certified Public Accountants appeared in support of SB 540. He stated that members of his organization are experiencing increases in their liability premiums as high as 1200% when the loss ratio of CPA's has been only 35%. They have been led to believe that this legislation will have a stabilizing affect on the upward trend of their premiums (Attachment 7).

George Barbee of the Kansas Association of Consulting Engineers appeared in support of SB 540 stating his association is having increasing difficulty finding companies willing to write their professional liability insurance as well as increasing premiums. He presented the committee with the report of the Tort Policy Working Group and the Task Force on Liability Insurance Availability (Attachment 8).

William Henry of the Kansas Engineering Society appeared in support of SB 540. He stated that there is a need to have a provision in the bill requiring insurance companies to provide a data base for the determination of premiums. He also feels that the screening panel provisions need to be looked at as theywould not come into play in 80% of the suits (Attachment 9).

John Myers, Director or Policy for Governor Carlin appeared before the committee in opposition to SB 540. The Governor feels this bill precludes too many rights of the citizens in exchange for the limited benefits to be derived. The Governor feels the issue of liability insurance should be approached by an in-depth study of the problem rather than by the current bill. He reminded the committee of the testimony it heard earlier from Robert Hunter concerning the cyclical nature of the insurance industry and reiterated that a portion of the current crisis is a part of the cyclical insurance industry. He stated that the various professions addressed in SB 540 do not have equal situations and needs for liability insurance that this bill would act as an arbitrary mandate handling all the professions equally. It would place the burden of actual and future expenses on the back of innocent citizens whether the injury is a result of the medical profession, the legal profession or the engineering professtion (Attachment 10).

Ted Fay of the Insurance Commissioner's Office appeared before the committee stating that the Insurance Department supports SB 540 only due to the fact that 10 years ago a lesson should have been learned with regard to medical malpractice. The actuaries at that time were getting nervous because the trendlines were going up. Noone believed them but they have been proven right. Now the actuaries are saying the same thing about other professions and the insurance companies are leaving the marketplace. For that reason the Insurance Department supports SB 540 (Attachment 11).

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 26, 1986.

Rochelle Heinz of the Kansas State Nurses Association appeared stating that her organization neither supports nor opposes the proposed legislation but would prefer the matter be the subject of an interim study and that the insurance industry be made a part of the study. She stated that the portions of her profession currently required to carry liability insurance are experiencing premium increases similar to other professions who have testified today and some specializations are experiencing difficulty in obtaining coverage at all (Attachment 12).

The Chairman announced that due to the lateness of the hour HB 2458 scheduled for hearing today would be passed over until Monday.

The Chairman adjourned the meeting at 5:25 P.M.

LEVEL 1 - 22 OF 281 STORIES

Business Wire

March 3, 1986, Monday

DISTRIBUTION: Business Editors/Aviation Writers

LENGTH: 611 words

HEADLINE: BEECH-AIRCRAFT: Supports Glickman Aviation **Tort Reform** Bill

DATELINE: WICHITA, Kan.

BODY:

Beech Aircraft Corporation President and CEO James S. Walsh has expressed his company's strong support for Congressman Dan Glickman's (D-Kansas) General Aviation **Tort Reform** Act of 1986 (HR-4142).

In a statement released today, Walsh said the Aviation **Tort Reform** Bill would help relieve the general aviation industry of an unfair economic burden, as well as ensure that accident victims are treated fairly.

The bill contains provisions to effectively deal with several major problem areas in the current product liability system:

-- It would provide consistent laws by which aircraft liability cases would be heard at the state level or in federal courts. Under the current system, manufacturers are subject to widely differing state liability laws. General aviation is unique in that it is entirely controlled by federal laws from manufacture to end use. Federal regulations now govern the design, manufacture, use and repair of airplanes. The only area not covered by federal statute is product liability. The General Aviation **Tort Reform** Act would correct that.

-- The bill would also establish comparative liability, with damages allocated among parties responsible for an accident in proportion to their established percentage of responsibility. In many states this is not always the case under the current system. Frequently parties are held jointly liable, but the party with the most resources is assigned the majority -- or sometimes even all -- of the damages.

-- The bill would also hold manufacturers responsible for designing products in accordance with the state-of-the-art technology available at the time the airplanes were built. Courts in some states have found manufacturers liable when aircraft did not contain design developments that occurred many years after

Attachment 1
House Judiciary
March 26 1986

the products were built and sold.

-- Another major feature of the Aviation **Tort Reform** Act would create a statute of repose, limiting the length of time an aircraft manufacturer would be held liable for an aircraft's design integrity to 12 years. It is based on the premise that an aicraft which has performed well for 12 years has proven its design to be inherently adequate, and that its performance thereafter is primarily dependent on maintenance and other factors over which the manufacturer has no control.

The Aviation **Tort Reform** Act is intended to create a fairer system for both injured parties and manufacturers. A study recently completed by Beech Aircraft indicates that the cost of administering the current system consumes 83 cents of every dollar Beech spends on product liability. This money is consumed by courts, attorneys, insurance companies and other parties involved in litigating cases. This leaves just 17 cents for the victims -- the people the system was intended to protect. The Aviation **Tort Reform** Act would make major strides towards correcting this inequity.

In recent years, product liability costs have risen dramatically for the general aviation industry. For example, Beech Aircraft's costs have tripled in the last three years. Product liability costs now add $85,000 to the price of

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every airplane Beech builds. Less than five years ago Beech was able to build and sell airplanes for less than $85,000. Other airframe manufacturers have been affected in the same way with the result that the market for small owner-flown aircraft has been virtually eliminated, and the larger business aircraft market is threatened due to price increases reflecting escalating liability insurance costs.

CONTACT: Beech Aircraft Corp., Wichita
Mike Potts, 316/681-7602

aircraft did not contain design developments that occurred many years after

November 20, 1985

99th CONGRESS
1st Session

H. R._____

To provide uniform rules of liability for bodily injury and property damage arising out of general aviation accidents, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

November , 1985

Mr._____ introduced the following bill; which was read twice and referred to the Committee on

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A BILL

to provide uniform rules of liability for bodily injury and property damage arising out of general aviation accidents, and for other purposes.

(c) Nothing in this section shall be construed to alter a person's duty to provide to aircraft owners and repair stations additional or modified warnings or instructions regarding the use or maintenance of an aircraft.

(d) If a manufacturer of a general aviation aircraft is not subject to liability because of the provisions of this section, then the owner of that aircraft shall be treated as a manufacturer and shall be subject to liability as set forth in Section 7.

SUBSEQUENT REMEDIAL MEASURES

Sec. 10. (a) Except as provided in subsection (b), evidence of any measure taken after an event, which if taken previously would have made the event less likely to occur, is not admissible in an action for damages for injury or damage arising out of a general aviation accident.

(b) This section does not require the exclusion of evidence of a subsequent measure, if offered to impeach a witness for the manufacturer or seller of an aircraft who has expressly denied the feasibility of such a measure.

DETERMINATION OF COMPENSATORY DAMAGES

Sec. 11. (a) Evidence of Federal and State income tax liability attributable to past or future earnings, support or profits alleged to have been lost or diminished because of bodily injury or property damage arising out of a general aviation accident, is admissible regarding proof of the plaintiff's damages.

(b) In any action for damages arising out of a general aviation accident, the present value of damages for lost or

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 540 & 668

March 26, 1986

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Judiciary Committee

by

David Litwin

Mr. Chairman, members of the committee. I am David Litwin, representing the Kansas Chamber of Commerce and Industry. We appreciate the opportunity to comment in favor of passage of SB 540 and SB 668.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Last month, KCCI's Board of Directors adopted a comprehensive policy on liability insurance availability and tort reform. A copy is appended to my written testimony.

Attachment 2
House Judiciary
March 26 1986

We endorse SB 540, in terms of the reforms that it would apply to a broader area than the medical malpractice bill, HB 2661, which we also support. SB 540 would apply the following reforms to professional malpractice actions involving 28 licensed professions: caps on awards, for both pain and suffering and total damages; structured awards for future economic loss to maximize the payout to victims while controlling defense and insurance costs; a requirement that expert witnesses spend substantial parts of their days in actual practice, in order to discourage the use of traveling professional hired-gun witnesses; mandatory settlement conferences, with sanctions for failure to accept reasonable settlement offers; tightened requirements concerning the reporting by insurers of incidents of possible professional malpractice; a requirement for an evidentiary hearing to determine the reasonableness of attorney fees; and, pretrial screening panels whose decisions would be admissible in evidence at any subsequent trial, with the important safeguard that would allow any member of the panel to be subpoenaed for purposes of examination and cross-examination.

These are important reforms and are a major part of what is often referred to as tort reform. Virtually all who have studied the present crisis in cost and availability of many kinds of liability insurance agree that it results both from problems within the insurance industry, and runaway costs of our tort litigation system, and that in order to restore long-term stability and affordability to both systems, both problems must be addressed. SB 540 would address many of the major problems in our civil justice system, for a limited class of defendants.

Other reforms might include restriction or abolition of punitive damages, the elimination of the collateral source rule, and control of discovery costs and abuse.

It is our hope that in the near future the legislature will undertake a broad inquiry into the problems plaguing our insurance and civil justice systems and enact such reforms of general applicability as may be necessary. There is a deeply-felt need among the general business community for relief from the increasing cost and

decreasing availability of insurance, and to bring costs of litigation back to a level of reasonableness and viability.

SB 540 would advance us further down that road, and KCCI supports its passage.

Turning to SB 668, one of the most troubled areas of liability insurance is product liability. Developed for the salutary purpose of compensating people injured by faulty products, the "spreading of the risk" through strict liability concept has tended to be taken to extremes by the courts with insufficient thought given to the ability of manufacturers and insurers to bear the costs. Compounding the problem has been the simultaneous tendency to give large awards for punitive damages in many products cases.

KCCI responded by adopting a policy urging certain reforms. First adopted in 1976, it reads:

> "KCCI recognizes the concern of all business and industry in the total area of product liability and product liability insurance coverage. The Chamber strongly supports state and federal laws and amendments thereto that will bring about a more logical approach to strict liability in tort through such measures as: a fair statute of limitations on the filing of claims; 'state of the art' as a defense; relief from responsibility in cases of injury resulting from alteration and modification; and, other legislative features to insure availability of insurance and protection against the current trend of excessive liability litigation."

In 1981 this legislature addressed the problem and passed the Kansas Product Liability Act, which created a period of repose against stale claims arising from products that were put into the stream of commerce many years earlier. Another section of this enactment, KSA 60-3304, provides, in substance, that where the injury-causing aspect of a product was in compliance with legislative and administrative standards regarding design, performance, and warnings or instructions at the time of manufacture, the product shall not be deemed defective by reason of failure of design, performance or warnings. This provision has the same philosophical base as the so-called "state-of-the-art" defense, in that both hold that it is grossly unfair, for "risk-spreading" or any other purpose, to hold manufacturers accountable for failures to anticipate developments that occur after an article has been put into the stream of

commerce. They also recognize that to hold manufacturers or others liable for failure to anticipate future advances destroys the predictability that is necessary for a viable insurance system.

SB 668 would complement the existing provision and essentially simply extend it to apply to advances in knowledge or theory, or in applications such as designing or manufacturing, that are not reflected in regulations of any governmental body by excluding evidence of such later advances. Again, the premise is one of fundamental fairness, that it violates basic ideas of equity to hold a manufacturer or supplier responsible for technical advances that had not been made at the time of manufacture, and makes insurance almost impossible to write.

The second part of SB 688, section 1 (b), would strengthen the important public policy that encourages manufacturers to continuously make their products better and safer, without fear that such conduct will come back to haunt them in court.

Some conferees may tell this committee that it would be wasting its time since only a federal response can completely resolve the product liability dilemma due to the fact that products circulate freely in commerce throughout the United States, and that a Kansas enactment cannot be of any help to a Kansas manufacturer or wholesaler if a claim arises elsewhere. I don't quarrel with that, but there is no guarantee that federal relief is forthcoming. Moreover, progressive state legislation might well set an example for Congress to follow, and by passing appropriate reform measures the legislature will have discharged its responsibility by doing all it can to alleviate the problem. In any event, reforms would govern products cases in our state courts.

We urge your approval of these bills. If there are any questions, I will be happy to try to answer them.

Kansas Chamber of Commerce and Industry
Tort Reform Policy

February 1986

The Kansas Chamber of Commerce and Industry supports reforms which, in medical malpractice actions, would impose caps on damage awards with the exception of past and future medical expenses and other out-of-pocket costs, provide for structured awards of future economic loss, require itemization of jury awards, make decisions of pretrial screening panels admissible in evidence, require expert witnesses to be active in clinical practice, establish mandatory settlement conferences, link postjudgment interest rates to the yield of United States Treasury bills, require evidentiary hearings on the reasonableness of attorneys' fees, and reduce the exposure of the Health Care Stabilization Fund.

KCCI further supports, in principle, the enactment of provisions which would curtail the activities of impaired health care providers, accelerate and improve practitioner discipline, impose mandatory requirements concerning the reporting of malpractice incidents, immunize good faith reporting of such incidents, require the implementation of peer review and risk management programs, and impose civil fines for malpractice.

KCCI further believes that there is an equally serious crisis in the cost and availability of liability insurance in a wide range of industries and professions and for public entities, and in the cost of litigating tort claims. KCCI believes that reforms that are necessary and appropriate in the medical malpractice area should, on the whole, be adopted in these more general spheres as well, and urges the legislature to enact remedial legislation as soon as possible. Such legislation should include provisions that would eliminate or significantly restrict the award of punitive damages, place caps on awards for pain and suffering, authorize structured awards, limit attorney contingent fees, eliminate the collateral source rule, eliminate discovery abuse and control discovery costs, provide for alternate dispute resolution in appropriate cases, limit venue shopping in tort actions, and effect such other procedural and substantive reforms as may be necessary.

SB 540

House Judiciary Committee

March 26, 1986

Mr. Chairman. Members of the House Judiciary Committee. I am Jack Euler, President-Elect of the Kansas Bar Association and a member of the Executive Council of KBA.

Our Executive Council represents the association's policy making arm. It is composed of both elected and appointed members. Our Council represents a diverse group of lawyers. Some are plaintiff's lawyers; some are primarily defense-oriented. Many on the Council are small town lawyers like myself whose practices vary, and some do little trial work.

We submit issues to our Legislative Committee for study, and many times they bring issues to us that have been suggested either by our membership, or as a result of previous bill introductions. Further, in some instances, we appoint special study committees on issues of great interest.

The liability insurance problems are certainly with us today. Nobody denies this. Certainly the pain of premium increases, or insur-

Attachment 3
House Judiciary
March 26, 1986

ance that is unavailable, is real. Lawyers are affected like any other consumer.

Clearly the natural legislative instinct is to do something. I know you realize how important the fact-gathering function of a legislature can be.

In Executive Council meetings in past years, KBA was well aware that certain tort reform, especially regarding the medical care industry, was going to be a major issue to the 1985 and 1986 Legislatures. Our discussions have been long. Our members need no encouragement to express their feelings. In the end, our Executive Council did what you often do: we compromised.

Our compromise doesn't place us unalterably opposed to limits on total awards. Or limits on pain and suffering. Our position tries to put the Kansas lawyer into the shoes of the Kansas citizen. Kansans rely on you to determine what the facts actually are, and legislate based on facts.

We simply believe before changing the legal system's ability to solve disputes, fully compensate litigants, and deter further negligent activities, those who want such changes should fully demonstrate (1) a clear and convincing public need for the change, and (2) the public will benefit from the change.

Mr. Chairman, we don't think these two prerequisites ask too much from the legislative process.

How will the public benefit from this change? Attorneys are included in this bill. I get reminded all the time there are too many attorneys in Kansas, and we graduate many new ones each year. We don't have a

problem with people not wanting to take the Bar exam because of insurance costs. I doubt that you've heard from your constituents that we've got to save these lawyers, engineers and CPAs from the financial ruin of malpractice lawsuits. What you've heard is from engineers, CPAs and lawyers that their premiums are too high. But lawyers cannot yet determine why our insurance rates are so high. I doubt if the other professions know, either. Those facts must come from our insurance carriers.

It would be easy for attorneys, because we are covered under this act, to come to you and say "we really don't think this will help much, but if you want to pass this bill, go ahead." That might be fine for our parochial interests. But the reason attorneys hesitate to do this is, first, we've not seen any information that tells us SB 540 will help our affordability and availability of insurance.

Second, if our legal system is to provide a forum where people are fairly and justly compensated, if we are the custodians of the judicial system, is it right for attorneys to want our clients to fairly and justly compensated for all matters except if we injure our clients through professional negligence?

As the chairman of this committee said in another committee on a contingency fee bill last week, if the purpose of this legislation is to set into place a giant wage and price control system within the judiciary, then come out and do it up front. Put that in the purpose of the bill.

There are some unanswered insurance questions. The lobbyist for the School Boards told a joint insurance committee hearing earlier this session that their main insurance carrier for errors and omissions poli-

cies indicated the loss ratio for Kansas was only 31% in 1985, and 17% in 1984, with a national loss ratio of 43%?[1] This indicates liability claims against school boards are not large in Kansas, and the current premium is adequate to cover their losses. Yet school board premiums continue to increase. Based on their statistics it would not appear that claims within the KANSAS legal system are the cause for that increase.

Our specific concerns are these:

(1) The limits in the law apply to all licensed professions, but not all citizens or others who may be defendants in civil litigation in Kansas. If the wealthy owner of a business runs into me with his auto, and I am heavily injured, I can sue for an unlimited amount. If I am negligent in the practice of law towards this same business client, and cause great financial harm, public policy is now saying the businessman cannot collect the full measure of damages -- solely because I am a licensed professional. Thus you create constitutional questions.

(2) To my knowledge there are no similar bills limiting awards for similar professions in other states. Why should my liability be limited and a plumber's liability not limited, solely because I am "licensed" by the Supreme Court? The Court would have to look at the effect on affected organizations, such as our own, to determine whether this legislative action is appropriate.

(3) Furthermore, the limit is only on "malpractice" actions. Ordinary business negligence -- which is the primary negligence insurance purchased for many of these organizations -- has no statutory limit on liability. We also cannot tell from the language whether the total limit on awards includes claims for punitive damages.[2]

(4) Section 6 has a limitation on expert witnesses, requiring them to have 50% of their "professional time" devoted to "actual practice in the same profession" and the "same speciality" as the defendant. This is similar to the legislation for the Physicians, HB 2661. Last weekend at our KBA Executive Council meeting, one prominent medical malpractice defense counsel, said if HB 2661 passes they may not be able to find an appropriate medical defense expert witness to defend their doctor. One can assume such problems may arise in defense of these other professions, too. You need defense expert witnesses -- regardless of the size of the claim. If I am looking to hire a lawyer expert witness "in the same speciality" in the practice of law, how can I find one when the Kansas Supreme Court does not recognize legal specialties? Doctors have board-certified specialties. Lawyers, CPAs, engineers, etc., do not.

(5) The Settlement conference section has penalties for rejecting a settlement. The only way to avoid these penalties for guessing wrong is not to make any offer. You can't be penalized under this section if you don't make an offer. But you defeat the purpose of the section which is to encourage settlement. And thereby defense costs will increase.

(6) New Section 11 sets up use of mandatory malpractice screening panels but you can use it only if there is "personal injury or death" from such malpractice. Legal or CPA malpractice ordinarily doesn't involve personal injury or death. Extending screening panels to all types of malpractice won't solve the problem, either. In medical malpractice, the claims are almost always filed by individual plaintiffs. The big claims against attorneys are usually because we've drafted an oil lease improperly, or we've improperly filed an Securities and Exchange Commission filing, or a CPA has messed up an audit. The plaintiff is usually a sophisticated businessman, a large corporation, or a large group of stockholders in a class action. Screening panels will not scare off those big claims for many of the professionals in this bill.

(7) Further, the "cost" of the screening panel is paid by the winner. Closed claim studies show many Kansas legal malpractice claims have no costs at all to insurance companies. Now companies will have to begin assuming there will be at least $700 in defense costs (New Section 17). For each of the professions covered by this bill, to the extent claims do not exceed the limits of the bill, but mandatory malpractice screening panels are used, their claims paid costs will not decrease, but the defense costs will increase.

KBA agreed this summer and fall that mandatory <u>medical</u> malpractice screening panels should be used. We support their limited use. But we did so after analyzing the claims paid data against physicians. We found the numbers of claims being paid were relatively constant, but claims being filed were rising rapidly, suggesting there might be some

claims that ought not be in the system. The use of screening panels was thus partially justified in screening some of these claims. The doctors admit there will be higher defense costs. We've not seen any statistics justifying screening panels in these cases. This will mean the same higher defense costs, which means higher, not lower, insurance premiums.

(8) The bill is anti-business. The larger claims against many of the professionals in this bill -- including lawyers -- will come from BUSINESSES plaintiffs. Large claims come from improperly drawn oil leases, Securities filings, negligent CPA audits, or structural deterioration of corporate headquarters.

What if negligent architectural and engineering services causes a hotel fire that kills many people? Under Kansas comparative negligence, the hotel names the architects and engineers as codefendants in order to limit the hotel's liability. Why is the hotel's liability unlimited, but the architects and engineer liability limited to $1 million?

If my legal advice causes a business client a $5 million loss when I could easily have drafted a clause in the contract that could have prevented the loss, and I'm clearly at fault, this bill says that business client can collect only $1 million.

This state has begun a large Economic Development program. Stockholders investing in new Kansas businesses will not be able to look to a negligent lawyer, engineer, architect or CPA if their investment is lost because of professional malpractice. The limit is $1 million from all defendants. If there is only ONE defendant, there will be $1 million total available, and if there are a thousand stockholders claiming damag-

es, their damages are limited to approximately one thousand dollars each. The damages they can collect from the Directors and Officers of the corporation are unlimited -- even though the directors and officers were relying on the advice of the lawyers and CPAs.

If a school board's architect causes millions of dollars in structural defects in an expensive new gym, the school district can recover only $1 million from the architect.

Is this really the business environment into which you want to bring new businesses and investors?

(9) SB 540 is inconsistent with other legislation you are considering. House Concurrent Resolution 5025 memorializes Congress to "exercise caution" when enacting protectionist foreign trade legislation. Yet SB 540 enacts what amounts to protectionist domestic professional legislation which may have unwanted effect on the domestic business community.

(10) The most serious defect is the false promise of availability of insurance. The average claim against Kansas lawyers is $18,000. Half of that cost is defense costs. Currently, some companies refuse to renew coverage after a claim is made. There is no joint underwriting authority for these professions covered in SB 540, like the JUA for physicians. There is no excess carrier for these professionals -- as there is for physicians with the Health Care Stabilization Fund. You've not assured availability with this bill.

KBA is not advocating mandatory insurance, or creation of such funds. If the companies write only the good risks and have their underwriting liability capped at $1 million, they can still exercise their option not to renew some professional who has one or two claims filed. And if no other companies cover the risk, the professional is still without insurance.

(11) Many of the professionals in this bill are subject to RICO lawsuits that physicians do not face. We are uncertain how this bill would operate if a legal malpractice claim also has a federal RICO claim, which allows treble damages, attorney fees, and no limits. The federal supremacy clause may control.

(12) The structured verdict section doesn't make much sense, Mr. Chairman. Note the definition of "economic loss" in the bill. Let's assume a Kansas CPA working for Boone Pickens of Mesa Petroleum negligently values a $10 million oil and gas field for $25 million, and Boone relies on that valuation and pays full price -- $15 million too much. If he sues, not only is he going to get only $1 million, but Section 3(c)(3) requires the judge to pay the $1 million through an annuity contract over the time period those losses occur. The annuity is based on the basis of the future economic loss, i.e. the value of the oil and gas field. If valuation is based on the reserves, and those reserves might sustain oil and gas wells hundreds of years into the future, that annuity could pay for a longer period of time than the lives of any of the lawyers, judges, jurors, stockholders, plaintiffs or defendants involved.

