

Offered: 5/12/86

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1 IN THE SENATE

2 CONFERENCE CS FOR SENATE BILL NO. 377
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to civil actions; amending Alaska
7 Rules of Civil Procedure 49, 52, 58, and 82; and
8 providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 09 is amended by adding a new chapter to read:

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

12 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to
13 recover damages for personal injury based on negligence, damages for
14 noneconomic losses shall be limited to compensation for pain, suffer-
15 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-
16 ment of life and other nonpecuniary damage.

17 (b) The amount of damages awarded by a court or jury under (a)
18 of this section may not exceed \$500,000 for each claim based on a
19 separate incident or injury.

20 (c) The limit under (b) of this section does not apply to dam-
21 ages for disfigurement or severe physical impairment.

22 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
23 awarded in an action, whether in tort, contract, or otherwise, unless
24 supported by clear and convincing evidence.

25 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
26 person who suffers personal injury or death may not recover damages
27 for the personal injury or death if the injuries or death occurred
28 while the person was engaged in the commission of a felony, the person
29 has been convicted of the felony, including conviction based on a

1 guilty plea or plea of nolo contendere, and the felony substantially
2 contributed to the injury or death. This section does not affect a
3 right of action under 42 U.S.C. 1983.

4 Sec. 09.17.040. AWARD OF DAMAGES. (a) In every case where
5 damages for personal injury are awarded by the court or jury, the
6 verdict shall be itemized between economic loss and noneconomic loss,
7 if any, as follows:

- 8 (1) past economic loss;
- 9 (2) past noneconomic loss;
- 10 (3) future economic loss;
- 11 (4) future noneconomic loss; and
- 12 (5) punitive damages.

13 (b) The fact finder shall reduce future economic damages to
14 present value. In computing the portion of a lump-sum award that is
15 attributable to future economic loss, the fact finder shall determine
16 the present amount that, if invested at long-term future interest
17 rates in the best and safest investments, will produce over the life
18 expectancy of the injured party the amount necessary to compensate the
19 injured party for

20 (1) the amount of wages the injured party could have been
21 expected to earn during future years, taking into account future
22 anticipated inflation and reasonably anticipated increases in the
23 injured party's earnings; and

24 (2) the amount of money necessary during future years to
25 provide for all additional economic losses related to the injury,
26 taking into account future anticipated inflation.

27 (c) Subsection (b) of this section does not apply to future
28 economic damages if the parties agree that the award of future damages
29 may be computed under the rule adopted in the case of *Beaulieu v.*

1 Elliott, 434 P.2d 655 (Alaska 1967).

2 (d) In an action to recover damages, the court shall, at the
3 request of an injured party, enter judgment ordering that amounts
4 awarded a judgment creditor for future damages be paid to the maximum
5 extent feasible by periodic payments rather than by a lump-sum pay-
6 ment.

7 (e) The court may require security be posted, in order to ensure
8 that funds are available as periodic payments become due. The court
9 may not require security to be posted if an authorized insurer, as
10 defined in AS 21.90.900, acknowledges to the court its obligation to
11 discharge the judgment.

12 (f) A judgment ordering payment of future damages by periodic
13 payment shall specify the recipient, the dollar amount of the pay-
14 ments, the interval between payments, and the number of payments or
15 the period of time over which payments shall be made. Payments may be
16 modified only in the event of the death of the judgment creditor, in
17 which case payments may not be reduced or terminated, but shall be
18 paid to persons to whom the judgment creditor owed a duty of support,
19 as provided by law, immediately before death. In the event the judg-
20 ment creditor owed no duty of support to dependents at the time of the
21 judgment creditor's death, the money remaining shall be distributed in
22 accordance with a will of the deceased judgment creditor accepted into
23 probate or under the intestate laws of the state if the deceased had
24 no will.

25 (g) If the court finds that the judgment debtor has exhibited a
26 continuing pattern of failing to make payments required under (c) of
27 this section, the court shall, in addition to the required periodic
28 payments, order the judgment debtor to pay the judgment creditor any
29 damages caused by the failure to make periodic payments, including

1 costs and attorney fees.

