

CITY COUNCIL MEETING
MARCH 5, 1986

18

SUPPORT OF FAIR
RESPONSIBILITY
ACT OF 1986

Council adopted Resolution No. 86-36 expressing support for
the Fair Responsibility Act of 1986.

RES.86-36

CC-28

CITY COUNCIL COMMUNICATION

TO: THE CITY COUNCIL

DATE

NO.

FROM: THE CITY MANAGER'S OFFICE

February 27, 1986

SUBJECT: SUPPORT OF FAIR RESPONSIBILITY ACT OF 1986

RECOMMENDED ACTION: That the City Council adopt Resolution No. _____ expressing support for the Fair Responsibility Act of 1986.

BACKGROUND INFORMATION: This resolution urges support of that ballot measure in the June 3 election that addresses the "deep pocket" doctrine. It will appear as Proposition 51. The City Council has expressed its support of such action in the past. The City Council has been asked by a citizens' group backing the initiative, Taxpayers for Fair Responsibility, to adopt the attached resolution (Exhibit A).

Respectfully submitted,



Thomas A. Peterson
City Manager

TAP/lh

RESOLUTION

WHEREAS, the state of California faces a crisis inflicting financial havoc on our state and local governments, public schools, private business and non-profit organizations; and

WHEREAS, this crisis is the unaffordability and unavailability of liability insurance; and

WHEREAS, the crisis is largely the result of the unfair "deep pocket" doctrine under which defendants can be held responsible for 100% of damages in multiple-party personal injury actions even if the defendant is found to be as little as one percent at fault; and

WHEREAS, this doctrine unfairly costs California cities and counties, public entities, businesses and professionals hundreds of millions of dollars in court judgments and settlements, legal expenses, and increased insurance costs; and

WHEREAS, California taxpayers and consumers ultimately bear these costs in their taxes and through increased prices for goods, services and insurance; and

WHEREAS, these costs have resulted in the reduction of vital government services to the people of California, including the grounding of police, fire and emergency vehicles, park and library closings, limitation of activities in public schools, and disruptions of public transportation, which imperils the safety, health and welfare of our citizens; and

WHEREAS, at least 43 California cities are now uninsured and hundreds will be by July of this year; and

WHEREAS, the Fair Responsibility Act of 1986 is an initiative measure that will give California voters an opportunity to reform the inequities of the "deep pocket" doctrine by holding liability lawsuit defendants financially liable in closer proportion to their actual degree of fault; and

WHEREAS, the County Supervisors Association of California, League of California Cities, California School Boards Association, California Chamber of Commerce, California Taxpayers Association, California State Parent-Teacher Association, California Manufacturers Association, National Federation of Independent Business, California District Attorneys Association, Association for California Tort Reform, California Police Chiefs Association, California Farm Bureau Federation, Consumer Alert, California State Sheriffs' Association, California Dental Association, California Peace Officers Association, California Restaurant Association, California Medical Association, Association of California Water Agencies, Agricultural Council of California, California Hospital Association, California Association of Resource Conservation Districts, California Trucking Association, California Defense Council, California Association of Publicly-Owned Transit Systems, California Association of 4WD Clubs, numerous engineer and insurance associations, several non-profit and social organizations that are having difficulty finding insurance, and other groups have endorsed the Fair Responsibility Act of 1986; now, therefore be it

RESOLVED that the _____ endorses the Fair Responsibility Act initiative and urges its support and passage to relieve the financial strain the "deep pocket" law imposes on public entities, the private sector, and taxpayers and consumers.

READ AND ADOPTED at _____, California, on this _____ day of _____, 1986, by _____

Signed: _____

CITY COUNCIL

DAVID M. HINCHMAN, Mayor
FRED M. REID
Mayor Pro Tempore
EVELYN M. OLSON
JAMES W. PINKERTON, Jr.
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
CALL BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634

THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

March 6, 1986

Tom Conn
Taxpayers for Fair Responsibility
111 Anza Boulevard, Suite 406
Burlingame, CA 94010

Dear Mr. Conn:

Enclosed please find Resolution No. 86-36 - "Resolution of the Lodi City Council Expressing Support for the Fair Responsibility Act of 1986", which was adopted by the Lodi City Council at its regular meeting of March 5, 1986.

