Sec. 23.30.055. Exclusiveness of liability.

The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee. In this section, "employer" includes, in addition to the meaning given in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially liable for securing payment of compensation.

History -

(Sec. 4 ch 193 SLA 1959; am Sec. 1 ch 42 SLA 1962; am Sec. 11 ch 79 SLA 1988; am Sec. 4 ch 80 SLA 2004)

Amendment Notes -

The 2004 amendment, effective September 15, 2004, inserted a comma following "that action" near the beginning of the fourth sentence, and added the last sentence.

AG Opinions -

While it is true that under the Alaska Workmen's Compensation Act, employers, including the state, are excluded from admiralty liability, this exclusive liability provision cannot act as a limitation on suits against the state under the federal maritime law once the state has unqualifiedly waived its immunity for negligent torts. 1963 Op. Att'y Gen., No. 28.

So much of this section as limits the liability of employers in admiralty must be considered an invalid infringement on the federal jurisdiction. 1963 Op. Att'y Gen., No. 28.

All employees on the Alaska ferry system who meet the classification of seamen or members of the crew within the scope of the Jones Act, former 46 U.S.C. Sec. 688, have an exclusive federal remedy within the terms of the Jones Act to the exclusion of the Alaska Workmen's Compensation Act, except as to those injuries that occur in a situation of only local concern or fall within the "twilight zone" between local and federal jurisdiction. 1963 Op. Att'y Gen., No. 28.

The "twilight zone" between local and federal jurisdiction encompasses all those employments for which a reasonable argument can be made both for and against the application of a state workmen's compensation law. 1963 Op. Att'y Gen., No. 28.

Seamen who come within the federal maritime jurisdiction for tort claims under the Jones Act, former 46 U.S.C. Sec. 688, can waive the federal remedy and elect to proceed under the Workmen's Compensation Act. 1963 Op. Att'y Gen., No. 28.

State ferry employees, who would be classified by their shore duties as longshoremen or harbor workers, are not subject to the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901 et seq. 1963 Op. Att'y Gen., No. 28.

Decisions -

Constitutionality. - There is sufficient justification for the workmen's compensation scheme, including the "exclusive liability" provision, for it to pass muster as having a rational basis - even under the "less speculative, less deferential, more intensified means-to-end" application of that test. Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

The only classification in this section is that separating work-related and nonwork-related injuries. There is nothing inherently "suspect" about this classification, nor is appellant's right to sue for

loss of consortium so "fundamental" as to require a "compelling state interest" to uphold statutory interference. Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

This section does not discriminate against women. Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

The exclusive liability provision of this chapter does not violate substantive due process since it has a reasonable relationship to a legitimate governmental purpose. Arctic Structures, Inc. v. Wedmore, 605 P.2d 426 (Alaska 1979).

With regard to the Workmen's Compensation Act, there is a fair and substantial relationship between the legislative objective of providing guaranteed, expeditious compensation to the injured employee and the limitation in this section on the employer's total liability regardless of its percentage of fault, even though that limitation has the effect of denying the third-party tort-feasors the right to pro rata contribution from the employer. Arctic Structures, Inc. v. Wedmore, 605 P.2d 426 (Alaska 1979).

Purpose of workers' compensation scheme. - See Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

Derivation of "exclusive liability" clause. - Alaska's "exclusive liability" clause is taken almost verbatim from a similar provision of the federal Longshoremen's and Harbor Workers' Compensation Act. Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

Extension of coverage. - The coverage of employers and occupations by the Workmen's Compensation Act has been gradually extended through the years. Gordon v. Burgess Constr. Co., 425 P.2d 602 (Alaska 1967).

Remedies exclusive. - Since its enactment, it has always provided that the remedies provided therein were exclusive. Gordon v. Burgess Constr. Co., 425 P.2d 602 (Alaska 1967).

The remedies provided by the Workmen's Compensation Act are intended to be in lieu of all rights and remedies as to a particular injury whether at common law or otherwise. Gordon v. Burgess Constr. Co., 425 P.2d 602 (Alaska 1967); Haman v. Allied Concrete Prods., Inc., 495 P.2d 531 (Alaska 1972); Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975); State v. Purdy, 601 P.2d 258 (Alaska 1979).

An action for wrongful death, filed pursuant to AS 09.55.580, is barred by this section; the fact that the estates of deceased workers leaving dependents are entitled to favored treatment over the estates of workers leaving no dependents reflects a legislative determination that the former require greater compensation, is entirely reasonable and does not deprive the estate of a worker leaving no dependents of equal protection of the law. Taylor v. Southeast-Harrison W. Corp., 694 P.2d 1160 (Alaska 1985).