These are difficult questions, Mr. Chairman.

As a former Chairman of this Committee, I believe I know the difficult political and personal pressure you feel as you wrestle with tort reforms. You have a great desire to do what is right. All of us who once swore an oath to uphold the state and federal constitutions remember that desire. And the duty.

The Alliance of American Insurers testified to Rex Hoy's Joint Insurance Subcommittee earlier this session.[3] They brought up ten areas of possible tort reform.[4] While they suggested a cap on noneconomic loss, even spokespersons for the main insurance industry trade groups are not suggesting limits on overall awards.

The plain fact is SB 540 is not "reform" based on a rational study of the legal system. SB 540 is arbitrary tort "limitation." Over in the Senate, my friend Frank Gaines, who is traditionally quite conservative, and who supports changes in the medical malpractice bill, challenged his fellow senators with 1000 to 1 odds that this bill is unconstitutional. Nobody took him up on the offer.

KBA only wishes SB 540 could help ease the pressure of insurance premiums, or solves the problem. Unfortunately, as our liability insurance consultants analyze it, it does neither. The purpose of the bill is to make professional malpractice insurance more available and/or more affordable. I cannot speak for other professions covered by the bill. KBA's insurance program consultants, Jan Pacey of Forrest T. Jones & Company, in Kansas City, Missouri, indicates to us by separate letter sent to Ron Smith, KBA's Legislative Counsel, that based on our premium and loss experience, current limits in SB 540 will have little practical

effect on availability or affordability of lawyer malpractice insurance. That letter is attached.

Malpractice insurance for Kansas lawyers is a real problem. Our members are unhappy. Our main carrier has been granted a 40% increase in premium by the insurance department. And this is on top of a 300% to 500% increase last year! We aren't sure in our mind it is justified. Primarily, in Kansas, there are about 4,000 lawyers who are in the private practice and perhaps would like insurance. Many of these lawyers are skilled practitioners. Because of their practice, however, such as Real Estate, or Oil and Gas, or municipal bonding, or Security and Exchange Commission work, finding coverage at all is difficult. We believe 90% of those 4,000 lawyers carry insurance, but we don't know how many of the 10% that don't are without insurance voluntarily, or because no one will write them.

Many lawyers who get coverage do not seek more than $100,000, which is the usual minimum policy. The higher limits of liability are not needed in their practice. Obviously, in those cases, the limits on awards provide little help with cost of premiums. The statistics on Kansas professional malpractice coverage and costs is included in the footnotes.[5]

Last weekend, KBA's Executive Council decided to invest a significant amount of money for legal and accounting expenses in an attempt to charter a multi-state captive insurance company, for lawyers, owned by lawyers. We don't expect the captive to save us money, however. It's chief virtue is insuring availability of coverage, and perhaps fewer peaks and valleys in premium rate setting.

Conclusion

Mr. Chairman, I wish SB 540 was the answer that many organizations supporting the bill want. Licensed professionals deserve affordable insurance and good, dependable coverage. We just don't see the empirical justification that this legislation will achieve those worthy goals.

KBA is interested in helping find solutions to these insurance problems. It is my understanding that the Insurance Commissioner has reappointed a Citizens Commission to help look at tort reform as a broad subject area. We support that decision. KBA believes that there are strengths and weaknesses in our legal system and that our legal system should be be able to withstand public scrutiny.

If there is a clear and convincing public need for change and if the public will benefit from a change, then the KBA is obligated to come to you and suggest change. Unless and until this clear public need is demonstrated, however, the KBA respectfully urges that the presently existing time tested method of redress of tort claims ought not to be altered. Such a clear public need for the enactment of SB 540 cannot be demonstrated; accordingly, the KBA opposes its enactment.

Footnotes

1. Testimony of Bill Curtis, Kansas Association of School Boards, in special minutes to the Special Insurance Subcommittee Testimony, page 52.

2. Lines 111 and 112 of SB 540 indicate "total amount recoverable . . . for all claims" is one million dollars.

3. Special Insurance Subcommittee testimony, beginning at page 49.

4. Half of their ten suggestions do not apply to Kansas because we have already abolished joint and several liability, have no prejudgment interest in tort cases, and already enacted a fair form of comparative negligence. They also indicate areas such as "discovery abuse" and "class actions" are more in the purview of the courts. Dee Bernhard, for the Alliance, also indicated "The availability problems have been with us for about a year and a half now, and there are signs of turnaround." (pp. 49-50)

5. The Kansas lawyer 7 years out of law school pays $1,528 to St. Paul Insurance for the customary $100,000 basic coverage. Some lawyers have seen 300 to 500% increases in premium between 1985 and 1986. Next year the basic premium will be over $2,000 for $100,000 coverage. We are beginning to see some competition in rates from Home Insurance out of Iowa, but essentially, Kansas is a one-company state -- St. Paul. One fourth of all written premiums St. Paul writes for lawyer malpractice is written in Kansas.

FORREST T. JONES & COMPANY, INC.
3130 BROADWAY • P.O. Box 131 • KANSAS CITY, MISSOURI 64141

February 20, 1986

Ron Smith
Kansas Bar Association
1200 Harrison
Topeka, KS 66612

RE: S. B. 540

Dear Ron

You asked me to provide some information concerning lawyers professional liability claims and the effect the referenced bill would have on current and future availability of insurance and on rates.

Over the past eight years, the average claim against lawyers insured under the Kansas Bar Association plans has been worth about $18,000. This figure includes both defense costs and damages. It should be noted that actual losses (damages) are only 50% of the total monies paid out in this type of insurance in Kansas. The remaining 50% are lawyers fees.

The problem in Kansas is not related to large awards. Instead, the problem is two fold. First, insurance companies during the early 1980's were charging premiums which were unrealistically low. Secondly, there are a large number of claims filed each year, some of which are frivolous and some of which are valid. In either case, defense counsel must be hired by the insurance company and these costs are considered to be losses under the policy. Since 1980, there has been no judgement against Kansas lawyers that has exceeded $400,000 that I know about.

Based on the above, I do not believe that a $1,000,000 damages cap will have a significant effect in Kansas, other than to deprive a potential plaintiff of an award equal to real or actual damages which exceed $1,000,000.

Cordially

Jan Pacey
Vice President

RESOLUTION _____

WHEREAS, liability insurance has become either unavailable or extraordinarily expensive for individuals, businesses, and government entities; and

WHEREAS, the Fifty-Fifth Colorado General Assembly is now considering a variety of legislative proposals during this session to reform and limit tort actions and the damages arising from such tort actions; and

WHEREAS, the thrust of this legislation is to assure Colorado citizens and insurance carriers a measure of certainty as to their potential for liability for tort claims and the scope of their tort liability; and

WHEREAS, a major objective of this legislation is to assure affordable and reasonable liability insurance rates for individuals, businesses and public entities; and

WHEREAS, the insurance industry has failed or refused to provide any indication or assurances that liability insurance will be available, or that available insurance rates will be reduced, if any of the tort reform legislation referred to above becomes law; and

WHEREAS, the national insurance industry, including casualty and liability insurance, was granted and has enjoyed a virtual exemption from the Federal Antitrust Statutes since 1944; and

WHEREAS, the most recent nationwide pattern of liability insurance cancellations and rate increases raises serious questions about the existence of a competitive free market in the liability insurance field which warrants investigation and study.

Attachment 4
House Judiciary
March 26, 1986

BE IT RESOLVED by the House of Representatives of the Fifty-Fifth General Assembly of the State of Colorado, the Senate concurring herein:

(1) The Colorado General Assembly urges the United States Congress to repeal the 1944 anti-trust exemption granted to the insurance industry.

(2) Further, the Colorado General Assembly urges the United States Congress to investigate and promote legislation which enhances economic competition within the insurance industry on a national basis.

BE IT FURTHER RESOLVED, that a copy of this Resolution be transmitted to each United States Representative and Senator from Colorado.

THE ATTORNEY GENERAL OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

February 24, 1986

Honorable Duane Woodard
Attorney General of Colorado
1525 Sherman Street - Third Floor
Denver, Colorado 80203

Dear Attorney General ~~Woodard~~ Duane:

If my experience here in Texas is any indication, you are experiencing the same problems regarding the liability insurance "crisis" in your State as we are here. Many of our Texas cities and businesses have been denied liability insurance coverage for no apparent reason. The people who have been "redlined" even includes ministers and charities. If a small business, charity or others are able to obtain any coverage at all, the rates are double or triple what they were paying the year before.

In speaking to a private emergency medical service company located in Central Texas just the other day, I learned that last year's cost of liability insurance was $120,000 and that six carriers have refused coverage so far this year; if this company is able to secure coverage, they will have to pay $480,000 for the same coverage.

It appears to me that the major insurance carriers and reinsurers are engaged in a national propaganda campaign to promote a "civil justice crisis" which they say will be solved only with the advent of "tort reform".

Despite these assertions, I cannot find any actual evidence of such a "crisis" in Texas. In fact, neither the insurance companies nor their allies have produced any closed case studies which support their allegations.

During this last month, I have testified before legislative committees here in Texas and Oklahoma where "tort reform" is being pushed. In New York, I notice that Governor Cuomo has named a special commission to investigate the situation. In addition to testifying before legislative committees, I have asked my attorneys to determine whether there is evidence of any antitrust violations on the part of the insurance industry.

STATEMENT OF ATTORNEY GENERAL JIM MATTOX

BEFORE THE JUDICIARY COMMITTEE

OF THE OKLAHOMA HOUSE OF REPRESENTATIVES

February 19, 1986

STATEMENT OF ATTORNEY GENERAL JIM MATTOX
BEFORE THE JUDICIARY COMMITTEE
OF THE OKLAHOMA HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Committee:

I appreciate the opportunity of appearing before you today to discuss the availability and cost of liability insurance in the United States as those matters relate to our civil justice system.

As Attorney General, it is my job to represent the public interest before the State Board of Insurance in Texas on all insurance rate matters.

As I see it, the "public interest" includes the "little people" as well as the "big people" - those citizens and businesses who cannot obtain liability insurance due to outrageous prices which are not based upon the actual experience of the insured, as well as those who cannot obtain coverage because of the industry's arbitrary refusal to write such coverage, because that citizen may be in a business which has been "redlined" by the major insurance carriers.

The insurance industry's well-oiled and well-financed national propaganda machine has tried to present the current so-called "liability insurance crisis" as a battle between

trial lawyers who represent injured plaintiffs and the family doctor, the corner grocery and our neighborhood day care center.

Through its front organizations like the Insurance Information Institute, the insurance industry is spending millions of taxsheltered dollars in a massive publicity campaign to publicize what they euphemistically call "The Civil Justice Crisis". Their proposed solution is called "Tort Reform." (See Attachment 1).

The truth is, the very people who the insurance industry says they are looking out for are the same people who stand to lose the most unless we stop the juggernaut of propaganda and get to the facts of the matter.

Already, citizens and businesses all over the United States have been "redlined" by insurance carriers and their reinsurance partners for no apparent reason other than the need to create the climate for less coverage at higher rates and less access to our courts. This group includes day-care operators, motor carriers, municipalities and even ministers of the gospel. (Please see N.A.I.C. Survey. Attachment 2 to this Statement).

The experience of a small city in the Austin, Texas area, the City of Westlake Hills, offers a good illustration of how illogical this boycott is. After years with the same liability carriers, Westlake's coverage was suddenly cancelled this last summer. Considering the fact that

Westlake had experienced only one (1) claim since it became a city in 1953, and that that claim is still pending and unpaid, city officials were shocked to hear that no less than twenty-two (22) liability insurance carriers had refused to write coverage for them. The reasons given were: "juries are out of control" or "Lloyds of London is not reinsuring municipalities anymore". (See Attachment 3).

Today, Westlake is paying twice what it paid last year for liability coverage through the Texas Municipal League.

Many people feel that the current liability insurance squeeze is artificial, contrived and nothing more than a cold and calculated attempt to jack-up insurance profits at the expense of those who need protection the most. Based upon what I have learned so far, I can tell you that their fears are not unjustified.

While insurance profits skyrocket, we are told that insurance companies are in dire straits; while it appears that our system of handling personal injury cases is working, we are told that we should no longer place our faith in a jury of our peers because they cannot be trusted to know what to do. (See Attachments 4 & 5).

To me, it is becoming clearer all the time that the people of this country are being asked to buy a pig-in-a-poke. What do we really know about this pig? Very, very little. We are told only that the pig's name is "Tort

Reform". (By the way, would a pig under any other name smell so sweet?. Could this pig be an English pig from London named "Lloyd"?) Yet we are not allowed to see this pig - in fact, the sacked-up pig has been hidden from us behind a bunch of liability insurance bramble bushes. It could be the sack is completely empty - we're not even sure there's a pig in the sack.

So we can get beyond the bushes and to the facts, I've called upon the insurance carriers and their reinsurance friends to go get the poke, open it up and let us look inside. We may not want to buy what is or is not inside the bag - the price may be too high. The people of the United States may not want to give up the guarantees of a judicial system which is based upon the concept of equal justice before the law in exchange for empty promises. What have they promised in return? Will they guarantee lower insurance rates? Better efficiency? Better safety programs? Adequate coverage for all citizens? The reality is, they have promised nothing more than that they will continue to feed at our trough if we give them everything they want.

At a very minimum, the people of Oklahoma, Texas and other States are entitled to know all the facts before we change our system of justice - otherwise, it will be too late. Texas and Oklahoma should pay heed to the Iowa experience - they gave the insurance companies the ransom

they demanded and Iowa rates are higher than ever. (See Statement of Lowell L. Jenkins, former Senate Majority Leader of Iowa).

The experience of the Province of Ontario, Canada, is also instructive. (See Attachments).

I urge you to require those interests who would tamper with our system of justice and forfeit our hard-won common law and constitutional rights, to come forward immediately with clear and convincing facts which would support such drastic measures before you act. I would suggest that your Committee require the insurance industry, through voluntary call or subpoena, to furnish full and complete data for your study before any legislative changes are made. I have asked the Texas Legislature to do the same.

Secondly, I suggest that Oklahoma commission and fund a closed case study of actual Oklahoma cases to determine whether your judicial system is functioning well or not.

While our studies are underway, it might be appropriate for all States to investigate further to determine whether the anti-competitive practices of the liability insurance carriers and their reinsurance associates in "redlining" businesses of certain types amount to illegal boycotts, restraints of trade or deceptive trade practices.

Last, I suggest that you consider the formation of a resinurance pool under State law or support the concept of a National Reinsurance Pool to put a safety net under those businesses which have been abandoned by the insurance carriers.

If I can be of any assistance, please let me know. My office will be more than willing to cooperate with your State officials on these issues. Thank you again for the opportunity of addressing your Committee.

TESTIMONY OF

LOWELL L. JUNKINS

FORMER SENATE MAJORITY LEADER

FOR THE STATE OF IOWA

BEFORE THE TEXAS JOINT SENATE

AND HOUSE COMMITTEE TO

STUDY LIABILITY INSURANCE

FEBRUARY 8, 1986

MR. CHAIRMAN, LEGISLATORS. LET ME SHARE WITH YOU MY PURPOSE IN BEING HERE THIS MORNING. CERTAINLY I DON'T EXPECT THAT THERE WILL BE ANY VOTES IN TEXAS FOR MY GUBERNATORIAL ASPIRATIONS, SO THAT'S NOT THE REASON.

WHEN I HEARD THAT YOU ALL IN TEXAS WERE EXPLORING LEGISLATION THAT'S BEING OFFERED BY VARIOUS FOLKS, SPEARHEADED IN A VERY BIG WAY BY THE INSURANCE INDUSTRY, I LOOKED FORWARD TO THE OPPORTUNITY TO TRY TO SHARE WITH YOU SOME EXPERIENCES THAT WE'VE HAD IN IOWA. THOUGH MY POSITION ON THIS ISSUE IS CONSISTENT WITH THE POSITION OF MOST TRIAL LAWYER GROUPS, I THINK MY TESTIMONY WILL INDICATE, THAT IN NO WAY AM I SPEAKING FOR THE TRIAL LAWYERS. MY EXPERIENCE IN THE PAST REGARDING THIS ISSUE IS THAT FRANKLY I WAS ON THE OTHER SIDE OF THE QUESTION FROM THE TRIAL LAWYERS.

MR. CHAIRMAN, I AM THE FORMER SENATE MAJORITY LEADER IN THE SENATE FOR THE LAST 3 YEARS, MINORITY LEADER 4 YEARS PRIOR TO THAT. I COME FROM A STATE THAT HAPPENS TO BE SECOND IN TERMS OF INSURANCE IN THIS NATION, AND RATED AS SUCH, SO ONE WOULD EXPECT AND I HOPE THAT I AM SENSITIVE TO THE NEEDS OF THE INSURANCE COMPANIES OF THIS COUNTRY AND SPECIFICALLY THOSE THAT ARE IN MY STATE. IN 1975, I CHAIRED THE COMMERCE COMMITTEE. I HELD THE RESPONSIBILITIES THAT YOU, MR. CHAIRMAN, HOLD OVER THIS DISTINGUISHED COMMITTEE. IN 1975,

ALSO I CHAIRED THE MIDWESTERN CONFERENCE FOR COUNCIL OF STATE GOVERNMENTS ON A MEDICAL MALPRACTICE TEAM THAT WAS PUT TOGETHER BY 13 STATES IN THE MIDWEST. IN 1975 WE WERE ASKED TO MAKE MAJOR TORT CHANGES IN THE STATE, MIDWEST, AND I THINK YOU ALL WERE ASKED ACCORDINGLY TO MAKE SOME SIGNIFICANT CHANGES BECAUSE THE MEDICAL MALPRACTICE CRISIS THAT SEEMED TO BE SWEEPING THIS NATION. I SPEARHEADED THE TORT CHANGES IN IOWA AT THAT TIME AGAINST THE OPPOSITION OF MANY OF THOSE PEOPLE THAT TODAY MAY OPPOSE CHANGES IN THE TORT SYSTEM AGAIN. IN 1983 IN IOWA WE WERE REVISITED BY THE INSURANCE INDUSTRY AND BY OTHERS WHO PRIMARILY WERE THE PEOPLE WHO WERE BUYING INSURANCE IN OUR STATE, OR ATTEMPTING TO PURCHASE INSURANCE WHEN IT WAS EITHER UNAFFORDABLE OR UNAVAILABLE. WE WERE TOLD THAT WE NEEDED TO CHANGE THE JOINT AND SEVERAL LIABILITY STATUTE IN OUR STATE IN ORDER TO PROVIDE FOR, NUMBER 1 AFFORDABLE INSURANCE, AND NUMBER 2, AVAILABLE INSURANCE IN THE CASES WHERE IT WAS UNAVAILABLE. I AGAIN WAS PART... AS THE MAJORITY LEADER OF FORCING THAT ISSUE TO AN END, AND AS A PRACTICAL MATTER WE ABOLISHED JOINT AND SEVERAL LIABILITY IN THE STATE OF IOWA IN 1983.

I MIGHT ADD ONE OTHER THING THAT PROVIDES MAYBE SOME QUALIFICATION FOR ME. I AM A CONSUMER OF THIS INSURANCE INDUSTRY AS WELL, I HAPPEN TO OWN AND OPERATE AN AMBULANCE SERVICE AND WE HAVE TO PURCHASE MALPRACTICE INSURANCE AND

WE HAVE OUR DIFFICULTIES LIKE EVERONE ELSE. IN SOME WAYS WE ARE TOUCHED BY THIS PARTICULAR ISSUE ON THREE DIFFERENT FRONTS.

AS I POINTED OUT IN 1975, WE MADE MAJOR TORT CHANGES EXPRESSLY IN THE AREA OF STATUTE OF LIMITATIONS AND COLLATERAL SOURCE RULE AND YET TODAY, IN IOWA, HAVING MADE THOSE CHANGES WE STILL HAVE THE SAME KINDS OF MEDICAL MALPRACTICE AVAILABILITY AND AFFORDABILITY PROBLEMS, SPECIFICALLY WITH OB/GYN DOCTORS. IN 1983, AS I POINTED OUT, WE ABOLISHED JOINT AND SEVERAL LIABILITY UNDER THE INSTRUCTIONS THAT IF WE WERE TO DO SO, THE COURT SYSTEM WOULD CLEAR UP, THE CLAIMS WOULD BE FEWER, THE DEEP-POCKET THEORY WOULD NO LONGER AFFECT US, AND YET WITHIN THE LAST FEW MONTHS 41 COUNTIES IN OUR STATE WERE NOTIFIED THAT WITHIN A 30 DAY PERIOD THERE WOULD BE NO INSURANCE AVAILABLE TO THEM. I MIGHT POINT OUT THAT RECENTLY WE BELIEVE THAT WE MAY NOW HAVE SOME INSURANCE FOR THOSE COUNTIES, BUT INSURANCE AT RATES THAT ARE IN SOME CASES AS MUCH AS 1000 PERCENT HIGHER THAN THEY WERE PAYING JUST A YEAR AGO. THE PROBLEM IT SEEMS, AND MR. CHAIRMAN MAYBE YOU WILL ALLOW ME TO USE THE PHRASE THAT, "TAKE IT FROM ONE WHO OWNS ONE". I HAVE TWICE BEEN A PARTY TO ROLLING THE DICE, BETTING THAT THESE TORT CHANGES THAT WE WERE BEING TOLD WOULD MAKE THE DIFFERENCE, MIGHT. IN BOTH CASES, WE DID IT WITHOUT THE FACTS, THAT IS TO

SAY, WE DON'T HAVE AND DID NOT HAVE AVAILABLE TO US AND TO THIS DAY IN IOWA AND THROUGHOUT THIS NATION I DON'T FIND IT A WHOLE LOT DIFFERENT ....WE DON'T HAVE OBJECTIVE FACTS AS TO WHAT THE PROBLEM IS AND WHAT THE SOLUTIONS IN FACT MIGHT BE.

AS YOU ASK INSURANCE COMPANIES IN IOWA, THE MIDWEST AND AROUND THE NATION, TO TELL YOU EXACTLY WHAT THE BENEFITS WILL BE IF YOU MAKE THESE VARIOUS TORT CHANGES, INCLUDING CAPS, THE ANSWER GENERALLY IS THAT THAT'S NOT SOMETHING THAT'S PREDICTABLE. WELL, IF IT'S NOT SOMETHING THAT'S PREDICTABLE THEN ISN'T IT TIME, ESPECIALLY IN A SITUATION LIKE OURS, WHERE WE HAVE ALREADY TRIED, TRIED, GAMBLED TWICE AND LOST, THAT WE FINALLY SAY WE'RE GOING TO HAVE TO HAVE THE FACTS BEFORE WE GAMBLE ANY FURTHER. IT SEEMS TO ME NOT TO BE IN THE PUBLIC'S INTERESTS TO TAKE CARE OF A PARTICULAR PRIVATE INTEREST WITHOUT THE FACTS, AND THAT'S WHAT WE SEEM TO BE UP AGAINST TODAY.

