MINUTES

ASSEMBLY COMMERCE COMMITTEE

April 4, 1977

Members Present

Chairman Harmon
Vice Chairman Mello
Mr. Barengo
Mr. Demers
Mrs. Hayes
Mr. Moody
Mr. Price
Mr. Sena
Mr. Weise

Guests Present

See Guest List Attached

Chairman Harmon called the meeting to order at 3:30 p.m. and announced that the first bill to be discussed would be A.B. 432.

Assembly Bill 432

Assemblyman Joe Dini stated that the last session of the Legislature created the Nevada Housing Finance Association which was to issue bonds for development of low cost housing or industry in Nevada. From figures he received last October, Mr. Dini finds that 95% of the money from the bonds has gone to Clark County and 5% to Washoe County and the other 15 counties have received nothing. A.B. 432 is an avenue to show there should be a method for distributing the money throughout the state. Mr. Dini said he had been given the excuse that there were no financial institutions in Lyon County who would handle this low cost money, apparently because they did not receive as high a rate of return. He feels this bill is a method of bringing forth testimony from various financial institutions to explain why this money can not be spread throughout the state.

Mr. Weise said he was not too sure he understood, reading the bill, how this association is going to affect these loans.

Mr. Dini said the bill might have to have some modifications. However, he feels the biggest problem is the mechanics of attempting to regulate federal institutions, whereas the legislature is probably capable of having some control over state banks and state lending institutions.

Mr. Mike Melner, State Commerce Director, and Bud Gubelman, Administrator of the Housing Division of the Department of Commerce, appeared in opposition to A.B. 432.

Mr. Melner said this program is supposed to work through the private sector. When this legislation was passed in 1975, the department of administration promised that there would be no forced participation in these private programs. The Commerce Department trys to make these programs attractive enough so that private lending institutions will participate. If the institutions do not choose to participate, that is the business decision of the institution in the private sector.

Mr. Melner felt this bill would in essence force institutions into the program and would destroy the program and the marketability of the bonds the agency issues. It is also his understanding that no state chartered bank could participate in this type of program because they are required to be insured by the Federal Deposit Insurance Corporation, so both the state charters and federal charters are restricted in participation. Mr. Melner said he didn't know how to encourage lending institutions to get money out into rural areas, but this piece of legislation wouldn't accomplish that purpose.

Mr. Harmon asked why the money was not used in rural areas. Mr. Melner explained it is the decision of the lending institutions and why they choose to make loans in a particular area is their business decision.

Mr. Harmon further questioned where the money had gone. Mr. Melner said $5 million was lent to First Western Savings, $1.5 million to Nevada National Bank, $500,000 to Family Savings, $500,000 to Frontier Savings and about $100,000 to Nevada Savings.

Mr. Price commented that there is a substantial area in his district that cannot receive loans, presumably because it was too close to the poverty areas. He would personally be interested in finding some way to assure that under programs such as this the money gets where it is needed, and would hope that A.B.432 would address this problem. Mr. Melner said he did not think the bill does as under A.B. 432 they would not be able to get money to lend since they could not sell securities based on that kind of a concept. Part of the problem in getting money to rural areas, according to Mr. Melner, is that the lending institutions are required to make only secured loans. For

certain reaons some of the rural areas are considered to be sub-standard or they don't have the security to secure the loans. Mr. Price said he knew the problem but would like to know the answer.

Mr. Weise asked if all the money that was available through the bonds has been put out. Mr. Melner answered that it had and that they were looking for another program sometime in the early summer, another bond issue, in the amount of $20 million. It will be a mortgage-purchase program which works somewhat differently than the current program.

Mr. Weise: What did you put out the first time?

Mr. Melner: 9.2 million. We also have some construction notes out.

Mr. Weise: When the money was made available then on this program, I suppose you contacted all the eligible institutions in the state to make--

Mr. Melner: We asked for commitments. How much money will you take. We got commitments from 5 institutions. They committed to take money under certain conditions, certain collateral requirements. We then sold the bonds and committed the money to them. They make loans on the basis of the terms and conditions we've established.

Mr. Weise: And the majority of that went to one institution and it was put out basically in Clark County?

Mr. Melner: No, that's not so. That institution does have an office in Reno and one in Carson City.

