

Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent: None

Guests Present:

Barbara Bailey, Nevada Trial Lawyers Assoc.
Chris Beattie
Joan Beattie
Joe Braswell, Inter-Tribal Council of Nevada
Cal Dunlap, Washoe County District Attorney
Richard Garrod, Farmers Insurance Group
Virgil Getto, Assemblyman
Mike Medema, Department of Prisons
Peter Neumann, Nevada Trial Lawyers Assoc.
Phyllis Otten, Health Division
Bob Perry, Nevada Trial Lawyers Assoc.
James D. Pitts, Nevada State Medical Association
Richard G. Pugh, Nevada State Medical Association
Dr. David Rubsmen
Carvell Rhodes, Nevada Roads Commission
B. J. Smith, AAA
Lody Smith, Nevada Division of Forestry
Roy Trenoweth, Nevada Division of Forestry
John S. Vengil, Attorney
Trish White, Review Journal
Charles Wolff, Jr., Dept. of Prisons

Chairman Hayes called the meeting to order at 8:05 a.m.

ASSEMBLY BILL 96

Provides for periodic payments of certain damages recovered in malpractice claims against providers of health care.

Dr. David Rubsmen cited a case which took place in December, 1975. A young woman had gone in for cosmetic surgery; she was given the wrong gas and consequently became vegetative. Her family settled out of court for \$2,050,000. Dr. Rubsmen felt that with passage of AB 96 the patient will receive an allotted amount over the period of his life as opposed to a lump sum payment. With AB 96 funds would be

set aside for minor children, and monthly income for the recipient. This income would also be tax free.

Mr. Malone asked Dr. Rubsman if the children were allowed any of the monthly income that patient received. Dr. Rubsman stated that at age 18 the children would receive a lump sum payment for their college education, business venture or whatever.

Dr. Rubsman stated that because Nevada is such a conservative jurisdiction and doctor-oriented, any court which makes it possible for a company to decide to settle rather than fight is likely to benefit the patient. Periodic payments give tax free income plus provides the insurance company to settle more cases. This benefits the company and the patient. The amount of money to compensate the patient in an out-of-court settlement should be projected by the attorney's economist. A 4% increase every year for 18 years would double the amount of money being paid.

Dr. James D. Pitts of the Nevada State Medical Association felt that the passage of AB 96 would be of great benefit to the people of Nevada. As malpractice insurance fees increase so will doctors' fees increase to make up that increased cost. Structured settlements would make possible for these doctors to meet their obligations. Very few doctors would be able to come up with a million dollars but through purchasing annuity, payment could be made if damages did exist.

Dr. Pitts met with the governmental affairs committee of the Nevada State Medical Association and in their opinion to make the bill better than it currently reads, the following should be changed:

Section 2.

1. "Future damages" to include: Cover loss of future earnings; structured settlement added to amount of money paid out.

Section 3.

22. Unless in the judge's discretion he finds it would not serve the interest of justice, the court would decide whether you would receive structured settlement or lump sum payment.

Section 4.

9. Post security adequate to assure full payment of such future damages as awarded by the judgement. Leave it to the judge as far as adequate security. The judge can look at the company and decide if it has adequate funds. It is not necessary to set up trust funds and incur other expenses.

Section 7.

50. If patient dies does not mean payment would cease. Payment should be paid to person to whom judgement creditor owed duty to support as provided by the law immediately prior to his death.

The court which rendered the original judgement may also petition any party or modify the judgement to award an apportion of future damages in accordance with the act. For instance, if the bread winner died, the money would continue on as the widow's needs existed or as minor children's needs existed. This will protect the people not the insurance companies. The only benefit the physician would gain by this is possibly stabilizing the cost of their malpractice insurance.

In response to Mr. Brady's question, Dr. Pitts said physicians were paying approximately \$25,000 per year in malpractice insurance, the majority of physicians never have a malpractice suit brought against them but insurance continues to increase. Mr. Brady also felt that the patient did not realize but possibly half of the claim filed.

