

# PREMIUM DECEIT

THE FAILURE OF “TORT REFORM”  
TO CUT INSURANCE PRICES



BY J. ROBERT HUNTER AND JOANNE DOROSHOW

Thanks to Joan Mulhern for her assistance, and to the many individuals around the country who helped ensure the accuracy of the report's legal research.

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**By J. Robert Hunter and Joanne Doroshow**

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# PREMIUM DECEIT

## THE FAILURE OF "TORT REFORM" TO CUT INSURANCE PRICES

### EXECUTIVE SUMMARY

From the mid-1980s until today, the nation's largest businesses have been advancing a legislative agenda to limit their liability for causing injuries. One of the principal arguments on which they rely is that laws that make it more difficult for injured people to go to court (i.e., "tort reform") will reduce insurance rates. This report analyzes these claims, and concludes they are invalid.

The "tort reform" movement largely originated in the mid-1980's while the nation was suffering through a severe "liability insurance crisis."<sup>1</sup> Small businesses, doctors, non-profit groups and others were hit with dramatic increases in insurance premiums, reduced coverage and arbitrary policy cancellations. The situation received extensive media attention, such as *Time Magazine's* 1986 cover story entitled, "Sorry, Your Policy is Cancelled."<sup>2</sup>

The insurance industry and other large corporations blamed the crisis on the legal system and lobbied extensively for what they called "tort reform" – laws that restrict the rights of injured consumers to sue and obtain compensation from corporate lawbreakers and other wrongdoers. They claimed that enactment of "tort reform" would cause insurance rates to stabilize and even fall.

Great pressure was brought to bear on state legislatures around the country to restrict the rights of innocent victims to recover for their injuries and to hold wrongdoers accountable in court. Many states succumbed to this pressure and passed "tort reforms." Moreover, states have continued to adopt these laws. As recently as the spring of 1999, Florida passed an extensive "tort reform" package. And some New York lawmakers are considering a similarly broad proposal.

This study – the most extensive review of insurance rate activity in the wake of the liability insurance crisis ever undertaken – was designed to test the impact on liability

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<sup>1</sup> On January 17, 1986, a number of business, professional and insurance trade organizations announced the formation of the American Tort Reform Association (ATRA).

<sup>2</sup> George J. Church., "Sorry, Your Policy Is Canceled," *Time Magazine*, March 24, 1986.

insurance rates of “tort reforms,” specifically those that were passed by state legislators (or voters by ballot initiative) in reaction to the liability insurance crisis of the mid-1980s, and in the years since.

We obtained data on insurance rate and loss cost movement in every state from 1985 through 1998.<sup>3</sup> We then segregated the states into three categories: states that enacted the fewest number of tort law changes over the period; states that passed a mid-range level of tort law limits; and states that enacted the most “tort reform.”

The hypothesis we tested was simple: if tort law limits succeed in reducing insurance costs for consumers of insurance, that should be evident in the trends of insurance costs. As tort law limits get more severe, the trends in rates and underlying loss costs should be less.

We tested this hypothesis for the lines of insurance subject to general tort reform and to product liability and medical malpractice separately, since states often enact separate tort law restrictions to be applied just in those areas.

We found that the trends in rates/loss costs do not support the hypothesis that “tort reform” has succeeded in holding down insurance costs or rates. Despite what “tort reform” proponents promised lawmakers, tort law limits enacted since the liability insurance crisis of the mid-1980s have not lowered insurance rates in the ensuing years. States with little or no tort law restrictions have experienced the same level of insurance rates as those states that enacted severe restrictions on victims’ rights.

The “liability insurance crisis” of the mid-1980s was ultimately found to be caused not by legal system excesses but by the economic cycle of the insurance industry. Given large rate increases and cut backs in coverage, the insurance cycle soon turned again and prices began to fall. The nation has enjoyed a relatively “soft” insurance market for over a decade now – with rates of liability insurance not only stable but down.

Just as the liability insurance crisis was found to be driven by the insurance underwriting cycle and not a tort law cost explosion as many insurance companies and others had claimed, the “tort reform” remedy pushed by these advocates failed. As the findings of this report confirm, legal system restrictions are based upon a false predicate. “Tort reforms” do not produce lower insurance costs or rates.

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<sup>3</sup> “Loss cost” is the term for the portion of each premium dollar taken in, that insurance companies use to pay for claims and for the adjustment of claims. Insurers use other parts of the premium dollar to pay for: their profit, commissions, other acquisition expenses, general expenses and taxes. Loss costs represent the largest part of the premium dollar for most lines of insurance.

## BACKGROUND

### THE “LIABILITY INSURANCE CRISIS” OF THE MID-1980S AND ITS PROGENY

From 1985 through the late 1980s, manufacturers, municipalities, doctors, nurse-midwives, day-care centers, non-profit groups and many other commercial customers of liability insurance, found themselves in the midst of a “crisis.” Insurance rates were skyrocketing, up 300 percent or more for some. Many could not find coverage at any price.

Insurance companies said that their costs were being driven up by a so-called “explosion” in litigation, claiming “frivolous lawsuits” and “out of control” juries were suddenly forcing insurers to make insurance unaffordable and sometimes unavailable. They told state legislatures around the country that the only way to ease this crisis was to limit “tort” or liability laws, to make it more difficult for sick and injured consumers to sue and be compensated by wrongdoers in court (also known as “tort reform”).

In 1986 alone – the year of the American Tort Reform Association’s founding -- 41 states passed legislation to limit the liability of wrongdoers, restrict the amount of monetary damages injured consumers could receive in court, or make it more difficult for the injured to obtain attorneys to represent them against insurance companies. In a few states, legislatures enacted across-the-board tort law limits, overturning years of common law that for generations had afforded harmed citizens the right to challenge corporate wrongdoing in court.

For the most part, these new “tort limits” have remained on the books. Moreover, in every year since, states have enacted additional “tort reforms,” based on the same rationale first advanced in the mid-1980s -- that restricting victims’ rights will lead to more affordable liability insurance rates. (See Appendix A for list of “tort reforms” enacted in each state since 1985.)

But what ultimately proved to be the true cause of the “liability insurance crisis” of the mid-1980s was not the legal system at all. Study after study that examined the property/casualty insurance industry found that the “insurance crisis” was actually a self-inflicted phenomenon caused by the mismanaged underwriting practices of the industry itself.

The insurance industry’s profits and underwriting practices are cyclical, often characterized by sharp ups and downs. In fact, these underwriting practices and the insurance cycle caused a similar, less severe “insurance crisis” in the mid-1970s. During years of high interest rates and/or excellent insurer profits, insurance companies engage in fierce competition for premium dollars to invest for maximum return. Insurers lower prices and insure very poor risks just to get the premium dollars. In the mid-1980s, the cycle’s effects were exacerbated by a particularly exaggerated underwriting response to

the high interest rates of the early 1980s, characterized by such risky underwriting as insuring the MGM Grand Hotel months *after it burned down in a fire*.<sup>4</sup>

By 1985 when interest rates had dropped and investment income had decreased accordingly, the industry responded by sharply increasing premiums and reducing availability of coverage, creating a “liability insurance crisis.”

As *Business Week* magazine explained a January, 1987 editorial:

Even while the industry was blaming its troubles on the tort system, many experts pointed out that its problems were largely self-made. In previous years the industry had slashed prices competitively to the point that it incurred enormous losses. That, rather than excessive jury awards, explained most of the industry's financial difficulties.<sup>5</sup>

The Ad Hoc Insurance Committee of the National Association of Attorneys General concluded after studying the “crisis” in 1986:

The facts do not bear out the allegations of an “explosion” in litigation or in claim size, nor do they bear out the allegations of a financial disaster suffered by property/casualty insurers today. They finally do not support any correlation between the current crisis in availability and affordability of insurance and such a litigation “explosion.” Instead, the available data indicate that the causes of, and therefore solutions to, the current crisis lie with the insurance industry itself.<sup>6</sup>

State commissions in New Mexico, Michigan and Pennsylvania reached similar conclusions.<sup>7</sup> Even the insurance industry admitted this internally. In 1986, Maurice R. Greenberg, President and Chief Executive Officer of American International Group, Inc., one of the country's leading property/casualty companies, told an insurance audience in Boston that the industry's problems were due to price cuts taken “to the point of absurdity” in the early 1980s. Had it not been for these cuts, Greenberg said, there would not be ‘all this hullabaloo’ about the tort system.”<sup>8</sup>

But to the public and to lawmakers, insurers told a different story. In fact, coming out of their bottom year of 1984, insurance companies began a “massive effort to market

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<sup>4</sup> One actuary at this time was quoted as saying “we don't need premiums anymore,” relying instead on tax credits coupled with high interest rates.

<sup>5</sup> “What Insurance Crisis?,” *Business Week*, January 12, 1987, p. 154.

<sup>6</sup> Francis X. Bellotti, Attorney General of Massachusetts, et al., *Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance* (Boston, Mass.: Ad Hoc Insurance Committee of the National Association of Attorneys General, May, 1986).

<sup>7</sup> See, e.g., New Mexico State Legislature, *Report of the Interim Legislative Workmen's Compensation Comm. on Liability Insurance and Tort Reform*, November 12, 1986; Michigan House of Representatives, *Study of the Profitability of Commercial Liability Insurance*, November 10, 1986; Insurance Comm. Pennsylvania House of Representatives, *Liability Insurance Crisis in Pennsylvania*, September 29, 1986.

