ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 20, 2004
8:05 a.m.

TAPE(S) 04-7

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 300
"An Act relating to an attorney's lien, to court actions, and to other proceedings where attorneys are employed."
MOVED SB 300 OUT OF COMMITTEE

SENATE BILL NO. 307
"An Act relating to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."
HEARD AND HELD

HOUSE BILL NO. 31
"An Act relating to initiative and referendum petitions; and providing for an effective date."
SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 300
SHORT TITLE: ATTORNEY'S LIEN
SPONSOR: SENATOR STEDMAN

02/06/04 (S) READ THE FIRST TIME - REFERRALS

02/06/04	(S)	JUD, FIN
02/09/04	(S)	JUD AT 8:00 AM BUTROVICH 205
02/09/04	(S)	Heard & Held
02/09/04	(S)	MINUTES (JUD)
02/20/04	(S)	JUD AT 8:00 AM BUTROVICH 205

BILL: SB 307
SHORT TITLE: APPEAL BONDS: TOBACCO SETTLEMENT PARTIES
SPONSOR(s): JUDICIARY

02/09/04	(S)	READ THE FIRST TIME - REFERRALS
02/09/04	(S)	JUD, FIN
02/20/04	(S)	JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Senator Bert Stedman
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 300

Mr. Brian Hove
Staff to Senator Seekins
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented SB 307 for the sponsor

Mr. Keith Teel
Covington and Burlington
Washington, D.C.
POSITION STATEMENT: Supports SB 307

Ms. Emily Nenon
American Cancer Society
Anchorage, AK
POSITION STATEMENT: Opposed to SB 307

Ms. Jennifer App
American Heart Association
Anchorage, AK
POSITION STATEMENT: Opposed to SB 307

Mr. Bob Evans, Lobbyist
Phillip Morris USA
PO Box 100384
Anchorage, AK 99510
POSITION STATEMENT: Supports SB 307

ACTION NARRATIVE

TAPE 04-7, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:05 a.m. Senators Therriault, Ellis, French and Chair Seekins were present. The first order of business to come before the committee was SB 300.

^#SB 300

SB 300-ATTORNEY'S LIEN

SENATOR BERT STEDMAN, sponsor, recapped the discussion about SB 300 during the first Senate Judiciary hearing. The measure changes the way taxation is handled on litigation awards and relates primarily to non-physical personal injury cases. Currently, gross proceeds from a settlement are awarded to the plaintiff, who must pay taxes on the full amount. The plaintiff must then pay attorney fees and the attorney pays taxes on those fees. Therefore, under certain circumstances, the plaintiff could have a net outflow if the taxes owed exceed the gross award minus the attorney fees.

SENATOR STEDMAN referred to an article in The Wall Street Journal dated February 12, 2004, which he said is a good synopsis of the issue. He said even though both Alaska and Oregon are under the jurisdiction of the Ninth Circuit Court, they are treated differently regarding taxation because their laws differ. If Alaska were to adopt a statute similar to Oregon’s law, Alaska would avoid the double taxation of its citizens. He said this issue has been raised at the national level but Congress has not yet dealt with it so Alaska is getting ahead of the curve. He pointed out the IRS National Taxpayer Advocate Report has reported this double taxation problem several times. He brought members’ attention to a letter from Kevin Walsh, a CPA from Fairbanks, which goes into great detail about the taxation issue.

SENATOR THERRIAULT asked if the Department of Law or the general public have expressed any concerns since the last meeting.

SENATOR STEDMAN said he has not heard any. He believes the double taxation issue is widely recognized as unfair.

SENATOR OGAN asked which state law would apply if an Alaskan filed a case in another state.

SENATOR STEDMAN said his guess, as a layman, is that the law of the state in which the case was filed would apply.

SENATOR FRENCH informed members that choice of law is one of the great contested areas of the profession. If an Alaskan were in a traffic accident in Montana, Montana law would apply. However, law professors love to argue about cases in which an Alaskan and a Montanan were involved in a traffic accident in Washington, and a lawsuit was filed in Washington. He thought SB 300 was designed to apply to Alaskan cases tried in Alaska.

SENATOR STEDMAN thought it certainly would be advantageous for an Alaska resident to have the issue addressed in Alaska if SB 300 passes.