Next to appear was Mr. Dick Garrod, local insurance agent, who offered the following information as to why malpractice insurance was so high in Nevada.

1. Signal Imperial Insurance of Nevada is also grouped with the Bay area.
2. There are not enough doctors in Nevada to provide adequate assets to pay a tremendous loss.

Mr. Peter Neumann, Nevada Trial Lawyers Association, expressed his opposition to AB 96. Mr. Neumann felt that more cases would be settled; a structured settlement should be used when only both sides are in agreement, on a free manner basis. Mr. Neumann could not condone legislation that allowed insurance agencies to mandate terms of judgement. Mr. Neumann further stated that interest should be accrued at prime rate.

Mr. Horn questioned Mr. Neumann as to whether or not client had the option of receiving settlement right away. Mr. Neumann stated that they could but as an attorney he felt obligated to meet with client and inform him of different alternatives open to him in which he could invest his money.

Mrs. Joan Beattie and her son, Chris, appeared before the Committee next. Chris had been injured and taken to Carson-Tahoe Hospital, where they felt he had received negligent treatment. Mrs. Beattie felt that because this was a small community they were victims of malpractice.

Mr. Bob Perry of Laxalt and Perry Law Firm spoke next. In the past Mr. Perry stated that he had four clients who had filed this type suit. Because of the time element they settled out of court. His clients had private detectives following them, questioning their neighbors and following them the rest of their lives.

Mr. Perry stated that if this bill passed it would have terrible results. The only ones to benefit would be the doctors, not the banks, insurance companies or lawyers.

Mr. Perry called one of his clients to the table, Mr. Joe Belford, to speak to the Committee. Mr. Belford is a local casino dealer and he stated that he settled out of court because of the length of time involved. Mr. Belford said that this particular legislation would only protect the doctors.

Next to speak was Mr. John S. Vengil, a lawyer in Reno. Mr. Vengil stated that people who handle these cases go on for as long as five years. He cited one case where a woman lost the sight of her right eye through the fault of the doctor. The hospital put her through hearings before she settled out of court. Mr. Vengil stated that victims of malpractice should be placed in this category.

Assemblyman Virgil Getto stated that people in his rural community needed medical facilities but rural doctors are scared without insurance. If doctors cannot be given relief there will no longer be doctors in emergency situations. Unlike big cities the rural doctor has no one to back him up. By giving the rural areas AB 95, they will be taken care of in emergency situations. All the doctors in the rural areas support this bill.

ASSEMBLY BILL 256

Excludes certain persons from industrial insurance.

Mr. Carvell Rhodes, Nevada Roads Commission, stated that prisoners who were working outside the prison were exempt from compensation.

Mr. Banner questioned the origin of this bill.

Ms. Barbara Bailey of the Nevada Trial Lawyers Association stated that Clark County had introduced the bill. She stated that since the prisoners were in a temporary situation and were serving out their time they should not be allowed workmen's compensation.

Mr. Chuck Wolff of the Department of Prisons, stated that prisoners who work outside the prison were covered by NIC. He felt that this program worked well and could see no reason to change.

ASSEMBLY BILL 257

Prescribes conduct of examinations of prospective jurors in civil actions.

Mr. Peter Neumann, Nevada Trial Lawyers Association, felt that this does open questions as far as jurors' qualification.

Mr. Cal Dunlap, Washoe County District Attorney, stated that it is extremely important for the prosecutor and defense attorney to question prospective jurors.

Mr. Dunlap pointed out the recent Flood case where one of the jurors stated he was not going to convict anyone of that age. As this was a federal case, this limited questioning of the jurors.

Mr. Dunlap stated the questioning procedure is probably the least interesting, most boring, most tedious for both attorney, court personnel, jury, judge and everyone. Because it is so boring it does not allow for much questioning.

ASSEMBLY BILL 255

Provides for interest on judgements from accrual of cause of action and increase rate.

