

**THE COST AND OTHER ADVANTAGES OF
AN EARLY OFFERS REFORM FOR
PERSONAL INJURY CLAIMS
AGAINST BUSINESS, INCLUDING FOR
PRODUCT LIABILITY***

Jeffrey O'Connell†
Patricia Born‡

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† The Samuel H. McCoy II Professor of Law, University of Virginia; B.A. 1951, Dartmouth College; J.D. 1954, Harvard Law School.

‡ Associate Professor, Department of Finance, Real Estate and Insurance, California State University - Northridge; B.A. 1986, University of Michigan; Ph.D. 1994, Duke University.

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1. SUMMARY

Many observers have concluded that the personal injury liability litigation system (including for product liability) needs improvement. Such cases are extremely complicated, requiring proof of the defendant's faulty conduct or product causing injury, and determination of not only economic but noneconomic damages. Some claimants who are injured through another's fault receive significant awards or settlements, but almost always after long delay. In addition, the current system entails formidable transaction costs, so

that substantial shares of the liability insurance premium dollars go to litigation expenses on both sides. Although some states have enacted product liability reforms, such as statutes of repose, the "early offers" reform reported on here should have a much more fundamental effect on liability litigation than such reforms. This report, in assessing the performance of the early offers reform, uses for comparison a Texas database of general business liability claims for personal injury (hereafter general liability).¹ This excludes, for example, medical malpractice and automobile accident cases.²

The analysis presented indicates that the early offers system, described in detail below, is likely to generate very significant savings, including a reduction in attorneys' fees for both sides. These savings should allow a substantial reduction of premiums for such personal injury liability insurance. Ultimately, injured parties, providers of goods and services, consumers, employers and the public generally should benefit from the reform.

Data on the Present System

As indicated, this report uses general liability data from Texas on closed claims for personal injury (of which product liability seems to comprise at least a third and perhaps more; coding difficulties impede precision) to compare present law with the hypothetical performance of the early offer proposal.

As to the present law, the Texas data involve all personal injury tort claims that were closed for an award or settlement greater than \$10,000 starting with 1988. Culling general liability claims for personal injury up through 2004 from those statistics, the Texas data document that most

¹ General liability insurance is a "form of insurance to protect owners and operators of business from a wide variety of liability exposures. These include liability arising out of accidents from the premises or the operations of an insured, products sold by the insured, [and] operations completed by the insured" THOMAS E. GREEN ET AL., GLOSSARY OF INSURANCE TERMS (1980).

² See *infra* App. A: TDI Closed Claim Reporting Forms, Item 7.

claims are settled, with fewer than one percent of the settlements or awards the result of trial verdicts. The distribution of closed claims is highly skewed. Only 0.43 percent of the claims involve awards or settlements greater than five million dollars [19C],³ and 3.93 percent greater than one million dollars [19C]. But 72.39 percent of the awards or settlements are between \$10,000 and \$100,000 [19C]. The median closed claim has a settlement amount or court award of \$39,919 [19C]. Almost 12 percent of the closed claims involve the death of the victim and an additional 6.73 percent involve severe nonfatal injuries with 8.36 percent of all cases involving children under age 18 [19B]. The average, as opposed to the median, claim involves a settlement or award of \$242,823 [1C(5)], of which 26 percent is allocated for economic loss [1C]. Only 4 percent of cases involve punitive damages [19A], with the average settlement or award in those cases being \$730,621, of which 21 percent is for economic loss [1Aa(3)(4)]. Another 18 percent of cases involve an average settlement or award of \$39,868, but no economic loss [1Ab(3)]. The vast majority of cases (96 percent) not involving punitive damages have an average settlement or award of \$186,215 and an estimated economic loss of \$58,395 (31 percent of the settlement or award) [1Bd(3)(4)]. The settlement or award includes claimant's attorneys' fees, conservatively assumed to be one-third of any payment.

Methodology

The early offer reform proposal is a legal reform approach designed to provide prompt coverage of claimants' economic losses and to reduce litigation costs. Under the early offer proposal, within 180 days after a personal injury liability claim is filed, liability insurers have the option of offering claimants a payment equal to the claimant's net economic

³ "19C" refers to Table 19, Panel C *infra*. References to Tables 1-20 will usually appear in the format: Table number, Panel letter (capital), row letter (lower case), column number(s). For example: 1Ab(3), represents Table 1, Panel A, Row b, Column 3.

loss (i.e., the loss beyond any other insurance applicable to the claim), plus reasonable legal fees, but nothing for pain and suffering damages. If the claimant does not accept this offer, the claimant can proceed with a tort claim for both economic and noneconomic damages, but the legal standards of both the burden of proof and level of misconduct applied to the claim would be raised, with the claimant having to prove the defendant's gross negligence beyond a reasonable doubt.

Insurers would decide whether to make an early offer by comparing the expected cost of the early offer to their expected cost under normal tort rules if the claim is not settled under the early offer proposal. This expected cost of an early offer would equal the net economic damages (medical expense and wage loss but, as stated, not pain and suffering) plus an allowable payment of the claimant's lawyers, which as an illustrative calculation is presumed to be 10 percent of the value of the early offer. That is, the insurer will make an offer if the expected liability and litigation costs if the claim is not settled under the early offer proposal are greater than the net economic damages and allowable claimant's legal fees.

In other words, the insurer will make an early offer when the amount of the early offer is less than the insurer's expected exposure from a full-scale tort claim. This formula assumes that insurers act in a rational economic manner, are risk-neutral, and value payoffs according to their expected value. This report focuses on the amounts that would be saved by insurers making early offers, since such savings are a prerequisite to making early offers. But savings to defendants' insurers by no means necessarily imply losses to claimants of an identical magnitude. Although claimants lose their normal recourse to full-scale tort litigation, such litigation, as seen, has inherent uncertainties, delays, and transaction costs, including very high claimants' legal fees, which are deducted from any payment. Under the early offer proposal, claimants lose any rights only after they are guaranteed prompt payment of their actual medical expenses and wage losses, plus a reasonable attorneys' fee.

Calculation of potential savings from the early offer reform requires a reference point for the computations. Three different points are possible using the Texas data: the insurer's initial reserve set aside for payment of the claim, its final reserve, and the ultimate settlement or award. Both initial and final reserves include estimated defense attorneys' fees, but the final reserve may be the most useful reference point because it is calculated at a point when more is known about the actual settlement or award and about actual defense attorneys' fees. However, the savings computed from this reference point involves a key assumption. One must assume that the defense early on correctly estimates its final expected value of the claim. An alternative reference point is the initial reserve where no such hypothetical knowledge must be imputed. But this latter measure proved to be less advantageous in the analyses in that many insurers typically seem to underestimate this amount, thus making early offers less likely.

Results

Table 2 focuses on the whole universe of personal injury liability claimants, both those covered and those not covered by workers' compensation. It shows that if the final reserve is the appropriate reference point for computing savings, the early offer reform could generate average per claim savings of \$230,232 [2Ae(2)]. Also based on the final reserve, overall, insurers would find it desirable to make an early offer in some 98 percent of the liability claims paid under tort criteria [2Ae].

This report contains additional information on the early offer reform, including the likely impacts by type of injury (fatality, severe injury, etc.), and by whether deductions for collateral sources are or are not included. The report also explores the effect of setting minimum amounts for early offers in cases of severe injury or death. A minimum of, say, \$250,000 would often result in higher payments to the claimant if the offer were accepted than otherwise. But, the higher the minimum offer, the less likely the defendant

would be to make an offer, therefore reducing the savings and other effects from the reform.

In sum, based on the assumptions used in this report, the early offer reform could lead to very large cost savings and comparatively speedy resolution of many cases if it were adopted. The main benefit to the claimant of the early offer reform is that if an offer is made and accepted, the claimant receives assurance of payment that covers economic damages starting approximately six months after the claim is filed. For the average case, payment will be received approximately 2.4 years sooner from the time of the claim than under the current system [3Ae(2)].

Admittedly, the disadvantage to the claimant of accepting the early offer is that the possibility of receiving noneconomic damages is eliminated. Since noneconomic damages often involve greater sums than economic damages, this loss is significant. But that loss must be counterbalanced with all the uncertainty, delay and transaction costs of a full scale tort claim. It might also be noted here that in about 4 percent of the cases, the possibility of receiving punitive damages is present [19A]. These are the cases where the early offer most likely will be rejected, but even here victory would by no means be assured since the burdens of proof would be substantially greater than now.

Granted, the extent to which savings projected in this report would be passed on through lower personal injury liability insurance premiums is unknown. However, assuming a competitive marketplace, one would expect that outcome.

2. THE RESULT OF THE EARLY OFFER PROPOSAL

A proposed early offer statute can differ in several ways: for example, the percentage of the award allocated for the claimant's legal expenses, the offset for collateral insurance payments, and the presence of minimum payments for severe injuries. In the following, we examine several such variants.

As seen, our report uses Texas general liability closed claims data to assess the way an early offer proposal would work. Where data are unavailable for smaller claims, values are imputed, as will be seen, using otherwise available data. Analysis that relies on these imputed amounts is reported separately. Pertinent data based on the final award or settlement is for amounts actually paid, whether by settlement, trial, or appellate decision.

The empirical analysis is structured in the following order. First, calculation of the components of the early offer proposal: namely, (1) the amount of the insurer's reserve set aside to pay the claim, calculated both early and later in the claims process; (2) actual settlement amounts and court awards; and (3) claimant's economic losses. Then, a calculation is made of both the number of cases for which an early offer is attractive to the insurer as well as the average savings if an early offer were in fact made and accepted. The calculations are figured by analyzing the data in two ways: (1) by type of injury (e.g., fatality or severe injury) and (2) by type of damages (e.g., whether punitive damages were demanded), whether only noneconomic damages were reported, and whether both noneconomic and economic, but not punitive, damages were reported (the much more typical situation). Also examined are alternative assumptions to include the effects of minimum early offer payments of (a) \$100,000, (b) \$250,000, or (c) \$500,000 for cases of deaths and severe injuries, and the effect of including offsetting collateral sources in determining economic damages as required in the early offer. Also calculated is how much time is saved if an early offer is tendered and accepted for each of these alternative scenarios. Next, the effect on litigation cost savings, which consist mostly of attorneys' fees, for both claimants and insurers is calculated. Finally, claimants' financial gain or loss per case from early offers is calculated.

Note that throughout this report, all dollar values are adjusted to 2004 dollars using the Consumer Price Index for All Urban Consumers. In addition, Appendix A provides additional selected descriptive characteristics of the Texas Closed Claim sample, including information on the

distribution of total settlements or court awards, while Appendix B provides detailed information on the construction of variables from the Texas data.⁴

3. EARLY OFFERS AND THE PRODUCT LIABILITY CONTEXT

3A. The product liability context

In this section, numbered items i and ii list some of the main criticisms of current personal injury liability law. Numbered items iii-xi relate the early offer proposal studied in this report to the debate on personal injury liability reform. Sections 4-8 then present details of the financial and other effects of the early offer reform.

i. The current system of tort liability for personal injury is often seen as unworkable and in need of fundamental reform. Under the current system, a claimant must prove two difficult elements: the defendant's faulty conduct or product, and the economic value of noneconomic damages, mostly pain and suffering. In product liability cases, determining fault is often especially complex, given the intricacies of modern products and their interaction with varying user characteristics. The system is thus subject to frustrating uncertainties, the attempted resolution of which is very cumbersome and expensive. All this uncertainty in turn generates substantial transaction costs (mostly legal fees on both sides, well documented in this report) and long delays in any payment that is made (also well documented

⁴ Standard statistical terms are used throughout this report as follows. The sample mean (the average) is calculated by adding up the data values and dividing by the total number of data values. Percentiles are values that indicate how many data values are below and how many are above the given percentile value, e.g., 30 percent of the data values lie below the 30th percentile, and 70 percent of the data values lie above the 30th percentile. The median, which is equivalent to the 50th percentile, is the value at which half the data values are larger than the median and half are smaller than the median. The standard deviation is a measure of "dispersion" or variation in the data values.

below). One earlier finding indicated that only 37.5 cents of the liability premium reaches claimants, and of that, only 14 cents goes to pay for the actual economic losses incurred by injured parties.⁵ In the end, the liability insurance system does not result in prompt payment to many needy victims; rather, it is a system of prolonged, unpredictable, expensive fights over whether claimants are deserving and/or what payment they deserve—a system that much too often operates to the detriment of providers of goods and those severely injured therefrom.

ii. The present system of tort liability insurance for personal injury leads to the anomalous result of maltreating most of all injured parties whose medical expenses and wage losses exceed any applicable private or public insurance coverage. The present legal system in effect tells those injured parties that they may be paid something, but only years from now and only after paying any recovery lawyers' fees of 30 percent or higher.

The tort system imposes far fewer risks on the various parties to personal injury liability litigation who are not severely injured. Providers of goods or services typically have protection through their self insurance or their liability insurance coverage, and their insurers are protected by their risk-spreading, augmented by actual calculations. Defense lawyers receive payment win or lose. Claimants' lawyers normally do not take a case unless confident it is likely to lead to recovery sufficient to make it worth their while. Even if the risk of nonrecovery for any one claim is threatening, the claimants' lawyer minimizes this risk by portfolio diversification, a form of protection unavailable to severely injured victims, who normally will have only one such claim in a lifetime. Finally, less seriously injured parties are relatively well protected by the very fact of lesser losses which are also more likely to be covered by collateral sources.

⁵ Jeffrey O'Connell, *An Alternative to Abandoning Tort Liability*, 60 MINN. L. REV. 501, 511-12 (1976).

What is one to make of a legal and insurance system that offers least protection to those who need it most?

iii. The early offer reform addresses the main shortcomings of the current system. Before considering the benefits of early offers, let us review again their structure. A defendant has the option (not the obligation) to offer an injured claimant, within 180 days after a claim is filed, periodic payment of the claimant's net economic losses as they accrue.⁶ Economic losses under an early offer statute must cover medical expenses, including rehabilitation, plus lost wages, to the extent that all such costs are not already covered by collateral sources, plus an additional 10 percent attorneys' fee. Therefore, a defendant cannot make a lesser or "low ball" offer and still be covered by the statute. Nor is there any need for a court to determine whether the early offer is fair. The early offer statute defines the fairness of the offer, just as under a workers' compensation statute for workplace accidents.

If an early offer is made and accepted, of course that settles the claim. If the defendant decides not to make an early offer, the injured party can proceed with a normal tort claim for medical expense and wage loss plus pain and suffering. Alternatively, if the claimant declines an early offer in favor of litigation, (1) the standard of proof of misconduct is raised, allowing payment only where the equivalent of "gross negligence" is proven; and (2) the standard of proof is also raised, requiring proof of such

⁶ For purposes of our analysis, we assume that periodic payments have the same present value as the net economic loss. Admittedly, periodic versus lump-sum payment can pose its own problems when claimants have medical expenses and other burdens that are not distributed evenly across time. But early offers are really a form of major medical/disability insurance which is payable periodically. Also, the problems of periodic payment are often avoided by the parties' agreeing to a lump-sum settlement, as is often done under workers' compensation. Finally, periodic payments avoid the need for a preliminary agreement of the value of an early offer when it is made (except for computing the claimant's attorneys' fees of 10 percent of the value of the offer to pay economic loss).

misconduct beyond a reasonable doubt (or at least by clear and convincing evidence).

iv. A typical case to illustrate the early offer law follows. A person has been injured in the course of using a product. If the victim wins in court, she would be awarded \$1 million, but given the risks of litigation, she has only a 50 percent chance of winning. Roughly calculated, the injury victim has a claim worth about \$500,000 (50 percent chance at \$1 million). Assume the cost of setting aside a corpus of money to pay her net economic losses as they accrue is projected at about \$250,000 (an often realistic assumption, as the following report demonstrates). The defendant would likely make the early offer, \$250,000 being clearly less than \$500,000. And the victim would likely accept, given that under the early offer proposal the victim will have the normally insuperable burden of proving the defendant guilty of gross negligence beyond a reasonable doubt.

Now assume a change in the facts: same injured party, same defendant, and the same possible \$1 million verdict. But here assume this victim's chances of winning are only one in ten, with an expected value of \$100,000 (1/10 of \$1 million). Here, the defendant's insurer would not make an early offer, \$100,000 being clearly less than \$250,000.

v. The fear of potentially higher costs to defendants under this early offer scheme is avoided because no defendants need make an offer if they would not do so without this statute. Claimants cannot demand an early offer. Thus, defendants will make an offer only when it makes economic sense for them to do so, as shown in the example above and in Section 2 above.

vi. Early offers will work only if defendants, not claimants, are allowed to make binding early offers. In the alternative situation in which claimants and their counsel could make binding early offers as well as defendants, with defendants thereby bound by that early offer, claimants would have a huge incentive to make non-meritorious or marginal claims. But defendants, as the parties making payment, when faced with manifestly meritless or very marginal claims, make no early offer, as shown in the

example above. And yet, when faced with potentially meritorious claims, defendants will have that incentive to explore whether the statutorily-defined early offer involves less expected cost than a full-scale tort suit with all its uncertainty and transaction costs. Only defendants, then, have the appropriate incentives to distinguish carefully between at least arguably meritorious and clearly non-meritorious claims in order to reduce costs by promptly paying the required minimum benefits in suitable cases.

vii. Will defendants thereby just “cherry pick” claims by making lower payments to clearly deserving claimants? Because of the uncertainty and cost of determining both liability and pain and suffering damages under present tort law, it is likely, as indicated in Item iv above and the report itself below, that defendants in product liability cases will make early offers even when liability is unclear.

viii. The proposal would advantage injury victims in many ways. Whereas injury victims would lose their recourse to full-scale tort litigation, they would reduce their uncertainty, delays, and transaction costs. Moreover, victims would lose their current tort litigation recourse only when they are guaranteed prompt payment of their actual economic losses plus attorneys’ fees. These prompt and certain payments will be especially advantageous to those severely injured parties whose losses are greater than all other applicable coverages. Admittedly, though, many early offer recipients, as we shall see, will receive much lower payments, especially if there is no requirement that an early offer include an alternative of a required high minimum payment amount.

ix. Several factors make it unattractive for early offers to be made voluntarily without an early offer statute. Defendants may well be confident of defeating or at least wearing down claimants, given the difficulties and delays in proving a tort claim. The long delays before trial may often enable defendants to bargain down even claimants clearly entitled to tort damages because the latter may need immediate money for accrued and accruing medical bills and wage loss. In addition, defendants may well fear that an

early offer to settle for claimants' net economic loss will be seen as a sign of weakness and thereby encourage claimants and their lawyers to press for an even larger settlement than originally sought. Claimants and their lawyers may similarly fear that an early offer to settle only for economic loss would be deemed an admission of weakness in their cases, resulting in either no payment or less than that otherwise sought. Early offers avoid these negative incentives by encouraging both sides to agree to prompt periodic payment of, in effect, relatively liquidated damages equaling net economic losses.

x. There are several reasons why damages for pain and suffering are not included in the statutory early offer. The uncertainty of determining both liability and damages for noneconomic damages is the key to the malfunctioning of tort law and, in turn, to a balanced solution fair to both injured parties and providers of goods. Under an early offer system, the prospect of an award of pain and suffering damages still serves as a means of deterrence by providing incentives both (1) to avoid causing mishaps accompanying the use of goods and (2) to make early offers covering essential economic losses when mishaps occur. The latter provides prompt compensation to the many inevitable victims of injuries that accompany, say, the use of manufactured products. In effect, the threat of paying damages for pain and suffering, rather than actual payments therefore, can be seen as better serving injured parties as well as the public interest.