<sup>8</sup> Greewald, “Insurers Must Share Blame: AIG Head,” *Business Insurance*, March 31 1986, p. 3.

the idea that there is something wrong with the civil justice system.”<sup>9</sup> The goal, in the words of one of the industry’s leading spokespersons, GEICO’s chairman John J. Byrne, was “to withdraw [from the market] and let the pressure for reform build in the courts and in the state legislatures.”<sup>10</sup> Evidence gathered by over a dozen state attorneys general for an antitrust class action filed in 1988, and settled in 1995, found that a number of insurance companies actually conspired to create this insurance crisis by restricting coverage to commercial customers and raising prices, creating an atmosphere intended to coax states into enacting “tort reform.”<sup>11</sup>

To support this effort, the Insurance Information Institute purchased \$6.5 million worth of print and television ads in 1986, designed to reach 90 percent of all U.S. adults, in order “to change the widely held perception that there is an ‘insurance crisis’ to a perception of a ‘lawsuit crisis.’”<sup>12</sup> The ads targeted groups that were having difficulty obtaining affordable insurance. Headlines read, *The Lawsuit Crisis is Bad for Babies*, *The Lawsuit Crisis is Penalizing School Sports* and *Even Clergy Can't Escape the Lawsuit Crisis*, and they appeared in *Readers' Digest*, *Time* and *Newsweek*, as well as in Sunday magazine supplements.<sup>13</sup> In 1986, after Congressman John J. LaFalce (D-N.Y.) asked the Insurance Information Institute to submit information to Congress to back up the “clergy” ads, he stated:

The information they gave us would lead us to conclude that there are only about a dozen of these religious malpractice cases pending throughout the country, and that the only one that has gone to trial was dismissed in favor of the defendant. In other words, ... at the time these ads were run, the insurance industry had not yet paid out one cent pursuant to any court judgment in any of these cases. Yet, they form an integral part of its national advertising campaign.<sup>14</sup>

Insurance companies and other insurance trade associations complemented the Insurance Information Institute campaign with their own ads. For example

- Johnson & Higgins ran several ads in 1985 and 1986. One that appeared in the *Wall Street Journal* on November 19, 1985, stated, “the mounting wave of losses, which last year cost insurers more than \$116 for every \$100 of premium taken in, has forced insurers to act defensively. Most have stopped offering pollution insurance entirely

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<sup>9</sup> *National Underwriter*, December 21, 1984, p. 2.

<sup>10</sup> *Journal of Commerce*, June 18, 1985, p. 10A.

<sup>11</sup> *In re Insurance Antitrust Litigation*, MDL No. 767, No. C 88 1688 [CAL], N.D. Calif.); “Final Approval Given To Insurance Antitrust Settlement,” *Mealey's Litigation Reports*, April 18, 1995.

<sup>12</sup> Herbert, “\$6.5 Million In Ads Targets Lawsuit Crisis,” *Journal of Commerce*, March 19, 1986, p. 1.

<sup>13</sup> *Ibid.*

<sup>14</sup> *The Liability Insurance Crisis, Hearings before the Subcomm. on Economic Stabilization of the Comm. on Banking, Finance and Urban Affairs*, House of Representatives, 99th Cong., 2d. Sess., Part 1, July 23, 1986, p. 2.

and have cut back on other vital liability coverages ... Nothing has done more to create this ominous situation than the field day plaintiffs are having in court.”<sup>15</sup>

- Aetna ran a series of ads in 1987. One contained a pull-quote that read, “Somehow we’ve managed to create a [civil justice] system that makes good people behave badly.” The ad blamed the civil justice system for the fact that “insurers, whose reasons for being in business is to pool risks so that they are affordable, start looking for reasons not to take risks.”<sup>16</sup>
- A full-page ad in the September 11, 1987, *Sacramento Bee*, placed by the Association of California Insurance Companies, “invited the California Trial Lawyers Association to help put the brakes on insurance costs by supporting a cut in contingency fees and limiting non-economic damages from auto accidents.”

State legislatures, regulators, and voters in ballot initiative states, were all told by business and insurance lobbyists (and their PR firms) that the way to bring down insurance rates was to make it more difficult for injured consumers to sue in court. For example,

- At a 1986 meeting of National Association of Insurance Commissioners, Iowa’s commissioner, William D. Hager, remarked, “The insurance industry has argued for some time that insurance rates and availability are predicated upon the high costs associated with the expanding tort system. It should clearly follow, therefore, that insurance rates will decrease and the availability improve with the advent of legislative reforms of the tort system.”<sup>17</sup>
- Iowa’s Attorney General Tom Miller asserted in 1986, “reforms are needed to reduce tort liability in the state and consequently cut spiraling insurance rates.”<sup>18</sup>
- A spokesman for the Texas Medical Association promised in 1986, “If significant tort reform is passed next year, there will be an immediate stabilization of premiums.”<sup>19</sup>
- In its March, 1987 newsletter, the Association for California Tort Reform, announced, “[D]oes significant reform mean lower insurance premiums? Yes!”
- Ralph Gaines, Jr., a spokesman for the Alabama Civil Justice Reform Committee, said in 1987, “rigorous and meaningful tort reform will go a long way to reduce rates in insurance premiums.”<sup>20</sup>
- In New York in 1986, just months after state lawmakers responded once to the “insurance crisis” by enacting major “tort reforms,” Minority Leader Clarence D. Rappleyea (R-Norwich) called for even more changes -- complete elimination of joint and several liability and a \$250,000 cap on “non-economic damages -- saying these measures were still needed “to ease the liability insurance crisis.”<sup>21</sup>

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<sup>15</sup> Stephen Daniels, “The Question of Jury Competence and the Politics of Civil Justice Reform: Symbols, Rhetoric, and Agenda-Building,” 52 *Law & Contemp. Prob.* 261 (1989).

<sup>16</sup> *Ibid.*

<sup>17</sup> Kenneth Reich, “Insurers told rate cuts must precede more legal reform” *Los Angeles Times*, December 14, 1986.

<sup>18</sup> Scott Sonner, “Miller calls for liability reform”, UPI, February 21, 1986.

<sup>19</sup> UPI, October 24, 1986.

<sup>20</sup> Dana Beyerle, “Civil liability law reform urged,” UPI, April 7, 1987.

<sup>21</sup> “Tort Reform, Banks on NY Insurance Agenda”, *Journal of Commerce*, January 22, 1987.

- To garner support for Florida’s Amendment 10, the unsuccessful 1988 ballot initiative that would have capped noneconomic damages at \$100,000, the Florida Medical Association argued that “the cap was a necessary tradeoff to stop spiraling insurance rates.”<sup>22</sup>
- Doctors in Montana and their insurers believed in 1988, “if tort reform is enacted to make the system more predictable, insurance rates will stabilize or drop.”<sup>23</sup>
- In a November 7, 1988, editorial entitled “Prepare for the backlash,” the *National Underwriter*, an insurance trade publication, bluntly conceded, “Let’s face it. The only reason tort reform was granted in many states is because people accepted our argument that it was needed to control soaring insurance rates.”

However, notwithstanding this well-orchestrated public relations and lobbying campaign, there was a “virtual absence of empirical evidence that tort reform [would] indeed lower liability insurance rates or expand the insurance’s availability,” as one business trade publication put it.<sup>24</sup> What’s more, when they were pushed hard by legislators to provide guarantees that rates would drop, they could not. And their subsequent rate filings with insurance departments confirmed this. For example,

- In 1986, lobbyist Peter G. Strauss of the Alliance of American Insurers, testified that “liability insurance rates would go down” if the New Jersey legislature enacted a cap on damages, repealed the collateral source rule and eliminated joint and several liability. However, “he said he could not say how much rates would drop.” And, under questioning from New Jersey Senate President John F. Russo (D-Ocean County), “he said that he knew of no state where rates had declined as a result of such ‘caps’ or other revisions in the civil justice system.”<sup>25</sup>
- In 1986, Washington State enacted what was considered at the time “one of the most comprehensive [tort] reform bills yet.” Before it passed, Ted E. Linham, president of the Washington State Physicians Insurance Association, “testified in the state legislature that the new law would reduce premiums charged by the association, which is a mutual company, by 25% to 30% within 18 months after the legislation takes effect Aug. 1.” However, after the law passed, the company asked for a rate *hike*, and state regulators began “looking for an explanation of why the insurer wants a premium hike after the industry was successful in getting tort reform.”<sup>26</sup>
- Following enactment of extensive “tort reforms” in Florida in 1986, Aetna and St. Paul Marine Insurance Company filed rate documents notifying Florida’s insurance commissioner that even these extensive tort changes would not reduce rates. Filings made in 1986 by 104 insurers licensed in Florida showed that out of 277 filings, 175,

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<sup>22</sup> Stephen Koff, “Voters deal hard blow to limits on liability,” *St. Petersburg Times*, November 9, 1988.

<sup>23</sup> Mike Dinnison, “In rural areas, doctors are delivering sad message to mothers-to-be,” *Los Angeles Times*, May 1, 1988.

<sup>24</sup> Editorial, Crain’s *Chicago Business*, June 9, 1986.

<sup>25</sup> Carolyn Acker, “Russo: Pending legislation won’t ease insurance rates,” *Philadelphia Inquirer*, September 5, 1986; Vincent R. Zarate, “\$500,000 liability lid proposed by Russo,” *Star-Ledger*, Sept. 5, 1986.

<sup>26</sup> “State hires outside firm to look at liability rate request,” *UPI*, December 4, 1986. See also, “Tort reform legislation: Did state get ‘suckered,’” *The Seattle Times*, July 1, 1986, p. 1.

or 63 percent showed no savings from “tort reform” while none showed savings of more than 10 percent.<sup>27</sup>

- In 1986, Connecticut enacted major “tort reforms” to “bring insurance premiums down by setting ceilings and other restrictions on liability.” But by 1987, one state lawmaker was noting, “the insurance industry now says those measures will have no effect on insurance rates. We have been disappointed by the response of the insurance industry. The reforms we passed should have led to rate reductions because we made it more difficult to recover, or set limits on recovery. But this hasn't happened.”<sup>28</sup>

Eventually, a few years after the mid-1980s insurance crisis, the insurance cycle flattened out, rates stabilized and availability improved everywhere. This had nothing to do with tort law restrictions enacted in particular states, but rather to modulations in the insurance cycle everywhere. In 1991, for example, Washington’s insurance commissioner Dick Marquardt concluded in a report that it was “impossible to attribute stable insurance rates to tort-law changes or the damages cap,” since rates also improved in states that did not pass tort reform.<sup>29</sup> The reason, of course, is that “tort reform” is based on an untrue premise: that the legal system, rather than the underwriting practices of the insurance industry, is responsible for gyrations in the cost and availability of insurance.

