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INSURANCE POOL STUDY COMMITTEE

Report to the Legislative Council
and the Members of the
First Session of the Sixty-seventh General Assembly

State of Iowa
1977

FINAL REPORT

INSURANCE POOL STUDY COMMITTEE

The Insurance Pool Study Committee was established by the Iowa Legislative Council as required by Senate Joint Resolution 1009 (1976 Session). The membership of the Committee is as follows: Senator Lowell L. Junkins, Chairperson; Representative Craig D. Walter, Vice Chairperson; Senator Robert M. Carr; Senator Warren E. Curtis; Senator Gene W. Glenn; Senator James W. Griffin, Sr.; Representative Roger A. Halvorson; Representative Maurice Hennessey; Representative Robert A. Krause; and Representative Robert M. Kreamer.

SCOPE OF STUDY

The study specified by S.J.R. 1009 encompasses the availability and cost in Iowa of certain kinds of insurance: The various types of insurance coverage purchased by governmental subdivisions, liability insurance for health care providers and other occupational and professional persons, and liability insurance for manufacturers and distributors of products. The Resolution cited several problems perceived to exist in those insurance markets, and required that the Committee investigate the following subject areas:

1. The causes and effects of the high cost and unavailability of insurance in those markets.

2. Remedial legislation, including the following:

   a. The feasibility of creating a state insurance pool to provide insurance for governmental subdivisions.

   b. The feasibility of insuring health care providers, other professions and occupations, and manufacturers and distributors of products by that state insurance pool.

   c. Other remedial legislation, including reinsurance pools, revisions of the Iowa Municipal Tort Claims Act, and revisions of the Iowa tort laws in general.

The Resolution provided that the Committee submit its findings and recommendations to the Sixty-seventh General Assembly in January, 1977.

NATURE OF COMMITTEE INVESTIGATION

The Committee met during the 1976-77 legislative interim for a total of six days, and during four of those days received statements, comments and opinions from many persons, professions and industries. The commentary expressed a wide variety of

opinions and concerns about the subject, and contained numerous recommendations for legislative action. Generally, the Committee found that within each of the insurance markets under consideration there is considerable though not universal agreement that action by the General Assembly is necessary, that certain proposals are believed by some to be solutions, and that nearly all of the proposals are controversial.

Much of the controversy which surrounds those recommendations arises because of the absence of conclusive data: Data which would enable the Committee to conclude that a specific proposal would have the desired ameliorative result. The Committee sought information, but discovered that those aggregate statistics from which predictions might be made presently do not exist. In addition, it yet has to be determined if many of the suggested legal impediments actually exist in Iowa law. Investigations are being made by various insurance industry organizations and by the federal government, but results are not anticipated before 1977 at the earliest.

The Committee requested studies of limited scope from two sources outside of the Committee. The Iowa Bar Association and the Academy of Trial Lawyers agreed to submit responses to a series of questions and a drafting proposal presented to them by the Committee. Three members of the insurance faculty of the State University of Iowa agreed to submit a report on the experiences of other states with a state-operated insurance pool. Those reports are expected in January and February of 1977.

SUMMARY OF EXISTING CONDITIONS

The information received by the Committee indicates that there is widespread concern on the part of governmental subdivisions, several of the professions, manufacturers and distributors of products, and the insurance industry about the existing conditions, and about the future of the liability insurance mechanism. During the past decade or so the following developments have occurred: The number of claims payable under liability insurance policies have been increasing at unpredictable rates; the amounts awarded as judgments against insureds have been increasing at unpredictable rates; the courts have been adopting changes in the common law of torts which expand both the definition and the scope of liability; and, as a response, the liability insurance industry substantially has altered its underwriting practices. These developments have resulted in widespread criticism of the existing tort liability system.

The concern and criticism has been generated primarily by the high cost and unavailability of liability insurance. Although "high cost" and "unavailability" are relative terms and constitute value judgments, it is clear that significant changes have occurred in recent years relative to both the cost and the availability of liability insurance to some types of risks. Appendix A to this report comtains selected portions of the information received by

the Committee. Those data suggest that the liability insurance mechanism is unstable and unpredictable compared with what it was prior to the 1960's.

Unpredictability is a common theme in the concerns expressed to the Committee. Insurers note that insurance theory and practice is founded upon predictions, and state that forces within the modern social, political, economic and legal systems have combined to attenuate, if not destroy, the essential predictability. Insureds point to the unsettling effects of unpredictability on their business and professions also. They state that recent increases in the cost of liability insurance cannot be anticipated, and in some instances cannot be absorbed, when budgets are being prepared; and they suggest that insurance problems may necessitate a Hobson's choice: Terminating the business or profession, or discontinuing insurance protection and thereby risking bankruptcy in the event of a large adverse judgment.

Plantiffs' attorneys assert that the individual is entitled to predictability also. They observe that the tort law is a continuously developing body of law which seeks to render justice between individuals. In essence that body of law establishes the principles that a person is entitled to expect that others will behave in a predictable (non-tortious) manner, and that if that right is violated then the person is entitled to recompense. It has been suggested, however, that the theory has limitations in reality: Small dollar losses are uncompensated because of the cost of obtaining relief, and an uninsured defendant may be a very unpredictable source of recompense.

Viewed in perspective, liability insurance is relatively cheap or expensive, and is relatively available or unavailable, depending upon the nature of the risk involved. Based upon the information submitted to the Committee it appears that cost and availability problems are widespread in the governmental subdivision area. This is suggested by the apparent fact that subdivisions of all sizes encounter similar problems. Representatives suggest that budget planning cannot anticipate the manifold increases in insurance rates which recently have been experienced. Hospital liability insurance problems also exist without regard to size. In both of those markets liability insurance is said to be available, although the number of insurers is very limited.

Products liability insurance is not available in Iowa for some products, is relatively costly for others, and presumably is available at "reasonable" prices for many products. The more "risky" products, those for which the greatest numbers or amounts of claims are experienced, are the ones which are the most difficult to insure. Similarly, health care practitioners engage in procedures which pose varying degrees of risk, and the liability insurance problem appears to exist only for the more "risky" types of practice.

Evidence is less available for other professions, such as engineers and architects, but it appears that there are limited numbers of insurers offering coverage, and that high cost has resulted in the decision by a substantial number of individuals and firms to practice without liability insurance.

In conclusion, the information available to the Committee suggests that the magnitude of the liability insurance problem varies greatly from market to market, and also varies greatly within each enterprise under consideration. Many commentators caution, however, that society rapidly is approaching the point where liability insurance as such will no longer be available in any form. Others argue that the existing environment will result in the elimination of "defective" goods and services from the economy; that certain types of services and products are uninsurable.

CAUSES AND EFFECTS

Senate Joint Resolution 1009 required that the Committee investigate the causes and effects of the high cost and unavailability of liability insurance. The information received suggests that there are three types of forces which combine to "cause" the liability insurance problem: Advances in technology, social inflation, and economic inflation. The effects are both short and long range, and although some short range effects can be observed, the predicted long range effects are beyond measurement at present.

Economic Inflation As A Cause

Insurers have pointed to economic inflation as one of the causes of the problem. There are several areas of influence, including the increasing costs of remedial care for the injured, and the increasing amounts of wage loss per individual for any given period of disability. Representatives of the insurance industry stated that economic inflation can be absorbed within the insuring process, but cautioned that extended periods of double-digit inflation cannot be sustained.

Technology As A Cause

Technology is used in its broadest meaning here: The totality of the means employed to provide human sustenance and comfort. Thus, advanced technology encompasses every new product, every medical procedure, every function performed by governmental subdivisions, and every structure designed and engineered for human use. Many of the procedures and devices which have been developed have the capacity to cause physical injury, and losses do occur. Part of those losses are the result of "accident", and the remainder are occasioned by the acts or omissions of individuals for which legal liability is imposed.

