

ALASKA STATE LEGISLATURE  
**SENATE TRANSPORTATION COMMITTEE**

May 7, 2002  
1:43 p.m.

**MEMBERS PRESENT**

Senator John Cowdery, Chair  
Senator Jerry Ward, Vice Chair  
Senator Gary Wilken  
Senator Kim Elton

**MEMBERS ABSENT**

Senator Robin Taylor

**COMMITTEE CALENDAR**

SENATE BILL NO. 372

"An Act providing for and relating to the issuance of general obligation bonds in a principal amount of not more than \$160,130,000 for the purpose of paying the cost of state transportation projects; and providing for an effective date."

MOVED CSSB 372(TRA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 528(FIN)

"An Act relating to programs of state reimbursement for debt payments for certain capital projects; and providing for an effective date."

ASSIGNED TO SUBCOMMITTEE

CS FOR HOUSE BILL NO. 175(2d FIN)

"An Act making an appropriation to the Alaska Energy Authority to secure repayment of bonds for power and intertie projects; and providing for an effective date."

ASSIGNED TO SUBCOMMITTEE

CS FOR HOUSE BILL NO. 271(JUD)

"An Act relating to recovery of punitive damages resulting from an aviation accident; and providing for an effective date."

HEARD AND HELD

**PREVIOUS SENATE COMMITTEE ACTION**

SB 372 - No previous action to record.

HB 528 - No previous action to record.

HB 175 - No previous action to record.

HB 271 - No previous action to record.

**WITNESS REGISTER**

Mr. Don Smith  
Aide to the Senate Transportation Committee  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Explained the provisions of SB 372

Mr. Kevin Ritchie  
Alaska Municipal League  
217 Second Street, Suite 200  
Juneau, Alaska 99801  
**POSITION STATEMENT:** Stated support for SB 372

Mr. Mike Scott  
Municipality of Anchorage  
PO Box 196650  
Anchorage, AK 99519  
**POSITION STATEMENT:** Testified in support of SB 372

Mr. Kip Knutson  
ERA Aviation  
Anchorage, AK  
**POSITION STATEMENT:** Testified in support of HB 271

Mr. Chris Knight  
Staff to Representative Halcro  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Testified for the sponsor of HB 271

Representative Andrew Halcro  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 271

**ACTION NARRATIVE**

**TAPE 02-23, SIDE A**  
Number 001

**CHAIRMAN JOHN COWDERY** called the Senate Transportation Committee meeting to order at 1:43 p.m. Senators Ward, Wilken and Chairman Cowdery were present. The first order of business to come before

the committee was SB 372.

#SB372

**SB 372-TRANSPORTATION BONDS**

MR. DON SMITH, staff to the Senate Transportation Committee, informed members that SB 372 would put a proposal before the voters on the November 2002 ballot to fund 14 transportation projects around the state through the sale of bonds. He listed the 14 transportation projects listed in the legislation and said the total cost will be just over \$160 million.

SENATOR WARD moved to adopt Amendment 1, which would delete the existing item number (10) on page 2, line 28, and insert a new item number (10) Eagle River, Old Glenn Highway MP 0-18.7. The amendment would also add item number (15), the Matanuska-Susitna Fairview Loop Path for \$1,310,000 and item (16), which would be the Nash Road Rehabilitation project in Seward for the amount of \$2,605,000.

SENATOR ELTON objected for the purpose of discussion and asked for an explanation of why the Trunk Road was being dropped and new projects added.

SENATOR WARD explained that the new projects are a higher priority of the Senators from those areas who have a better knowledge of what is needed. He said that Mile 0-18.7 on the Old Glenn Highway travels up toward the Knik River and is a part of the old Alcan Highway. It has not been improved since the new highway was built. He added that item (15) was requested by the Senator from that area, who said it is a high priority. He said, regarding item 16, the Nash Road Rehabilitation is one of Seward's highest priorities.

SENATOR ELTON pointed out that the adoption of Amendment 1 will require a title change.

SENATOR WARD moved a conceptual amendment to adjust the title to reflect the new appropriation amounts and asked for unanimous consent.

CHAIRMAN COWDERY noted that Amendment 1 was not yet adopted.