Should you have any questions, please do not hesitate to call this office.

Very truly yours,

Alice M. Reimche
Alice M. Reimche
City Clerk

AMR:jj

TAXPAYERS for FAIR RESPONSIBILITY

11 Anna Road, West Glendale, CA • Insurance, California 90012 • (415) 340-0470

County Supervisors
Association of California
League of California
Cities
California Chamber
of Commerce
California Taxpayers
Association
California Manufacturers
Association
Association for California
Tort Reform
California Medical
Association
California Hospital
Association
Association of California
Insurance Companies
Alliance of
American Insurers
(Partial Listing)

John H. Hodgson II,
Treasurer
I.D. #850827

Mr. Stein,

Enclosed is the information you requested. I hope it is of help.

If you could get us on the agenda for your next Council meeting we will be able to include you on our list of supporters all the sooner.

Also enclosed are endorsement cards. If someone could pass these along to supportive council member we will be able to include them as well.

Thank you

Tom Conn

(415) 579-0441

JAN 17 1986



TAXPAYERS for FAIR RESPONSIBILITY

111 Anza Boulevard, Suite 400 • Buntingame, California 94010 • (415) 340-0470

County Supervisors
Association of California

League of California
Cities

California Chamber
of Commerce

California Taxpayers
Association

California Manufacturers
Association

Association for California
Tort Reform

California Medical
Association

California Hospital
Association

Association of California
Insurance Companies

Alliance of
American Insurers
(Partial Listing)

John H. Hodgson II,
Treasurer
I.D. #850827

HELP SEW UP OUR "DEEP POCKETS"

We are facing a crisis in California; a crisis that is inflicting financial havoc on our state and local governments, public school systems and private businesses -- and costing taxpayers and consumers untold millions of dollars.

The crisis: the unaffordability and unavailability of liability insurance.

A major contributing source: "deep pocket" lawsuits. Present law allows a plaintiff to recover 100% of a damage award from a co-defendant who is only 1% at fault in personal injury suits if other co-defendants are unable to pay.

This is unfair to cities, to counties, to school boards, to businesses and professionals. It is unfair to the taxpayer and consumer.

Why is this law in existence? Prior to 1975, a plaintiff found even partially at fault for his own injuries could not collect for any damages. A court ruling later determined that in personal injury cases involving more than one defendant, each defendant was responsible for economic damages (medical costs, lost earnings, etc.) and non-economic damages (mental suffering, etc.) in direct proportion to their respective degrees of fault.

In 1978, the California Supreme Court ruled that defendants with substantial assets or insurance (that is, with "deep pockets") could be forced to pay 100% of all damages, even if they were found only 1% at fault in instances where other defendants lacked funds. This is known as the doctrine of joint and several liability and it remains in effect.

The law tempts the plaintiff (or his attorney) to go where the money is, not just where the fault lies. Not surprisingly, the practical application of this doctrine has increasingly been to name governmental entities and businesses as co-defendants in cases where they are only peripherally involved but might be found slightly at fault. Without the lure of their "deep pockets," they would not have become defendants.

Some examples:

In So. California, a driver pulled onto what he thought was the shoulder of the Ventura Freeway and raised the hood of his car. However, there was no shoulder there; he had stopped in the right-hand lane of traffic. A drunk driver traveling about 60 mph crashed into his car, leaving him permanently disabled. The victim sued the drunk driver, the restaurant in which she had been drinking and the State of California. His claim against the State: there should have been a sign warning drivers there was no shoulder at that point. He collected \$8.2 million.

In Irvine, a blind college student with a guide dog crossed the street on a green light. A car jumped the light, injured the student and killed the dog. The victim sued both the driver and the city. Claim against the city: the intersection should have had "walk" lights. (The dog, however, was trained to go on green.) The driver paid \$100,000. The city entered a structured settlement for \$1.7 million.

It is obviously not difficult to prove that a "deep pocket" is at least 1% at fault. A League of California Cities survey showed that 163 cities paid out more than \$20 million in "deep pocket" judgments in 1983-84 -- up from \$5 million in 1981-82. City officials estimate they face a combined potential exposure of more than \$210 million in the next two years.