Pain and suffering damages also differ from economic damages from an insurance point of view. People do not generally find it desirable to purchase insurance covering their pain and suffering.⁷ Indeed, no such general insurance market has emerged.⁸ But individuals normally do insure

⁷ See W. Kip Viscusi, *Pain and Suffering: Damages in Search of a Sounder Rationale*, 1 MICH. L. & POL'Y REV. 141 (1996).

⁸ For the point that uninsured motorists' coverage is a unique "first party" insurance that includes payment for pain and suffering, see Steven P. Croley & Jon D. Hansen, *The Nonpecuniary Costs of Accident: Pain-and-Suffering Damages in Tort Law*, 108 HARV. L. REV. 1785 (1995).

their economic losses; this is the focal point of the early offer proposal.

Here we reach a key point: Because personal injury claims alone among all other legal claims routinely entail damages for both economic and noneconomic losses, defendants are uniquely positioned not only to make, but also to enforce by early offers, socially attractive settlements for only economic loss. In non-personal injury claims, where only economic damages are at stake, no comparably fair means are available to sanction a claimant who refuses to accept an offer of only a portion of the total losses claimed.

xi. A complete no-fault plan for, say, product injuries is not feasible. It is difficult to define in advance when no-fault benefits should be paid for injuries that generally arise from manufactured goods. Under no-fault auto insurance policies, compensation is paid for an injury "arising out of the ownership, maintenance, or use of a motor vehicle." Under workers' compensation laws, compensation is paid for an "injury arising out of, and in the course of, employment," which with occasional exceptions, is also relatively easy to determine. It is not feasible, however, to force all providers of products to pay for any and all adverse events arising in the course of using a product. A provider of products could not be expected to pay every party injured by a product. (Who, in fairness, under no-fault should pay a visitor falling and injuring his head by hitting the host's marble table top? The host, the furniture store, the quarry?) So such a comprehensive *ex ante* no-fault solution is unworkable. The proposed early offer system for personal injury liability allows, once the facts are perceived, *ex post* comparisons of the cost of a tort claim versus that of an early offer. Thus, this system seems at once workable, economical, equitable, and simplifying.

3B. Some operational features of the early offer plan

Some questions regarding the practical operation of the early offer plan should be addressed. Is the 180-day period too short a time for the defendant to decide to make an early offer? Today, insurers generally calculate what they expect

to pay for any given claim early on (called the initial reserve), and thus an early offers regime should not unduly tax them. Claimants and their lawyers, in addition to taking as long as they wish to research whether to bring a claim, can also take whatever time they wish to press any discovery they deem necessary before responding to an early offer. But knowledge of the likelihood of early offers would probably induce them to accelerate their side of the claims process.

Nor will court approval of the statutorily defined terms of an accepted early offer be any more required than is court approval of the similarly statutorily defined terms of a workers' compensation case. Admittedly, there may be later disputes after an early offer settlement regarding what is due periodically as losses accrue in the future, but that happens under workers' compensation or indeed any major medical/disability policy extending into the future. Furthermore, an early offer settlement by being paid periodically is better than lump sum court awards in dealing with questions such as whether the claimant's condition might change. Note that the Michigan no-fault auto law, with its very large no-fault coverage extending to many hundreds of thousands of dollars, has been able to deal effectively with such matters. But to avoid them the parties might also agree to a structured settlement.

The limit on claimant attorneys' fees to 10 percent of the value of the early offer is a plausible provision when compared with the present almost uniform minimum of one-third of the value of a full-scale tort settlement or verdict. By definition, there will be no trial expenses under early settlements. But if the 10 percent fee is manifestly too low because of special circumstances, claimant's counsel can petition the court for an augmentation, still payable by the early offeror.

3C. Overview of the effects of early offers: Case study of severe nonfatal injuries

This overview briefly sets forth the results of our analysis of the early offer proposal described above and relates these results to the current personal injury liability outcomes,

based, as indicated above, on the extensive general liability closed claim data required to be filed by insurers in Texas.

The categories of cases covered in our overall study include fatalities, severe nonfatal injuries, and less serious cases. In this overview, we discuss "severe nonfatal injuries," defined as brain damage and spinal cord injury and complications in personal injury liability cases both involving and not involving recipients of worker's compensation as well. (Later in Section 6F we will separate the results for the two categories.) The economic losses for the 1429 cases that received tort payment in this category (excluding cases that do not involve punitive damages)⁹ average \$337,151 [1Bb(4)]. That figure of \$337,151 far exceeds comparable figures for fatal injuries and less severe nonfatal injuries.

The key to estimating the effect of early offers, as seen in Item iv of Section 3A above, is a comparison of the amount an insurer sets aside early on to pay a given tort claim (called, as mentioned, the initial reserve) versus the amount that would be required under an early offer to pay the claimant's net economic loss plus attorneys' fees. If the former is greater than the latter, an early offer will likely be tendered. The presence and amount of collateral sources can also affect whether an early offer is made. Finally, the report also uses the insurer's final reserve and the ultimate payout for such a comparison.

Basing the insurers' decision on initial reserves, and assuming there is a collateral source offset, of the 1,429 claimants suffering severe nonfatal injuries paid under tort law 853 (or 59 percent) would be tendered early offers under the proposed statute [3Bb(1)]. The savings from paying such claims would average \$670,116 per claim [3Bb(1)]. Such claimants would be paid on average 2.37 years (860 days)

⁹ For claims that settle without a court decision, insurers are requested to report the breakdown of damages into its four components of economic, noneconomic, punitive, and prejudgment interest only if in the opinion of the individual completing the form, the settlement was influenced by demand for or possible award of one of the latter three damages components. The 1607 claims noted above are claims for which a positive value is entered for punitive damages.

faster than under tort law [9Bb(1)], with total litigation costs reduced by an average of \$210,758 per claim [13Bb(1)]. On the debit side, admittedly this average payment would reduce average payment to such claimants by \$275,814, with only 3.86 percent of claimants receiving more under an early offer than under a tort claim [16Bb(1)]. Some claimants may receive more under early offers than tort if most of their damages under the current system are economic loss, from which one-third is deducted for attorneys' fees. But even so, the above figures raise a question: Are early offers worth the trade? Arguably yes, given that early offers cover essential losses with far lower costs, plus the greater promptitude and certainty of such payments.

But to lessen the discrepancy of payments under early offers compared to payments under tort law for those suffering severe nonfatal injuries (or death), an early offer statute could require that an early offer provide a minimum payment of either payment of net economic loss or a minimum of \$250,000. (Also tested in the report is the effect of minimums of \$100,000 and \$500,000.) The number of claimants suffering severe but nonfatal injuries who lose an amount of compensation under the \$250,000 option is reduced from 672 to 313, with the percentage of claimants gaining in compensation rising from 3.86 percent [5Bb(1)] to 32.27 percent [16Bf(1)]. On the other hand, the number of severe nonfatal injury cases receiving early offers would be reduced from 673 [2Bb(1)] to 313, with the remaining claimants consigned to the dysfunctions of the current tort claim system [2Bf(1)].

The smaller the insurer's reserve in any given case, the less likely an early offer would be made. And herein lies an important factor of the report: the initial (or early) dollar reserve allocated to pay a claim seems often greatly underestimated compared to a claim's ultimate value for claims that are paid. The report shows that for nonfatal severe injuries paid in tort, the average initial reserve was \$543,365 [1Bb(1)], compared to a final reserve of \$1,347,422 and an actual settlement/award of \$992,514 [1Bb(2)(3)]. Note further, that only \$337,151 of the average tort

settlement or award consisted of the claimant's economic loss [1Bb(4)], giving a rough indication of how comparatively attractive for insurers early offers will be based on the cost of paying only economic loss versus full damages. Turning to the subset of cases where an early offer is likely, final reserves, too, are larger than initial reserves. Those defendants are more likely to make early offers if the decision is based on final reserves versus initial reserves. This would result in (1) more early offer payees, (2) prompter payment, (3) lower litigation costs, and (4) lower overall costs [3Bb(1)(2); 9Bb(1)(2); 13Bb(1)(2)], as shown by the following lettered Exhibits:

Exhibit A

Number of Early Offer Payees, Based on:

Initial Reserve	853
Final Reserve	1386

Days Saved, Based on:

Initial Reserve	860
Final Reserve	884

Litigation Cost Savings, Based on:

Initial Reserve	\$210,758
Final Reserve	\$263,003

Overall Savings, Based on:

Initial Reserve	\$670,116
Final Reserve	\$1,120,845

The outcome comparisons for payees under early offers based on initial reserve and final reserve payout are as follows [16Bb(1)(2); 16Bf(1)(2)]:

Exhibit B

Average Claimant Reductions, Based on:

Initial Reserve	\$275,814 (3.86 percent gaining)
Final Reserve	\$281,109 (5.19 percent gaining)

Average Claimant Reductions With \$250,000 Minimum, Based on:

Initial Reserve	\$459,716 (32.27 percent gaining)
Final Reserve	\$360,344 (34.72 percent gaining)

A minimum payment increases average claimant reductions in compensation because the mix of claims affected by early offers changes. Such a minimum reduces the number of claims eligible for an early offer (compared to paying only net economic losses), with the result that the altered mix of cases entails only higher value claims.

The important point here is that the larger the final reserve or payment compared to the initial reserve, the greater the incentive for insurers to set a more realistic and therefore a higher initial reserve, leading in turn to more and higher early offers. In this connection it should be noted that insurers' final reserve for claims involving severe nonfatal injuries averages \$1,347,422, which is closer to the average settlement/award of \$992,514 than the average initial reserve of \$543,365 [1Bb(2)(3)(1)].¹⁰ Of course insurers currently do not have knowledge of the later reserve or final payout at the time they are making the initial reserve. However, if the early offer proposal is adopted, insurers would seemingly have an incentive to do a more refined analysis of a claim at an earlier stage than they do at present. But even without adjusting the initial reserve values to reflect the likely greater research that will occur in

¹⁰ Adding defense costs to the settlement/award would bring these numbers even closer.

an early offer regime, the data still seem to indicate widespread opportunities for successful early offers.¹¹

4. COMPONENTS OF THE EARLY OFFER PROPOSAL

4A. Expected overall insurers' costs

As seen, the maximum an insurer would be willing to offer under the early offer proposal is governed by the insurer's expected liability and litigation costs of proceeding with the claim under current tort law. This expectation, of course, takes into account the probability of, as well as the amount involved in, settling the claim or losing the case in court. These probabilities are incorporated in the reserve amounts.

As also seen above, in our calculations we use three different reference measurements to estimate the basis for the defendant's decision. The first measure is the defendant's initial reserve amount set aside for possible payment in the tort case. The second measure is its final reserve amount set aside for the same case. The third measure is the actual amount of the settlement or court award in the case, plus associated legal defense expenses. (Note again, the use of the second or third measure to decide on the feasibility of an early offer assumes either much greater foresight on the part of the insurer or more expeditious analysis.) The Texas closed claim data used here reports initial and final reserve divided into "indemnity" reserve (i.e., the reserve for payments) and "expense" reserve (i.e., the reserve for all claim-related defense expenses). The expense reserve information permits consideration of alternative assumptions about reductions in expected legal

¹¹ For an economic model of the cost and other effects of the early offer proposal applicable to medical malpractice claims also showing similar results, see Jeffrey O'Connell, Jeremy Kidd & Evan Stephenson, *An Economic Model Costing "Early Offers" Medical Malpractice Reform: Trading Noneconomic Damages for Prompt Payment of Economic Damages*, 35 N.M. L. REV. 259, 264-70 (2005).

defense expenses arising out of an early offer. The closed claim data also separately report both total "allocated loss expenses" specifically assigned to a given case as well as a subcategory of unallocated more general legal and related administrative expenses.

Texas requires that insurers submit information to the office of the Texas State Department of Insurance (TDI) on all claims with bodily injury payments of at least \$10,000. Payments over \$25,000 are reported on a separate long form, whereas payments less than this amount, but with a minimum of \$10,000, are reported on a short form [These forms are shown in Appendix A].¹² The primary insurer (the principal one in the case) submits the Texas closed claim form to the TDI. The primary insurer reports not only its reserves but also reports information on its actual payment as well as what, if anything, any other insurers of defendant parties contributed to the settlement or award. This means that the reported reserve corresponds to the portion of the claim the primary insurer expects to pay while the total settlement or court award pertains to the actual full payment of the claim. As an example, suppose there are two insured providers of goods defending a product liability case, a manufacturer and a wholesaler, and suppose the manufacturer's insurer (the primary insurer) paid \$250,000 and the wholesaler's insurer paid \$100,000. Each insurer would then submit a closed claim form to the TDI, reporting both its own payment and the payment by the other party's insurer, and would also report the total amount of the settlement or court award as \$350,000. For 82 percent of the Texas claims, the primary insurer paid the full amount of the settlement or court award,¹³ with the remaining 18

¹² Neil Vidmar and his colleagues, while indicating flaws, for the purposes of their study nonetheless acknowledge the Texas data as "the best available." Neil Vidmar et al., *Uncovering the "Invisible" Profile of Medical Malpractice Litigation*, 54 DEPAUL L. REV. 315, 319-22 (2005).

¹³ There are 1458 claims (0.04 percent of all claims) in which the primary insurer reported zero payment. Per the Texas Department of Insurance (TDI) staff, these are claims in which the primary insurer paid the claim but was fully reimbursed by a deductible paid by the insured

percent of the claims reporting that more than one payer contributed to the settlement [19Ag].¹⁴ If an early offer makes sense, all the insurers involved in any given case will likely join in making an early offer. Otherwise any non-offeror faces a claimant now seeking both economic damages, with no collateral source offset, and noneconomic damages, with such a case in addition being financed by payment from another insurer's early offer. We thus assume that the insurers can be treated as a collective entity and that in practice any division of the costs among the insurers will be handled later through arbitration. Assuming then that the early offer will be a collective venture among the applicable defendants, the pertinent reserve values to determine the willingness to pay for the early offer are the projected amounts for all insurers, not simply that for the primary insurer. To obtain this projection, the primary insurer reserve amount is scaled up by the size of the total settlement or award, divided by the payment by the primary insurer plus any deductible. In particular, we multiplied the reserve amounts by the ratio of the response in the Texas long form closed report claim to question 12a7 (pertaining to the total final amount of settlement or court award) divided by the sum of the values in question 12a1 and 12a2 (pertaining to the amounts paid by the primary insurer plus any deductible paid by the insured provider) (see Appendix A for the wording of question 12).

also reported on the closed claim form, and the reserve amounts include this value on the deductible line in the reporting form to TDI. Per TDI staff, the reported reserve corresponds to the sum of the primary insurer payment plus any deductible payment.

¹⁴ Payments by other parties are not always known to the primary insurer and so, although the amount paid by the primary insurer is accurate, there may be other contributors. Thus, total amounts may understate the true total amount of settlement or court award. The TDI flags duplicate claims reported within the same year. A claim is a "duplicate" if there is more than one insurer for the same injury. The TDI identifies 669 duplicates in the 39,553 claims. It is important to identify duplicates in tracking overall trends in product liability payments, but it is not relevant in making a comparison of a reserve to economic loss as we do here.

4B. Defense legal expense

Not all of the defense legal expenses will be saved if an early offer is accepted because some costs must be incurred to evaluate the claim before deciding whether to make an early offer. To assess the share of costs that would be saved, an approach was adopted that is consistent with the proposal's projected treatment of a claimant's legal fees. Assuming the usual claimant's legal fees would be one-third of any normal tort award or settlement, the presumed early offer proposal payment of 10 percent of net economic loss as a claimant's legal expenses provides payment of $10/33$ of the otherwise normal contingency fee as a part of the early offer. Making a parallel share assumption for defendants, it is assumed that the fraction $10/33$ of defense legal expenses will be incurred before the early offer is accepted. If the defendant chooses instead to litigate the claim, it will incur this $10/33$ fraction of defense costs plus the remaining $23/33$ fraction. Thus, by settling a claim based on an early offer, the defendant saves the $23/33$ fraction of legal expenses. As with reserves, we scale up the primary defense legal expenses.

In this calculation of whether an early offer is desirable, the maximum an insurer would be willing to offer is the expected tort settlement or award plus this $23/33$ defense cost share. If the early offer is accepted, the defense costs that count as "savings" are only the $23/33$ share amount because, as indicated, the other defense costs will already have been incurred.

4C. Net economic loss

Of the 39,553 claims in the Texas closed claim data set, 16,058 reported a breakdown of the damages into four possible categories: (1) economic damages (which, net of collateral sources, are payable under an early offer), (2) noneconomic damages (which are not payable under an early offer), (3) punitive damages (the possible presence of which includes cases when an early offer would more likely be declined), and (4) prejudgment interest (which will be largely

eliminated because of the promptness of early offer payments).¹⁵ For cases in which the breakdown of economic damages is included in the Texas data, the damages amount reported is used. For all other cases, the average economic damages share is calculated using the average of claims with the similar characteristics. In particular, four different economic damages share values are separately considered based on injury type (fatal/nonfatal) and whether or not workers' compensation was a collateral source. The economic damages shares of the total award are as follows: 31.77 percent nonfatal, no workers' compensation (i.e., nonfatal for those without workers' compensation as a collateral source); 38.79 percent nonfatal with workers' compensation; 27.00 percent fatal, no workers' compensation; 36.14 percent fatal with workers' compensation. The injury type and collateral sources are not reported for all the TDI short form claims. For these cases (10,289), the share of economic damages was imputed to be 5.32 percent, the average of the economic damages share for all short form claims in which a breakdown was reported.¹⁶ Because the aim of the early offer plan is to compensate for economic loss, noneconomic or punitive damages or prejudgment interest amounts are not imputed. To provide more information on the allocation of damages into the four categories, detailed information is reported on the distribution of economic damages, noneconomic damages, punitive damages, prejudgment interest, and the total settlement court award

¹⁵ The actual breakdown is reported for court awards and is an estimate as contemplated in the settlement for those without court decisions. Per TDI staff, for cases that settled out of court, the breakdown is only asked to be reported if, in the opinion of the individual completing the form, the settlement was influenced by a demand or possible award of non-economic, or punitive damages, or prejudgment interest. Also per TDI staff, this is the best and only information available using Texas closed claim data on the components of damage awards, granted that most insurers do not record information with even this level of detail. *See supra* note 9.