SENATOR WARD withdrew his conceptual amendment.

CHAIRMAN COWDERY asked if there was continued objection to adopting Amendment 1. There being none, Amendment 1 was adopted.

SENATOR WARD moved to change the title of SB 372 as amended to reflect the new dollar amount resulting from the adoption of Amendment 1.

CHAIRMAN COWDERY announced that without objection, the title would be changed.

SENATOR ELTON moved to adopt Amendment 2.

SENATOR WARD objected.

SENATOR ELTON explained that Amendment 2 would add a total of \$35 million for the fast ferry project. If adopted, the bill title would have to be adjusted again. He informed members that one fast ferry has been approved; Amendment 2 would allocate dollars for a second fast ferry. Amendment 2 would require changes on page 2, lines 10 and 21 (to add a project description), page 3, line 6, and page 4, line 1.

CHAIRMAN COWDERY noted that objection was maintained therefore a roll call vote was taken. The motion to adopt Amendment 2 failed with Senator Elton in favor and Senators Ward, Wilken and Cowdery opposed.

CHAIRMAN COWDERY noted that no one else wished to testify on the bill as amended.

SENATOR WILKEN asked if the other body was deliberating companion legislation.

[No response was audible.]

SENATOR WARD moved SB 372 as amended, CSSB 372(TRA), from committee with individual recommendations.

CHAIRMAN COWDERY announced that people were waiting to testify via teleconference.

SENATOR WARD withdrew his motion to move CSSB 372(TRA) from committee.

CHAIRMAN COWDERY took public testimony.

MR. KEVIN RITCHIE, Alaska Municipal League (AML), thanked the committee for taking action on the bill.

MR. MIKE SCOTT, representing the Municipality of Anchorage and the AML, thanked members for introducing the bill and said a

statewide transportation package is an AML priority.

There being no further testimony, SENATOR WARD moved CSSB 372(TRA) from committee with individual recommendations.

CHAIRMAN COWDERY announced that without objection, CSSB 372(TRA) moved from committee.

SENATOR TAYLOR asked if the funding for the three roads in Anchorage will amount to \$88 million, while the road resurface in Ketchikan will amount to \$600,000.

CHAIRMAN COWDERY noted the bill also contains \$5.5 million for a road in Sitka.

SENATOR TAYLOR said that road was supposed to have been built already as it was funded once in the past.

SENATOR ELTON said his eyes must be getting old as he didn't see any Juneau projects listed.

CHAIRMAN COWDERY announced that with no objection, the bill moved from committee.

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#HB 528

#HB 175

**HB 528-STATE REIMBURSEMENT CAPITAL PROJECT DEBTS**  
**APPROP: POWER PROJECTS BONDS**

CHAIRMAN COWDERY announced that he would appoint a subcommittee, chaired by Senator Ward, to work on HB 528 and HB 175.

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The committee took up CSHB 271(JUD).

#HB271

**CSHB 271(JUD)-CAP ON AVIATION ACCIDENT PUNITIVE DAMAGES**

CHAIRMAN COWDERY asked if anyone wished to testify on CSHB 271(JUD).

MR. KIP KNUTSON, representing the Alaska Air Carriers Association (AACCA), informed members that the AACCA is in support of CSHB 271(JUD) because of the situation occurring in Alaska regarding insurance premiums for air carriers. The industry believes the aviation infrastructure is in peril because of steadily rising insurance costs. CSHB 271(JUD) attempts to change that

environment. He acknowledged it is frustrating for all involved that there is no solid answer as to what impact this legislation will have on insurance rates. CSHB 271(JUD) contains a tool used by plaintiffs when they approach an air carrier. Most air carriers carry liability insurance but do not insure for punitive damages. During a negotiation, a plaintiff often comes forward and says he or she will sue for punitive damages as well as liability. Because carriers do not have insurance for punitive damages, they are more motivated to persuade the insurance companies to settle at a higher amount or to the limits of their liability policies to avoid punitive claims, whether those claims are legitimate or not. He said that procedure is not easily verifiable with statistics but he could provide attorneys who would validate that is the practice.