Since it has become common practice to include the State Department of Transportation in nearly all litigation involving accidents on state highways, the number of personal injury cases filed against Caltrans jumped from 27 in 1973 to 512 last year. That is a 440% increase in financial claims -- from \$230 million to more than one billion.

Who bears the cost of these settlements and judgments? Make no mistake -- the "deep pocket" is our pocket.

Taxpayers pay in the form of high taxes and drastically reduced governmental services. "Deep pocket" settlements and the increased risk assigned to governmental entities as a result of the 1978 ruling have helped send liability insurance premiums higher and higher.

Cities and counties are finding commercial liability insurance either unaffordable or unavailable. More than 30 cities have no liability insurance whatever and more than a dozen others are inadequately insured. The list is expected to grow as policies come up for renewal.

As a result, services have been affected dramatically. Some police and fire vehicles have been grounded; public schools have been forced to curtail activities; garbage collections have been stalled; public buses have been halted. Even a

municipal government or school district lucky enough to get liability insurance must divert dollars from other services to pay for the huge premiums.

Consumers pay in the form of high prices for goods and services and higher premiums for our own insurance. Private businesses and the professionals who serve us must pass their increased insurance costs on to the consumers.

Clearly, the problem can only get worse. The solution? Reform the "deep pocket" law. Efforts to achieve this have been fruitless in the Legislature over a period of years. Four times a reform bill was approved by the Senate only to die in the Assembly Judiciary Committee under the extreme lobbying pressures of the California Trial Lawyers Association. (The California Trial Lawyers Association, incidentally, gave more money, by far, to legislators' campaign funds in 1985 than any other organization in California.)

Frustrated by the stacked deck in the Assembly and smarting from the increasing number of "deep pocket" lawsuits, with the resulting increased cost and reduced availability of liability insurance, local government, business and professional organizations joined forces to take their case for fairness directly to the people of California.

They formed a coalition to put the Fair Responsibility Act of 1986 on the ballot -- an initiative virtually identical to SB75 by Senator John F. Foran -- the ill-fated legislative reform bill. Included among the supporters: the County Supervisors Association of California, League of California Cities, California Chamber of Commerce, California Taxpayers Association, California Medical Association, California Manufacturers Association, California School Boards Association, Association for California Tort Reform, California Police Chiefs Association, California Peace Officers Association, California Farm Bureau, and numerous insurance industry groups.

The initiative would not alter present law as it applies to economic damages. With regard to the huge non-economic awards (for such things as emotional distress and the like), the initiative would restore the notion of payment in direct proportion to one's degree of responsibility. If a co-defendant is found 10% at fault for an accident, that party would pay 10% -- no more and no less -- of the total non-economic award.

This is a measure that is based on common sense and down-to-earth fairness. There is no superfund in the sky from which multi-million dollar awards are paid. The money comes from our pockets.

The time to act is now. Help us sew up the deep pockets.

RESOLUTION

WHEREAS, the present joint and several liability law, also known as the "Deep Pocket Doctrine", has unfairly cost the cities of California millions of dollars in court judgments, settlements, legal costs, skyrocketing insurance premiums and difficulty in obtaining adequate liability insurance coverage; and

WHEREAS, this same doctrine has also cost other governmental bodies, business firms and professionals many millions of dollars; and

WHEREAS, ultimately this cost is unfairly borne by the taxpayers and consumers of California; and

WHEREAS, many cities, other governmental bodies, business firms and professionals are selected as defendants in lawsuits merely because of their perceived assets or insurance and often are found only fractionally at fault but must pay most or all of the judgment because the defendants most at fault cannot pay; and

WHEREAS, the cost of this is unfairly borne by the taxpayers and consumers of California; and

WHEREAS, the "Fair Responsibility Act of 1986" is an initiative measure that would give the voters of California an opportunity to reform the inequities and injustices of the "Deep Pocket Doctrine" by holding liability lawsuit defendants financially liable in closer proportion to their degree of fault; now, therefore be it

RESOLVED that the City Council of the City of _____ endorse the "Fair Responsibility Act of 1986" and urge its support and passage to relieve the financial strain imposed on local government and its taxpayers.