¹⁶ The payment cap is \$25,000 for short form closed claim reports, so these injuries are unlikely to entail death or severe injury.

in Table 1, Panel C, for the 16,058 claims in which a breakdown is reported.

Although the TDI long form allows reports of whether any collateral sources were available to the injured party, claimants are not required to report such sources to the insurer. Investigation of these data suggests that reports of collateral sources were incomplete. Therefore, the percent of economic loss offset by collateral sources under the early offer proposal is imputed using data from Florida in the earlier HHS medical malpractice study co-authored by the first-named author of this personal injury liability study and noted by an asterisk at the beginning of this article. We use the same collateral source offset of 26 percent for all claims, unless the claim involves an offset for workers' compensation. For the latter, with its much more generous payment of relatively unlimited medical coverage and significant wage loss, we assume a 60 percent offset.

5. SPECIAL CONSIDERATIONS: PUNITIVE DAMAGES AND MINIMUM PAYMENT

5A. Punitive damages

Claimants who do not accept an early offer must show that the provider's conduct was grossly negligent, which is variously but generally similarly defined in the several states, in order to collect full tort damages. A useful measure of whether claimants would anticipate if this higher legal standard could be met (and therefore opt out of the early offer settlement choosing instead to litigate) would be whether punitive damages are claimed or actually paid in the court award and are thus reported to the TDI. For purposes of our analysis we assume that all cases in which there are claims for punitive damages will opt out of the early offer and that all claims without punitive damages will accept an early offer if one is made. (As a practical matter, some claimants who ultimately might have received punitive damages may choose to accept the early offer, since there is substantial uncertainty as to whether such damages will be

awarded. Likewise, some claimants who ultimately will not receive punitive damages will choose to reject the early offer because they overestimate their chances of receiving such damages.) But based on the above assumptions, claims that report punitive damages are separated by us from those that do not, and we indicate the results under the early offer proposal with and without these claims. As seen, only 1607 of the 39,553 claims in Panel A of Table 1 thus involved punitive damages, or about 4 percent of the claims [1Aa(5), e(5)].

5B. Minimum payment for death or severe injuries

Another feature in the proposal, as seen above, arises from how to treat severe tort claims where economic damages would be small, even though noneconomic losses are large. For example, deaths to children and older people with no or low levels of earnings would produce low economic damages, although the noneconomic costs to the survivors would of course be high. As a result, we explore two alternative approaches to treating severe claims, which, as seen, are defined as deaths, amputations, brain injuries, and spinal cord injuries. These were the claim categories in the TDI data with the highest amounts of noneconomic damages. We explore, first, what would the damages be if the claim were valued based on the actual net economic damages incurred, and second, what would the damages be if various floors of \$100,000, \$250,000, or \$500,000 were set as the minimum amount of damages payable in such very severe cases?

6. FINDINGS

6A. Reserve and awards

It is important to keep in mind that Table 1 concerns the entire universe of general liability claims paid under tort liability criteria, whereas Tables 2-18 concern only the subset of those claims where an early offer can be expected to be made.

We begin in Table 1 by reporting insurers' initial and final reserve, the total tort settlement or court award, and claimants' net economic loss. Table 1, Panel A, column 1 reports the average projected initial reserve amounts using the multiplication factor described above in Section 4A, which scales up the reserve amount to reflect total payments by multiple parties [1A(1)]. Column 2 reports average projected final reserve amounts [1A(2)]. Column 3 reports the average total settlement or court award actually made for the claim [1A(3)]. Column 4 reports average economic loss [1A(4)]. Column 5 reports the sample size for each row [1A(5)]. The difference between Column 3, Total Settlement or Court Award, in Panel A of Table 1 and Column 4 of that table equals the sum of noneconomic damages, prejudgment interest, and, where applicable, punitive damages [1A(3)(4)]. Panel B of Table 1 reports the same information as Panel A, except that it is by injury type rather than damage categories. Panel C of Table 1 reports the breakdown and distribution of awards into these categories for the 16,058 claims reporting such a breakdown. Panel D of Table 1 reports the reserve, total settlement or court award, legal expenses, and economic loss for the 82 percent of claims [19Ag] in which the primary carrier paid the full amount.

In Panel A of Table 1 (as well as in Panel A of the subsequent tables), the rows of the table stratify the sample into four groups to show how different types of claims in the TDI data are handled by the early offer proposal. It is important to remember that only 40 percent of the claims report a breakdown of damages into the four possible categories of damages, namely, economic damages, noneconomic damages, punitive damages, and prejudgment interest. Thus the largest group is composed of claims that do not report this allocation of damages. For these claims, we impute economic damages using methods discussed above in Section 4C. These claims are indicated by the row heading "Imputed economic damages" and appear in row d of Panel A in each of Tables 1 - 18. For those claims that report the breakdown into the four categories of damages, one group is composed of claims with punitive damages as well

as other damages. These punitive damages cases are analyzed separately as it is assumed, as seen, that these claimants will not accept an early offer in place of full-scale litigation. These claims are indicated by the row heading "Punitive damages reported" and appear in row a of Panel A in each of Tables 1–18.¹⁷ The next group is composed of claims where neither punitive damages nor economic damages were reported. For these claims, all damages amounts paid by the insurer were noneconomic and/or prejudgment interest. These claims are indicated by the row heading "No punitive damages, economic damages reported as zero" and appear in row b of Panel A in each of Tables 1–18. Thus, under an early offer proposal that pays economic damages only, claimants with zero economic damages would receive zero payment. These claims are analyzed separately because, first, these claims will be most affected by a minimum payment requirement in the early offer proposal, and second, without a minimum payment, such claimants gain nothing from the early offer and will have the most incentive to pursue litigation (but, as seen, still with the formidable barriers thereto). The final group is composed of claims with positive economic loss reported. Such claims typically also report noneconomic loss and/or prejudgment interest. These claims are indicated by the row heading "No punitive damages, positive economic damages reported" and appear in row c of Panel A in each of Tables 1–18.

Table 1, row a consists of the 1607 cases for which punitive damages are reported [1Aa(5)]. As is apparent, these cases involve the largest stakes of any of the subsamples in the table. Row b pertains to the 7046 cases in which there were both no punitive damages nor reported economic damages [1Ab(5)]. For example, there might be only damages for pain and suffering. Granted, these cases

¹⁷ Most of the trial court awards of punitive damages were subsequently reduced. But the value used for the total settlement or court award is the final payment, not the original court award. Whether a claim is included in the row "punitive damages reported" is not based on whether the original court award actually included punitive damages. See *supra* notes 9 and 15.

would all receive zero payment under an early offer approach with no minimum payment, but with a minimum payment of \$100,000, \$250,000 or \$500,000, all of these cases will receive payment. Row c consists of the 7405 cases in which there are no mention of punitive damages, but economic damages were reported [1Ac(5)]. Row d reports the cases for which there are no damages breakdown but for which the economic damages share is imputed using the imputation procedure employing the other data discussed in Section 4C above [1Ad(5)]. Row e reports the pooled set of results for all claims [1Ae(5)].

Several patterns are noteworthy. The punitive damages cases in row a have the highest values for every reserve or loss value in the table, with the next largest amounts being for cases in row c for which positive economic damages are reported. For every row in the table, the projected initial reserves in column 1 are below the total settlements or court awards in column 3, which in turn are smaller than the projected final reserve in column 2 [$1A(1) < 1A(3) < 1A(2)$]. But one thing to note is that the reserve amounts in Table 1 include, in addition to indemnity (or loss) reserves, defense expense reserves which are mainly legal expenses, whereas the settlement or court award values in Table 1 do not take such defense expenses into account [1A]. These expenses will be considered in Table 2.

It may be puzzling that the initial reserves are so much lower than the final reserve, but there are several possible explanations for this difference. The fact that initial reserves are well below final reserves does not necessarily imply that insurers are under-reserving on average with their initial reserve amounts, though that may well be the case as indicated in scholarly literature.¹⁸ The cases

¹⁸ That there may be systematic errors in loss reserving is well documented. Weak insurers have a tendency to under-reserve to make their financial soundness appear brighter. See Kathy Ruby Petroni, *Optimistic Reporting in the Property-Casualty Insurance Industry*, 15 J. ACCT. & ECON. 485 (1992). In addition, the amount of reported reserves may be affected by income smoothing objectives and tax concerns. See Jennifer J. Gaver & Jeffrey Paterson, *Managing Insurance Company*

observed in the data in Table 1 are the successful tort claims that led to insurer payouts. If, for example, the insurer reserves the same amount for claims of a particular type that are both paid and not paid, with this amount corresponding to the average claim costs, then the claims that are ultimately successful will be under-reserved initially, while the unsuccessful claims will exhibit over-reserving. Thus, assuming these figures do not cancel each other out, the selection of claims for inclusion in the data set could alone account for the observed pattern without any bias as to reserving. Moreover, as the claim matures, the insurer will learn more about the claim, distinguishing which claims in this overall claims category are those with the highest expected losses.

Even with all that, however, the scholarly literature mentioned above indicates that initial under-reserving is generally pervasive in the general field of liability insurance. Indeed it may well be a leading cause of financial failure among product liability insurers. To that extent, it should be noted here that a crucial element of the early offer plan is that it provides insurers with a much greater incentive than they now have to reserve more realistically very early on (i.e., within 180 days). To the contrary, today defendants have an incentive to delay the whole claims process, thereby hoping to weaken the bargaining power of needy claimants.

Panel B of Table 1 reports information by nature of injury, excluding claims reporting punitive damages because, as seen, we assume such claims will most likely lead to claimants' opting out of an early offer. Information on the nature of injury is reported on the Texas long form and enables one to distinguish fatalities and severe nonfatal injuries (brain damage, spinal cord injury, amputation) from other nonfatal injuries. Overall, 10 percent of the cases for which the injury type is given are either death or severe

Financial Statements to Meet Regulatory and Tax Reporting Goals, 16 CONTEMP. ACCT. RES. 207 (1999); Elizabeth V. Grace, *Property-Liability Insurer Reserve Errors: A Theoretical and Empirical Analysis*, 57 J. RISK & INS. 28 (1990).

nonfatal injuries.¹⁹ The Texas short form does not record the nature of the injury. Because claims reported on the short form represent damage payments under \$25,000, it is very probable that these claims do not represent cases with death or other severe injury, and so these claims are grouped with nonfatal, non-severe injuries in the table.

In each instance the column headings for Panel B, Table 1 are the same as Panel A of Table 1, but the rows are different. Row a in Panel B provides information for all fatality claims, row b for the severe nonfatal claims, and row c for all other nonfatal injuries and short form claims [1Ba,b,c]. Row d provides values for all claims excluding those with punitive damages [1Bd]. In terms of empirical magnitudes, the severe nonfatal injuries in row b of Panel B involve the largest reserve amounts and settlement or award amounts [1Bb]. The average economic loss for this category remains substantial but is well under \$400,000.

Panel C of Table 1 reports the 10th, 25th, 50th, 75th, and 90th percentiles of the distribution of total damages and the damages components, as well as the mean and standard deviation of each category of damages for the 16,058 cases for which the breakdown is provided. For the average settlement or court award of \$242,823, most is for noneconomic damages which averages \$137,976, with economic damages of \$65,414 on average [1C(5)(2)(1)]. Punitive damages and prejudgment interest together account for a combined share of only slightly over 16 percent of the total settlement award.

The skewed nature of the damages distribution is evident from the results in Panel C. For economic damages, the mean value of \$65,414 [1C(1)] is over nine times larger than the median value of \$7,226, which is shown at the 50th percentile, indicating the substantial influence of some unusually large claims on the mean [1C(1)]. For example, the total economic damages value at the 90th percentile is \$134,640 [1C(1)]. The data's broad damages variability is further reflected in the large value of the standard deviation

¹⁹ $2388 + 1429 = 3817 \div 37,946 = 10\%$ [1Ba,b(5)].

of \$266,411 for economic damages [1C(1)]. This variability in turn is consistent with the certainty provided by early offers being attractive to risk-averse claimants. The patterns of high variability exhibited by the noneconomic damages distribution and that of total settlements and awards are similar.

Punitive damages and prejudgment interest are zero or close to it for most cases, but are significant when they do come into play. At the 90th percentile the value of punitive damages is only \$305 [1C(3)], but the overall mean is \$29,039, indicating that a small number of cases have substantial punitive damages [1C(3)]. Similarly, prejudgment interest has a value of zero through the 75th percentile [1C(4)], with a 90th percentile value of \$11,769 [1C(4)] and a mean value of \$10,394 [1C(4)]. In other words, for most cases neither punitive damages nor prejudgment interest come into play, but the average effect thereof for all cases does matter.

Panel D of Table 1 provides the counterpart of Panel A for the claims paid entirely by a sole carrier. Thus, for these claims the complications raised by multiple parties do not arise. Focusing on these claims indicates that for claims for which punitive damages are reported, final reserves are very similar to the value of the settlement or court award. However, for all claims combined the initial reserve is less than half of the total settlement or court award, while the final reserve is about one-quarter greater than the actual settlement or award.

6B. Early offer outcomes with and without collateral source offset

At the outset it should again be recalled that Table 2 (and all subsequent tables) concern cases where an early offer may be made, whereas Table 1 concerns all cases where tort payment was actually made. Table 20 provides an example of the values reported in Table 1 compared with those in Table 2 (and all subsequent tables). With that in mind, as indicated earlier, whether insurers will choose to make an early offer and how much they will save relative to the

current product liability regime depends on the maximum amounts that they would be willing to offer under the present tort regime minus the amounts that they would have to pay under the early offer regime. We refer to these amounts in Tables 2, 3, 6, 10, 14, and 17 as the dollar savings stemming from the early offer plan, meaning that compared to the current system, the early offer proposal will save these amounts. Note that Table 3, for example, deducts collateral sources to calculate net economic damages, whereas Table 2 does not. The columns in all Tables calculating savings report savings computed from different assumptions about the insurer's expected costs. In column 1 of each table, the savings are calculated using initial reserves; in column 2, the savings are calculated using projected final reserves; and in column 3, the savings are calculated using the actual total settlements or court awards. In calculating economic loss plus legal fees, we assume, as pointed out above, that the early offer plan sets legal fees of the claimant at 10 percent of the value of the tendered economic loss. Thus, the legal fee payment is in addition to economic loss rather than being deducted from the payee's loss payment as is done under the current tort regime. Table 2 reports the average savings when they are positive (or zero) based on the following calculations:²⁰

Column (1), rows a-d: Savings = Projected initial damages reserve + 23/33 initial defense expense reserve - 1.1 economic loss

Column (2), rows a-d: Savings = Projected final damages reserve + 23/33 final expense reserve - 1.1 economic loss

Column (3), rows a-d: Savings = Total settlement or court award + 23/33 total allocated loss adjustment expenses - 1.1 economic loss

²⁰ For a numerical example, see Table 20.

We also calculate in the tables savings based on the assumption of a minimum payment of \$100,000, \$250,000, or \$500,000 for fatalities and severe nonfatal injuries, with these values reported in rows e-j of Panel B in Tables 2-7.

In these tables the bracketed values refer to sample size, and the dollar numbers in each entry correspond to the average savings under the early offer plan for the category conditional on it being desirable for the insurer to make an early offer. For example, in Table 7, Panel A, dealing with claims not involving workers' compensation, the entry in row c, column 1, deducting collateral sources, indicates that based on the initial reserve, it is desirable for the insurer to make an early offer in 2273 of the 4523 cases in this category (claims with no punitive damages reporting positive economic damages) [7Ac(1)]. If the claimants were to accept, the average savings compared to the current product liability payout would be \$213,777 based on the initial reserve.

Row e in Panel A of all the tables showing dollar savings provides a summary of statistics for all claims. For example, in Table 3, Panel A, row e, out of the 39,553 tort claims, making an early offer is desirable for 29,915 of them based on the initial reserve amount, for 38,826 claims based on the final reserve amount, and for all 39,553 claims based on the actual award or settlement [3Ae(1)(2)(3)]. The greatest insurer savings are for the projected final reserve approach, where for the claims in which an offer is desirable the average savings are \$256,854 [3Ae(2)].

Panel B of all the tables showing dollar savings provides information for the same columns of early offer scenarios by nature of injury, excluding claims reporting punitive damage, but including a variant of the analysis in which there is a minimum payment of \$100,000, \$250,000, or \$500,000 for death or severe injury. As seen, the effect of the minimum payment on the desirability of making an early offer is substantial. For example, for severe nonfatal injuries based on the initial reserve amount, which is reflected in Table 7 for all claims except those involving workers' compensation, an early offer is desirable for 457 cases out of the 822 cases [7Bb(1)]. But as the results in row f indicate,

with a \$250,000 minimum an early offer is attractive to insurers in only 180 cases [7Bf(1)]. Lowering the minimum payment to \$100,000 raises the number of claims for which an early offer is attractive to insurers to 274 claims [7Bh(1)]. Interestingly, the imposition of the minimum payment increases the average savings per case. That seemingly paradoxical result can be traced to the change in the mix of claims for which an early offer is desirable. As the minimum payment amount is increased, it is desirable for insurers to make an early offer for fewer claims. Once a \$250,000 or even a \$100,000 minimum is imposed, it is only higher stakes claims for which the insurer will find an early offer attractive. Raising the payment minimum consequently reduces the number of claims in which an early offer will be made but increases the average savings for this altered mix of cases. These are the claims that have a large level of noneconomic damages, while under the early offer regime the insurer only pays net economic damages, subject to a minimum, plus an allowance for attorneys' fees. (The same phenomenon applies to the effect of minimum payments on claimant losses recorded in other tables.)