MR. CHRIS KNIGHT informed members he is staff to Representative Halcro who chaired a House Labor and Commerce subcommittee on this issue last year. He said the subcommittee studied a number of aviation industry issues. That industry is plagued by high insurance rates. After studying several options, the subcommittee drafted this legislation.

REPRESENTATIVE ANDREW HALCRO, District 12, told members that the House Labor and Commerce subcommittee spent a great deal of time last year looking at problems in the aviation industry in Alaska. That industry is, beyond question, in peril. The subcommittee identified three areas that need assistance to stabilize this industry to protect rural communities and our neighbors in the business that depend on it.

The first area is in regard to industry reforms in education and training. Those reforms are being achieved through the Medallion Program. The University of Alaska has made a tremendous investment in flight simulators for training and is doing a good job to increase enrollment in that area. He explained a consortium of private aircraft companies created the Medallion Program to recognize and award excellence in operation, maintenance, and flight safety procedures. That consortium has worked with the Federal Aviation Administration to design voluntary improvements in flight safety.

REPRESENTATIVE HALCRO said the second area of concern relates to insurance pooling and access to aviation insurance markets. An insurance pool would have to be capitalized to the tune of \$20 to \$30 million so that small aviation companies can band together. The State of Alaska does not have that money to spare.

REPRESENTATIVE HALCRO said the third area of concern has to do

with tort reform, which is one of the most important components of controlling costs. Attorneys in Alaska have used the threat of punitive damages to get a higher settlement. CSHB 271(JUD) will identify and limit the exposure of aircraft companies to punitive damages. He noted the legislation has tremendous industry support, as well as support from the Division of Insurance. He recounted a case in Barrow a few years ago in which the insurer believed its exposure was a couple of million dollars. The exposure ended up being significantly higher because the judge allowed the plaintiff to pierce the ceilings in the limits. He explained that CSHB 271(JUD) will provide the industry with serious help. He said he believes tort reform is a responsible and reasonable step to address the needs of the aviation industry in Alaska.

SENATOR TAYLOR asked Representative Halcro to explain how punitive damages played into the Barrow case.

REPRESENTATIVE HALCRO said it had nothing to do with punitive damages but it set a precedent. He noted the insurance company was under the impression that it had exposure of Y but:

they went to court and the judge allowed, through the suit, the judge allowed them not to be liable for Y but actually pierce those limits and said oh, you can sue for other damages. So it was just - what the case did was the case highlighted the fact that there needs to be some understanding with regards to the law so when these insurance companies that are few and far between writing for this industry, sit down and look at evaluating a policy and look at issuing a quote, they understand what their risk exposure is for this market. And that lawsuit drew seriously into question what exactly their risk was at the end of the day if there was an accident.

SENATOR TAYLOR replied, "In essence, the answer to my question is, punitive damages in this bill has absolutely nothing to do with the Barrow case, does it?"

REPRESENTATIVE HALCRO said that is what he just said.

SENATOR TAYLOR noted the Barrow case "was a lousy job done by the people writing up the releases for the insurance company when they thought they had settled the case." The company found out it had not taken care of the rest of the heirs, who were then allowed to bring litigation against the company. That is why the exposure extended. He said everyone doing aircraft litigation

knows better after the case and, as a consequence, they draft their releases. He said he knows for a fact that Alaska Airlines, in settling Flight 261 fatalities, is drafting its releases in such a way that it includes all of the heirs and living members of each family so that it knows it has a complete settlement. He maintained that whatever aberration was caused by the Barrow case has already been resolved within the industry and everyone now knows how to settle such cases.

SENATOR TAYLOR asked Representative Halcro what he based his assumption on regarding the use of the threat of punitive damages to get higher court settlements. He indicated that Mr. Lohr of the Division of Insurance did not mention that aspect of the problem in his letter.

REPRESENTATIVE HALCRO said the fact is the out-of-court settlements are sealed so no empirical data is available to show that because of punitive damages, the awards were higher. However, testimony from insurance carriers is available.