CHAIR SEEKINS opined that SB 300 would apply to cases tried in the Alaska Court System. The only time he envisions a venue problem is with cases involving contract law. He pointed out that many of his contracts with the Ford Motor Company are subject to the laws of Michigan. He said he sees the intent of the bill as applying to cases that are tried in the Alaska Court System.

SENATOR STEDMAN clarified that if a business is involved, the tax situation is different so the double taxation problem does not apply.

SENATOR FRENCH referred to a summary of committee action in the Washington State Legislature in members' packets. That bill summary reads:

> An attorney has a lien upon the action and its proceeds to the extent of the value of the services performed by the attorney in that action.... Proceeds are limited to monetary sums perceived in the action so the lien is not enforceable against real or personal property. The attorney's lien is superior although it [indisc.] upon the judgment. The legislature expresses its purpose of making attorneys fees taxable solely to the attorney and its intention that the court will apply the statute retroactively.

He noted his main interest is the sentence that says a lien is not enforceable against real or personal property. He looked at

Alaska statute and did not see any similar protection for the plaintiff. He asked Senator Stedman if it is his intention that this lien not be enforceable against real or personal property. He said after long, contentious lawsuits, plaintiffs and their attorneys sometimes get sideways and fees become an issue. He would hate to see someone "lose the farm" after having won a lawsuit.

SENATOR STEDMAN agreed with Senator French and said the intent behind SB 300 is to clean up the tax inequity and not to allow a broader reach to other assets.

SENATOR THERRIAULT asked:

> Wouldn't they have a lien already for fees that are owed? We're talking about a specific lien on the award but, absent that, if I'm an attorney and do work and then my client never pays the bill – I mean you can't walk out on the fees they owe their attorney. I'm not sure if a lien is automatically placed on property and what-not but an attorney can protect themselves by getting a lien. I know what Senator French is getting at but this talks specifically about the lien it gives the award and I don't know how that would necessarily slop over onto any other assets.

CHAIR SEEKINS said he reads it to refer to a lien against the cause of action that would not extend to any assets outside of the cause of action.

SENATOR FRENCH said that is how he reads the attorney's lien statute. He clarified that he is not saying that a lawyer can't turn around and sue a client; he was saying that a lawyer does not automatically get a lien on his client's property as the result of a fee dispute. The lawyer would have to go through the normal steps that everyone else goes through to satisfy a debt.

CHAIR SEEKINS said he believes the committee's intent is that SB 300 only deals with a lien against the cause of action.

SENATOR STEDMAN agreed that is his intent also.

CHAIR SEEKINS noted that no one else wished to testify so he closed public testimony.

SENATOR OGAN asked what part of a settlement, for example punitive damages, would be taxable.

SENATOR FRENCH said he did not know about punitive damages but he thought the main injustices occur in claims where people sue for wrongful termination or other workplace matters. He pointed out if a person has to go up against Wal-Mart for wrongful termination, it could cost that person $900,000 while the monetary damage award might be $30,000. That person would then get taxed on $930,000 and the attorney would also pay taxes on the $900,000.

CHAIR SEEKINS said regardless of the type of award, SB 300 would allow the recipient of the award to deduct the attorney fees before paying taxes.

SENATOR OGAN moved SB 300 and its zero fiscal notes from committee with individual recommendations.

CHAIR SEEKINS announced that without objection, SB 300 would move to the Senate Finance Committee. He then announced a brief at-ease.
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8:25 a.m.

^#SB 307

SB 307-APPEAL BONDS: TOBACCO SETTLEMENT PARTIES

MR. BRIAN HOVE, staff to Senator Seekins, explained to members:

> SB 307 is an act relating to the amount of bond required to stay execution of judgment involving a signatory to the tobacco product master settlement agreement. He said the tobacco Master Settlement Agreement [MSA] delivers millions of dollars in revenues annually to Alaska and 45 other participatory states. However, the continued receipt of these funds is threatened by the huge judgments that have been awarded against the tobacco companies that are funding the settlement. Defendants facing large judgments almost always have a right to appeal them and, in many cases, their appeals are successful, either in terms of obtaining a reduced judgment or in overturning the judgment entirely. But in order to stay the execution of a pecuniary judgment on appeal, a defendant must post an appeal bond, which in the diminishing number of states that do not have limits on appeal bonds usually equals the amount of the judgment. In Alaska

the bond required is ordinarily the amount of the judgment remaining unsatisfied plus appeal costs and interest.