READ AND ADOPTED at _____, California, on this _____ day of _____, 198 ____, by a majority vote of the duly elected members of said City Council.

Signed: _____

(Print or type name)

(Office or Title)

Phone: (____) _____

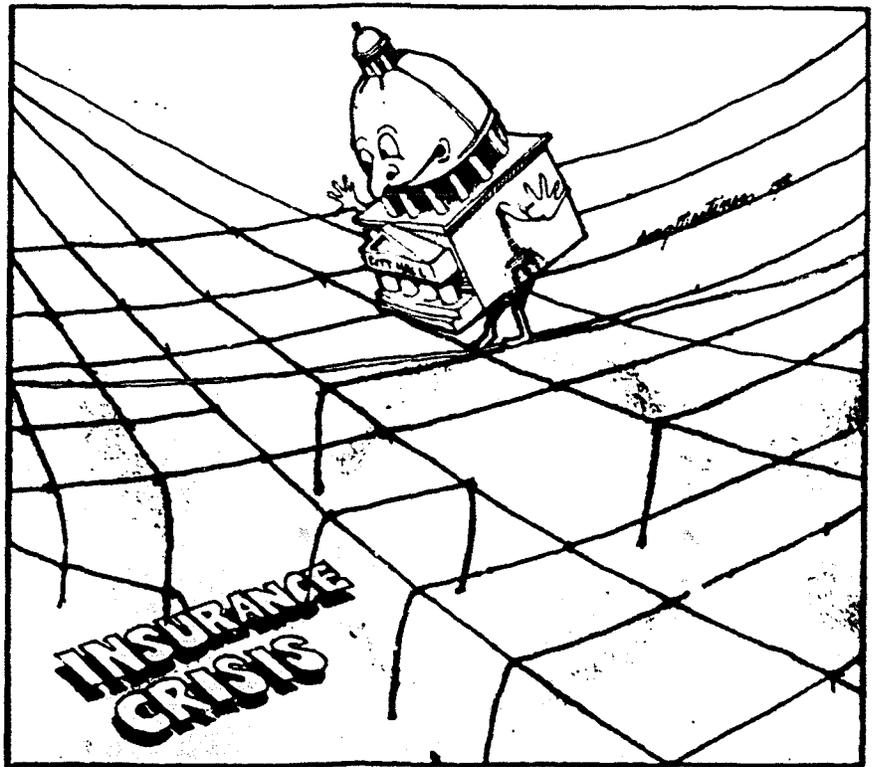
Why Cities Can't Get Liability Insurance

by D. Michael Enfield

By now, virtually everyone is aware of the desperate condition of California's cities and counties in the area of insurance protection. As of July of this year, a great many of the cities and counties in the state have been uninsured beyond a small primary limit of liability. Of those that are "bare," the lucky ones are those which have elected not to pay the exorbitant premiums necessary to purchase excess coverage layers. The unfortunate municipalities simply have been unable to find excess coverage at any price. And, many more California cities and counties will find themselves uninsurable by 1987. The inevitable question therefore must be asked: Why? What happened?

Although magicians are not supposed to divulge the secrets of their craft, I will admit it is a fairly easy thing to predict the recurring collapses of the public entity liability insurance market, even beyond the ability to predict the inevitable cycles of the overall insurance market.

The insurance industry is dramatically susceptible to the laws of supply and demand. When the supply of capital in the industry is high, as it has been for many years up until now, there is virtually nothing — such as the cost of raw materials in the manufacturing industry — to resist the inexorable movement toward broad coverages and low prices. When the supply of capital is limited relative to the demand, as it is today, there is nothing to impede the erosion of coverages and the explosion of premium costs.



This is conventional wisdom and it is widely understood. Less obvious, especially to those not actively involved in the insurance industry, is the impact of these shifts in supply and demand upon certain classes of risk. By classes of risk I mean both types of coverage, such as earthquake insurance or environmental

(D. Michael Enfield is Managing Director of Marsh and McLennan in San Francisco.)

impairment liability insurance, as well as identifiable buying groups, such as pharmaceutical companies or public entities. When significant amounts of new capital enter the insurance market, typically through the less regulated reinsurance sector, this new capital must find some way of attracting a share of the market away from the established sources of insurance, which buyers always find more secure, and therefore more attractive.