Liability insurance is the means by which persons who provide similar products or services, and thus incur similar risks of liability, attempt to distribute in a predictable manner individually unpredictable losses sustained as a result of that liability. Recent years have evidenced a large increase in the numbers of transactions which may result in legal liability. The greater numbers of employees and services of governmental subdivisions, greater numbers of manufacturers, distributors, and manufactured products, and greater numbers of practicing professionals, all combine to increase the number of transactions in which losses may occur and in which liability may be imposed.

In addition to that increased number of contacts between individuals, the capacity for harm increases as new products and services are developed. The more scientifically advanced a product or service, the greater the risk that harm may result. In our society the tendency is to encourage rather than discourage those risks.

Social Inflation As A Cause

Although economic inflation and technology usually are mentioned as causes, commentators most frequently point to "social inflation" as the primary cause of the high cost and unavailability of liability insurance. The term encompasses an imprecise group of developments within society, each of which arguably tends to diminish the capacity of the liability insurance mechanism to function. Among the cited factors are an increasing tendency of individuals to sue for imagined as well as actual wrongs; a shift in the nature of practice of plaintiffs' lawyers from automobile accident suits to actions based on professional liability and products liability; an increasing conviction within society that every loss ought to be borne by someone other than the injured; an increasing tendency of juries to render judgments based upon sympathy for the victim rather than the applicable legal principles; the tendency of the courts to make it easier for a plaintiff in a tort action to obtain judgment, whether by means of a relaxation of procedural rules, or by means of a substantive change in the standards of liability; and an increasing expectation on the part of the individual that every product or service should provide complete satisfaction.

Insurers and insureds alike point to this group of causes as being the most unpredictable, and thus the most difficult to absorb within the liability insurance structure. The commentary presented to the Committee suggests that social inflation is propelling society to the point where the insurance system will be unable to provide protection against legal liability. Although evidence does not exist by which to prove or disprove that assertion, it is fair to conclude that those factors collectively referred to as social inflation are causing substantial changes in the liability insurance mechanism.

Effects

The impact of economic inflation, technology and social inflation is reflected in several significant changes which have been made in the insurance industry. The insurers recently have sought frequent rate increases to generate the higher reserves needed to pay increasing claims. Evidence of the rate increases experienced in each of the subject industries is contained in Appendix A of this report. These rate increases cannot be planned for, say the insureds, particularly when the increase is by a factor of five, ten, or even twenty, as have been the experiences of certain Iowa manufacturers. Manufacturers and professionals alike suggest that they often are unable to pass on in product or service prices the full amounts of the increases. These insurers suggest that they also have a planning problem. They note that the process of establishing rates requires the accumulation and analysis of large amounts of data, and that technology, and economic and social inflation always occur before that experience is obtained. As a result, they observe, the final data only indicate whether or not an error in ratemaking already has been committed.

In addition to rate increases, insurers have changed the amounts of insurance protection which they are willing to provide. In the health care area the change has been seen as a reduction in the maximum amount of coverage which a provider can purchase from a given insurer. Thus a physician often finds it necessary to obtain layers of coverage from several different insurers, and in some instances may find it impossible to obtain the full coverage which he or she believes necessary. The extreme of this situation has been experienced in the health care industry as many insurers have ceased to write liability coverage altogether.

Local governments also have experienced a more restricted market. A major Iowa underwriter withdrew from the market entirely in 1976. Representatives indicated that although coverage appears to be available to all subdivisions, individual companies are more selective and premiums have increased over a period of one year by aproximately 100% for counties, as much as 300% for one city.

Manufacturers also note increased selectivity by insurers. And they note that insurers are writing policies with larger deductibles, thus requiring the insured to absorb a greater number of claims.

A third practice of insurers, and one which causes the most concern, perhaps, is that of refusing to renew the policy of a particular individual or company. The insurers observe that insurance can only be written to protect against risks, not probable losses, and that if a product has been adjudged defective, or if a professional has been adjudged "incompetent", then insurance cannot be written to protect against the probability of future claims. Insureds criticize this practice as unfair; and they suggest that it is the fault of legal theories which attach liability where there ought not to be any.

Ultimately, the effects felt by insurers and insureds have both direct and indirect effects on consumers. At least a substantial portion of the higher costs of insurance are experienced as a more expensive product or service. Or, a product or service may be withdrawn from the market. It also has been pointed out to the Committee that if a manufacturer is forced to close the doors of its business, its personnel become unemployed, perhaps indefinitely.

The long range effects of the liability insurance problem are matters of opinion and of speculation. The insurance industry indicates that numerous adjustments are being made in an attempt to assure the continued existence of liability insurance. They caution, though, that without legislation which returns some predictability to the legal system the insurance industry will not be able to offer this assurance.

Assuming that the liability insurance mechanism can be maintained, several long range effects appear reasonably predictable. Those products or services which presently are the most costly to insure either will have to be priced much higher in order to reflect the social costs resulting from their use, or will disappear from the economy altogether, or will have to be subject to a subsidy from other insured products and services or from some other source. Some commentators suggest that elimination of the product or service is the only alternative, however, because a subsidy is politically and socially unnacceptable and because most individuals and companies are unable to withstand the costs imposed by the present liability system. Health care practitioners state, for example, that unless relief is provided anesthesiologists they will cease to practice, and it is noted that anesthesiology is an essential part of the practice of medicine.

Another effect which has resulted, and which logically would seem to be of major significance in the future, is a concerted effort to reduce the number of severity of losses. The various crises which have been felt in the subject industries emphasize the need to assess the capacity for harm of the various products and services, and it can be documented that changes have been made or suggested in each of the industries. Some observers state, however, that this results in defensive overkill; that some health care practitioners order unnecessary procedures for the purpose of protecting themselves against legal liability, and that some manufacturers attempt to produce "idiot proof" products.

Insurers and insureds both contend that the effects of the high cost and unavailability of liability insurance will be detrimental, and that remedial legislation is a must if the liability insurance system is to be preserved.

REMEDIAL LEGISLATION

Much of the time consumed in Committee hearings involved the presentation of the various proposals which have been offered as remedial legislation. The general commentary received in this subject area is summarized below.

Feasibility of State Insurance Pool

The Committee consulted with members of the insurance faculty of the State University of Iowa respecting the feasibility of creating a state insurance pool to insure governmental subdivisions. All agreed that such a pool is feasible. It was stated to the Committee that five states have had experience with such pools, and that in each of those states the pool has suffered from mismanagement and from inadequate financing. The consultants stated that the tendency is to avoid adequate premium charges with the result that the fund eventually is rendered insolvent. A majority of the consultants suggested that local governments are in the best position to know their insurance needs, and that the state should not undertake to insure them. They observed that several Iowa cities presently have very effective insurance programs. Several of the consultants were of the opinion that even a properly funded insurance pool could not write insurance at rates which would be significantly less than those now charged by the private insurance industry unless tax revenues were used to subsidize the fund.

Some Committee members and others noted that many cities and counties do not assess their insurance programs wisely and do not take advantage of existing varieties and sources of insurance coverage which enable a governmental subdivision to obtain protection appropriate to its needs and resources. Suggestions were made that as alternatives to a state insurance fund legislation ought to be adopted which would enable cities and counties to enter reciprocal insurance agreements, and which would establish a state agency to provide risk management services to subdivisions.

Feasibility of Occupational Liability Insurance Pool

The consultants also commented upon the feasibility of providing insurance for professional and products liability by means of a state insurance pool. It was stated that such an undertaking would have all of the problems associated with a pool for governmental subdivisions, and in addition it would require the employment of a vast number of state employees to produce the services now performed by private enterprise. It was suggested that the high cost and unavailability of liability insurance is the result of the amounts being paid in the form of damages, and that a state-operated fund could not significantly reduce those costs.

Tort Reform

Most of the recommendations received by the Committee advocate changes in the existing methods of establishing legal liability and measuring compensable loss. All of the recommendations received are summarized in Appendix B of this report.