Tables 4 and 6 repeat the analysis of the tables showing dollar savings but without deducting imputed collateral sources from economic loss. When those tables are compared to Tables 2, 5, and 7, naturally enough, the early offer proposal will be attractive to insurers more often when collateral sources are offset from economic loss. (The opposite results for Savings based on Initial Reserves reflect very different numbers of cases when based thereon.) This is especially so when workers' compensation benefits are deducted. It will be recalled that we estimate an offset of about 26 percent in non workers' compensation cases versus 60 percent in workers' compensation cases.

6C. Time saved

Tables 8, 9, 10, and 11 report time saved by acceptance of the early offer proposal under the assumption that offers will be made and accepted in 180 days. Claimants will obviously benefit from quicker payment. The early offer proposal is

conservatively shown as expediting payments by about two and a half years, measured from the time of present tort claims.²¹

6D. Litigation cost savings

The main quantifiable gain in efficiency from the early offer proposal is the savings in litigation costs. There are of course other efficiency gains that are more difficult to assess, such as the benefit of reduced uncertainty of payment. As discussed in Section 2B, for insurers we estimate the litigation cost savings based on the fraction 23/33 of the reserve for legal expenses or actual legal expenses, depending on whether the calculations in the pertinent table are based on reserves (columns 1 and 2) or actual payout (column 3). The initial reserve for legal expenses does not account for the fact that incurring these expenses will not be immediate. We convert these estimates to a present value (PV) assuming a 3 percent interest rate and a time period equal to the time period savings under the early offer proposal. For the other litigation cost estimates, we assume that no discounting is needed. In all cases, for claimants we estimate the litigation cost savings as 0.23 of what the total settlement or award would have been in the absence of the early offer proposal.

The specific equations used to calculate litigation cost savings reported in Tables 12–15 are as follows:

Column (1), rows a–d: Litigation cost savings = 0.23 total settlement or court award + (PV 23/33 initial expense reserve).

Column (2), rows a–d: Litigation cost savings = 0.23 total settlement or court award + 23/33 final expense reserve.

Column (3), rows a–d: Litigation cost savings = 0.23 total settlement or court award + 23/33 attorney expenses.

²¹ Claimants will in all likelihood make claims much earlier to trigger the early offer's 180-day period compared to today's practices.

As the estimates in Tables 12, 13, 14, and 15 indicate, the litigation cost savings are substantial, often way over \$100,000 per claim. Cases for which the litigation cost savings, for example, are under \$100,000 are for the nonfatal injuries that are not severe (as defined in Section 4A) and claims reported on the short form (which are for claims under \$25,000).

6E. Gains or losses to claimants

The effect of different early offer proposal structures on different categories of claims is assessed as well. Under the current tort system, we assume that claimants receive two-thirds of the total settlement or award, with the remaining one-third going to attorneys' fees. The early offer plan compensates claimants for net economic damages, which must in turn be inflated to account for their quicker payment, which, as indicated, we do using a 3 percent interest rate.

Tables 16, 17, and 18 indicate the effect of early offers on claimants in terms of the average net gain or loss in dollars paid. Each cell also provides in parentheses the percentage of claimants in each group who will gain from the early offer approach. Consider the effect on all claims in row e of Panel A in Table 16. The percentage of claimants who gain in dollar payout is 3.1 percent or less, with an average loss of \$53,864 to \$67,691, but the results in Panel B of Table 16 indicate that the imposition of a minimum payment amount can substantially increase the percentage of claimants who gain. For example, based on the initial reserve, the percentage of cases involving a fatal injury that would be better off under the early offer proposal is as high as 38 percent for a \$250,000 minimum and 45 percent for a \$500,000 minimum [16Be,i(1)].

6F. The results separating claims involving and not involving workers' compensation

Here, unlike in Section 3C, we break down those personal injury liability claims already covered by workers' compensation and those not so covered, in each case deducting collateral sources. We start with the latter:

A. Claimants Not Also Receiving Workers' Compensation

Basing the insurers' decision on their initial reserves, of the 822 such claimants in the study suffering severe nonfatal product injuries paid under tort law, 457 (or 55 percent) would be tendered early offers under the proposed statute [7Bb(1)]. The cost savings from paying such claimants with early offers would average \$635,840 per claim [7Bb(1)]. Claimants would be paid on average 2.38 years faster than under tort law [8Bb(1)], with total litigation costs reduced by an average of \$197,073 per claim [15Bb(1)]. On the debit side, this average payment would reduce payment by \$266,501 per claim, with only 2.26 percent of claimants receiving more under an early offer than under a tort claim [18Bb(1)].

Under a minimum payment of \$250,000 for severely injured claimants, the percentage of claimants gaining in compensation rises from 2.26 percent [18Bb(1)] to 33.9 percent [18Bf(1)]. On the other hand, the number of such injury cases receiving early offers would be reduced from 398 [18Bb(1)] to 171 [18Bf(1)], with the remaining claimants consigned to the current tort system.

Here too insurers' initial dollar reserve allocated to pay a typical claim often turns out to underestimate a claim's ultimate value. As opposed to average savings per case of \$635,840 using initial reserves as the base, savings would equal \$1,055,544 per case using final reserves and \$893,782 using actual payouts respectively as the base [7Bb(1)(2)(3)]. Similarly, average litigation costs which drop by \$197,073 per case based on initial reserves drop by \$246,045 and \$418,348 under final reserves and payouts respectively

[15Bb(1)(2)(3)]. Also, the number of injured patients receiving early offers grows from 457, based on initial reserve, out of the possible 822 cases to 789 and 822, based on final reserve and payouts respectively [7Bb(1)(2)(3)].

The same is also true for fatalities and for all cases, including less serious injuries. For example, for the 1565 death cases, the average savings per case would be \$417,162 based on the early reserve and \$721,914 based on the final reserve [7Ba(1)(2)], with average litigation costs per case reduced respectively by \$136,492 and \$187,869 [15Ba(1)(2)]. For all cases together, i.e., larger, smaller and of medium size, equaling a total of 30,947 in number, the average savings per case would be \$75,227 based on the early reserve and \$164,614 based on the final reserve [7Ae(1)(2)], with average litigation costs per case reduced respectively by \$26,885 and \$41,561 [15Ae(1)(2)].

B. Claimants Also Receiving Workers' Compensation

Turning next to liability cases brought against third parties by those already paid by workers' compensation from their employers, these claims constitute about 20 percent of all product liability claims. The pattern is similar to other liability claims but they are larger. Also, the deductions for collateral services, including by definition workers' compensation benefits, we conservatively estimate to be over twice as big (60 percent versus 25 percent), based, as seen, on the comparative generosity of workers' compensation benefits.

Here too one finds average savings per severe injury case of \$709,673 using initial reserves as the base, but using final reserves they rise to \$1,207,147 per case [5Bb(1)(2)]. Similarly, average litigation costs which drop by \$226,551 per case based on initial reserves drop by \$285,416 using final reserves [14Bb(1)(2)]. Delays in payment are cut by 2.4 years [10Bb(1)].

The same pattern holds for fatalities and for all general liability/workers' compensation cases, including less severe injuries. For example, in death cases the average savings

per case depending on the base would be \$890,915 and \$1,550,422 for early and final reserves respectively [5Ba(1)(2)] and with average litigation costs per case reduced respectively by \$206,851 and \$256,777 [14Ba(1)(2)]. For all cases together, i.e., larger, smaller and of medium size, the average savings per case would be \$348,954 based on the early reserve and \$589,140 based on the final reserve [5Ae(1)(2)], with average litigation costs per case reduced respectively by \$97,754 and \$123,964 [14Ae(1)(2)].

7. EFFECTS ON THE NUMBER OF CLAIMS AND DETERRENCE

Will more or fewer claims be paid under an early offers regime? One is not able to answer this question partly because the Texas data are limited to paid claims, so one does not have a basis for analyzing the number of claims unpaid at common law that are likely payable by early offers. In this section, we discuss some of the issues that affect the number of claims under early offers relative to the number of claims under the current tort regime.

From the standpoint of defendants' incentives, compared to the present system, the early offer regime will reduce the costs of settling a claim, including defense costs. Claimants will also be more willing to settle than under the present regime so that in terms of the theoretical structure of the settlement process, settlement of any given claim should be more likely than at present.

But a premise of the early offer regime is that defendants are not required to make an offer for any claim, including claims not likely to be paid now. Data other than our own indicate that some 60 percent of medical malpractice claims now brought are closed without payment.²² Our sample shows, for example, that 25 percent of all cases now being paid will not lead insurers to make an early offer based on the analysis using initial reserves [3Ae(1)]; $(29,915 \div 39,553 = 0.756)$. (If early offers are calculated on the basis of final

²² DON DEWEES ET AL., *EXPLORING THE DOMAIN OF ACCIDENT LAW: TAKING THE FACTS SERIOUSLY* 425 (1996).

reserves or actual payout, the percentage of claims now paid that would also be paid under early offers rises to 98 percent and 100 percent respectively [3Ae(2)(3)].)

A key factor that will affect the attractiveness of making early offers would be high litigation costs, especially for severe non-fatal injuries [12Bb(1)(2)(3)], as discussed in Section 3B. If any claim is severe enough that defense costs, coupled with even a relatively small risk of an adverse verdict, exceed the claimant's net economic loss, an early offer might be forthcoming. But insurers may be reluctant to make offers based primarily on avoiding defense costs because that may affect their bargaining position for other claims. On the other hand, two informal estimates by medical malpractice defense counsel, one in a big firm, the other in a small one, indicate they would be inclined to recommend early offers in about 80 percent of the cases they were currently defending.²³

From the claimant's perspective, any claim not likely to have been initiated prior to the early offer regime where the claimant's attorney received a one-third share of a full award can be seen as relatively unattractive when the payment of legal fees is limited to 10 percent of only the economic loss. The main offsetting influence is that payments to attorneys will be more immediate and entail less work.

On this subject of more claims under early offers, it is important to re-emphasize that a key premise of an early offer regime is to make better use of product liability dollars now being expended, not to increase them.

The issue of more—or fewer—claims, along with reduced costs, raises the question of whether there will be more or less deterrence of unsafe conduct or products under an early offer regime. In the first place there is currently no consensus regarding whether the present tort regime, for all its various burdens, effectively deters lapses by providers of

²³ One discussion was with William Ginsburg, Esq., at Durham, N.C. (Apr. 1996); the other anonymous. The model in O'Connell et al., *supra* note 11, indicates that more malpractice claims will be paid under an early offers regime but "the increase . . . will be too small to effect the [projected] savings . . ." *Id.* at 37, nn.126 & 127.

goods or services.²⁴ At least the early offer approach should improve the present system in providing more timely and certain compensation with lower litigation costs, goals much more readily accomplished than improved deterrence. Incentives for safety will arguably be provided as long as there is substantial internalization of the costs of unsafe conduct or products. The certainty and greater promptitude of these internalizing payments under early offers will also enhance deterrence compared to the current system in that deterrence to be effective must be swift and certain, two qualities the present tort system surely lacks.

8. CONCLUSION

This report has analyzed the quantifiable effects of the early offer reform of general liability insurance in samples of cases involving claims of recipients of workers' compensation, of claims not receiving such, as well as combining the two. The early offers approach will greatly reduce overall costs, and provide payments to injured parties much more effectively and quickly, with much lower transaction costs.²⁵ The report has analyzed the effect of a particular early offer proposal under three different assumptions regarding its expected costs based on insurers' initial reserves, final reserves, and actual awards or settlements. We explored the effect of subtracting collateral

²⁴ For a decidedly mixed view at best of the deterrent effects of current product liability law, see 1 AM. L. INST., REPORTERS' STUDY ON ENTERPRISE RESPONSIBILITY FOR PERSONAL INJURY 263-78 (1991).

²⁵ As may be apparent, the early offers proposal analyzed here could be applied both more narrowly or broadly than to, say, product liability claims, e.g., to only some medical malpractice cases or to all personal injury claims. For a report similar to this one on the effect of early offers on medical malpractice claims, also using the Texas and Florida data, see JONI HERSCH, JEFFREY O'CONNELL & KIP VISCUSI, U.S. DEP'T OF HEALTH & HUMAN SERVS., EVALUATION OF EARLY OFFER REFORM OF MEDICAL MALPRACTICE CLAIMS: FINAL REPORT (2006), available at <http://aspe.hhs.gov/daltcp/reports/2006/medmalcl.htm>; see also Joni Hersch, Jeffrey O'Connell & Kip Viscusi, *An Empirical Assessment of Early Offer Reform for Medical Malpractice*, 36 J. LEGAL STUD. S231 (Supp. 2007).

payments or not, as well as the introduction of different minimum payments ranging from \$100,000 to \$500,000 for fatalities and severe injuries. These differences influence the net gains or losses of the parties, with these effects varying by injury type. But claimants with severe injuries and great financial need, for whom we re-emphasize, any insurance mechanism should be particularly concerned, will especially benefit from the early offer payment.

Table 1: Projected Reserve, Total Settlement or Court Awards, and Economic Loss

Panel A: By Damages Category					
	(1) Projected Total Initial Reserve (\$)	(2) Projected Total Final Reserve (\$)	(3) Total Settlement or Court Award (\$)	(4) Economic Loss (\$)	(5) N
a. Exemplary damages reported	429,454	1,051,005	730,621	151,821	1,607
b. No exemplary damages, economic damages reported as zero	7,734	43,938	39,868	0	7,046
c. No exemplary damages, positive economic damages reported	174,108	463,052	330,079	108,907	7,405
d. Imputed economic damages	127,276	281,140	184,761	59,988	23,495
e. All claims	127,026	304,220	208,333	62,191	39,553
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages					
	(1) Projected Total Initial Reserve (\$)	(2) Projected Total Final Reserve (\$)	(3) Total Settlement or Court Award (\$)	(4) Economic Loss (\$)	(5) N
a. Fatality	533,203	1,190,446	755,442	224,112	2,388
b. Serious nonfatal injury	543,365	1,347,422	992,514	337,151	1,429
c. Other nonfatal injuries and short form claims	66,933	163,369	112,626	35,128	34,129

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d. All claims without exemplary damages	114,218	272,594	186,215	58,395	37,946	
Panel C: Distribution of Damages for Claims in Which Breakdown is Reported (N = 16,058)						
Distributional Characteristics	(1) Economic Damages (\$)	(2) Non-Economic Damages (\$)	(3) Exemplary Damages (\$)	(4) Pre-Judgment Interest (\$)	(5) Total Settlement or Court Award (\$)	
10 th Percentile	0	14,457	0	0	20,249	
25 th Percentile	0	20,249	0	0	20,913	
50 th Percentile	7,226	28,755	0	0	48,707	
75 th Percentile	38,063	79,469	0	0	138,693	
90 th Percentile	134,640	254,926	305	11,769	490,732	
Mean	65,414	137,976	29,039	10,394	242,823	
Standard Deviation	266,411	526,430	325,758	70,625	877,010	
Panel D: Reserves, Total Settlement or Court Awards, Legal Expenses, and Economic Loss for Claims Paid Entirely by Carrier						
	(1) Total Initial Reserve (\$)	(2) Total Final Reserve (\$)	(3) Total Settlement or Court Award (\$)	(4) Legal Expenses (\$)	(5) Economic Loss (\$)	(6) N
a. Exemplary damages reported	135,495	334,142	308,427	37,725	69,223	1,062
b. No exemplary damages, economic damages reported as zero	1,915	36,727	35,560	5,995	0	7,007
c. No exemplary damages, positive economic damages reported	61,751	197,179	166,706	28,915	60,898	5,151
d. Imputed economic damages	47,968	121,286	97,200	21,795	29,758	19,257
e. All claims	43,080	122,040	101,832	20,037	29,567	32,477

Table 2: Average Savings from Early Offer Proposal

Panel A: By Type of Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Exemplary damages reported [1,607]	524,285 [964]	866,566 [1,564]	720,567 [1,607]
b. No exemplary damages, economic damages reported as zero [7,046]	7,324 [7,046]	43,281 [7,046]	45,260 [7,046]
c. No exemplary damages, positive economic damages reported [7,405]	261,984 [3,112]	345,925 [6,995]	280,075 [7,373]
d. Imputed economic damages [23,495]	124,800 [15,847]	208,892 [22,834]	165,014 [23,495]
e. All claims [39,553]	124,217 [26,969]	230,232 [38,439]	187,719 [39,521]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Fatality [2,388]	595,597 [1,472]	920,527 [2,284]	707,540 [2,379]
b. Serious nonfatal injury [1,429]	716,207 [673]	995,581 [1,350]	826,356 [1,424]
c. Other nonfatal injuries and short form claims [34,129]	62,275 [23,860]	121,779 [33,241]	99,701 [34,111]
d. All claims without exemplary damages [37,946]	109,387 [26,005]	203,242 [36,875]	165,134 [37,914]
e. Fatality – minimum \$250,000 [2,388]	1,146,558 [650]	1,298,193 [1,435]	1,044,260 [1,392]

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f. Serious nonfatal injury – minimum \$250,000 [1,429]	1,294,533 [313]	1,458,329 [844]	1,294,465 [826]
g. Fatality – minimum \$100,000 [2,388]	811,596 [1,015]	1,044,242 [1,934]	824,782 [1,939]
h. Serious nonfatal injury – minimum \$100,000 [1,429]	1,021,494 [456]	1,165,241 [1,123]	992,566 [1,150]
i. Fatality – minimum \$500,000 [2,388]	1,536,900 [419]	1,679,154 [973]	1,365,829 [913]
j. Serious nonfatal injury – minimum \$500,000 [1,429]	1,871,183 [211]	1,876,703 [593]	1,681,579 [572]
<p>Note: Savings calculated as:</p> <p>(1) Projected (initial indemnity reserve + 23/33 initial expense reserve) – 1.1 economic loss.</p> <p>(2) Projected (final indemnity reserve + 23/33 final expense reserve) – 1.1 economic loss.</p> <p>(3) Total settlement or court award + 23/33 total allocated loss adjustment expenses – 1.1 economic loss.</p>			