SENATOR TAYLOR stated the legislature enacted a significant tort reform bill before Representative Halcro came to the legislature. Every single insurance company that supported the bill told the legislature at that time that tort reform would result in dramatic reductions in rates. That has not happened. The legislature heard two years of testimony about specious lawsuits that were filed, for example, people were being awarded millions of dollars over spilled cups of coffee. The legislature wanted verification so it required a document to be filed with the Judicial Council when a case is settled, containing the amount of the settlement and attorneys' fees. Those documents are not sealed and they are reviewed to determine whether specious suits are being filed.

REPRESENTATIVE HALCRO said the Judicial Council reported that half of the eight awards for punitive damages were for amounts between \$15,000 and \$100,000. Four sets of punitive damage awards exceeded \$100,000. The highest three awards ranged from \$2.6 million to \$150 million. He told members that as someone who grew up in a family business, he has seen these types of lawsuits. He and others in the private sector see tort reform as a very reasonable and practical approach to creating an environment that is not only safe to do business in, but encourages free market development. He pointed out when you have testimony from small aviation companies whose livelihoods are in their fleet and they provide specific examples of where their insurance premiums have gone up, he believes it is in the legislature's purview to "tweak" the rules to provide a better level of fairness. He added

that the National Institute of Occupational and Safety Hazards (NIOSH) averages show that people are compensated 3.2 times more for aircraft accidents than they are for automobile accidents. He said considering the importance of the role that aviation plays in Alaska, legislators should respond to this dilemma rather than carry on a dialog arguing the merits of tort reform.

SENATOR TAYLOR suggested there is no dialog between he and Representative Halcro on tort reform because that is not what the bill does, according to Representative Halcro's response about the Barrow case.

REPRESENTATIVE HALCRO said with regard to the Barrow lawsuit, he meant to link tort reform to the uncertainty that exists in the aviation insurance industry and the reason it is so difficult to find underwriters in this market.

SENATOR TAYLOR said he was asking about the bill before the committee, which he is limited to. He asked which insurance companies in Alaska are providing punitive damage insurance.

REPRESENTATIVE HALCRO deferred to Kip Knutson. He suggested that AIG might offer punitive damage insurance.

SENATOR TAYLOR commented that to his knowledge, one can't buy insurance for punitive damages because punitive damages are awarded for conduct so malicious or egregious that, except for the fact that there is no criminal law against that conduct, someone should be thrown in jail. He said he did not know that insurance companies were willing to write insurance policies so that people could act egregiously and recklessly. He said he would appreciate an explanation of how insurance companies are writing punitive damage policies.

MR. KNUTSON told members that just a handful of companies manage to get some of that risk underwritten. ERA Aviation has insurance for punitive damages, but it is by far the exception in Alaska. He said the weakness in this whole discussion is that most carriers are uninsured, therefore their businesses are on the line when punitive damage claims are brought. That is why the owners and insurance companies are anxious to get this issue settled. He said that just defending against a punitive damage claim is enough to bankrupt a small business.

SENATOR TAYLOR asked Representative Halcro if his information about litigation came from the Alaska Judicial Council. He asked the number of lawsuits in which punitive damages were requested since this information began to be compiled.

REPRESENTATIVE HALCRO read:

An Alaska Judicial Council report prepared for the period of June 1, 1999 through December 1, 2000 shows that of the 2,354 civil cases with judgments of \$1 or more reviewed by the Council, only eight of the judgments included punitive awards, although parties in 488 of the cases requested them.

REPRESENTATIVE HALCRO repeated the Judicial Council noted that half of the eight punitive damages were for amounts between \$15,000 and \$120,000, and four sets of award exceeded \$100,000, the highest three awards ranged from \$2.6 to \$150 million. He said the concern is that although air carriers don't settle on punitive damages, it is the mere threat of punitive damages that increases the settlements because there is no cap to the damage award.

SENATOR TAYLOR said pursuant to CSHB 271(JUD), the cap would be based on the number of employees.

REPRESENTATIVE HALCRO said that is correct and the intent was to protect the smaller carriers who are providing the most critical services.

SENATOR TAYLOR indicated that a total of eight judgments were awarded from 2,350 cases.

REPRESENTATIVE HALCRO replied, "Those are the ones that were specifically settled. The threat is the one where most of these were settled and I'm sure that those are not noted in the Judicial Council's..."

SENATOR TAYLOR interrupted to say they were threatened in 488 cases but they do not know how many of those resulted in any judgment at all. He surmised that half of those cases may have been thrown out.

