The meeting was called to order at 9:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Don Ashworth
Senator Dodge
Senator Ford
Senator Raggio
Senator Sloan

ABSENT: None

S.B. 292 Provides for periodic payments of certain damages recovered in malpractice claims against providers of health care.

Dr. Neil Swissman, M.D. testified in support of this bill (see attached Exhibit A for his testimony) and read into the record letters from Attorney General Richard Bryan and Attorney Norman Hilbrecht) attached as Exhibits B and C).

Senator Dodge stated that according to Dr. Swissman, there are 11 states that have passed this type of legislation and it had resulted in reduced premium costs. He asked if Dr. Swissman could document that and was assured that information would be provided.

Senator Dodge asked which states have passed this type of legislation and was advised they are: Alabama, Alaska, California, Delaware, Florida, Kansas, Maryland, New Mexico, Utah, Washington, and Wisconsin. Within the last four months, Kansas, Utah and Wisconsin have had a reduction in their malpractice insurance premiums.

Senator Raggio stated that the theory of structured settlements is that in these types of actions, the settlement or award will be structured over a period of life expectancy of the injured party, and what may be termed a windfall doesn't pass over to the estate if the party dies before the expectancy date. In that event, it is returned to the insurance company. He asked if the party survives beyond that period, why isn't the settlement then extended?

Dr. Swissman explained that the dollar amount that would be set aside for that type of care would be no different if it is a lump sum payment initially, or if it is structured out. The injured party would end up with the same amount of dollars.

Senator Ashworth called attention to section 6, page 2. The way he reads #1, that provision could be modified except as controlled in subsection 2, which deals with accrual payments which have already accrued. He could not see where you couldn't come back in after this had happened. He was advised that that section does not contemplate an addition of the award.

Senator Close explained that the section only permits modification as to the amount and frequency of payments.

Senator Ashworth asked that if there is no specific definition of future damages, what happens in the event there are damages that relate to the estate or to the bread winner of the family? He asked if that comes under the classification of future damages, or if we are only talking about the cost that would be expended for his health care during the remainder of his life.

Dr. Swissman explained that the loss of income and all other expenditures come off the top - the initial lump sum. The only thing this bill intends to structure is the amount set aside for medical treatment and custodial care.

Mr. Charles O'Brien, former Chief Deputy A.G. for California, now in private practice and working closely with consumer and medical groups to rationalize tort law spoke in support of this bill and introduced Dr. David Rubsamen. Mr. O'Brien answered Senator Raggio's question that this payment is for life, regardless of how long the injured party lives. If the actuarial basis upon which the annuity was purchased turns out to be wrong, for either the casualty company that is on the hook for the judgment or the life company from which they purchased that annuity, they are still obligated.

Senator Raggio called attention to lines 25-27, page 2 which specifies that there is a provision that says "upon termination of the period payments or when the judgment debtor of the insurer." By contrast the payments end when the security runs out, and that runs out at the time that his life expectancy is reached.

Mr. Rubsamen stated that the manner in which the corpus of this fund is set, and this is uniform, is that the party responsible for that payment will retire an amount of money into an escrow account or a separate identifiable account. The interest from that will support the obligation. In section 7, it states "the satisfaction or expiration of all obligation." The satisfaction might be that there will be periodic payments until a double amputee has been completely rehabilitated over a period of time.

The expiration of the obligation would be the death of the patient. Satisfaction in one sense anticipates from the beginning that this person has a finite period of need for medical management or custodial care. An expiration of all obligations would normally be thought of as the patient who is going to be supported for life but is then going to die. The way periodic payments are set up, they are, by definition, required to satisfy the intent of the judge or jury which sets up the award, i.e., to take care of the full obligation for the full period of time. One does that by the nature of the fund set up and the interest payments from that go to satisfying the obligation and then at the end of that period of time that corpus comes back to the judgment debtor.

Senator Raggio asked if he means that the victim, on future damages, is paid for life, regardless of the amount of the judgment. His understanding is that the judgment is structured over the life expectancy of the judgment creditor.