Mr. Weise: Do you track the money as it goes out? Do you find out eventually where that home loan goes? And 95% are in Clark County, is that correct? Can you give us an idea what the breakdown is?

Mr. Gubelman: I think it is going to work out more like the proportion of population.

Mr. Weise: So roughly half of the money would be in Clark County and half the money somewhere else?

Mr. Gubelman thought probably that was so. Mr. Harmon asked if the Commerce Department could come back next Wednesday with some ideas as to how to get money to the rural areas. Mr. Weise suggested that the committee go back to the original statute passed 2 years ago and build in it that the money has

to be apportioned out on a population basis to the 17 counties.

Mr. Melner stated that they would not be able to sell securities on that basis. Mr. Gubelman said the housing division does not ignore the rural area's problem. There is a program now to see how housing can be made available in rural areas. The Federal Government is going to pick 4 states to carry out the demonstration and Nevada has applied. They have a plan to put into effect if they are one of the 4 states chosen.

Mr. Weise: Mike, the original bill, wasn't the nature of it not to really put money out to high risk areas but to put money out to people who the interest rate alone could have been the discriminating factor as to whether or not they would qualify.

Mr. Melner said the whole program was to lessen the cost of money. Mr. Price questioned why it could not be specified that a certain amount of the money was to go to so-called high risk areas. Mr. Melner said he could discuss it with the underwriters, but doesn't know what their attitude would be.

Mr. Don Brodeen, representing the Mortgage Bankers Association, was the next speaker in opposition to A.B. 432. He stated there were several things about the bill that were completely impractical. He stated that it was difficult for lenders to travel long distances to make loans and then to service them. They also have trouble ascertaining the economic status of an area that is out of their territory and cannot afford to put a man who is knowledgeable in real estate lending in every area of the state. The bill could be construed to refer to all kinds of real estate lenders, not only the Housing Finance Association Mr. Brodeen referred to Mr. Price's area and said that declining areas are coming back into the area where they are able to get money. He also said FHA and VA go into any area.

Mr. Moody asked if Mr. Brodeen was saying that the only two areas he was interested in was Reno and Las Vegas. Mr. Brodeen replied they were interested in Las Vegas since that is where their office is. Mr. Moody felt that if Mr. Brodeen's services were available in other areas they would have sufficient loans to pay them to travel and service them.

Mr. Fran Breen, Nevada Bankers Association, said they realize there is a problem in the state which this bill is trying to correct. They are not opposed to some sort of solution, but this particular bill just won't do the job. A.B. 432 would have no application to national banks since the Federal Government is the sole agency can control them. As far as state banks are concerned, he would suspect that Article 8, Section 9, of the State Constitution would prohibit a state bank from

being a member of this association. Also, Mr. Breen pointed out that the national bank examiners are very strict with regard to loans in rural areas.

Mr. Jordan J. Crouch, Director of the Nevada Bankers Association, explained the difficulties confronting the bankers in making loans. They must have good security since they are loaning other people's money and the bank examiner is going to classify the loan.

Mr. Crouch suggests that the way to solve the problem in rural or other areas where there is not sufficient security for a loan is to have the State of Nevada guarantee the loan. FHA's are guaranteed by the Federal Government.

Mr. Weise asked why the First National Bank in Yerington doesn't apply for some of the money to put loans out in Yerington and Weed Heights at the frozen interest rate of 8%. FNB is presently loaning money at 8-3/4%. Mr. Weise further asked why they couldn't put out some 8% money to Nevada residents and if it was because they would be competing with their own 8-3/4% money. Mr. Crouch replied that if Mr. Weise had $10,000 to loan at either 8% or 8-3/4%, he thought he knew where Mr. Weise would put the money.

Mr. Melner also informed Mr. Weise that they loan the money to the banks at 6-3/4% and the banks can charge 8%, so in reality they only make 1.25%. Mr. Weise said perhaps Nevada has wasted time and energy with the agency in trying to solve the problem of trying to get money out and available to the citizens at an interest rate they can live with.

The discussion turned to Assembly Bill 490.

Assemblyman Sue Wagner appeared in support of the bill which she had introduced. Mrs. Wagner said she would speak to the concept of the bill rather than specifics about insurance. Basically, the bill prohibits discrimination against disabled persons in the sale of life, accident or health insurance unless claims experience, acturial projections and other data establish significant and substantial differences in class rates because of that particular disability.