Employees cannot obtain compensation outside of the system provided by the Alaska Workers' Compensation Act. Gunter v. Kathy-O-Estates, 87 P.3d 65 (Alaska 2004).

Superior court did not err in determining that an employee could not recover damages for his back injury in tort; recovery of such damages was barred by the exclusive remedy provision of this section. Kinzel v. Discovery Drilling, Inc., 93 P.3d 427 (Alaska 2004).

Tort remedy against non-complying employer. - A worker's lawsuit under this section, as to an employer who did not carry workers' compensation, must be a tort action for the underlying injury. Nickels v. Napolilli, 29 P.3d 242 (Alaska 2001).

When employer fails to secure payment of compensation, thereby entitling an employee to pursue a civil action, courts treat the civil action as any other common law claim, even though the Workers' Compensation Act affects the allocation of the burden of proof and abrogates certain defenses. Ehredt v. Dehavilland Aircraft Co., 705 P.2d 913 (Alaska 1985).

Waiver of exclusive remedy. - No waiver by the city of its exclusive remedy defense was effected by an addendum placed on the compromise and release by the workers' compensation insurance carrier's representative which merely reserved whatever rights the employee had at the time he signed the compromise and release. Gorman v. City of Haines, 675 P.2d 646 (Alaska 1984).

Partnership's negligence for employee injuries. - The exclusive remedy provision of this section bars an employee's common law tort claim against a partner in a partnership where the partner's

negligence arises out of and is within the course of partnership business. Williams v. Mammoth of Alaska, Inc., 890 P.2d 581 (Alaska 1995).

Acts before formation of partnership. - Where a drilling company built a drill rig for use in its business, where later the drilling company and another company formed a partnership, and where, after the partnership was formed, a partnership employee was injured when a component of the drill rig collapsed, drilling company was not employee's employer when the drill rig was built; thus drilling company is not immune from third party liability by virtue of this section. Huf v. Arctic Alaska Drilling Co., 890 P.2d 579 (Alaska 1995).

Common-law action against fellow employee barred. - Under this section, workmen's compensation is the exclusive remedy and bars a common-law action against a fellow employee. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

Unless employee commits intentional tort. - The exclusivity provision of this section does not protect a fellow employee committing an intentional tort, despite the statute's use of the terms "employer and any fellow employee." Logically the supreme court adopts the same construction as to the identical phrase as in AS 23.30.015. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

The socially beneficial purpose of the worker's compensation law would not be furthered by allowing a person who commits intentional tort to use the compensation law as a shield against liability. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

The compensation remedy should not be exclusive when an employee commits an intentional tort on a fellow worker. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

Worker's compensation benefits are paid from employees' premiums, as a means of spreading the cost of hazards of the workplace. It would not be wise public policy to allow an intentional tort-feasor to shift his liability for his acts to such a fund. Assaults by fellow workers differ not in degree, but in kind, from the type of harm the statute was enacted to deal with. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

Co-employees may be liable for responsibilities that are not "incident to" or "inextricably intertwined" with their employment duties. Sauve v. Winfree, 907 P.2d 7 (Alaska 1995).

Where a corporate employee was injured in a fall at work, co-employees who were shareholders and officers of the corporation and who owned the building occupied by the business through a partnership were not immune from an action by the employee alleging that they had breached their duty as landlords. Sauve v. Winfree, 907 P.2d 7 (Alaska 1995).

Negligent employee not decedent's co-employee. - Exclusive remedy provision was inapplicable, where a parent aviation firm's negligent employee was not decedent's co-employee, despite the firm's contention that the two were employed by one of its corporate subsidiaries. Croxton v. Crowley Maritime Corp., 817 P.2d 460 (Alaska 1991).

Workers' compensation as exclusive remedy in workplace fight cases. - The beneficial effect of the rule that workmen's compensation is the exclusive remedy in workplace fight cases would be largely destroyed if every case required an inquiry into the relative rank of the assailant and victim, an inquiry which is not relevant to the question whether the quarrel was work-related. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

Where the manager of the corporate premises was guilty of assault and battery, directed against two employees, the corporate veil may not be pierced and the corporation's assets made liable for his intentional torts merely because the manager controlled the activities of the corporation, owned 50 percent of its shares and was its president. Workmen's compensation is the exclusive remedy against the employer. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

And against employer for acts of managerial employee. - An employer is not vicariously liable to its employees in an assault and battery action for the acts of its managerial employee. This section makes workmen's compensation the exclusive remedy against the employer for compensable injuries. AS 23.30.265(17) (now AS 23.30.395(24)) defines compensable injuries to include "an injury caused by the willful act of a third person directed against an employee because of his employment." A supervisor is

such a third person within this definition, and so workmen's compensation is the exclusive remedy against the employer. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