SB 307 would place a $25 million limit on the appeal bond that MSA signatories must post to stay the execution of a judgment. This bond limit would not change any other aspect of the law. It does not change the rules by which the trial is conducted. It does not affect who ultimately wins or loses the lawsuit and it does not affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal. Plaintiffs are also protected by the provision in the proposed legislation that allows the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment.

SB 307 thus would not injure plaintiffs in any way and would protect the state by ensuring that it will continue to receive its MSA payments while the tobacco companies fully appeal an adverse judgment. In this instance, Alaska will join 26 other states, which have passed legislation or amended court rules to limit the size of the required appeal bond in cases involving large judgments. By joining these states we promote our collective interest with respect to preserving the revenue stream mandated by the master settlement agreement.

MR. HOVE said the driving force behind this legislation is that Alaska, according to the MSA schedule of payments, will be receiving from $22 million per year to $27 million per year in the later years of this agreement. SB 307 will insure that Alaska continues to receive those payments in the later years.

CHAIR SEEKINS asked if the maximum amount that Alaska is scheduled to receive in one year is $27.3 million.

MR. HOVE said that is correct and that will begin in 2018 and continue to 2025. The total amount that will accrue to the state is nearly $670 million.

CHAIR SEEKINS asked if requiring tobacco companies to put up the entire bond amounts to appeal cases could cause them to go bankrupt, and the state would not receive any money at all.

MR. HOVE said that is correct. He noted that although many people are unsympathetic to the tobacco companies, this money is important to Alaska and 26 other states.

SENATOR THERRIAULT asked for a description of the differences between the original bill and Version H.

MR. HOVE said the original bill erroneously cites AS 43 instead of AS 45.

SENATOR THERRIAULT moved to adopt version H as the working document of the committee.

CHAIR SEEKINS announced that without objection, version H was before the committee.

SENATOR FRENCH asked who the signatories of the MSA are.

MR. KEITH TEEL, Covington and Burlington, Washington, D.C., told members he represents four of the signatories to the MSA: Phillip Morris USA, Lorillard Tobacco Company, R. J. Reynolds, and Brown and Williams. He pointed out those were the only four original signatories, however, a number of other companies have signed on to the settlement agreement since then. He said this legislation would apply to every company that has signed on but the four original signatories are the companies who would get sued.

SENATOR FRENCH asked if the bill would limit the amount of the appeal bond that those companies would have to post if they were successfully sued in an Alaska court and decided to appeal.

MR. HOVE replied, “Regardless of how you feel about tobacco companies, every defendant has a right to appeal. As I understand it, this $25 million would be the limit on these four.”

SENATOR FRENCH commented if Exxon, Conoco Phillips, British Petroleum, or Pepsi were sued for $1 billion and the plaintiff won, those companies would have to post the full bond amount to file an appeal.

MR. HOVE said the tobacco company situation needs to be considered as extraordinary in light of the [MSA] revenue streams the state is trying to protect. He stated in this instance, it is in Alaska’s best interest to assist those

companies to make sure the MSA funds are available by limiting the amount of the bond required.

CHAIR SEEKINS said as he reads SB 307, it only applies to those monies received as the result of the master settlement agreement. It does not extend to future judgments and other types of cases.

SENATOR FRENCH disagreed and referred to Section 1 of the bill, which he interprets to mean if a tobacco truck is in an accident with a school bus and the state sues the tobacco company and gets a $1 billion judgment, the tobacco company would only have to post $25 million for an appeal bond.

CHAIR SEEKINS said he does not understand how SB 307 would apply to that scenario unless the state entered into a master settlement agreement with the tobacco company on the accident.

SENATOR THERRIAULT agreed with Senator French's interpretation that Section 1 limits the protection of the legislation to those companies who are signatories to the MSA but it offers protection under any legal theory, meaning any civil litigation. He pointed out an exception in subsection (b) allows the judge to ignore this limit, if convinced by a preponderance of the evidence that the company is trying to dissipate its assets.

SENATOR FRENCH said he does not disagree with the motive behind the act, that being to keep these companies healthy long enough to pay the settlement. The tobacco companies are seeing courts across the nation award billion dollar settlements and want to keep the lid on the amount of money tied up in [bonds] while fighting those cases. He pointed out, however, that some other states have limited the bond amount to $100 million.