(continued on page 5)

Why Cities Can't Get Insurance (continued from page 3)

It is no secret that the only ways to quickly attract such a market share are by offering types of coverage not generally available from the established insurance markets, or by offering customary insurance coverages to buying groups not particularly well served by the conventional marketplace. Conversely, when the supply of capital in the marketplace suddenly and dramatically contracts, as it has over the past year, the remaining sources of insurance coverage need not offer anything but the most prosaic forms of coverage to the least hazardous risk groups to meet their underwriting budgets.

Accordingly, in times of an excess supply of capital, insurance companies are driven by the search for market share even at the risk they might also be driven out of business. Not to seek that market share by offering favorable terms certainly would drive these companies out of business for lack of any customers at all.

The airline industry tends to exhibit some of the same curious behavior patterns in search of market share. For example, although it may cost \$300 to fly someone from coast to coast, once a new player enters the picture in the form of a new airline or a new route, that new player may immediately offer to fly someone coast to coast for \$100, thereby losing \$200 per passenger, simply to obtain a market share. Then, the other airline's immediately will fall over one another in an effort to match these absurd fares. This suggests a cynical parallel between the airline and insurance industries: if you think there is such a thing as a really good airline, you simply haven't flown often enough; and if you think there is an insurance company that is independent of the supply and demand cycle, you simply haven't been buying insurance long enough.

The devastation of the property and casualty insurance marketplace began in the spring of 1984, as major insurance companies began to negotiate the renewal of their reinsurance treaties expiring on July 1 of that year. Such treaties are the method by which insurance companies "lay off" with reinsurance underwriters, sizeable portions of the risk they have assumed by providing large limits of liability under a single policy. The overwhelming majority of such reinsurance treaties expire annually on either the first of July or the

first of January.

And so, on July 1, 1984, the industry witnessed the first significant tightening of reinsurance treaties in half a dozen years. Since then, on January 1 and July 1 of this year, virtually every reinsurance treaty in existence has been severely restricted, and many have simply ceased to exist. Accordingly, insurance companies which had previously provided five and ten million dollars of coverage, or more, for a single insured are now able to provide limits of only \$500,000 or \$1,000,000.

Thus, to obtain \$10 million coverage in 1985, as many as six or seven insur-

This logically absurd doctrine amounts to nothing less than a social redistribution of wealth, and the nation's insurance underwriters no longer are prepared to support such madness.

ance companies must be organized to insure the risk which might have been provided by a single insurance company in 1984.

Unfortunately, those risk classes or buying groups which have never been able to attract the rank and file of the insuring companies in the country to the negotiating table, simply wind up being inadequately insured or perhaps not insured at all. In California, the class of risk always devastated by such a market turn is earthquake insurance, and the buying group frequently abandoned by the insuring community is the public sector.

There are a number of reasons most insurance companies will not offer terms for public agencies unless they have to, that is unless the need for market share drives them to offer terms to buyers they otherwise would not wish to be associated with. First, the buying habits of public agencies seem arcane and counterproductive to most underwriters. In addition, when negotiating with the risk managers for these public entities, the underwriters know they are not dealing with the ultimate decision makers. The elected governing body of each public entity maintains that power, and the highly charged political atmosphere in

which insurance contracts are awarded to competing brokers and agents is well known to underwriters.

And, there is the matter of the bidding process itself, a system which is reviled by almost every insurance underwriter in the country. Beyond all of this, there is the highly negative risk profile of California cities and counties. Because of the road maintenance responsibilities of these jurisdictions, underwriters believe there is a vast uncontrolled -- and uncontrollable -- public exposure.

By far the most insidious factor, however, is the "joint and several liability" or "deep pocket" phenomenon in California. This is the law by which a city or county can be assessed 100 percent of the liability for damage or injury, even though their actual share of the negligence may have been a fraction of a percent, in any situation where the plaintiff in a legal action is unable to recover awarded damages from the primary tortfeasor. Under this "joint and several" doctrine, a city or county may be asked to stand a \$3,000,000 judgment against an uninsured drunk driver simply because of a minor, but definable, imperfection in the roadbed.