Boss accompanying employee on errand. - Decision of the plaintiff, executive of corporate employer, to accompany an employee on his job-related errand was both reasonably foreseeable and contemplated by his employment. As the employee's boss, the plaintiff's presence on his employee's business errand necessarily related to the plaintiff's job and invoked workers' compensation coverage, even if the plaintiff considered his break from the franchise business to be wholly unrelated to the employer's business; therefore, workers' compensation provided the plaintiff's exclusive remedy. Witmer v. Kellen, 884 P.2d 662 (Alaska 1994).

Intangible injury from sexual harassment. - The exclusive remedy provisions of workers' compensation law does not bar intangible injury claims resulting from sexual harassment. VECO, Inc. v. Rosebrock, 970 P.2d 906 (Alaska 1999).

Contribution subversive of section's policy. - To expose an employer to an action for contribution would subvert the policy behind this section, exclusivity of liability. Fellows v. Tlingit-Haida Regional Elec. Auth., 740 P.2d 428 (Alaska 1987).

Noncomplying employer not relieved from duty to contribute. - An employer should not receive the protection of the exclusivity provision of this section when it has failed to secure payment of compensation as required by AS 23.30; a noncomplying employer is not relieved from its duty to contribute under AS 09.16.010 (now see AS 09.17.080) by the exclusivity provision of this section. Ehredt v. Dehavilland Aircraft Co., 705 P.2d 913 (Alaska 1985).

Recovery of workers' compensation not bar to suit against employee-assailant. - An employee-victim in an assault and battery case is not barred from suit against the employee-assailant because of a recovery of workmen's compensation benefits. Elliott v. Brown, 569 P.2d 1323 (Alaska 1977).

Section applies to employee's relatives. - This section applies equally to both the husband or wife of any employee. Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

The Alaska statute specifically provides for exclusion of not only the employee's rights, but also those of the employee's spouse, as well as various other relations, in-laws and representatives. Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

Emotional distress damages in retaliatory discharge case were not precluded by the workers' compensation exclusive remedy provision, AS 23.30.055; employer pointed to no statute text or legislative history suggesting that the Alaska Workers' Compensation Act was intended to provide a remedy for a discharge motivated by a violation of public policy. Reust v. Alaska Petroleum Contrs., Inc., Op. No. 5951, 127 P.3d 807 (Alaska 2005).

Spouse may not bring loss of consortium action against the injured employee's employer after the employee has recovered workmen's compensation benefits. Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

While a spouse's right to recover for loss of consortium is predicated on an injury to her, rather than her husband, it nevertheless requires proof of culpable negligence on the part of the employer. It arises out of, and cannot exist without, the very core of activity with which our workmen's compensation scheme is concerned. For these reasons, the spouse's action is brought "on account of the injury" to her husband, as expressed in this section, and is, thus, barred. Wright v. Action Vending Co., 544 P.2d 82 (Alaska 1975).

Federal maritime suit not barred. - This section cannot deprive a state employed maritime worker who has already accepted workers' compensation benefits from suing the state under the Jones Act, former 46 U.S.C. Sec. 688, because AS 09.50.250 waives the sovereign immunity of the state as to claims brought in superior court under federal law for torts sounding in admiralty. State, Dep't of Pub. Safety v. Brown, 794 P.2d 108 (Alaska 1990).

Factual issues preclude summary judgment. - In a personal injury suit filed by a worker whose truck collided with a co-worker's while the trucks were under lease, genuine issues of fact as to whether the men were employees or independent contractors precluded summary judgment on the question of

whether workers' compensation provided the sole remedy. Odsather v. Richardson, 96 P.3d 521 (Alaska 2004).

Trial court erred in granting summary judgment for an employer in a wrongful death suit brought by the decedent's estate because genuine issues of material facts remained as to whether the decedent was "on-shift" or "off-shift" when his injury occurred, and there was an issue as to whether the employer authorized the decedent's use of an ATV. Estate of Milos v. Quality Asphalt Paving, Inc., 145 P.3d 533 (Alaska 2006).

Section bars claim under Defective Machinery Act. - The legislature intended that the exclusive remedy provision of the Alaska Workmen's Compensation Act should bar a claim for relief under the Defective Machinery Act (AS 23.25.010 - 23.25.040). Haman v. Allied Concrete Prods., Inc., 495 P.2d 531 (Alaska 1972).