Considerable disagreement exists about the need or effectiveness of each of the proposals. An evaluation requires the balancing of the interests of the individual who incurs injury and the interests of the person facing potential liability. In a broader respect, each proposal requires a balancing of the social and economic needs of the state, and an estimation of the effects of the proposal. The capacity to estimate future effects presently is lacking. Many of the proposals entail the statutory enactment of common law principles which have been discarded by the courts, thereby seeking to reestablish the predictability which once existed. Others would have the effect of retaining current law while attempting to assure that the courts do not adopt changes in the future which would diminish the predictability which now exists or which may be developed. Critics observe that the end results of these proposals cannot be established, either in terms of the effect on cost or availability of insurance, or in terms of the individual and system costs which result when compensation for loss is not provided.

A factor which further complicates the decision-making process is the fact that the insurance industry operates on a nationwide basis. It has been observed that changes in the laws of Iowa cannot have much impact on the cost or the availability of liability insurance because ratemaking must be based on national averages and nationwide experience. This problem is asserted to be particularly difficult in the products liability insurance market because the greatest exposure to suit for many, if not most Iowa manufacturers is in other states where the product is sold, and thus Iowa law would not even apply in those circumstances. Utilizing these arguments, some observe that only federal legislation can produce a desirable result. Others suggest that a state-by-state approach is the traditional method of dealing with problems, and that uniform laws often result from individual state action.

COMMITTEE FINDINGS AND CONCLUSIONS

The Committee is unable to reach agreement on recommendations for legislative action. There is considerable evidence that severe liability insurance problems do exist for some individuals and companies. There also is evidence that the liability insurance industry as a whole is experiencing instability. Nevertheless, none of the recommendations which have been received by the Committee has been accompanied by sufficient information about potential effects to enable a majority of the

members from each chamber to agree that such a proposal ought to be recommended by the Committee. For that reason, the Committee does not submit any findings or recommendations.

Respectfully submitted,

LOWELL L. JUNKINS
Chairperson

APPENDIX A

League of Iowa Municipalities

444 Insurance Exchange Building – Des Moines, Iowa 50309 – Phone 515/288-1919

October 5, 1976

Samples of returns from survey conducted to determine cost and availability of liability insurance for cities in Iowa.

ONE YEAR INCREASES IN PREMIUMS FOR COMPREHENSIVE GENERAL LIABILITY

CITY	(POPULATION)	PERCENTAGE INCREASE	
Decorah	(7,703)	51.6%	
Clarinda	(5,420)	54 %	
Greenfield	(2,212)	55.1%	
Sibley	(2,955)	59 %	(165% over 4 years)
Fort Dodge	(31,263)	61 %	- $17,344
Oelwein	(7,735)	74 %	
Washington	(6,317)	80 %	
Estherville	(8,109)	100 %	
Donnellson	(798)	102 %	
Pella	(6,784)	135 %	
Goldfield	(722)	135 %	
Indianola	(9,611)	137.5%	
Clinton	(36,719)	200 %	
Council Bluffs	(60,348)	208 %	- $36,000
Atlantic	(7,306)	215 %	(over 3 years)
Mason City	(31,839)	230 %	- $43,000
Urbandale	(16,410)	260 %	- $30,000
Storm Lake	(8,591)	266 %	- $24,000
Moulton	(763)	309 %	

PATTERSON, LORENTZEN, DUFFIELD, TIMMONS, IRISH & BECKER
ATTORNEYS AND COUNSELORS AT LAW
720 INSURANCE EXCHANGE BUILDING
DES MOINES, IOWA 50309

TELEPHONE
AREA CODE 515
283-2340

June 30, 1976

Mr. Leroy Zeran
Legislative Research Bureau
State Capital
Des Moines, Iowa

Dear Zeke:

In compliance with your request for experience on the insurance on political subdivisions, three of our companies were the main writers--Hawkeye, Employers, and AID. I am in the process of trying to get the experience from all of them, but so far I have only been able to get Hawkeye's. If it will help any, in 1975 countrywide Hawkeye wrote 4,000,000 in premium with loss and loss adjustment expense of 3,760,000 and expenses of 1,400,000, giving a total of 5,160,000 or a net loss of 1,160,000. The experience in Iowa developed similar to this on premiums of 1,200,000. Loss and loss on expenses amounted to 1,552,000.

As soon as I get some additional information, I will pass it on.

Incidentally, for your benefit, enclosed is a 1975 underwriting loss for the Iowa companies.

Very truly yours,

William E. Timmons

WET:crb

Enclosure

CITY OF KEOKUK
MUNICIPAL BUILDING
KEOKUK, IOWA
52632

August 12, 1976

Mr. Larry W. Burch
Legislative Service Bureau
State House
Des Moines, Iowa 50319

Dear Mr. Burch:

This letter is in response to your letter of August 4, 1976 pertaining to problems the City of Keokuk has encountered with insurance.

We have three plans we are very much concerned with:

1. The General Liability and Umbrella Coverage. In April we were notified that they would not renew our policy. This led to a meeting with our local insurance association whereupon we asked for bids. We received only one bid and that was contingent on the company also providing the coverage for our City Building plan and our City Fleet plan. The premium that we are now paying is more than triple what we previously paid.

2. We were informed that we were fortunate to be awarded coverage on our City Fleet as provided in our specifications. There is the possibility that this premium will be considerably higher this coming year.

3. We are under an "assigned risk" on the Workmen's Compensation plan and, therefore, are not able to receive bids. The premium appears to be uncontrollable. We had a budget total of $3,500 in 1971 and the 1976 premium payment will be $27,000.

As a comparison, the 1971 total City Insurance budget was $15,050 and the 1976 total insurance budget is $47,609. We will exceed the 1976 budget by approximately $15,000.

We appreciate being notified and if further information is needed, please do not hesitate to contact me.

Sincerely yours,

J. A. Finerty
City Clerk

PATTERSON, LORENTZEN, DUFFIELD, TIMMONS, IRISH & BECKER
ATTORNEYS AND COUNSELORS AT LAW
928 INSURANCE EXCHANGE BUILDING
DES MOINES, IOWA 50309

August 16, 1976

Mr. LeRoy Zeman
Legislative Research
State Capitol Building
Des Moines, Iowa

Dear Zeke:

I have been able to develop a little more liability experience on towns only. This does not include counties.

Employers Mutual:

From June of 1973 to the end of May, 1974, wrote 269 policies with a written premium of $49,095.00, had 58 claims and paid losses of $21,000.00, and had a loss ratio of 42 percent.

From June of 1974 to May of 1975, they wrote 268 policies with a premium of $47,400.00. Again, they had 58 claims with losses of $32,000.00 and a loss ratio of 68 percent.

From June of 1975 to June of 1976 they wrote 277 policies with a premium of $68,653.00, they had 84 claims, paid losses of $231,461.00, have reserves set up of $235,370.00 for a total loss of $466,831.00 for a ratio of 679 percent.

In addition, there were two other claims paid since that date--one for Eagle Grove of $171,000 BI and $25,000 PD and loss adjustment expense of $31,000 and for the city of Madrid, liable payments of $95,000.

You can see how badly this business deteriorated. I don't know if this will be any help to you, but you're welcome to use it.

Very truly yours,

William E. Timmons

WET:crb

THE IOWA HOSPITAL ASSOCIATION
1908 Ingersoll Ave. • Des Moines, Iowa 50309 • Phone (515) 288-1955
DONALD W. DUNN, President

August 13, 1976

Mr. Larry M. Burch
Legal Counsel
Iowa Legislative Service Bureau
State House
Des Moines, Iowa 50319

RE: Interim Committee Study -- Cost and Availability of Insurance

Dear Larry:

In response to your letter of August 4, 1976, the Iowa Hospital Association would offer the following comments for consideration by the referenced Interim Committee.