Despite this evidence, states have continued to enact sometimes drastic limitations on the rights of severely injured people, in the hopes that insurance rates still might drop. For example, Illinois passed such severe restrictions in 1995 (although the law was largely declared unconstitutional in 1997<sup>30</sup>) in part, “to protect the availability of affordable liability insurance.”<sup>31</sup> As recently as the spring of 1999, Florida passed an extensive “tort reform” package including caps on punitive damages, severe limits on joint and several liability and a statute of repose in products liability cases. Florida’s business lobbyists frequently cited the insurance argument before the bill finally passed.<sup>32</sup> And some New York lawmakers are now considering a similarly broad proposal, being pushed heavily by a coalition of insurance companies and large business interests who are making comparable claims about liability insurance rates.<sup>33</sup>

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<sup>27</sup> “‘Tort Reform’ a Fraud, Insurers Admit,” and “Tort Reform Will Not Reduce Insurance Rates, Say 100+ Florida Insurers,” National Insurance Consumer Organization (1986).

<sup>28</sup> “Insurers Warn,” UPI, March 9, 1987.

<sup>29</sup> “Health care Reform – Bush’s insurance cap plan a proven failure”, *The Seattle Times*, May 16, 1991.

<sup>30</sup> *Best v. Taylor Machine Works*, 689 N.E. 2d 1057 (1997)

<sup>31</sup> Among the legislature’s “findings” in the Illinois 1995 Tort Reform Act were: “drastic restrictions in coverage accompanied by vastly increased premiums have become permanent realities for many products and services ... [It] is the purpose of this Act to modify and improve the civil justice system in order to ... [p]rotect the availability of affordable liability insurance.”

<sup>32</sup> Jon Shebel of Associated Industries said severe restrictions on attorneys’ fees would “lower liability insurance rates.” William March, “Tort Reform Weighs In Race For District 58,” *The Tampa Tribune*, September 19, 1997. Lee Hinkle, a lobbyist for the Florida Chamber of Commerce, said that with tort reform, “families would see ... savings in the form of ... smaller insurance premiums.” Gordon Russell, “Business Sees A Victory After Tort Reform Law Changes Pass,” *Sarasota Herald-Tribune*, May 1, 1998.

<sup>33</sup> In its 1998 report *An Accident and a Dream*, the Public Policy Institute – the research arm of the Business Council of New York State which is a major force behind “tort reform” legislation under

This report, the first comprehensive empirical study of “tort reform’s” impact on insurance costs and rates since 1985, shows that legislative attempts to reduce insurance rates by taking away the rights of the most seriously injured in our society, has been and continues to be a failed public policy.

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consideration in New York -- says, “everyone pays for [large] awards, through ...higher insurance premiums,” and announced in a March 1998 press release that if New York enacted certain tort reforms, “New Yorkers would save roughly \$800 million a year, or roughly 6 percent, in liability premiums and self-insurance payments.”

## METHODOLOGY

We purchased from the Insurance Services Office (ISO) the Chief Executive Circular Letters showing the state-by-state price or advisory loss cost level activity for the years 1985 through 1998.<sup>34</sup> These letters show, for each line of insurance for which ISO performs statistical and actuarial analysis, the changes recommended by ISO to its insurance company members, subscribers and other customers, after filing and action by the state insurance regulators.

In the early years of this review, ISO was recommending final rates to be charged by insurers. The Circular Letters were called “Price Activities” from 1985 until 1990 when it was changed to “Loss Cost/Rate Level Activity.” In 1994 the name was changed again, to “Loss Cost Level Activity,” a title the Circular Letters still use.<sup>35</sup> These later names reflect the changing role of ISO as it increasingly stopped recommending full, final prices and, instead, recommended only the loss portion of the rate (i.e. the expected claims costs, also known as “loss costs”).

ISO has the largest database of audited, unit transaction data of any entity in the United States. “Unit transaction” means that the data are generated each time a transaction occurs (such as a policy being bought or a claim filed or paid). This allows for a paper trail back to actual records if ISO audits determine that an insurer is filing “bad” data. ISO audits these data and requests corrections as necessary based upon that review.

ISO data therefore represent the most reliable and largest database for determining trends in insurance costs as measured either by final rates being suggested by ISO in the 1980s or by the trends in loss costs in more recent years.

From these ISO Circular Letters, a 14-year (1985 through 1998) database was constructed for lines of insurance that had a liability component. The database shows the year-by-year change ISO filed with each state and got approved or otherwise went into effect, for each line of insurance. For example, the data for a state for a specific line of insurance might show that rates/loss costs went up by 5.4% in a specific year. We recorded this change along with changes from each year for the years 1985 to 1998 into

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<sup>34</sup> “Loss cost” is the term for the portion of each premium dollar taken in, that insurance companies use to pay for claims and for the adjustment of claims. Insurers use other parts of the premium dollar to pay for: their profit, commissions, other acquisition expenses, general expenses and taxes. Loss costs represent the largest part of the premium dollar for most lines of insurance.

<sup>35</sup> The dates of the Chief Executive Circulars relied upon in this study are: January 6, 1986, January 6, 1987, January 5, 1988, January 3, 1989, January 4, 1990, January 4, 1991, January 6, 1992, January 7, 1993, January 7, 1994, January 6, 1995, January 5, 1996, January 6, 1997, January 8, 1998 and January 8, 1999.

the database for each state. Ultimately we combined the changes to obtain the total change for the entire period 1985 to 1998.<sup>36</sup>

The lines of insurance covered by the database we created are: Personal Auto Basic Limits Liability<sup>37</sup>, Commercial Auto Bodily Injury and Property Damage Liability, Personal Combined Total Limits Liability, Owner's, Landlord's and Tenants (OL&T) Liability, Manufacturer's and Contractor's (M&C) Combined Total Limits Liability, Special Multi-Peril, Hospital Professional Liability, Physicians', Surgeons' and Dentists' (PS&D) Professional Liability, and Product Combined Total Limits Liability.

In order to measure the impact on insurance costs of tort law limits, we placed the states into three Categories (1, 2 and 3), based on the following criteria:

We evaluated the major tort law limits passed by state legislatures or by ballot initiative from 1985 through 1997. Decisions as to what constituted a "major tort law limit" were based on materials compiled by the American Tort Reform Association (ATRA) and the Association of Trial Lawyers of America (ATLA), additional legal research and consultation with lawyers or lobbyists in every state. We divided these laws into three separate sections for evaluation: limits that apply across the board in tort cases, limits that apply in medical malpractice cases, and limits that affect product liability actions. This is to ensure that we evaluate the impact of tort law changes only on those lines of insurance that are relevant.

We defined as a "major tort law limit" any provision enacted by a state legislature that ATRA and ATLA define as a "tort reform," with certain exceptions explained below. Included are: caps on damages (economic, non-economic and/or punitive damages), modifications to joint and several liability, modifications to the collateral source rule, structured settlements (except if optional for plaintiffs), limits on prejudgment interest, limits on contingency fees for plaintiffs' attorneys, new product liability defenses (except if codifying the common law), and statutes of repose for products. (See Appendix B for descriptions of these terms.) Certain unique state statutes are also included, such as Virginia's Birth-Related Neurological Injury Compensation Act, an injury compensation fund for catastrophically injured newborns that precludes non-economic and punitive damages.

Not included either because they varied widely for different causes of action, were part of the common law or were court imposed (this study is only evaluating the impact of legislative or voter responses), were limited to narrow causes of action, or varied so widely from state to state as to make them impossible to compare, were:

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<sup>36</sup> We did this by adding the change for each year to unity (e.g. 5.4% added to unity create a factor of 1.054 for that year. We multiplied the changes together to get a factor for the entire 1985 to 1998 period and subtracted unity to obtain the 14 year percentage change.

<sup>37</sup> Our original database included personal auto liability. We did not use it, however, both because of widely differing auto insurance systems between states and because the study focused on tort law changes other than auto changes, including no-fault, which were not related to the liability insurance crisis of the mid-1980s.

statutes of limitations, punitive damages standards (many are court imposed), immunity for specific industries, governments or groups, arbitration rules, or wrongful death statutes. In addition, we did not consider auto insurance laws in this study. This is both because of widely varying state auto insurance systems (for example, a number of states have no-fault systems with varying thresholds and benefit levels). But also, changes in auto insurance systems, while sometimes paralleling the major, national corporate drive for "tort reform" which gained momentum the mid-1980s, is largely separate from this movement.

Sometimes, as with joint and several liability, the legislature decided to modify the law in some respect. Other times, it decided to abolish the doctrine altogether. Also, caps on damages vary in size. No subjective weight was attached to any of these decisions, or to the reforms themselves. The assumption was that whatever was enacted was whatever the legislature was convinced was necessary to bring down insurance rates, among other things, in that state at that time. The longer a tort limit has been in effect, the more weight has been attached to its expected impact on costs over time. In other words, more weight is given to a punitive damages cap enacted in 1986 than to one enacted in 1991, and even more weight is attached to it than a cap passed in 1996. If a law was struck down as unconstitutional, appropriate weight is given depending on how many years the law was in effect.

Since this study is evaluating only legislative actions since 1985, no weight was attached to tort limits enacted prior to those years. Therefore, this breakdown is not necessarily a good measure of the current severity of a state's tort laws limits. For example, some states, like California and Delaware, enacted significant medical malpractice limits before 1985, which have had serious impact on victims' rights in these states. However, they are not part of the legislative response we are examining here.

Once the final list of tort law limits was determined, each provision was weighted based on the number of years in effect. Each listing (general, medical malpractice and product liability) was then divided into three evenly divided categories of 17 (50 states plus the District of Columbia). Category 1 represents the states with the fewest tort limits passed over time, Category 3 the most. These categories are relative. Therefore, a state may have enacted a number of product liability limits during these years, yet may not place in Category 3 because other states have done more.

The state law breakdowns are listed in Appendix A.

For our analysis, we grouped several lines of insurance into a "General Tort" group. This group includes Commercial Auto Basic Limits Liability, Personal Liability, OL&T Liability, M&C Liability and Special Multi-Peril. We combined these data on an overall basis, using premium as weights, to determine the effectiveness of tort reform on insurance rates.<sup>38</sup>

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<sup>38</sup> The use of premium as weights is a standard actuarial technique for combining data. Use of simple averages would distort the results in unknown ways. This is the most accurate way to combine these data.