Mrs. Wagner urged the committee to look at the concept of the bill. The Insurance Commissioner's office has advised her that they might be able to help her in amending the bill and if the committee desires any changes, Mrs. Wagner would be happy to work on amendments. Mrs. Wagner feels that many people would benefit by this bill and asked the committee to look at the problem closely.

Mr. Weise asked what standards would be utilized by the insurance industry in determining the person's rate class on the basis of disability and where the insurance company would get the information to make this legal discrimination. Mrs. Wagner was unable to answer but said that a representative of the industry who was to testify would be able to.

Mr. Bob Rodolph who works for Services to the Blind, State of Nevada, also appeared in support of A.B. 490. Mr. Rodolph told of his experiences in trying to obtain insurance because he has multiple sclerosis. He cannot obtain health, life or mortgage insurance. Mr. Rodolph also spoke of the problems of the blind vending facility operators in the state. A law was passed by Congress in 1973 which was to provide them with health insurance and life insurance. This program is still being studied by the Federal Government. Mr. Rodolph feels there is a need for this type of legislation.

Mrs. Jane Rosenbrock stated she is a member of the Governor's Committee for the Development of the Disabled and she is speaking for those disabled persons who are unable to get health insurance or life insurance. Something should be developed through a state plan in which these people could be covered. Four other states have eliminated discriminatory insurance practices. Mrs. Rosenbrock stated they had done considerable research in this area and found that there are mortality statistics available, but there are no morbidity statistics. Mrs. Rosenbrock submitted a paper covering some of the contacts they had made in an effort to receive information. (Exhibit 1). She urged the committee to give careful attention to the bill so that people with disabilities could be helped.

Mr. Weise asked if the four states Mrs. Rosenbrock had mentioned had developed any type of statistics. He further suggested there could be exclusions in policies for certain insureds--for example, blind people could be covered except for injuries which might be common to them, such as falling and breaking a bone, etc.

In answer to Mr. Weise's question on the availability of statistics, Mrs. Rosenbrock repeated her statement that there were statistics for mortality rates, but not morbidity rates. Mrs. Rosenbrock would encourage the legislature to request the insurance companies to make this information available.

Mr. Harold Jacobsen, a chartered life underwriter who sells life and health insurance, also appeared in support of A.B. 490. He explained that the insurance industry's morbidity tables are not adequate and they leave a lot of room for arbitrary and discretionary decisions by insurance companies. Mr. Jacobsen feels this problem is worthy of study and his

recommendation would be that a committee be appointed to study the matter during the interim.

Mr. Maynard Yasmer of the Rehabilitation Department was the next proponent of A.B. 490. Mr. Yasmer said the bill speaks for itself and he cannot indicate any data or statistics that prove or provide evidence for the fact that various disabilities are insurable. Conversely, Mr. Yasmer would maintain that the insurance companies to not have acturial evidence that would support their decisions in the denials in any of the rate classes.

Milos Terzich, representing the Health Insurance Association of America and the American Life Insurance Association, appeared in opposition to the bill. He feels that this bill is actually mandating insurance companies to cover any person who applies for health or life insurance notwithstanding what disability he has. Mr. Terzich would suggest that the committee study NRS 686A.100, 686B.050, 686B.060 and 686B.110 before taking any action on A.B. 490. These statutes have been enacted to provide rates in different classes so there is no discrimination.

Mr. Terzich further stated this bill would actually run the small company out of business because no small company has the available assets or ability to form or hire an acturial department to form these statistics. Mr. Terzich presented the committee with a statement of ALIA made to the State of California. (Exhibit 2)

Mr. Weise: It would seem to me that your two associations which make up almost 600 insurance companies would have substantial volume of data base and that you would have enough people insured under group policies or individual policies who develop a disability that you could develop some of these statistics and have some basis for acturial determination.

Mr. Terzich stated some data had been developed for common occurences such as high blood pressure and heart conditions. In diseases or illnesses which no one has had or for which there is no cure, it is difficult to get true statistics. Mr. Weise asked if the insurance companies have to justify their rates to the Insurance Commissioner. Mr. Terzich said the rates were subject to investigation. In further questions from Mr. Weise, Mr. Terzich stated that making of rates was not based solely upon statistical data. It is a judgment matter which varies from company to company.