Table 3: Average Savings from Early Offer Proposal, Deducting Collateral Sources

Panel A: By Type of Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Exemplary damages reported [1,607]	505,584 [1,119]	928,979 [1,582]	796,690 [1,607]
b. No exemplary damages, economic damages reported as zero [7,046]	7,324 [7,046]	43,281 [7,046]	45,260 [7,046]
c. No exemplary damages, positive economic damages reported [7,405]	235,484 [4,055]	389,444 [7,182]	332,220 [7,405]
d. Imputed economic damages [23,495]	129,083 [17,695]	234,664 [23,016]	193,699 [23,495]
e. All claims [39,553]	128,911 [29,915]	256,854 [38,826]	217,688 [39,553]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Fatality [2,388]	586,739 [1,693]	1,010,371 [2,315]	809,854 [2,388]
b. Serious nonfatal injury [1,429]	670,116 [853]	1,120,845 [1,386]	980,436 [1,429]
c. Other nonfatal injuries and short form claims [34,129]	65,740 [26,250]	137,449 [33,543]	117,055 [34,129]
d. All claims without exemplary damages [37,946]	114,274 [28,796]	228,304 [37,244]	193,168 [37,946]

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e. Fatality – minimum \$250,000 [2,388]	1,160,594 [704]	1,402,412 [1,447]	1,164,914 [1,401]
f. Serious nonfatal injury – minimum \$250,000 [1,429]	1,431,944 [350]	1,622,086 [858]	1,499,698 [829]
g. Fatality – minimum \$100,000 [2,388]	820,138 [1,123]	1,140,026 [1,956]	935,811 [1,948]
h. Serious nonfatal injury – minimum \$100,000 [1,429]	1,022,180 [533]	1,312,025 [1,143]	1,167,183 [1,154]
i. Fatality – minimum \$500,000 [2,388]	1,565,244 [441]	1,780,935 [983]	1,493,905 [920]
j. Serious nonfatal injury – minimum \$500,000 [1,429]	1,919,656 [232]	2,066,946 [601]	1,920,206 [574]
<p>Note: Savings calculated as:</p> <p>(1) Projected (initial indemnity reserve + 23/33 initial expense reserve) – 1.1 economic loss.</p> <p>(2) Projected (final indemnity reserve + 23/33 final expense reserve) – 1.1 economic loss.</p> <p>(3) Total settlement or court award + 23/33 total allocated loss adjustment expenses – 1.1 economic loss.</p>			

Table 4: Average Savings from Early Offer Proposal, Only Claims Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Exemplary damages reported [463]	983,621 [234]	1,436,062 [447]	1,175,016 [463]
b. No exemplary damages, economic damages reported as zero [669]	34,088 [669]	102,141 [669]	108,180 [669]
c. No exemplary damages, positive economic damages reported [2,882]	309,445 [1,171]	430,542 [2,278]	372,225 [2,873]
d. Imputed economic damages [4,592]	501,877 [2,107]	518,646 [4,376]	356,516 [4,592]
e. All claims [8,606]	400,093 [4,181]	505,397 [8,220]	386,522 [8,597]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Fatality [823]	987,950 [464]	1,376,333 [788]	918,206 [821]
b. Serious nonfatal injury [607]	789,154 [275]	1,006,914 [573]	848,722 [605]
c. Other nonfatal injuries and short form claims [6,713]	239,151 [3,208]	288,667 [6,412]	225,339 [6,708]
d. All claims without exemplary damages [8,143]	365,498 [3,947]	451,878 [7,773]	341,640 [8,134]

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e. Fatality – minimum \$250,000 [823]	1,598,156 [265]	1,733,011 [588]	1,188,745 [581]
f. Serious nonfatal injury – minimum \$250,000 [607]	1,407,772 [142]	1,353,760 [394]	1,232,092 [384]
g. Fatality – minimum \$100,000 [823]	1,230,144 [363]	1,507,076 [707]	1,014,500 [724]
h. Serious nonfatal injury – minimum \$100,000 [627]	1,026,184 [206]	1,107,824 [510]	959,095 [523]
i. Fatality – minimum \$500,000 [823]	2,091,836 [184]	2,165,258 [430]	1,494,274 [408]
j. Serious nonfatal injury – minimum \$500,000 [627]	1,883,661 [96]	1,644,022 [291]	1,513,519 [280]
<p>Note: Savings calculated as: (1) Projected (initial indemnity reserve + 23/33 initial expense reserve) – 1.1 economic loss. (2) Projected (final indemnity reserve + 23/33 final expense reserve) – 1.1 economic loss. (3) Total settlement or court award + 23/33 total allocated loss adjustment expenses – 1.1 economic loss.</p>			

Table 5: Average Savings from Early Offer Proposal, Deducting Collateral Sources, Only Claims Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Exemplary damages reported [463]	838,098 [327]	1,589,595 [458]	1,375,315 [463]
b. No exemplary damages, economic damages reported as zero [669]	34,088 [669]	102,141 [669]	108,180 [669]
c. No exemplary damages, positive economic damages reported [2,882]	263,173 [1,782]	515,324 [2,826]	472,744 [2,882]
d. Imputed economic damages [4,592]	414,852 [3,089]	606,137 [4,483]	460,610 [4,592]
e. All claims [8,606]	348,954 [5,867]	589,140 [8,436]	486,488 [8,606]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Fatality [823]	890,915 [606]	1,550,422 [806]	1,128,375 [823]
b. Serious nonfatal injury [607]	709,673 [396]	1,207,147 [597]	1,097,781 [607]
c. Other nonfatal injuries and short form claims [6,713]	209,857 [4,538]	345,497 [6,575]	291,216 [6,713]
d. All claims without exemplary damages [8,143]	320,083 [5,540]	531,706 [7,978]	435,950 [8,143]

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e. Fatality – minimum \$250,000 [823]	1,561,517 [304]	1,920,972 [592]	1,401,765 [583]
f. Serious nonfatal injury – minimum \$250,000 [607]	1,442,285 [170]	1,579,983 [406]	1,530,651 [385]
g. Fatality – minimum \$100,000 [823]	1,165,793 [443]	1,687,851 [720]	1,230,901 [726]
h. Serious nonfatal injury – minimum \$100,000 [627]	1,033,987 [259]	1,322,989 [526]	1,221,783 [525]
i. Fatality – minimum \$500,000 [823]	2,092,017 [199]	2,338,579 [433]	1,707,541 [409]
j. Serious nonfatal injury – minimum \$500,000 [627]	1,946,952 [111]	1,889,261 [298]	1,833,232 [281]
<p>Note: Savings calculated as:</p> <p>(1) Projected (initial indemnity reserve + 23/33 initial expense reserve) – 1.1 economic loss.</p> <p>(2) Projected (final indemnity reserve + 23/33 final expense reserve) – 1.1 economic loss.</p> <p>(3) Total settlement or court award + 23/33 total allocated loss adjustment expenses – 1.1 economic loss.</p>			

Table 6: Average Savings from Early Offer Proposal, Only Claims Not Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Exemplary damages reported [1,144]	377,046 [730]	638,666 [1,117]	536,643 [1,144]
b. No exemplary damages, economic damages reported as zero [6,377]	4,517 [6,377]	37,106 [6,377]	38,659 [6,377]
c. No exemplary damages, positive economic damages reported [4,523]	233,351 [1,941]	291,827 [4,267]	221,242 [4,500]
d. Imputed economic damages [18,903]	66,977 [13,740]	135,457 [18,458]	118,493 [18,903]
e. All claims [30,947]	73,601 [22,788]	155,383 [30,219]	132,451 [30,924]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Fatality [1,565]	414,990 [1,008]	680,436 [1,496]	596,528 [1,558]
b. Serious nonfatal injury [822]	665,804 [398]	987,224 [777]	809,835 [819]
c. Other nonfatal injuries and short form claims [27,416]	34,800 [20,652]	81,893 [26,289]	68,947 [27,403]
d. All claims without exemplary damages [29,803]	63,559 [22,058]	136,833 [29,102]	116,924 [29,780]

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e. Fatality – minimum \$250,000 [1,565]	835,718 [385]	996,335 [847]	940,751 [811]
f. Serious nonfatal injury – minimum \$250,000 [822]	1,383,539 [171]	1,549,884 [450]	1,348,653 [442]
g. Fatality – minimum \$100,000 [1,565]	578,569 [652]	777,557 [1,227]	711,733 [1,215]
h. Serious nonfatal injury – minimum \$100,000 [822]	1,017,629 [250]	1,213,010 [613]	1,020,486 [627]
i. Fatality – minimum \$500,000 [1,565]	1,102,397 [235]	1,294,210 [543]	1,262,056 [505]
j. Serious nonfatal injury – minimum \$500,000 [822]	1,860,766 [115]	2,100,909 [302]	1,842,732 [292]
<p>Note: Savings calculated as:</p> <p>(1) Projected (initial indemnity reserve + 23/33 initial expense reserve) – 1.1 economic loss.</p> <p>(2) Projected (final indemnity reserve + 23/33 final expense reserve) – 1.1 economic loss.</p> <p>(3) Total settlement or court award + 23/33 total allocated loss adjustment expenses – 1.1 economic loss.</p>			

Table 7: Average Savings from Early Offer Proposal, Deducting Collateral Sources, Only Claims Not Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Exemplary damages reported [1,144]	368,296 [792]	659,795 [1,124]	562,509 [1,144]
b. No exemplary damages, economic damages reported as zero [6,377]	4,517 [6,377]	37,105 [6,377]	38,659 [6,377]
c. No exemplary damages, positive economic damages reported [4,523]	213,777 [2,273]	307,778 [4,356]	242,681 [4,523]
d. Imputed economic damages [18,903]	68,647 [14,606]	144,807 [18,533]	128,859 [18,903]
e. All claims [30,947]	75,227 [24,048]	164,614 [30,390]	142,938 [30,947]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Savings Based on Initial Reserve if Positive (\$) [N]	(2) Savings Based on Final Reserve if Positive (\$) [N]	(3) Savings Based on Total Settlement or Court Award if Positive (\$) [N]
a. Fatality [1,565]	417,162 [1,087]	721,914 [1,509]	642,350 [1,565]
b. Serious nonfatal injury [822]	635,840 [457]	1,055,544 [789]	893,782 [822]
c. Other nonfatal injuries and short form claims [27,416]	35,618 [21,712]	86,726 [26,968]	74,410 [27,416]
d. All claims without exemplary damages [29,803]	65,246 [23,256]	145,596 [29,266]	126,833 [29,803]

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e. Fatality – minimum \$250,000 [1,565]	855,893 [400]	1,043,363 [855]	996,108 [818]
f. Serious nonfatal injury – minimum \$250,000 [822]	1,422,178 [180]	1,659,903 [452]	1,472,859 [444]
g. Fatality – minimum \$100,000 [1,565]	594,955 [680]	820,905 [1,236]	760,495 [1,222]
h. Serious nonfatal injury – minimum \$100,000 [822]	1,011,020 [274]	1,302,678 [617]	1,121,610 [629]
i. Fatality – minimum \$500,000 [1,565]	1,132,071 [242]	1,341,918 [550]	1,322,912 [511]
j. Serious nonfatal injury – minimum \$500,000 [822]	1,894,616 [121]	2,241,699 [303]	2,003,617 [293]
<p>Note: Savings calculated as:</p> <p>(1) Projected (initial indemnity reserve + 23/33 initial expense reserve) – 1.1 economic loss.</p> <p>(2) Projected (final indemnity reserve + 23/33 final expense reserve) – 1.1 economic loss.</p> <p>(3) Total settlement or court award + 23/33 total allocated loss adjustment expenses – 1.1 economic loss.</p>			

Table 8: Average Time Saved in Days from Early Offer Proposal

Panel A: By Type of Damages			
	(1) Days Saved if Early Offer Based on Initial Reserve [N]	(2) Days Saved if Early Offer Based on Final Reserve [N]	(3) Days Saved if Early Offer Based on Total Settlement or Court Award [N]
a. Exemplary damages reported [1,607]	979 [964]	818 [1,564]	819 [1,607]
b. No exemplary damages, economic damages reported as zero [7,046]	1,616 [7046]	1,617 [7,046]	1,617 [7,046]
c. No exemplary damages, positive economic damages reported [7,405]	797 [3,112]	840 [6,995]	837 [7,373]
d. Imputed economic damages [23,495]	645 [15,847]	686 [22,834]	685 [23,495]
e. All claims [39,553]	922 [26,969]	890 [38,439]	885 [39,521]
Panel B: Time Saved by Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Days Saved if Early Offer Based on Initial Reserve [N]	(2) Days Saved if Early Offer Based on Final Reserve [N]	(3) Days Saved if Early Offer Based on Total Settlement or Court Award [N]
a. Fatality [2,388]	865 [1,472]	892 [2,284]	891 [2,379]
b. Serious nonfatal injury [1,429]	861 [672]	891 [1,350]	881 [1,424]
c. Other nonfatal injuries and short form claims [34,129]	932 [23,860]	893 [33,241]	888 [34,111]

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d. All claims without exemplary damages [37,946]	927 [26,005]	893 [36,875]	888 [37,914]
e. Fatality - minimum \$250,000 [2,388]	820 [650]	880 [1,435]	899 [1,392]
f. Serious nonfatal injury - minimum \$250,000 [1,429]	883 [313]	936 [844]	927 [826]
g. Fatality - minimum \$100,000 [2,388]	866 [1,015]	888 [1,934]	891 [1,939]
h. Serious nonfatal injury - minimum \$100,000 [1,429]	906 [456]	926 [1,123]	922 [1,150]
i. Fatality - minimum \$500,000 [2,388]	825 [419]	886 [973]	891 [913]
j. Serious nonfatal injury - minimum \$500,000 [1,429]	852 [211]	933 [593]	934 [572]

**Table 9: Average Time Saved in Days from Early Offer Proposal,
Deducting Collateral Sources**

Panel A: By Type of Damages			
	(1) Days Saved if Early Offer Based on Initial Reserve [N]	(2) Days Saved if Early Offer Based on Final Reserve [N]	(3) Days Saved if Early Offer Based on Total Settlement or Court Award [N]
a. Exemplary damages reported [1,607]	807 [1119]	819 [1,582]	819 [1,607]
b. No exemplary damages, economic damages reported as zero [7,046]	1,616 [7,046]	1,617 [7,046]	1,616 [7,046]
c. No exemplary damages, positive economic damages reported [7,405]	821 [4,055]	840 [7,182]	836 [7,405]
d. Imputed economic damages [23,495]	658 [17,695]	686 [23,016]	685 [23,495]
e. All claims [39,553]	912 [29,915]	889 [38,826]	885 [39,553]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Days Saved if Early Offer Based on Initial Reserve [N]	(2) Days Saved if Early Offer Based on Final Reserve [N]	(3) Days Saved if Early Offer Based on Total Settlement or Court Award [N]
a. Fatality [2,388]	880 [1,675]	891 [2,315]	890 [2,388]
b. Serious nonfatal injury [1,429]	860 [837]	884 [1,383]	880 [1,429]
c. Other nonfatal injuries and short form claims [34,129]	916 [26,069]	892 [33,510]	888 [34,129]

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d. All claims without exemplary damages [37,946]	912 [28,581]	891 [37,208]	888 [37,946]
e. Fatality – minimum \$250,000 [2,388]	825 [704]	878 [1,447]	896 [1,401]
f. Serious nonfatal injury – minimum \$250,000 [1,429]	881 [350]	933 [858]	926 [829]
g. Fatality – minimum \$100,000 [2,388]	873 [1,123]	887 [1,956]	889 [1,948]
h. Serious nonfatal injury – minimum \$100,000 [1,429]	908 [533]	924 [1,143]	921 [1,154]
i. Fatality – minimum \$500,000 [2,388]	825 [441]	884 [983]	887 [920]
j. Serious nonfatal injury – minimum \$500,000 [1,429]	826 [232]	926 [601]	932 [574]

Table 10: Average Time Saved in Days from Early Offer Proposal, Deducting Collateral Sources, Only Claims Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Days Saved if Early Offer Based on Initial Reserve [N]	(2) Days Saved if Early Offer Based on Final Reserve [N]	(3) Days Saved if Early Offer Based on Total Settlement or Court Award [N]
a. Exemplary damages reported [463]	930 [327]	947 [458]	941 [463]
b. No exemplary damages, economic damages reported as zero [669]	1,701 [669]	1,701 [669]	1,701 [669]
c. No exemplary damages, positive economic damages reported [2,882]	929 [1,782]	935 [2,826]	932 [2,882]
d. Imputed economic damages [4,592]	860 [3,089]	874 [4,483]	872 [4,592]
e. All claims [8,606]	981 [5,867]	964 [8,436]	960 [8,606]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Days Saved if Early Offer Based on Initial Reserve [N]	(2) Days Saved if Early Offer Based on Final Reserve [N]	(3) Days Saved if Early Offer Based on Total Settlement or Court Award [N]
a. Fatality [823]	979 [606]	992 [806]	996 [823]
b. Serious nonfatal injury [607]	886 [396]	902 [597]	898 [607]
c. Other nonfatal injuries and short form claims [6,713]	993 [4,538]	967 [6,575]	963 [6,713]

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d. All claims without exemplary damages [8,143]	984 [5,540]	965 [7,978]	961 [8,143]
e. Fatality – minimum \$250,000 [823]	906 [304]	941 [592]	958 [583]
f. Serious nonfatal injury – minimum \$250,000 [607]	870 [170]	924 [406]	914 [385]
g. Fatality – minimum \$100,000 [823]	942 [443]	975 [720]	975 [726]
h. Serious nonfatal injury – minimum \$100,000 [627]	891 [259]	920 [526]	914 [525]
i. Fatality – minimum \$500,000 [823]	887 [199]	943 [433]	945 [409]
j. Serious nonfatal injury – minimum \$500,000 [627]	809 [111]	914 [298]	924 [281]

Table 11: Average Time Saved in Days from Early Offer Proposal, Deducting Collateral Sources, Only Claims Not Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Days Saved if Early Offer Based on Initial Reserve [N]	(2) Days Saved if Early Offer Based on Final Reserve [N]	(3) Days Saved if Early Offer Based on Total Settlement or Court Award [N]
a. Exemplary damages reported [1,144]	756 [792]	767 [1,124]	769 [1,144]
b. No exemplary damages, economic damages reported as zero [6,377]	1,608 [6,377]	1,608 [6,377]	1,608 [6,377]
c. No exemplary damages, positive economic damages reported [4,523]	737 [2,273]	778 [4,356]	775 [4,523]
d. Imputed economic damages [18,903]	615 [14,606]	641 [18,533]	640 [18,903]
e. All claims [30,947]	895 [24,048]	868 [30,390]	864 [30,947]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Days Saved if Early Offer Based on Initial Reserve [N]	(2) Days Saved if Early Offer Based on Final Reserve [N]	(3) Days Saved if Early Offer Based on Total Settlement or Court Award [N]
a. Fatality [1,565]	839 [1,087]	838 [1,509]	834 [1,565]
b. Serious nonfatal injury [822]	870 [457]	873 [789]	867 [822]
c. Other nonfatal injuries and short form claims [27,416]	903 [21,712]	874 [26,968]	870 [27,416]