THERE IS A WAY FOR US TO DEAL WITH THIS PARTICULAR PROBLEM AND IF YOU LISTEN TO THE INSURANCE INDUSTRY THEY'D INDICATE THAT THE BIGGEST PROBLEM THEY HAVE IS EXPOSURE. CLEARLY, IF WE WERE TO BAR ACCESS TO THE COURTS FOR ALL OF OUR PEOPLE, THAT WOULD ELIMINATE THE EXPOSURE, AND THEREFORE SOLVE THE PROBLEM, THERE WOULDN'T BE ANY NEED FOR INSURANCE AT ALL. BUT, THAT BORDERS ON RIDICULOUS, AND CERTAINLY IF WE WORK

TOWARD THAT EXTREME, SLOWLY BUT SURELY THAT'S WHERE WE'RE BEING PUSHED. IT SEEMS TO ME THAT WHEN WE'VE ONLY HAD ONE STATE, THAT AS A PRACTICAL MATTER, AND I BELIEVE THAT STATE IS PENNSYLVANIA, THAT HAS BEEN ABLE TO GATHER THE OBJECTIVE INFORMATION AS TO WHAT THE PROBLEMS ARE AND THE FACTS ARE, AND WHAT THE EFFECT OF THE TORT CHANGES MAY BE ON THIS PARTICULAR CRISIS THAT WE ALL FACE. WE OUGHT TO ASK IF 49 OTHER STATES OUGHT NOT PARTICIPATE IN THAT SAME MOVE BEFORE WE MOVE MUCH FURTHER TOWARD REDUCING OUR OPPORTUNITY TO THE COURTHOUSE. AGAIN, THE CONCERN THAT I HAVE IS AS A PERSON WHO DID PUSH FOR THOSE TORT CHANGES, WHO ON ONE CASE SPEARHEADED THAT CHANGE, ON ANOTHER WAS PARTICIPATING IN BRINGING TO A CONCLUSION THOSE CHANGES TO ELIMINATE JOINT AND SEVERAL LIABILITY IN OUR STATE, AND THEN SEE NO BENEFITS FROM IT, IT SEEMS TO ME THAT IT'S TIME TO SAY WHOA. THERE IS A PROBLEM, CLEARLY, THERE IS A PROBLEM IN OUR STATE AND I'M SURE IN YOUR STATE REGARDING INSURANCE AVAILABILITY AND AFFORDABILITY. THERE IS NO QUESTION. THE UNFORTUNATE THING THAT SEEMS TO BE HAPPENING, AND AGAIN MY PLEA HERE TODAY IN THIS STATE, IS THAT WE NOT BE CAUGHT WITH WHAT I CONSIDER A HERD MENTALITY. WE HAVE A FEW FOLKS WHO ARE SUGGESTING BECAUSE OF THE CRISIS AND IT'S EFFECT ON THEM THAT THEY HAVE REACHED OUT INTO THE SKY AND SOMEWAY CAPTURED A SOLUTION TO THIS PROBLEM. AND WHEN YOU ASK THE QUESTION, DO YOU KNOW FOR SURE THAT IT WILL WORK? THE ANSWER IS I DON'T KNOW, BUT

WE OUGHT TO TRY IT. WELL, THERE ARE A 100 OF THOSE "I DON'T KNOW BUT WE OUGHT TO TRY IT", IDEAS LYING AROUND WITH THE CRISIS HITTING US AND EMOTIONALLY WHEN YOU LOOK AT BUSINESS PEOPLE IN THE STATE OF IOWA, AND I'M SURE IN THE STATE OF TEXAS, WHEN YOU LOOK AT THE DOCTORS, THE ENGINEERS, THE ARCHITECTS, THE CITIES, THE COUNTIES, AND THE IOWA DEPARTMENT OF TRANSPORTATION, ALL OF WHOM FRANKLY ARE FACED WITH A VERY SERIOUS PROBLEM. EVERONE IS GRASPING AT STRAWS TO TRY TO SOLVE THIS PROBLEM IMMEDIATELY. THE BIGGEST CONCERN I HAVE IS THE FACT THAT IT SEEMS TO ME THAT THERE'S A GOLDEN OPPORTUNITY FOR THE INSURANCE INDUSTRY TO SIT BACK RATHER QUIETLY ALLOWING OTHERS TO DO THEIR BIDDING FOR THEM. AND, CERTAINLY YOU CAN BET IN IOWA, THAT THAT BIDDING IS BEING DONE BY GROUPS SUCH AS THE PROJECT CIVIL REFORM, WELL INTENTIONED PEOPLE WHO HAVE A VERY SERIOUS PROBLEM ON THEIR HANDS WHO IN MY ESTIMATION ARE CUAGHT UP IN A HERD MENTALITY THAT WILL TAKE ANYTHING AND EVERTHING THAT'S BEFORE US AND HOPE THAT IT'S GOING TO WORK. THE COSTS OF THAT SORT OF A POTENTIAL CHANGE IN OUR TORT SYSTEM COULD BE DISASTROUS TO INDIVIDUALS WITHIN THE STATE AND IT SEEMS TO ME THAT CAUTION IS THE WORD OF THE DAY AND THAT WE TRY TO PUT SOME SENSE INTO DEALING WITH THIS MATTER.

TESTIMONY ON PROFESSIONAL LIABILITY: S.B. 540
Presented March 26, 1986
Before House Judiciary Committee
Eugene B. Ralston

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

The discussion of S.B. 540 needs to be placed in a context of the general crisis in liability insurance. Some features of this crisis are clear: rates have risen dramatically for almost every industry and profession, and the insurance coverage has been severely restricted.

The causes of this sudden and dramatic shift have been harder to obtain and more difficult to discuss; and, the socalled solutions seem unlikely to slove the current problems.

Citizens of Kansas want some legislative action to ensure affordable and available liability insurance. Will the provisions of S.B. 540 answer that plea for help? All indications are that this unique and uncharted solution will not have a significant impact on the problem.

The last panic cycle of the insurance industry was in the mid-70's and product manufacturers, doctors and municipalities came to Lesgislatures around the country for relief. In the mid-60's, the bottom cycle of the industry was aimed at innercity risks, and the practice of "red-lining", totally eliminating certain central city areas from insurance coverage, was a major social issue.

The crisis of the 70's produced cries for tort reform in products liability and medical malpractice, as well as limited immunity for governmental entities. Kansas was one of the

Attachment 5
House Judiciary
March 26, 1986

states which did not totally panic and did not arbitrarily restrict the rights of innocent victims, and the "crisis" abated in this state and throughout the country.

The dire predictions in the mid-70's of doctors refusing to practice medicine and all business being driven into bankruptcy did not occur. In fact, just the opposite occurred. In the early 80's, liability insurance prices dropped even though lawsuits and awards were on a gradual rise.

Mr. Charles Baxter, from Farm Bureau Insurance, gave a very articulate explanation to the Liability Subcommittee of the cycle of insurance pricing and what he termed as the "bad management practices" of industry competition for premium dollars leading to price cutting below justifiable rates. He explained that the inadequate premiums caused an exaggerated cycle of recovery, which is now occurring with huge rate increases and restrictions of liability coverage.

Mr. Robert Hunter, the former Federal Insurance Administrator, visited Kansas a few weeks ago to discuss liability insurance. He presented some graphs to illustrate the insurance cycles, which are attached to the remarks.

Also attached is the "Statement of Imminent Peril" issued in the State of New Jersey. This is an indication of the kind of aggressive action which some states have taken to counter these huge rate increases, cancellations, and policy restrictions. Several states have public advocates or persons with the Office of Attorney General who are working to challenge rate increases or insurance cancellations.

Most of the parties advocate tort reform. The proposals of S.B. 540 would limit liability of all professionals to $1 million, regardless of damages incurred. It is impossible to measure the impact of this legislation without gathering some basic information.

Even if the legislative public policy is to limit all liability to drive down the price of insurance, it is impossible to set an appropriate cap without obtaining detailed claims information. Surely no one would argue that even if there had never been any $1 million claims in any of these professions that rates would be lowered. Since insurance is based on experience not forecasting, our previous record should have a bearing on the rates.

Why have some lines become so restricted or hard to obtain? Currently, insurance for day care centers and directors and officers is almost impossible to obtain and very difficult to afford. Are the day care centers different than two or three years ago? What is the claims history in Kansas? Surely all of these risks did not become prohibitive at the same time.

Some of the specific questions which need to be asked are:

What is the claims history for various professions, industries, business, which have experienced rate increases or cancellations?

- how many claims are filed per year?
- how much is collected in premiums?
- how much is paid on closed claims?
- how much is allocated to reserves?

- how expensive are costs: administration, defense, etc.?

- what is the highest award/settlement?

Unless this data is analyzed for a period including the latest cycle from the mid-70's through the mid-80's, it is impossible to design legislation to solve the crisis. Even if the Legislature wants to support a cap on awards, it is important to know at what level the cap will have an effect.

Currently, Kansas has a $500,000 cap on all tort claims actions - suits against state or municipal government. Yet, our liability insurance for governmental entities is just as expensive and restrictive as the insurance in states with no cap.

Mr. Hunter brought some recent data from Canada which is also helpful to examine.

We are here to share in the concern about extraordinary increases in insurance rates, the elimination of reinsurance in many significant areas, and the rush to curtail and eliminate liability. We urge the Kansas Legislature to continue to examine this critical situation, and to work to obtain the data about the real situation in Kansas courts prior to making determinations about legal changes.

We also urge some agressive action from the Insurance Commissioner and Legislature to make insurance available for basic services. In the mid-70's Kansas took a bold step and organized the Health Care Stabilization Fund, to provide excess insurance for doctors. While there has been criticism about the fiscal management of the Fund, there is no doubt that it solved a basic problem of available coverage.

While reinsurance needs to be addressed at the national level, to promote insurance independence and free the United States from foreign entities able to restrict entire markets, the state can help to provide affordable alternatives for many areas.

The Senate has considered some legislation requiring additional notice and reasons for cancellations and restrictions; more of this is required. In states where rate increases have been vigorously challenged, the companies have often lowered or withdrawn the initial request.

It may be that the data shows areas of significant abuse which should be changed. But, the specific data is needed in order to develop a comprehensive and meaningful solution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 1

Toronto Star
Friday, January 10, 1986

Liability coverage crunch may shut day-care agencies

By Elaine Carey Toronto Star

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

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

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

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

'Pay 1,000 per cent'

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

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

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

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

'Deficit financing'

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

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

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

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

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

Umbrella Day Care Coalition, which arranges insurance for 185 non-profit day-care centres in Metro, did manage to get insurance Oct. 1 for only a slight premium increase, "but we had to stay away totally from American insurance companies," director June Hall said.

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

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

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

Higher insurance rates hit school bus operators

By Kim Zarzour Toronto Star

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 2

416/963-0311

555 Yonge Street
Toronto, Ontario
M7A 2H6

Ministry of
Consumer and
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Relations

BACKGROUND NOTES - January 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: SCHOOL BOARDS

121 of the 168 boards (excluding Canadian Forces Board and Treatment Centres) responded to an insurance questionnaire distributed in early December 1985 and at this time only one board has been unable to obtain liability insurance coverage at all. The board is the Moose Factory Island District High School Area.

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

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

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

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

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

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

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

Exhibit 3

Toronto Star
Friday, January 10, 1986

'Crisis' team to investigate soaring price of insurance

By Denise Harrington Toronto Star

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

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

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

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

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

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

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

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

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

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

'Doing nothing'

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

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

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

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

Exhibit 4

Globe Mail
Jan. 15/86

...surance problems may curtail season for Canadian skiers

Special and Canadian Press

OTTAWA

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

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

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

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

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

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

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

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

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

SKI — Page A2

Ski teams can't get liability insurance

● From Page One

ance Co.

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

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

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

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

CSA was first advised by its insurance agent it could expect to pay between $90,000 and $100,000 for $10-million in liability insurance for 1986. Mr. Payment said the CSA, which has never had a major liability claim against it, was willing to pay that amount, but later found that insurance companies had backed away from offering liability insurance at any price.

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 5

416/963-0311

555 Yonge Street
Toronto, Ontario
M7A 2H6

Ministry of
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BACKGROUND NOTES - JANUARY 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: BUSES

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

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

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

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

Exhibit 6

[illegible]

416/963-0311

555 Yonge Street
Toronto, Ontario
M7A 2H6

Ministry of
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BACKGROUND NOTES - January 9, 1986

SUBJECT: LIABILITY INSURANCE

INSURANCE CLASS: HOSPITALS

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

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

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

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

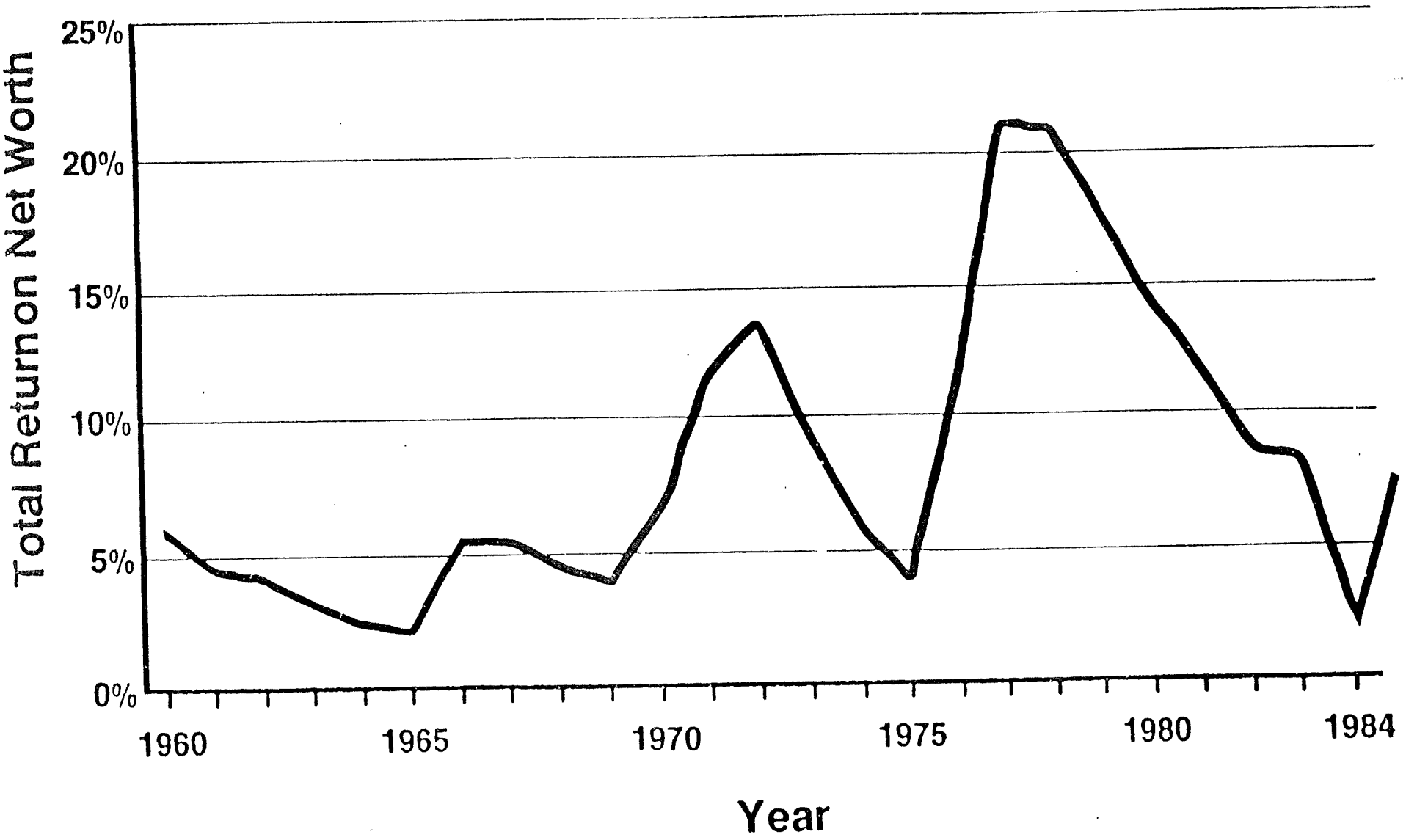
A group of 20 Metro Toronto hospitals are conducting a similar, but independent, review.

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

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

CHART 1

THE "CYCLE" AND CONSUMER ABUSE



BEST'S PROPERTY/CASUALTY STOCK INDEX

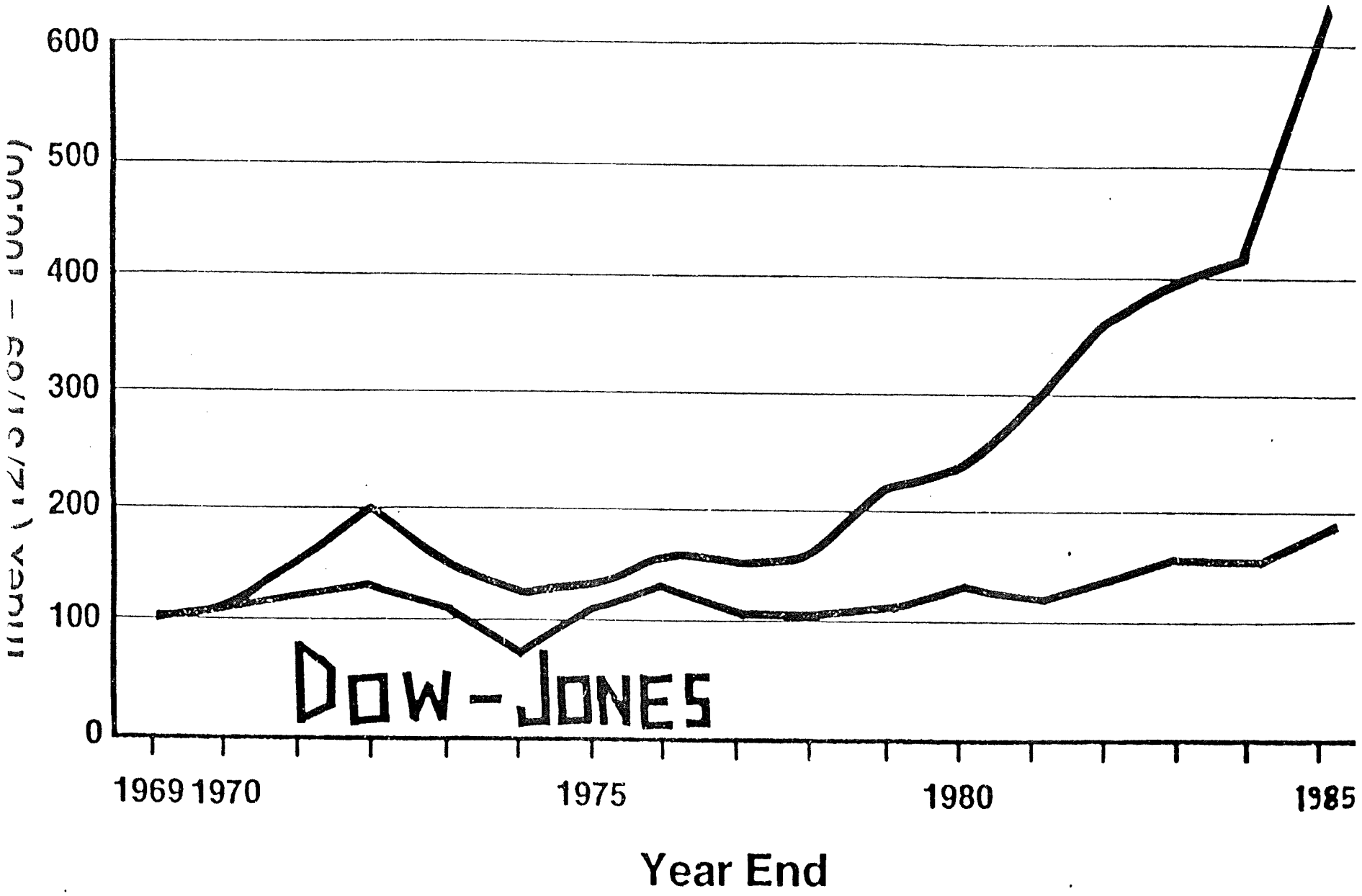
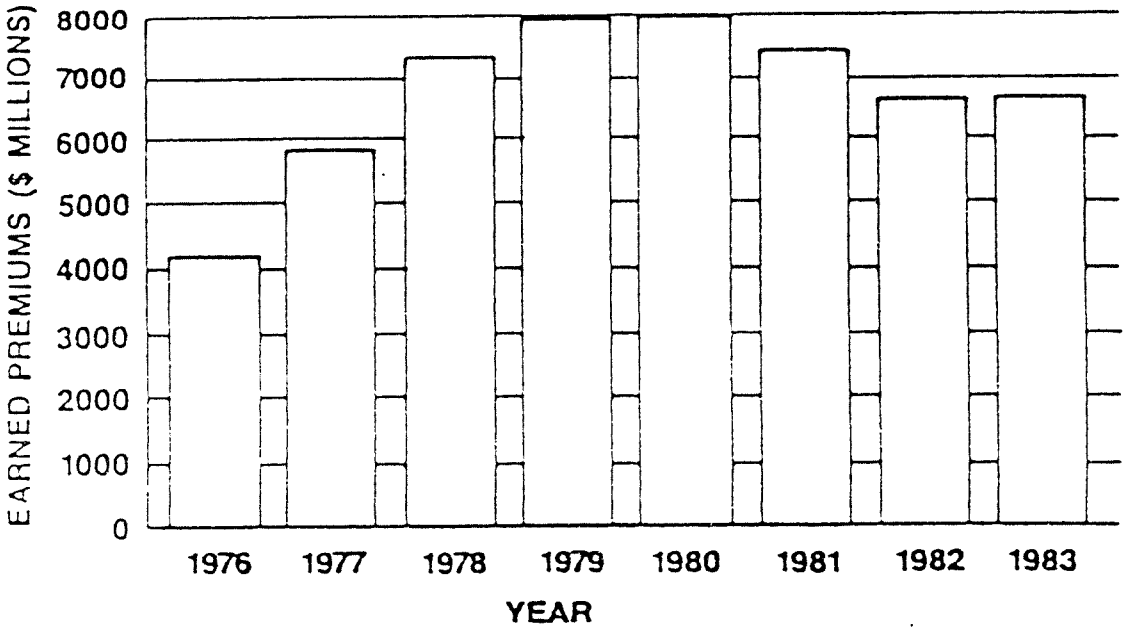