As each subsequent amendment of the Workmen's Compensation Act extended its coverage, the coverage of the Defective Machinery Act, AS 23.25.010 - 23.25.040, was correspondingly reduced by reason of the provision in the Workmen's Compensation Act that the remedies provided therein were exclusive. Gordon v. Burgess Constr. Co., 425 P.2d 602 (Alaska 1967).

Upon the enactment of the first Workmen's Compensation Act two years later, the coverage provided by the Defective Machinery Act, AS 23.25.010 - 23.25.040, was reduced to the extent that it no longer applied to employers in the mining industry employing five or more persons who had not rejected the provisions of the act. Gordon v. Burgess Constr. Co., 425 P.2d 602 (Alaska 1967).

The Alaska legislature, by continuing the Defective Machinery Act, AS 23.25.010 - 23.25.040, in existence after enactment of the Workmen's Compensation Act, has not evidenced an intent to exclude defective, dangerous machinery from the coverage of the Workmen's Compensation Act in order to coerce employers to furnish safe machinery. Gordon v. Burgess Constr. Co., 425 P.2d 602 (Alaska 1967).

Harmonious construction with Defective Machinery Act. - The Workmen's Compensation Act and the Defective Machinery Act, AS 23.25.010 - 23.25.040, can and should be construed to be harmonious rather than in conflict. Gordon v. Burgess Constr. Co., 425 P.2d 602 (Alaska 1967).

Due process rights held not infringed by amendments to section. - Oil rig worker, who was employed by a contractor, brought a third-party suit against an oil company for work-related injuries; the worker's due process rights were not infringed by the 2004 amendments to AS 23.30.045 and this section because the worker still had access to the courts, and the worker still had a worker's compensation claim. The worker's equal protection rights were also not violated by the amendments because the worker's interests were economic; therefore, a minimum scrutiny level of review was applied. Schiel v. Union Oil Co., 219 P.3d 1025 (Alaska 2009).

Relative nature of the work test. - Alaska adopts the "relative nature of the work test" for distinguishing between employees and independent contractors for the purposes of workers' compensation. Odsather v. Richardson, 96 P.3d 521 (Alaska 2004).

Effect of section on recovery under wrongful death statute. - Adult daughter of deceased employee, who was not a beneficiary within the meaning of the Workmen's Compensation Act, was not entitled to maintain an action for the wrongful death of the employee. McKenna v. Evans-Jones Coal Co., 12 Alaska 692 (1950).

Crossclaims by tortfeasors against employer barred. - This exclusive remedy provision of the Alaska Workmen's Compensation Act bars third-party crossclaims for indemnity and contribution against an employer. State v. Wien Air Alaska, Inc., 619 P.2d 719 (Alaska 1980).

A tortfeasor is not entitled to reduce an award against him by the amount of workers' compensation benefits which have been received by the plaintiff-employee. State v. Wien Air Alaska, Inc., 619 P.2d 719 (Alaska 1980).

The liability of a third-party defendant cannot be reduced proportionately by the negligence attributable to the plaintiff's employer. State v. Wien Air Alaska, Inc., 619 P.2d 719 (Alaska 1980).

Procedural due process is not offended by depriving the third-party defendant of a right to pro-rata contribution from the employer under this section. State v. Wien Air Alaska, Inc., 619 P.2d 719 (Alaska 1980).

Employee not barred from suing compensation carrier for intentional torts. - Under the exclusive remedy provisions of Alaska's Workmen's Compensation Act, an employee is not barred from suing his employer's compensation carrier for intentional torts. Stafford v. Westchester Fire Ins. Co., 526 P.2d 37 (Alaska 1974), overruled on other grounds, Cooper v. Argonaut Ins. Cos., 556 P.2d 525 (Alaska 1976).

Intentional tort not found. - Company violations of state and federal safety regulations regarding the operation of a forklift did not constitute the commission of an intentional tort; therefore, an exception to the exclusivity provisions of this section did not apply. Williams v. Mammoth of Alaska, Inc., 890 P.2d 581 (Alaska 1995).

Because an employee did not show that a municipality had the specific intent to injure the employee, the employee's claim of an intentional tort on the municipality's part did not operate to take the employee's claim for damages outside of the confines of the Alaska Workers' Compensation Act, and the employee's claim was barred by the exclusive remedy provision, AS 23.30.055. Fenner v. Municipality of Anchorage, 53 P.3d 573 (Alaska 2002).

Under this chapter carrier is considered separate entity from the employer. Stafford v. Westchester Fire Ins. Co., 526 P.2d 37 (Alaska 1974), overruled on other grounds, Cooper v. Argonaut Ins. Cos., 556 P.2d 525 (Alaska 1976).