2 Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
3 OFFICERS. (a) Unless the act or omission constituted gross negli-
4 gence, a person may not recover tort damages for personal injury,
5 death, or damage to property for an act or omission to act in the
6 course and scope of official duties, from one of the following:

7 (1) a member of the board of directors or an officer of a
8 nonprofit corporation;

9 (2) a member of the board of directors of a public or
10 nonprofit hospital, or a member of a citizen's advisory board of any
11 hospital;

12 (3) a member of a school board of a school district;

13 (4) a member of the governing body, a commission, or a
14 citizen's advisory committee of a municipality of the state.

15 (b) Notwithstanding (a) of this section, the duties and liabil-
16 ities of a director or officer of a nonprofit corporation to the
17 corporation or the corporation's shareholders may not be limited or
18 modified.

19 (c) In this section "nonprofit corporation" means a corporation
20 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)
21 or (4) (Internal Revenue Code).

22 Sec. 09.17.060. EFFECT OF CONTRIBUTORY FAULT. In an action
23 based on fault seeking to recover damages for injury or death to a
24 person or harm to property, contributory fault chargeable to the
25 claimant diminishes proportionately the amount awarded as compensatory
26 damages for the injury attributable to the claimant's contributory
27 fault, but does not bar recovery.

28 Sec. 09.17.070. COLLATERAL BENEFITS. (a) After the fact finder
29 has rendered an award to a claimant, and after the court has awarded

1 costs and attorney fees, a defendant may introduce evidence of amounts
2 received or to be received by the claimant as compensation for the
3 same injury from collateral sources that do not have a right of subro-
4 gation by law or contract.

5 (b) If the defendant elects to introduce evidence under (a) of
6 this section, the claimant may introduce evidence of

7 (1) the amount that the actual attorney fees incurred by
8 the claimant in obtaining the award exceed the amount of attorney fees
9 awarded to the claimant by the court; and

10 (2) the amount that the claimant has paid or contributed to
11 secure the right to an insurance benefit introduced by the defendant
12 as evidence.

13 (c) If the total amount of collateral benefits introduced as
14 evidence under (a) of this section exceeds the total amount that the
15 claimant introduced as evidence under (b) of this section, the court
16 shall deduct from the total award the amount by which the value of the
17 nonsubrogated sum awarded under (a) of this section exceeds the amount
18 of payments under (b) of this section.

19 (d) Notwithstanding (a) of this section, the defendant may not
20 introduce evidence of

21 (1) benefits that under federal law cannot be reduced or
22 offset;

23 (2) a deceased's life insurance policy; or

24 (3) gratuitous benefits provided to the claimant.

25 (e) This section does not apply to a medical malpractice action
26 filed under AS 09.55.

27 Sec. 09.17.080. APPORTIONMENT OF DAMAGES. (a) In all actions
28 involving fault of more than one party to the action, including third-
29 party defendants and persons who have been released under

1 AS 09.17.090, the court, unless otherwise agreed by all parties, shall
2 instruct the jury to answer special interrogatories or, if there is no
3 jury, shall make findings, indicating

4 (1) the amount of damages each claimant would be entitled
5 to recover if contributory fault is disregarded; and

6 (2) the percentage of the total fault of all of the parties
7 to each claim that is allocated to each claimant, defendant, third-
8 party defendant, and person who has been released from liability under
9 AS 09.17.090.

10 (b) In determining the percentages of fault, the trier of fact
11 shall consider both the nature of the conduct of each party at fault,
12 and the extent of the causal relation between the conduct and the
13 damages claimed. The trier of fact may determine that two or more
14 persons are to be treated as a single party if their conduct was a
15 cause of the damages claimed and the separate act or omission of each
16 person cannot be distinguished.

17 (c) The court shall determine the award of damages to each
18 claimant in accordance with the findings, subject to a reduction under
19 AS 09.17.090, and enter judgment against each party liable. The court
20 also shall determine and state in the judgment each party's equitable
21 share of the obligation to each claimant in accordance with the re-
22 spective percentages of fault.

23 (d) The court shall enter judgment against each party liable on
24 the basis of joint and several liability, except that a party who is
25 allocated less than 50 percent of the total fault allocated to all the
26 parties may not be jointly liable for more than twice the percentage
27 of fault allocated to that party.

28 Sec. 09.17.090. EFFECT OF RELEASE. When a release or covenant
29 not to sue or not to enforce judgment is given in good faith to one of

1 two or more persons liable in tort for the same injury or the same
2 wrongful death

3 (1) it does not discharge any of the other tortfeasors from
4 liability for the injury or wrongful death unless its terms so pro-
5 vide; but it reduces the claim against the others to the extent of any
6 amount stipulated by the release or the covenant, or in the amount of
7 the consideration paid for it, whichever is the greater; and

8 (2) it discharges the tortfeasor to whom it is given from
9 all liability for contribution to any other tortfeasor.