The Iowa Hospital Association represents 147 Iowa non-profit community hospitals. During the past several years, Iowa hospitals have experienced increasingly significant difficulty in securing professional liability insurance coverage at a reasonable cost. With the withdrawal of the Argonaut Insurance Company from the Iowa market in the Spring of 1975, there remains essentially only one major admitted insurer in the Iowa hospital professional liability market. The monopolistic situation emanating from this reality during the last half of 1975 and thus far into 1976 has proven to be an untenable state of affairs for our membership.

While limited coverage is generally available throughout the state today, the cost is exorbitantly high with respect to the recognized loss experience of our member hospitals. As non-profit community hospitals, the unjustified escalation of professional liability insurance costs is of tantamount concern since they may be defrayed only through a directly proportionate increase in the cost of personal health care services for all Iowans. Iowa hospitals thus cannot be the "big losers" in this game -- the people of Iowa must be.

Another detrimental ramification of this monopolistic market is the usurption of hospital flexibility in the purchase of other insurance coverages. Hospitals are generally required to purchase "package policies" in which professional liability coverage is only one element. The purchase of the traditionally high profit and therefore highly competitive multi-peril insurance coverages has now generally become a prerequisite to the acquisition of professional liability insurance coverage. This situation is obviously not in the best interest of either hospitals or their patients.

In response to this untenable situation which has evolved within the State of Iowa, the Iowa Hospital Association Board of Officers and Trustees has created an insurance corporation chartered as a legal entity under Section 519 of the 1975 Code of Iowa, as amended. This corporation, the Iowa Hospital Mutual Insurance Corporation, will be fully owned and operated by Iowa hospitals and will be used exclusively for providing Iowa hospitals with professional liability insurance protection. Iowa hospital acceptance and participation in the development of this program to date has been exceptional. The IHMIC, with the approval of the State Insurance Commissioner, is projected to become fully operational and binding hospitals by October 1, 1976. With the successful implementation of the IHMIC, the people of Iowa, through their non-profit community hospitals, will need pay only the equitable costs of professional liability insurance as actuarially determined exclusively by Iowa experience. The IHA would be most pleased to provide the Interim Committee with additional insight into the underlying rationale of the IHMIC program and its potential for the people of Iowa.

This endeavor obviously does not address all of the many varied aspects of the medical malpractice situation as it exists in Iowa. It does, however, demonstrate that Iowa hospitals are willing to assume major responsibility in resolving this situation and are in fact exerting the requisite initiative. Ultimate resolution will of course necessitate a similar acceptance of responsibility and demonstration of initiative on behalf of other health care providers, the legal community, and the Iowa legislature. In Iowa, this problem is not an insurmountable one. The IHA will commit its resources to labor diligently with the Interim Committee in seeking resolution of this situation. At an appropriate future date, we would enjoy an opportunity to share with the Committee our perspective on the root causes of the problem, the aforementioned activity of the IHA and the IHMIC, and our suggestions for supportive legislative activity.

We would like to express our appreciation to you and the Interim Committee for providing us with this opportunity to express our views on the medical malpractice situation as it exists in Iowa.

Best regards,

Duane H. Heintz
Vice President
IHMIC

DHH:jj

cc: Donald W. Dunn, President, IHA

IOWA PHARMACEUTICAL ASSOCIATION

AFFILIATED with the AMERICAN PHARMACEUTICAL ASSOCIATION
[illegible] SHOPS BUILDING • DES MOINES, IOWA [illegible] • PHONE [illegible]
ROBERT GIBBS, Executive Director

August 19, 1976

Mr. Larry W. Burch, Legal Counsel
Iowa Legislative Service Bureau
State House
Des Moines, Iowa 50319

Dear Mr. Burch:

Your letter of August 4 requesting Association comment regarding problems pharmacists experience in obtaining and retaining malpractice liability insurance was received when I was on vacation. I regret that because of this I was not able to respond prior to August 15. Nevertheless, I did want to reply in order to be helpful.

Generally speaking, there are two types of coverage available. First, individual professional liability coverage for pharmacists and pharmacy students, $200,000/$600,000 liability limits with premiums around $25.00 per year to $70 for three year coverage. Also available is what is called Umbrella Liability coverage that includes both professional and personal liability. Frequently, carriers also provide, as a rider, professional liability within other forms of coverage, i.e. inventory coverage.

The nature of risk insured, there is no difference under tort law between malpractice in pharmacy, medicine, etc. The most common malpractice suits effecting pharmacists as defendants include:

1. error in filling a Rx
2. an illegible Rx
3. unusual or fatal dose
4. drug interaction

Specific problems are not significant at this time. There is little difficulty experienced in obtaining coverage. Costs are reasonable and in most instances coverage is not limiting based on factors such as areas of practice, i.e. community, institutional practice.

WA PHARMACEUTICAL ASSOCIATION

Some carriers deny liability insurance coverage to a pharmacist convicted or found guilty by Boards of Pharmacy. Provision in some contracts limits application caused by violation of statute or ordinance committed by insured.

Pharmacy malpractice litigation is more prevalent today than before, and in some areas a 300% increase in cases is noted. However, there is little change in liability rates being experienced.

The profession recognizes that as pharmacy increases the scope of its professional role and responsibility, utilizing its skill and knowledge and exercises its professional judgment to meet the change in health care delivery system, there will be a corresponding increased potential liability. Therefore, any legislation relating to malpractice must include pharmacy. This is emphasized by the interesting, recent article enclosed which discusses the experience of James Simmons, a pharmacist-lawyer, who specializes in pharmacy malpractice litigation. As noted some of my comments are referred to in this article.

At this time the Association does not feel it necessary to present testimony to the Committee at subsequent meetings. We would, however, like to be kept advised of meetings so we might attend.

Sincerely,

IOWA PHARMACEUTICAL ASSOCIATION

Robert G. Gibbs

Robert G. Gibbs, R. Ph.
Executive Director

RGG:jt
Enc.

DRUGGISTS MUTUAL INSURANCE Company

A. M. THORESON
SECRETARY

ALGONA, IOWA
50511

Today Is Monday
October 18, 1976

Mr. Robert G. Gibbs
Executive Director
Iowa Pharmaceutical Association
302 Shops Building
Des Moines, IA 50309

Dear Bob:

Insurance Services Office Rating Bureau did forward information to this Company as requested but did not break out the data in layman's language as requested. Most of the enclosed information is of an actuarial nature, Bob.

Several of the sheets do point out interesting statistics, however.

Item #1 does have a break-out of the employed pharmacist premiums and losses from 1967-1971. The "malpractice crunch" did not hit until two years ago, however. It is interesting to note that the loss ratio has practically tripled, although the statistics are five years in arrears. By deduction, this also indicates that our present rates are again not adequate.

Item #2 indicates the country-wide professional liability problem. The average paid claim cost in 1968 was $2,842.00. The average claim on December 31, 1972, was $4,762.00 The average has doubled in four years.

Item #3 does break out the professional liability by class for pharmacists (4021). The anticipated rate adjustment necessary is a 201.6% increase. Item #3a deals with miscellaneous medical professional liability coverage and the way those losses have increased, along with nurses, X-ray therapists, and veterinarians.

Item #4 is for the employed pharmacist, class 4021, and again, the actuarial basis for the premium increase.

The balance of the information is actuarial in nature and deals with the increase from .36¢ to .60¢ for Territory 2, which covers most of the United States. I believe Territory 1 is confined to the larger cities, such as Los Angeles, New York, Chicago, et

Until we can receive some modification in the present tort laws, limit the liability for non-economic loss, regulate trial lawyer contingencies, limit punitive damages, perhaps utilize split trials (try the liability issues first and if the liability is found, then determine damages), reinforce the power of all Health-Care Licensing Boards, and perhaps write professional liability coverage on a claims-made contract, we are simply in a state of "limbo". The insurance company must charge what the legal system demands. Apparently, based on the enclosed information and the figures submitted to the rating bureaus, they do believe the increase is actuarially sound. In addition, these increases have been filed with and approved by the various state insurance departments.