Mr. Rubsamen explained that if the future damages (the fund that the jury sets for future custodial care) are $600,000 and the life expectancy is 30 years, which is the way this is done at the present time nationally, the INA or Metropolitan Life is approached. The way this is phrased at the present time is not "what are you going to charge me to assume an obligation for 30 years" but, "this patient needs life custodial care and it is going to run $20,000 a year." The amount of money we have to deal with is not more than $600,000. INA may well say, "we will pay out $20,000 a year for life for $370,000." The obligation to satisfy this periodic payment is very precise, it is spelled out and that is what they will assume. They may well even discount it lower than that. INA may have their doctors look at the individual and they might say that he is not going to last more than 5 years. They may feel that the jury was wrong or wasn't sophisticated enough to make an accurate assessment. So they would charge alot less than what the jury set up.

Senator Close asked what would happen if the claimant lives 35 years, and was advised by Mr. Rubsamen that they will continue to pay because that is what the judgment debtor has bought.

Senator Dodge suggested that if that is the concern, perhaps we could clear that up on line 7 by just saying "future damages mean damages for: a) medical treatment; b) care and custody to be received or incurred by the judgment creditor for life after judgment is rendered."

Senator Raggio suggested adding, "not withstanding the total amount of the verdict."

Senator Ashworth pointed out that the problem you are addressing is that you are talking about picking up a commercial annuity and that annuity lasts during the life of the individual that the annuity is on. The question then arises as to the situation where the court comes in with a specific amount, $200,000, and they want that paid periodically over the life of the individual. That has nothing to do with a commercial contract. You have a set figure and what they say is "okay, we will pay that at such, and such." What Senator Raggio is saying is, you get out to the end of the $200,000 figure; you bought the commercial annuity; and the indivual continues to life. You don't continue to pay him because under the judgment, the judgment is terminated after the $200,000. If what you are saying is true, then what you have to do here is say, as Senator Dodge pointed out, that you are not dealing with a lump sum settlement, you are dealing with a period payment that is going to last over the remainder of the life and if you do it that way you obviate that problem.

Mr. Rubsamen explained that the confusion rises because present value and future value are two different things.

Senator Ashworth agreed. But stated he feels they are going to come in and argue, and rightly so, that once they have extended the judgment out to $200,000, they have done all the court has asked them to do. Consequently the individual lives another 5 years without any coverage. If you back this thing out as Senators Raggio and Dodge pointed out, and make it a life annuity for the termination of the life, then you have no set amount. The insurance company comes in and does exactly what you say. They examine the individual and say, "I think their life expectancy is only 7 years. We will give it to you." That is a commercial thing that the debtor is able to buy and if it extends longer than that, then the insurance company is on the short end of the stick and they would have to continue to pay for another 15 or 20 years. But that is not what this statue says.

Mr. Rubsamen agreed that that was a very good point. He feels the focus should be on the present value figure. When the jury says "we hereby award $200,000 for future damages," then that should be placed in the context of the present value of $200,000. For a present value of that, you can buy a future value of a great deal more money.

Senator Ashworth agreed but stated that their feeling is that they shouldn't come in with a money verdict in that regard; there should be no money verdict. In this state we would set no money verdict as far as these things are concerned. (Committee Minutes)

All we can say is that we want this individual taken care of as far as medical treatment, care and custody is concerned, for the remainder of their life.

Mr. Rubsamen explained that there is a problem created by that inasmuch as insurance company actuaries want certain figures. They will not object to a rule whereby the jury says this is the amount of the award; and then in the statue it says that that amount of money will be used to purchase an annuity which shall continue for the patient's life. The problem is if you leave it open-ended so that if there is a wild runaway inflation that the company has no idea of what their future obligation is. You have to fix it at the amount of money that the jury awards.

Senator Ashworth expressed the opinion that if you do fix it at the amount of money that the jury awards, then the comments of Senator Raggio are exactly right. The only one that really benefits is the insurance company.