Contractual indemnity not precluded. - The exclusivity provisions of this section do not preclude express or implied contractual indemnity. Bell Helicopter v. United States, 833 F.2d 1375 (9th Cir. 1987).

Since a private employer enjoys the immunity from claims of contribution and indemnity afforded to it under the exclusive remedy provision, so does the federal government. Bell Helicopter v. United States, 833 F.2d 1375 (9th Cir. 1987).

Indemnity covenant will not be implied. - The policies underlying this section and the application of ordinary rules of the law of contracts cannot justify the implication of an indemnity covenant. Golden Valley Elec. Ass'n v. City Elec. Serv., Inc., 518 P.2d 65 (Alaska 1974).

Since a third party may be held liable only upon establishment of its negligence, there is no need for a judicially implied contract of indemnity. There is, thus, no reason for the supreme court to become lost in the labyrinth created by contorting contract law to imply an indemnity agreement when the parties are perfectly free to express their own intentions. Golden Valley Elec. Ass'n v. City Elec. Serv., Inc., 518 P.2d 65 (Alaska 1974).

Courts will imply a contract term in order to conform an agreement to the evident intent of the parties, but since a third party and the employer contracting with it are chargeable with knowledge of the exclusive remedy provision of the Alaska Workmen's Compensation Act, it is illogical to conclude that indemnification of the third party by the employer against the tort claims of the employer's servants has been in the contemplation of the parties all along. Furthermore, such an interpretation of contracts between employers and third parties effectively nullifies one intended effect of the statute - the establishment of an acceptable, ascertainable and reliable limit to liability. Golden Valley Elec. Ass'n v. City Elec. Serv., Inc., 518 P.2d 65 (Alaska 1974).

Implied contractual indemnity is precluded by this section. Manson-Osberg Co. v. State, 552 P.2d 654 (Alaska 1976).

But should be expressly set forth. - Where parties chargeable with knowledge of the exclusive remedy provision of the Alaska Workmen's Compensation Act have entered into a service contract, they should be required to set forth expressly any agreement by which they intend to increase an employer's liability beyond the limits dictated by the workmen's compensation statute. Golden Valley Elec. Ass'n v. City Elec. Serv., Inc., 518 P.2d 65 (Alaska 1974).

If a third party owning extensive property interests, employing numerous employees and engaging in frequent and substantial contracts wishes to alter this section so as to require an employer contracting with it to indemnify the third party against the tort claims of the employer's servants, it is not

onerous to require that the third party expressly so provide in the contract. Golden Valley Elec. Ass'n v. City Elec. Serv., Inc., 518 P.2d 65 (Alaska 1974).

Express indemnity clause will be enforceable, despite workmen's compensation exclusive liability as contained in this section. Manson-Osberg Co. v. State, 552 P.2d 654 (Alaska 1976).

Where an employee of a welding and contracting company was injured due to the alleged negligence of an oil production company while he was aboard an off-shore drilling platform owned by the oil production company, and the welding and contracting company had entered into an agreement with the oil production company to indemnify the oil production company for injuries to the welding and contracting company's employees, the oil production company was entitled to indemnification. Amoco Prod. Co. v. W.C. Church Welding & Contracting, Inc., 580 P.2d 697 (Alaska 1978).

As a result of the exclusive liability provisions, an employer may be joined as a third-party defendant only when another party asserts an express indemnity claim against it. However, the fact that the employer is a third-party indemnity defendant in any particular case is a fortuity which does not alter the rule applicable to employer fault generally, even though it might affect the ultimate liability of the parties to the agreement. Lake v. Construction Mach., Inc., 787 P.2d 1027 (Alaska 1990).

Express contractual indemnity claim cannot create common law indemnity claim because such a claim is barred by this section; only an express indemnity claim is not barred by this provision. Bell Helicopter Textron, Inc. v. United States, 967 F.2d 307 (9th Cir. 1992), cert. denied, 506 U.S. 1048, 113 S. Ct. 964, 122 L. Ed. 2d 121 (1993).

Employer may be third party defendant only by express indemnity claim. - Because an employer may be joined as a third-party defendant only when another party asserts an express indemnity claim against it, a similar action in which the employer was sued separately under an implied contractual indemnity and noncontractual indemnity claims also failed. Bell Helicopter Textron, Inc. v. United States, 967 F.2d 307 (9th Cir. 1992), cert. denied, 506 U.S. 1048, 113 S. Ct. 964, 122 L. Ed. 2d 121 (1993).