10 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
11 acts or omissions that are in any measure negligent or reckless toward
12 the person or property of the actor or others, or that subject a
13 person to strict tort liability. The term also includes breach of
14 warranty, unreasonable assumption of risk not constituting an enforce-
15 able express consent, misuse of a product for which the defendant
16 otherwise would be liable, and unreasonable failure to avoid an injury
17 or to mitigate damages. Legal requirements of causal relation apply
18 both to fault as the basis for liability and to contributory fault.

19 * Sec. 2. AS 09.30.065 is amended to read:

20 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
21 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
22 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
23 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
24 making a claim or the party defending against a claim may serve upon
25 the adverse party an offer to allow judgment to be entered in complete
26 satisfaction of the claim for the money or property or to the effect
27 specified in the offer, with cost then accrued. If within 10 days
28 after the service of the offer the adverse party serves written notice
29 that the offer is accepted, either party may then file the offer and

1 notice of acceptance together with proof of service, and the clerk
2 shall enter judgment. An offer not accepted within 10 days is con-
3 sidered withdrawn and evidence of that offer is not admissible except
4 in a proceeding to determine the form of judgment after verdict. If
5 the judgment finally entered on the claim as to which an offer has
6 been made under this section is not more favorable to the offeree than
7 the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]
8 and accrued up to the date judgment is entered shall be adjusted as
9 follows:

10 (1) if the offeree is the party making the claim, the
11 interest rate shall be reduced by five [TWO] percent a year;

12 (2) if the offeree is the party defending against the
13 claim, the interest rate shall be increased by five [TWO] percent a
14 year.

15 * Sec. 3. AS 09.30.070 is amended by adding a new subsection to read:

16 (b) Except when the court finds that the parties have agreed
17 otherwise, prejudgment interest accrues from the day process is served
18 on the defendant or the day the defendant received written notifica-
19 tion that an injury has occurred and that a claim may be brought
20 against the defendant for that injury, whichever is earlier. The
21 written notification must be of a nature that would lead a prudent
22 person to believe that a claim will be made against the person receiv-
23 ing the notification, for personal injury, death, or damage to prop-
24 erty.

25 * Sec. 4. AS 09.60.010 is repealed and reenacted to read:

26 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
27 PARTY. The supreme court shall determine by rule or order the costs,
28 if any, that may be allowed a prevailing party in a civil action.
29 Unless specifically authorized by statute or by agreement between the

1 parties, attorney fees may not be awarded to a party in a civil action
2 for personal injury, death or property damage related to or arising
3 out of fault, as defined in AS 09.17.900, unless the civil action is
4 contested without trial, or fully contested as determined by the
5 court.

6 * Sec. 5. AS 09.17.040 and 09.17.080 enacted in sec. 1 of this Act have
7 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
8 jury to answer the special interrogatories listed in AS 09.17.080 regarding
9 the amount of damages and the percentages of fault to be allocated among
10 the parties and to itemize the verdict regarding economic, noneconomic, and
11 punitive damages as specified in AS 09.17.040.

12 * Sec. 6. AS 09.17.080 enacted in sec. 1 of this Act has the effect of
13 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
14 specific findings regarding the amount of damages and the percentages of
15 fault to be allocated among the parties.

16 * Sec. 7. AS 09.17.040 and 09.17.080 enacted in sec. 1 of this Act have
17 the effect of amending Alaska Rule of Civil Procedure 58 by requiring the
18 court to include a specific item in its judgment.

19 * Sec. 8. AS 09.60.010 as amended by sec. 4 of this Act has the effect
20 of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of
21 attorney fees in certain civil actions based on fault, unless allowed by
22 statute or by agreement of the parties or unless the civil action is con-
23 tested without trial or fully contested.

24 * Sec. 9. APPLICABILITY. Sections 1 - 4 of this Act apply to all
25 causes of action accruing after the effective date of this Act.

26 * Sec. 10. SEVERABILITY. If any provision of this Act, or the applica-
27 tion thereof to any person or circumstance is held invalid, the remainder
28 of this Act and the application to other persons or circumstances are not
29 affected.

1 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).