CHAIR SEEKINS maintained that is because their [MSA] judgments are larger.

SENATOR FRENCH said SB 307 tells any plaintiff in Alaska that if he gets a big award from a lawsuit against a tobacco company, the most that company has to post on appeal is $25 million.

CHAIR SEEKINS said that is correct. He repeated the intent is to protect the money stream coming to Alaska on an annual basis from the MSA.

MR. TEEL told members SB 307 would apply to any case involving any signatory to the MSA. He explained:

The reason we set out to look at this really arose about four years ago. I was asked by the companies to look at – to kind of be on the watch for things that could hurt their ability to continue to make their payments under the Master Settlement Agreement to all of the states who they owe a lot of money to. [Indisc.], the truth is, they'd rather live under this settlement agreement than go back to the days when they were litigating against all of the states, so they'd like to be able to honor that commitment to the states. We ran into some litigation four years ago in the state of Florida that resulted in a verdict against the four companies I represent in the amount of $145 billion – that's billion with a b. In order, under Florida's laws, to post the appeal bond, we would have had to come up with $181 billion...if you take the biggest companies you can think of, I don't think its strange credulity to say no one can make that kind of payment. There's just not that kind of money out there. You can't go out in the commercial marketplace and buy a bond of that kind. There's just limits on what you can do and these companies would have all been bankrupted by that judgment. And that really would have meant, for reasons I'll explain, that the states would not have gotten their Master Settlement Agreement.

Fortunately, we persuaded the Florida Legislature, probably about two weeks before the verdict in that case, to pass a bill that in Florida limited the bond to $100 million.... Probably the largest block of states that have done this has a $25 million number, about a nearly equal amount has 50, one has 75, about five or six have 100, and two states have 150 for their limit...bigger states in terms of population have tended to go with bigger numbers. Smaller population states tended to go with smaller numbers.

At any rate, Florida passed that and the companies were able to post that reduced appeal and ... last May, May 2003, the Florida Court of Appeals completely reversed that judgment and tossed it out in entirety. Had the companies not been able to get to an appeal because they could not have posted an appeal bond, every state would have lost its MSA revenues and thousands, if not hundreds of thousands, of people

would have been tossed out of jobs, all for a decision that ultimately, once you got or exercised your right to appeal, the decision was reversed.

More recently there was a similar case. By the way, these all tend to be class actions with mega-judgments. They are class actions and often cases that result in punitive damages. I'm not aware of a single case against this industry in any of the four companies I represent where anybody has ever sought damages against them for personal injuries where the compensatory side of the judgment as opposed to the punitive side exceeded the $25 million limit we now have before you in this bill. So we think the limit here is fully covered in virtually every case you can imagine the compensatory side of things. What really happens here is the punitive side of things is what drives these bond amounts up.

At any rate, the only thing I'll tell you about...is much more recently in the State of Illinois a class action resulted in a judgment – and this was not a jury trial, this was a bench trial – a judgment of $10.1 billion. Under the law of Illinois, the judge ordered a bond to be posted of $12 billion and Phillip Morris gave notice to all of the states that it was facing a difficult situation. It could try to somehow take its assets and come up with a way to bond that or it could make its debt-scheduled payment under the Master Settlement Agreement but it probably didn't have the assets to do both. And Phillip Morris, by the way, is the strongest of the four. If Phillip Morris couldn't do it, the other three certainly couldn't do it.

What unfolded is really quite extraordinary. Ultimately, I will tell you, that the state supreme court entered a special order allowing a somewhat reduced bond. It's still a huge bond but it reduced it. But, in the meantime, as they were getting there, 37 state attorneys general filed a brief with the court saying you really ought to let a lower bond be posted in this situation. And one of those AGs was the attorney general of Alaska and I think that brief [indisc.] a lot for us because it said for Heaven's sakes, we're talking here about continued receipt of

public money while an appeal goes on. As a result, ultimately the bond was lowered.