Indemnity agreement precluded reliance on section for claim of nonliability. - In an action by plaintiff airline for indemnification for settlement claims with it brought by defendant airline's employees as the result of a crash of defendant's plane on an airfield controlled by plaintiff, the existence and validity of an indemnity agreement between plaintiff and defendant precluded reliance on this section by defendant for its contention of nonliability to the claims. Northwest Airlines v. Alaska Airlines, 343 F. Supp. 826 (D. Alaska 1972).

Presumption of knowledge of exclusive liability provision. - Each Alaskan employer may, as a matter of law, be presumed to have sufficient knowledge of the provisions of the Alaska Workmen's Compensation Act to be aware that the Act contains a provision whereby the employer's liability prescribed by the Act "is exclusive and in place of all other liability of the employer and any fellow employee to the employee . . . and anyone otherwise entitled to recover damages from the employer . . . on account of the employee's injury or death." Golden Valley Elec. Ass'n v. City Elec. Serv., Inc., 518 P.2d 65 (Alaska 1974).

There does not appear to be any valid reason for the supreme court to author contractual terms for the parties when, in the absence of an express agreement to the contrary, they may be presumed to have relied on the statutory exclusive remedy provision. Golden Valley Elec. Ass'n v. City Elec. Serv., Inc., 518 P.2d 65 (Alaska 1974).

Common-law damage action by illegally-employed child not barred. - This section does not bar a common-law damage action when such an action is brought against an employer by a person who was employed in violation of child labor laws at the time of injury. Whitney-Fidalgo Seafoods, Inc. v. Beukers, 554 P.2d 250 (Alaska 1976).

Where an employer has knowingly entered into an illegal contract of employment with a child, in express violation of a statute, the employer will not be permitted to insist that a child is an "employee" within the terms of the Workmen's Compensation Act, so that the child can no longer assert its common-law rights against the employer. Whitney-Fidalgo Seafoods, Inc. v. Beukers, 554 P.2d 250 (Alaska 1976).

Absent any evidence of a conscious intent on her part to choose compensation benefits, an illegally employed minor cannot be held to have waived her right to a common-law remedy. Whitney-Fidalgo Seafoods, Inc. v. Beukers, 554 P.2d 250 (Alaska 1976).

As to application of compensation benefits received by ill minor against any damages recovered against employer, see Whitney-Fidalgo Seafoods, Inc. v. Beukers, 554 P.2d 250 (Alaska 1976).

Issue of whether plaintiff was employee or independent contractor, involving the exclusive remedy defense of the Workers' Compensation Act, could be tried by the court and was not subject to the constitutional right to a jury trial. Benson v. City of Nenana, 725 P.2d 490 (Alaska 1986).

When distinguishing between employees and independent contractors for the purposes of workers' compensation, the inquiry into the character of the claimant's business can further be broken into the degree of skill involved, whether the claimant holds himself out to the public as a separate business, and whether the claimant bears the accident burden. Odsather v. Richardson, 96 P.3d 521 (Alaska 2004).

Relative nature of the work test for distinguishing between employees and independent contractors requires that the relevant facts be first determined and then analyzed. Odsather v. Richardson, 96 P.3d 521 (Alaska 2004).

Temporary and special employment. - When a general employer lends an employee to a special employer, the special employer becomes liable for workers' compensation (and is immune from tort liability) only if: (a) the employee has made a contract of hire, express or implied, with the special employer; (b) the work being done is essentially that of the special employer; and (c) the special employer has the right to control the details of the work. When all three of the above conditions are satisfied in relation to both employers, both employers are liable for workers' compensation. Anderson v. Tuboscope Vetco, Inc., 9 P.3d 1013 (Alaska 2000).

"Project owner." - Pipeline operator met the statutory definition of "project owner" under AS 23.30.045(f)(2) where, in the course of its business, it engaged the services of a contractor, which undertook performance of work for the operator; because of its contract with the contractor, the operator did not need to hire its own employees to perform the work done by the contractor. The operator was covered by the exclusivity provisions of this section, and the superior court correctly dismissed the employee's lawsuit. Anderson v. Alyeska Pipeline Serv. Co., 234 P.3d 1282 (Alaska 2010).

Mutual employment for benefit of two employers. - Where the employee is performing services for the mutual benefit of two employers at the time of the accident, such simultaneous employment carries with it the statutory immunity afforded coemployees under the Workers' Compensation Act. Before an employee may avail himself of such immunity, however, he must, at minimum, offer evidence sufficient to establish that such mutual employment in fact existed at the time of the accident for which the immunity is sought, and such evidence must be sufficient to establish the existence of an express or implied employment agreement between the parties. Cuffe v. Sanders Constr. Co., 748 P.2d 328 (Alaska 1988).