REPRESENTATIVE HALCRO said they also do not know how many were successful in negotiating a settlement. He said one could follow that same logic along the lines of those who settled at a much higher rate.

SENATOR TAYLOR remarked:

I just have a hard time understanding how, if you took the same egregious conduct - let's assume that we got Alaska Airlines flight 261 and either as a matter of policy or neglect they just quit greasing the jack

screw in the back of the plane and the jury decides that that may have been intentional, that they may have decided to cut back on maintenance. I mean who knows what the facts are going to turn out there? And then the jury has to find a whole standard under Alaska law of conduct, which is egregious conduct and reckless and disregard of life and so on. So the jury finds that very high standard and then the jury is going to be instructed - yea, the conduct was really, really bad and the company ought to be punished over and above what the civil award is. We're talking about punishment money here. The company ought to be punished but if they were really egregious and had fewer than - what? 10, yea, 100 employees, 500 employees, then apparently we go to the size of the aircraft itself. If it is really rotten conduct and they really ought to be punished, they only get to be punished up to this amount if they were flying in a small plane but the very same conduct you get to punish them a whole lot more if they were in a 737-400, huh? I don't understand how the difference in conduct - how the difference in award has anything to do with the egregious conduct that may be involved - or you just don't care what the conduct is, you just want a limit.

REPRESENTATIVE HALCRO said he certainly would not simplify it like that. He said the intent of the different levels is to protect the smaller carriers because they seem to have a harder time obtaining affordable coverage. He asked to explain the challenges facing the aviation industry and the reason why punitive damages come into play. He said, unlike other industries where proving negligence is more clear cut, studies show that 90 percent of the accidents in Alaska result from flying uncontrolled into terrain. When pilots take off the weather is fine but halfway to their destination the weather changes. Certainly it is questionable as to whether that is punishable conduct on the part of the pilot who made the decision to fly. He noted that is the reason the subcommittee looked into education and training. However, the fact is, aviators find themselves in some very difficult conditions due to changing weather and the unique geographic attributes of Alaska. Therefore, talking about punitive damages in a case where someone flew a plane into the side of a mountain is different because of the challenging environment in which the industry conducts business. He said there is a higher threshold of risk in getting on a small plane in rural Alaska than there is in getting on a 727 in Anchorage. He said this bill does discriminate against the larger air carriers but it is for a good public policy reason because the intent is to protect the small carriers. In addition, it mirrors

FAA regulations.

SENATOR TAYLOR asked if there has been a single case in Alaska involving an airplane accident and punitive damages.

MR. KNIGHT told Senator Taylor there is not one case that is documented, but he spoke with six trial lawyers.

SENATOR TAYLOR interrupted Mr. Knight and repeated his question.

MR. KNIGHT replied, "Not that I could find in the building."

SENATOR TAYLOR asked the same question again.

MR. KNIGHT said there are none.

SENATOR TAYLOR asked, if there are no cases in the entire history of the state in which punitive damages were ever awarded, how this legislation is supposed to act as the savior of the aircraft industry on a liability that has never been found in the history of this state and for which only one carrier can even get insurance.

REPRESENTATIVE HALCRO said it is not so much the application of these punitive damages, it is the threat of them. The threat is not documented but through individual testimony he has heard over the course of this bill, that threat is not only very prevalent but also a very harsh reality for the aviation industry right now. He suggested Senator Taylor discuss the matter with Bob Jacobsen (ph). He said he would not argue court facts with Senator Taylor but he would argue that people in the industry see an important application for this legislation.

SENATOR ELTON thanked Representative Halcro for providing extensive backup materials to committee members. He referred to an Associated Press story from February 2002 in members' packets and noted that an airline author and former insurance broker was quoted in that story. That person essentially said that one of the problems facing the smaller airline industry is that insurance companies were able to afford to take some losses because they were making profits on the stock market. Senator Elton said he assumes that because the stock market is down, there is a profit consequence to the insurance industry. The legislature will be adopting punitive damage limits if CSHB 271(JUD) is adopted, but he is curious what will happen when the stock market starts to go up again. He noted insurance company profits could go back up and a percentage of those profits may be passed on to the consumer. However, Senator Taylor alluded to the fact that after tort reform was enacted by the legislature,

insurance company profits went up and stayed up but premiums did not decrease. He asked Representative Halcro if he thought about a sunset provision for this legislation.