DJM/

DRUGGISTS MUTUAL INSURANCE Company

ALGONA, IOWA
50511

RESON
ANY

pe this information is of some use to you, Bob. As suggested in our letter, statistics from the Druggists Mutual are a very minor part of the over-all input companies throughout the United States. We do not have in-house actuaries liable, and must rely on the bureaus and their "expertise", accumulation of , etc., for our base guideline. We are returning a 22% dividend, however, which help to reduce the insurance overhead. As an Agency for Employers Mutual Companies, ave no control over their rate structure, etc. At present, they do not deviate druggists professional liability nor do they give any dividend.

erely yours,

GISTS MUTUAL INSURANCE COMPANY

retary

jkb
l.

Iowa Chapter, American Institute of Architects
621 Savings & Loan Building • Des Moines, Iowa 50309 • 515-244-7502

August 6, 1976

Mr. Larry W. Burch
Iowa Legislative Service Bureau
State House
Des Moines, Iowa 50319

Dear Mr. Burch:

Thank you for your bulletin of August 4 requesting preliminary information on insurance coverage problems especially, in our case, by the architecual profession.

The type of coverage involved is known variously as professional liability insurance or errors and omissions insurance. The nature of the risk insured is against claims for damages, property or personal, alleged caused by faulty design. The specific problem is excessive cost. Architecual firms in Iowa have been faced with past year with premium raises all the way from 75% to 300%.

I strongly suspect that we will request opportunity to present testimony to the committee and we will let you know within the next week who that person will be and will follow your requests on presentation procedure. Thank you.

Cordially,

Julian B. Serrill

Julian B. Serrill
Executive Director

JBS/du

IOWA ENGINEERING SOCIETY

4931 DOUGLAS, SUITE C, DES MOINES, IOWA 50310 PHONE 515 278-1653

ADDRESS REPLY TO:
Paul C. Sandy, P.E., Acting Executive Director

August 25, 1976

Mr. Larry W. Burch
Legal Counsel
Iowa Legislative Service Bureau
State House
Des Moines, Iowa 50319

Dear Mr. Burch:

Thank you for the opportunity to provide input to the legislative committee studying professional liability insurance. We apologize for the time it has taken us to respond, but wished to provide the most current information possible.

Iowa professional engineers do have a problem with professional liability insurance, which is the type of coverage involved. The nature of the risks insured against are negligent acts, errors or omissions of professional engineers.

At the present time the market is primarily limited to four insurance companies, only one of which is admitted in Iowa, and one of which is a specialty company. The carriers range from one which is fairly liberal in its underwriting but charges the highest premiums, to one which is very restrictive in its underwriting but offers the broadest form of coverage. Most of the policies are individually underwritten by risk - the areas of practice of the individual engineer or firm being insured. The rates have steadily been increasing and the market is extremely tight. The policies being written are exclusively "claims made". No "occurrence" coverage is available. A number of engineering firms are not presently insured.

There is extremely limited availability of coverage for contractual liability. The policy forms currently available do not provide coverage for the indemnity agreements and hold harmless agreements being requested by governmental agencies of engineers.

The availability of professional liability insurance at affordable rates is of extreme importance to professional engineers. Iowa is one of the few states that does not have a statute of limitations applicable to engineers and other design professionals on improvements to real property. The Iowa Engineering Society believes that a reasonable statute of limitations would be extremely beneficial in helping to alleviate the restricted professional liability insurance market which exists today.

Sincerely,

Paul C. Sandy, P.E.
Acting Executive Director

PCS:bj
cc: R. Mel

STRIVING FOR PROFESSIONAL EXCELLENCE

The following statistical information was secured from a sampling of the experience of twenty (20) Iowa voluntary non-profit community hospitals ranging in size from 26 beds to 620 beds and geographically distributed throughout the State. They collectively represent 24% of Iowa's short-term general acute hospital beds which have purchased hospital professional liability insurance protection from a variety of carriers since 1973.

The following chart reflects the cost of professional liability insurance for these twenty (20) hospitals since 1973.

	COVERAGE YEAR(S)			
	1973-74	1974-75	1975-76	Cumulativ Change 1973-76
Total Premium Dollars (Cost)	$324,209	$702,913	$1,704,766	--
Cost Per Bed	$86.14	$191.11	$463.50	--
Percentage Increase from Previous Year	--	117%	143%	426%
Cost Per Patient Day	$.33	$.72	$1.77	--
Percentage Increase from Previous Year	--	118%	146%	436%

This chart reveals that hospitals have collectively experienced an increase in excess of 100% in each of the past three (3) years. On a "cost per bed" basis the net increase from 1973-74 through 1975-76 was 426% for nearly identical, if not reduced coverages.

Since Iowa hospitals are non-profit organizations (nearly 50% of which are governmentally owned and/or operated) they do not have the financial capacity to absorb such cost increases within their operating margins which

generally do not exceed 2-3% of total revenue. These costs must thus be "passed through" to patients. The increased cost to each patient on a per day basis, as reflected in this chart, increased over 436% from 1973-74 to 1975-76; i.e., $.33 per patient day to $1.77 per patient day respectively. Although $1.77 is the average per patient day cost, several of the sampled hospitals reported substantially higher costs. For example, one fifty (50) bed rural hospital reported a cost of $4.96 per patient day and a three hundred and seventy-nine bed hospital reported a figure of $3.63 per patient day. It should further be noted that this represents only the cost to each patient of the hospital's professional liability coverage.

It does not include the physicians' component of professional liability, nor, the hospitals' other insurance coverages, such as general liability.

Looking at the cost to the patient from another perspective, the professional liability insurance cost increases as a percentage of the total hospital costs per patient day, is reflected on the following chart representing the twenty (20) sampled hospitals.

	COVERAGE YEAR(S)			
	1973-74	1974-75	1975-76	Cumulative Change 1973-76
Cost of Hospital Care Per Patient Day	$69.60	$76.56	$87.09	--
Percentage Increase from Previous Year	--	10.0%	13.8%	25.13%
Cost of Malpractice Insurance Per Patient Day	$.33	$.72	$1.77	--
Malpractice Insurance as Percentage of Hospital Care Costs Per Patient Day	0.47%	0.94%	2.03%	331.92%

Malpractice insurance premium costs in 1973-74 constituted less than one-half of one percent of the cost per day for an average patient; however, within a brief span of three years it now constitutes over two percent of the total cost. While two percent may seem minimal in absolute terms, the escalating trend established during this three year period is alarming. If this trend is not abated in the near future, it will obviously become a critically high component of the cost of providing patient care services.

The real significance of this chart is in documenting a 331.92% cumulative percentage increase (from .47% to 2.03%) in the relationship of malpractice insurance costs per patient day to the hospital care costs per patient day as contrasted with a 25.13 cumulative percentage increase (from $69.60 to $87.09) in the per patient day hospital care costs.

As a percentage of hospital nonpayroll expenses, malpractice insurance premium costs have escalated 287% (from 0.89% to 3.44%) over a three year period. As noted on the following chart, this is in contrast to the cumulative increase of 35.5% (from $36,429,000 to $49,506,000) in total nonpayroll costs of the twenty (20) hospitals included in the sample. The cost of malpractice insurance for hospitals has escalated far in excess of the other nonpayroll expenses associated with the delivery of health care services.

(See chart on following page)

	COVERAGE YEAR(S) 1973-74	1974-75	1975-76	Cumulative Change 1973-76
*Total Nonpayroll expenses	$36,429,000	$41,773,000	$49,506,000	--
Percentage of Nonpayroll Increase over Previous Year	--	14.7%	18.5%	35.9%
Total Premium Dollars (Cost)	$324,209	$702,913	$1,704,766	--
Percentage of Premium Dollars to Nonpayroll Expenses	0.89%	1.68%	3.44%	287%

*Approximate figures derived from American Hospital Association Guide Issue.