Mr. Rubsamen stated if the rule is, that the amount of money the jury awards will not run out where life, custodial and medical care is intended, that will be used to purchase an annuity which will provide for that. This is done now in structured settlements, and some out-of-court settlements are arranged this way. He assured the committee this could be covered in this bill if that is the desire.

Senator Sloan asked if there isn't another potentiality that could happen, where a person might no longer require custodial care, that should be built into this. It just can't go on for life. It is conceivable that the person would no longer require maintenance or custodial care.

Mr. O'Brien explained that there are basically 2 situations. The situation in which the person is incapacitated for life, and the situation in which, with the proper therapy and rehabilitation, a person can be made a functioning, whole member of society. He has to be compensated for what he has lost but you don't have a fixed figure on how much care and custody he is going to have. Some of this language says that at a certain point, with enough funds, we can rehabilitate the person to make him a functioning person in society. You compensate him for every loss he has had, but once he begins to function again there should be an opportunity to say he really doesn't need the care and custody again. You have to remember that the types of insurance companies we are talking about are non-profit, occupational insurance companies. The big companies are out of it. We have to compensate the injured victim and we have to do so in the rational kind of way that will be good for the consumer.

I think we should compensate him out front for his pain and suffering, for economic losses that extend as far into the future as they are likely to be, and for all those kinds of losses. But then in terms of the future care and custody, to keep those funds available to him for as long as he needs them. But at cessation they go back to the nonprofit insurers so that you can keep your insurance rates down. He explained that in the states that have passed this, the insurance rates are lower.

Mr. Rubsamen advised the committee that the problem with professional insurance is, you have a small pool of insured that have to pay the total premium to support the system. In a small state Like Nevada this is a very critical point. Something which isn't talked about very often that is a reality which is extremely important in medical malpractice, is claims work. When an insured doctor reports to his insurance carrier that he has a serious accident, they look at the facts of the case and look at it from 2 points of view: judged by his peers, is he responsible, was it negligently caused. If the answer is no, then the case will be fought down the wire. If the answer is yes, the next question is what will a jury say about it. Historically, juries go about 50-50. Usually the trial is 3 years down the road and in the meantime they will reserve the case at $1 million and pick up the interest on that money. If they lose they can always appeal and pick up some more interest so they rock it. The periodic payment has really brought about a reassessment in this philosophy. In a marginal case you can afford to settle these cases and take care of the patient from the beginning. The benefit to the patient is that the carri can aford to settle that marginal case.

Senator Close asked about the inflation factor for the settlements or periodic payments of care and custody.

Mr. Rubsamen replied that the inflationary factor is figured into the size of the award for custodial care will anticipate that. In out-of-court settlements it is built into the agreement.

Senator Close asked what the threshold is in other states insofar as mandatory structured settlements and was advised that $50,000 is a very common figure.

Mr. Dave Gamble, representing the Nevada Trial Lawyers Association, testified next and pointed out that the previous witness indicated that structured settlements would change the carrier's attitude. He stated that is available now. He also advised that structured settlements are available now in out-of-court settlements but this bill does not specifically address that. He stated he would like to see some documentation that premiums have been lowered in those states that have structured settlements. There has been no documentation of the fact that doctors or medical providers charges have stabilized in any states where they have this law. He disagreed with the statement of Dr. Swissman that the American Bar Association, the State Bar Association and the American Trial Lawyers support this bill. In his opinion the overall effect of this bill is to take the settlement possibilities and enforce them through the court; this increases litigation. If a person is going to be disabled from the time they are 20 until they die you are going to have monthly potential litigation for the remainder of that person's life. Section 5 subsection 2, allows the bank, or whoever is holding the money, to come in and petition the court for instructions when any dispute arises between claimant and carrier.

Senator Close asked where this bill provides that they can come back in after the judgment from the jury to the court and modify that judgment because that person has become able to work. He was advised that Section 6 states: "the court may, for good cause shown" allows the insurance company to come in and say the person doesn't need more care. That can be done monthly.

