

SB

249

EXPLANATION OF HB 354 AND SB 249
RELATING TO SUITS AGAINST LOCAL GOVERNMENTS

The Bill revises AS 09.65.070 in its entirety with nominal amendment of subsections (a) and (b), clarification of subsection (c), and primarily adding subsection (d) to amend the present statute which makes municipalities liable for all of their acts without regard to whether the act was discretionary or ministerial or was related to a governmental as opposed to a proprietary function. Definitional subsection (e) is added to clarify its application to municipalities and villages.

Subsection (d) prescribes limited exceptions to municipal liability. The municipality will not be subject to suit for acts falling within the exceptions. Employees and officers, while acting as such, will not be subject to suit for acts which are expected.

The first exception, which is in subparagraph (d)(a)(A)-(C) is similar, in part, to the language in SB 151 which would create an additional exception to the liability of the state pertaining to inspections. This exception is needed by the state's political subdivisions as well as the state itself. It would remove the threat of suit against the municipality

and its officers and employees for their failure to inspect property, their failure to discover violations or hazards and their failure to adequately abate violations and hazards discovered.

This exception is needed to limit the liability of municipalities which

1. adopt various safety and health codes (fire, building, health, sanitation, vehicle, etc.) which they are unable to vigorously enforce 100% of the time, or
2. conduct inspections for the purpose of enforcing safety and health codes, or
3. do not enforce safety and health codes

The alternative to having such statutory reassurance is the withdrawal of municipalities from the safety and health enforcement fields. The State of Alaska has already partially withdrawn from the fire inspection field as a result of the Adams and Jennings cases which imposed liability for failure to discover hazards and failure to abate discovered hazards. More injury will be done to the public by such a withdrawal than by granting the exception and allowing municipalities to proceed on a best efforts basis. The property owner, contractor, or other person responsible for an injury will be and remains liable to the injured person in either situation so the injured person is not without remedy under this exception.

The second exception, which appears in subparagraph (d) (2), confers to municipalities the same exception which the state already has under AS 09.50.250(1). Discretionary acts cover those acts which are essentially policy or planning in nature. They include such things as decisions to initiate or terminate a program, to stop maintenance of a road during the winter, to fund a program at a certain level, to concentrate on the enforcement of certain codes, etc. Municipalities do not now have the statutory protection the state has in this area and could be held liable for the exercise of their discretion in a situation where the state could not under identical circumstances. Municipalities, like the state, must be able to perform discretionary acts without fear of suit. This is not to say, however, that once the municipality has exercised its discretion to, say, build or maintain a road, it may build or maintain it in a negligent manner. It may not. Municipalities will, subject to the limitations of this section, remain liable for their ministerial torts.

The third exception, which appears in subparagraph (d) (3), covers an area in which municipalities are occasionally sued for damages. The threat of suit for damages should not play any part in the decision of a municipal official or body to issue, deny or suspend a permit or privilege of any nature. Also, this section would remove the possibility of liability

which is based on the theory that the issuance of a permit is a warranty that the plans, proposal, etc., upon which the permit was based met all applicable codes, ordinances, laws and constituted a reasonable method or proposal. The person responsible for the plans, etc., upon which the permit, etc is issued will still be liable for his work. This section would not limit the applicant's or permittee's right to go to court to force the issuance, grant, etc., if it is one to which the person is entitled.

The fourth exception, which appears in subparagraph (d)(4), is copied from the exception for the state which appears in AS 09.50.250(3) with the change here that the misrepresentation exception would be for only negligent misrepresentation, not all misrepresentation as in the case for the state. The municipality would be excepted from liability for the causes of action listed in the subparagraph. Officers and employees would be protected when the act complained of was done in the exercise of one of the actor's duties and was an act which was within his authority as an officer or employee. Thus, the zoning administrator could be held liable for falsely arresting someone while a policeman usually could not. The zoning administrator does not have the authority to arrest in the discharge of his duties so such an act would constitute an act outside his employment status, often known

in law as a frolic, and he would be personally liable. On the other hand, the policeman is not hired to administer the zoning code and could not, as a municipal official, make any statement to a citizen regarding the zoning of a particular parcel of land. The policeman would be personally liable for any misrepresentation in the course of making such a statement. The zoning administrator, and through him, the municipality would be liable for a misrepresentation if the misrepresentation was intentional. Again, this subparagraph extends to municipalities and its employees and officers most of what the state already has.