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d. All claims without exemplary damages \$29,803	899 [23,256]	872 [29,266]	868 [29,803]
e. Fatality – minimum \$250,000 [1,565]	764 [400]	835 [855]	853 [818]
f. Serious nonfatal injury – minimum \$250,000 [822]	890 [180]	941 [452]	937 [444]
g. Fatality – minimum \$100,000 [1,565]	828 [680]	836 [1,236]	838 [1,222]
h. Serious nonfatal injury – minimum \$100,000 [822]	924 [274]	928 [617]	927 [629]
i. Fatality – minimum \$500,000 [1,565]	774 [242]	838 [550]	841 [511]
j. Serious nonfatal injury – minimum \$500,000 [822]	843 [121]	937 [303]	940 [293]

Table 12: Average Litigation Cost Savings from Early Offer Proposal

Panel A: By Type of Damages			
	(1) Litigation Costs Reduced if Savings Based on Initial Reserve are Positive (\$) [N]	(2) Litigation Costs Reduced if Savings Based on Final Reserve are Positive (\$) [N]	(3) Litigation Costs Reduced if Savings Based on Total Settlement or Court Award are Positive (\$) [N]
a. Exemplary damages reported [1,607]	172,601 [964]	188,312 [1,564]	324,992 [1,607]
b. No exemplary damages, economic damages reported as zero [7,046]	9,349 [7,046]	9,852 [7,046]	14,562 [7,046]
c. No exemplary damages, positive economic damages reported [7,405]	82,006 [3,112]	93,539 [6,995]	144,211 [7,373]
d. Imputed economic damages [23,495]	32,061 [15,847]	54,495 [22,834]	88,734 [23,495]
e. All claims [39,553]	36,914 [26,969]	58,861 [38,439]	95,467 [39,521]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Litigation Costs Reduced if Savings Based on Initial Reserve are Positive (\$) [N]	(2) Litigation Costs Reduced if Savings Based on Final Reserve are Positive (\$) [N]	(3) Litigation Costs Reduced if Savings Based on Total Settlement or Court Award are Positive (\$) [N]
a. Fatality [2,388]	155,112 [1,472]	211,415 [2,284]	368,906 [2,379]
b. Serious nonfatal injury [1,429]	207,372 [672]	258,934 [1,350]	431,063 [1,424]
c. Other nonfatal injuries and short form claims [34,129]	19,332 [23,860]	34,163 [33,241]	51,573 [34,111]

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d. All claims without exemplary damages [37,946]	31,884 [26,005]	53,371 [36,875]	85,738 [37,914]
e. Fatality – minimum \$250,000 [2,388]	282,336 [650]	312,118 [1,435]	593,122 [1,392]
f. Serious nonfatal injury – minimum \$250,000 [1,429]	397,076 [313]	391,928 [844]	707,204 [826]
g. Fatality – minimum \$100,000 [2,388]	207,240 [1,015]	245,371 [1,934]	446,000 [1,939]
h. Serious nonfatal injury – minimum \$100,000 [1,429]	293,188 [456]	306,700 [1,123]	527,468 [1,150]
i. Fatality – minimum \$500,000 [2,388]	377,522 [419]	411,602 [973]	828,770 [913]
j. Serious nonfatal injury – minimum \$500,000 [1,429]	524,111 [211]	517,595 [593]	958,056 [572]

Note: Litigation costs saved calculated as:

- (1) 0.23 total settlement or court award + (PV 23/33 initial expense reserve).
- (2) 0.23 total settlement or court award + 23/33 final expense reserve.
- (3) 0.23 total settlement or court award + 23/33 attorney expenses.

Table 13: Average Litigation Cost Savings from Early Offer Proposal, Deducting Collateral Sources

Panel A: By Type of Damages			
	(1) Litigation Costs Reduced if Savings Based on Initial Reserve are Positive (\$) [N]	(2) Litigation Costs Reduced if Savings Based on Final Reserve are Positive (\$) [N]	(3) Litigation Costs Reduced if Savings Based on Total Settlement or Court Award are Positive (\$) [N]
a. Exemplary damages reported [1,607]	171,524 [1,119]	188,916 [1,582]	324,992 [1,607]
b. No exemplary damages, economic damages reported as zero [7,046]	1,616 [7,046]	1,616 [7,046]	1,616 [7,046]
c. No exemplary damages, positive economic damages reported [7,405]	82,170 [4,055]	93,621 [7,182]	144,268 [7,405]
d. Imputed economic damages [23,495]	35,549 [17,695]	55,098 [23,016]	88,734 [23,495]
e. All claims [39,553]	40,784 [29,915]	59,465 [38,826]	95,517 [39,553]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Litigation Costs Reduced if Savings Based on Initial Reserve are Positive (\$) [N]	(2) Litigation Costs Reduced if Savings Based on Final Reserve are Positive (\$) [N]	(3) Litigation Costs Reduced if Savings Based on Total Settlement or Court Award are Positive (\$) [N]
a. Fatality [2,388]	161,677 [1,693]	211,861 [2,315]	369,088 [2,388]
b. Serious nonfatal injury [1,429]	210,758 [853]	263,003 [1,386]	429,981 [1,429]
c. Other nonfatal injuries and short form claims [34,129]	21,890 [26,250]	34,432 [33,543]	51,566 [34,129]

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d. All claims without exemplary damages [37,946]	35,704 [28,796]	53,967 [37,244]	85,799 [37,946]
e. Fatality – minimum \$250,000 [2,388]	304,513 [704]	313,273 [1,447]	591,994 [1,401]
f. Serious nonfatal injury – minimum \$250,000 [1,429]	436,233 [350]	401,554 [858]	705,310 [829]
g. Fatality – minimum \$100,000 [2,388]	222,744 [1,123]	246,372 [1,956]	445,868 [1,948]
h. Serious nonfatal injury – minimum \$100,000 [1,429]	317,286 [533]	314,008 [1,143]	526,160 [1,154]
i. Fatality – minimum \$500,000 [2,388]	402,433 [441]	412,431 [983]	826,356 [920]
j. Serious nonfatal injury – minimum \$500,000 [1,429]	577,265 [232]	530,281 [601]	955,449 [574]
<p>Note: Litigation costs saved calculated as:</p> <p>(1) 0.23 total settlement or court award + (PV 23/33 initial expense reserve).</p> <p>(2) 0.23 total settlement or court award + 23/33 final expense reserve.</p> <p>(3) 0.23 total settlement or court award + 23/33 attorney expenses.</p>			

Table 14: Average Litigation Cost Savings from Early Offer Proposal, Deducting Collateral Sources, Only Claims Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Litigation Costs Reduced if Savings Based on Initial Reserve are Positive (\$) [N]	(2) Litigation Costs Reduced if Savings Based on Final Reserve are Positive (\$) [N]	(3) Litigation Costs Reduced if Savings Based on Total Settlement or Court Award are Positive (\$ [N]
a. Exemplary damages reported [463]	270,608 [327]	305,597 [458]	534,339 [463]
b. No exemplary damages, economic damages reported as zero [669]	21,643 [669]	22,595 [669]	37,507 [669]
c. No exemplary damages, positive economic damages reported [2,882]	103,227 [1,782]	124,690 [2,826]	197,145 [2,882]
d. Imputed economic damages [4,592]	92,782 [3,089]	120,077 [4,483]	211,328 [4,592]
e. All claims [8,606]	97,754 [5,867]	123,964 [8,436]	210,444 [8,606]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Litigation Costs Reduced if Savings Based on Initial Reserve are Positive (\$) [N]	(2) Litigation Costs Reduced if Savings Based on Final Reserve are Positive (\$) [N]	(3) Litigation Costs Reduced if Savings Based on Total Settlement or Court Award are Positive (\$ [N]
a. Fatality [823]	206,851 [606]	256,777 [806]	529,555 [823]
b. Serious nonfatal injury [607]	226,551 [396]	285,416 [597]	445,733 [607]

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c. Other nonfatal injuries and short form claims [6,713]	59,490 [4,538]	80,371 [6,575]	127,707 [6,713]
d. All claims without exemplary damages [8,143]	87,551 [5,540]	113,536 [7,978]	192,027 [8,143]
e. Fatality – minimum \$250,000 [823]	335,566 [304]	331,698 [592]	723,823 [583]
f. Serious nonfatal injury – minimum \$250,000 [607]	440,915 [170]	399,633 [406]	670,702 [385]
g. Fatality – minimum \$100,000 [823]	262,951 [443]	284,323 [720]	596,150 [726]
h. Serious nonfatal injury – minimum \$100,000 [627]	325,299 [259]	320,589 [526]	510,560 [525]
i. Fatality – minimum \$500,000 [823]	422,715 [199]	414,104 [433]	966,487 [409]
j. Serious nonfatal injury – minimum \$500,000 [627]	569,119 [111]	505,291 [298]	864,867 [281]
<p>Note: Litigation costs saved calculated as:</p> <p>(1) 0.23 total settlement or court award + (PV 23/33 initial expense reserve).</p> <p>(2) 0.23 total settlement or court award + 23/33 final expense reserve.</p> <p>(3) 0.23 total settlement or court award + 23/33 attorney expenses.</p>			

Table 15: Average Litigation Cost Savings from Early Offer Proposal, Deducting Collateral Sources, Only Claims Not Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Litigation Costs Reduced if Savings Based on Initial Reserve are Positive (\$) [N]	(2) Litigation Costs Reduced if Savings Based on Final Reserve are Positive (\$) [N]	(3) Litigation Costs Reduced if Savings Based on Total Settlement or Court Award are Positive (\$) [N]
a. Exemplary damages reported [1,144]	130,614 [792]	141,371 [1,124]	240,265 [1,144]
b. No exemplary damages, economic damages reported as zero [6,377]	8,060 [6,377]	8,515 [6,377]	12,155 [6,377]
c. No exemplary damages, positive economic damages reported [4,523]	65,662 [2,273]	73,465 [4,356]	110,575 [4,523]
d. Imputed economic damages [18,903]	23,445 [14,606]	39,380 [18,533]	58,953 [18,903]
e. All claims [30,947]	26,885 [24,048]	41,561 [30,390]	63,557 [30,947]
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Litigation Costs Reduced if Savings Based on Initial Reserve are Positive (\$) [N]	(2) Litigation Costs Reduced if Savings Based on Final Reserve are Positive (\$) [N]	(3) Litigation Costs Reduced if Savings Based on Total Settlement or Court Award are Positive (\$) [N]
a. Fatality [1,565]	136,492 [1,087]	187,869 [1,509]	284,702 [1,565]
b. Serious nonfatal injury [822]	197,073 [457]	246,045 [789]	418,348 [822]

(continued on next page)

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c. Other nonfatal injuries and short form claims [27,416]	14,032 [21,712]	23,232 [26,968]	32,922 [27,416]
d. All claims without exemplary damages [29,803]	23,353 [23,256]	37,728 [29,266]	56,774 [29,803]
e. Fatality – minimum \$250,000 [1,565]	280,913 [400]	300,516 [855]	498,037 [818]
f. Serious nonfatal injury – minimum \$250,000 [822]	431,810 [180]	403,279 [452]	735,319 [444]
g. Fatality – minimum \$100,000 [1,565]	196,551 [680]	224,264 [1,236]	356,584 [1,222]
h. Serious nonfatal injury – minimum \$100,000 [822]	309,711 [274]	308,397 [617]	539,180 [629]
i. Fatality – minimum \$500,000 [1,565]	385,754 [242]	411,113 [550]	714,196 [511]
j. Serious nonfatal injury – minimum \$500,000 [822]	584,739 [121]	554,858 [303]	1,042,321 [293]
<p>Note: Litigation costs saved calculated as:</p> <p>(1) 0.23 total settlement or court award + (PV 23/33 initial expense reserve).</p> <p>(2) 0.23 total settlement or court award + 23/33 final expense reserve.</p> <p>(3) 0.23 total settlement or court award + 23/33 attorney expenses.</p>			

Table 16: Average Gains or Losses to Claimants from Acceptance of Early Offer

Panel A: By Type of Damages			
	(1) Claimant Gain or Loss if Early Offer Decision Based on Initial Reserve (\$ [N] (percent positive)	(2) Claimant Gain or Loss if Early Offer Decision Based on Final Reserve (\$ [N] (percent positive)	(3) Claimant Gain or Loss if Early Offer Decision Based on Total Settlement or Court Award (\$ [N] (percent positive)
a. Exemplary damages reported [1,607]	-319,694 [964] (4.77%)	-293,062 [1,564] (7.8%)	-303,342 [1,607] (7.97%)
b. No exemplary damages, economic damages reported as zero [7,046]	-23,495 [7046] (0.00%)	-23,495 [7,046] (0.00%)	-23,495 [7,046] (0.00%)
c. No exemplary damages, positive economic damages reported [7,405]	-129,557 [3,112] (8.26%)	-100,968 [6,995] (14.21%)	-97,833 [7,373] (14.88%)
d. Imputed economic damages [23,495]	-36,332 [15,847] (0.00%)	-52,956 [22,834] (0.00%)	-55,369 [23,495] (0.00%)
e. All claims [39,553]	-53,864 [26,969] (1.12%)	-66,062 [38,439] (2.9%)	-67,691 [39,521] (3.10%)
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Claimant Gain or Loss if Early Offer Decision Based on Initial Reserve (\$ [N] (percent positive)	(2) Claimant Gain or Loss if Early Offer Decision Based on Final Reserve (\$ [N] (percent positive)	(3) Claimant Gain or Loss if Early Offer Decision Based on Total Settlement or Court Award (\$ [N] (percent positive)
a. Fatality [2,388]	-224,095 [1,472] (1.43%)	-246,489 [2,284] (3.68%)	-250,852 [2,379] (3.83%)

(continued on next page)

(continued from previous page)

b. Serious nonfatal injury [1,429]	-275,814 [672] (3.86%)	-281,109 [1,350] (5.19%)	-285,194 [1,424] (5.06%)
c. Other nonfatal injuries and short form claims [34,129]	-26,362 [23,860] (0.88%)	-34,251 [33,241] (2.53%)	-34,735 [34,111] (2.74%)
d. All claims without exemplary damages [37,946]	-44,010 [26,005] (0.99%)	-56,434 [36,875] (2.70%)	-57,703 [37,914] (2.89%)
e. Fatality – minimum \$250,000 [2,388]	-294,343 [650] (38.15%)	-273,088 [1,435] (37.84%)	-318,164 [1,392] (32.54%)
f. Serious nonfatal injury – minimum \$250,000 [1,429]	-459,716 [313] (32.27%)	-360,344 [844] (34.72%)	-411,946 [826] (28.21%)
g. Fatality – minimum \$100,000 [2,388]	-261,473 [1,015] (26.70%)	-256,472 [1,934] (27.66%)	-275,394 [1,939] (24.34%)
h. Serious nonfatal injury – minimum \$100,000 [1,429]	-368,503 [456] (25.22%)	-314,122 [1,123] (26.63%)	-331,939 [1,150] (23.30%)
i. Fatality – minimum \$500,000 [2,388]	-293,941 [419] (45.58%)	-269,244 [973] (46.76%)	-361,868 [913] (39.54%)
j. Serious nonfatal injury – minimum \$500,000 [1,429]	-519,296 [211] (39.34%)	-405,190 [593] (43.00%)	-493,594 [572] (36.36%)

Table 17: Average Gains or Losses to Claimants from Acceptance of Early Offer, Only Claims Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Claimant Gain or Loss if Early Offer Decision Based on Initial Reserve (\$ [N]) (percent positive)	(2) Claimant Gain or Loss if Early Offer Decision Based on Final Reserve (\$ [N]) (percent positive)	(3) Claimant Gain or Loss if Early Offer Decision Based on Total Settlement or Court Award (\$ [N]) (percent positive)
a. Exemplary damages reported [463]	-479,658 [234] (7.69%)	-445,366 [447] (11.41%)	-485,106 [463] (11.45%)
b. No exemplary damages, economic damages reported as zero [669]	-53,751 [669] (0.00%)	-53,751 [669] (0.00%)	-53,751 [669] (0.00%)
c. No exemplary damages, positive economic damages reported [2,882]	-162,404 [1,171] (11.53%)	-125,528 [2,728] (17.52%)	-122,499 [2,873] (18.34%)
d. Imputed economic damages [4,592]	-84,925 [2,107] (0.00%)	-94,987 [4,376] (0.00%)	-99,073 [4,592] (0.00%)
e. All claims [8,606]	-123,729 [4,181] (3.66%)	-120,820 [8,220] (6.44%)	-124,165 [8,597] (6.75%)
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Claimant Gain or Loss if Early Offer Decision Based on Initial Reserve (\$ [N]) (percent positive)	(2) Claimant Gain or Loss if Early Offer Decision Based on Final Reserve (\$ [N]) (percent positive)	(3) Claimant Gain or Loss if Early Offer Decision Based on Total Settlement or Court Award (\$ [N]) (percent positive)
a. Fatality [823]	-269,655 [464] (1.51%)	-271,235 [788] (5.46%)	-276,458 [821] (5.36%)

(continued on next page)

(continued from previous page)

b. Serious nonfatal injury [607]	-289,293 [275] (6.18%)	-275,978 [573] (6.63%)	-285,940 [605] (6.61%)
c. Other nonfatal injuries and short form claims [6,713]	-62,468 [3,208] (3.46%)	-65,845 [6,412] (6.19%)	-66,022 [6,708] (6.60%)
d. All claims without exemplary damages [8,143]	-102,628 [3,947] (3.42%)	-102,157 [7,773] (6.15%)	-103,620 [8,134] (6.48%)
e. Fatality – minimum \$250,000 [823]	-313,155 [265] (34.34%)	-280,300 [588] (33.84%)	-317,069 [581] (29.09%)
f. Serious nonfatal injury – minimum \$250,000 [607]	-450,498 [142] (30.28%)	-329,483 [394] (32.74%)	-389,249 [384] (25.78%)
g. Fatality – minimum \$100,000 [823]	-293,648 [363] (19.01%)	-280,423 [707] (22.49%)	-293,647 [724] (20.30%)
h. Serious nonfatal injury – minimum \$100,000 [627]	-360,151 [206] (24.27%)	-292,308 [510] (25.10%)	-315,175 [523] (22.56%)
i. Fatality – minimum \$500,000 [823]	-303,678 [184] (42.93%)	-262,892 [430] (44.88%)	-342,459 [408] (38.73%)
j. Serious nonfatal injury – minimum \$500,000 [627]	-469,924 [96] (41.67%)	-338,255 [291] (45.70%)	-432,663 [280] (38.57%)