Liability of general contractor for injury to subcontractor's employee. - When a general contractor injures a subcontractor's employee by his own affirmative act of negligence, the general contractor remains liable without regard to the extent of his control over the subcontractor's work. Cuffe v. Sanders Constr. Co., 748 P.2d 328 (Alaska 1988).

General contractor paying benefits to employee of uninsured subcontractor. - A general contractor who, by operation of the contractor-under clause contained in AS 23.30.045(a), has been required to pay workers' compensation benefits to the employee of an uninsured subcontractor is not an employer for purposes of immunity from common-law liability under this section. Miller v. Northside Danzi Constr. Co., 629 P.2d 1389 (Alaska 1981).

If a general contractor who by operation of the contractor-under clause contained in AS 23.30.045(a) has been required to pay workers' compensation benefits to the employee of an uninsured subcontractor is also found liable for damages at common law, he may set-off from that award the amount of compensation benefits he has previously paid to the subcontractor's employee. Miller v. Northside Danzi Constr. Co., 629 P.2d 1389 (Alaska 1981).

Defendant was not employee. - This section did not bar a tort action against a defendant who, under the relative nature of the work test, was a subcontractor, not an employee, of plaintiff's employer. Benner v. Wichman, 874 P.2d 949 (Alaska 1994).

Pipeline company was agent of oil companies. - This section did not shield a pipeline service company from common-law tort liability for the injuries of the employees of the execution contractors since the company was not a "contractor" within the meaning of AS 23.30.045 but an agent for the oil companies which owned the permit authorizing construction of the pipeline. Everette v. Alyeska Pipeline Serv. Co., 614 P.2d 1341 (Alaska 1980).

Longshoreman-stevedore's collection of workmen's compensation benefits did not preclude further recovery against his employer on a subsequent unseaworthiness claim. Barber v. New Eng. Fish Co., 510 P.2d 806 (Alaska 1973).

Where a longshoreman-stevedore has elected to avail himself of the state compensation benefits, he should have the same right of suing his employer-shipowner as if he elected to proceed under the federal Longshoremen's Act. Any other result would work material prejudice to general maritime law contrary to the dictates of the constitution's supremacy clause as interpreted by the United States supreme court. Barber v. New Eng. Fish Co., 510 P.2d 806 (Alaska 1973).

It is not contrary to the Submerged Land Acts, 43 U.S.C. Sec. 1311(a), to hold the state did not have the power to exclude a federal maritime remedy. Barber v. New Eng. Fish Co., 510 P.2d 806 (Alaska 1973).

Jurisdiction of superior court. - Superior court did not abuse its discretion when it refused to grant a stay where there was prior filing of a workers' compensation claim, when the major issue before the court was construction of an insurance contract, a question of law uniquely suited to judicial resolution; the employer waited until six weeks before the trial date, after much discovery had taken place, to request a stay; and no action had been taken in the administrative proceeding. Ehredt v. DeHavilland Aircraft Co., 705 P.2d 446 (Alaska 1985).

Dual capacity doctrine not adopted. - The supreme court refused to adopt as the law of the state the dual capacity doctrine, under which an employer apparently protected by the exclusive liability principle may become liable to the employee in tort if, in respect to that tort, he occupies a position which places upon him obligations independent and distinct from his role as an employer. State v. Purdy, 601 P.2d 258 (Alaska 1979).

Action for negligent inspection of workplace. - There is nothing in the statutory language of the Alaska scheme which prevents an employee from bringing a negligence action against a carrier for negligent inspection of the employer's workplace. Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

Aviation firm using pilots without adequate rest. - Complaint alleging that aviation firm dispatched pilots for a night flight without adequate rest or sleep alleged, at best, gross negligence or willful and knowing violation of FAA regulations, and such allegations failed to constitute the type of intentional tort actionable outside the workers' compensation system. Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

Refusal to allow employer's negligence as partial defense to liability. - In an action by an employee who sustained on-the-job injuries to which both his employer and third-party defendants negligently contributed, the third-party defendants were not deprived of any available defenses by the refusal of the superior court to allow them to present the employer's negligence as a partial defense to liability. Arctic Structures, Inc. v. Wedmore, 605 P.2d 426 (Alaska 1979).

Defense of comparative negligence was inapplicable in action against employer who failed to secure worker's compensation insurance. Grothe v. Olafson, 659 P.2d 602 (Alaska 1983).