The fifth exception, which appears in subparagraph (d)(5), represents an application of the Good Samaritan principle to insulate the municipality from liability where it gratuitously responds to a need outside its limits. For example, a municipality could not be held liable for its acts in fighting a fire outside its limits. A municipality having no contractual duty to respond beyond its jurisdictional limits fears the consequences of liability and adverse insurance costs and is induced to abstain. It simply is not worth the added liability exposure. Yet, as with the inspection problem discussed above, even an occasional negligent response is more than likely far more beneficial than an across the board policy of non-response.

The sixth exception, which appears in subparagraph (d)(6), is needed for reasons which are basically the same as those relating to extra-territorial service exception

discussed immediately above. Commonly occurring examples are local police called to respond in the temporary absence of the Trooper, and mutual aid agreements respecting assistance at state airports.

In conclusion, municipal non-immunity will remain the rule. Judicially-recognized municipal liability respecting certain functions coupled with increasing difficulty in obtaining insurance to cover the risk compel local governments to re-examine and diminish the scope of their activities rather than suffer liability exposure and inability to respond in damages. This legislation is intended to afford limited liability with a view toward non-curtailement of certain traditional functions predicated on public policy favoring the municipalities to proceed on a best efforts basis.

Prepared and submitted by:

L.B. Jacobson, attorney for Petersburg, Kake, Hoonah, Skagway
and Craig

Lee Sharp, attorney for Juneau

Ted Berns, assistant attorney for Anchorage

City May Have To Shoulder Fire Liability

By SUSAN GIMORE
Empire Staff Reporter

Juneau could find itself on the expensive end of a liability lawsuit as a result of recent action taken by the state firemarshal's office disavowing responsibility for conducting fire inspections.

Last month the state notified Juneau and several other Alaskan cities that "responsibilities for fire prevention and inspection and enforcement of state fire safety regulations... is deferred to your local jurisdiction."

The order reportedly was precipitated by a recent Alaska Supreme Court action holding the state partially liable for a hotel fire in Anchorage.

In this case, according to city attorney Lee Sharp, state fire officials inspected the Gold

Rush Hotel and discovered fire hazards. He said the state failed to take immediate action to abate the hazard, even though the hotel owner was notified of the danger. The Supreme Court held the failure of the state to remedy the hazard may have contributed to injuries suffered by the guests.

The state has now backed off of any local fire inspections, unless the inspection involves a state-owned building or the inspection is needed for licensing, as a day care center.

"The reaction in most municipalities seems to be 'thanks, but no thanks,'" Sharp said. He said under the supreme court decision, Juneau could be held liable for injuries suffered in a fire if local inspectors failed to abate a hazard, failed to locate a hazard, or even fail to inspect a building.

To counter the state's action deferring jurisdiction, Sharp has drafted an ordinance which will be considered by the Assembly in April.

This ordinance disavows any intent by the city and borough of Juneau to conduct inspections "for the purpose of enforcing codes, regulations or laws of the State of Alaska."

While this ordinance may be a bandaid on a potential liability suit, several statewide municipal officials have convinced lawmakers to introduce legislation giving municipalities immunity from such lawsuits.

Already adopted by the Senate, the bill would give cities protection where they inspected property and either didn't discover a hazard, failed to take action against a hazard or failed to inspect the property at all.

According to Sharp, the legislation would allow municipalities the same umbrella of law the state has enjoyed for years—the umbrella that the state can't be held liable for not conducting an inspection, only for failing to find or abate a hazard once an inspection is made.

"This bill picks up the language giving the state immunity in discretionary acts," Sharp said: "We are asking the veil of state law be extended to municipalities."

According to state fire officials, the laissez-faire edict was prompted by the Anchorage fire and by a work overload involving new construction and increased arson investigation.