Table 18: Average Gains or Losses to Claimants from Acceptance of Early Offer, Only Claims Not Involving Workers' Compensation

Panel A: By Type of Damages			
	(1) Claimant Gain or Loss if Early Offer Decision Based on Initial Reserve (\$ [N] (percent positive)	(2) Claimant Gain or Loss if Early Offer Decision Based on Final Reserve (\$ [N] (percent positive)	(3) Claimant Gain or Loss if Early Offer Decision Based on Total Settlement or Court Award (\$ [N] (percent positive)
a. Exemplary damages reported [1,144]	-268,418 [730] (3.84%)	-232,113 [1,117] (6.36%)	-229,778 [1,144] (6.56%)
b. No exemplary damages, economic damages reported as zero [6,377]	-20,320 [6,377] (0.00%)	-20,320 [6,377] (0.00%)	-20,030 [6,377] (0.00%)
c. No exemplary damages, positive economic damages reported [4,523]	-109,741 [1,941] (6.29%)	-85,266 [4,267] (12.09%)	-82,085 [4,500] (12.67%)
d. Imputed economic damages [18,903]	-28,881 [13,740] (0.00%)	-42,991 [18,458] (0.00%)	-44,752 [18,903] (0.00%)
e. All claims [30,947]	-41,046 [22,788] (0.66%)	-51,167 [30,219] (1.94%)	-51,991 [30,924] (2.09%)
Panel B: By Injury Type, Excluding Claims Reporting Exemplary Damages			
	(1) Claimant Gain or Loss if Early Offer Decision Based on Initial Reserve (\$ [N] (percent positive)	(2) Claimant Gain or Loss if Early Offer Decision Based on Final Reserve (\$ [N] (percent positive)	(3) Claimant Gain or Loss if Early Offer Decision Based on Total Settlement or Court Award (\$ [N] (percent positive)
a. Fatality [1,565]	-203,122 [1,008] (1.39%)	-233,454 [1,496] (2.74%)	-237,358 [1,558] (3.02%)

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(continued from previous page)

b. Serious nonfatal injury [822]	-266,501 [398] (2.26%)	-284,893 [777] (4.12%)	-284,642 [819] (3.91%)
c. Other nonfatal injuries and short form claims [27,416]	-20,753 [20,652] (0.48%)	-26,700 [26,829] (1.65%)	-27,077 [27,403] (1.79%)
d. All claims without exemplary damages [29,803]	-33,521 [22,058] (0.55%)	-44,222 [29,102] (1.77%)	-45,161 [29,780] (1.91%)
e. Fatality – minimum \$250,000 [1,565]	-281,394 [385] (40.78%)	-268,082 [847] (40.61%)	-318,948 [811] (35.02%)
f. Serious nonfatal injury – minimum \$250,000 [822]	-467,371 [171] (33.92%)	-387,365 [450] (36.44%)	-431,666 [442] (30.32%)
g. Fatality – minimum \$100,000 [1,565]	-243,560 [652] (30.98%)	-242,671 [1,227] (30.64%)	-264,518 [1,215] (26.75%)
h. Serious nonfatal injury – minimum \$100,000 [822]	-375,386 [250] (26.00%)	-332,272 [613] (27.90%)	-345,921 [627] (23.92%)
i. Fatality – minimum \$500,000 [1,565]	-286,318 [235] (47.66%)	-274,274 [543] (48.25%)	-377,549 [505] (40.20%)
j. Serious nonfatal injury – minimum \$500,000 [822]	-560,510 [115] (37.39%)	-469,687 [302] (40.40%)	-552,020 [292] (34.25%)

Table 19: Sample Characteristics

PANEL A: Record Types						
	N		Percent			
a. Long form	23,013		58.18			
b. Short form	16,540		41.82			
c. Total number of claims	39,553		100.00			
d. Damages components reported	16,058		40.60			
e. Exemplary damages reported	1607		4.06			
f. Primary insurer payment = total settlement or court award	30,308		76.63			
g. Primary insurer payment + deductible = total settlement or court award	32,477		82.11			
h. Multiparty claim	16,593		41.95			
i. Duplicate report within same year	669		1.69			
PANEL B: Age and Injury Characteristics – Long Form Claims						
	All Cases		Death		Serious injury	
	N	Percent	N	Percent	N	Percent
All ages	23,013	100.0	2,701	11.74	1,549	6.73
Age < 18	1,923	8.36	429	15.88	270	17.43
Age 18 or older	21,090	91.64	2,272	84.12	1,279	82.57
PANEL C: Distribution of Total Settlements or Court Awards*						
	Percent					
\$10,000 - \$100,000	72.39					
\$100,001 - \$500,000	19.47					
\$500,001 - \$1,000,000	4.21					
\$1,000,001 - \$5,000,000	3.50					
> \$5,000,000	0.43					
* Median settlement or court award is \$39,919. Mean settlement or court award is \$208,333.						

Table 20: Comparison of All Paid Tort Claims with Claims to be Paid by Early Offers

This example is based on severe non-fatal injuries (excluding claims reporting exemplary damages) and calculations using the initial reserve amount.

	(1) All severe nonfatal injury claims (Table 1)	(2) Severe nonfatal injury claims resulting in early offers based on initial reserve (Table 2)
a. Number of claims	1,429 ¹	673 ⁶
b. Projected average total initial reserve	543,365 ²	1,016,969 ⁷
c. Projected average initial indemnity reserve	486,508 ³	915,208 ⁸
d. Projected average initial expense reserve	56,857 ⁴	101,760 ⁹
e. Economic loss	337,151 ⁵	245,286 ¹⁰
f. Average savings		716,207 ¹¹

¹ 1Bb(5)

² 1Bb(1)

³ Calculated from TDI data, not appearing in the foregoing

⁴ Calculated from TDI data, not appearing in the foregoing

⁵ 1Bb(4)

⁶ 2Bb(1)

⁷ Calculated from TDI data, not appearing in the foregoing

⁸ Calculated from TDI data, not appearing in the foregoing

⁹ Calculated from TDI data, not appearing in the foregoing

¹⁰ Calculated from TDI data, not appearing in the foregoing

¹¹ 2Bb(1)

Note: Savings = Projected initial loss reserve + 23/33 initial expense reserve – 1.1 economic loss.

Inserting numbers from Column 2:

$$\begin{aligned}
 \text{Savings} &= \$915,208 + ((23/33) \times \$101,760) - 1.1 \times \$245,286 \\
 &= \$915,208 + 70,924 - 269,815 \\
 &= \$716,317
 \end{aligned}$$

Appendix A: TDI Closed Claim Reporting Forms

LONG FORM

TEXAS DEPARTMENT OF INSURANCE

**Texas Commercial Liability Insurance
Closed Claim Report
Indemnity Payments of \$25,000 or More**

Company Name & Address: _____ Always Complete

NAIC Company Code: _____ NAIC Group Code: _____ Always Complete

Claim File Identification: _____ Always Complete

Form Completed By: _____ Tel: _____

Form Reviewed By (Coordinator): _____ Tel: _____ Always Complete

**LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE**

NAIC Company Code: _____ NAIC Group Code: _____

- 1. a. Date of Injury _____ MM / DD / YYYY Always Complete
- b. Date reported to insurer _____ MM / DD / YYYY Always Complete
- c. Date suit filed _____ MM / DD / YYYY Complete if suit filed
- d. Date of trial or final trial setting _____ MM / DD / YYYY Complete if trial held
- e. Date of settlement _____ MM / DD / YYYY Always Complete
- f. Date of jury award _____ MM / DD / YYYY Complete if rendered
- g. Date claim was closed _____ MM / DD / YYYY Always Complete
- 2. Age of injured person at the time of the injury:
(Indicate months only if child is less than one year of age) _____ Years _____ Months Always Complete
- 3. a. Was injured person employed at the time of the loss? _____ Y/N Always Complete
- b. If 3.a if "Y", was the injury work-related? _____ Y/N Do not respond if 3.a is "N"
- 4. Type of injury: Select all that apply Always Complete
 - a. Death _____
 - b. Amputation _____
 - c. Burns (heat) _____
 - d. Burns (chemical) _____
 - e. Systemic poisoning (toxic substance) _____
 - f. Systemic poisoning (other) _____
 - g. Eye injury (blindness) _____
 - h. Respiratory condition _____

(Question #4 is continued on page 2)

LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE

NAIC Company Code: NAIC Group Code:

(Question #4 continued)

- i. Nervous condition
j. Hearing loss or impairment
k. Circulatory condition
l. Multiple injuries (broken limbs, lacerations, contusions)
m. Back injury
n. Skin disorder
o. Brain damage
p. Scarring
q. Spinal cord injuries (including paraplegia and quadriplegia)
r. Other (Give Brief Description)

5. How did the injury occur? Always Complete
Select all that apply

- a. Off road vehicle
b. Air transportation
c. Railway
d. Other motor vehicle
e. Complications, misadventures of surgical/medical care
f. Falls
g. Drowning
h. Use of defective product
i. Fire
j. Firearm
k. Pollution or long-term exposure to toxic material
l. Explosions
m. Use of agricultural machinery
n. Oil & gas extractions
o. Other (Give Brief Description)

6. a. Where did the injury occur? Always Complete
(Choose either 1 or 2 and then complete the applicable item below) Enter either 1 or 2

1. Texas City Name County County Name Complete if Texas

2. Other Brief Location, i.e.: Off-shore, Name of State, etc. Complete if not Texas

b. If Texas, enter county code where the injury occurred Complete if 6.a. is "1".

c. Enter the county code where suit was initially filed Complete if suit filed

(Question #6 is continued on page 3)

**LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE**

NAIC Company Code: _____ NAIC Group Code: _____

(Question #6 continued)

d. Enter the county code where the case was tried _____ Complete if trial started

7. Policy Information

a. Policy Type _____ Always Complete

Choose one

- 1. Mono-line general liability
- 2. Commercial auto liability
- 3. Texas commercial multiperil (Sec. II lib.; include TCP&P & TBOP)
- 4. Medical professional liability
- 5. Other professional liability

b. Policy Form _____ Always Complete

Choose one

- 1. Occurrence
- 2. Claims Made

c. Business Class _____ Always Complete

Choose one

- 1. Agriculture
- 2. Mining
- 3. Manufacturer of chemical & allied products
- 4. Medical products manufacturers
- 5. Drug manufacturers
- 6. Other products manufacturers
- 7. Transportation
- 8. Wholesale-retail trade
- 9. Municipal/public liability
- 10. Schools (public & private)
- 11. Daycare centers
- 12. Liquor liability
- 13. Non-profit organizations
- 14. Construction firms
- 15. Oil wells & drillings
- 16. Apartments, townhouse & condominiums
- 17. Office
- 18. Churches

(Question #7 is continued on page 4)

LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE

NAIC Company Code: NAIC Group Code:

(Question #7 continued)

- 19. Physicians & surgeons
20. Dentists
21. Oral surgeons
22. Hospital
23. Nursing Home
24. Professionals - lawyers
25. Professionals - D&O
26. Other

d. Policy limits for bodily injury: Always Complete
Indicate the limit for individual bodily injuries with all zeroes shown in the response. Do not use slashes or abbreviations in the response

Complete all that apply:

- 1. Per person (commercial auto only) \$
2. Per occurrence/accident \$
3. Combined single limit \$

8. a. Indicate the initial reserve first established for the indemnity portion of the claim after investigation of the claim or review of the file. Do not report formula or fast track reserves. Answer 8a - 8f In whole dollars Always Complete

b. Indicate the initial reserve first established for expenses relating to the claim after investigation of the claim or review of the reserves. Always Complete

c. Indicate (a + b). Always Complete

d. Indicate the reserve for the indemnity portion of the claim just before the file was closed. Always Complete

e. Indicate the reserve for expenses relating to the claim just before the file was closed. Always Complete

f. Indicate (d + e). Always Complete

9. a. Was an attorney employed by the plaintiff? (Y/N) Always Complete

b. Was an attorney (outside or in-house) employed by the insurer? (Y/N) Always Complete

c. Was an attorney employed by the insured? (Y/N) Always Complete

LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE

NAIC Company Code: NAIC Group Code:

10. a. At what stage of the legal system was a settlement reached or an award made? Always Complete

Choose One

- 1. Alternative dispute resolution with no suit filed
2. No suit filed
3. Alternative dispute resolution after suit filed
4. Suit filed but settlement reached before trial
5. During trial, but before court verdict
6. Court verdict
7. Settlement reached after court verdict
8. Settlement reached after appeal was filed
9. Case dismissed or summary judgment

b. If a court verdict is indicated, indicate the result by choosing one of the following

Choose One

- 1. Directed verdict for the plaintiff
2. Directed verdict for the defendant
3. Judgment not withstanding the verdict for the plaintiff
4. Judgment not withstanding the verdict for the defendant
5. Judgment for the plaintiff
6. Judgment for the defendant
7. For plaintiff, after appeal
8. For defendant, after appeal
9. All others

c. If the case went to trial, was it

Choose One

- 1. Trial by judge and jury
2. Trial by judge alone

d. If appealed, who requested the appeal

Choose One

- 1. Plaintiff
2. Defendant

(Question #10 is continued on page 6)

**LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE**

NAIC Company Code: _____ NAIC Group Code: _____

(Question #10 continued)

e. Did the court order a remittitur? _____ Y/N

f. If yes, indicate the amount by which the original award was reduced _____ \$

11. a. Indicate the amount of the final demand by claimant or attorney for claimant _____ \$

Always Complete

b. 1. If the case was closed as a result of a court verdict or settled after a court verdict, what was the amount of the court verdict? _____ \$

If there is no court verdict, please skip to item 11.e.

2. How was this amount distributed between: Complete all that apply

Round to whole dollars

- a. Economic losses _____ \$
- b. Non-economic losses _____ \$
- c. Exemplary damages _____ \$
- d. Prejudgment interest _____ \$
- e. Total _____ \$

c. Was the total amount paid as a result of the settlement after a court verdict different from the amount stated in the court verdict? _____ (Y/N)

d. 1. If "Y", what was the amount of the settlement after the court verdict? _____ \$

2. Was this settlement influenced by a demand for or possible award of non-economic, exemplary damages, or prejudgment interest? _____ (Y/N)

3. If yes, estimate the amount of the following as contemplated in your settlement: _____ Round to whole dollars

- Complete all that apply
- a. Economic losses _____ \$ *
 - b. Non-economic losses _____ \$ *
 - c. Exemplary damages _____ \$ *
 - d. Prejudgment interest _____ \$ *
 - e. Total _____ \$

* Indicates that the question calls for your most candid expert opinion

(Question #11 is continued on page 7)

LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE

NAIC Company Code: NAIC Group Code:

(Question #11 continued)

- e. 1. If no suit was filed or the claim was closed before reaching court...
2. Was this settlement influenced by a demand for or possible award of non-economic exemplary damages or prejudgment interest?
3. If yes, estimate the amount of the following as contemplated in your settlement:

- Complete all that apply
a. Economic losses
b. Non-economic losses
c. Exemplary damages
d. Prejudgment interest
e. Total

- 12. a. Please indicate the following dollar amounts as applicable to this claim

- Complete all that apply
1. Amount paid by the primary carrier
2. Amount paid by the insured, due to deductible
3. Amount paid by the excess carrier
4. Amount paid by the insured due to settlement or award in excess of policy limits
5. Amount paid by other insurers on behalf of the other defendants
6. Amount paid by other defendants that were not insured
7. Total amount of settlement or court award

* Indicates that the question calls for your most candid expert opinion

(Question #12 is continued on page 8)

**LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE**

NAIC Company Code: _____ NAIC Group Code: _____

(Question #12 continued)

- b. Please provide the following information for each of the other insurers contributing to the total settlement in this claim:

	Company Name	NAIC Co. Number	Amount Paid
1.	_____	_____	\$ _____
2.	_____	_____	\$ _____
3.	_____	_____	\$ _____
4.	_____	_____	\$ _____
5.	_____	_____	\$ _____
6.	_____	_____	\$ _____

- c. Are any other defendants still in litigation relative to this claim? _____ Always Complete
(Y/N)

13. a. In cases that closed due to a court verdict or settlement after a court verdict, did the judgment provide or joint and several liability in regard to any defendant? _____ Complete items 13.a and 13.b only if there is a court verdict
(Y/N)

- b. Complete the following table for cases that closed due to a court verdict or settlement reached after a court verdict: Round to whole dollars

	Percent of Fault Assigned by Court Verdict To	Total Amount Paid or Awarded by a Court Verdict	Total Amount Paid in Settlement After Verdict
1. Injured party	%	N/A	N/A
2. Your insured	%	\$ _____	\$ _____
3. Other insured defendants	%	\$ _____	\$ _____
4. Other uninsured defendants	%	\$ _____	\$ _____
5. Total verdict amount.....		\$ _____	
6. Total pay out amount in settlement after verdict.....			\$ _____

- c. In cases that were settled before a court verdict, did the doctrine of joint and several liability impact the settlement? _____ Complete item 13.c if there is not a court verdict
(Y/N)

(Question #13 is continued on page 9)

**LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE**

NAIC Company Code: _____ NAIC Group Code: _____

(Question #13 continued)

d. Indicate the following for cases that were settled before a court verdict.

Complete item 13.d if there is not a court verdict.

Round to whole dollars

	Estimated % of Fault Assigned To	Total Amount Paid in Settlement
1. Injured party	_____%*	____N/A____
2. Your insured	_____%*	____\$____
3. Other insured defendants	_____%*	____\$____
4. Other uninsured defendants	_____%*	____\$____
5. Total payout	_____	____\$____

e. 1. How many other defendants were there?

(enter the applicable alpha character from below in the space provided)..... _____

If there are no other defendants, then leave blank

Choose one

- A. One
- B. Two
- C. Three
- D. Four
- E. Five
- F. Six
- G. More than six

2. Indicate the following for the other defendants:

Complete if 13.e.1 is answered

Complete all that apply

	How Many Insured Defendants?	How Many Uninsured Defendants?
a. Municipal _____	_____	_____
b. Government other than municipal _____	_____	_____
c. Business _____	_____	_____
d. Industrial _____	_____	_____
e. Non-profit organizations _____	_____	_____
f. Hospital _____	_____	_____
g. Physicians & surgeons _____	_____	_____
h. Other health care providers _____	_____	_____
i. All others _____	_____	_____

Please indicate numbers. Do not use "X" marks or check marks.