This logically absurd doctrine amounts to nothing less than a social redistribution of wealth, and the nation's insurance underwriters no longer are prepared to support such madness. Thus, as more and more cities and counties are forced to self-insure vast amounts of public liability, the "joint and several liability" doctrine becomes nothing less than a gun trained at the heads of the state's taxpayers.

As long as the cost of this misguided doctrine is borne by the stockholders of the casualty insurance companies in the United States, significant public support for legislative reform is unlikely. But as uninsured municipalities begin to turn to the electorate, through increased taxes, to pay for the massive uninsured judgments returned against them in these "joint and several liability" lawsuits, the public will begin to demand legislative reform.

But what about the insurance marketplace itself? When will significant amounts of capital return to the insurance market? There are no clear answers. In the first half of this decade the supply of reinsurance capital, as a function of the risk demand, was inflated far beyond any level previously known in this century. There were a number of reasons for this. The alter-

(continued on page 20)

Why Cities Can't Get Insurance (continued from page 5)

native forms of investment with which the insurance industry had to compete in order to attract investment capital were very unattractive when the "soft" insurance market began in the late seventies. The Dow Jones Average, for example, stood at a level some 600 points lower than it is today.

But the most significant attraction of the insurance market as a suitable place for investment was its unique ability to quickly raise large multiples of invested sums for purposes of reinvestment in various money markets.

In the late 70's, the prime rate began an inexorable and not particularly slow rise to 21 percent. At that rate of return, a casualty insurance company could virtually double its original investment well before it would ever be required to actually make loss payments in most significant cases. So the rush was on, and by the early 80's there was an unprecedented glut of insurance capital in the market. This resulted in an abundant supply of inexpensive earthquake insurance in California, as well as in an unprecedented number of insurance companies prepared to offer liability to California public entities.

But now, not only is the abundant rein-

surance gone, but the declining assets and policy-holders surplus of the National American property and casualty insurance companies in 1984 has been reduced by almost \$5 billion dollars, primarily as a result of adverse loss experience. And since the watchdogs of the insurance industry effectively prevent any insurance company from absorbing premium, in any given calendar year, at a rate of more than about two and one-half times the combined assets and plus of the company, that \$5 billion reduction in surplus effectively reduces the amount of premium that could be absorbed by all companies in 1985 by perhaps as much as \$12.5 billion dollars.

At the same time, given the fact that price increases have most recently begun to border on the astronomical, far less risk can be insured for each premium dollar.

As a consequence, a great deal of insured property and casualty risk in 1984 necessarily must be uninsured in 1985. In some cases, this is achieved by simply providing dramatically lower limits of liability to major buyers of insurance.

For instance, it has not been unusual to find \$100 million dollar programs renewing for limits of as little as \$10 million. In addition, certain types of insurance have been moving toward complete extinction. Among the coverages which are now scarce, if available at all, are environmental impairment liability insurance, directors and officers liability insurance, public officials liability insurance, and any kind of professional errors and omissions insurance.

Beyond all of this, there is a highly negative risk profile of California cities and counties. Because of the road maintenance responsibilities of these jurisdictions, underwriters believe there is a vast uncontrolled — and uncontrollable — public exposure.

Case History:

Traffic and Transportation Services



Willdan Associates and the California Energy Commission's Fuel Efficient Traffic Signal Management program is helping save California motorists \$20 million in fuel costs and 11.3 million hours in travel time annually.

For further information about Willdan's services and capabilities, contact the Manager of any of our Regional Offices, or our Client Services staff at (714) 774-5740.

Some insurance companies began to ration their remaining premium absorption capacities as early as February, in anticipation of being unable to provide renewal terms to long-time clients. Some insurance companies have ceased writing any additional business at all for the rest of 1985. There are growing fears that very little insurance will be available in the last quarter of this year, forcing many otherwise insurable risks to go unprotected until January 1, 1986, when all of the property and casualty insurance companies will have new premium budgets available.