Mr. Peter Neumann, Nevada Trial Lawyers Association, stated that he was in favor of this bill. He said it is quite similar to a bill introduced by Assemblyman Harmon and felt Mr. Harmon's bill is better because it allows for judgement at the prime rate. With Mr. Harmon's bill or this bill, the existing law will be changed. After a judgement is rendered the interest on judgement, instead of starting from the date of judgement, it would allow interest from the date the accident or cause of action occurred.

Mr. Neumann cited Alaska and Wyoming as both providing an interest rate of 10%. The present rate of 7% on judgements only runs from the day the court signs the judgement. Today's market is not a fair rate of interest. The insurance company can loan the money out at 12 - 14%. They are encouraged by the 7% to file

an appeal which could delay the judgement as long as 1 1/2 years. This means that the insurance company does not have to pay anything but 7% from the date of judgement. If the appeal is lost they pay interest at present law but only 7%, not the going rate and make 14% and pay 7%. It is for their benefit to drag out the case even further.

Mr. Neumann brought up the fact that Mr. Vargas, a Reno attorney, had stated in hearings last week that this would encourage plaintiff lawyers to drag their cases out as the judgement would be more because of interest. Mr. Neumann stated that this was a most ridiculous, untrue statement. If this is done, it encourages settlements from the insurance companies' point of view instead of dragging feet on settlement. It would be more beneficial to try to settle the case early. The longer the insurance company can drag it out the longer they can use the money. Under a contract situation, if there are no provisions for attorney fees, judgement on interest under this bill the defendant would be required to pay interest from date of breach of contract.

Mr. Neumann stated he personally favored prime rate as Mr. Harmon's bill states simply because in today's monetary situation, rate of interest is fluctuating a great deal. It makes more sense to base it on the prime rate rather than a fixed rate.

Mr. Neumann felt this would unclog court cases. The carriers know the longer they delay the more beneficial it is to them because they can use the money at a higher interest rate.

Mr. Dick Garrod, Farmers Insurance Group, spoke next stating that apparently Mr. Neumann had read the financial statements of the fire and casualty companies incorrectly. Mr. Garrod stated that life insurance companies do invest in high interest notes but the law prohibits fire and casualty companies from lending money on mortgages. Farmers Insurance Group maintains a market for municipal bonds at 6% but no more. They are very restricted by law where they can invest their money. Mr. Garrod stated that they cannot go out and loan \$1 of surplus of casualty insurance on mortgages. The laws of the state are very strict on where money can be invested.

Mr. Garrod further stated that a lawsuit or attempt to recover from NIC is going to have to pay interest from date of occurrence. Mr. Garrod stated that if he should lose his hand while working in the state of Nevada and NIC paid his medical insurance; if it took nine months for this to stabilize and find out whether or not he could manipulate a claw, if they gave him \$5,000 for the loss of his hand, they would be paying interest from the date that he lost his hand. In any city, county or state which has an award made against it, it is subject to increase in cost.

Mr. Garrod said that Mr. Vargas' statement of last week applied to the same bill.

Mr. Garrod stated emphatically that this would increase the cost of insurance but he didn't know how much. He stated that his insurance group did not make money, it is the money of the insured that they manage and return to the people. Farmers Insurance of Nevada is now losing money.

ASSEMBLY BILL 95
ASSEMBLY BILL 96

Chairman Hayes stated that these two bills needed more looking into. Both had merit and committee should discuss them further. They would be discussed on February 13, 1979.

ASSEMBLY BILL 257

Mr. Horn moved for do pass as amended; Mr. Sena seconded the motion. The Committee unanimously approved the motion.

ASSEMBLY BILL 258

Mr. Fielding moved for do pass as amended; Mr. Horn seconded the motion. The Committee unanimously approved the motion.

ASSEMBLY BILL 256

Mr. Sena moved for an indefinite postpone as there was not much testimony of this particular bill. Mr. Malone seconded the motion. The Committee unanimously approved the motion.

Chairman Hayes declared the meeting adjourned at 10:25 a.m.

Respectfully submitted,

Sharon L. Day
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Secretary