Another significant figure on this chart is the nearly three and one-half percent (3.44%) of nonpayroll expenses attributable to only professional liability insurance premiums for hospitals. These are non-productive allocations of hospital resources. They increase the cost of providing health care and contribute measurably to hospital inflation, but they do not increase the quality of patient care.

RECOMMENDATIONS

The Iowa Hospital Association and its member hospitals have been willing to assume major responsibility in resolving this malpractice situation; and, in fact, have demonstrated the requisite initiative through the development of the Iowa Hospital Mutual Insurance Corporation. This program will not only address the issues of availability and cost; but, more importantly will address the root causes of the problem. This will be accomplished through the initiation of an extensive loss prevention/risk management program in conjunction with the Iowa Hospital Association. Also contributing to this program in varying degrees

STATEMENT OF THE IOWA MEDICAL SOCIETY
PRESENTED TO THE INTERIM INSURANCE POOL STUDY COMMITTEE
OF THE IOWA GENERAL ASSEMBLY

October 6, 1976

My name is Clarence H. Denser, Jr. I am in the private practice of medicine in Des Moines and specialize in pathology. It is my pleasure to serve as chairman of the Iowa Medical Society MedicoLegal Committee. It is my further privilege this morning to speak for the membership of the Iowa Medical Society. As was the case with the 1975 forerunner to this present study committee, we welcome the opportunity to continue to share our thoughts on the complex and broadening liability problem which is affecting Iowa and the entire nation.

This report is divided into two basic parts: (I) Statistical Material Pertaining to (a) Professional Liability Premiums and (b) Physicians' Income and Expenses; and (II) Recommendations for Further Remedial Legislation to Stabilize and/or Improve the Availability and Cost of Medical Liability Insurance. As it has been throughout our consultations with members of the Iowa General Assembly, the basic goal of the medical profession is twofold: (a) to contain and even lower medical liability insurance costs and subsequently (and importantly) curb the cost of health care to the people of Iowa, and (b) to provide a fair and just means of compensating those individuals who are victims of medical malpractice.

(I-a) - Statistical Material Pertaining to Professional Liability Premiums

(These medical malpractice premium projections are based on rates filed by the Insurance Services Organization (ISO) and obtained from the State Insurance Commissioner.)

FOUR-YEAR PROJECTIONS - TOTAL IOWA MEDICAL MALPRACTICE PREMIUMS

1. FOR $100,000/300,000 LIMITS

Physician by Class	Prior to 1972	7/5/72	6/17/74
1-(1,104 Physicians)	$ 225,216	$ 291,456	$ 437,184
2-(522 Physicians)	185,832	240,562	360,702
3-(156 Physicians)	120,588	156,156	234,156
4-(806 Physicians)	830,180	1,074,398	1,612,000
5-(400 Physicians)	515,200	666,800	1,000,400
TOTAL PREMIUM	$1,877,016	$2,429,452	$3,644,442

Physician by Class	12/31/74	3/1/75	1/5/76
1-(1,104 Physicians)	$ 507,840	$ 794,880	$ 927,360
2-(522 Physicians)	420,210	675,990	789,264
3-(156 Physicians)	269,568	343,336	399,828
4-(806 Physicians)	1,856,218	2,957,214	3,444,038
5-(400 Physicians)	1,152,000	2,348,800	2,733,200
TOTAL PREMIUM	$4,203,836	$7,120,240	$8,295,690

(A 442% Increase is Noted for this 4-Year Period.)

* * * * * * * * * * *

2. FOR $200,000/600,000 LIMITS

Physician by Class	Prior to 1972	7/5/72	4/17/74
1-(1,104 Physicians)	$ 258,336	$ 330,096	$ 486,864
2-(522 Physicians)	208,278	267,264	396,720
3-(156 Physicians)	134,004	172,692	257,712
4-(806 Physicians)	917,228	1,184	1,770,783
5-(400 Physicians)	568,000	733,600	1,097,600
TOTAL PREMIUM	$2,085,846	$2,687,666	$4,009,678

Physician by Class	12/31/74	3/1/75	1/5/76
1-(1,104 Physicians)	$ 582,912	$ 901,968	$1,077,504
2-(522 Physicians)	475,542	761,076	910,368
3-(156 Physicians)	305,604	388,596	465,348
4-(806 Physicians)	2,100,636	3,339,258	4,000,984
5-(400 Physicians)	1,302,000	2,648,400	3,173,600
TOTAL PREMIUM	$4,766,494	$8,039,298	$9,627,804

(A 462% Increase is Noted for this 4-Year Period.)

* * * * * * * * * * *

3. FOR $1,000,000 LIMITS

Physician by Class	Prior to 1972	7/5/72	4/17/74
1-(1,104 Physicians)	$ 323,472	$ 407,376	$ 591,744
2-(522 Physicians)	253,170	322,596	475,020
3-(156 Physicians)	161,772	207,636	308,724
4-(806 Physicians)	1,103,414	1,420,172	2,116,558
5-(400 Physicians)	681,600	878,000	1,310,000
TOTAL PREMIUM	$2,523,428	$3,235,780	$4,802,044

Physician by Class	12/31/74	3/1/75	1/5/76
1-(1,104 Physicians)	$ 748,512	$1,148,160	$1,440,720
2-(522 Physicians)	604,476	962,046	1,241,040
3-(156 Physicians)	386,880	491,088	617,604
4-(806 Physicians	2,653,352	4,211,350	5,301,062
5-(400 Physicians)	1,643,600	3,336,000	4,201,600
TOTAL PREMIUM	$6,036,820	$10,148,644	$12,722,026

(A 504% Increase is Noted for this 4-Year Period)

IMA PRODUCTS LIABILITY QUESTIONNAIRE RESULTS

(Questionnaire was mailed to members August 6, 1976)

Number of companies surveyed - 700.

Number of respondents - 138.

*In 1970 85 companies paid $1,733,523 in product liability insurance premiums.

In 1975 these same companies paid $3,514,006, an increase if 184.87% over 1970.

In 1976 these companies paid $5,367,026, an increase of 335.08% over 1970, and a 52.7% increase over 1975.

87 respondents indicated they had sustained no product liability losses to justify the increased premiums, while 18 respondents reported minimal losses and 18 reported losses or potential liability justifying increased premiums.

84 companies reported no difficulty in securing products liability insurance, while 17 companies reported some difficulty and 10 companies reported severe problems in securing product liability insurance.

23 companies indicated that if they could not purchase product liability insurance, they would self-insure.

23 companies indicated they would close if unable to secure insurance. 22 would curtail operations, 14 would make no change in their operations, 9 did not know what they would do, and 18 indicated a large lawsuit would put them out of business.

9 companies reported having their product liability insurance cancelled and 7 companies indicated they are self-insured.

Members surveyed were asked their opinion of the current product liability situation in their business and how they viewed the future of the problem. 23 companies indicated no product liability problem, 55 indicated it was a normal problem and 41 indicated it was a severe problem.

Two companies indicated product liability problems were decreasing, 72 indicated they were increasing, and 42 indicated product liability problems were increasing to mammoth proportions.

*(The remainder of the companies reported data too insufficient to permit tabulation.)