We reviewed Product Liability separately since law changes impacting product liability often were separate from or in addition to general tort law changes.

We reviewed the combination of Hospital Professional and PS&D Professional Liability Insurance and termed it “Medical Malpractice Insurance.” Similar to product liability, law changes impacting medical malpractice liability often were separate from or in addition to general tort law changes.

The hypothesis underlying our analysis is simple: if tort law limits succeed in reducing insurance costs to consumers of insurance, that should be evident in the ISO trends in costs measured by rate and loss cost changes proposed by ISO to the states. Indeed, as the tort law limits get more severe, the ISO changes should be lower. The analysis, discussed below, tests this hypothesis with the facts we assembled.

Appendix C contains three exhibits showing the overall changes in prices by line of insurance. They are General Tort (Exhibit 1), Products Liability (Exhibit 2) and Medical Malpractice (Exhibit 3).

Exhibit 1 --General Tort, shows the 14 year (1985 to 1998) rate/loss cost change ISO achieved for its insurer members for each of the general tort lines of insurance. The exhibit ranks the states by the ascending size of rate/loss cost change over the 1985 to 1998 period. The exhibit is coded by severity of tort law change (1 for the least severe change, 2 for the mid-range change and 3 for the most severe change states).

In order to combine the tort lines to obtain an overall change for general tort, the changes in rates/loss costs are weighted by the 1997 premiums for each line of insurance based on data from the National Association of Insurance Commissioners (NAIC).<sup>39</sup> Data on premiums for M&C and OL&T are not separately available, but data for “Other Liability” is available. We assumed that OL&T and M&C each represented 50% of Other Liability premium. We also estimated the premiums for personal liability at 5% of the state’s personal auto liability premium.

Exhibit 2 -- Products Liability, shows the products liability rate/loss cost changes from 1985 to 1998 ranked by the ascending size of rate/loss cost change over the 1985 to 1998 period. No weightings are necessary here but we included the earned premiums from NAIC for analysis purposes, which will be discussed in the analysis section of this report. The same coding used in the General Tort Lines exhibit is applied here, but the categories are based, as indicated earlier, specifically on Product Liability law changes.

Exhibit 3 -- Medical Malpractice, shows the rate/loss cost changes from 1985 to 1998 ranked by the ascending size of rate/loss cost change over the 1985 to 1998 period. We averaged the Hospital Professional Liability rate/loss cost changes and the Physician, Surgeon and Dentist Liability rate/loss cost change to estimate the overall medical

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<sup>39</sup> *Report on Profitability By Line By State, 1997*, National Association of Insurance Commissioners. Also see previous footnote for an explanation of why weighting by premiums increases the accuracy of the results.

malpractice changes. No other weightings are necessary but we included the earned premiums from NAIC for analysis purposes, which will be discussed in the analysis section of this report. The same coding used in the General Tort Lines exhibit is applied here, but the categories are based, as indicated earlier, specifically on Medical Malpractice law changes.

## FINDINGS

### GENERAL TORT

A visual inspection of Exhibit 1 reveals that there is no apparent significant difference between levels of tort law change and overall rate/loss cost impact. In other words, tort reform severity does not appear to be a predictor of rate/loss cost change.

We undertook to test this visual conclusion by weighting the rate/loss cost changes by state on the earned premiums for each of the three tort law severity categories.<sup>40</sup> This produced the following results.

TABLE 1

<u>State Tort Law Change Severity</u>	<u>Weighted 14 Year Rate/Loss Cost Change</u>	<u>Annualized Loss Cost Change<sup>41</sup></u>
1	+45.6% <sup>42</sup>	+2.9% <sup>43</sup>
2	+49.1	+3.1
3	+48.8	+3.1

This result indicates that there is no significant difference in insurance rates from the adoption of tort reform for the General Tort category. Indeed, the three categories of tort law change have no impact on rates/loss costs. That is, the underlying costs, which ultimately drive insurance prices, are not impacted by tort law changes of the type adopted in this nation since the liability insurance crisis of the mid-1980s.

### PRODUCT LIABILITY

A visual inspection of Exhibit 2 reveals that there is no apparent significant difference between levels of tort law change and overall rate/loss cost impact for product liability. In other words, tort reform severity does not appear to be a predictor of rate/loss cost change.

We undertook to test this visual conclusion by weighting the rate/loss cost changes by state on the earned premiums for each of the three tort law severity categories. This produced the following results.

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<sup>40</sup> Weighting by premium is the proper actuarial method for combining the rate changes. This is because the rate changes are applied to rates which directly impact premiums.

<sup>41</sup> This result, raised to the 13<sup>th</sup> power (representing the change from 1985 to 1998, equals the second column).

<sup>42</sup> In other words, over the period 1985 to 1998, the premiums in the states with the least tort law changes rose by 45.6%.

<sup>43</sup> The 45.6% change over the period 1985 to 1998 represents a change of 2.9% per year for the period.

TABLE 2

<b>State Tort Law Change Severity</b>	<b>Weighted 14 Year Rate/ Loss Cost Change</b>	<b>Annualized Loss Cost Change<sup>44</sup></b>
1	+80.4%	+4.6%
2	+52.0	+3.3
3	+74.8	+4.4

With these mixed results it is difficult to see any clear difference in insurance rates from the adoption of tort reform for the Product Liability category. That is, the underlying costs, which ultimately drive insurance prices, appear to be impacted by modest tort law changes but not by severe changes. This is not a logical result. The only reasonable conclusion is that no clear evidence of tort law change impacting insurance prices is determinable from these data.

#### MEDICAL MALPRACTICE

A visual inspection of Exhibit 3 reveals that there is an apparent difference between levels of tort law change and overall rate/loss cost impact. In other words, based on this visual inspection, tort reform severity may be a predictor of rate/loss cost change.

We undertook to test this visual conclusion by weighting the rate/loss cost changes by state on the earned premiums for each of the three tort law severity categories. This produced the following results.

TABLE 3

<b>State Tort Law Change Severity</b>	<b>Weighted 14 Year Rate/ Loss Cost Change</b>	<b>Annualized Loss Cost Change<sup>45</sup></b>
1	+179.5%	+8.2%
2	+214.5	+9.2
3	+120.2	+6.3

This result indicates that there is a modest rise in insurance rates/loss costs from the adoption of mid-range tort reforms for the Medical Malpractice category. That is, the underlying costs, which ultimately drive insurance prices, are impacted *upwardly* by mid-range medical malpractice tort law changes of the type adopted in this nation since the liability insurance crisis of the mid-1980s. This is counter-intuitive. While there does

<sup>44</sup> This result, raised to the 13<sup>th</sup> power (representing the change from 1985 to 1998, equals the second column).

<sup>45</sup> This result, raised to the 13<sup>th</sup> power (representing the change from 1985 to 1998, equals the second column).

appear to be a reduction in rates/loss costs from severe tort law changes in medical malpractice, compared to the changes in categories 1 and 2, the mixed results confuse any conclusion. One reasonable conclusion is that no clear evidence of tort law change impacting insurance prices is determinable from these data.

#### IMPLICATIONS OF FINDINGS

If the hypothesis is correct – that enactment of tort law limits (or “tort reform”) since 1985 has reduced insurance rates/loss costs for consumers of insurance – then the following should be true: states that enacted little or no “tort reform” since the mid-1980s should be experiencing the highest insurance rate/loss cost increases; states with moderate “tort reform” should see lower rate/loss cost increases; and states that enacted major tort law limits should realize the lowest increases in rates/loss costs.

The data do not support this hypothesis.

Indeed, there is no evidence that general, across-the-board “tort reform” (or product liability “tort reforms”) has lowered insurance rates/loss costs. The impact of tort limits enacted in medical malpractice cases is inconsistent and inconclusive, with apparently lower rate/loss cost increases for severe law changes over time but an increase in rates/loss costs for moderate law changes compared to little or no law changes.

The same mixed picture emerges when a review of similar states is undertaken. For example, consider the following data from similar industrial states:

**TABLE 4**

<b>STATE</b>	<b>TORT LAW CHANGE RANKING</b>	<b>GEN. TORT 85-98 CHANGE</b>	<b>PRODUCTS 85-98 CHANGE</b>	<b>MED. MAL. 85-98 CHANGE</b>
Illinois	2	+51.9% -	10.8%	+55.2%
Michigan	3	+13.4	+79.3	+154.9
Missouri	2 <sup>46</sup>	+5.1	+62.7	+156.8
Ohio	3 <sup>47</sup>	+11.5	+88.0	+282.8
Pennsylvania	1	+28.3	+109.8	+264.8
Wisconsin	1 <sup>48</sup>	+19.2	+84.2	+58.8

It is difficult to discern any pattern of rate/loss cost effect based upon the degree of tort law change from these similar states. In General Tort, the highest and lowest changes are from states with moderate tort law change. In Products, the highest change is in a low tort law change state but the least change is in a moderate tort law change state.

<sup>46</sup> Missouri ranks in Category 3 for medical malpractice tort law changes.

<sup>47</sup> Ohio ranks in Category 2 for medical malpractice tort law changes.

<sup>48</sup> Wisconsin ranks in Category 2 for medical malpractice tort law changes.

In Medical Malpractice, the lowest rate/loss cost changes are in category 2 and 1 states, the highest in a category 2 state.

It is also interesting to note that there are states with little or no change with low rate/loss cost changes and states with severe changes with large increases in rate/loss cost. In other words, some states that have resisted any “tort reform” since 1985 have experienced low increases in insurance rates/loss costs relative to the national trends, and some states that enacted major “tort reform” packages have seen very high rate/loss cost increases relative to the national trends.

For instance, in General Tort, Massachusetts had no tort law changes in the period of study but had an increase in rate/loss cost of only 25.9% for the 14 year period, averaging 1.8% a year, well below general inflation. Massachusetts enjoyed the 10<sup>th</sup> lowest increase in the nation.

New Jersey, on the other hand, adopted severe tort law changes such as joint and several liability, collateral source and a cap on punitive damages. Yet New Jersey had a rate/loss cost increase of 82.7% (or 4.7% a year, 2.6 times the rate of change in Massachusetts). New Jersey suffered the eighth highest cost increase in the nation during the 1985 to 1998 period.<sup>49</sup>

While it is beyond the scope of this report to determine what is responsible for these unexpected findings, it is clear that factors other than changes in the tort law are the cause. Further research is required to understand what drives these rate/loss costs since tort law restrictions are not it.