CHART 3

NATIONAL LIABILITY INSURANCE STRIKE



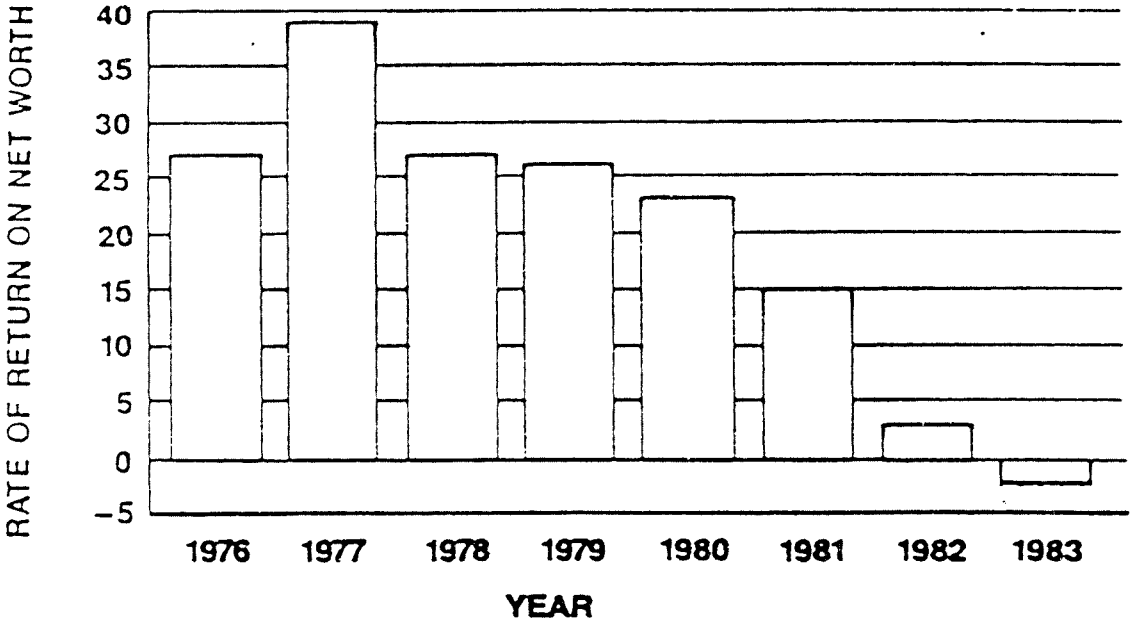
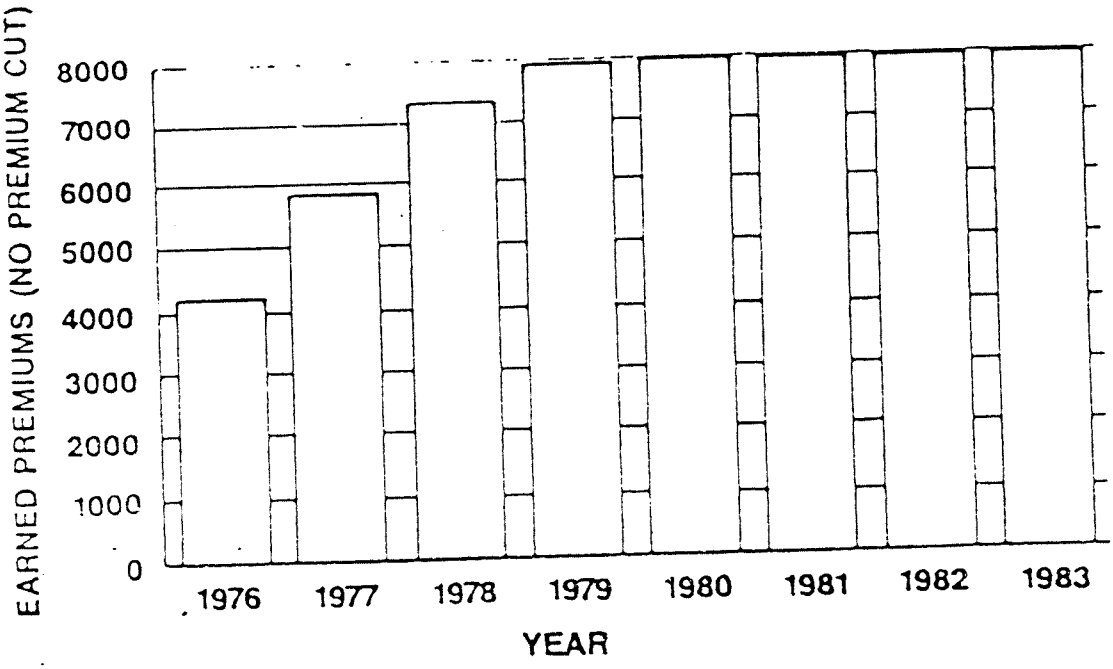
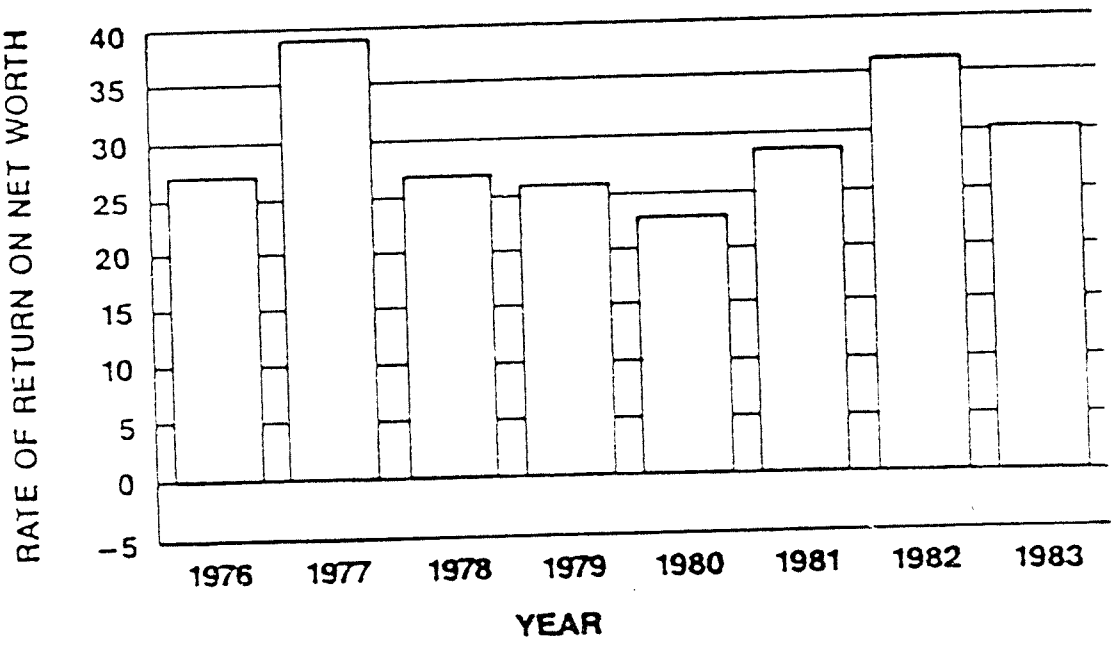


CHART 4

NATIONAL LIABILITY INSURANCE
STRIKE II





DATA UNDERLYING CHARTS 3 & 4

COMMERCIAL LIABILITY INSURANCE PROFITABILITY STATISTICS (1)
Rate of Return on Net Worth (2)

Year	Earned Premiums (Millions of $)	Actual ROR	All American Industry (3)
1976	$4160	27%	13.3%
1977	5865	39	13.5
1978	7334	27	14.3
1979	7943	26	15.9
1980	7969	23	14.4
1981	7416	15	14.0
1982	6627	3	11.0
1983	6671	-2	11.5
Average		19%	13.5%

(1) Source: National Association of Insurance Commissioners Report on Profitability, By Line, By State.

(2) Rate of Return on net worth estimated from the NAIC Reported Insurance Operating Profit on Earned Premiums by converting to net worth by multiplying by a 2:1 Premium/Net Worth Ratio. Investment Income on Surplus is added at an assumed after tax yield as follows: 1976, 5.0%; 1977, 5.5%; 1978, 6.0%; 1979, 6.5%; 1980, 7.0%; 1981, 7.5%; 1982, 8.0%; 1983, 8.5%.

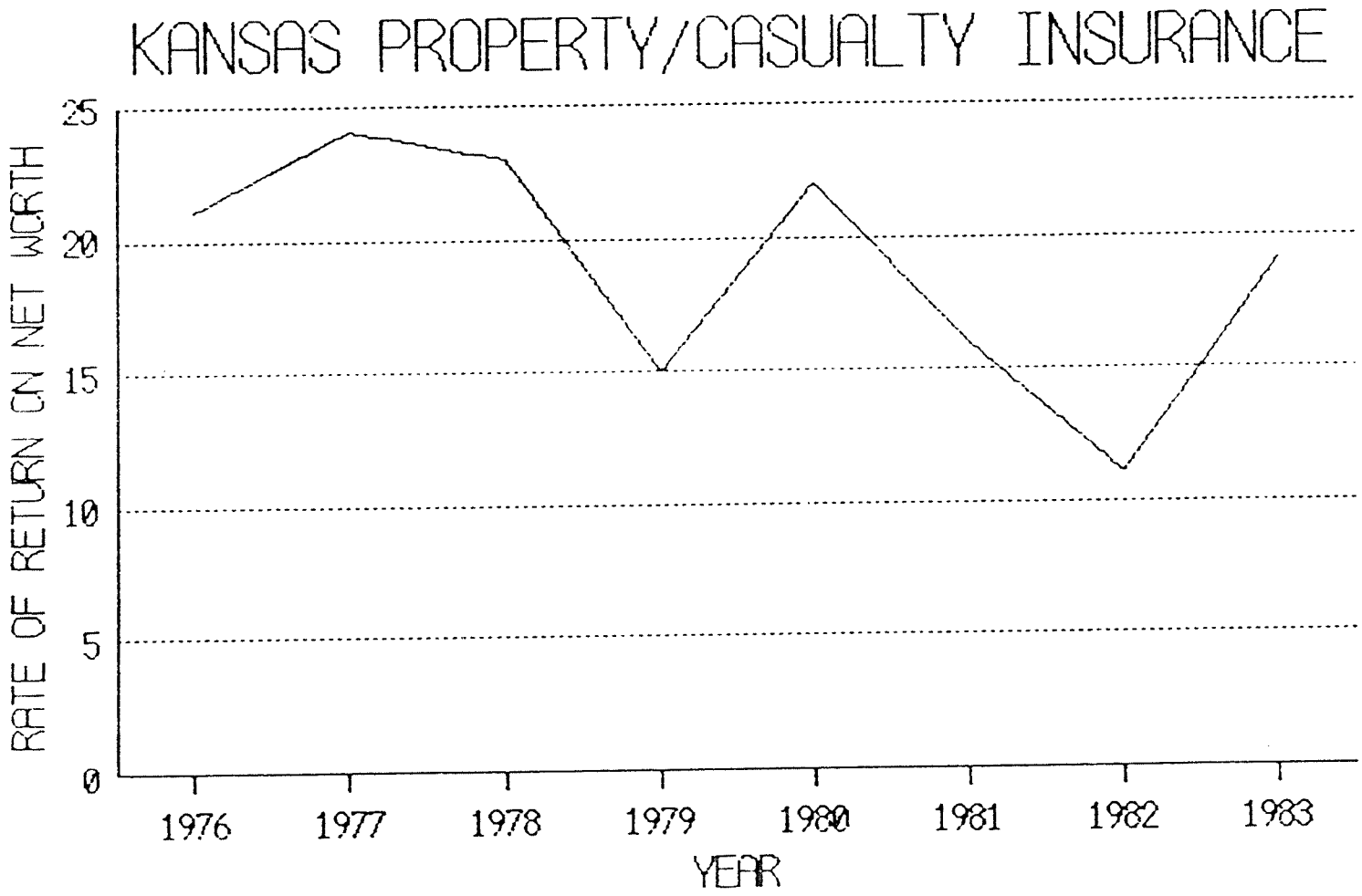
(3) Fortune 500, 1976-1980; Business Week, 1981-1983.

NOTE: Had the insurers not cut premiums after 1980 but held them constant, the Rate of Return on Net Worth would have been:

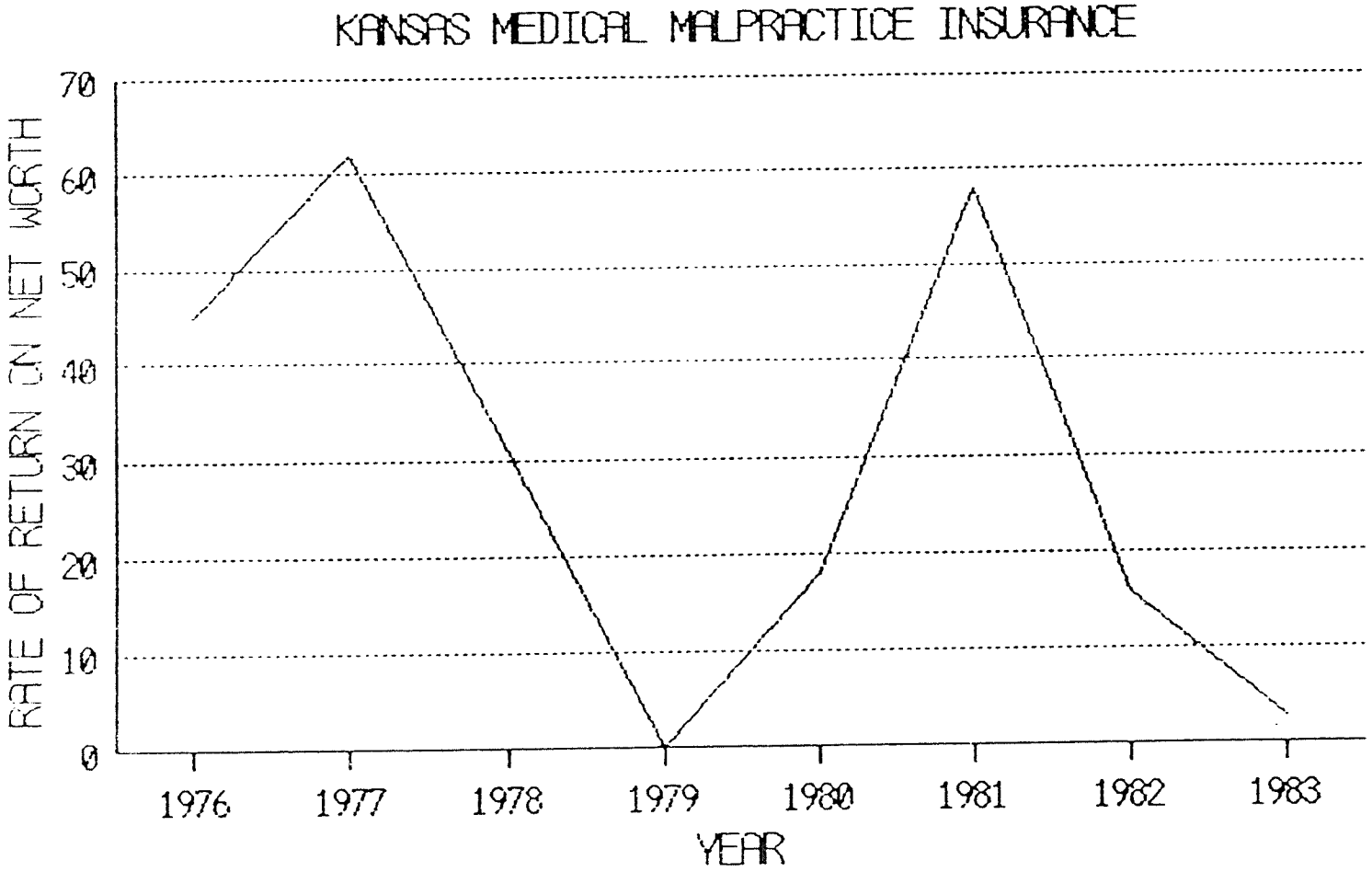
1981	29%
1982	37%
1983	31%
8-year average	30%

The problem is clearly rate cutting, nothing else!

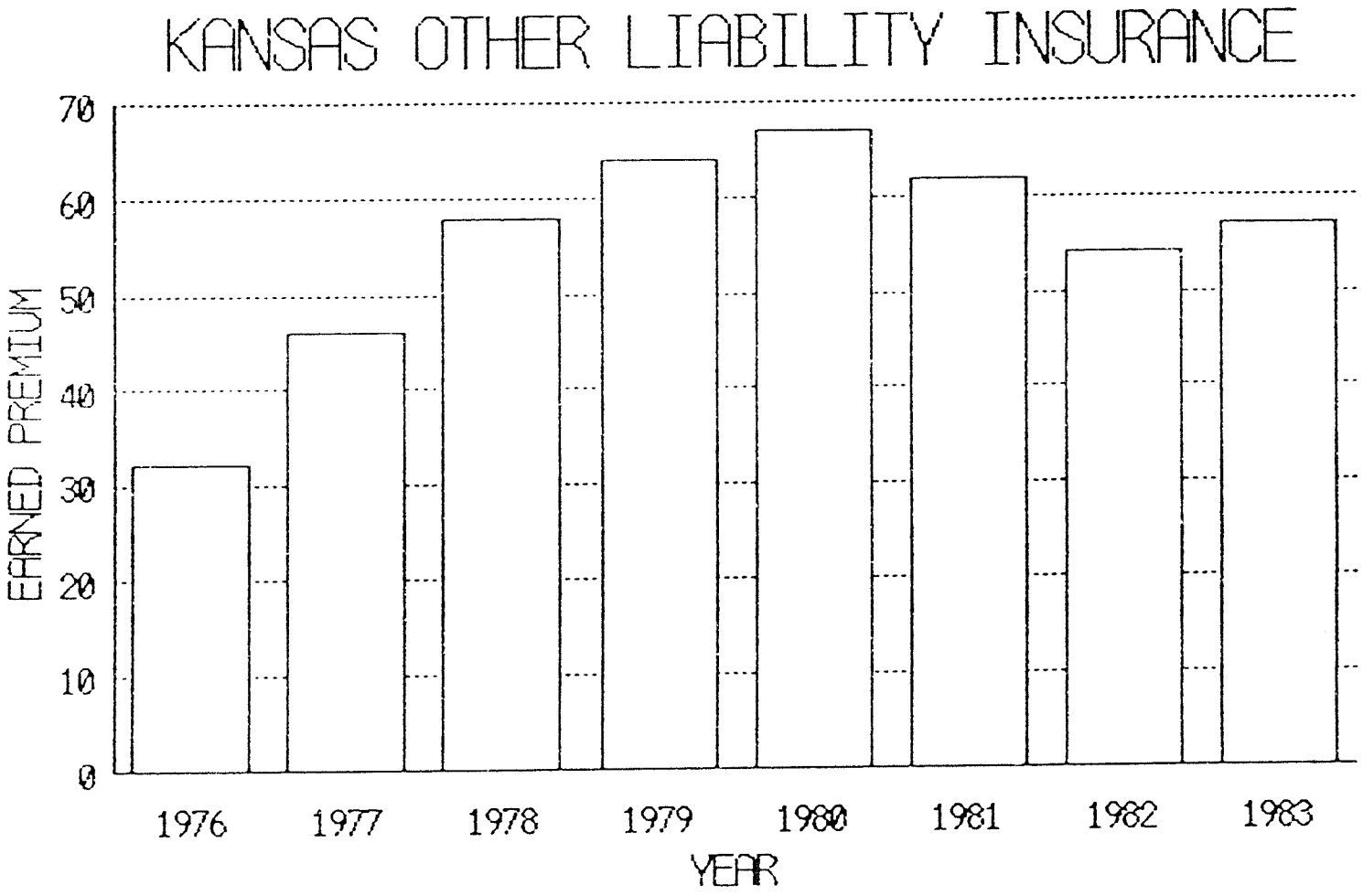
KANSAS 1


KANSAS PROPERTY/CASUALTY INSURANCE
RATE OF RETURN ON NET WORTH
25
20
15
10
5
0
1976
1977
1978
1979
1980
1981
1982
1983
YEAR

KANSAS 2


KANSAS MEDICAL MALPRACTICE INSURANCE
RATE OF RETURN ON NET WORTH
70
60
50
40
30
20
10
0
1976
1977
1978
1979
1980
1981
1982
1983
YEAR

KANSAS 3


KANSAS OTHER LIABILITY INSURANCE
EARNED PREMIUM
70
60
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40
30
20
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1976
1977
1978
1979
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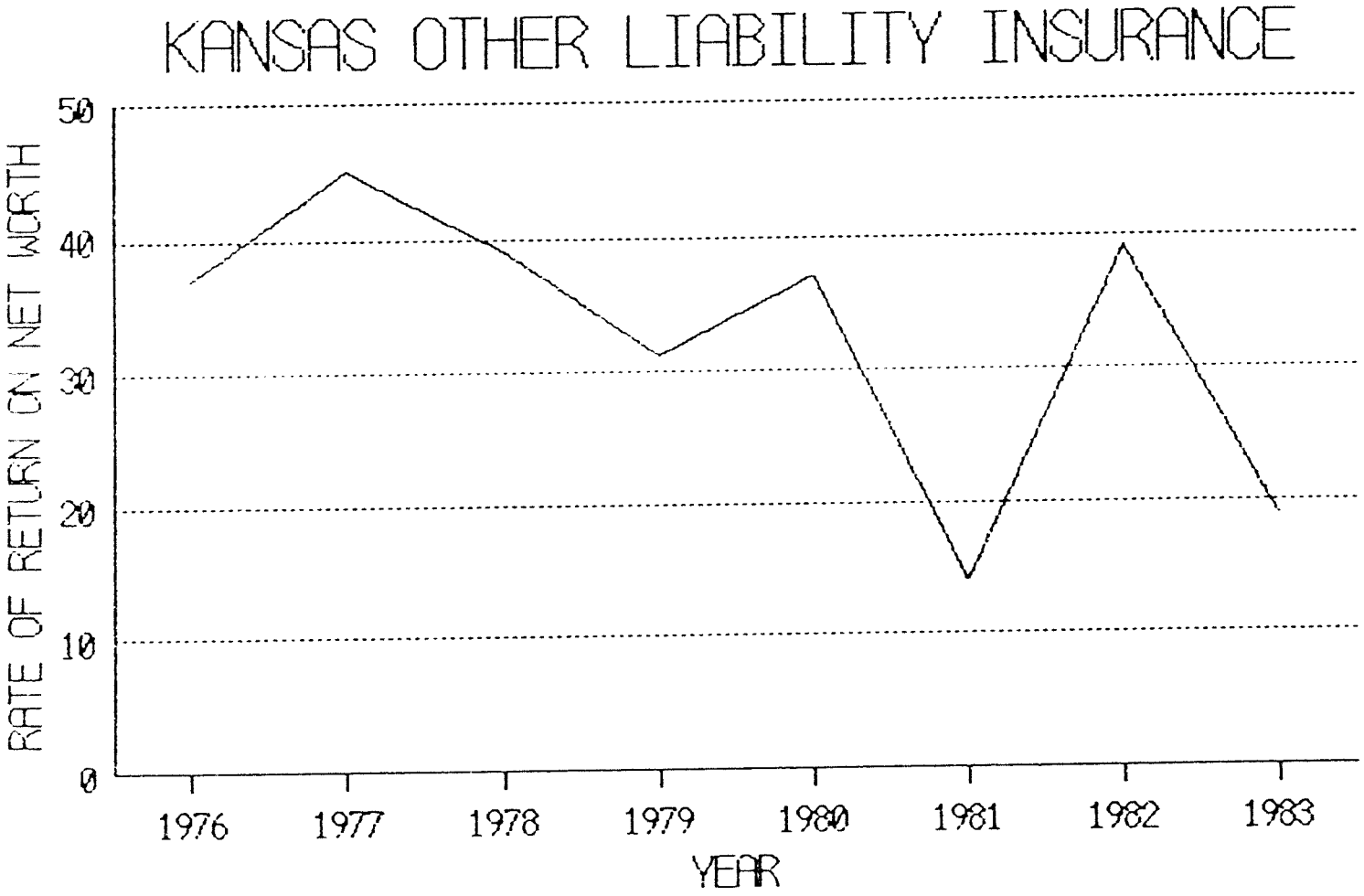
1981
1982
1983
YEAR

KANSAS 4


KANSAS OTHER LIABILITY INSURANCE
RATE OF RETURN ON NET WORTH
50
40
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0
1976
1977
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1979
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1983
YEAR

MONTHLY LETTER

LESLIE WRIGHT & ROLFE GROUP

INSURING YOUR SUCCESS SINCE 1900

No. 198

A DETAILED ANALYSIS OF THE ECONOMIC AND SOCIAL FACTORS THAT DRIVE INSURANCE PRICES AND CAPACITY

Imagine your reaction the next time you visited your neighbourhood supermarket if you found that prices had doubled, all economy sized containers and packages had disappeared, and some types of food were unavailable! ... the cost of groceries for a family of four had doubled overnight!

The chances are you would be angry and frustrated. Consumer groups would plead for government help. Here and there governments might declare a state of emergency. Producers and distributors would complain that their costs had risen. Consumers would consider setting up co-ops and growing their own food.

Does this sound familiar? Not in the grocery trade, but this has been occurring in the conservative property and casualty insurance industry.

While grocery prices have been increasing, a little here and a little there, to keep pace with rising costs and inflation, insurance companies in the commercial insurance field have been engaged in a cut throat price war that has raged unabated for nearly seven years. Until recently commercial property and casualty insurance was unquestionably the greatest bargain of any financial services product.

Late in 1984 market forces caused changes and just a few short months later insurance companies had pushed the cost of many lines of property and casualty insurance to the highest levels in recent history. In addition, a shortage of insurance occurred, (yes, that's possible) and some specialty types of insurance became virtually unavailable while the cost of others increased dramatically.

Like our hypothetical grocery shopper commercial insurance buyers are frustrated and angry. Some have complained to government while others are looking at self insurance, group programs, increased deductibles, captives and other ways of controlling costs.