"This doesn't mean if there is local political pressure we wouldn't assist," said one official. "Once a hazard is called to our attention we can't sit on it—we have to act."

"This still doesn't let us off the hook if a hazard hasn't been corrected," he added. "We still get calls, but refer them to the city."

Buildings inspected include public buildings, stores, apartment buildings, hotels, schools, hospitals and other facilities required by state law to pass safety tests. Some are inspected annually, others monthly.

According to assistant Juneau fire chief Sev Swanson, inspections include heating equipment, wiring, exits, general housekeeping and storage.

He said inspections are still being conducted on a local level, but the city is now limited on how many inspections can be made and how often follow-up probes are conducted.

A direct affect the fire inspection decision could have on property owners is a boost in

fire insurance rates.

The Fire Rating Bureau, which sets the standards for insurance rates, has rated Juneau a weak five on a scale of one to 10. A 10 is an unprotected district. The scale is derived by beginning at a base figure and crediting fire districts for certain aspects of fire protection—as fire hydrants, number of firemen, and inspections.

Sharp said if fire inspections are ceased, Juneau's rating will probably rise to a six and fire insurance premiums could increase 10 per cent.

Sharp also said that the threat the city could be named in a liability suit evolving from a fire inspection could also hike city-borough insurance rates. "Even if we win (a suit)," he said, "the defense is expensive."

SOUTHEAST ALASKA EMPIRE

The Capital City's Daily Newspaper

VOL. 71 NO. 58

WEDNESDAY, MARCH 23, 1977

12 PAGES TODAY 25 CENTS



CITY OF VALDEZ

P. O. BOX 506
PHONE: (907) 835-4313

ZIP CODE 99686

March 25, 1977

Senator Joseph L. Orsini
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Subject: HB 354 and SB 249

Dear Senator Orsini:

The subject bills provide tort liability protection for municipalities. We urge you to support these bills.

Because of two recent court decisions, i.e. the Gold Rush fire and Nordale Hotel fire, municipalities are now confronted with liability they never had before. As a result, the municipalities are confronted with two major problems. One, the cities are finding they can no longer obtain insurance; or, if they are fortunate enough to get insurance, the premium costs are prohibitive.

With the constant increase in the cost of providing even minimal services, the addition of this type of liability and its attendant costs is rapidly forcing many communities to the brink of bankruptcy.

When government becomes so expensive that no one can afford it, our whole system will break down. It is vital that municipalities be held responsible for only those acts which are willful, negligent or malicious.

Very truly yours,

Herbert W. Lehfeldt
City Manager

HWL:ss

Municipality
of
Anchorage



POUCH 6 650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

A CASE FOR LIMITED
MUNICIPAL TORT IMMUNITY IN ALASKA

Municipal tort immunity refers to the legal doctrine by which a state legislature, as a matter of public policy, has defined specific types of municipal activities for which municipalities may not be held liable for damages. At the outset, it is important to state that no one would argue for total immunity from suit for local governments in Alaska. If a municipal vehicle injures a pedestrian or if a city fails to correct a dangerous condition on publicly owned property the local government should be held liable to pay damages to injured parties. However, for many other activities undertaken by municipalities, it is less clear whether government should be under the threat of multi-million dollar damage judgments which could devastate the operation of both large and small municipalities in Alaska.

The case for limited municipal tort immunity in Alaska is perhaps best illustrated by the so-called "Good Samaritan" doctrine. As an example of this principle, consider a physician who, returning home from his office, comes upon a man lying severely injured at the side of the road. At early common law, the physician had no legal duty to stop and attempt to aid the injured man. Moreover, if the doctor did attempt to aid the victim and, because he did not have the necessary medicines, equipment, etc., accidentally caused some additional injury, the physician could find himself the defendant in a lawsuit brought by the very person he had attempted to aid.

To avoid the undesirable consequences described above, states began to offer statutory protection from lawsuits to physicians and other health care providers who voluntarily rendered aid to persons in need of medical attention. In Alaska, the Legislature has adopted AS 09.65.090 which provides that persons attempting to administer aid in certain emergency circumstances need not fear the threat of a lawsuit if, in the course of their efforts, an accident

2



occurs. The public policy supporting limited tort immunity for persons rendering emergency aid is the belief that it is important to encourage such voluntary actions as essentially a public service. This is to say that we, the people, want the assurance that physicians and other persons will voluntarily attempt to render aid to those in need and that we are willing to provide a limited measure of tort immunity to encourage such actions.

