STATEMENT REGARDING
HOUSE BILLS 1012 AND 1013 BEFORE THE
JOINT LABOR RELATIONS AND JUDICIARY COMMITTEES

HARRISBURG, PENNSYLVANIA
DECEMBER 14, 1989

The Alliance of American Insurers is a trade association whose member companies account for approximately 24 percent of all workers compensation premiums written by insurance companies in the country today. In Pennsylvania, these same companies are responsible for approximately 20 percent of the workers compensation premium in force. As such, the Alliance and its member companies have a deep interest in the state system of workers compensation and the manner in which it provides benefits to the industrially injured worker. This includes an interest in the mainitenance of a safe workplace for all workers.

BY: JOHN J. DOYLE
REGIONAL DIRECTOR
WORKERS COMPENSATION

CRITIQUE OF HOUSE BILLS 1012 AND 1013

Chairman Caltagirone, Chairman Cohen, Members of the House Judiciary and Labor Relations Committee, I am pleased to be allowed to comment on House Bills 1012 and 1013 today. I have with me Mr. Michael Frohman, an attorney from Milwaukee, and I will explain his purpose as part of my remarks.

My late little old Irish mother used to admonish me as a child with the statement that "the road to hell is paved with good intentions". Now, of course, her admonishment was an attempt to get me to do something like, clean my room, get a job, or straighten out my character and that is not exactly the case here. However, I am sure she would agree that even though the intent to do something is commendable, perhaps not doing it the best way could be equally questionable. Now, I'm not saying that if the legislature passes these bill you are all going to go to hell, (you'll all have to deal with your individual consciences on that one) but I am saying that we have no argument with the necessity for a safe place to work. All we workers have a right to that without question. However, I am saying that there is a way to accomplish the intent of these bills without dismantling the workers compensation system that has served this state well since January 1, 1916. Previous testifiers have given you the history of workers compensation,

including the employer-employee tradeoff (the exclusive remedy in exchange for swift and sure compensation without the question of fault) and have expressed opinions as to how these bills would weaken this basic "no-fault" concept. However, I don't believe that the "no-fault" concept ever intended to excuse an employer (nor an employee for that matter) from the responsibility for injury as a result of willful actions. But, I am afraid that in your zeal to get at the "bad guys" in these bills you would sweep alot of "good guys" into that net because we cannot predict the decisions of a jury nor the interpretations that courts put on words, phrases, and even ideas. Accidents don't happen in a vacuum and in the eyes of many they had to be caused by someone and there will be a constant hacking away at the words and circumstances outlined in the statute. So, I predict that there will be a tremendous proliferation of costly litigation as attorneys (as they should) search to fit their client's cases into these statutory provisions.

Also, I believe the loss control aspects of these bills have yet to be explored. Previous testifyers have asked for further study and I therefore am offering the services of the Alliance's Loss Control Department to participate in this further study. This would include the services of a loss control specilist from Pennsylvania National Insurance Company (an Alliance member) right here in this town.

Your state has just experienced a 27.03 percent workers compensation increase and this type of legislation will be just another burden on the employers if coverage for these types of claims are provided under coverage B of the workers compensation policy. Or if not covered there, they will have the direct burden. Now, I'm not saying that cost per se should be a determining factor in providing a safe workplace, but what I am saying is that "unnecessary" cost is.

I also believe that the responsibility for a safe workplace lies not only with the employer but also with the employee and it would appear to me that to be "fair" some type of penalty provision against a willfully negligent employee should be imposed.

Therefore, this brings me to why I have Mr. Frohman with me this morning. The problem of willful action on the part of employers and employees which result in injuries is not new. The state of Wisconsin recognized this many years ago and have incorporated it into their statute, penalty provisions which apply not only to the employer but to the employee. Mr. Frohman is a practicing workers compensation attorney from Milwaukee, Wisconsin, and was formerly an administrative law judge in that state's workers compensation system. He understands and has worked with these provisions sucessfully and I have asked him to provide the committee with a brief statement regarding their

concept just by way of explanation as another way to adjust this problem without dismantling the workers compensation system. He is not an advocate but merely here to provide information.

May I present Mr. Frohman.

NATIONAL UNDERWRITER

DEC 11 1989

Prod. Liability Damage Awards Not Erratic: GAO

BY STEVEN BROSTOFF

WASHINGTON—General damage awards in product liability cases are neither erratic nor excessive, according to a new report from the General Accounting Office.

GAO said that the size of compensatory awards—which include both economic and noneconomic damages—is closely related to injury severity and the amount of the underlying economic loss. Indeed, GAO said, the amount awarded is frequently insufficient to cover economic losses when these losses are large.

While some tort reform advocates have complained about the size of punitive damage awards, GAO said that appeals and post-trial settlements serve to reduce the size of most extremely large awards and eliminate many unjustified awards.

Most often, GAO said, manufacturers are found liable based on their own negligence.

Sometimes, however, manufacturers are held liable in the absense of negligence, GAO said. But in such cases, judges and juries are allowed to consider the ability of defendants to have foreseen or prevented the danger in assessing responsibility, GAO said.

GAO reviewed 305 product liability cases from 1983 through 1985 in five states—Arizona, Massachusetts, Missouri, North Dakota and South Carolina. GAO cautioned against generalizing the findings to other states.

It was the selection of states that drew immediate criticism from tort reform advocates. The selection of states was "very strange," according to Martin Connor, president of the American Tort Reform Association, Washington, D.C.

Mr. Connor said that except for Massachusetts, GAO did not select any of the major industrial states from which most product liability problems arise, such as New Jersey, California, Illinois and Pennsylvania. Indeed, he said, more than half the product liability cases nationwide are related to industrial accidents.

"Why didn't they (GAO) select Guam and American Samoa?" he asked, sarcastically.

Mr. Connor said that GAO seems to have selected states for their own convenience rather than for any scientific reason.

According to GAO, plaintiffs in the five states included in the study were awarded compensatory damages in 45 percent of the cases, and received awards of $1 million or more only in cases involving death or permanent disability. Punitive damages were awarded in 23 cases, but were highly correlated with compensatory damages, GAO said.

However, GAO said, appeals and post-trial settlements reduced the total award amounts by 43 percent. Reductions occurred in 50 percent of the cases won by plaintiffs and in 71 percent of the cases with awards of $1 million or more, GAO said. GAO also said that appellate courts reversed or remanded for retrial all punitive damage awards on which they ruled.

According to GAO, it took almost two and one-half years for product liability cases to move from the filing of a complaint to the beginning of trial. The trial usually took 12 days, GAO said, while the appeals process took up another 10 months.

Plaintiff attorneys, according to GAO, received an average of 35 percent of the recovery on a contingency fee basis. A few attorneys were paid more than $1 million, although the median was $33,000, GAO said. Defendant attorneys received a median of $20,000, although their fees, which were based on an hourly rate, ranged from $1,500 to $400,000.

GAO added that fees and expenses paid to defendant attorneys in appealed cases were double those paid for non-appealed cases.

Turning to tort reform proposals, GAO said that most of the proposed federal reforms would have affected a minority of cases studied. GAO said that in only a few cases did the ultimate payout exceed statutory caps that have been enacted in some states. □