After carefully analysing each clients requirements and preparing underwriting proposals, insurance brokers can only suggest and negotiate rates. Rates are finally determined by the insurance companies. A qualified insurance broker can advise how to mitigate increases and still obtain suitable coverage. Providing your broker with full information about your business operations and claims experience is essential. Carrying out the recommendations that he suggests and retaining higher levels of risk will assist your broker in negotiating better terms. Final decisions, however, are made by insurance underwriters and in a difficult market clients may ultimately have to live with the decisions made by the insurers.

Insurance prices, like groceries and all other services and products, are the result of supply and demand and other economic factors. While negotiating insurance in a hard market can be a disheartening and frustrating exercise, it will be easier if the buyer understands the economic and regulatory factors that affect insurance pricing.

SUPPLY FACTORS

The supply side of insurance is governed by a basic cycle, the strength and duration of which is influenced by various internal and external factors.

GOVERNMENT REGULATIONS

To ensure that insurance companies remain solvent (and some are not) and able to pay claims, the governments in most countries license and control their operations. One important control is the ratio between surplus and premiums. Insurers typically are allowed to write total annual premiums equal to three times their surplus. Premiums can be increased to the extent that the Insurer purchases reinsurance that is acceptable to the regulatory authorities.

Because of these regulations the capacity or supply of insurance rises and falls proportionately with invested capital, surplus and available reinsurance.

CAPITAL & SURPLUS

Capital or surplus is generated from new investment in the insurance industry such as the sale of shares, and from retained profits from prior years' operations and the sale of assets such as real estate.

The surplus from which capacity flows depends on profit to generate additional surplus internally or to attract new investment into the insurance industry.

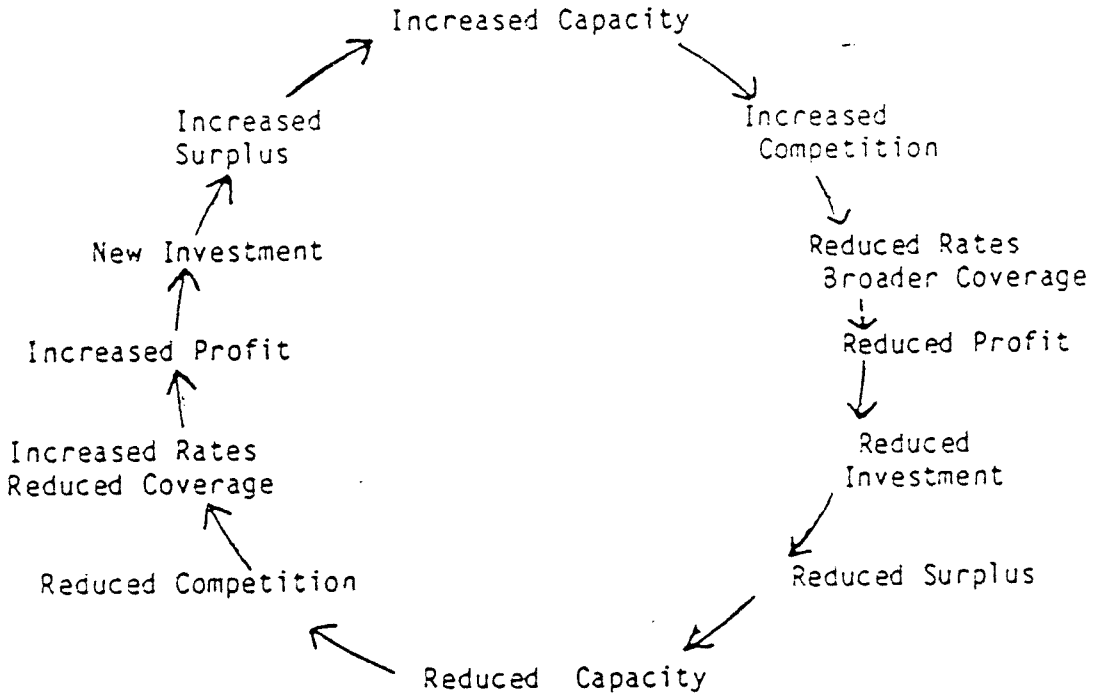
THE BASIC CYCLE

The basic cycle is profit driven. As profits increase they are reinvested and new capital is attracted into the industry. Because government regulators relate the premiums that an Insurer can write to its capital and surplus, an increase in investment produces an increase in the industry's capacity. Unless there is a corresponding increase in demand the increased capacity will produce increased competition which results in lower rates and broader coverage. These conditions will lead to reduced profit and ultimately losses which reduce the industry's capital and surplus and cut its capacity. To solve this problem rates are increased.

As rates increase and terms become more conservative, opportunities for well financed insurers to increase their market share will arise. Many insurers will seek additional investment in order to increase their capacity and in essence become part of the solution.

Unfortunately, many poorly managed and troubled insurers have to "clean house" before they can again move forward and this will cause them to cancel risks in mid term, refuse to renew, increase prices, reduce coverage, withdraw from certain classes and take other drastic and often unfair steps.

The additional premiums generated by rate increases become part of the overall premiums to which government imposed multiples apply and this causes a further reduction in the industry's capacity that won't be increased, except by new investment, until the higher rates work their way through the system producing profit which can be reinvested.



This type of cycle has been carrying on for many years. During the last cycle new factors - investment income and reinsurance - that had always been around suddenly became dominant driving forces.

INVESTMENT INCOME

The money that insurance companies earn comes from two main sources:

1. Underwriting profit or what is left over from the premiums collected after claims and expenses are paid.

2. Investment income or what can be earned on an insurance company's cash flow and legally required reserves.

Starting in the mid 1970's inflation and the demand for investment funds from the private and public sectors pushed interest rates to unprecedented highs. Insurance companies saw this as an opportunity to increase their investment income. This action was encouraged by hungry reinsurers. Capacity reached unknown highs. Competition was rampant. Many Insurers aggressively wrote almost any kind of business at price levels that could not possibly produce an underwriting profit. These Insurers hoped to earn investment profits that would offset their underwriting losses and for a while this worked. Clients with long stable relationships with brokers and Insurers transferred their business to take advantage of the lower prices and broad coverage that was available.

As a result of this reckless underwriting claims grew at a faster rate than income and, ultimately, claims and expenses exceeded both premiums and investment income causing many insurance companies, particularly reinsurers, to have bottom line losses. Early in 1984 it became apparent that this strategy was failing. Interest rates had dropped - they had become insuffient to cover the underwriting losses. The industry was writing business at bargain prices. Reliance on investment income didn't change the basic cycle, but greatly amplified its effect. When the bubble burst in the latter months of 1984 the industry was writing more business than it could handle. The reaction was sudden and violent much like the supermarket whose prices doubled overnight.

EQUITY PRICES

Insurance companies are allowed to invest part of their assets in approved common stocks. The 1974 hard market was fueled by the tremendous drop in the market value of common shares. While stock prices have not been a major factor in the current hard market they represent another potential force that can drive the cycle upwards or downwards.

REINSURANCE

Historically the direct companies shared many risks in order to protect themselves from large claims that might impair their financial stability. At one time it was not uncommon to see thirty or forty separate policies insuring the same risk or thirty or forty companies sharing in a "subscription" policy. As the size of risks grew this system became unwieldy and direct companies bought more and more reinsurance in order to be able to write larger risks. By the 1970s it had become common for very small companies to underwrite jumbo risks backed primarily by reinsurance rather than their own assets. Small companies, with say $5,000,000 in capital and surplus, wrote policies with limits of $50,000,000 and $100,000,000 and even more. The increased use of reinsurance led to some serious abuses. First of all some companies started using unlicensed foreign reinsurers. A few of these reinsurers were not financially secure and could not pay their claims, leaving the direct companies, which often were small, having to pay claims from their own limited assets. A second problem was caused by the high degree of competition in the reinsurance business. Reinsurance companies hungry for investment income accepted business at substantial discounts from the already low rates charged by

direct Insurers. This allowed the direct Insurers to assume large risks, pass most of the risk to reinsurers and still have a substantial amount of cash flow to invest. These were very clever moves as long as the reinsurers were financially sound and could pay up when called on. Many conservative Insurers continued to operate on a sound basis but competitors drew everyone into the game to some degree and the result was even more downward pressure on rates. When the market turned reinsurers were the first to tighten up.

Reinsurers raised rates, reduced coverage, and cut capacity. This had a leveraged effect on direct Insurers who were forced to take similar steps. Reinsurers had accelerated the move to lower rates during the soft market and now accelerated the return to more realistic rates and tougher conditions.

RESERVES

Since most claims (particularly liability claims) take some time to settle, it is impossible for an insurance company to know where they stand at the end of any year. To help evaluate their position, reserves for both known claims and incurred but not reported claims, are established. These reserves are determined in various ways but depend heavily on estimates by claim managers and casualty actuaries.

When large amounts of premium are being generated to invest and Insurers appear profitable some less conservative insurance company managements may underestimate their reserves. In the short term this will make reinsuers happy and justify higher dividends to shareholders. Insurers who deliberately underestimate reserves operate in a euphoric fool's paradise. When the claims are paid, the real amount becomes known, and this of course accelerates losses in the year when settlement is made causing another highly leveraged impact on a tight market.

Some industry observers believe that reserves at December 31, 1984 were understated by as much as 10-20%. For those companies already showing a loss these reserve deficits, when finally adjusted, will to the extent of the adjustment further increase the losses.

CATASTROPHE CLAIMS

Like most of us, insurance companies react to the world around them. Insurance companies and their actuaries like to deal with predictable risks. An insurance company that insures 10,000 concrete office buildings can fairly accurately project future fire losses.

Insurers have historically better handled those risks that occur relatively often (high frequency) and produce relatively small losses (low severity). Such risks are predictable and suitable rates can be established with relative ease. Insurers have greater difficulty dealing with unique risks applicable to specific industries and high severity low frequency risks, such as earthquakes. Some of these risks can only be handled when insurers are permitted to accumulate reserves over a long period.

The 1980s have become a world of uncertainty. Who can predict the potential losses from risks and activities such as,

- acid rain
- industrial accidents (Bhopal)
- earthquakes
- seepage from stored chemicals (PCB's)
- air pollution
- defoliants
- medical services
- legal services
- design and construction

Who can predict what economic woes will afflict us during the balance of the Eighties?

A few to consider are:

- further failures of financial institutions
- trade embargoes
- unexpected currency fluctuations.

The recent escalation of unpredictable risks has caused insurance companies to return to a more conservative underwriting stance further reducing the industry's capacity to write business.

At the present time the supply of insurance is possibly 20% below demand. This is causing the current escalation in commercial insurance pricing.

So far we have been looking at the factors that control the supply of insurance. We have seen that there is a basic cycle in which profit generates surplus which generates excess capacity. We have then seen how excess capacity results in greater competition which produces lower premiums and, ultimately, financial losses for insurance companies. The market then swings to the hard segment. Rates are raised, capital and surplus rise, capacity is increased, new money is attracted and the industry once again becomes profitable.

We have seen how the various segments of the cycle are accelerated and slowed by outside factors including investment income, the stock market, reinsurance, claims reserves, catastrophe claims and, of course, new investment.

DEMAND FACTORS

The demand for insurance is somewhat fixed as most prudent buyers consider that they must continue to protect their assets and buy coverage for unexpected liabilities. Those with mortgages on commercial property are forced to continue to buy insurance. The demand for insurance is somewhat less variable than supply because many buyers desire to continue or must continue their protection. Demand increases somewhat as insurance rates drop and decreases when rates rise and buyers turn to self insurance, increased deductibles and so on.

Increased demand for insurance is primarily brought about by three factors:

1. Demand rises as real new investment (factories, homes, stores, buildings) is made and new risks to insure are created during a buoyant economy. Inflation increases prices and causes an artificial increase in demand.

2. Demand rises as old risks are seen in a new light. Some major risks, such as pollution, that caused Insurers to reduce their capacity, create an increased demand as insurance buyers learn more about these exposures and try to obtain coverage.

3. Demand rises when attractive new products are conceived, developed, and marketed by the insurance industry.

At this point in time the worldwide capacity of the insurance industry has been significantly reduced because of a reduction in capital and surplus due to the lack of profit. At the same time the demand for insurance is increasing not so much because of real economic growth, but rather because of the need for specialized insurance to cover areas that are perceived to be highly risky by both insurance buyers and insurance companies. Some of these areas are Pollution and Contamination exposures including clean-up expenses, chemical waste problems and Professional Liability risks. Many of these risks are arising because of changes in our legal system, but many are simply the result of the insurance industry withdrawing from certain areas that it considers to be high risk and where little or no catastrophe reinsurance is available. We are reminded of the increased demand attributable to wartime rationing. The result of a reduced supply and increased demand is higher prices and tougher terms.

THE CANADIAN SCENE

Insurance is an international business. Without the support of multinational insurers and reinsurers Canada's domestic insurance industry would not be able to weather the huge disasters that can occur anywhere at any time. Without these international resources major earthquakes, chemical spills and marine disasters could not be handled by Canadian insurers.

Although Canada is a separate country it has close social, economic and legal ties with the United States. Our legal systems stem from the same roots, but have developed independently. Over the years many legal principles that protected defendants and their insurers have been modified or eliminated as a result of court decisions. This trend has been most noticeable in the United States. Many insurers consider the high and unexpected settlements resulting from these changes as the root cause of today's problems.

The Canadian insurance industry has historically been dominated by insurers from foreign countries, particularly Britain, Switzerland, Germany and, of course, the U.S.A. While foreign involvement will continue as a major factor, we think that "winds of change" are starting to blow. We are beginning to see some major Canadian groups becoming significant players in the property and casualty business. These include E.L. Financial Corporation which has recently purchased the troubled Canadian Indemnity Company and already owns the Dominion of Canada Group and Empire Life. Another new player is the Trilon Financial Corporation which recently purchased most of the Canadian operation of the Fireman's Fund Insurance Company from American Express. The Laurentian Group, which includes Imperial life and the Laurentian Pacific, has developed a national presence under the leadership of Claude Castonguay. A major effort is underway to establish a Canadian insurance exchange which will operate somewhat like the New York Insurance Exchange and Lloyds.

In spite of these developments, foreign insurers continue to be a major part of the Canadian scene, but many are transferring the day to day management of their Canadian operations to their Canadian head offices. American companies with a significant Canadian presence include the U.S.F. & G., CIGNA, American International Group, Travelers, Hartford and Allstate. British insurers include The Guardian, Royal, Commercial Union, Prudential and, of course, Lloyd's. Other foreign insurers include the Zurich, Gerling Global and The Tokio Marine & Fire Insurance Company.

Canada is dominated by foreign owned brokers. There are only three Canadian owned brokers with a national presence. Positioned between the local agents and the national brokers are the regional brokers who are privately owned and offer a range of specialized services to their clients. Several large Canadian regional brokers, including Leslie Wright & Rolfe Limited, operate in the West, Central Canada or the Maritimes. These brokers specialize in various fields including construction, professional liability, strata housing and travel insurance.

EFFECT ON CLIENTS

The current insurance problems are affecting business, professional, government and institutional buyers to a much greater extent than individuals. While the cost of homeowner and tenant packages and personal automobile insurance is rising the main impact is on commercial insurance.

Liability insurance is a disaster area.

Many general liability insurers have been hit by American courts holding that injuries such as silicosis, asbestosis and pollution that occurred over extended periods are covered not just by current policies, but by all policies in force over the period when injuries occurred. Insurers have become liable for claims under policies that had expired years ago. The limits provided by companies in each year that they insured a risk are being added together to create a large and unexpected liability. Insurers have reacted by introducing "claims made" general liability policies designed to avoid this "long tail." While this problem is limited to only

a small percentage of risks, insurers may ultimately force the majority of clients to accept "claims made" policies.

While all classes of general liability insurance have been hit, some classes such as chemical risks, drug manufacturers, municipalities and manufacturers with an extensive American products liability exposure have been particularly affected.

The limited market for many specialty liability forms has been further restricted as many marginal players have pulled out or cut back.

Professional liability policies issued to accountants, lawyers, architects, engineers and other professionals have long been written on a "claims made" basis, but are also having prices raised and conditions tightened in reaction to large awards and the gradual erosion of the law of negligence. The courts are virtually holding professionals to be guarantors of results. While these trends may be socially desirable, the cost of insurance to cover them may ultimately force many professionals to find other solutions or be forced from the marketplace.

Property insurance, while less affected than liability coverage, is also suffering from higher prices and tougher terms. Insurers are now withdrawing frills, demanding standard wordings and higher deductibles.

The contract bonding business, while not immune from market cycles, has not been as seriously affected as casualty insurance. Many companies, who attempted to write underfinanced and inexperienced contractors in order to gain a market share, have withdrawn. Selective and experienced underwriters continue to provide a market for well managed and sound contractors.

REACTING TO A DIFFICULT MARKET

Armed with an understanding of the cyclical insurance market and the factors that influence prices and capacity, how should a wise commercial insurance buyer react? Panic is not in order. Plan to reduce the risks that need insuring, make your risks attractive to insurers and self insure the portion of risk that you can financially absorb. Continue to insure against catastrophe losses of a magnitude and nature that you cannot absorb.

Reducing or eliminating risks can be accomplished in many ways. Some risks can be transferred to other parties in carefully written contracts. High risk operations can be sold, terminated or sub-contracted. New high risk operations can be delayed.

Risks can be made more attractive to insurers in many ways. A few that come to mind are:

- loss control programs
- sprinkler systems
- improved construction

Risks can be self insured in many ways. Increasing deductibles and simply not buying insurance on high frequency/low severity risks is a common way. More sophisticated self insurance arrangements include funded group plans and captives. Many self insured arrangements allow the insured, rather than the insurer, to earn investment income on premiums until claims are actually paid.

In spite of the difficult market insurance buyers will continue to rely on the commercial insurance market for their catastrophe insurance. Buyers, however, may need to redefine their interpretation of catastrophe in light of both cost and availability of coverage.

SOLVENCY

Business failures are a natural development in a free enterprise market. They weed out poorly managed, dishonest, underfinanced or marginal operators. Insurance companies, trust companies, banks and credit unions are important parts of our financial infrastructure. Until a few short years ago Canadians had come to rely on government regulation and control to ensure that these organizations were sound. In the past four years several trust companies, two regional banks and four insurance companies have failed. Inspection staffs had not kept pace with changes in these industries.

Brokers and insurance buyers must spend more time reviewing the financial affairs of their insurers. A number of excellent publications classify the financial strength of insurance companies in various ways. In today's market, bargain prices or exceptionally broad terms may be warning signs of impending disaster.

REACTING TO A NEW COMPETITIVE MARKET

Many insurance buyers will need to re-evaluate their position when insurance markets, as they inevitably will, become more competitive. While some buyers may wish to transfer their business to the most competitive insurers, those with a long term outlook may wish to remain insured with the stable companies who provided them with coverage during the difficult times, in order to build a more permanent relationship. Buyers should carefully examine the reputation and long term financial stability of insurers, particularly when purchasing coverages where the insurer is obligated to pay claims many years in the future.

LONG TERM SOLUTION

Considering the highly competitive nature of the insurance industry and the number of factors that affect insurance pricing and capacity, it is unlikely that any internal solutions will solve the problem. Perhaps the solution lies in some compromise between government control and increased responsibility by insurers, buyers and brokers. Government and our legal system need to be more responsive to insurance industry problems and the social and economic consequences of failing to respond to them. Insurance company management and buyers need to develop a long term outlook.

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE
HAZEL FRANK GLUCK, COMMISSIONER
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609-292-5363

STATEMENT OF IMMINENT PERIL

INSURANCE
DIVISION OF ADMINISTRATION

Emergency Adoption of New Rules and Concurrent Proposal N.J.A.C. 11:1-20

The Department of Insurance is currently experiencing an increasing influx of consumer and agent complaints regarding indiscriminate cancellation, nonrenewal, premium increase and underwriting practices of commercial insurers. The actions complained of include mid-term cancellations, mid-term increases in premiums, failure to provide timely notice of nonrenewals and block cancellations and nonrenewals of entire lines of insurance. In addition, the Department, as well as affected public entities and others, have been notified by commercial insurers of their intentions to block nonrenew their clients' comprehensive general liability policies if the Department fails to approve a new commercial general liability policy form proposed by the Insurance Services Office, the largest rating organization in the State.

The property/casualty industry is presently attempting to recover from very serious problems caused by six consecutive years of increasing underwriting losses. The business is hurting because it underpriced its products, especially in casualty coverages.

Many industry advocates lay blame for the current crisis in commercial property/casualty lines upon the tort law system and overly sympathetic judges and juries. They assert that it is impossible for companies to determine with any degree of certainty the maximum exposure they face on policies written due to the liabilities created by the federal Superfund and New Jersey Spill Fund Acts and the courts' undue expansion of the common law liability of municipalities for environmental incidents and their concomitant disregard of contract provisions designed to provide insurers with coverage defenses.

Insurance company response to poor results has been to increase rates and reduce coverage substantially. This response is also in reaction to poor results experienced by reinsurers here and abroad who are withdrawing from the United States market. The end result is a capacity crunch.

As in previous "capacity crunch" incidents, the public suffers severe and economically debilitating dislocations. After a period of glut, when premiums drop to a fraction of their prior price levels, underwriting tightens like a vise and important major manufacturing and service industries find themselves unable to purchase insurance protection at any price from any company.

The insurers' actions in terminating existing coverage, refusing to renew expired policies and in dramatically increasing rates have led to an availability and affordability crisis in commercial lines insurance. Municipalities, environmental concerns, product manufacturers, medical professionals, transit authorities, nurse-midwives and day-care centers are among the hardest hit. Most of the affected professions and other entities cannot find coverage and if they are fortunate enough to do so, the cost is prohibitive.

The property/casualty industry asserts that its actions are necessary because of the financial harm caused by six years of overheated price competition during which rate adequacy and normal underwriting standards were sacrificed in order to maintain premium income. In support of its assertions, the industry points to an 17.7 percent underwriting loss in 1984 and an 18.5 percent underwriting loss for the first six months of 1985. The industry contends that these results pose great dangers to the very solvency of an unacceptably large number of insurers. Advocates of the industry assert that it must improve its earnings if the industry is to maintain its current capital base and attract new capital to meet the insurance needs of a growing economy.

Although we agree that the industry's operating results has deteriorated for seven consecutive years, and that more disciplined underwriting along with adequate rates are needed, we see no justification for the rash of actions undertaken by the industry in terminating coverage prior to the expiration dates of policies and in increasing rates and reducing coverage in mid-term. The United States General Accounting Office in developing a financial overview of the property/casualty insurance industry found that for the 10-year period 1974 through 1983, the industry suffered about $28 billion in underwriting losses. However, for the same period, the industry had about $100 billion in investment gains, resulting in a total gain of about $72 billion for those years. Further, from 1974 through 1983, the industry paid only $1.3 billion in federal income taxes, about 2 percent of the industry's total gain for the period. While in past years investment gains have exceeded underwriting losses by a fairly wide margin, in more recent years the gap has narrowed. However, in every year, investment income has exceeded underwriting losses. Therefore, we should not permit the industry to abuse its policyholders as it implements new strategies to address its past mismanagement practices.

The data emanating from Wall Street tends to support this view. Property/casualty stocks have soared to record highs more than doubling the DoW Jones Industrial Average rise in 1985. Moreover, property/casualty stocks has historically outperformed the Dow Jones and other broad stock price indices, even in periods of adverse underwriting results.

Also, the A. M. Best Company (the leading financial analyst of the insurance industry) recently reported that the property/casualty industry has ample resources available to meet all contingencies. Best's found that the industry has liquid assets equal to 31 percent of liabilities and total unaffiliated investments exceeding liabilities by four percent.

While the property/casualty industry's profits were low last year and modest rate adjustments were expected, rates have skyrocketed. Instead of moderate rate increases, we see massive cancellations and mammoth price increases of up to 2000 percent for day-care centers, municipalities, transit authorities, truck and bus operators and others.