Richard R. Garrod, representing Farmers Insurance Group, said he felt A.B. 490 was premature since statistics were short.

Vice chairman Mello stated that the next bill to be discussed would be A.B. 504.

Mr. Virgil Anderson, Triple A, spoke in support of the bill. The purpose of the bill is to amend the Nevada Motor Vehicle Insurance Act to clarify liabilities of reparation obligors to one another. At the time of the passage of the No Fault law, the tort exemption provided for a $750 threshold and there has been some question as to whether or not the threshold applied to the right of subrogation. The holding of the Insurance Commissioner is that it does not. The purpose and thrust of A.B. 504 is on page 2, line 14-16.

Mr. Garrod stated that Farmers Insurance Group supports this legislation.

Assembly Bill 505

Mr. George L. Ciapusci, Property Claim Superintendent, State Farm Automobile Insurance Company, stated that they were responsible for the original draft of the bill but the Legislative Counsel Bureau took liberty with their language to the extent that some of their intent has been completely reversed. Their original thought was to ask that the bill be killed in its entirety, but there are factors which are important enough to call to the committee's attention.

Mr. Ciapusci asked that subsections 1 and 2, page 2, lines 3 through 9, be completely ignored. They think subsection 3, 4 and 5 should remain.

Mr. Barengo said that he had received a list of suggested changes in No Fault signed by several people in the Reno area. They suggest that the following section be added after 698.290: "There shall be no subrogation between reparation obligors unless all the requirements of NRS 698.280 have been met regarding tort liability and the threshold." Mr. Barengo asked if that amendment would be acceptable.

Mr. Anderson felt it was directly contrary to A.B. 504. There was discussion between Mr. Barengo and Mr. Ciapusci regarding the suggestions which Mr. Barengo had received from the Reno Employment Association. Mr. Ciapusci said the insurance industry had not given their endorsement to all of the suggestions.

Mr. Jack Lehman, an attorney from Las Vegas, appeared in opposition to A.B. 505. Mr. Lehman said it would be an insidious thing if this bill were passed since the concept of no fault

insurance is that one is entitled to recover for his injuries regardless of fault. The idea behing A.B. 505 and the so-called first dollar subrogation would frustrate that and the entire concept of the no-fault bill. Mr. Lehman discussed the present no-fault bill and said this amendment would have a horrible effect on those people who have the greatest need for insurance protection. He further discussed various personal injury cases in which he had been involved.

Mr. Lehman feels that A.B. 505 is the result of rulings of Judge Thompson and Judge Wendell. Senate Bill 137 is contrary to this bill and it should be endorsed. A copy of Judge Wendell's decision was submitted to the committee. (Exhibit 3)

Mr. Barengo asked Mr. Lehman for his comments on A.B. 504 with regard to deleting the word "chronic" under subsection (i) on page 2, line 3. Mr. Lehman said he would have no objection since "chronic" was such a nebulous term.

There was further discussion between Mr. Lehman, Mr. Anderson and Mr. Ciapusci regarding A.B. 504 and A.B. 505.

Vice Chairman Mello requested that the Insurance Commissioner furnish the Commerce Committee with a copy of the Nevada Insurance Laws.

Assembly Bill 506

Mr. Virgil Anderson explained that this bill clarifies who death benefits are paid to. Mr. Barengo asked, "What if there's a will?" Mr. Anderson didn't know if that question has ever arisen. Mr. Barengo said he understood that they were trying to pin down who the benefits go to, but this bill does not accomplish that.

Mr. Garrod stated that Farmers Insurance Group supports A.B. 506. Mr. Ciapusci said that State Farm also agreed with Mr. Anderson.

Mr. Barengo and Mr. Jim Wadhams of the Insurance Commissioner's office discussed Insurance Bulletins 26 and 27.

Vice Chairman Mello stated if anything was to be done on A.B. 504, 505 and 506, the language should be cleaned up. He appointed Mr. Barengo and Mr. Price to review these bills.

Vice Chairman Mello further said S.B. 11 would not be heard at this time.

The meeting was adjourned at 5:45 p.m.