Anyway, what you see here is I think the other states responding to this. There are now 26 states that have fully passed legislation allowing a reduced appeal bond. Some of those have been limited to MSA signatories, probably about half of them. The other half are more general in nature and cover everybody. And you've got another state - just last night Iowa passed this bill and it's on its way to the Governor's desk. You've got five additional states that don't even require an appeal bond but you file notice of appeal and [indisc.] automatically stayed. So, ultimately when you look at the picture, you've got 31 states that already allow either no or a limited appeal bond. This bill would bring Alaska into line with other states and would do so in a limited way just to cover, I think, the one group of companies who has a regular obligation under this settlement agreement to make payments to the state.

SENATOR THERRIAULT asked if Mr. Teel said this exemption would apply to the signatories of the MSA in any civil litigation case.

MR. TEEL said that is correct.

SENATOR THERRIAULT asked if there is any connection between the $25 million Alaska is receiving from the MSA each year and the $25 million bond limit in SB 307.

MR. TEEL said the same amount is nothing but coincidence. The $25 million referred to in SB 307 is the size of a judgment that a litigant might get against the signatories.

SENATOR THERRIAULT said, "Okay. So what we're really looking out for here is setting a level that protects the financial viability of the companies – continued financial viability."

MR. TEEL agreed and said nothing in SB 307 or in any of the bills passed in other states does anything to change the substantive law. The legislation protects the signatories in the sense that it lets them get through their right to appeal but it does nothing to protect what occurs during the appeals stage.

CHAIR SEEKINS commented this bill does not limit the judgment; it merely sets the ceiling for the amount of the appeal bond.

MR. TEEL agreed.

8:55 a.m.

CHAIR SEEKINS took public testimony.

MS. EMILY NENON, the Alaska Advocacy Manager for the American Cancer Society (ACS), told members that the ACS has taken a very strong position on this issue, which it has repeated around the country. The ACS believes tobacco companies should be held to the same standards as other industries and should not receive special protection from state legislatures. She reminded members that ultimately the tobacco settlement is a tobacco industry repayment to the states for damage inflicted. The settlement was not a windfall for state budgets. The ACS believes it is not the State of Alaska's job to protect the economic health of an industry that cost the state over $200 million each year in health care costs and lost productivity.

MS. NENON gave members the following background on the Illinois case:

> The court in Illinois found tobacco giant Phillip Morris guilty of defrauding millions of people through defective marketing practices on light and low-tar cigarettes. In a very strongly worded opinion, the court ruled that 'Phillip Morris's practices of [indisc.] public policy are immoral, unethical, oppressive and unscrupulous.' Now this is the court speaking, not the American Cancer Society - I want to make that clear. The court ruling went even further, calling Phillip Morris's conduct 'outrageous, both because Phillip Morris's motive was evil and the act showed a reckless disregard for the consumer's right.'
>
> Phillip Morris was ordered to pay $10.1 billion in damages. Phillip Morris decided to appeal the ruling and according to Illinois law was asked to post a $12 billion bond in order to move forward with the appeal. But Phillip Morris decided to change the rules in the middle of the court proceeding by lobbying the Illinois State Legislature to let them off the hook and lower the bond amount required for an appeal. Phillip Morris threatened to file for bankruptcy as a

result of the ruling, claiming they couldn't afford to post a $12 billion bond as well as make the required payments to state governments based on the Master Settlement Agreement.

Now here's where Alaska comes in. As you've already heard this morning, legislators across the country are nervous about this threat because many states will be facing, like us, budget deficits this year and fear that without tobacco settlement payments they may have to make tough decisions about large budget cuts.

Now, going back to Illinois for a minute. The Illinois Legislature, for the record, stood up to Phillip Morris and declined to rewrite the law on appeals bonds.

MS. NENON said the ACS believes tobacco companies should be held to the same standard as every other industry and should not receive special protection from state legislatures.

SENATOR OGAN said if the tobacco companies have to post a series of multi-million dollar cash bonds, they may not be solvent enough to pay the MSA and other deserving people who may litigate. In addition, multi-billion dollar settlements and bonds could hamstring their cash flow. He asked Ms. Nenon if the ACS feels a different bond limit amount would be more appropriate.

MS. NENON said absolutely not. The ACS believes those decisions should be left to the court; the Illinois Court reduced the appeal bond by half.

TAPE 04-7, SIDE B

SENATOR OGAN asked Ms. Nenon how much personal responsibility people should take as it is well known that cigarette smoking is hazardous to one's health.

MS. NENON said that is an entirely different issue.