The Commissioner finds it necessary to adopt emergency rules restricting mid-term cancellations, mid-term price increases, prohibiting block cancellations and nonrenewals and requiring timely notice of non-renewals and cancellations in property/casualty commercial lines because failure to act promptly will result in serious harm to the insurance-buying public and the economic environment within the State. These techniques comprise some of the many steps insurers are taking in an effort to halt a competitive situation in commercial lines (and its related lack of regard for underwriting profit during the past several years) that has compromised the operating results of the industry. However, as the industry strives to return to a sounder financial footing, it should not abdicate its responsibilities. We are not insensitive to the industry's present condition and the critical need for corrective action; however, we observe that in many cases insurance companies have exceeded the boundaries of reasonableness in the conduct of their business and these activities must cease."

While we recognize that some premium increases, are perhaps justified, there is absolutely no reasonable excuse for mid-term cancellations unless on an individual basis as a result of unfavorable underwriting factors relating to the individual risk which were not present at the inception of the coverage. Moreover, unless a risk has developed an adverse loss history, it should be eligible for renewal under an insurer's current underwriting rules and rates. If a risk meets a company's underwriting standards at a "bargain basement" or even a "manual" premium when investment income is high and the physical nature of the risk itself does not change when investment income deteriorates, that risk should not be penalized by cancellation or non-renewal.

These are indeed distressing matters, which not only constitute unfair practices that are injurious to the public, but which also interrupt the free flow of commerce. Society cannot function properly when its commerce is to disrupted. The statutory responsibilities enjoins the insurance regulator to take agressive action to protect the interests of policyholders and the State, to the extent that insurance companies provide responsible, equitable and fair treatment to the insuring public. These emergency rules are being adopted to ensure that the insuring public receives treatment from

their insurers that is consistent with the insurance laws of New Jersey. Delay in adopting rules fosters insecurity, distrust, unfair pricing and unavailability of insurance to magnitudes where the insurance buying public will be affected by extreme adversities.

Hazel Frank Gluck

Hazel Frank Gluck

9/16/85

Date

Regular Session, 1983

SENATE BILL NO. 373

BY MR. KELLY

ENROLLED

Act 595
(signed 7/14/83

3-21

AN ACT

To enact R.S. 22:1451.2, relative to annual reports by property and casualty insurers, to require annual reports of property and casualty claims experienced in this state; to provide for the form of the reports and the information to be included therein; to require the commissioner of insurance to compile and review all reports and to publish a report; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1451.2 is hereby enacted to read as follows:

§1451.2. Annual reports, property and casualty insurers

A. The commissioner shall promulgate rules and regulations which shall require each insurer licensed to write property and casualty insurance in this state, as a supplement to Schedule T of its annual statement, to submit a report on a form furnished by the commissioner showing its direct writings in this state.

B. The supplemental report required by Subsection A of this Section shall include but not be limited to the following types of insurance written by such insurer:

(1) Motor vehicle bodily injury liability insurance, including medical

S 209

Attachment 6
House Judiciary
March 26, 1986

pay insurance.

(2) Products liability insurance.

(3) Medical malpractice insurance.

(4) Architects and engineers malpractice insurance.

(5) Attorneys malpractice insurance.

(6) Motor vehicle personal injury protection insurance.

(7) Motor vehicle property liability insurance.

(8) Uninsured motorist insurance.

(9) Underinsured motorist insurance.

C. The supplemental reports shall include the following data for the previous year ending on the thirty-first day of December:

(1) Direct premiums written.

(2) Direct premiums earned.

(3) Net investment income, including net realized capital gains and losses, using appropriate estimates where necessary.

(4) Incurred claims, developed as the sum, and with figures provided for, of the following:

(a) Dollar amount of claims closed with payment, plus

(b) Reserves for reported claims at the end of the current year, minus

(c) Reserves for reported claims at the end of the previous year, plus

(d) Reserves for incurred but not reported claims at the end of the current year, minus

(e) Reserves for incurred but not reported claims at the end of the previous year, plus

(f) Reserves for loss adjustment expense at the end of the current year, minus

(g) Reserves for loss adjustment expense at the end of the previous year.

(5) Actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, general office expenses, taxes, licenses and fees, and all other expenses.

(6) Net underwriting gain or loss.

(7) Net operation gain or loss, including net investment income.

D. This report shall be due by the first of May of each year, and the first report shall cover the year 1983.

E. It shall be the duty of the commissioner to annually compile and review all such reports submitted by insurers pursuant to this Section. The filings shall be published and made available to any interested insured or citizen.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

Kansas Society of
Certified Public Accountants

FOUNDED OCTOBER 17, 1932

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460

FOR THE KANSAS HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

Testimony Regarding SB 540

March 26, 1986

The Kansas Society of Certified
Public Accountants
T. C. Anderson,
Executive Director

Attachment 7
House Judiciary
March 26, 1986

Last month our Kansas Society Newsletter carried a front page headline warning members that their 1986 Professional Liability Insurance premium could increase as much as 1,000 percent.

I cite for you the case of the north central Kansas CPA firm which has nine employees. It's 1984 premium for $1 million coverage was $682. In 1985 the cost increased to $775 and earlier this year the postman brought the news for 1986...$9,113 just shy of a 1200 percent increase.

In south central Kansas the story is somewhat the same. A firm with 14 employees paid $787 for a million dollars' coverage in 1984, $1,302 in 1985 and in 1986...$14,925, a bit more than an 1100 percent increase.

Needless to say neither firm has ever had a claim filed against it.

The Kansas Society of Certified Public Accountants represents nearly 2,000 members and appears before you today in support of SB 540.

We are fortunate in that our national organization, since 1974, has provided professional liability insurance through a nationwide plan for CPA firms with 250 or less employees. Nationally, 15,500 firms are insured through the Plan. Last year, 273 Kansas CPA firms were enrolled.

From the material attached to my remarks you can see for the ten year period from 1974 through 1983 Kansas CPAs were a good risk. During that period the company collected more than $1.3 million in premiums and paid out $473,000 in claims. The 49 claims filed during the ten years

resulted in incurred losses of 35 percent of premium.

I should also point out the attached 1986 base premium charges are already out of date in that a revised summary was filed with the Kansas Insurance Department on January 13, 1986 and reflected a premium increase of an additional 15 to 25 percent.

We are not so fortunate, however, when it comes to amount of coverage available. In 1985, Kansas CPA firms could obtain $5 million of coverage, to date $1 million is the maximum for 1986 because of a lack of interest from the reinsurance market.

Lets explore the plight of a Kansas firm which had $2 million of coverage with a $2,500 deductible for a premium of $6,000 in 1985. In 1986 the coverage decreased to $1 million, the deductible was doubled and the premium rose to $18,500.

Another firm obtained $3 million of coverage for a premium of $8,000 in 1985. And as with the illustration above, this firm's coverage in 1986 was reduced to $1 million while the premium soared to $21,825.

If an insurance company made available tomorrow higher amounts of coverage at a lower cost, the 273 Kansas CPA firms enrolled in the national plan would be hard pressed to take advantage. The carrier of the national plan will not offer any prior acts coverage except in cases of retirement or cancellation by the company and the new carrier would be writing only claims made policies.

Thus, Mr. Chairman and members of the Committee, your favorable action on SB 540 will do no more than place into Kansas law that which is already dictated by the market place which is a limit of $1 million on Kansas CPA's professional liability.

FILING MEMORANDUM

Crum & Forster has been the endorsed underwriter of the American Institute of Certified Public Accountants Professional Liability Insurance Plan since late 1974. During the past 11 years we have worked closely with the AICPA to offer a viable insurance program to Certified Public Accountants countrywide. The plan is also coendorsed by 35 states. We currently have approximately 14,000 policyholders, 58% of which are units with a staff size of 4 or less.

Claim frequency and severity has accelerated during recent years resulting in underwriting losses for the years 1980-1984. The following are gross combined loss ratios on a calendar basis:

Year	Ratio
1980	126.5%
1981	131.7%
1982	223.6%
1983	157.5%
1984	363.7%
1985*	254.7%

* As of 9/30/85

In July 1985 we retained Tillinghast, Nelson & Warren, Inc. a leading independent actuarial company, to review the adequacy of the rates currently in use. The major findings of the Tillinghast report are:

1. A substantial increase in premium volume is intended exclusively to cover 1986 experience and will not be applied to previous year's losses.
2. Allocation of the premium volume increase to various staff sizes varies significantly based on historical experience.

Based on the Tillinghast report we constructed a new rate table to correct the inequities discovered under the current rating schedule. As a result, those practice units that fall within the 11-25 staff size category will see the largest increases. Historically this group has shown extraordinarily large loss ratios due in part to internal credits built into the rating schedule. For instance under the current rates a sole practitioner pays $1,200 for a $1 million limit; whereas a firm with a staff size of 15, for the same limit, pays only $2,868 or $191.20 per staff member.

In the area of loss control, we have implemented a system of analyzing the types of claims being made against accountants categorizing them by frequency and severity. At the request of various state CPA societies we have participated in continuing professional education seminars dealing with accountants malpractice. Loss information is also provided to the AICPA for use in their quarterly newsletter sent to all participants in the program.

In October, 1985 we met with the AICPA Professional Liability Insurance Plan committee and propsed to continue offering professional liability coverage through the program in 1986 subject to rate approval by the various state insurance departments. After an exhaustive review of the Tillinghast report the committee supported our proposal for 1986.

1
A. BASE PREMIUM CHARGES

STAFF	LIMIT OF LIABILITY			DEDUCTIBLE
	250K	500	1,000	
1.	1,152	1,476	1,800	1,000 Each
2.	1,581	2,025	2,470	Claim
3.	2,010	2,575	3,140	For staff size
4.	2,502	3,206	3,910	1-5
5	2,995	3,838	4,680	
6.		4,551	5,550	3,000 Each
7.		5,264	6,420	Claim
8.		5,978	7,290	For staff size
9.		6,691	8,160	6-10
10.		7,405	9,030	
11,			10,000	5,000 Each
12.			10,970	Claim
13.			11,940	For staff size
14.			12,910	11-19
15.			13,880	
16.			14,850	
17			15,820	
18			16,790	
19			17,760	
20.			18,630	7,000 Each
21.			19,500	Claim
22.			20,370	For staff size
23.			21,240	20-30
24.			22,110	
25.			22,980	
26.			23,750	
27.			24,520	
28.			25,290	
29			26,060	
30			26,830	

B Applications from firms with staff of more than 30 or for limits in excess of 1 million will be judgement rated, based upon reinsurance availability.

C. Rates to be surcharged by 25% if there is a ratio greater than 10% between the firm's total fees in their last fiscal year and total fees derived from clients that make filings with the S.E.C.

INCREASE DEDUCTIBLE CREDITS

MANDATORY DEDUCTIBLE	ALTERNATE DEDUCTIBLES			
	5,000	10,000	20,000	25,000
1,000	3.7%	5.3%	9.3%	11.5%
3,000	1.3%	4.0%	8.4%	10.2%
5,000		2.7%	7.2%	9.0%
7,000		1.6%	6.1%	8.0%
10,000			4.6%	6.5%

1984

1
A. BASE PREMIUM CHARGES

STAFF	LIMIT OF LIABILITY			DEDUCTIBLE
	250K	500	1,000	
1.	374	534	667	500 Annual
2.	396	566	722	Aggregate
3,	377	538	682	For staff size
4.	397	568	714	1-5
5.	386	551	684	
6.		584	725	1,500 Annual
7.		619	750	Aggregate
8.		657	775	For staff size
9		696	801	6-10
10.		738	825	
11.			1180	2,500 Each Claim
12.			1240	For staff size
13.			1302	11-20
14.			1366	
15.			1434	
16.			1506	
17.			1581	
18.			1659	
19.			1741	
20.			1830	
21.			1923	3,500 Each Claim
22.			2019	For staff size
23.			2121	21-30
24.			2226	
25.			2338	
26.			2431	
27.			2529	
28.			2628	
29.			2736	
30.			2844	

B. Applications from firms with staff of more than 30 or for limits in excess of 1 million will be judgment rated, based upon reinsurance availability.

2. Premium Modification Factors
A. Credits

Policyholders that participate in the plan and incur no losses for three years or six years are eligible for premium reductions based upon the experience and most recent annual volume of the plan in their state:

I. States with annualized gross premium volume up to $150,000

STATE'S PURE LOSS RATIO	3 YEARS	6 YEARS
OVER 75%	0	0
50-74%	5%	7.5%
BELOW 50%	10%	12.5%

II. States with annualized gross premium volume greater than $150,000

STATE'S PURE LOSS RATIO	3 YEARS	6 YEARS
OVER 100%	0	0
75-100%	5%	10%
50-74%	7.5%	12.5%
BELOW 50%	10%	15.0%

B. DEBITS

Policyholders are subject to premium debits when they incur losses of more than $5,000 as result of claims against the policyholder in the immediately preceeding period of three years. Premium debits are based upon current experience of the plan in the state of the policyholder. When incurred losses are less than $5,000, no debit will apply.

L. W. B I E G L E R I N C.
EARNED PREMIUM / INCURRED LOSS EXPERIENCE REPORT FOR A P L AS OF 12/31/83

STATE RECAP

			CLAIM COUNT	NET EARNED PREMIUM	NET INCURRED LOSS	NET LOSS RATIO (%)	GROSS EARNED PREMIUM	GROSS INCURRED LOSS	GROSS LOSS RATIO (%)
X	•	AL ALABAMA	71	784,689.14	459,249.00	58.0	1,306,932.77	590,421.00	45.0
X		AZ ARIZONA	40	403,536.21	184,874.00	45.0	661,514.36	232,658.00	35.0
X	•	AR ARKANSAS	25	556,293.42	592,183.00	106.0	921,895.29	764,824.00	82.0
X		CA CALIFORNIA	123	2,825,226.01	2,523,652.00	89.0	4,266,899.31	3,528,354.00	82.0
X		CO COLORADO	72	743,126.51	670,977.00	90.0	1,262,735.09	1,007,805.00	79.0
X		CT CONNECTICUT	63	800,476.01	703,430.00	87.0	1,375,073.24	986,636.00	71.0
	•	DE DELAWARE	15	168,438.28	40,791.00	24.0	287,522.42	61,185.00	21.0
X	•	DC DISTRICT OF COLUMBIA	10	358,486.88	55,530.00	15.0	687,460.55	83,295.00	12.0
X	•	FL FLORIDA	252	2,602,996.32	3,772,648.00	144.0	4,459,315.55	5,220,027.00	117.0
X		GA GEORGIA	32	495,827.68	346,561.00	69.0	853,697.79	500,511.00	58.0
X	•	ID IDAHO	24	256,811.03	153,892.00	59.0	414,264.17	211,011.00	50.0
		IL ILLINOIS	150	2,230,622.19	2,952,921.00	132.0	4,065,394.05	4,512,298.00	110.0
X	•	IN INDIANA	56	727,038.23	643,162.00	88.0	1,249,727.16	841,083.00	67.0
X	•	IA IOWA	48	596,957.67	1,652,050.00	276.0	990,157.63	3,648,950.00	368.0
X	•	KS KANSAS	49	756,150.89	314,963.00	41.0	1,322,999.08	473,397.00	35.0
X	•	KY KENTUCKY	63	806,188.81	291,277.00	36.0	1,373,290.55	430,362.00	31.0
X	•	LA LOUISIANA	35	589,513.96	1,166,245.00	197.0	1,056,649.09	1,926,640.00	182.0
X		ME MAINE	11	206,220.05	102,973.00	49.0	353,565.82	115,112.00	32.0
X		MD MARYLAND	21	358,102.25	49,182.00	13.0	731,152.07	93,525.00	12.0
X		MA MASSACHUSETTS	90	1,154,077.89	1,843,703.00	159.0	2,229,997.34	3,243,218.00	145.0
X		MI MICHIGAN	48	837,943.10	1,517,850.00	181.0	1,511,944.93	2,223,997.00	147.0
X		MN MINNESOTA	71	592,194.71	1,087,298.00	183.0	1,047,450.80	1,391,505.00	132.0

• AICPA PROGRAM ENDORSED BY STATE SOCIETY
X MANDATORY CONTINUING PROFESSIONAL EDUCATION

EARNED PREMIUM / INCURRED LOSS EXPERIENCE REPORT FOR A P L AS OF 12/31/83

STATE RECAP

			CLAIM COUNT	NET EARNED PREMIUM	NET INCURRED LOSS	NET LOSS RATIO (%)	GROSS EARNED PREMIUM	GROSS INCURRED LOSS	GROSS LOSS RATIO (%)
	•	MS MISSISSIPPI	40	572,343.53	604,956.00	105.0	968,079.98	869,336.00	89.0
	•	MO MISSOURI	86	1,192,720.45	653,308.00	54.0	2,016,891.70	976,282.00	48.0
X	•	MT MONTANA	36	421,268.45	302,117.00	71.0	724,959.72	439,476.00	60.0
X		NB NEBRASKA	18	153,037.98	244,906.00	160.0	254,370.53	327,587.00	128.0
X	•	NV NEVADA	34	289,330.07	225,392.00	77.0	505,349.83	308,289.00	61.0
X	•	NH NEW HAMPSHIRE	27	231,997.06	212,249.00	91.0	398,784.40	295,932.00	74.0
		NJ NEW JERSEY	52	476,343.08	682,020.00	143.0	888,327.16	853,639.00	96.0
X	•	NM NEW MEXICO	36	356,912.65	336,382.00	94.0	588,215.31	394,745.00	67.0
		NY NEW YORK	26	646,391.53	154,697.00	23.0	1,084,543.73	209,036.00	19.0
X	•	NC NORTH CAROLINA	64	1,289,935.69	408,162.00	31.0	2,250,699.15	548,752.00	24.0
X		ND NORTH DAKOTA	15	255,277.69	311,236.00	121.0	477,749.80	459,359.00	96.0
X	•	OH OHIO	194	2,280,257.66	1,352,502.00	59.0	3,862,166.80	1,921,383.00	49.0
X	•	OK OKLAHOMA	39	761,589.50	406,096.00	53.0	1,264,263.32	596,584.00	47.0
X		OR OREGON	58	437,242.21	446,726.00	102.0	753,630.10	572,232.00	75.0
X		PA PENNSYLVANIA	45	515,489.56	1,454,364.00	282.0	1,322,776.88	1,873,573.00	141.0
X	•	RI RHODE ISLAND	13	294,760.61	183,030.00	62.0	511,156.83	204,079.00	39.0
X	•	SC SOUTH CAROLINA	43	565,282.16	430,539.00	76.0	977,167.35	638,224.00	65.0
X		SD SOUTH DAKOTA	12	177,837.68	32,765.00	18.0	307,659.39	50,800.00	16.0
X	•	TN TENNESSEE	60	910,381.18	737,447.00	81.0	1,566,526.88	1,010,769.00	64.0
	•	TX TEXAS	165	2,375,018.37	1,637,004.00	68.0	4,210,578.67	2,287,296.00	54.0
X	•	UT UTAH	39	314,007.13	331,335.00	105.0	501,175.01	487,658.00	97.0
X	•	VT VERMONT	16	154,935.82	29,943.00	19.0	265,247.48	45,359.00	17.0

• AICPA PROGRAM ENDORSED BY STATE SOCIETY
X MANDATORY CONTINUING PROFESSIONAL EDUCATION

DATE PREPARED 02/14/84

L. W. B I E G L E R I N C.
EARNED PREMIUM / INCURRED LOSS EXPERIENCE REPORT FOR A P L AS OF 12/31/83

STATE RECAP

		CLAIM COUNT	NET EARNED PREMIUM	NET INCURRED LOSS	NET LOSS RATIO (%)	GROSS EARNED PREMIUM	GROSS INCURRED LOSS	GROSS LOSS RATIO (%)
*	VA VIRGINIA	106	1,412,055.45	1,644,254.00	116.0	2,578,314.44	2,015,281.00	78.0
X *	WA WASHINGTON	161	1,459,839.03	1,783,179.00	122.0	2,721,261.58	2,249,389.00	82.0
*	WV WEST VIRGINIA	26	393,376.72	1,220,154.00	310.0	681,581.60	1,559,487.00	228.0
*	WI WISCONSIN	106	1,242,834.36	1,736,716.00	139.0	2,248,768.01	2,428,460.00	107.0
X *	WY WYOMING	18	173,352.30	36,396.00	20.0	300,995.40	46,925.00	15.0
X *	AK ALASKA	19	152,526.71	214,147.00	140.0	248,001.21	232,603.00	93.0
X *	HI HAWAII	26	316,397.83	417,488.00	131.0	515,471.21	567,403.00	110.0
	PR PUERTO RICO		3,059.25		.0	5,353.61		.0
	VI VIRGIN ISLANDS	1			.0			.0
	UA UNALLOCATED		20.36		.0	74.25		.0
	FINAL TOTAL -	2,950	38,676,739.31	39,354,921.00	101.0	67,429,780.39	56,556,752.00	83.0

33 STATES HAVE PROGRAMS ENDORSED BY THEIR STATE SOCIETIES
41 STATES HAVE MANDATORY CONTINUING PROFESSIONAL EDUCATION

* AICPA PROGRAM ENDORSED BY STATE SOCIETY
X MANDATORY CONTINUING PROFESSIONAL EDUCATION

ROLLINS BURDICK & HUNTER

LIABILITY INSURANCE PREMIUMS FOR

CPAs FROM 1981 TO 1986

Firm Size	5	10	20	30
Amount of Insurance		Premium		
$250,000				
1981	$ 351	N/A	N/A	N/A
1984	386	N/A	N/A	N/A
1986	2995	N/A	N/A	N/A
$500,000				
1981	$ 501	$ 671	N/A	N/A
1984	551	738	N/A	N/A
1986	3838	7405	N/A	N/A
$1,000,000				
1981	$ 622	$ 750	$ 1,220	N/A
1984	684	825	1,830	$ 2,844
1986	4,680	9,030	18,630	26,830

* N/A - not available

AICPA - ACCOUNTANTS' PROFESSIONAL LIABILITY RATE SCHEDULE

NATIONAL RATE TABLE

1981

STAFF	250,000	500,000	1,000,000	2,000,000	3,000,000	4,000,000	5,000,000	DEDUCTIBLE
1	280	400	500	800	1,050	1,250	1,400	
2	297	424	541	865	1,135	1,351	1,513	
3	314	448	568	908	1,191	1,418	1,589	$ 500. Annual Aggregate
4	331	473	595	952	1,249	1,487	1,666	
5	351	501	622	995	1,305	1,554	1,741	
6		531	659	1,054	1,383	1,646	1,844	
7		563	682	1,091	1,431	1,704	1,909	
8		597	705	1,128	1,480	1,762	1,974	$1,500. Annual Aggregate
9		633	728	1,164	1,527	1,818	2,037	
10		671	750	1,200	1,575	1,875	2,100	
11			787	1,259	1,652	1,967	2,203	
12			827	1,321	1,733	2,064	2,311	
13			868	1,388	1,821	2,168	2,429	
14			911	1,457	1,912	2,276	2,549	
15			956	1,531	2,009	2,392	2,679	
16			1,004	1,608	2,110	2,512	2,814	$2,500. Each Claim
17			1,054	1,688	2,215	2,637	2,954	
18			1,106	1,772	2,325	2,768	3,101	
19			1,161	1,860	2,441	2,906	3,255	
20			1,220	1,953	2,563	3,051	3,417	
21			1,282	2,051	2,691	3,204	3,589	
22			1,346	2,153	2,825	3,364	3,767	
23			1,414	2,262	2,968	3,534	3,958	
24			1,484	2,374	3,115	3,709	4,154	
25			1,559	2,494	3,273	3,896	4,364	$3,500. Each Claim
26			1,621	2,593	3,403	4,051	4,537	
27			1,686	2,697	3,539	4,214	4,719	
28			1,752	2,804	3,680	4,381	4,907	
29			1,824	2,918	3,829	4,559	5,106	
30			1,896	3,033	3,980	4,739	5,307	
31				3,155	4,140	4,929	5,521	
32				3,281	4,306	5,126	5,741	
33				3,412	4,478	5,331	5,971	
34				3,550	4,659	5,546	6,212	
35				3,691	4,844	5,767	6,459	
36				3,840	5,040	6,000	6,720	
37				3,993	5,240	6,239	6,987	
38				4,153	5,450	6,489	7,267	
39				4,320	5,670	6,750	7,560	
40				4,492	5,895	7,018	7,861	
41				4,672	6,132	7,300	8,176	$5,000. Each Claim
42				4,859	6,377	7,592	8,503	
43				5,052	6,630	7,893	8,841	
44				5,254	6,895	8,209	9,194	
45				5,465	7,172	8,539	9,563	
46				5,685	7,461	8,882	9,948	
47				5,912	7,759	9,237	10,346	
48				6,147	8,067	9,604	10,757	
49				6,393	8,390	9,989	11,187	
50				6,649	8,726	10,389	11,635	

ABOVE RATES TO BE SURCHARGED BY 25% IF THERE IS A RATIO GREATER THAN 10% BETWEEN THE FIRM'S TOTAL FEES IN THEIR LAST FISCAL YEAR AND TOTAL FEES DERIVED FROM CLIENTS THAT MAKE FILINGS WITH THE S.E.C.

Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability

February 1986

Attachment 8
House Judiciary
March 26, 1986

INTRODUCTION

AND

EXECUTIVE SUMMARY

In October of last year the Attorney General established the Tort Policy Working Group, an inter-agency working group consisting of representatives of ten agencies and the White House. One of the tasks the Working Group was asked to undertake was to examine the rapidly expanding crisis in liability insurance availability and affordability.

The following is the report of the Tort Policy Working Group on the causes, extent and policy implications of this crisis. The primary contributing agencies included the Department of Justice, the Department of Commerce and the Small Business Administration.

Chapter 1 of the report (The Crisis in Insurance Availability and Affordability) describes in detail the significant problems many businesses, professionals and municipalities are having obtaining liability insurance. The Chapter documents a dramatic change in the last two years in the availability, affordability and adequacy of liability insurance. Where insurance is available (and in some areas it simply is not), premium increases of several hundred percent over the last year or two have become commonplace. Few if any private or public entities that rely on liability insurance have escaped the problems generated by this crisis.

Part A of Chapter 2 (The Causes of the Crisis in Insurance Availability and Affordability) reviews the current financial condition of the insurance industry, and the economic factors leading to that condition. The property-casualty industry in the past two years has suffered significant underwriting losses ($21 billion in 1984; $25 billion in 1985) which have limited its ability to offer as much insurance as its customers desire, and have made it reluctant to insure high risk activities which may expose it to further substantial underwriting losses. These underwriting losses appear to be largely a result of coverage written in the late 1970's and early 1980's which may have been underpriced due to the industry's desire to obtain premium income to invest at the then prevailing high interest rates.

Nonetheless, there is little to suggest that the recent massive increases in premiums is related solely to these losses, or that the cost of liability insurance will decline significantly as the industry limits its underwriting losses and restores its desired level of overall profitability. To the contrary,

indications are that developments in tort law are a major cause for the sharp premium increases. 1/

Part B of Chapter 2 reviews the contribution of tort law to the insurance availability/affordability crisis. The Working Group found that in the past decade there has been a veritable explosion of tort liability in the United States. Four specific problem areas are identified and discussed:

- The movement toward no-fault liability, which increasingly results in companies and individuals being found liable even in the absence of any wrongdoing on their part.

- The undermining of causation through a variety of questionable practices and doctrines which shift liability to "deep pocket" defendants even though they did not cause the underlying injury or had only a limited or tangential involvement.

- The explosive growth in the damages awarded in tort lawsuits, particularly with regard to non-economic awards such as pain and suffering or punitive damages. And,

- The excessive transaction costs of the tort system, in which virtually two-thirds of every dollar paid out through the system is lost to attorneys' fees and litigation expenses.

The Working Group was particularly struck by the extraordinary growth over the last decade of the number of tort lawsuits and the average award per lawsuit. A few examples amply illustrate this point:

- Between 1974 and 1985 there has been a 758% increase in the number of product liability lawsuits filed in federal district court.

- The number of medical malpractice lawsuits per 100 physicians doubled between 1979 and 1983, and tripled during that period for obstetricians/gynecologists.

- According to a jury verdict reporting service, between 1975 and 1985 the average medical malpractice jury

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1/ The Working Group also considered whether state regulation of the insurance industry may be a cause of the crisis, and found little compelling evidence that state regulation is a major cause of these problems.

verdict increased from $220,018 to $1,017,716, and the average product liability jury verdict increased from $393,580 to $1,850,452. 2/

- A survey of punitive damage awards in Cook County, Illinois indicates that the average personal injury punitive damage award (measured in constant 1984 dollars) increased from $40,000 in 1970-74 to $1,152,174 in 1980-84.

The above data demonstrates that the insurance industry was selling coverage at constant or even reduced cost over a period of years during which tort liability was undergoing a dramatic expansion. This suggests that a major factor underlying the availability/affordability crisis is the industry's attempt to bring premiums quickly back into line with rapidly growing liability risks. 3/ The high -- and in some areas unaffordable -- insurance premiums reflect the fact that tort law is now placing a massive compensation burden on the private sector.

A second important contribution of tort liability to the availability/affordability crisis is the tremendous uncertainty that has been generated by rapidly changing standards of liability and causation. The "rules of the game" have become so unpredictable that the insurance industry often cannot assess liability risks with any degree of confidence. This appears to have severely exacerbated the problem.

Chapter 3 of the report (Recent Insurance Industry Developments) summarizes a number of responses of the insurance industry, its customers and state regulators to the crisis. These developments include the use of claims-made policies, the inclusion within policy limits of all or part of defense costs, the increasing use of self-insurance and captives, and more exacting state regulation.

In Chapter 4 of the report (Tort Law Reform) the Working Group concludes that while some of the above recent developments in the insurance industry, along with a likely improvement in the industry's financial condition, should relieve some of the current availability/affordability problems, it is unlikely that these changes will provide long-term, systemic relief without

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2/ For purposes of comparison, the dollar lost approximately half of its purchasing power during this period.

3/ While some have suggested that the dramatic premium increases are an attempt by the industry to recoup its past underwriting losses, for the reasons discussed in the report such a theory makes little economic sense.

some fundamental reforms of tort law. Indeed, there are good reasons to believe that absent such reforms, particularly the insurance affordability problem will remain a long-term fixture of the American economy.

The Working Group recommends eight reforms of tort law that should significantly alleviate the crisis in insurance availability and affordability. The Working Group does not at this time recommend how these reforms should be implemented (whether at the federal or state level, or through legislative or judicial modification of the law); nor are these reforms meant to be an exhaustive list of potential reforms. The recommended reforms are:

- Return to a fault-based standard for liability.
- Base causation findings on credible scientific and medical evidence and opinions.
- Eliminate joint and several liability in cases where defendants have not acted in concert.
- Limit non-economic damages (such as pain and suffering, mental anguish, or punitive damages) to a fair and reasonable maximum dollar amount.
- Provide for periodic (instead of lump-sum) payments of damages for future medical care or lost income.
- Reduce awards in cases where a plaintiff can be compensated by certain collateral sources to prevent a windfall double recovery.
- Limit attorneys' contingency fees to reasonable amounts on a "sliding scale."
- Encourage use of alternative dispute resolution mechanisms to resolve cases out of court.

Chapter 5 of the report (Government Insurance: A Non-Solution) details the reasons why government insurance or indemnification would be highly undesirable and would do nothing to remedy the problems underlying the availability/affordability crisis. Such a federal insurance or indemnification program would not only be extremely expensive, but also could exacerbate the problems of tort law by making the "deep pocket" of the taxpayer available in many cases. In addition, such a program could undermine public health and safety, require more extensive government regulation of private sector activities, involve the government in substantial litigation, lead to increased federal involvement in state insurance regulation, and inhibit the ability of the private sector to adapt insurance services to changing economic and social conditions.

The Conclusion to the report lists five conclusions as to the appropriate response of the federal government to the current crisis in insurance availability and affordability. In sum, the Working Group concludes that while there are a number of factors underlying the insurance availability/affordability crisis, tort law is a major cause which the federal government can address in various sensible and appropriate ways. As for some of the other factors underlying the crisis, such as the insurance industry's recent large underwriting losses, there is little the federal government can or should do to remedy these problems.

In that both the tort liability and insurance developments in this report are highly dynamic, and because more detailed data and other studies undoubtedly will become available, the Working Group will continue to follow developments in this area, and, where appropriate, supplement its conclusions and recommendations.

Richard K. Willard
Chairman
Tort Policy Working Group

Robert L. Willmore
Chairman
Task Force on Liability
Insurance Availability

February, 1986

Kansas Engineering Society, Inc.
627 S. Topeka, P.O. Box 477
Topeka, Kansas 66601 (913) 233-1867

February 21, 1986

Representative Joe Knopp
Chairman, House Judiciary Committee
State Capitol, Room 175-West
Topeka, Kansas 66612

Re: Kansas Engineering Society support for S.B. 540

Dear Representative Knopp, members of the Committee:

On behalf of the Kansas Engineering Society's more than 1100 members we wish to express our professional organization's support for S.B. 540.

Our society is composed of individual engineers who practice their profession in industry, education, construction, government and private consulting.

Each and every licensed engineer today is being affected by the increases in malpractice liability rates, some in more ways than others.

The largest percentage of our membership, thirty eight (38) percent, are consulting engineers. Nationally in 1985 the professional malpractice insurance rates for this group on the average increased thirty five (35) percent; preliminary data for 1986 shows minimum premium increases to be averaging one hundred (100) percent.

More significantly, is the basic problem of obtaining malpractice insurance at all. Six to seven years ago there were at least ten firms offering malpractice insurance to professional engineers and architects and that number has been reduced to less than three. In Kansas, the practical effect of this withdrawal from the market is that there is only one insurer that offers liability insurance to a broad spectrum of practicing engineers.

We believe tort reform would aid the individual practitioner in securing malpractice insurance because certain aspects of tort reform would reduce the costs involved with litigation. For instance, the screening panel approach that is

Attachment 9
House Judiciary
March 26 1986

suggested in S.B. 540 is one good means of reducing spurious litigation while at the same time speeding up those valid claims which may exist.

We also believe that the establishment of a data base of claims involving members of our profession and requiring that data to be submitted to our State Board of Technical Professions is another good move.

We would suggest however that the language involving the screening panel be mandated for any claim based on alleged malpractice of a professional licensee whether or not the damages sought are for personal injury or death.

An additional problem facing our individual engineers is the situation that many insurance companies will not provide an insurance policy for an individual who wishes to go out and begin his own individual practice. This situation prevents a natural movement and diversification of practice that has occurred in the practice of engineering over many years. This situation also exists for engineers who are in education for example and are called upon as expert witnesses. Because of this specialization it is difficult to find insurance to cover those individuals in education who do specialized work.

For the above reasons and several others we wish to express our appreciation and support for S.B. 540.

Very Truly Yours,

William M. Henry
Executive Vice President
Kansas Engineering Society

WMH:mg
c.c. Bill Johnson, P.E.
Mike Lackey, P.E.
Larry Emig, P.E.
Kenny Hill, P.E.
Larry Thompson, P.E.
Mike Conduff, P.E.

Bartlett & West
Engineers, Inc.
Civil Engineers, Land Planners & Landscape Architects

24 February 1986

Mr. Bill Henry
Kansas Engineering Society
627 SW Topeka Avenue
Topeka, Kansas 66603

Dear Mr. Henry:

As one example as to what has happened to professional liability rates in the consulting engineering profession, I submit to you the increase in rates we experienced in July of 1985 when for no apparent reason our insurance company did not renew our policy and we were forced to go to another company.

Adding insult to injury was the fact that we had not had a single claim during the time we had insurance coverage and when we switched to CIGNA our deductible went from $15,000 to $50,000.

TABLE OF CHANGE IN PREMIUM

Year	Prev. Year Business Volume	Premium per $1,000,000 Volume	Change with 1981 as base of Year of 1.00
1981	$ 984,304	$10,966	1.00
1982	953,022	10,754	.98
1983	974,568	10,299	.94
1984	971,125	11,883	1.08
1985	1,342,270	27,687	2.52

I sincerely hope some mitigation of these increases may be possible through changes in the law.

Increased premiums must be passed through to our clients, many of whom are public bodies and rely on taxes for public works.

Sincerely,

BARTLETT & WEST ENGINEERS, INC.

William F. Roberson
President
WFR/cs

(913) 266-8377
310 West 33rd Street, Topeka, Kansas 66611

BRANCH OFFICE
Bismarck, North Dakota

STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612-1590

John Carlin *Governor*

Testimony to
House Judiciary Committee
Regarding Senate Bill 540
By John Myers
March 26, 1986

Mr. Chairman and members of the committee, I am John Myers, Director of Policy for Governor Carlin, and I am here to testify on his behalf. Senate Bill 540 is one of several measures introduced which attempts to address the problem of rising professional liability insurance. After reviewing this bill, the Governor finds the concept and ultimate impact of SB 540 to be both inequitable and premature. Any benefit derived from the passage of this bill is far outweighed by the unjust deprivation of the rights of Kansas citizens to be compensated for injury caused by another.

Governor Carlin recognizes that the problem currently confronting health care providers extends to other professional groups as well. He has on many occasions called for a comprehensive approach to the entire issue of liability insurance and the rising cost of premiums. However, any across-the-board approach that is not based on an exhaustive in-depth study does a great disservice to the members of the affected groups and the public at large.

Recently Richard D. Brock, Administrative Assistant to Kansas Insurance Commissioner Fletcher Bell, appeared before a special joint subcommittee of the House and Senate Insurance Committees. In his testimony, Mr. Brock described the cyclical nature of the insurance industry and advised the subcommittee not to "overact" to the current problem. The bulk of Mr. Brock's testimony reiterated the points outlined to the House Judiciary Committee earlier this session by J. Robert Hunter, President of the National Insurance Consumer Organization. Before this state enacts laws that significantly reduce the rights of our citizens, study in a variety of areas should be conducted, encompassing but not limited to: the licensing and reviewing procedures for the respective professionals; the factors being utilized to establish premium costs; the availability of liability insurance for the particular profession; and the existing cost and pattern of increases in premium charges. Without this investigation, we cannot conscientiously determine if there is, in fact, a need for legislative action.

The major focus of SB 540 is the provision which would limit an injured party's right to recovery to a total of $1 million. This limitation would apply to all claims arising from the malpractice of professionals currently licensed by the State of Kansas. This cap is modeled after the limitation proposed for health care providers in HB 2661 and would equate the insurance needs of all professions without regard to the unique situations existing in each field and without regard for the rights of victims. The Governor cannot accept this unfair and arbitrary mandate which places the burden of actual and future expenses on the back of the innocent party. Whether the injury is the result of medical malpractice or the negligent design of a building, the right of an injured party to be reimbursed for actual expenses must be preserved.

On behalf of Governor Carlin, I encourage you to defeat SB 540.

Attachment 10
House Judiciary
March 26 1986

PRESENTATION ON SENATE BILL 540

BY

THE KANSAS INSURANCE DEPARTMENT

TO

HOUSE JUDICIARY COMMITTEE

MARCH 26, 1986

TED FAY REPRESENTING
FLETCHER BELL
INSURANCE COMMISSIONER

Attachment II
House Judiciary
March 26 1986

IN JANUARY OF 1985 COMMISSIONER BELL ASKED ME TO SERVE AS THE ATTORNEY FOR THE CITIZENS COMMITTEE HE HAD APPOINTED TO STUDY THE TORT SYSTEM AND IN PARTICULAR THE PROBLEMS WITH MEDICAL MALPRACTICE IN KANSAS. THE CITIZENS COMMITTEE HAD MEMBERS REPRESENTING ALL INTERESTS INCLUDING PHYSICIANS AND TRIAL LAWYERS. THE COMMITTEE ALSO HAD REPRESENTATIVES FROM SUCH GROUPS AS LABOR, BUSINESS, THE ACADEMIC COMMUNITY, AND THE AARP. THE ARGUMENTS DURING THE EIGHT MONTHS THE COMMITTEE MET WERE UNRESTRAINED TO SAY THE LEAST.

I FEEL, AFTER WORKING ALMOST FULL TIME FOR OVER A YEAR ON THE MEDICAL MALPRACTICE, PRETTY CONFIDENT ABOUT THE CRISIS THAT EXISTS IN THIS AREA. THE MEDICAL MALPRACTICE PROBLEM HAS BEEN WITH US FOR MANY YEARS.

TEN YEARS AGO BECAUSE INSURANCE COMPANIES WERE WITHDRAWING FROM THE MEDICAL MALPRACTICE MARKET, KANSAS ESTABLISHED A JOINT UNDERWRITING ASSOCIATION OR JUA TYPE ENTITY UNDER STATE SUPERVISION TO GUARANTEE THAT ALL HEALTH CARE PROVIDERS IN KANSAS COULD OBTAIN MEDICAL MALPRACTICE INSURANCE IN KANSAS. THE LEGISLATURE ALSO CREATED THE HEALTH CARE STABILIZATION FUND TO BE ADMINISTERED BY THE INSURANCE COMMISSIONER TO PROVIDE EXCESS INSURANCE COVERAGE FOR HEALTH CARE PROVIDERS.

THESE CHANGES WORKED. ALL HEALTH CARE PROVIDERS IN KANSAS CAN OBTAIN INSURANCE PROTECTION. NOW THE PROBLEM IS "COST" NOT "AVAILABILITY", AND IT IS NOT DIFFICULT TO DETERMINE WHAT IS CAUSING THESE COST PROBLEMS SINCE

WE HAVE TEN YEARS OF STATISTICS FROM THE JUA AND THE HEALTH CARE STABILIZATION FUND TO REVIEW AND STUDY.

THERE ARE STILL THOSE WHO ARGUE THAT WE DON'T HAVE ENOUGH DATA IN MEDICAL MALPRACTICE UPON WHICH TO BASE RECOMMENDATIONS. DON'T BELIEVE THEM. WE HAVE ENOUGH STATISTICS TO SINK A BATTLESHIP. WE CERTAINLY HAVE ENOUGH STATISTICS TO JUSTIFY PASSAGE OF HOUSE BILL 2661 WHICH HAS BEEN OR WILL SOON BE UP ON THE FLOOR OF THE SENATE FOR A VOTE. HOUSE BILL 2661 CONTAINS A PACKAGE OF REFORMS THAT HAVE BEEN ARRIVED AT WITH THE EFFORTS AND HARD WORK OF A SUBSTANTIAL NUMBER OF PEOPLE. THE BILL DESERVES TO BE SUPPORTED. THE BILL REPRESENTS A LOT OF COMPROMISES - PERHAPS THERE HAVE BEEN TOO MANY

COMPROMISES FOR THE BILL TO TOTALLY SOLVE THE MEDICAL MALPRACTICE PROBLEM. WE DON'T THINK SO, BUT WE ARE CERTAIN THAT IF HOUSE BILL 2661 ISN'T PASSED WE ARE FLIRTING WITH A DISASTER IN THE HEALTH CARE SYSTEM IN THIS STATE. WITHOUT HOUSE BILL 2661 MEDICAL MALPRACTICE PREMIUMS WILL CONTINUE TO SOAR AND OUR RURAL HEALTH CARE SYSTEM MAY CEASE TO EXIST IN ITS PRESENT FORM. TIME HAS RUN OUT IN MEDICAL MALPRACTICE. THERE SIMPLY IS NO TIME LEFT FOR EXPERIMENTATION. WE MUST HAVE MEANINGFUL LEGISLATION AND HOUSE BILL 2661 IS THE BEST THING ON THE TABLE.

I HAVE DISCUSSED MEDICAL MALPRACTICE FOR A FEW MINUTES BECAUSE I FEEL COMFORTABLE WITH THE INFORMATION

NOW AVAILABLE IN THAT AREA. I MUST HONESTLY TELL YOU THAT I AM NOT AS COMFORTABLE WITH THE DATA AVAILABLE IN OTHER LIABILITY INSURANCE AREAS, I DON'T HAVE THE STATISTICS TO PROVE CONCLUSIVELY THAT THE TORT SYSTEM IS THE PRIMARY CAUSE OF PROBLEMS WITH MUNICIPALITIES, DAY CARE CENTERS, CPA'S, DESIGN ENGINEERS, AIRPLANE MANUFACTURERS AND SO FORTH. A GREAT DEAL OF WORK NEEDS TO BE ACCOMPLISHED IN EACH OF THESE AREAS.

COMMISSIONER BELL HAS ALREADY STARTED AN EFFORT TO STUDY THESE PROBLEMS. HE WILL SERVE AS CHAIRMAN OF A TASK FORCE FOR THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS TO STUDY THESE LIABILITY INSURANCE PROBLEMS AT THE NATIONAL LEVEL. HE HAS ALSO RECONSTITUTED HIS

CITIZENS COMMITTEE. THE NEW COMMITTEE WILL HAVE REPRESENTATIVES FROM MANY OF THE INDUSTRIES AND GROUPS IN KANSAS FACING LIABILITY INSURANCE PROBLEMS. BOTH OF THESE COMMITTEES SHOULD BE HELPFUL IN OBTAINING THE STATISTICS AND INFORMATION NECESSARY TO DETERMINE WHAT MAY BE CAUSING THEIR PROBLEMS.

BUT LET ME TELL YOU AT THE OUTSET THAT IT MIGHT BE WELL TO LEARN SOME OF THE LESSONS THAT MEDICAL MALPRACTICE TAUGHT US DURING OUR RECENT STUDY. FOR EXAMPLE:

TEN YEARS AGO INSURANCE COMPANIES STARTED TO WITHDRAW FROM THE MEDICAL MALPRACTICE MARKETS. IN LARGE PART THIS WAS BECAUSE THEIR ACTUARIES WERE SEEING SOME

OMINOUS SIGNS FOR THEIR INDUSTRY.

AS YOU KNOW, ACTUARIES ARE THE MATHEMATICIANS AND STATISTICIANS FOR THE INSURANCE INDUSTRY. THEIR JOB IS TO REVIEW PAST TRENDS AND PREDICT FUTURE LOSSES. PREMIUMS ARE COMPUTED BASED UPON THESE EXPECTATIONS. WHEN LOSSES BECOME TOO VOLATILE, ACTUARIES ARE UNABLE TO PREDICT REASONABLY THE FUTURE AND WHEN THIS HAPPENS ACTUARIES GENERALLY ADVISE THEIR COMPANIES TO WITHDRAW FROM THE RISK. INSURANCE COMPANIES DON'T LIKE TO THINK THEY ARE GAMBLERS. THEY PREFER TO THINK THAT THEY SCIENTIFICALLY ESTIMATE LOSSES FOR LARGE GROUPS AND SPREAD THAT RISK AMONG THE GROUPS IN THE FORM OF PREMIUMS.

TEN YEARS AGO ACTUARIES WERE WARNING THEIR COMPANIES THAT MEDICAL MALPRACTICE WAS TOO UNPREDICTABLE BECAUSE OF SOME ALARMING AND DANGEROUS TRENDS. MANY PEOPLE, INCLUDING LAWYERS, LEGISLATORS, STATES AND PHYSICIAN GROUPS DIDN'T ENTIRELY BELIEVE THESE WARNINGS. THEY ASSUMED THAT IF ONLY THE STATE COULD TAKE OVER THE INSURANCE MECHANISM, IF ONLY PHYSICIANS COULD SET UP PHYSICIAN OWNED INSURANCE COMPANIES AND GET RID OF INSURANCE COMPANY PROFITS, OR IF THE RISK WAS INTERNALIZED SO THAT KANSAS HEALTH CARE PROVIDERS PAID INSURANCE PREMIUMS OR SURCHARGES BASED TOTALLY ON KANSAS EXPERIENCE, THEN THE PROBLEM WOULD BE SOLVED.