* Indicates that the question calls for your most candid expert opinion

**LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE**

NAIC Company Code: _____ NAIC Group Code: _____

14. a. Was workers' compensation available to the injured party? (Y/N) Always Complete

b. Are you aware of any other collateral sources available to the injured party? (Y/N) Always Complete

c. If 14.b is "Y", indicate which of the following sources were available:

Select all that apply

- 1. Medical insurance _____
- 2. Disability insurance _____
- 3. Social security disability/supplementary security benefits _____
- 4. Medicare, Medicaid _____
- 5. Sick leave _____
- 6. Other _____

15. a. Are you aware of any lawsuit(s) which has (have) been filed under rights of subrogation, contribution or indemnification in connection with this claim? (Y/N) Always Complete

b. If 15.a is "Y", indicate your status in that suit: _____

Choose one

- 1. Plaintiff
- 2. Defendant
- 3. Not Involved
- 4. Both

16. a. Was a structured settlement used in closing the claim? (Y/N) Always Complete

b. If 16.a is "Y", please complete the following: Round to whole dollars

- 1. Immediate payment \$ _____
- 2. Present value of projected total future payment (price of an annuity if purchased) \$ _____
- 3. Total award or settlement (1 + 2) \$ _____
- 4. Indicate the total projected future pay out \$ _____

16.b.3 must equal item 12.a.7 if 16.a is "Y".

c. Was a structured settlement used to pay the plaintiff's attorney's fee? (Y/N) Always Complete

**LONG FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OF \$25,000 OR MORE**

NAIC Company Code: _____ NAIC Group Code: _____

17. a. Indicate the amount paid to outside defense counsel..... \$ _____ Round to whole dollars.
- b. Indicate any allocated expense for in-house defense counsel..... \$ _____
- c. Indicate the amount of other allocated loss adjustment expenses, such as court costs and stenographers..... \$ _____
- d. Indicate the total allocated loss adjustment expense (a + b + c)..... \$ _____ 17.d must equal the sum of items 17.a. through 17.c.

Additional Comments (optional):

SHORT FORM

TEXAS DEPARTMENT OF INSURANCE

Texas Commercial Liability Insurance Closed Claim Report Indemnity Payments Over \$10,000 But Less Than \$25,000

Company Name & Address: _____ Always Complete

NAIC Company Code: _____ NAIC Group Code: _____ Always Complete

Claim File Identification: _____ Always Complete

Form Completed By: _____ Tel: _____

Form Reviewed By (Coordinator): _____ Tel: _____ Always Complete

SHORT FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OVER \$10,000 BUT LESS THAN \$25,000

NAIC Company Code: NAIC Group Code:

- 1. a. Date of Injury MM / DD / YYYY Always Complete
b. Date reported to insurer MM / DD / YYYY Always Complete
c. Date suit filed MM / DD / YYYY Complete if suit filed
d. Date of trial or final trial setting MM / DD / YYYY Complete if trial held
e. Date of settlement MM / DD / YYYY Always Complete
f. Date of jury award MM / DD / YYYY Complete if rendered
g. Date claim was closed MM / DD / YYYY Always Complete

(Questions 2 through 5 Omitted)

- 6. a. Where did the injury occur? Always Complete
1. Texas (City Name) County (County Name) Complete if Texas
2. Other (Brief Location, i.e.: Off-shore, Name of State, etc.) Complete if not Texas
b. If Texas, enter county code where the injury occurred Complete if 6.a. is "1".
c. Enter the county code where suit was initially filed Complete if suit filed
d. Enter the county code where the case was tried Complete if trial started
7. Policy Information
a. Policy Type Always Complete

- Choose one
1. Mono-line general liability
2. Commercial auto liability
3. Texas commercial multiperil (Sec. 11 lib.; include TCPP & TBOP)
4. Medical professional liability
5. Other professional liability

(Question #7 is continued on page 2)

**SHORT FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OVER \$10,000 BUT LESS THAN \$25,000**

NAIC Company Code: _____ NAIC Group Code: _____

(Question #7 continued)

b. Policy Form _____ Always Complete

Choose one

- 1. Occurrence
- 2. Claims Made

c. Business Class _____ Always Complete

Choose one

- 1. Agriculture
- 2. Mining
- 3. Manufacturer of chemical & allied products
- 4. Medical products manufacturers
- 5. Drug manufacturers
- 6. Other products manufacturers
- 7. Transportation
- 8. Wholesale-retail trade
- 9. Municipal/public liability
- 10. Schools (public & private)
- 11. Daycare centers
- 12. Liquor liability
- 13. Non-profit organizations
- 14. Construction firms
- 15. Oil wells & drillings
- 16. Apartments, townhouse & condominiums
- 17. Office
- 18. Churches
- 19. Physicians & surgeons
- 20. Dentists
- 21. Oral surgeons
- 22. Hospital
- 23. Nursing Home
- 24. Professionals – lawyers
- 25. Professionals – D&O
- 26. Other _____

(Give Brief Description)

d. Policy limits for bodily injury: _____ Always Complete

Indicate the limit for individual bodily injuries with all zeroes shown in the response. Do not use slashes or abbreviations in the response

Complete all that apply:

- 1. Per person (commercial auto only) \$ _____
- 2. Per occurrence/accident \$ _____
- 3. Combined single limit \$ _____

**SHORT FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OVER \$10,000 BUT LESS THAN \$25,000**

NAIC Company Code: _____ NAIC Group Code: _____

- | | | |
|-----|---|------------------------------------|
| 8. | a. Indicate the initial reserve first established for the <u>indemnity</u> portion of the claim after investigation of the claim or review of the file. Do not report formula or fast track reserves _____ \$ _____ | Answer 8a - 8f
in whole dollars |
| | b. Indicate the initial reserve first established for <u>expenses</u> relating to the claim after investigation of the claim or review of the reserves _____ \$ _____ | Always Complete |
| | c. Indicate (a + b) _____ \$ _____ | Always Complete |
| | d. Indicate the reserve for the <u>indemnity</u> portion of the claim just before the file was closed _____ \$ _____ | Always Complete |
| | e. Indicate the reserve for <u>expenses</u> relating to the claim just before the file was closed _____ \$ _____ | Always Complete |
| | f. Indicate (d + e) _____ \$ _____ | Always Complete |
| 9. | a. Was an attorney employed by the plaintiff? _____
<div style="text-align: center;">(Y/N)</div> | Always Complete |
| | b. Was an attorney (outside or in-house) employed by the insurer? _____
<div style="text-align: center;">(Y/N)</div> | Always Complete |
| | c. Was an attorney employed by the insured? _____
<div style="text-align: center;">(Y/N)</div> | Always Complete |
| 10. | a. At what stage of the legal system was a settlement reached or an award made? _____ | Always Complete |

Choose One

1. Alternative dispute resolution with no suit filed
2. No suit filed
3. Alternative dispute resolution after suit filed
4. Suit filed but settlement reached before trial
If you choose 1, 2, 3 or 4, complete items 11.a, 11.e, 12.a, 12.c, 13.c, 13.d, 13.e, 14, 15, 16 and 17.
5. During trial, but before court verdict
If you choose 5, complete items 10.c, 11.a, 11.e, 12.a, 12.c, 13.c, 13.d, 13.e, 14, 15, 16 and 17.
6. Court verdict
If you choose 6, complete items 10.b, 10.c, 10.e, 11.a, 11.b, 12.a, 12.c, 13.a, 13.b, 13.e, 14, 15, 16 & 17.
7. Settlement reached after court verdict
If you choose 7, complete items 10.b, 10.c, 10.e, 11.a, 11.b, 11.c, and 11.d. Also complete 12.a, 12.c, 13.a, 13.b, 13.e, 14, 15, 16 and 17.
8. Settlement reached after appeal was filed
If you choose 8, complete items 10.b through 10.f, and 11.a through 11.c. If item 11.c is "Y", then complete 11.d. Also complete 12.a, 12.c, 13.a, 13.b, 13.e, 14, 15, 16 and 17.
9. Case dismissed or summary judgment
If you choose 9, contact the Texas Department of Insurance for further instructions.

(Questions #10 is continued on page 4)

**SHORT FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OVER \$10,000 BUT LESS THAN \$25,000**

NAIC Company Code: _____ NAIC Group Code: _____

(Question #10 continued)

- b. If a court verdict is indicated, indicate the result by choosing one of the following _____

Choose One

1. Directed verdict for the plaintiff
2. Directed verdict for the defendant
3. Judgment notwithstanding the verdict for the plaintiff
4. Judgment notwithstanding the verdict for the defendant
5. Judgment for the plaintiff
6. Judgment for the defendant
7. For plaintiff, after appeal
8. For defendant, after appeal
9. All others

- c. If the case went to trial, was it _____

Choose One

1. Trial by judge and jury
2. Trial by judge alone

- d. If appealed, who requested the appeal _____

Choose One

1. Plaintiff
2. Defendant

- e. Did the court order a remittitur?..... _____ Y/N

- f. If yes, indicate the amount by which the original award was reduced..... \$ _____

11. a. Indicate the amount of the final demand by claimant or attorney for claimant..... \$ _____

Always Complete

- b. If the case was closed as a result of a court verdict or settled after a court verdict, what was the amount of the court verdict? \$ _____

If there is no court verdict, please skip to item 11.e.

(Question #11 is continued on page 5)

**SHORT FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OVER \$10,000 BUT LESS THAN \$25,000**

NAIC Company Code: _____ NAIC Group Code: _____

(Question #11 continued)

2. How was this amount distributed between: Round to whole dollars

Complete all that apply

- a. Economic losses _____ \$ _____
- b. Non-economic losses _____ \$ _____
- c. Exemplary damages _____ \$ _____
- d. Prejudgment interest _____ \$ _____
- e. Total _____ \$ _____

c. Was the total amount paid as a result of the settlement after a court verdict different from the amount stated in the court verdict? _____ (Y/N)

d. 1. If "Y", what was the amount of the settlement after the court verdict? _____ \$ _____

2. Was the settlement influenced by a demand for or possible award of exemplary damages? _____ (Y/N)

3. If yes, estimate the amount of the following as contemplated in your settlement: Round to whole dollars

Complete all that apply

- a. Economic losses _____ \$ _____ *
- b. Non-economic losses _____ \$ _____ *
- c. Exemplary damages _____ \$ _____ *
- d. Prejudgment interest _____ \$ _____ *
- e. Total _____ \$ _____

e. 1. If no suit was filed or the claim was closed before reaching court or before reaching a court decision, what was the amount of the settlement? _____ \$ _____

Item 11.e.1 must agree with item 12.a.7 if there is no court verdict

2. Was this settlement influenced by a demand for or possible award of exemplary damages? _____ (Y/N)

If item 11.e.2 is "N" do not respond to item 11.e.3

3. If yes, estimate the amount of the following as contemplated in your settlement: Round to whole dollars

Complete all that apply

- a. Economic losses _____ \$ _____ *
- b. Non-economic losses _____ \$ _____ *
- c. Exemplary damages _____ \$ _____ *
- d. Prejudgment interest _____ \$ _____ *
- e. Total _____ \$ _____

* Indicates that the question calls for your most candid expert opinion

**SHORT FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OVER \$10,000 BUT LESS THAN \$25,000**

NAIC Company Code: _____ NAIC Group Code: _____

12. a. Please indicate the following dollar amounts as applicable to this claim

A response is required in item 12.a.1 or 12.a.2.

Complete all that apply

Round to whole dollars

1. Amount paid by the primary carrier \$ _____
2. Amount paid by the insured, due to deductible \$ _____
3. Amount paid by the excess carrier (Indicate "unknown" when applicable) \$ _____
4. Amount paid by the insured due to settlement or award in excess of policy limits (Indicate "unknown" when applicable) \$ _____
5. Amount paid by other insurers on behalf of the other defendants (Indicate "unknown" when applicable) \$ _____
6. Amount paid by other defendants that were not insured (Indicate "unknown" when applicable) \$ _____
7. Total amount of settlement or court award \$ _____

Item 12.a.7 requires a response. Do not include "unknown".

b. Please provide the following information for each of the other insurers contributing to the total settlement in this claim:

Company Name	NAIC Co. Number	Amount Paid
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____
4. _____	_____	\$ _____
5. _____	_____	\$ _____
6. _____	_____	\$ _____

c. Are any other defendants still in litigation relative to this claim? _____

Always Complete

(Y/N)

(Questions 13 through 16 Omitted)

**SHORT FORM
TEXAS CLOSED CLAIM REPORT
INDEMNITY PAYMENTS OVER \$10,000 BUT LESS THAN \$25,000**

NAIC Company Code: _____ NAIC Group Code: _____

- 17. a. Indicate the amount paid to outside defense
counsel \$ _____
- b. Indicate any allocated expense for in-house
defense counsel..... \$ _____
- c. Indicate the amount of other allocated loss
adjustment expenses, such as court costs and
stenographers \$ _____
- d. Indicate the total allocated loss adjustment
expense (a + b + c) \$ _____

17.d must equal the sum
of items 17.a. through 17.c.
Round to whole dollars.

Additional Comments (optional):

**Appendix B: Additional Information on Variable Construction
from the TDI**

Table D1: Variable Construction		
Variable	Question Number	Comments/Explanations
Type of injury	4 (long form only)	<p>Injuries are grouped into three categories by severity: fatalities; serious injuries (amputation, brain damage, or spinal cord injury); all other nonfatal, non-serious injuries.</p> <p>Because multiple injuries can be reported, some cases reporting death or serious injury also report other injuries. As reported in the 2005 Annual Report of TDI (p. 13), the injury types with the largest median settlement amount are brain damage (\$400,000), death (\$250,000), spinal cord injuries (\$205,000), and amputation (\$180,000).</p> <p>Because injury type is not reported on the short form, we group short form claims in the early offer analysis with nonfatal, nonserious injuries. Given the indemnity cap of \$25,000 for short form reports, the injuries are unlikely to be death or serious injury.</p>
Policy type	7a4	Cases are selected if policy type is monoline general liability.
Reserves	8a - 8f	<p>Primary carriers report the initial and final reserves for indemnity and expenses corresponding to their payment reported in question 12a1. As reported in the 2005 Annual Report (p. 11), some insurers include expense reserves with indemnity reserves. This means that total reserves reported in 8c and 8f may be more reliable than the components reported in 8a, 8b, 8d, and 8e.</p> <p>For cases in which primary carrier reports zero payment in 12a1, reserves correspond to payment reported in 12a2. For cases involving a self-insured entity, reserves correspond to the sum of 12a1 and 12a2.</p> <p>Per conversation with TDI staff, the relevant comparison of reserves in 8a - 8f is to the sum of 12a1 and 12a2 for all claims.</p>
Attorney employed	9	Attorneys were employed by the plaintiff in 99 percent of the claims and by the insurer in 95

		percent of the claims. For simplicity, we assume all claims will employ an attorney.
Legal stage	10a	The question identifies stage of legal system at which a settlement was reached or an award made.
Damage components	11 b2 a - e, 11 d3 a - e, 11e3 a - e	<p>For some claims, total damage amounts are reported in four components: economic losses, noneconomic losses, exemplary damages, and prejudgment interest. Claims settled by court verdict or settled after a court verdict are required to report this breakdown. Claims settled out of court report the breakdown only if, in the opinion of the individual completing the form, the settlement was influenced by a demand for or possible award of noneconomic, exemplary damages, or prejudgment interest.</p> <p>For these amounts, we use the TDI-calculated variables reported in Columns 184 – 188 of the raw data, labeled ECONOMIC, NONECO, EXEMP, and INTEREST. For the long form claims not reporting the breakdown, we use similar claims to impute economic loss as a fraction of the total court award or settlement amount. We distinguish between fatal and nonfatal cases, and between cases with and without workers' compensation (WC) as a collateral source. The fractions are as follows: 0.318, nonfatal with no WC; 0.388, nonfatal with WC; 0.270, fatal with no WC; 0.361, fatal with WC. For all short form claims not reporting the breakdown, we use the mean economic share for all short claims that reported the breakdown, 0.053. Note that it was not possible to differentiate across injury type or collateral sources since these are not available in the short form cases.</p>
Payments	12a1 - 7	<p>Payments are reported by the primary carrier and are reported as amount paid by primary carrier (12a1); amount paid by the insured, due to deductible (12a2); amount paid by excess carrier (12a3); amount paid by the insured due to settlement or award in excess of policy limits (12a4); amount paid by other insurers on behalf of other defendants (12a5); amount paid by other defendants that were not insured (12a6). The total amount of settlement or court award is reported in 12a7 and is the sum of the numbers reported in 12a1 - 12a6.</p> <p>As reported in the 2005 Annual Report (p. 2-3), the total settlement amount may be incomplete because carriers report only known settlement</p>

		<p>amounts paid to the claimant. Specifically, p. 3 states: "Reports indicating involvement of other contributing parties may not have included the other contributing parties' payments in the total settlement amount." Respondents were asked to indicate "unknown" when they did not know amount paid by other parties. As an example, our calculations show that the amount paid by other insurers on behalf of other defendants was reported as "unknown" for 7823 claims.</p>
Collateral sources	14a, b, c1 - c6, long form only	<p>The form asked whether workers' compensation was available to the injured party (14a); whether the respondent was aware of any other collateral sources available to the injured party (14b); and for those indicating yes to 14b, to select those sources that were available from a list of collateral sources (medical insurance; disability insurance; social security disability/supplementary security benefits; Medicare, Medicaid; sick leave; other). The values of these collateral sources are not reported.</p> <p>Furthermore, as reported in the 2005 Annual Report (p. 6), claimants were not required to make collateral source information available to insurers, so the data may not report all cases when collateral sources were available, leading to a lower than accurate value of the role of collateral sources.</p> <p>We impute collateral sources offset as follows: 60 percent for cases involving workers' compensation as a collateral source, 26 percent otherwise.</p>
Legal expenses	17a - 17d	<p>The amount paid to outside defense counsel is reported in 17a, allocated expense for in-house counsel is reported in 17b, allocated loss adjustment expenses such as court costs and stenographers are reported in 17c, with the total allocated loss adjustment expense reported in 17d. As reported in the 2005 Annual TDI Report (p. 7), cost containment expenses are not reported on the closed claim forms and so the expenses incurred to settle the claim are understated.</p>
Elapsed time	ET1B1G	<p>Elapsed time between date reported to insurer and date claim closed, calculated by TDI from 1b and 1g.</p>