Furthermore, unless there is legislative reform of the 'joint and several liability' problem, it is quite possible conditions never will improve for California cities and counties.

Given all of this, the simple reality is that, as of July 1, most insurance companies became convinced they easily could exhaust their remaining premium budgets, even if they only offered insurance to shoe stores. As a consequence, any risk greater than that of a shoe store is comparatively less likely to find insurance available for the balance of this year. And at the top of the list of relatively unattractive risks are the cities and counties of California.

The situation has become a desperate one indeed. In 1983 there were as many as 30 insurance companies which, individually, might have been able to offer liability insurance to a city or county in California in amounts of \$5,000,000, \$10,000,000 or more. As of July 1, 1985, only a handful of companies will provide any coverage at all, and none of them can effectively provide more than \$1,000,000 in limits for any single public entity.

In order to guarantee a source of insurance for their renewing customers, the leading liability insurer for public agencies in California, the Transcontinental Insurance Company, decided shortly after the first of this year to provide insurance only for their renewing cities or counties. But at least Transcontinental has remained in the business of

providing liability insurance in the public sector. Virtually all of the other companies have disappeared, with the exception of the Planet Insurance Company, a relative newcomer to the public entity liability arena during the period of the soft market.

But, neither of these companies can provide the large limits of liability desired by the public agencies in California. Beyond a \$1 million primary layer, essentially no market for liability coverage remains for cities and counties in California at present.

It is almost impossible to suggest what will happen next. Obviously, January 1, 1986, will bring a new premium budget, and possibly some temporary increase in capacity for public entities. It is doubtful there will be much increased capacity for cities and counties, however, because of their miserable risk profile. And whatever capacity there is may be quickly eroded in 1986, just as it has been in 1985. Given the current interest rates prevailing in the United States it seems unlikely that vast amounts of additional capital are going to be attracted to the insurance marketplace.

In order for there to be a significant increase in the North American property and casualty insurance market capacity, it would seem that surplus must be increased in the only other way possible, through favorable underwriting results. Unfortunately, even if the 1985 premiums result in an underwriting profit, the results of that favorable loss ratio will not significantly impact the nationwide underwriting capacity until 1987.

Therefore, it seems unlikely there will be any significant improvement in the desperate condition of the public risk sector for at least 18 months. Furthermore, unless there is legislative reform of the "joint and several liability" problem, it is quite possible conditions never will improve for California cities and counties.

Finally, it should be noted that in difficult times such as these, the frustrations in the public sector inevitably give rise to demands for a legislative solution in the form of governmental involvement in the insurance business. This, of course, would simply be an attempt to deal with the symptoms of the disease rather than the disease itself. By looking for ways to pass the burden of our legislative indulgence onto the backs of California's taxpayers, rather than seeking genuine reform of the disgraceful "deep pocket" phenomenon in this state, we are leaving a soiled diaper on the baby and simply changing the safety pin ■

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And you should!
We provide it...*

ICMA/RC's Deferred Compensation Plan

- On-site service representatives
- Toll-free service lines
- Quarterly participant reports and quarterly newsletters
- Personalized retirement planning
- Widest range of payment options
- No early withdrawal or rollover penalties

*to contact the Service
Representative nearest you call:*

**ICMA
RETIREMENT
CORPORATION**

California 800-772-4075
Other Western States 800-227-0938

RC



League of California Cities

1400 K STREET • SACRAMENTO, CA 95814 • (916) 444-5790

For your infor

Sacramento, CA
October 21, 1985

**MEMORANDUM TO MAYORS, CITY MANAGERS AND
CITY CLERKS IN NON-MANAGER CITIES
(PLEASE PASS ALONG TO COUNCIL MEMBERS AND DEPARTMENT HEADS)**

Dear City Official:

The crisis in liability insurance coverage is reaching dramatic proportions. Many of you have been along for the long hard fight to gain reforms through the Legislative process, which to date has been unsuccessful.

Negotiations are continuing on SB 75 (Foran) and AB 1332 (W. Brown) to reach a compromise with the California Trial Lawyers Association, the chief opponents of any change in the Deep Pocket Doctrine. Officials need to continue to exert pressure on their Legislative representatives to enact satisfactory legislation.