Apportionment of damages. - When the legislature enacted AS 09.17.080, governing apportionment of damages, it left intact the exclusive liability and employer reimbursement provisions of the Workers' Compensation Act. Lake v. Construction Mach., Inc., 787 P.2d 1027 (Alaska 1990).

Evidence of an employer's negligence may be relevant and admissible in an employee's action against third-party tortfeasors to prove that the employer was entirely at fault, or that the employer's fault

was a superseding cause of the injury. Under AS 09.17.080, the finder of fact may allocate all or none of the total fault to the employer. It may not allocate only a portion of the total fault to the employer. Jury instructions must be carefully prepared to prevent a panel from attributing to the employee any negligence of the employer. Lake v. Construction Mach., Inc., 787 P.2d 1027 (Alaska 1990).

Reimbursement of certain financial expenses not allowed. - Alaska Workers' Compensation Board properly denied an injured employee's reimbursement claims for a court-imposed fine, court-ordered alcohol treatment and testing, theft, unpaid rent, an interest in a boat, and an interest in his employer's business, where employee was seeking reimbursement outside of the structure provided by the workers' compensation act. Gunter v. Kathy-O-Estates, 87 P.3d 65 (Alaska 2004).

Instruction. - Absent any evidence that the employer failed to secure payment of compensation to the injured employee, there was no error in the trial court's instruction in a tort action that the employee's only remedy was under the Workmen's Compensation Act. Searfus v. Northern Gas Co., 472 P.2d 966 (Alaska 1970).

Applied in Cordova Fish & Cold Storage Co. v. Estes, 370 P.2d 180 (Alaska 1962); Alaska Workmen's Comp. Bd. v. Marsh, 550 P.2d 805 (Alaska 1976); Ruble v. Arctic Gen., Inc., 598 P.2d 95 (Alaska 1979).

Quoted in Richard v. Fireman's Fund Ins. Co., 384 P.2d 445 (Alaska 1963); Alaska Pulp Corp. v. United Paperworkers Int'l Union, 791 P.2d 1008 (Alaska 1990); Christensen v. NCH Corp., 956 P.2d 468 (Alaska 1998).

Stated in Norcon, Inc. v. Kotowski, 971 P.2d 158 (Alaska 1999).

Cited in Taylor v. Interior Enters., Inc., 471 P.2d 405 (Alaska 1970); Alyeska Pipeline Serv. Co. v. H.C. Price Co., 694 P.2d 782 (Alaska 1985); Croxton v. Crowley Maritime Corp., 758 P.2d 97 (Alaska 1988); Scammon Bay Ass'n v. Ulak, Op. No. 5971, 126 P.3d 138 (Alaska 2005); State Farm Mut. Auto. Ins. Co. v. Wilson, 199 P.3d 581 (Alaska 2008).

Collateral Refs -

82 Am. Jur. 2d, Workmen's Compensation, Sec. 9, 62.

101 C.J.S., Workmen's Compensation, Sec. 918-935.

Workmen's Compensation Act as furnishing exclusive remedy for master's failure to inform servant of disease or physical condition disclosed by medical examination. 69 ALR2d 1218.

Right of employee to maintain common-law action for negligence against workmen's compensation insurance carrier. 93 ALR2d 598.

Right to maintain action against fellow employee for injury or death covered by workmen's compensation. 21 ALR3d 845; 57 ALR4th 888.

Right to maintain malpractice suit against injured employee's attending physician notwithstanding receipt of workmen's compensation award. 28 ALR3d 1066.

Workmen's compensation provision as precluding employee's action against employer for fraud, false imprisonment, defamation, or the like. 46 ALR3d 1279.

Modern status of effect of state Workmen's Compensation Act on right of third-person tortfeasor to contribution or indemnity from employer of injured or killed workman. 100 ALR3d 350.

Modern status: "dual capacity doctrine" as basis for employee's recovery from employer in tort. 23 ALR4th 1151.

Workers' compensation immunity as extending to one owning controlling interest in employer corporation. 30 ALR4th 948.

Workers' Compensation Law as precluding employee's suit against employer for third person's criminal attack. 49 ALR4th 926.

Worker's compensation as precluding tort action for injury to or death of employee's unborn child. 55 ALR4th 792.

Willful, wanton, or reckless conduct of coemployee as ground of liability despite bar of Workers' Compensation Law. 57 ALR4th 888.

Breach of assumed duty to inspect property as ground for liability to third party. 13 ALR5th 289.

Postaccident conduct by employer, employer's insurer, or employer's employees in relation to workers' compensation claim as waiving, or estopping employer from asserting, exclusivity otherwise afforded by workers' compensation statute. 120 ALR5th 513.