Senator Close stated that was not the intent of the committee when we drafted the bill 2 years ago.

Mr. Gamble pointed out that Section 8 provides for more litigation, i.e., in Subsection 1 where it says that each periodic payment is a new judgment. Section 5 states that the bank or trust company is entitled to a reasonable fee for its services as trustee. This is done now in estate cases or probate cases. It is simply more cost that is not going to come out of the insurance company's pocket.

It states, "The fee must be paid out of the award as provided by order of the court". If the bank is forced to come to court monthly to settle disputes between the claimant and the carrier, then those administrative costs are going to escalate. There is nothing that this bill provides that the insurance company can do that the claimant can't do on his own. We have structured settlement cases at the present time. The carrier can take the $200,000, purchase an annuity which will eventually pay out a million, and if the claimant dies, the insurance company gets its money back because the corpus of the fund has been invested to provide the annuity without any cost to the corpus. With regard as how the monies awarded are earmarked, he explained that now when a judge gives a case to the jury in a malpractice case or in more personal injury cases, he says "these are the items of damage, if you find liability, bring me back a number." He doesn't say "bring me back a number of future wage loss, past medical care, future medical care,etc." This bill requires a judge to send a jury with a special verdict form. Juries should not be obligated to earmark those funds. If that requirement is made the jury is going to make that judgement not for the unknown quantities of pain and suffering or for future earning capacity, they are going to do it for hard evidentiary items. That is going to be shown in past and future medical care.

Senator Sloan asked if it is his experience in tort law that the preponderance of the jury recovery would be calculated by the jury for custodial care and maintenance as opposed to loss of income, loss of consortium, pain and suffering?

Mr. Gamble replied that was not accurate. The point he was making is that presently we have general verdicts that aren't earmarked, but if a jury is required to earmark them, he would say that they are going to put them in categories where they can best justify them and that is the hard evidence categories. On the problem with the award going for life, he can anticipate a lot of problems with a verdict form, inasmuch as the jury is going to have to answer how many years will he be disabled, to what extent is he disabled, how much medical care is he going to need and during what years he is going to need this. He does not believe you can mix jury verdicts and insurance purchases (annuity). If a jury says $ 200,000 for future care and medical, then the fact that the claimant may outlive the annuity table, creates a problem. If you put "for life," as in line 7, doesn't cure it, as it may well be that this individual is not going to be disabled for life. Not every victim of malpractice is going to be disabled for life but

nonetheless he is going to require medical treatment or rehabilitation for certain number of years. The jury verdict and the ordering by the court for a carrier to purchase an annuity policy, just doesn't go together.

Senator Dodge brought out that there is no mechanism within the legal profession on these awards to offer any type of safeguards that this money is going to last over a period of years in order to take care of a man who is damaged. Normally the legal profession doesn't see to it that that money is preserved some way. Aside from the question of whether the claimant finally ends up on welfare, there is a public policy issue involved and that is that we want to be sure that that type of individual is taken care of without the agonies of having the money run out and no source of income.

Mr. Gamble agreed, adding that it is in the interest of the legislature to protect people who are given awards, from dissipating those awards. His question is whether or not this bill addresses that. He doesn't believe the legislature should tell the courts that the claimant must be protected from dissipating his money. This bill provides the insurance carriers with the ability to fund judgements for much less than their face value and it also gives them the power to come back monthly and ask the court to cut those monies off.

Senator Dodge pointed out that he was confusing two things. The annuity would save the insurance company money and would hopefully go to reduce insurance premiums. The other thing about the concept of them putting up the money in a cash reserve whereby, as the years went on and the expectancy became less they could ask the court to let them have some of their money back because of the fact that at that point in the person's life they didn't need to fund all the money.

Mr. Gamble agreed that may have been the intent of the committee when they drafted the legislation, but that can also be used as an avenue for cutting off funds to the claimant.