REPRESENTATIVE HALCRO said he had not but he was not opposed to discussing one. With regard to the insurance industry, he said the Division of Insurance reported that in 1998 insurance companies lost \$1.30 for every dollar they wrote in premiums and they were allowed to recover those losses through gains in the stock market. He said he believes at this point in time the legislature needs to do whatever it can to help the aviation industry. He said he looks at the number of communities that are solely served by air and the number of small airlines that no longer carry passengers and only haul cargo because of the expense. He noted that health and safety issues are involved and that the legislature needs to give this industry the benefit of the doubt. He said he would not oppose adding a sunset date to the bill.

SENATOR ELTON asked how the subcommittee came up with one bill when it addressed a broad array of issues.

REPRESENTATIVE HALCRO said the [House] Judiciary Committee discussed the option of tying the liability cap to the Medallion Program to create an incentive within the industry. However, according to the Department of Law, the legislature cannot set policy and tie it to "a Chamber of Commerce criteria" as there is no connection or enforcement. He said the industry is embracing the training changes right now and he does not believe it is the legislature's role to get involved in requiring more education. He repeated the reason the subcommittee did not incorporate any of the other issues into legislation is because they felt it would be very difficult to tie a public policy call to private industry action doctrine.

TAPE 02-23, SIDE B  
2:30 p.m.

SENATOR ELTON said that Alaska's airline industry has significant problems and this legislation takes a very narrow view of how to address those problems. He expressed concern that he has not seen a benefit to insurance consumers that resulted from the work that was done on tort reform five or six years ago.

SENATOR WILKEN said he was having a little trouble "connecting the dots" and asked Representative Halcro to explain the sentence on his sponsor statement that reads, "In any liability case resulting in compensatory damages (loss of work, life, future wages, etc.), punitive damages are always used as a hammer to leverage higher damage awards." He asked how that can be if, as Senator Taylor stated, there are no punitive damage awards for

aircraft accidents in Alaska. He then asked if a cap would drive up the cost of travel.

REPRESENTATIVE HALCRO repeated that, according to the Judicial Council, a handful of cases were settled with punitive damages. However, the problem is the threat of those punitive damages. Because there is no existing limit on punitive damages, attorneys say if a company doesn't agree to settle for a certain amount, they will take the case to court. This bill will put a ceiling on how much one can claim in punitive damages. He said he does not see how this bill would increase the cost of air service; he sees how it will help because insurance coverage will be more affordable.

SENATOR WILKEN said if this bill takes effect, companies will still insure for compensatory damages but there will also be another bucket of money that the lawyers can collect from - the punitive damage coverage. He said the bill will open up the ability to get that money and someone will have to pay for that, which will drive up the cost of transportation. He said he still fails to see the need for the bill.

SENATOR TAYLOR said that a subtle distinction was missed in the previous exchange. He commented:

A lawsuit is brought for compensatory damages. That's the only thing Senator Wilken has insurance for. He can't buy punitive damages insurance and I'd really like to take a look at what ERA's punitive damage insurance really protects them from because I've never heard of it before. I've only been around the state about 40 years now but I've never heard of it. You can't buy it as far as I know. Gary certainly can't buy it. I can't buy it. My air carriers, especially the small guys that are going under in Ketchikan that I really think need to have some help and I want to help them, they can't buy punitive damage insurance because it doesn't exist.

So here's what happens. An air crash occurs. You're running the company. You get sued. You get sued for compensatory damages and you have coverage for that. In fact you're required by our laws to have up to \$150,000 a seat coverage for that. So you've got the coverage and you call up your insurance man and say Mr. Insurance Man, please defend me. That's why I bought this policy. And the insurance company comes in and says, Gary, we can defend you and we will defend you in the compensatory aspects of the case but you must

understand, we reserve our rights to be limited only to our policy - you guess at a million dollars coverage or whatever - we reserve our rights and we will not be liable for, nor will we pay any defense costs for, allegations against you for egregious, horrible conduct called punitive damages. You have to cover that on your own.