Jane Dunne
Assembly Attache

GUEST LIST

NAME (Please print)	REPRESENTING	IF YOU WISH TO SPEAK Pro	Con
Jane W. Rosenbrock	D. D. C	✓	
BARBARA GUZZIAN	D.D.C.		
[illegible]	Rehabilitation Div.		
[illegible] AK-499	SERV. TO THE BLIND, SAVE	✓	
[illegible]	REHAB. [illegible]	✓	
[illegible]	[illegible]		
Bud Gubelman	Housing		✓
DON BROOSEN	MORTGAGE BANKERS ASS'N		432
FRAN BROWN	Nevada Bankers		✓
JIM SANFORD	MASON VALLEY NEWS		
[illegible] SANFORD	MASON VALLEY NEWS		
JORDAN J. CROUCH	NEV. BANKERS ASS'N.		
LOUIS D. MOCK	MORTGAGE BANKERS Assc		
JACK LEHMAN	SELF		505
[illegible]	[illegible]		

STATE OF NEVADA
DEPARTMENT OF HUMAN RESOURCES
ROGER S. TROUNDAY, DIRECTOR
MIKE O'CALLAGHAN, GOVERNOR
YRL NYGREN, ADMINISTRATOR
EALTH PLANNING AND RESOURCES
DEVELOPMENTAL DISABILITIES COUNCIL
505 EAST KING STREET, ROOM 604
CARSON CITY, NEVADA 89710

The following contacts were made in an attempt to find insurance legislation relating to the following conditions, and actuarial statistics on mortality rates and morbidity rates for persons with epilepsy, autism, mental retardation, cerebral palsy, multiple sclerosis, cystic fibrosis, spinal bifida or other disabling conditions.

1. Called The Center for the Law and the Handicapped and spoke with Mr. Tom O'Donnell. He did not have any information concerning insurance legislation for these conditions nor statistics. He suggested contacting Dr. Franklin Smith.

2. Contacted Dr. Franklin Smith of the National Committee of the Association for Retarded Citizens. Sent a bibliography of mortality rates for the mentally retarded, but had no other information. Referred me to Rebecca Knittle.

3. Spoke with Rebecca Knittle at Legal Advocacy for the Developmentally Disabled of Minnesota. Rebecca sent copies of Minnesota's legislation 72A.20, "Methods, acts and practices which are defined an unfair or deceptice" and Chapter 296 relating to health care. Also sent subcommittee reports of testimony which lead to the enactment of this legislation. Also spoke with Anne Henry and Pat Suita from the same office.

4. Contacted the Child Development and Mental Retardation Center in Washington state. They were to send a copy of their insurance discrimination act.

5. Spoke with Tom Elornow and Gene Stevens of the National Association for Blue Shield in Chicago. They could not supply me with statistics for these conditions.

6. Vern Beckett of the California Association for Retarded Citizens said that there is evidence to show that accident risks for the handicapped in industry are less. He is currently working on a pilot project which provides group insurance coverage for sheltered workshops.

7. A copy of the Unfair Insurer Priactices Act was received from Mr. Mel Boynton of the Insurance Department of Pennsylvania.

8. The Health Insurance Association of America did not have statistics available and suggested contacting actuaries.

Exhibit 1

9. The Health Insurance Institute in New York did not have statistics available.

10. Charles Stevenson of the California Regional Office of the National Epilepsy Foundation sent materials on Life Insurance policies.

11. Sent a letter to John Booth an actuary for the American Council of Life Insurance. Received a response from Daniel Case, Associate Actuary. Mr. Case sent copies of chapters of the publication Medical Risks: Patterns of Mortality and Survival. In his letter Mr. Case stated, "Not all of the conditions mentioned in your request are represented in the enclosed material. The reason for the absence of one condition or another may have to do with the volume or quality of the raw data available, or it may have to do with the significance of the condition for life insurance purposes. For example, it may be the judgement of many life insurance underwriters, based in part on whatever raw data have been published elsewhere, that autism, which I understand is akin to juvenile schizophrenia, is usually ininsurable. It may have been felt that in a book such as Medical Risks, which was compiled in large part at least for use by the life insurance business and which is already 784 pages long, space should be devoted to conditions whose survival rates fall more within the insurable range. As you will note, the enclosed data relate to mortality rates, but not to morbidity rates. I do not know of a good source of morbidity data classified by type of mental or physical condition."

12. Talked with Georgia Massey of the Nevada Department of Commerce, Insurance Division, and she suggested calling the Health Insurance Association of America for statistics.