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<sup>49</sup> Similar findings can be cited in Product Liability and Medical Malpractice. In Product Liability, Kentucky and Massachusetts have little tort reform. Kentucky’s rates/loss costs declined for the period and Massachusetts (with no law changes) was the ninth lowest rate/loss cost change state in the nation. Four severe tort law change states (Alaska at #3, Idaho at #4, New Jersey at #5 and Florida at #9) were in the ten highest rate/loss cost change states for Product Liability. In Medical Malpractice, New Mexico with little tort law change was the ninth least rate/loss cost increase state while Idaho, with severe tort law changes, was 14<sup>th</sup> most costly in rate/loss cost increases.

## CONCLUSION

To our knowledge, this study is the most comprehensive review of the impact of tort law changes on insurance rates/loss costs to date. The key finding is : the data do not support any conclusion that enactment of tort law limits since the liability insurance crisis of the mid-1980s has succeeded in reducing insurance costs to insurance consumers.

Just as the liability insurance crisis was ultimately found to be driven by the insurance underwriting cycle and not a tort law cost explosion as many insurance companies had claimed, the remedy pushed by the insurance companies failed. Laws that restrict the rights of injured consumers to go to court do not produce lower insurance costs or rates, and insurance companies that claim they do are severely misleading this country's lawmakers.

## ABOUT THE AUTHORS

J. ROBERT HUNTER, an actuary, is currently the Director of Insurance for the Consumer Federation of America (CFA). He was formerly the Commissioner of Insurance for the State of Texas, the Federal Insurance Administrator under both Presidents Carter and Ford, and President and Founder of the National Insurance Consumer Organization.

As a consultant on public policy and actuarial issues for various government agencies, his clients have included the U.S. Department of Housing and Urban Development, the General Accounting Office, and the Environmental Protection Agency, as well as state governments including California, Florida, Georgia, Massachusetts, Maine, North Carolina, New Jersey, New York, Oklahoma, South Carolina and Texas. Other experience includes work in the private sector, including as Associate Actuary for the Mutual Insurance Advisory Association and Mutual Insurance Rating Bureau (now AIPSO), Actuarial Supervisor for the National Bureau of Casualty Underwriters (now ISO), and Underwriter, Atlantic Mutual and Centennial Insurance Companies.

His awards include the Award for Excellent Service for the Secretary of the Department of Housing and Urban Development (HUD), for work performed from 1971 to 1977. He is the author of numerous publications on insurance and related topics and has served as an Executive Committee member and advisor to the National Association of Insurance Commissioners (NAIC).

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Ms. Doroshow has extensive media experience as one of the producers of the 1992 Academy Award-winning documentary, *The Panama Deception*, and Coordinating Producer for TV Nation, the Emmy Award-winning humorous political magazine show. Her experience also includes lead counsel for TMI Alert, a community group working to block the restart of the Three Mile Island 1 nuclear reactor following the 1979 accident, and as director of the California-based Bhopal Justice Campaign in 1989 and 1990 created to win broad statewide support for the plight of the Bhopal, India gas disaster victims.

She was recently honored with one of two 1999 Public Interest Pioneer grants by the Stern Family Fund.

# APPENDIX A

“TORT REFORMS” ENACTED IN STATES

## GENERAL "TORT REFORMS"

### Alabama

Pre-1985: collateral source

87: punitive cap (but declared unconstitutional in 93)

87: collateral source (but declared unconstitutional in part in 96)

### Alaska

86: cap, noneconomic

86: joint and several liability

86: collateral source rule

88: joint and several liability (ballot initiative)

97: cap, all damages

97: punitive cap

97: prejudgment interest

### Arizona

87: joint and several (except hazardous waste, intent)

97: joint and several liability (hazardous waste exemption removed)

### Arkansas

### California

86: joint and several liability (ballot initiative)

### Colorado

86: cap, noneconomic

86: joint and several liability

86: punitive cap

86: collateral source

### Connecticut

86: collateral source

86: joint and several (i.e. proportional) liability

86: contingency fees

### Delaware

Pre-1985: collateral source

### District of Columbia

Pre-1985: collateral source

### Florida

86: joint and several liability (except pollution, intent)

86: collateral source

86: contingency fees

86 : punitive cap

88: cap, noneconomic (but declared unconstitutional in 91)

### Georgia

87: punitive cap

87: joint and several liability

### Hawaii

86: cap, noneconomic (except products, asbestos, toxics, auto, aircraft , intent, some auto)

86: joint and several (except products, asbestos, toxics, auto, aircraft , intent, some auto)

86: collateral source (liens)

### Idaho

87: cap, noneconomic

87: joint and several liability (except intent, hazardous waste and drugs and medical products)

87: structured settlements

90: collateral source

### Illinois

86: collateral source

95: cap, noneconomic (but declared unconstitutional in 97)

95: joint and several liability (but declared unconstitutional in 97)

95: punitive cap (but declared unconstitutional in 97)

### Indiana

Pre-1985: joint and several liability

86: collateral source

95: punitive cap

### Iowa

Pre-1985: joint and several liability

86: structured settlements

87: collateral source

87: prejudgment interest

87: structured settlements

97: joint and several liability

97: prejudgment interest

### Kansas

86: structured settlements (but declared unconstitutional in 88)

87: cap, noneconomic

87: punitive cap

88: collateral source (but declared unconstitutional in 93)

Kentucky  
88: joint and several liability (but codified common law rule)  
88: collateral source (but declared unconstitutional in 95)

Louisiana  
Pre-1985: joint and several liability  
87: joint and several liability  
87: prejudgment interest  
96: joint and several liability

Maine  
88: prejudgment interest

Maryland  
Pre-1985: collateral source  
86: cap, noneconomic (but annual increases since 95)  
86: structured settlements

Massachusetts

Michigan  
86: collateral source  
86: prejudgment interest  
86: structured settlements  
87: joint and several liability  
95: joint and several liability

Minnesota  
86: cap, noneconomic (but repealed in 90)  
86: collateral source  
86: prejudgment interest  
88: joint and several liability

Mississippi  
89: joint and several liability

Missouri  
87: joint and several liability  
87: collateral source

Montana:  
87: joint and several liability (but declared unconstitutional in 94)  
87: collateral source  
95: structured settlements  
97: joint and several liability

Nebraska  
Pre-1985: collateral source

86: prejudgment interest (but improved prior standard)  
92: joint and several liability (but improved prior standard)

Nevada  
87: joint and several liability (except products, toxics, intent)  
89: punitive cap

New Hampshire  
86: cap noneconomic (but declared unconstitutional in 91)  
86: punitives abolished  
89: joint and several liability  
95: prejudgment interest

New Jersey  
Pre-1985: contingency fees  
87: joint and several liability  
87: collateral source  
95: punitive cap  
95: joint and several liability

New Mexico  
87: joint and several liability (but codified common law)

New York  
86: joint and several liability, (except toxics, intent, some products)  
86: collateral source  
86: structured settlements

North Carolina  
95: punitive cap

North Dakota  
87: joint and several liability (except products, intent)  
87: collateral source  
87: structured settlements  
93: punitive cap

Ohio  
87: joint and several liability  
87: structured settlements  
96: cap, noneconomic  
96 : joint and several liability  
96: punitive cap  
96: collateral source  
96: prejudgment interest

Oklahoma:

86: prejudgment interest  
95: punitive cap

Oregon

87: cap, noneconomic  
87: joint and several liability  
87: collateral source  
95: joint and several liability

Pennsylvania

Rhode Island

87: prejudgment interest

South Carolina

South Dakota

86: structured settlements  
87: joint and several liability

Tennessee

Texas

87: joint and several liability (except  
environmental)  
87: punitive cap  
87: prejudgment interest  
95: joint and several liability  
95: punitive cap

Utah

86: joint and several liability

Vermont

Pre-85: joint and several liability

Virginia

87: punitive cap

Washington

Pre-1985: punitive cap  
86: cap, all damages (but declared unconstitutional  
in 89)  
86: joint and several liability (except  
environmental, some products)  
86: structured settlements

West Virginia

Wisconsin

95: joint and several liability

Wyoming

86: joint and several liability

## PRODUCTS LIABILITY “TORT REFORMS”

### Alabama

Pre-1985: collateral source

87: punitive cap (but declared unconstitutional in 93)

87: collateral source (but declared unconstitutional in part in 96)

### Alaska

86: cap, noneconomic

86: joint and several liability

86: collateral source rule

88: joint and several liability (ballot initiative)

97: cap, all damages

97: punitive cap

97: prejudgment interest

### Arizona

Pre-1985: products liability defenses; products statute of repose (but declared unconstitutional in 93)

89: products liability defenses

87: joint and several liability (except hazardous waste, intent)

97: joint and several liability (hazardous waste exemption removed)

### Arkansas

Pre-1985: products liability defenses

### California

86: joint and several liability (ballot initiative)

87: products liability defenses (inherently dangerous products) but tobacco cases exempt in 97

### Colorado

86: cap, noneconomic

86: joint and several liability

86: punitive cap

86: products statute of repose

86: collateral source

### Connecticut

Pre-1985: products liability punitive cap

86: collateral source

86: joint and several (i.e. proportional) liability

86: contingency fees

### Delaware

Pre-1985: collateral source

### District of Columbia

Pre-1985: collateral source

### Florida

86: joint and several liability, (except pollution, intent)

86: collateral source

86: contingency fees

86 : punitive cap

88: cap, noneconomic (but declared unconstitutional in 91)

### Georgia

Pre-1985: products statute of repose

87: punitive, one per product (but declared unconstitutional in 90))

87: joint and several liability

87: products liability defenses

### Hawaii

86: collateral source (liens)

### Idaho

Pre-1985: products statute of repose

87: cap, noneconomic

87: joint and several liability (except intent, hazardous waste and drugs and medical products)

87: structured settlements

90: collateral source

### Illinois

86: collateral source

95: cap, noneconomic (but declared unconstitutional in 97)

95: joint and several liability (but declared unconstitutional in 97)