Senator Dodge asked if he meant that he didn't trust the judgement of the court inasmuch as they have to go before the court to do that.

Mr. Gamble explained that he didn't think that the court should be bothered with that.

Senator Close stated it was never the committee's intent to allow the insurance company to come back in and reduce the judgement that was rendered by the jury or given by the court. The intent was, if the person who was injured needed more money, he could have the money paid to him more rapidly with higher payments or whatever. Once the verdict was rendered, never could the court under this bill, increase or decrease it. They could modify the payments in between but the judgement was final.

Barbara Bailey, representing the Nevada Trial Lawyers Association, testified that the statement made by Dr. Swissman indicating ATL and NTL supported the concept of the structured settlements was not true. Her association has called the national headquarters in Washington, D.C. and they oppose the mandatory aspects of the bill.

Dr. Swissman stated his reference to the ATL was one that was made by Mr. Hilbrecht in the letter he presented to the committee. He assumed that since Mr. Hilbrecht made this reference that the position is substantiated by public record. Dr. Swissman reiterated his position and stated he stands firmly behind the letter from the Attorny General and behind his testimony about the committee from the American Bar Association.

Senator Ashworth asked if it would be possible to get a statement from some large companies stating that if this bill was passed, they would give serious consideration to coming back into this state. We have had no testimony that this is going to make any difference at all.

Dr. Swissman advised that he has letters from Hartford, Aetna stating that at this time they are adopting a "wait and see attitude." But they have gone back to writing policies in other states where there have been malpractice packages. One of the major companies is making serious threats about pulling out of Nevada because they believe now they have to escalate their rates to a point where they will not be marketable. It is possible that if we can show them some kind of reform we can convince them not to pull out of the state. They insure somewhat in excess of 100 doctors.

Mr. Fred Hillerby, testifying in behalf of the Nevada Hospital Association supported the bill. He stated they have one carrier that underwrites malpractice insurance for 17 hospitals. They have talked to his association about the concept of structured settlements and have indicated that they are interested.

Senator Raggio stated for the record that his law firm represents the Nevada Hospital Association, but it does not consider it a conflict insofar as general legislation of this kind is concerned. He wants the record to reflect that disclosure.

Mr. Jim Wadhams, the Director, of the Department of Commerce and Don Heath, Insurance Commissioner testified that logically, the benefit of the structured settlement system is contingent soley upon a reversionary feature on the custodial care and maintenance award. If this bill is to be processed, that is probably the reason that it would go forward. They suggested that the effort to reduce malpractice premiums should be very carefully considered. Anyone who suggests that liability insurance premiums of any form are going to go down again, should be very cautious about making such a statement. It is felt that the best we could hope to do is reduce the escalation of costs of the medical malpractice and thus try to stabilize the insurance premium. A third point that should be mentioned at this point is that we have only one licensed insurance company active in writing medical malpractice insurance in Nevada. We have the Nevada Medical Liability Insurance Association which has been created by the legislature as a temporary organization to assist in this field and there are at least two unlicensed companies that are doing business.

Senator Close asked if they had any idea how many doctors are going without insurance and was advised there are about 50% uninsured.

Senator Dodge asked if they support the concept and was advised by Mr. Wadhams, that without getting into the equities between the patient and the doctor, economically he feels it could have an ameliorative effect on the cost of the malpractice risk-spreading system.

Dr. Swissman stated that close to 700 out of 890 practicing physicians in this state are covered by malpractice insurance, including the state agency.

The testimony was closed at that time, however, the following individuals asked that their names be included in the record as being in opposed to SB 292:

Neil Galatz, Attorney, personally opposes structured settlement. He also understands the Nevada Trial Lawyers Association is strongly opposed.

Tom Foley, Attorney, advises the State Bar has not considered this bill.

In regard to the proposed court-of-record bill, Senator Close informed the committee that he had discussed with Frank Daykin, the possibility of adding municipal courts. It was Mr. Daykin's opinion that this would be unconstitutional. Section 9, Article 6 of the Nevada Constitution prohibits competition by municipal courts with courts of record. Senator Close has therefore requested a constitutional amendment which would allow for this.