13. A letter was sent to The Prudential Insurance Company of America. The district office in California did not have the information and suggested contacting the Institute of Life Insurance in New York as the best source of information.

14. A request for actuarial statistics was sent to the New York Life Insurance Company in New York. They suggested obtaining a copy of the most current source of mortality statistics, Medical Risks: Patterns of Mortality and Survival.

15. In response to our request Farmers New World Life Insurance Company district office sent "Monthly Vital Statistics Report" published by the U.S. Department of Health, Education and Welfare and a copy of "Vital and Health Statistics Publication Series" by the National Center for Health Statistics.

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STATEMENT OF AMERICAN LIFE INSURANCE ASSOCIATION
AND HEALTH INSURANCE ASSOCIATION OF AMERICA
AT THE CALIFORNIA INSURANCE DEPARTMENT HEARING ON
INSURING VISUALLY OR PHYSICALLY HANDICAPPED PERSONS
HELD ON JUNE 22, 1976

This statement is submitted on behalf of American Life Insurance Association (a division of American Council of Life Insurance) and Health Insurance Association of America, whose 520 member companies have over 90% of the life and disability insurance in force in the United States.

For many years, life insurers doing business in California have been subject to Insurance Code Section 790.03(f) of the Unfair Practices Article which prohibits "Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract."

Similarly, health insurers have been subject to Insurance Code Section 10401, which provides that "Any incorporated insurer admitted for disability insurance and any agent of such insurer, that makes or permits any discrimination between insureds of the same class in any manner whatsoever with relation to such insurance, is guilty of a misdemeanor."

Obviously, these laws are intended to express the broad public policy of the state to prevent arbitrary and unfair discrimination among insureds of the same class who share an equal expectation of loss. We certainly agree with this view which mandates equity among policyholders and preserves the underlying principle

Exhibit 2

of insurance, whereby every insured contributes his fair share toward the risk involved and that each premium class consists of insureds who are exposed to comparable degrees of risk.

Private life and disability insurance is essentially a voluntary institution through which individuals can distribute and equalize the risk of measurable financial loss arising from accident or sickness. In the very early days of insurance it was often assumed that the fairest way to operate was to charge each insured an equal rate. It soon became evident, however, that if individuals found the operation of the risk-sharing mechanism to be unfair or inequitable and to their disadvantage, they would either elect not to enter the system or would withdraw if they had previously entered. The approach of charging equal rates to everyone failed to take into account the fact that new insureds who were characterized by impaired health or involvement in dangerous activities brought greater risks to the mechanism. When rates were not equitably differentiated on the basis of individual risk factors, an ever-increasing number of the better risks elected not to participate in the insurance mechanism, leading to an upward spiral of claim and premium rates and the eventual collapse of the arrangement. From such experiences emerged the principle that rates charged to individual insureds should be made fair and equitable by classifying insureds for rating purposes on the basis of risk factors which are relevant to the expected risk of loss.

In order to determine a fair and equitable price for life or health insurance coverage, insureds must be grouped into classes according to their expected risk of loss so that everyone in the same rate classification has approximately the same risk of loss and is purchasing protection having the same unit value as that sold to others in that class. Since expected risk of loss refers to the insurer's estimate of what will be the average occurrence of the event insured against among members of any given class, it is evident that some members of the class will incur losses very substantially in excess of this average, while others will

incur none. The fact that the event insured against will occur in the case of some members of the class but not in the case of others does not indicate inequitable treatment of any members of the class. So long as the occurrence of the event insured against is approximately equally likely for any member of the class, and the premium rate charged properly reflects this probability, then each member of the class is being treated equitably. This, in fact, is the very principle of insurance. If it were known which individuals would incur the loss and which would not, there would be no "risk" as such, and no need for insurance.

Classification of risks is, therefore, both a necessary business practice and a legal requirement. Our Associations recognize that all residents of California, regardless of their personal characteristics, should have an equal opportunity to obtain life and disability insurance if it can be furnished at a price that is commensurate with their expected risk of loss. At the same time, the law recognizes that in order for citizens to obtain life and disability insurance at a fair price, there must be underwriting and rating distinctions between insureds to reflect their different expected risks of loss. However, such distinctions must not be the consequence of unfair discrimination based on personal characteristics which have no connection with the expected risk.