Prepared by:
Iowa Manufacturers Association
1212 Des Moines Building
Des Moines, Iowa 50309
Telephone 515/244-6149

September 1976

IMA PRODUCTS LIABILITY QUESTIONNAIRE NO. 2 RESULTS

Number of companies surveyed 140
(Questionnaire No. 2 was mailed 9/13/76 to companies responding to the August 6 questionnaire and to IMA Product Liability Committee)

Number of companies responding 76

Summary of questionnaires from companies with gross sales over $5 million:

Number of companies 35

Number of employees

51 - 100	4
101 - 250	10
251 - 500	12
Over 500	9

Number of self-insured

Yes	4
No	29
No answer	2

Degree of risk involved in company's product

High	3
Medium	19
Low	11
None	2

Product Liability insurance cost as % of net income (profit after taxes)

Over 15%	7
12.1 - 15%	0
9.1 - 12%	0
6.1 - 9%	1
3.1 - 6%	4
1.1 - 3%	5
1% or less	15
No answer	3
Highest	40%

Summary of questionnaires from companies with gross sales of $2.5 million to $5 million

Number of companies 17

Number of employees

26 - 50	4
51 - 100	8
101 - 250	5

Number of self-insured

Yes	2
No	14
No answer	1

Degree of risk involved in company's product

High	0
Medium	5
Low	8
None	4

Product Liability insurance cost as % of net income (profit after taxes)

Over 15%	1
12.1 - 15%	0
9.1 - 12%	2
6.1 - 9%	2
3.1 - 6%	2
1.1 - 3%	1
1% or less	7
No answer	1
Highest	22.7%

Summary of questionnaires from companies with gross sales of $1 million to $2.5 million

Number of companies	19
Number of employees	
11 - 25	4
26 - 50	6
51 - 100	9
Number of self-insured	
Yes	1
No	17
No answer	1
Degree of risk involved in company's product	
High	1
Medium	4
Low	14
Product Liability insurance cost as % of net income (profit after taxes)	
Over 15%	1
12.1 - 15%	0
9.1 - 12%	0
6.1 - 9%	1
3.1 - 6%	3
1.1 - 3%	3
1% or less	8
No answer	3
Highest	22%

Summary of questionnaires from companies with gross sales of $500,000 to $1 million

Number of companies	4
Number of employees	
11 - 25	3
26 - 50	1
Number of self-insured	
Yes	0
No	3
No answer	1
Degree of risk involved in company's product	
High	0
Medium	0
Low	3
None	1
Product Liability insurance cost as % of net income (profit after taxes)	
Over 15%	1
Less than 1%	2
No answer	1
Highest	41%

- Fairfield Engineering & Manufacturing Company, Fairfield, Iowa - livestock fountains and swing gate for the wood industry: "We cannot buy product liability insurance for the (swing gate) line at any cost, yet we are responsible for all the 6,000 gates in use, over their expected life of 40 years. If we are sued on a claim for an accident occurring after April 21, 1976 ... the expiration date of (our) insurance ... this firm will be bankrupt and closed. 38 years of work by many people will go down the drain".

Confidential statistics (for Iowa mirror - not attached exhibits):

- Al-Jon, Incorporated, Shipman, Iowa - recycling equipment (car crushers, tin balers, hydrostatic loaders): In six years liability premium increased from $1,500 to $33,290 - an increase of 22 times. This firm employs only 61 employees.

- Easton Corporation, Waverly, Iowa - power cranes and shovels: Product liability premium in 1970, $20,353; 1976, $392,848, an increase of over 19 times. With 580 employees, the premium amounts to $680 per employee.

- Clay Equipment Corporation, Cedar Falls, Iowa - also excavators and scraper conveyors: 1970 product liability premium, $6,830; now forced to self-insure, setting up a non-tax deductible reserve this year of $249,646. An increase of 35 times. With 400 employees this amounts to a per employee expense of $600.

- Miracle Recreation Equipment Company, Grinnell, Iowa - a leading playground equipment manufacturer: "One company was quoted $393,000 for $300,000 limit of liability, and received another $520,000 quote for $500,000 coverage". This firm is now completely self-insured, without even umbrella coverage for catastrophic losses.

- Sudenga Industries, George, Iowa - farm implement attachments: 1975 product liability premium, $1,726; 1976 premium, $24,967, an increase of 11 times.

- Contract Packaging, Inc., Norwalk, Iowa - aerosol sprays for agriculture: Insurance over the last eight years had never been over $500. This year the firm was quoted by the same insurance company an estimated premium of $100,000 per year. This company's annual sales are only $300,000.

- Cooper Manufacturing Company, Marshalltown, Iowa - makers of power lawnmowers and trailers: "Our product liability insurance ... has quintupled in seven years ... recently decided to dissolve our mower division ... will devote all energies and facilities ... to ... gaskets. We felt that serious losses could be expected ... by eliminating future losses, we were willing to volunteer termination pay to those we could no longer support".

The Cooper Company's employment dropped from 100 to 45 employees.

IOWA MANUFACTURERS ASSOCIATION

- Economy Forms Corporation, Des Moines, Iowa - steel forms for concrete construction: In 1970 paid $14,911 in product liability insurance premium, and in 1976, $383,608, an increase of 24 times. With 537 employees, the firm's cost per employee of this insurance is $630. A spokesman says, "Our losses do not justify premium increases".

- Nissen Corporation, Cedar Rapids, Iowa - gymnastics equipment manufacturer: Although a small company ($6.5 million equity), it is the world's leading supplier of gymnastic apparatus in terms of both dollar sales and quality. Nissen is now completely self-insured, and if the present loss experience continues, because of the number of accidents in gymnastics - not product failure - there is no doubt Nissen will be forced out of business by already staggering lawsuits. The result will be that equipment will be provided to United States gymnasts by remaining firms which are generally of lesser quality.

Bidirectional awards of the year go to:

- Marshalltown Trowel Company, Marshalltown, Iowa - manufacturers of hand trowels: With no claims nor threat of claims, paid $671 in 1970 for product liability insurance, and in 1976 are paying $6,036!

- Hawkeye Pen Shop Company, Sioux City, Iowa, paid $7,000 liability insurance premium in 1975, and $8,000 in 1976. Premium tripled and the product manufactured is pens!!!!

Iowa in July, for an overall rate increase of 29 percent, but this is based on a very small amount of premium--less than $700,000. Their statistics (policy year) are only up to 1973 and the remainder of the data is based on county-wide experience, factored.

Following is a breakdown on some of our companies who keep their own products liability statistics, but it should not be interpreted as having industry-wide credibility.

IOWA PRODUCTS LIABILITY

Year	Company	Premium	Incurred Losses	I/E	Loss Adj. Expense	Other Expense
1st 6 mo. 1976	EMC	217,988	501,098	229.9	60,383	77,386
1975	EMC	344,655	96,957	28.1	95,469	122,353
	Hawkeye	297,616	417,973	140.4	82,440	106,844
	Total	642,271	514,930	80.2	177,909	229,197
1974	EMC	280,485	101,731	36.3	64,512	107,987
	Hawkeye	142,096	140,327	101.4	28,703	56,270
	Total	422,581	242,058	57.3	93,215	164,257
1973	EMC	231,831	89,141 cr	--	44,047	92,964
	Hawkeye	75,176	--	--	6,991	26,687
	Total	307,007	89,141 cr	--	51,038	119,651
Combined Total		1,589,847	1,168,945	73.5	382,545	590,491

COUNTRYWIDE PRODUCTS LIABILITY

Year	Company	Premium	Incurred Losses	I/E	Loss Adj. Expense	Other Expense
1st 6 mo. 1976	EMC	910,174	609,877	67.0	252,118	323,112
1975	EMC	1,313,377	1,076,022	81.9	363,805	466,249
	Hawkeye	616,374	456,652	74.2	170,632	221,278
	Total	1,929,751	1,532,674	79.4	534,437	687,527
1974	EMC	1,032,319	648,869	62.9	237,433	397,443
	Hawkeye	351,912	263,975	75.0	71,086	139,357
	Total	1,384,231	912,844	65.9	308,519	536,800
1973	EMC	863,765	246,344	28.5	164,115	346,370
	Hawkeye	161,528	24,703	15.3	15,022	57,342
	Total	1,025,293	271,047	26.4	179,137	403,712
Combined Total		5,249,449	3,326,442	63.4	1,274,211	1,951,151

In conclusion, we would like to point out that long-term solutions are not now known because all the facts and all the information are still not available. The NAIC is gathering data and are running a closed claim survey similar to the work done in malpractice. The American Insurance Association is running a 30,000 closed claim study. None of

APPENDIX B

INSURANCE POOL STUDY COMMITTEE

November 30, 1976

PROPOSALS FOR LEGISLATION

AS PRESENTED BY

PARTICIPANTS IN COMMITTEE HEARINGS

1976-77 LEGISLATIVE INTERIM

PREPARED BY

LEGISLATIVE SERVICE BUREAU

FOR COMMITTEE USE

NOVEMBER, 1976

The following is a compilation of proposals or recommendations expressly or impliedly submitted by persons presenting commentary to the Committee during public hearings, and is prepared at the direction of the Committee. The letter designations in parentheses indicate the source or sources of the recommendation or proposal. Editorial comments have been added where staff believes alternative methods of drafting are possible, or where commentators have offered different versions of the same type of proposal.