Here's what happens to you. The plaintiff's side comes to you and they say, Gary we'd be willing to settle with you for policy limits. You know, two people killed and the rest of them maimed up for life. We're willing to settle for the 150 grand - the policy limits. But your insurance company refuses to settle for that amount and if we have to go to trial we are going to go after punitive too, which means now your life is hanging in jeopardy because the insurance company has refused to settle within policy limits. That's what's happening, Andrew. That's what happens every day out there. For the area of your life you're not insured for that they can still come after you on, either excess, more compensatory than what you bought coverage for, or for punitive, yes, that will be threatened.

At that point you turn around and you threaten your carrier back and you say look, I paid for this policy for you to cover us and now because you guys want to settle for a nickel on the dollar with them, and you want to force them to trial, if you force them to trial, I could lose the whole farm. So you write them a letter that says you either settle for policy limits, or I'm going to sue you on breach of the contract that we have between you and I with the insurance company.

At this point, the insurance company starts getting a little cold feet because they know you'll settle with the plaintiff. You'll give them an offer, a judgment. You will then hand over your contract of insurance to the plaintiff and say, you go sue these guys. They wouldn't represent me and they jeopardized my life and my family here when they should have settled.

This is a bunch of whining by the insurance industry who loves to be able to jeopardize the Gary Wilkens and the Robin Taylors and keep us hanging out on the edge of the limb so they can negotiate a lower settlement with the plaintiff. Been there, done that on both sides because I represented more insurance carriers than I

ever represented plaintiffs so I know exactly how that system works. It does have an effect.

All this is going to do is provide the insurance carrier with a cap. That's how that system works. It does have an effect. All this is going to do is provide the insurance carrier with a cap beyond which - I should say provide Gary with a cap beyond which he's still going to go bankrupt anyhow. They come in and they threaten \$300,000, \$500,000 per seat and you're only carrying \$150,000 per seat insurance. Gary's still in exactly the same position, Representative Halcro, as he was before. His whole equity in his business could be lost because his insurance company wants to offer 50 cents on the dollar to walk away without paying full policy limits.

REPRESENTATIVE HALCRO responded that is a good anecdotal story but the Division of Insurance's numbers show that these carriers are not settling for a nickel on the dollar. He noted in 1998, insurance carriers paid out \$24 million when they only took in \$14.7 million in premiums. That fact, as well as the other back-up information received from the Division of Insurance, clearly proves that this is an industry that is not getting away with settling for a nickel on the dollar. This is an industry that has suffered real losses that are translating into higher premiums. The operators are saying those premium increases are affecting their businesses.

SENATOR TAYLOR said he hopes he and Representative Halcro can agree on one thing, that being that in each of those given years, when the settlements were finally resolved with compensatory damages only, a lot of people were killed. That is why those numbers are so high. There is not one single award of punitive damages in Alaska. He noted a basic compensatory policy includes both haul coverage and liability so a good portion of that number is for haul coverage. He stated:

Where in the world we can solve this problem by merely limiting, as I used the example, Gary's individual risk over and above what his current policy provides him, the leverage is still going to be there and it's still going to be significant and the insurance company's still going to get the same letter back. It's going to say, please defend me, quit holding me hostage.

REPRESENTATIVE HALCRO noted that Senator Taylor just admitted that punitive damages are used as leverage. He said the problem is that one has to take a look at the unique application to this industry. He responded:

I mean you get a plane load up in weather and halfway there some weather socks in and you know, you're looking at compensatory damages and then all of a sudden it's well, you know, you've got a 28 year old pilot that flew into the side of a mountain because of bad weather, that's punitive damages. You know that's going to be - that's punitive damages. That needs to be punishable and there are certainly those of us that say that, you know, along with risk needs to come a little bit of flexibility when it comes to regards of exposure. I mean, you know, this is being used as a leverage and this is hurting real people who own real businesses out there.

CHAIRMAN COWDERY asked if anyone else wished to testify. [There was no response.] He announced that he would hold CSHB 271(JUD) for further work. With no further business to come before the committee, he adjourned the meeting at 2:44 p.m.

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