95: punitive cap (but declared unconstitutional in 97)

95: products statute of repose (but declared unconstitutional in 97)

95: products liability defenses (but declared unconstitutional in 97)

### Indiana

Pre-1985: joint and several liability; products liability defenses

86: collateral source

95: punitive cap

95: products liability defenses

### Iowa

Pre-1985: joint and several liability

86: structured settlements  
86: products liability defenses  
87: collateral source  
87: prejudgment interest  
87: structured settlements  
97: joint and several liability  
97: products statute of repose  
97: prejudgment interest

#### Kansas

Pre-1985: products liability defenses; products statute of repose  
86: structured settlements (but declared unconstitutional in 88)  
86: products liability defenses  
87: cap, noneconomic  
87: punitive cap  
88: collateral source (but declared unconstitutional in 93)

#### Kentucky

Pre-1985: products liability defenses; products statute of repose  
88: joint and several liability (but codified common law rule)  
88: collateral source (but declared unconstitutional in 95)

#### Louisiana

Pre-1985: joint and several liability  
87: joint and several liability  
87: prejudgment interest  
88: products liability defenses  
96: joint and several liability

#### Maine

88: prejudgment interest  
96: products liability defense

#### Maryland

Pre-1985: collateral source  
86: cap, noneconomic (but annual increases since 95)  
86: structured settlements

#### Massachusetts

#### Michigan

86: collateral source  
86: prejudgment interest  
86: structured settlements  
87: joint and several liability  
95: products liability cap, noneconomic

95: joint and several liability  
95: products liability defenses

#### Minnesota

86: cap, noneconomic (but repealed in 90)  
86: collateral source  
86: prejudgment interest  
88: joint and several liability

#### Mississippi

89: joint and several liability  
93: products liability defenses

#### Missouri

87: joint and several liability  
87: collateral source  
87: products liability defenses

#### Montana:

87: joint and several liability (but declared unconstitutional in 94)  
87: collateral source  
87: products liability defenses  
95: structured settlements  
97: joint and several liability

#### Nebraska

Pre-1985: collateral source; products statute of repose  
86: prejudgment interest (but improved prior standard)  
92: joint and several liability (but improved prior standard)

#### Nevada

89: punitive cap

#### New Hampshire

86: cap, noneconomic (but declared unconstitutional in 91)  
86: punitives abolished  
88: products liability defenses  
89: joint and several liability  
95: prejudgment interest

#### New Jersey

Pre-1985: contingency fee schedule  
87: joint and several liability  
87: collateral source  
87: products liability defenses  
95: punitive cap  
95: joint and several liability  
95: products liability defenses

New Mexico

New York

86: joint and several liability (except toxics, intent, some products)

86: collateral source

86: structured settlements

North Carolina

Pre-1985: products statute of repose

95: punitive cap

95: products liability defenses

North Dakota

Pre-1985: products liability defenses

87: products liability defenses

87: collateral source

87: structured settlements

93: punitive cap

93: products liability defenses

95: products liability defense

95: products statute of repose

Ohio

87: products liability defenses (but codified common law)

87: joint and several liability

87: structured settlements

96: cap, noneconomic

96: joint and several liability

96: punitive cap

96: collateral source

96: prejudgment interest

96: products liability defenses

96: products statute of repose

Oklahoma:

86: prejudgment interest

95: punitive cap

Oregon

Pre-1985: products statute of repose

87: cap, noneconomic

87: joint and several liability

87: collateral source

87: products liability defenses

95: joint and several liability

Pennsylvania

Rhode Island

87: prejudgment interest

South Carolina

South Dakota

Pre-1975: products liability defenses

86: structured settlements

87: joint and several liability

95: products liability defenses

Tennessee

Pre-1985: products liability defenses; products statute of repose

Texas

85: products liability defenses

87: joint and several liability (except environmental)

87: punitive cap

87: prejudgment interest

93: products liability defenses

93: products statute of repose

95: joint and several liability

95: punitive cap

Utah

86: joint and several liability

89: products liability defenses

Vermont:

Pre-85: joint and several liability

Virginia

87: punitive cap

Washington

Pre-1985: punitive cap; products statute of repose

86: cap, all damages (but declared unconstitutional in 88)

86: joint and several liability (except environmental, some products)

86: structured settlements

West Virginia

Wisconsin

95: joint and several liability

Wyoming

86: joint and several liability

## MEDICAL MALPRACTICE “TORT REFORMS”

### Alabama

Pre-1985: collateral source

87: med mal cap (but declared unconstitutional in 91)

87: punitive cap (but declared unconstitutional in 93)

87: collateral source (but declared unconstitutional in part in 96)

### Alaska

86: cap, non-economic

86: joint and several liability

86: collateral source rule

88: joint and several liability (ballot initiative)

97: cap, all damages

97: punitive cap

97: prejudgment interest

### Arizona

Pre-1985: med mal collateral source

87: joint and several

89: med mal structured settlements (but declared unconstitutional in 94)

### Arkansas

Pre-1985: medical malpractice structured settlements

### California

Pre-1985: med mal cap, noneconomic; med mal collateral source; med mal contingency fees; med mal structured settlements

86: joint and several liability (ballot initiative)

### Colorado

86: cap, noneconomic

86: joint and several liability

86: punitive cap

86: collateral source

88: med mal cap, all damages

88: med mal statute of repose

88: med mal structured settlements

92: med mal collateral source

### Connecticut

85: med mal collateral source

86: joint and several (i.e. proportional) liability

86: contingency fees

### Delaware

Pre-1985: collateral source; med mal contingency fees; med mal structured settlements

### District of Columbia

Pre-1985: collateral source

### Florida

86: joint and several liability

86: collateral source

86: med mal structured settlements

86: contingency fees

86: punitive cap

88: cap noneconomic (but declared unconstitutional in 91)

88: med mal cap, noneconomic (depending on arbitration)

### Georgia

87: punitive cap

87: joint and several liability

### Hawaii

86: cap, noneconomic

86: joint and several liability (except medical products)

86: collateral source (liens)

### Idaho

87: cap, noneconomic

87: joint and several liability

87: structured settlements

90: collateral source

### Illinois

Pre-1985: med mal collateral source

85: medical malpractice structured settlements

85: med mal contingency fees

95: cap, noneconomic (but declared unconstitutional in 97)

95: joint and several liability (but declared unconstitutional in 97)

95: punitive cap (but declared unconstitutional in 97)

### Indiana

Pre-1985: joint and several liability

86: collateral source

93: med mal cap, all damages

93: med mal contingency fee

95: punitive cap

Iowa  
 Pre-1985: joint and several liability; med mal collateral source  
 86: structured settlements  
 87: collateral source  
 87: prejudgment interest  
 87: structured settlements  
 97: joint and several liability  
 97: prejudgment interest

Kansas  
 85: med mal punitive cap (but expired in 88)  
 86: med mal cap (but declared unconstitutional in 88)  
 86: med mal structured settlements (but declared unconstitutional in 88)  
 87: cap, noneconomic  
 87: punitive cap  
 88: collateral source (but declared unconstitutional in 93)

Kentucky  
 88: joint and several liability (but codified common law rule)  
 88: collateral source (but declared unconstitutional in 95)

Louisiana  
 Pre-1985: med mal cap; med mal structured settlements (Patients Comp. fund); joint and several liability  
 87: joint and several liability  
 87: prejudgment interest  
 96: joint and several liability

Maine  
 85: med mal structured settlements  
 85: med mal contingency fees  
 88: prejudgment interest  
 89: med mal collateral source

Maryland  
 Pre-1985: collateral source  
 86: cap, noneconomic  
 86: structured settlements

Massachusetts  
 86: med mal cap, noneconomic  
 86: med mal collateral source  
 86: med mal contingency fees

Michigan  
 86: med mal cap, noneconomic

86: collateral source  
 86: structured settlements  
 86: prejudgment interest  
 87: joint and several liability  
 93: med mal cap, noneconomic  
 95: joint and several liability

Minnesota  
 86: cap, noneconomic (but repealed in 90)  
 86: collateral source  
 86: prejudgment interest  
 88: joint and several liability

Mississippi  
 89: joint and several liability  
 98: med mal statute of repose

Missouri  
 86: med mal cap, noneconomic  
 86: med mal structured settlements  
 87: joint and several liability  
 87: collateral source

Montana:  
 87: joint and several liability (but declared unconstitutional in 94)  
 87: collateral source  
 95: med mal cap, noneconomic  
 95: med mal structured settlements  
 97: joint and several liability

Nebraska  
 Pre-1985: collateral source; med mal cap (cap increased in 92)  
 86: prejudgment interest (but improved prior standard)  
 92: joint and several liability (but improved prior standard)

Nevada  
 Pre-1985: med mal collateral source  
 87: joint and several liability  
 89: punitive cap

New Hampshire  
 86: cap, noneconomic (but declared unconstitutional in 91)  
 86: punitive abolished  
 89: joint and several liability  
 95: prejudgment interest

New Jersey  
 Pre-1985: contingency fees

87: joint and several liability  
 87: collateral source  
 95: punitive cap  
 95: joint and several liability

New Mexico  
 87: joint and several liability (but codified common law)  
 92: med mal structured settlement  
 92: med mal cap (except punitives)

New York  
 86: joint and several liability  
 86: collateral source  
 86: structured settlements  
 86: med mal contingency fees

North Carolina  
 95: punitive cap

North Dakota  
 87: joint and several liability  
 87: collateral source  
 87: structured settlements  
 93: punitive cap  
 95: med mal cap, noneconomic

Ohio  
 87: joint and several liability  
 87: structured settlements  
 96: cap, noneconomic  
 96: joint and several liability  
 96: punitive cap  
 96: collateral source  
 96: prejudgment interest

Oklahoma:  
 86: prejudgment interest  
 95: punitive cap

Oregon  
 87: cap, noneconomic  
 87: joint and several liability  
 87: med mal punitives abolished against doctors  
 87: collateral source  
 95: joint and several liability

Pennsylvania  
 Pre-1985: med mal collateral source  
 96: med mal punitive cap

Rhode Island  
 86: med mal collateral source

87: prejudgment interest

South Carolina  
 Pre-1985: med mal structured settlements (Patient Comp. Fund with annual cap)