Senator Sloan asked if there might be a conflict in jurisdiction with the justice and municipal courts in that they would have concurrent jurisdiction over all misdemeanor charges.

Senator Close stated that he did not believe that to be a problem, in that municipal court jurisdiction is much more limited than that of the justice court.

There being no further business, the meeting was adjourned.

Respectfully submitted,

APPROVED:

Cheri Kinsley

Cheri Kinsley, Secretary

Senator Melvin D. Close, Jr., Chairman

Testimony of Neil Swissman, M.D.
before the
Senate Judiciary Committee
March 15, 1979

S.B.292 - Structured Settlements

Senator Close and Members of the Committee:

I want to express the gratitude of all Nevada Physicians and their patients for your efforts, past and present, to help alleviate our malpractice insurance problems. The combined efforts of both houses of the legislature hav enabled Nevada medicine to be practiced in an environment of temporary and relative liability comfort for the past four years.

The problems of cost and availability of professional liability insurance, however, still exist, and soon again we may be facing a crisis. There are threats of malpractice insurance markets being withdrawn and requests for premium increases of almost 57% which make maximum annual premiums nearly $40,000. There is some question of the relative stability of other malpractice insurance markets in Nevada. We have been unable to attract new providers from other established and experienced underwriters even though we have been in constant communication in an attempt to entice them to Nevada's insurance shores. All are waiting to see what happens during this 1979 legislative session. We must encourage them so that we no longer have the problem of only a single malpractice insurance market available in Nevada. Multiple markets and their competitive thirst for business also will help to stabilize premium levels.

We all know that health costs in our state have escalated. Inflationary pressure is certainly responsible for some of that increased cost. However, since the beginning of th malpractice insurance crisis two legislative sessions ago, premiums have increased 406%. This is the single largest factor in increased health costs in Nevada and indeed in the nation.

We are told by some concerned parties that the liability insurance providers are "ripping off the people" with inappropriately inflated premiums. If that is true, I am at a loss to understand why so many reputable and experienced insurance companies have withdraw from this supposedly extremely lucrative market. If this is indeed accurate, I am certain that our excellent insurance division, under the direction of Commissioner Heath, will evaluate and correct this situation. Our Association feels that legislation protecting only malpractice insurance is inappropriate. We must protect the entire liability market. Whatever final corrective legislation is adopted to should apply to all liability insuranc

We endorse the actions of previous legislatures and strongly support and urge the adoption of all the proposals of the SCR-12 Subcommittee, particularly the proposed S.B.292 on periodic payments with reversionary trusts. Periodic payments do not change the total amount of an award, abrogate rights, or change the spirit of the tort system or the intent of the court. Medical bills, awards for pain and injury, loss of income, attorneys' fees and out-of-pocket expenses come off the top of the award. S.B.292 very carefully addresses these issues and defines future damages which are for maintenance and custodial care. It is only those future damages for maintenance and custodial care that are structured and reversionary. This is applicable only to future damages of $50,000 or more. Therefore, appropriate funds are made available for the purpose they were intended. Passage of this bill may well stabilize premiums for professional liability insurance and cut the rate of inflation of health care costs. This type of legislation has been passed in at least 11 states and has been responsible for significant premium reductions, hence, decreased costs to patients.

I do recommend the bill be amended to allow insurance companies to post security adequate to assure full payment of such future damages awarded by the judgment. The legality of the bill will be questioned, and I would like to read letters from Nevada's Attorney General and former state senator Ty Hilbrecht, Chairman of the SCR-12 Subcommitte Both are in favor of this bill. The Chairman of the American Bar Association's Commission on Medical Professional Liability, Lyman M. Tondel, Jr., has said that these types of tort changes can achieve "as much as a 20% reduction in rates." He urges the adoption of these reforms. On behalf of Nevada physicians, I urge a DO PASS on S.B. 292.