It has sometimes been argued in the interests of social policy that even though there are differences between insureds in the expected risk of loss, equity in premium rates should be disregarded and the better classes of risk should subsidize the insurance costs of those who are unfortunate enough to be exposed to a greater risk of loss. However, as we have noted earlier, broad equalization of premium rates cannot work in a private insurance system where insureds who feel they are being charged an inequitable and unfair rate have the freedom to withdraw and make other arrangements. Many government programs have been created to serve social purposes by guaranteeing contributions to basic human needs through the compulsory transfer of wealth from the more affluent to the less fortunate

members of society. These programs provide a basic floor of protection which all members of our society enjoy as a matter of right. Superimposed upon this basic social protection, the private life and disability insurance system provides a means by which individuals can voluntarily purchase additional protection at a price that is commensurate with its value.

In order to provide some perspective to the problems which may exist in extending life and disability coverage to the handicapped through the private insurance system, it should be noted that there are differences in the methods in which coverages are marketed, namely, through group and individual policy mechanisms. Under the group mechanisms written through employers, the group is rated as a whole and there are relatively few underwriting restrictions as to individual risks. In these situations, when persons with handicaps are working, coverage offered by the employer is extended to these persons under the plan. Therefore, most of our discussion is directed towards individual insurance.

Within the context of Sections 790.03(f) and 10401, life and disability insurance companies have a responsibility to the public to establish underwriting and rating classification standards and practices on a basis that is fair to all. Consequently, such standards and practices should result in each insured paying a price for his insurance protection which is commensurate with that insured's expected risk of loss. Such a price should be determined as accurately as possible within the constraints imposed by costs and by the current state of the art of risk appraisal involved in the underwriting and classification process.

In the underwriting and classification process, insurers use all available information that is relevant to the risk. For example, a person's age and condition of health are data which are relevant to the degree of risk involved in most kinds of life or disability insurance coverage. As aids in classifying

risks, insurers have various tables of death, sickness, and/or accident rates and data of varying degrees of reliability and completeness concerning specified health characteristics. For example, there have been thorough studies of death rates among insured persons whose weight and/or blood pressure are above or below average. On the other hand, the available data concerning a relatively uncommon physical condition might be limited to one or two clinical studies consisting of a few cases not involving insured persons. The application of such data in the underwriting process could call for the exercise of considerable judgment, in accordance with previously established objective standards.

It should be noted that in making use of available data, insurers are not just trying to determine what the experience has been in the past. They are forming a judgment as to the expected risk of loss in the future. They must take into account trends in health and health care, longevity, employment, and other aspects of the environment. In estimating expected risk of loss, the presence of voluminous data may not of itself be sufficient to determine a proper rating classification. On the other hand, the absence of voluminous data does not necessarily prevent the insurer from making a sufficiently informed judgment to arrive at a fair rating.

A different type of consideration which insurers must always take into account is insurable interest. Life insurance has been sold traditionally to breadwinners whose premature death would occasion an economic loss to his or her dependents. Dependence on a breadwinner's earnings constitutes an insurable interest. Another type of insurable interest is dependence on the work done by a homemaker, such as a breadwinner's spouse. In disability insurance, an insurable interest is present when the insured, or the insured's family, would suffer an economic loss if the insured became disabled and/or incurred medical expenses.

Insurable interest must be present if an insurance policy is to be issued on a sound basis. If the insurer cannot discern an insurable interest at least

equal to the amount of life or disability insurance applied for, the insurer cannot be sure that the applicant does not have an ulterior motive in applying for insurance. The applicant may have plans to effect a personal gain through the insurance and may be concealing some important information concerning his insurability. Such a situation is incompatible with the role of insurance as protection against unforeseen loss. An insurer has little choice but to decline applications which do not involve an adequate insurable interest.

Over the years, as underwriters have gained more experience, there has been an extension of insurance to many risks that might previously have been declined. In addition, new occupations and avocations, the disappearance of some occupations, advances in the prevention, treatment and cure of disease, and the changing role of women in society have all led to changes in eligibility rules and in underwriting and rating standards to reflect the changed significance of certain individual risk factors as regards the risk of loss. These examples are given to indicate that acceptance and classification of risks for rating purposes is not a static process, but must be continually changing to reflect the estimates of expected risk of loss based on the best current information available. Experience of insured lives and other underwriting information is continually being updated so that premium rates charged will more accurately reflect the most probable expected risk of loss. Thus, what may have been an evidently fair and equitable classification criterion at one time may become inappropriate as conditions change.