-CAVEAT-

Nothing contained in this document is intended to be argumentative, or suggestive of the merits, or the absence thereof, of any proposal or recommendation.

The compilation uses the following format: recommendations which are common to more than one subject area or which are similar to 1975 legislation are listed first, and recommendations by each industry or industry group follow, including those listed previously as "common". As used herein, "subject area" means industry of concern per S.J.R. 1009, and includes architects and engineers, health care providers, local governmental units, and manufacturers and distributors of products. Any other "subject" who may be encompassed within the provisions of S.J.R. 1009 is excluded from this compilation only because commentary was not received.

"COMMON" PROPOSALS

1. STATUTE OF LIMITATIONS

Recommended in architectural/engineering and in products areas. Enacted in health care area in 1975.

-Comment-

The general effect is to establish a period of time beyond which recovery is precluded, whether or not cause of action has arisen or has been discovered. Could be made applicable only to strict liability claims, or could apply to negligence as well.

2. ARBITRATION

Recommended in health care area as voluntary binding arbitration. Recommended in architectual/engineering area as a mandatory procedure in cases below certain dollar amount.

-Comment-

In architectural/engineering area, pre-accident voluntary arbitration agreement would not have any effect where third parties are injured.

3. AD-DAMNUM - Prohibit claims for specific dollar amounts

Recommended in products area. Enacted in health care area.

-Comment-

The 1975 Act precludes dollar demand. Alternatively, a statute could permit specific dollar demands only for those amounts representing actual out-of-pocket losses.

4. SEPARATE TRIALS FOR LIABILITY AND DAMAGE QUESTIONS

Recommended in health care and products areas.

5. ELIMINATE LIABILITY IN THE EVENT OF MISUSE OR MODIFICATION

Recommended in architectural/engineering and products areas.

-Comment-

Could be drafted with burden on claimant to prove "proper" use, or as defense with burden of proof on defendant to prove misuse.

6. GENERAL DAMAGE LIMITATIONS

Recommended in health care, products, and architectural/engineering areas.

7. PUNITIVE DAMAGE LIMITATIONS

Recommended in health care and products areas.

-Comment-

Several approaches have been suggested, including elimination of punitive damage recovery, create limitation on amount which may be recovered, provide that payment of punitive damages awarded shall be to state rather than to claimant, and provide for proof beyond reasonable doubt before punitive damages may be awarded.

8. COLLATERAL SOURCE RULE

Recommended in products area. Enacted in health care area.

-Comment-

The 1975 Act provides for set-off against jury award. Proponent provides that collateral source evidence is admissible--Set-off not required.

9. CONTINGENCY FEES

Recommended in health care and products areas that contingency fees be regulated by statute. Enacted in health care area.

-Comment-

The 1975 Act provides for judicial supervision of contingency fee agreements. Alternatively, a statutory schedule of permissible fee arrangements could be established.

10. INSTALLMENT PAYMENT OF JUDGMENTS

Recommended in health care and products areas.

-Comment-

The installment payment principle has been recommended both with and without a reversionary aspect. It is commonly understood, it is assumed, that only the future losses are subject to installment payment, and that losses incurred up to judgment date would be payable as a lump sum.

ARCHITECTURAL/ENGINEERING

1. Provide for absolute statute of limitations on liability for construction, alteration,etc., of real property. (IES)

2. Preclude liability where property is used in manner for which it was not designed. (IES)

3. Mandatory arbitration of claims where amount demanded is below specified dollar amount. (DPIC; IES)

4. Limit amount recoverable as general damages. (DPIC; IES)

LOCAL GOVERNMENTAL UNITS

1. Create a state insurance pool.

2. Establish a ceiling on liability of sovereign.

3. Create state office of risk management/insurance advisory assistance. (Halverson)

4. Provide enabling legislation to allow local governmental units to consolidate for purpose of risk management/reciprocal self-insuring/purchasing insurance. (Carr)

MEDICAL/HEALTH CARE SERVICES

1. Enhance licensing laws/powers of licensing authority. (IMA; IMS; IPA)

2. Require special verdicts respecting damage award. (IMS)

3. Authorize pre-incident agreements for voluntary binding arbitration. (IMA; IMS)

4. Create statutory definition of "negligence". (IMS)

5. Limit amount recoverable as general damages. (IPA; IMS)

6. Regulate contingency fees. (IPA)

7. Limit amount recoverable as punitive damages. (IPA)

8. Separate trials for liability and damages questions. (IPA)

9. Provide for use of claims-made insurance policies. (IPA)

10. Extend life of Joint Underwriting Association. (Commissioner of Insurance)

11. Installment payment of judgments. (IMA; with reversion, IMS)

12. Require proof of negligence beyond reasonable doubt. (IMS)

PRODUCTS LIABILITY

1. Provide for absolute statute of limitations for strict liability and/or negligence. (AMIA; III; IMA)

2. Eliminate punitive damage recovery. (AMIA; III) Require proof beyond reasonable doubt before punitive damages may be awarded. (IMA) Provide that payment of punitive damage award is made to state rather than to party. (IMA)

3. Establish state-of-the-art at time of manufacture as standard for negligence/strict liability. (AMIA; IMA)

4. Preclude ad damnum claims for specific dollar amounts. (AMIA; IMA)

5. Establish statutory definition and standard for "duty to warn". (AMIA; IMA)

6. Provide that compliance with federal/state regulations or product standards is a defense against liability. (AMIA; IMA)

7. Preclude liability where product has been altered or modified by person other than manufacturer. (AMIA; III; IMA)

8. Abolish claim/subrogation as against manufacturer where injured is eligible for workers compensation benefits. (IMA)

9. Prohibit introduction of evidence of product modifications adopted after the accident. (AMIA)

10. Preclude liability where product is "misused". (AMIA)

11. Limit amount recoverable as general damages. (III)

12. Seperate trials for liability and damages questions. (III)

13. Regulate contingency fees. (III; IMA)

14. Permit introduction of evidence of collateral source benefits. (IMA)

15. Installment payment of judgments. (IMA)

16. Provide that a loan agreement is void if it requires injured borrower to bring suit against a person who is or may be jointly liable with the lender for the injuries sustained by the borrower. (IMA)

-Comment-

The object is to prevent the use of contractual devices by which one "defendant" can bargain with an injured party to pay a part of the total damages, in exchange for which the injured person recovers the total amount of damages from a third person who is jointly liable with the defendant. The technique avoids common law rules which provide (1) that a release of one joint tortfeasor is a release of all, and (2) one joint tortfeasor does not have a right of contribution against other joint tortfeasors. By utilizing the loan agreement method which this proposal would nullify, one defendant can be assured of obtaining a "contribution" from another defendant.

MISCELLANEOUS

1. Authorize Insurance Department to employ insurance company examiners, similar to the authority of the Department of Banking to employ bank examiners. (Fischer)

2. Require the licensing of persons who provide insurance consulting services for a fee. (Commissioner of Insurance)

APPENDIX

AMIA - American Mutual Insurance Alliance

DPIC - Design Professionals Insurance Company

IES - Iowa Engineering Society

IHA - Iowa Hospital Association

III - Iowa Insurance Institute

IMA - Iowa Manufacturers Association

IMS - Iowa Medical Society

IPA - Iowa Pharmaceutical Association