"EXHIBIT A"

State of Nevada
Office of the Attorney General
Capitol Complex
Carson City 89710

Richard H. Bryan
Attorney General

NS

February 26, 1979

Neil Swissman, M.D.
Nevada State Medical Association
3660 Baker Lane
Reno, NV 89509

Dear Neil:

Thanks for your letter of February 1, 1979. As you will recall, as a member of the Senate Judiciary Committee in the 1977 session, I supported a structured settlement bill for the reasons which are all to well known to you. I am informed that the Assembly Judiciary Committee which indefinitely postponed the 1977 structured settlement bill, has again declined to support the 1979 version, AB96.

I regret the action of the committee because in my judgement it represents a responsible partial solution to the medical malpractice problem in Nevada. Perhaps your legislative representatives will be successful in persuading the Assembly Judiciary Committee to reconsider its position during the current session. If not, I believe that it should be proposed at the next legislative session with particular emphasis on indicating those problems you are now faced with regarding malpractice and what benefits would be derived from a structured settlement bill.

Sincerely,

RICHARD H. BRYAN
Attorney General

"EXHIBIT B"

LAW OFFICES
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600 EAST CHARLESTON BOULEVARD
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NORMAN TY HILBRECHT
LESLIE TERENCE JONES
FRANK ARTHUR SCHRECK
PETER C. BERNHARD

SHANNON L. BYBEE, JR.
OF COUNSEL

March 7, 1979

Neil Swissman, M.D.
3121 Maryland Parkway
Las Vegas, Nevada 89109

Re: SB 292

Dear Dr. Swissman:

You have asked me to comment in writing on Senate Bill 292, presently before the Senate Judiciary Committee. My review of the bill shows that it is identical with the BDR prepared by the Interim Subcommittee on Professional Liability Insurance. Senator Clifford Young served with distinction on that Subcommittee and can, I am sure, describe the committee's four years of deliberations and compromises that attended its consideration of Structured Awards in general and SB 292 in particular.

Of all the constitutional and publicly acceptable proposals offered by the insurance industry to maintain a private market in the field of medical liability, structured awards seemed to the Committee the most likely to get results. Our own expert - the executive officer of the Nevada Medical Liability Insurance Association offered the Committee persuasive evidence, based upon his Nevada experience that a structural awards statute would have resulted in substantial savings to the Nevada asso-iation.

As you know, we were constantly confronted with the necessity to balance our responsibility to recommend legislation that would secure liability insurance to our professionals while at the same time protecting those basic rights of Nevada's consumer public now expressed only through the tort system. This frequently resulted in rather sweeping compromises with groups such as the Consumers League and American Trial Lawyers. In the case of collateral sources, you will recall the Committee recommended that only public, nondiscretionary payments be credited.

"EXHIBIT C"

LAW OFFICES
Hilbrecht, Jones, Schreck & Bernhard
CHARTERED

Similarly, in the case of the BDR that resulted in SB 292, the structured award mechanism was narrowed to apply only to those items of future economic damage identified by the trier of fact. Hence, attorneys fees, pain and other intangibles as well as past economic damages are still paid in a lump sum. This concept was accepted in principal by the representatives of American Trial Lawyers who worked with us.

Basically, the policies that underly the structured award are three-fold:

1. It protects the injured party by making court - supervised provision for his future economic needs within the limitations of the judgment;

2. It diminishes the catastrophic nature of the judgment upon the defendants or their insurers;

3. It avoids the inequity and waste of the windfall that results to the heirs of an injured party who may die shortly after the judgment.

Because of items 2 and 3 above it tends to make the professional liability market more attractive because it permits underwriters to make provision to pay damages out of reserve-type assets rather than cash payments, and permits them to recoup any future damage items not expended in the event of the injured party's early death.

I certainly support this measure and commend the Association for adopting it as part of its program before the 1979 Legislature.

Sincerely,

NORMAN TY HILBRECHT, ESQ.

cjl