SENATOR THERRIAULT said across the nation these large hundred billion dollar judgments have not fared well on appeal. He said one of the policy calls the legislature is confronted with is whether the bond requirement is so high that it truncates the companies' appeal rights. He said the

limit could be set fairly high so that the normal judgments would be covered, and the court could set the limit aside if the company is attempting to reorganize to get out from under the anticipated judgment. He noted while the committee might want to reconsider the $25 million amount, the rest of the suggested system seems reasonable to him. He said everyone should have access to the court.

CHAIR SEEKINS asked Ms. Nenon to describe the final outcome of the Illinois case.

MS. NENON deferred to Ms. App.

MS. JENNIFER APP, Advocacy Director, American Heart Association (AHA), Anchorage, said the outcome of the Illinois case last year was that the bond was reduced from $12 billion to $6 billion. Phillip Morris was able to post that bond. She said that case is important in that it shows that the existing system works. She pointed out that in any billion-dollar case against any company, the option to appeal the amount of the bond exists. It is in the judiciary's area of expertise to set that bond. She reminded members that bonds exist to make sure that the defendant who was held liable in the lower court can actually pay the judgment if engaging in an appeal of that judgment. That is done to protect the victors in the lower court and make sure they receive the award the court decided they are legally entitled to.

CHAIR SEEKINS asked her the final outcome of the case.

MS. APP said she believes the case has not yet been decided.

MR. TEEL affirmed that is correct. He added the Illinois Supreme Court reached down and took the case away from the Illinois Court of Appeals because everyone recognized the Supreme Court would have to deal with it on the merits. He believed the briefing schedule would continue for a few more months.

CHAIR SEEKINS asked Ms. App to continue with her testimony.

MS. APP said the AHA wants to see the remaining 20 percent of the MSA be used for tobacco education and cessation. Health organizations have a big interest in the MSA but despite that interest, the AHA disagrees with SB 307. This

effort was generated by the tobacco industry to protect itself, not to protect the MSA.

MS. APP told members that according to a Phillips Morris financial statement, it spends $4.5 billion each year marketing cigarettes. She suggested Phillip Morris could cut back its marketing budget and cut political contributions to accept responsibility for the damage its product has caused instead of trying to shirk the laws that govern other businesses. Phillip Morris USA and its parent company, Altria, are among the wealthiest companies in the world. Altria has operating income of $16.6 billion while the income of Phillip Morris is over $5 billion per year. She said when one looks at the awards that have been assessed against those companies for decades of deceit, the numbers are not unreasonable. She said the only thing that strikes her about this bill is that $25 million is a very low number when one considers the purpose of the bond to cover the potential injuries. The Illinois judge found Phillip Morris's actions so egregious, it ordered the company to pay $10 billion in class action litigation. She repeated that a bond of $25 million would not begin to cover the kind of risk the victor in a lower court would have to bear during an appeal.

MS. APP said her point is that the courts have unique expertise and the power within existing court rules to reduce bonds when necessary. She also questioned why this issue has arisen in Alaska at this time since she has heard no rumblings of class action lawsuits. She referred to subsection (b) on page 2, line 5, and said "dissipating assets outside the ordinary course of business" is fairly difficult to prove because the tobacco companies have fairly complex corporate structures in which they are always dissipating assets.

9:05 a.m.

MS. PAM LABOLLE, Alaska Chamber of Commerce (ACC), stated support for SB 307 because the ACC feels it is important that everyone have the right to an appeal in the judicial process. She said that $25 million is a lot of money to most of the businesses she is aware of and is a reasonable amount.

SENATOR THERRIAULT pointed out that although $25 million is a significant amount to the businesses associated with the

Chamber, SB 307 only applies to the large multi-national corporations. He believes it is reasonable to consider an amount other than $25 million. He stated:

> The thing that should shape the multi-nationals' actions as far as how much they put into marketing should be the judgments that they actually pay, not the bonds that they have to post just to get access to the judicial system, so that's what's troubling to me here on the argument that we should do nothing. I agree, as they suffer the impact of actual judgments that should shape their business practices, not what they have to pay to get through the courthouse doors.

MS. LABOLLE said her main point was that they should not have to pay extraordinary amounts to get access to the judicial process.