South Dakota  
 Pre-1985: med mal collateral source; med mal cap; noneconomic  
 86: med mal cap, economic (but declared unconstitutional 96)  
 86: med mal structured settlements  
 87: joint and several liability

Tennessee  
 Pre-1985: med mal collateral source

Texas  
 87: med mal cap (but declared unconstitutional in 88, although allowed for wrongful death, 90)  
 87: joint and several liability (except environmental)  
 87: punitive cap  
 87: prejudgment interest  
 95: joint and several liability  
 95: punitive cap

Utah  
 85: med mal collateral source  
 86: med mal cap, noneconomic  
 86: joint and several liability  
 86: med mal structured settlements

Vermont:  
 Pre-85: joint and several liability

Virginia  
 Pre-1985: med mal cap (although cap raised in 83 and 99)  
 87: med mal (children injured at birth, no right to sue, no noneconomic or punitives)  
 87: punitive cap

Washington  
 Pre-1985: punitive cap; med mal collateral source  
 86: cap, all damages (but declared unconstitutional in 88)  
 86: joint and several liability  
 86: structured settlements

West Virginia  
 86: med mal cap, noneconomic  
 86: med mal joint and several liability

Wisconsin

Pre-1985: med mal (Patient Comp. Fund)

86: med mal cap, noneconomic (but expired 90)

86: med mal contingency fees

95: med mal cap

95: joint and several liability

95: med mal structured settlements

95: med mal collateral source

Wyoming

86: joint and several liability

# APPENDIX B

GLOSSARY OF "TORT REFORMS"

## GLOSSARY OF COMMON “TORT REFORMS”

**Collateral Source Rule** – The collateral source rule prevents a wrongdoer from reducing its financial responsibility for the injuries it causes by the amount an injured party receives (or could later receive) from outside sources. Payments from outside sources means those unrelated to the wrongdoer, like health or disability insurance, for which the injured party has already paid premiums or taxes. The rule also prevents juries from learning about such collateral payments, so as not to unfairly influence with verdict. States that have modified this rule have either completely repealed it, mandating that payments received from health insurance, social security or other sources be used to reduce the wrongdoer’s liability. Or, they allow juries to hear during trial about collateral payments.

**Caps (on Damages)** – A damages cap is an arbitrary ceiling on the amount an injured party can receive in compensation by a judge or jury, irrespective of what the evidence presented at a trial proves compensation should be. A cap is usually defined in a statute by a dollar figure (\$100,000, \$500,000, etc.) Caps usurp the authority of judges and juries, who listen to the evidence in a case, to decide compensation based on each specific fact situation. Several states have declared caps unconstitutional.

**Contingency Fees** -- Under a contingency fee arrangement, a lawyer agrees to take a case on behalf of an injured client without obtaining any money up front from the client. This is a risk, because if the case is lost, the lawyer is paid nothing. In return, the lawyer is entitled to a percentage of the amount of money collected -- usually one-third -- if the case is successful. This system provides injured consumers who could not otherwise afford legal representation with access to the courts. Typically, states limit contingency fees by capping them sometimes way below one-third, sometimes along a sliding scale so fee percentages decrease, sometimes drastically, as judgments increases. The principal impact of contingency fee limits is to make it less likely attorneys can afford to risk bringing many cases, particularly the more costly and complex ones, providing practical immunity for many wrongdoers

**Joint and Several Liability** – The doctrine of joint and several liability is a fairness rule, developed over centuries to protect injured consumers. It applies when more than one defendant is found *fully responsible* for causing an injury (not 1% or 10% responsible, as is commonly misstated). If one wrongdoer is insolvent or cannot pay their share, the other fully-responsible wrongdoers must pick up the tab, to make sure the innocent victim is fully compensated. For example, suppose three toxic polluters recklessly contaminate drinking water, causing leukemia in neighborhood children. The actions of any one of them alone would be sufficient to cause leukemia. But because three companies are involved, each one’s relative share becomes only one-third. This fortuitous circumstance allows them to split the total compensation each one owes the victims. But if one of those three companies becomes insolvent and cannot pay any compensation, who should cover it? Joint and several liability says that the other companies must cover the insolvent company’s share. When joint and several liability is limited or abolished, however, these other wrongdoers are not required to cover the insolvent company’s share, even if it means the innocent victim receives far less compensation for injuries than the judge or jury determined they deserve.

**Non-economic Damages** – Non-economic damages compensate injured consumers for intangible but real injuries, like infertility, permanent disability, disfigurement, pain and suffering, loss of a limb or other physical impairment. Limits on non-economic damages can have a disproportionate effect on plaintiffs who do not have high wages – like women who work inside the home, children, seniors or the poor, who are thus more likely to receive a greater percentage of their compensation in the form of non-economic damages if they are injured.

**Prejudgment Interest** – Prejudgment interest is the amount of interest that accrues on the value of an injured consumer’s claim between the time he or she files a case, and the final judgment. Some states penalize victims by prohibiting pre-judgment interest or by imposing very low limits on pre-judgment interest rates. Laws that limit prejudgment interest can delay timely settlements or judgments in civil cases by reducing the monetary incentive that defendants have to resolve cases expeditiously.

**Product Liability Defenses** – The doctrine of “strict liability” has long applied in suits involving defective products. Strict liability ensures that one who is responsible for bringing a dangerously defective product into the marketplace or workplace compensates those injured by the product. However, some states have enacted new defenses for those who manufacture or sell defective products. For example, some laws establish a presumption that an injury-causing product, drug or medical device is not defective or unreasonably dangerous if the product complies with government standards. This benefits manufacturers that profit from weak and long out-of-date health and safety standards, like manufacturers of cars, trains, factory equipment, and school buses. Other provisions require an injured consumer to prove the existence of an “alternative design” for a defective product, which would have prevented the harm but would not have hurt the product’s marketability. This forces plaintiffs, who are at a distinct disadvantage when it comes to knowledge about technical design alternatives, to prove the existence of such alternatives when this defense is raised. Other laws immunize manufacturers that produce products with design defects if the products have “obvious risks,” like tobacco, or are considered “unavoidably unsafe,” like guns -- even if a defective gun accidentally discharges and kills someone.

**Punitive Damages** – Punitive damages, also known as “exemplary damages,” are assessed against defendants by judges or juries to punish particularly outrageous, deliberate or harmful misconduct, and to deter the defendant and others from engaging in similar misconduct in the future. It is well recognized that the prospect of having to pay punitive damages in a lawsuit by an injured consumer causes corporations to build safer products and operate more safely. Many dangerous and defective products -- including the Ford Pinto, asbestos, and the Dalkon Shield IUD -- were removed from the market because of punitive damages.

**Statute of Repose** – A statute of repose for products completely cuts off liability of the manufacturer or seller of a defective product after an arbitrarily-established number of years, such as 10 years or 15 years. (A few states have adopted statutes of repose to cut off doctors’ and hospitals’ liability for medical malpractice, as well.) Statutes of repose apply no matter how serious the injuries, how many injuries have been caused over the years by these products or services, or how reckless the actions of the wrongdoer were. They cover products with expected lives much longer than typical cut-off dates in the statute of repose, products like nuclear power plant components, medical devices such as pacemakers, elevators, airplanes, home appliances, playground equipment, farm equipment, freight trains, trucks, and other industrial machinery.

**Structured Settlements** – Also called “periodic payments,” structured settlement laws either mandate, allow defendants to request, or allow courts to require that some or all payments awarded by a judge or jury be made to the injured consumer over a long period of time. In other words, the injured consumer is prohibited from receiving payments in a lump sum. These provisions increase the hardships of the most seriously injured consumers who are hit soon after an injury with large medical costs and must make adjustments in transportation and housing. Often, the law allows insurance companies to pocket the money upon the plaintiff’s death, instead of paying it to a dependent spouse or child.

# APPENDIX C

ISO DATA ANALYSIS

## EXHIBIT I -- GENERAL TORT

	State	Special Multi-Peril Liability 85 to 98 change	Comm. Auto Basic Liability 85 to 98 change	Personal Liability 85 to 98 change	OL&T Liability 85 to 98 change	M&C Liability 85 to 98 change	Severity Of Tort Law Change	Overall Change	Comm. Multi-Peril 1997 Earned Premiums (in millions of \$)	Comm. Auto Liab 1997 Earned Premiums (in millions of \$)	EST Personal Liability** 1997 Earned Premiums (in millions of \$)	Other Liability** 1997 Earned Premiums (in millions of \$)
1	Missouri	0.894	1.354	0.707	1.365	0.78	2	1.051	386	238	60	447
2	Ohio	0.916	1.354	0.512	1.171	1.301	3	1.115	707	479	123	829
3	Iowa	1.136	1.175	0.546	1.427	0.866	3	1.125	169	141	25	247
4	Michigan	1.164	0.991	0.685	1.429	1.037	3	1.134	698	359	106	778
5	Wisconsin	1.103	1.156	1.114	1.402	1.226	1	1.192	344	241	50	357
6	Minnesota	0.892	1.814	0.517	1.472	0.92	3	1.195	325	231	66	471
7	Indiana	0.88	1.67	0.604	1.523	1.095	2	1.196	432	284	66	359
8	Kansas	1.083	1.06	0.876	1.783	1.169	3	1.203	178	111	26	168
9	Virginia	1.197	1.244	0.796	1.600	0.927	1	1.204	372	286	82	417
10	Massachusetts*	0.963	0.961	1.785	1.913	1.328	1	1.259	612	449	103	720
11	Pennsylvania	1.164	1.317	1.085	1.278	1.519	1	1.283	976	634	166	1092
12	Maryland	0.977	1.633	0.958	1.847	0.938	2	1.289	329	254	73	386
13	Maine	1.183	1.385	0.684	1.773	1.31	1	1.306	109	63	12	67
14	Florida	1.313	1.322	0.916	1.616	1.12	3	1.306	1260	823	248	1186
15	Arizona	1.041	1.869	0.885	1.573	1.009	2	1.309	291	200	66	315
16	North Dakota	1.019	1.263	0.514	2.120	1.46	3	1.322	41	33	6	41
17	Washington	1.217	1.577	0.945	1.608	1.157	2	1.327	435	228	79	388
18	Arkansas	0.936	1.481	0.482	2.041	1.579	1	1.347	155	138	28	150
19	Alaska	1.245	1.027	1.22	2.011	1.47	3	1.378	68	33	7	60
20	Oregon	1.067	1.516	0.901	2.601	1.037	3	1.384	275	148	44	204
21	Nebraska	1.213	1.152	0.57	2.500	1.133	1	1.400	122	83	17	138
22	Georgia	1.051	1.686	0.706	1.994	1.282	2	1.421	448	397	84	557
23	Montana	1.133	1.408	0.777	2.491	1.511	2	1.447	68	52	9	53
24	Colorado	1.013	1.454	0.89	2.936	0.99	3	1.460	323	171	61	358
25	Idaho	1.327	1.393	0.785	2.507	1.157	3	1.475	91	57	12	74
26	Tennessee	1.093	1.999	0.704	1.890	1.161	1	1.475	312	274	53	335