On another front, a tort reform initiative has recently been submitted to the State Attorney General and has been titled the "Fair Responsibility Act of 1986". Movement is now under way to collect the necessary signatures to qualify this initiative for the June 1986 ballot. The League Board of Directors has voted to support this measure and the voting membership added their support in the form of an Annual Conference resolution passed earlier this month.

With this in mind, we are providing the attached information for your use in speaking to your Legislators, the public, and the press in the very vital attempts to inform the voting public so as to rectify the inequities cities face under the current deep pocket doctrine.

The League will continue to keep you updated on the progress on each of these fronts. If you have need for further information or details, contact Conni Barker in the Sacramento office.

Sincerely,

Pat Russell
Council President, City of Los Angeles
and President, League of California Cities

Lon Benninghoven
Executive Director

CLOSING THE DEEP POCKETS

Tort Reform -- The Fair Responsibility Act of 1986

Liability Insurance Crisis

As city officials are all too aware, we are facing a crisis in the area of liability insurance. Our cities are experiencing rate increases of 100-500-1000 percent. Many cities can no longer afford to carry insurance. Or, even worse, can find no insurance carrier to cover municipal liability.

Deep pocket judgments, simply stated, mean that when more than one defendant is involved and any of the defendants is unable to pay, the remaining defendants must pay 100 percent of the cost. In practice, that means cities, counties and other entities with substantial pocketbooks are increasingly being named in lawsuits where they have little or no responsibility, merely to provide a "deep pocket" capable of paying the judgment.

Some examples:

A young man dives into an ocean sand bar off a city beach, suffering injuries which leave him a quadriplegic. He sues, claiming the city should have posted signs warning him it was dangerous to do so. The jury awards him \$6 million.

A motorist with a blood alcohol level of 0.32 percent -- three times the maximum allowable legal level -- is injured when his car, traveling 60 mph in a 30 mph zone, hits water on the pavement and crashes. He sues the city for \$2 million.

A driver with a blood alcohol level of 0.17 is killed when his car runs off the end of a dead end street and over a railroad embankment 100 feet from the road. His survivors sue the city, claiming "dead end" signs were improperly placed.

These cases have become an increasing drain on the taxpayer. In a survey completed early this year, the League found 163 cities -- slightly more than one-third of the cities in the state -- reported paying out \$20.1 million in "deep pocket" judgments in 1983-84. (This figure does not include the \$6 million judgment in the diving case mentioned above which was decided after FY 1984.)

The 163 cities paid \$5.1 million in such claims in 1981-82 and \$18.2 million in 1982-83. They estimate they face a combined potential exposure amounting to more than \$210.7 million for cases that will come to trial in the next few years. Some cities, such as Laguna Beach and Dixon, face potential judgments which could exceed their total annual budgets.

Although most cities cover part of each judgment or settlement by insurance, a major portion must be borne in the city's deductible (usually \$100,000 to \$500,000), and the insurance premiums of the cities have skyrocketed. Since a city, in most cases, is unable to increase taxes in a sufficient amount to cover the losses, it must cut other parts of its budget.

TAXPAYERS for FAIR RESPONSIBILITY

Tom Conn

~~Maggie Shandera~~

~~Deputy Campaign Manager~~

Field Rep

111 Anza Boulevard, Suite 406
Burlingame, California 94010

5790441
(415) 540-0970

TC.

YES! I support Taxpayers for Fair Responsibility. I'll join the battle to change the unfair "deep pockets" law by:

- | | |
|---|---|
| <input type="checkbox"/> Using my name publicly | <input type="checkbox"/> Distributing literature |
| <input type="checkbox"/> Contributing \$ _____ | <input type="checkbox"/> Contacting friends and neighbors |
| <input type="checkbox"/> Writing letters to editors | <input type="checkbox"/> Being a speaker |

Name (Print or type) _____

Signature _____

Address _____

City _____ Zip _____ County _____

Home Phone(_____) _____ Office Phone(_____) _____

Occupation _____ Employer _____

Business Address _____

Paid for by Taxpayers for Fair Responsibility, John H. Hodgson II, Treasurer