A large element of judgment is involved in attempting to determine a fair risk classification, and reasonable men may differ on what classifications are appropriate for which handicaps. This is because there are, relevant to this hearing, many different kinds of physical handicaps, some of which may involve progressive diseases, and different insurers will probably have different ways of categorizing them and different ways of applying the available data, in their own judgment, to arrive at a probable underwriting action. Some handicaps may

fall in more than one rating class, and the final appraisal of the risk would depend on the severity and stability of the condition. The evaluation would be conducted through the usual underwriting sources, which in various cases could include medical examinations, special tests such as ECGs, X-rays, blood tests, urinalyses, etc., and/or medical records from attending physicians and hospitals.

In summary, the existing competitive system affords the consumer who feels he has been offered life or disability insurance at an unfair and inequitable rate an opportunity to seek a better arrangement from another insurer. It also provides a strong incentive to companies to charge fair premium rates. Charging premium rates which are clearly inequitable or unfairly discriminatory would be an unsound business practice that would not only violate the law but also would drive away the relatively good risks, leaving the insurer with only the bad risks.

As will become evident from the testimony of individual companies, underwriting is not an exact science, but an art which must take into consideration many factors-acturial and statistical studies, medical and clinical experiences, population statistics, social and economic conditions, other relevant material and changes that have evolved or are evolving in any of this data-apply it all to the situation of a particular individual using the underwriter's best judgment in order to determine the proper classification of risk for that individual on the basis of probable expectation of loss in the future.

We appreciate the opportunity to offer these comments and observations and will be glad to work with the Department in developing guidelines or regulations in this area of life and disability insurance, if any are found to be needed.

Respectfully submitted,

American Life Insurance Association

By Daniel F. Case

Daniel F. Case
Associate Actuary

Health Insurance Association of America

By Joe W. Peel

Joe W. Peel
Associate General Counsel

Thorndal & Li[illegible] (Gentner)

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Jul 19 3 14 PM '76
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CLERK
BY [illegible]

CASE NO. A 152817

CIVIL DOCKET "D"

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK.
* * * *

CAROL ANN JACOB,

Plaintiff,

-vs-

WILLIAM C. SPENCE; et al,

Defendants.

ALLSTATE INSURANCE COMPANY,

Intervenor,

-vs-

CAROL ANN JACOB, Plaintiff;
WILLIAM C. SPENCE; et al,

Defendants.

DECISION

Plaintiff, Carol Ann Jacob, and Intervenor, Allstate Insurance Company, have made cross motions for a partial summary judgment as to the Third Cause of Action alleged in the Intervenor's Complaint.

Intervenor's Third Cause of Action is based upon an alleged right of setoff.

It is alleged that the plaintiff, while riding as a passenger in the uninsured motor vehicle of William Spence, was severely injured as the result of an accident. Plaintiff was insured under a policy provided by Allstate which contained both uninsured motorist and no-fault coverage. Pursuant to their obligation under the no-fault coverage, Allstate paid basic reparation benefits to the plaintiff.

EXHIBIT "A"
Exhibit 3 - Commerce Comm.

The sole question now before this court is whether Allstate can offset any amount which may become payable to plaintiff under the uninsured motorist coverage by the sum they have paid as basic reparation benefits.

NRS 690B020(7) provides: "To the extent that a person is entitled to basic or added reparation benefits under Chapter 698 of Nevada Revised Statutes, he may not recover payments under uninsured motor vehicle coverage."

NRS 698.290(1) provides:

> "A reparation obligor does not have and may not directly or indirectly contract for a right of reimbursement from or subrogation to the proceeds of a claim for relief or cause of action for non-economic detriment of a recipient of basic or added reparation benefits."

After hearing oral argument and considering the points and authorities submitted, it is the decision of the court that NRS 690B020(7) and 698.290(1) can be read in harmony. NRS 698.290(1) merely precludes the plaintiff from recovering her basic reparation benefits under both the uninsured and no-fault provisions of the policy. The plaintiff may still recover the full value of her non-economic detriment up to the limits of her uninsured motorist coverage.

Accordingly, the plaintiff's motion for partial summary judgment is granted.

DATED this 19 day of July, 1976.

DISTRICT JUDGE