	State	Special Multi-Peril Liability 85 to 98 change	Comm. Auto Basic Liability 85 to 98 change	Personal Liability 85 to 98 change	OL&T Liability 85 to 98 change	M&C Liability 85 to 98 change	Severity Of Tort Law Change	Overall Change	Comm. Multi-Peril 1997 Earned Premiums (in millions of \$)	Comm Auto Liab 1997 Earned Premiums (in millions of \$)	EST Personal Liability** 1997 Earned Premiums (in millions of \$)	Other Liability** 1997 Earned Premiums (in millions of \$)
27	New Hampshire	0.951	1.912	1.284	1.705	1.889	3	1.479	123	65	14	124
28	Dist. Of Columbia	1.352	1.467	1.435	1.655	1.471	1	1.489	74	30	5	148
29	Oklahoma	1.285	1.107	0.77	2.856	1.438	2	1.496	214	155	37	203
30	Utah	1.188	1.629	0.884	2.162	1.646	2	1.500	131	81	23	110
31	Illinois	1.054	1.337	1.242	2.184	1.489	2	1.519	922	543	125	1766
32	Kentucky	1.394	1.582	0.813	2.832	1.276	1	1.606	239	185	49	209
33	Connecticut	0.965	1.699	0.719	2.177	1.954	3	1.615	366	233	62	607
34	Vermont	0.988	2.111	0.795	2.606	1.566	1	1.631	60	30	6	64
35	South Carolina	1.071	1.652	0.938	2.887	2.038	1	1.646	220	182	42	190
36	Hawaii*	1.332	1.501	1.162	2.492	1.645	3	1.647	117	70	21	136
37	New Mexico	1.403	1.476	1.087	2.794	1.686	1	1.647	114	70	22	88
38	South Dakota	1.294	1.443	0.543	3.637	1.28	2	1.721	48	37	7	53
39	Wyoming	1.009	1.186	0.886	4.233	2.136	2	1.734	42	24	5	33
40	Nevada	1.463	2.442	1.122	2.445	1.321	2	1.785	147	84	31	131
41	New York	1.06	2.055	1.278	2.510	2.16	3	1.792	2034	1112	270	2459
42	New Jersey	1.492	2.128	1.153	2.572	1.455	3	1.827	880	704	166	1040
43	North Carolina	1.39	2.186	1.252	3.359	1.242	1	1.906	412	375	92	424
44	West Virginia	1.21	1.415	1.135	4.394	2.128	1	1.907	99	92	24	98
45	Rhode Island	1.146	2.521	1.086	3.335	1.538	2	1.911	90	57	18	93
46	Mississippi	1.297	2.136	1.261	3.425	1.557	1	1.924	153	147	23	141
47	Alabama	1.409	1.91	0.611	3.841	1.405	2	1.934	284	222	39	299
48	Louisiana	1.569	2.02	0.877	4.563	1.782	2	2.241	277	283	67	365
49	Delaware	1.547	2.628	1.313	4.592	1.131	1	2.437	58	58	13	130
50	California*	1.452	1.332	1	1.347	1.92	Incomptl data	na	na	1306	na	3024
51	Texas*	1.072	0.951	1.381	3.066	2.807	Incomptl data	na	na	956	na	1510

\* Hawaii, Massachusetts and Texas are Commercial Auto Rate Bureau States. Hawaii is a Personal Liability Rate Bureau State. Data may be understated. Also, a review of the data makes it clear that California and Texas data are incomplete from ISO.

\*\*Personal Liability Premium estimated at 5% of Personal auto liability. Weight Given to M&C and OL&T is 50% of Other Liability.

Appendix C – Exhibit 1 – General Tort 2

## EXHIBIT 2 – PRODUCTS LIABILITY

	STATE	Products Liability 85 to 98 Change	Severity of Tort Law Change	Products Liability 1997 Earned Premiums (in millions of \$)
1	Kentucky	0.834	1	972
2	Illinois	0.892	2	2503
3	Oklahoma	1	2	747
4	Wyoming	1.07	2	92
5	Hawaii *	1.212	2	413
6	Texas	1.362	3	5561
7	Oregon	1.41	3	870
8	Alabama	1.421	2	776
9	Massachusetts	1.429	1	2061
10	California	1.45	2	8541
11	Louisiana	1.507	3	1345
12	Connecticut	1.535	3	1232
13	Maine	1.557	2	243
14	Iowa	1.581	3	509
15	New Hampshire	1.581	3	282
16	Indiana	1.606	2	1323
17	Tennessee	1.624	1	1061
18	Georgia	1.624	2	1683
19	Missouri	1.627	2	1190
20	Nebraska	1.633	1	336
21	Mississippi	1.664	2	454
22	New York	1.673	3	5396
23	Utah	1.713	2	464
24	South Dakota	1.721	2	146
25	West Virginia	1.752	1	486
26	Arizona	1.754	2	1312
27	Dist. of Col.	1.766	1	107
28	Montana	1.77	2	172
29	Michigan	1.793	3	2121
30	Minnesota	1.815	3	1323
31	Kansas	1.816	3	523
32	South Carolina	1.818	1	839
33	Arkansas	1.826	1	568
34	Colorado	1.829	3	1220
35	Wisconsin	1.842	1	999
36	Nevada	1.856	1	618
37	Ohio	1.88	3	2460
38	North Carolina	1.902	1	1834

39	Maryland	1.909	2	1450
40	Rhode Island	1.944	1	350
41	North Dakota	1.958	3	113
42	Delaware	1.979	1	264
43	Florida	2.059	3	4950
44	New Mexico	2.061	1	437
45	Virginia	2.095	1	1645
46	Pennsylvania	2.098	1	3313
47	New Jersey	2.116	3	3311
48	Idaho	2.126	3	242
49	Alaska	2.14	3	146
50	Washington	2.325	2	1586
51	Vermont	2.369	1	117

\* Hawaii is a Product Liability Rate Bureau state. Data may thus be understated

## EXHIBIT 3 – MEDICAL MALPRACTICE

	STATE	Hospital Professional Liability 85 to 98 change	Physicians, Surgeons & . Denstists Liability 85 to 98 change	Average of Hospital and PS&D = Med Mal. 85 to 98 change	Severity of Tort Law Change	1997 Medical Malpractice Earned Premiums (millions of \$)
1	Utah	1.571	0.652	1.112	3	30
2	Washington	1.322	0.984	1.153	2	99
3	Rhode Island	1.14	1.236	1.188	2	22
4	Minnesota	1.644	0.892	1.268	3	52
5	Nevada	0.922	1.842	1.382	2	45
6	South Dakota	1.977	0.995	1.486	2	11
7	Florida	1.847	1.16	1.504	3	403
8	Maine	1.694	1.321	1.508	3	25
9	New Mexico	0.914	2.159	1.537	1	29
10	Illinois	0.668	2.436	1.552	2	380
11	Dist. of Col.	1.536	1.597	1.567	1	34
12	Wisconsin	1.987	1.188	1.588	2	65
13	West Virginia	0.879	2.412	1.646	2	44
14	Massachusetts	1	2.5	1.750	3	178
15	Iowa	2.002	1.535	1.769	3	44
16	Connecticut	2.312	1.23	1.771	3	127
17	Alaska	0.922	2.727	1.825	3	13
18	Hawaii	1	2.732	1.866	3	22
19	North Dakota	2.518	1.415	1.967	3	13
20	South Carolina	1.481	2.605	2.043	1	11
21	California	1.731	2.435	2.083	1	629
22	Oregon	3.198	1.009	2.104	3	39
23	Kentucky	2.951	1.528	2.240	1	59
24	Indiana	1.977	2.631	2.304	2	38
25	Colorado	3.326	1.597	2.462	3	90
26	New Jersey	3.356	1.671	2.514	2	290
27	Michigan	2.116	2.982	2.549	3	189
28	Missouri	2.452	2.683	2.568	3	114
29	Nebraska	3.19	2.116	2.653	1	20
30	New York	3.017	2.389	2.703	3	809
31	Georgia	3.578	2.118	2.848	2	179
32	Montana	4.678	1.053	2.866	2	15
33	Tennessee	3.975	1.959	2.967	1	154
34	North Carolina	3.537	2.454	2.996	1	117
35	Mississippi	3.843	2.328	3.086	1	31
36	Arizona	3.795	2.385	3.090	1	120

37	Idaho	5.055	1.353	3.204	3	18
38	Oklahoma	3.147	3.48	3.314	1	71
39	Pennsylvania	5.045	2.25	3.648	1	217
40	Maryland	5.882	1.426	3.654	2	115
41	Delaware	5.55	1.774	3.662	1	18
42	Kansas	3.354	4.075	3.715	2	40
43	Ohio	4.893	2.762	3.828	2	198
44	Arkansas	4.586	3.178	3.882	1	32
45	Vermont	6.378	1.995	4.187	1	8
46	Alabama	7.451	1.731	4.591	1	94
47	Wyoming	6.617	3.362	4.990	1	11
48	Virginia	6.942	3.073	5.008	2	112
49	New Hampshire	10.139	1.967	6.053	2	20
50	Louisiana	4.233	29.311	16.772	2	66
51	Texas*	1	1	NA	Data in- complete	340

\* A review of the data makes it clear that Texas data are incomplete from ISO.