KEEP IN MIND THAT IN 1976 KANSAS HAD NEVER HAD A

MEDICAL MALPRACTICE CASE ABOVE $500,000. CALIFORNIA HAD A COUPLE OF MILLION DOLLAR JUDGMENTS BUT WE JUST COULDN'T BELIEVE THEIR PROBLEMS WOULD HAPPEN HERE. WE WERE SURE THAT INSURANCE COMPANIES WERE OVER REACTING.

THEY WEREN'T.

THE ACTUARIES FOR MEDICAL MALPRACTICE COMPANIES WERE RIGHT. THEY HAD NOTED CLOUDS ON THE HORIZON AND THOSE CLOUDS HAVE NOW BECOME A STORM IN MEDICAL MALPRACTICE.

NOW ACTUARIES IN OTHER LIABILITY AREAS ARE ONCE AGAIN WARNING THAT CLOUDS ARE ON THE HORIZON FOR MANY OTHER BUSINESSES AND PROFESSIONAL GROUPS. THEY ARE WARNING THEIR COMPANIES TO WITHDRAWN FROM THESE RISKS.

WE CAN ONCE AGAIN PRETEND THAT ALL WE NEED TO DO IS MAKE SURE INSURANCE IS AVAILABLE AND THE PROBLEMS WILL GO AWAY - BUT IF WE IGNORE THE OMINOUS TRENDS CAUSING OUR INSURANCE PROBLEMS WE DO SO AT OUR OWN RISK - AT LEAST IF OUR EXPERIENCE IN MEDICAL MALPRACTICE IS ANY GUIDE. KEEP IN MIND THAT INVESTORS IN PUBLICLY OWNED CASUALTY COMPANIES BELIEVE WHAT THE ACTUARIES ARE SAYING. STOCK PRICES HAVE BEEN MOVING HIGHER PARTIALLY AS A RESULT OF INVESTORS HOPES AND THEIR OBSERVATIONS THAT THESE COMPANIES ARE GETTING OUT OF UNNECESSARILY RISKY AREAS OF INSURANCE.

DON'T MISUNDERSTAND ME. YOU KNOW COMMISSIONER BELL WELL ENOUGH TO KNOW THAT HE WILL MAINTAIN A VIGILANCE

TO PROTECT KANSAS CITIZENS FROM INSURANCE COMPANIES. HE HAS BEEN DOING THAT FOR ALMOST 3 DECADES AND HIS EXPERIENCE DURING THESE MOST DIFFICULT TIMES FOR INSURANCE IS ESSENTIAL. I HAVE READ SOME OF THE INSURANCE REGULATORY RECOMMENDATIONS BEING MADE IN SOME OTHER STATES. I AM IMPRESSED THAT MOST OF THE THINGS RECOMMENDED HAVE BEEN IN PLACE IN KANSAS FOR A LONG TIME. SO COMMISSIONER BELL WILL CONTINUE TO REGULATE INSURANCE.

BUT WE TRUTHFULLY PROBABLY ALREADY KNOW WHAT IS CAUSING THE LIABILITY INSURANCE CRISIS. YOU DON'T HAVE TO LOOK IN INSURANCE MAGAZINES. ALL YOU HAVE TO DO IS READ YOUR LOCAL NEWSPAPER, OR TIME OR NEWSWEEK

OR ANY OTHER WIDELY DISTRIBUTED PUBLICATION. ALMOST EVERY ISSUE HAS AN ARTICLE ABOUT THE CAUSE OF THE PROBLEM. WE, AS A SOCIETY ARE SUING MORE THAN EVER BEFORE AND AS A GROUP WE ALL WANT MORE AND MORE MONEY TO SETTLE THESE CASES.

TO GIVE A PERSONAL EXAMPLE, I AM A DIRECTOR FOR A VERY LARGE NON-PROFIT DAY CARE CENTER IN LAWRENCE. OUR BOARD HAS A PHYSICIAN, A CPA, TWO LOCAL BUSINESS OWNERS, A PRESIDENT OF A SMALL MANUFACTURING COMPANY, A PHARMACIST, TWO TEACHERS, AND ONE OF THE LEADING AUTHORITIES ON DAY CARE CENTERS AT THE UNIVERSITY OF KANSAS.

YOU WOULD THINK THAT IF OUR DAY CARE CENTER IS TO AVOID SOME OF THE PROBLEMS EXPERIENCED BY OTHER DAY CARE

CENTERS THAT OUR BOARD HAS THE EXPERTISE TO ANTICIPATE PROBLEMS AND SOLVE THEM BEFORE THEY OCCUR.

WE TRY! WE CONSTANTLY REVIEW OUR EQUIPMENT, FACILITIES AND PLANS TO PREVENT ACCIDENTS, OR THE SPREAD OF DISEASE. WE KNOW HOWEVER THAT IF SOMETHING HAPPENS TO ONE OF OUR CHILDREN LAWYERS WON'T JUDGE US BASED UPON WHAT WE HAVE DONE. THEY WILL LOOK AT THE MATTER WITH HINDSIGHT AND WHATEVER HAPPENED TO CAUSE THE INJURY WILL BECOME OUR RESPONSIBILITY. IT WON'T MATTER THAT THE PROBLEM COULDN'T HAVE BEEN REASONABLY FORESEEN. AND EVEN IF WE ARE SUCCESSFUL IN OUR DEFENSE THE LEGAL FEES MAY BANKRUPT US.

YOU SEE WE HAVEN'T HAD DIRECTORS AND OFFICERS

INSURANCE FOR A NUMBER OF YEARS. WE CAN'T GET ANY. WE CONTINUE TO WONDER WHY WE SHOULD SUBJECT OUR FAMILIES TO THE RISK OF A LAWSUIT, HOWEVER NOT A SINGLE DIRECTOR HAS RESIGNED SO FAR.

WE ARE FACED WITH ALL KINDS OF CATCH 22 PROBLEMS. TO PROTECT THE CHILDREN WE MUST SUPERVISE OUR EMPLOYEES CAREFULLY. IF WE SPOT A PROBLEM WE EXPECT OUR DIRECTOR TO TERMINATE IMMEDIATELY THAT EMPLOYEE. WE THINK THIS IS NECESSARY, BUT SUCH A HARSH TERMINATION POLICY SUBJECTS US TO POSSIBLE LEGAL ACTION FOR WRONGFUL DISCHARGE OR FOR CIVIL RIGHTS VIOLATIONS. ONE GROUP OF LAWYERS SEEMS TO GET US IF WE DO SOMETHING WHILE ANOTHER GROUP OF LAWYERS WILL GET US IF WE DON'T. IT

IS A NO WIN SITUATION AND WE CAN'T FAULT INSURANCE COMPANIES FOR GETTING OUT OF THE D & O BUSINESS.

WE KNOW VERY WELL THAT IT IS THE TORT SYSTEM THAT HAS LEFT US WITHOUT D & O INSURANCE. IF IT WERE MERELY A MATTER OF PAYING FOR INJURIES IN OUR FACILITY WE COULD BUY A POLICY TO COVER MEDICAL EXPENSE. BUT WE KNOW THAT IF WE ARE SUED IT IS LIKELY WE WILL FACE A LARGE DEMAND FOR PAIN AND SUFFERING OR PUNITIVE DAMAGES. ACTUAL DAMAGES PLAY A SMALLER AND SMALLER PART IN LITIGATION AND THE LEGAL EXPENSES - WIN OR LOSE - WILL BE TREMENDOUS.

HOWEVER, EVEN IF WE ACCEPT THE FACT THAT THE TORT

SYSTEM MAY BE RESPONSIBLE FOR THE PROBLEMS OUR INSURANCE MECHANISM IS ENCOUNTERING WE MUST STILL DECIDE HOW TO SOLVE THE PROBLEM. MOST LIKELY THE ANSWERS IN EACH AREA WILL REQUIRE DIFFERENT RESULTS.

THE ANSWER IN MEDICAL MALPRACTICE CONTAINED IN HOUSE BILL 2661 IS A COMBINATION OF CAPS ON AWARDS, SCREENING PANELS, STRUCTURED JUDGMENTS AND INCREASED EFFORTS BY THE MEDICAL COMMUNITY TO CONTROL MALPRACTICE. CAPS MAY ALSO WORK IN OTHER AREAS.

IN OTHER AREAS, SUCH AS LIABILITY OF COUNTIES AND TOWNSHIPS, A FULL OR PARTIAL RETURN TO GOVERNMENTAL IMMUNITY MAY BE NECESSARY.

MANDATORY ARBITRATION MAY BE THE ANSWER IN STILL OTHER AREAS SUCH AS DAY CARE CENTERS.

KANSAS IS NOW BEGINNING TO ADDRESS THESE SERIOUS PROBLEMS AND WE ARE CONFIDENT THAT ANSWERS CAN BE FOUND TO SOLVE THE PROBLEMS PRESENTLY FACING THE COMPENSATION SYSTEM.

SENATE BILL 540 PLACES A $1 MILLION CAP ON AWARDS FOR ACTIONS INVOLVING THE PROFESSIONAL LIABILITY OF 26 LICENSED PROFESSIONALS AND 2 BUSINESSES IN KANSAS. THIS BILL ALSO INCLUDES SOME OF THE PROVISIONS IN HOUSE BILL 2661 REQUIRING STRUCTURED AWARDS AND SETTLEMENT CONFERENCES. THIS BILL TAKES THE ACTUARIES AT THEIR WORD. IT ANTICIPATES THAT THERE ARE STRUCTURAL PROBLEMS CAUSING OUR

PRESENT LIABILITY INSURANCE PROBLEMS AND ATTEMPTS TO ADDRESS THESE PROBLEMS NOW RATHER THAN A DECADE FROM NOW WHEN THESE PROBLEMS MAY HAVE GROWN TOO SEVERE TO CORRECT EASILY. SENATE BILL 540 RECOGNIZES THAT SOME OF THE MOST IMPORTANT AND NECESSARY PROFESSIONALS IN THIS STATE MAY BE FORCED TO CHANGE THEIR BUSINESS PRACTICES IF SOME RELIEF ISN'T FOUND FOR THEIR INSURANCE PROBLEMS.

THE INSURANCE COMMISSIONER WILL CONTINUE TO STUDY AND INVESTIGATE EACH OF THESE AND OTHER LIABILITY AREAS EVEN IF SENATE BILL 540 IS ENACTED. AS MORE INFORMATION AND DATA ARE OBTAINED SOME ADJUSTMENTS MAY BE NECESSARY, HOWEVER, THE CAP WILL PROVIDE SOME IMMEDIATE RELIEF ALTHOUGH NOT NECESSARILY IMMEDIATE <u>PREMIUM</u> RELIEF.

TEN YEARS AGO THE ACTUARIES WARNED US ABOUT THE FUTURE IN MEDICAL MALPRACTICE. HAD WE PLACED A CAP ON AWARDS AT THAT TIME - EVEN THOUGH WE DIDN'T HAVE ALL THE FACTS AT OUR DISPOSAL - WE COULD HAVE AVOIDED THE SUBSTANTIAL MEDICAL MALPRACTICE PROBLEM FACING US TODAY. NOW WE HAVE A CHANCE TO ACT QUICKLY RATHER THAN REACT TO A SITUATION THAT WILL STEADILY WORSEN UNLESS SOME KIND OF REMEDIAL ACTION IS TAKEN.

WE MAY NOT HAVE ALL THE FACTS WE WOULD LIKE FOR THE 28 GROUPS COVERED BY THIS BILL, BUT IF SENATE BILL 540 IS ENACTED IT MIGHT PREVENT SERIOUS PROBLEMS 5 OR 10 YEARS FROM NOW AND MAY SAVE A NUMBER OF PROFESSIONS AND INJURED THIRD PARTIES FROM AN ECONOMIC DISASTER.

LETFO

KSNA
the voice of Nursing in Kansas

For Further Information Contact:

TERRI ROSSELOT, J.D., R.N.
Executive Director
(913) 233-8638

March 26, 1986

S.B. 540 LIABILITY INSURANCE COVERAGE

Mr. Chairman, members of the Judiciary Committee, my name is Michele Hinds MN, RN and I come before you today as the Legislative Chairperson of the Kansas State Nurses' Association. There are currently over 22,000 licensed registered nurses in the state of Kansas. SB 540 specifically identifies both registered nurses and licensed practical nurses in (lines 0088,0089) section 1 (21) to be included in this civil liability limitation legislation. KSNA believes that there are some existing problems with liability insurance coverage, and troubling trends that plague health care personnel in obtaining insurance. There is currently one nursing speciality that is covered under the Health Care Stabilization Fund, the practice of certified registered nurse anesthetists. The remaining registered nurses in Kansas are not required to carry liability insurance. Some employers carry umbrella plans which include registered nurses employed in those settings, some RN's carry their own professional libility insurance and others carry no professional liability insurance. There is a significant number of registered nurses in Kansas who are not actively engaged in current nursing practice, and there are approximately 3800 registered nurses who are licensed in Kansas but do not maintain residence in this state. This bill does not speak to the specific issue of requiring licensees to

attachment 12
House Judiciary
March 26 1986

carry liability insurance, however, reform of tort claim recoveries (except wrongful death) has significant implications for such mandates. With the simple statistics presented about registered nurses practicing and not practicing in Kansas, such requirements would have definite influence on licensees, particularly if such a provision was aligned with licensure. In the past twenty-four months the nursing profession, and particular speciality groups of nurses have had difficulty in obtaining appropriate liability insurance coverage. The nurse-midwives, recognized in many states by licensure are currently negotiating on a national level with Insurance companies to underwrite a coverage plan, as the only one on the market expires Oct. 31, 1986. Certified Registered Nurse Anesthetists are no longer covered as registered nurses practicing in an expanded role under state law, they must obtain independent insurance coverage. Liability insurance coverage for professional registered nurses in Kansas through Kirke-Van Orsdell (plan administrator, American Nurses' Association sponsored insurance) raised insurance premiums from $45 for a 1 millon/3 million plan in 1985 to $74 for the same coverage in 1986. This represents a 65% increase in premiums in one year alone. This trend is particularly significant if it is allowed to continue.

KSNA believes that the issues related to insurance premiums and liability coverage for nursing and nursings expanded role practice are

complicated . SB 540 liability limitation insurance reform includes many currently licensed professionals. The licensees listed in this bill are very diverse. KSNA has hopefully demonstrated an underlying problem in obtaining insurance coverage for registered nurses in Kansas, and a trend that needs to be evaluated concerning the economic expenditure for such liability coverage. KSNA would support a thorough study on the availabililty and economic impact of liability insurance coverage on nurses and other licensed professionals in Kansas. SB 540 draws attention to a problem facing many licensed professions, and one alternative to the problem, namely tort reform. There are many issues that need to be addressed concerning liability insurance and civil remedies in our courts. KSNA would urge that this committee support an interim study on liability insurance accessibility and affordability.

Thank You.

ATTACHMENT: S.B. 540 LIABILITY INSURANCE COVERAGE

Capital Update

AMERICAN NURSES' ASSOCIATION • WASHINGTON OFFICE

Vol. 3, No. 8 September 1985

LOSS OF INSURANCE BY NURSE MIDWIVES EXPLORED AT HEARING

The Subcommittee on Commerce, Transportation, and Tourism of the House Energy and Commerce Committee, chaired by Rep. James Florio (D-N.J.), held a hearing on September 19 on the crisis in access to property-casualty insurance. Along with several other concerns regarding denial of insurance coverage, the issue of the inability of certified nurse midwives (CNMs) to gain access to malpractice insurance was discussed.

Expressing the concerns of the nursing profession over the loss of liability insurance by CNMs were ANA President Eunice Cole and Kate McHugh, representing the American College of Nurse Midwives (ACNM). Ms. McHugh discussed the various alternatives the ACNM has explored in order to obtain malpractice coverage for the nurse midwives. Regrettably, all such efforts have proven unsuccessful.

President Cole outlined the ANA's attempt to provide coverage for CNMs under its own liability policy. "As this (ANA's) policy covered a large number of nurses with a relatively low risk experience, we believed that we had the ability to spread the risk in such a manner that the nurse midwife population could be subsumed within our covered group," she said. "In fact, we believed that incorporation of the nurse midwives into a larger policy was the optimal way, under the circumstances, to address the access to insurance dilemma."

Unfortunately, ANA was informed by its underwriter on August 30 that nurse midwives would have to be excluded from its policy as of November 1, 1985, although all existing contracts would be honored. Therefore, since every alternative in the private sector had been exhausted, ANA and ACNM stated that no other choice existed but to appeal to Congress for relief.

"After a sufficient record has been established, we ask that this subcommittee seriously consider the possibility of legislation which will adequately address this problem. We would like to investigate with the subcommittee the possibility of a temporary, federally sponsored program of reinsurance with a private carrier of liability insurance for nurse midwives. This is only a temporary measure until liability insurance becomes available from the private market, and would only be extended if the government determines that there is no change in availability of reinsurance from the private sector. We would like to further refine this idea with the subcommittee staff in order to forge a bipartisan solution to the problem. Regrettably, at this point, we see this as the only viable remedy to this unfortunate predicament," President Cole concluded.

THE KANSAS SOCIETY OF ARCHITECTS, AIA
612-614 Kansas Avenue Topeka, Kansas 66603 913-357-5308 A Chapter of the American Institute of Architects

March 26, 1986

The Honorable Joseph A. Knopp
Chairperson - Judiciary Committee
Kansas House of Representatives
Room 175 W, State Capitol
Topeka, Kansas

Dear Representative Knopp:

The Kansas Society of Architects, AIA greatly appreciates the opportunity to provide information to your committee relative to SB 540. Our association at both the national and state levels is very concerned about the rising costs and the reduced availablility of professional liability insurance. **We support any legislation that potentially improves the insurance climate for our members without jeopardizing the legitimate interests of the public.**

We do support SB 540. We believe the insurance climate may be improved by this legislation. In the area of personal injury or death, SB 540 seems to deal with the issue of frivilous litigation by empowering the use of a screening panel. This same process extended to other damage cases might further reduce unnecessary litigation.

We have not completed a planned member survey about liability insurance experiences in Kansas. We cannot at this point quote Kansas statistics about premiums, percent increases, number of claims, size of claims, etc. A spot check of a few Kansas firms indicates similar increases to those reported nationally by carriers of design professional liability insurance. We have found that 1985 increases were 25% at the low end and exceeded 100% at the high end. Although it's very difficult to reduce premium data to like-kind comparisons, this disparity apparently reflects differences in carrier underwriting criteria and carrier pricing for similar exposures. We have been informed that even higher increases have been filed for approval with the Insurance Commission in 1986. We also know that the number of carriers in this market has decreased significantly.

Our concerns are real. If these increases are not the result of the "cyclical nature of the insurance

House Judiciary
March 26 1986

March 26, 1986

industry" but rather are due to actuarial projection that there are too many risks in this liability arena; we will soon witness a national crisis. Like physicians, some architects may be (or have been) forced to abandon practice. Some architects will simply choose (or have chosen) to "go bare". Others (larger firms) will be able to continue the fight by direct-billing insurance costs to their clients. **Are any of these eventualities in the best interest of society?**

We believe the long term solution to this impending crisis will need to include various legislative remedies. We have concerns about existing statute of limitations interpretations, about existing laws on joint and several liability, and about frivilous or unnecessary litigation. We even have some concern that the definition used in this bill to express the liability action (professional malpractice) further fosters what has become a litigant society. Malpractice usually carries with it the connotation of consistent dereliction of professional duty or improper practice. This would imply that we are inherently incompetent each time the provisions of this proposed law were involked. We believe that the typical professional shortcoming is one of errors or omissions; not dereliction of duty. We believe "professional liability" would be the more appropriate definition for this bill.

We applaud the intent of this legislative initiative. We look forward to working with the legislature to reconcile the tort issues that are now so drastically impacting our society.

Sincerely,

Vance W Liston

Vance W Liston

Chairperson - Public Policy Committee
Kansas Society of Architects, AIA

ONEK • FINCHAM • Architects • PA
6540 S.W.10th • Topeka, Kansas 66615 • 913 • 272-8252

The Honorable Robert G. Frey
Chairperson, Judiciary Committee
Kansas Senate
Room 514-S
Kansas State Capitol
Topeka, Kansas 66603

Dear Senator Frey,

With the pending legislation on professional liability insurance, I am sending you a brief resume on our status this year and the the past two years. You can see our construction values and our receipts were virtually the same for the policy coverage. This year the real change came - an increase of 200.04%.

Many of our clients are using the professional's insurance to cover the entire building. It is not for that purpose. Many, including the State of Kansas, are demanding a sizeable amount which is unrealistic and excessive. If you want to do business, the insurance is a rapidly increasing expense and is not on that our income is keeping up with.

1983 - $4,608.00 premium
This premium covers $1,000,000.00 per claim and $1,000,000.00 aggregate limit with $5,000.00 deductible.

1984 - $4,992.00 premium
This premium covers $1,000,000.00 per claim and $1,000,000.00 aggregate limit with $5,000.00 deductible.

1985 - $10,004.00 premium
This premium covers $1,000,000.00 per claim and $1,000,000.00 aggregate limit with $5,000.00 deductible.

In each of the three listed years, the construction value and the receipts remained the same. The need of this insurance in today's marketplace is apparant but the cost is becoming prohibitive.

I hope the above is helpful. The professionals need your help.

Sincerely,

Robert D. Onek, AIA, Architect
ONEK - FINCHAM - Architects - P.A.

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Schinnerer & Company Inc.

ARCHITECTS AND ENGINEERS 1984/85
PROGRAM CHANGES

The loss development trends have continued to deteriorate for architects and engineers professional liability claims. Claims frequency has continued at the highest levels in the program's history - more than 40 claims per 100 firms per year. The average cost of each claim has increased more than 65% in recent years. These factors have necessitated the implementation of a combination of rate and coverage changes which are reflected in the enclosed quotations:

1. An average nationwide rate increase of 15% will go into effect for basic coverage. The increase will vary from state to state.

2. The cost of Optional Defense Cost Coverages has been increased to more accurately reflect their actual costs.

3. The eligibility criteria and benefits under the Deductible Credit Plan have been revised.

4. Structural engineering firms will receive an additional rate increase of 25% above those outlined above.

5. For firms with losses, there may be other individual risk underwriting modifications which may result in rate increases in excess of those outlined above.

Changes in exposure or firm size as measured by billing may result in premium changes which vary from those outlined above.

KIENE & BRADLEY
DESIGN GROUP
CHARTERED
SUITE 925
1ST NATIONAL BANK
BUILDING
TOPEKA, KANSAS
66603

February 26, 1986

Honorable Robert G. Frey, Chairperson
Judiciary Committee
Kansas State Senate
Room 514 S
State Capitol
Topeka, Kansas 66612

Re: Professional Liability Insurance Premiums

Dear Senator Frey:

Kiene and Bradley Design Group is a 20 person architectural and interior design firm. Continental Casualty Company recently notified us that our professional liability insurance premium for the period 11/26/85 to 11/26/86 would increase from $27,200.00 to $43,352.00. This is a 59% increase of premium with no change in insurance coverage or reduction in deductible.

The increase in premium for the prior year was from $21,737.00 to $27,200.00, or a 20% increase. The increases, in part, are due to "program changes" that the carrier inacted as outlined in the attached list.

We are sympathetic to the insurance industry's right to generate a profit while doing business. However, it appears that controls are required to keep premium costs at a reasonable level. We understand we are not unique as a profession or as a firm. Therefore, we request your consideration of our profession's problem with continual significant annual premium increases for professional liability insurance.

Thank you for your consideration.

Sincerely,

KIENE & BRADLEY DESIGN GROUP

Gary L. Hibbs, Vice-President

GLH:kki

Enclosure