SENATOR OGAN maintained that one corporate strategy is the time-value of money and, although he believes the size of the judgments are outrageous, the corporate attorneys will wait the plaintiffs out. He noted that many participants in the Exxon Valdez case have died while the case has been held up. He cautioned if the bar is set too low, the defendant will play the time-value of money game. He said he wants to be able to represent the "little guy" but doesn't want to bankrupt these companies so that no one gets paid.

MS. LABOLLE agreed that is the policy call the legislature must make. She said it is not unheard of that wealthy corporations end up bankrupt. She noted the income stream from the MSA for the next 20 years is significant for many states and needs to be considered.

SENATOR SEEKINS asked what county in Illinois the lawsuit was brought in.

MR. TEEL said it was brought in Madison County, Illinois, which is the county that is giving the entire Illinois judiciary a black eye. It has more class action lawsuits filed on a per capita basis than any other county in the United States, the reason being the judges frequently try the cases themselves and the [settlements] are large. He

said a lot of organizations are very concerned about that particular county.

CHAIR SEEKINS said it is his understanding that Madison County is a haven for class action lawsuits in the United States.

MR. TEEL said a large enough number of class action lawsuits get filed there so that one has to scratch his head and wonder what the particular nexus is to that county.

SENATOR FRENCH asked Mr. Teel to provide the committee with a list of all of the legitimate affiliates of the signatories so that committee members can see whom this bill will affect.

MR. TEEL agreed to do so.

SENATOR ELLIS asked Ms. LaBolle if she polled her members and they support a change to Alaska statute to give the signatories to the MSA a benefit that Alaskan companies would not enjoy.

MS. LABOLLE said she did not say that. She explained that the Chamber has a policy committee that works on issues and the Chamber's general guiding principles of business and the fairness of the judicial process determine which pieces of legislation fit.

SENATOR ELLIS said he is interested in what the Chamber's membership thinks of this legislation because he cannot believe its members would support giving a benefit to outside companies that they do not enjoy. He asked her to consider posing that question to her members.

MS. LABOLLE said to require a business to pay an extraordinary amount of money to be able to have access to an appeal is something she believes her membership would find unacceptable.

CHAIR SEEKINS said he would accept that Ms. LaBolle can testify to the position of the Alaska Chamber of Commerce without having to present the committee with the results of a poll of her membership. He noted as a member of the Chamber, Ms. LaBolle has taken positions that he has not

agreed with but that is within her purview, given her understanding of the Chamber.

MS. LABOLLE thanked the chair and said bringing the poll results would be as difficult as expecting legislators to poll their constituents on every decision before them.

SENATOR THERRIAULT clarified that the benefit that springs from SB 307 is access to the judicial system. It does not limit the liability of the companies.

CHAIR SEEKINS agreed. He said he personally has no sympathy for the tobacco industry and he finds it hard to understand why people use tobacco products. However, he believes the legislature has the responsibility of providing guidance to the courts regarding access. He agreed with Ms. App that no case is pending in Alaska that would affect this limitation and he agrees with Senator Therriault that the committee should discuss the amount of the bond limit if such a case should arise.

9:20 a.m.

SENATOR OGAN noted a benefit to the tobacco companies is that SB 307 will make it easier to appeal a case and it will be to their advantage to do so. He said in some cases, a tobacco company might not appeal if the settlement is not egregious and the bond amount is high. However, he does not want to prevent people and the states from getting the money they deserve so he will be wrestling with this issue.

MR. BOB EVANS, lobbyist for Altria, the parent company of Phillip Morris USA, asked to respond to some of the previous comments made. First, regarding the statement that SB 307 treats the four tobacco companies differently, he maintained the [MSA] was an extraordinary event in the American judicial system that involves a $200 billion plus [settlement] that involves 45 states. Different treatment is necessary to ensure the flow of the settlement income to those states. There is no other example of such a large judgment in American history. Regarding an earlier question about whether SB 307 would affect a case involving a Phillip Morris truck and a school bus, he said none of the participating companies have one employee in Alaska; they use independent distributors.

SENATOR THERRIAULT said his family is a big consumer of Kraft macaroni and cheese and asked if those products are sold using independent distributors.

MR. EVANS said he believes they are.

CHAIR SEEKINS said with no further testimony, he would hold the bill in committee. He said although he believes a healthy business climate benefits everyone, he is not sure the tobacco industry is part of that but he is willing to listen to their testimony. He then adjourned the meeting at 9:26 a.m.
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