Municipal governments, in undertaking many of their activities, are often acting essentially as "good samaritans". No rule of law states that a community must provide, for example, a fire inspection program designed to reduce threats to the health and safety of its citizens. Municipalities do not conduct such programs for pecuniary gain or other financial benefit. Rather, the people have in many cases decided to voluntarily provide this service to individual property owners for the common good.

No one contends that municipal officers or employees are perfectly efficient or that mistakes and accidents in the operation of, for example, fire inspection programs will not occur. If the operation of local fire inspection programs is threatened by the possibility of huge damage judgments, the people, and in turn their elected legislators, are faced with circumstances similar to the "good samaritan" situation discussed above. The uncomfortable choice for many local governments in Alaska is between maintaining, for example, the best possible fire inspection program at the risk of devastating lawsuits should a mistake be made, and simply eliminating any inspection program at the risk of allowing serious health and safety hazards to exist in the community. Faced with this untenable situation, Alaskan municipalities are asking the Tenth Legislature to provide a limited measure of tort immunity to cover situations in which local governments voluntarily undertake programs designed to protect the health and safety of their citizens.

The danger that Alaska's local governments will be forced to discontinue or severely limit programs such as building code inspections, enforcement of housing codes, fire inspections, planning and zoning functions, and various public health programs is imminent. In all of the activities listed above, municipalities are, in essence, acting as volunteers or "good samaritans" by extending services to their citizens for the protection of the public health, safety and general welfare. In the case of fire inspection activities, recent decisions by the Alaska Supreme Court indicate that if a municipality undertakes an inspection program it may be held liable for (possibly) millions of dollars in damages in the event that a mistake is made. See,

*Adams - no State
Folk - no Nodak Hotel*

*Jan 26 1968
Karr - 4232*

for example, Adams v. State, 555 P.2d 235 (Alas. 1976), and City of Fairbanks v. Nordale Hotel, Inc., 555 P.2d 248 (Alas. 1976).

In response to these cases, some local governments in Alaska have already considered the possibility of discontinuing fire inspection activities. In addition, it appears that the reasoning advanced by the Supreme Court in the Adams and Nordale cases could be expanded to cover building, housing, and public health inspection programs and, perhaps, damages allegedly caused by the issuance of various permits which are later discovered to contain error. For example, the Supreme Court of Washington has upheld a \$2.8 million dollar judgment against the City of Seattle based on the allegedly negligent issuance of a building permit. See, Haslund v. City of Seattle, 547 P.2d 1221.

In conclusion, it is important to stress that the goal of local governments is not to leave injured parties without a remedy in the event of an accident. As noted above, the proposed legislation does not relieve municipalities from liability based on actions that are proprietary in nature such as the operation of municipal vehicles or the maintenance and operation of municipal property. In most other situations, a municipality will be only one of several possible defendants. For example, if a building in a municipality is destroyed by fire, the injured party may have an action against (1) the person or persons directly responsible for the blaze, (2) the person's employer (and his insurance company), and (3) possibly against the manufacturer of any materials and equipment which are discovered to have been negligently constructed or improperly installed. However, given the absence of any municipal immunity, any plaintiff's attorney will also join the municipality as a defendant if it can be alleged that there has been any failure to properly inspect or certify the building or equipment as part of a municipal fire inspection program.

By extending a limited degree of tort immunity to municipalities to cover activities such as fire inspection programs, the injured party in a situation such as the one described above is not left without a remedy. Rather, the burden of liability is merely shifted from municipalities to others who, in most cases, are more directly responsible for the accident. Viewed in another light, the choice for the individual property owner is to (1) look to his private insurance carrier or to other responsible parties, not including a municipality, in the event of, for example, a fire and be assured that he will have the benefit of a local fire inspection program or (2) risk the loss of local fire prevention/inspection services due to the threat of tort

liability. Faced with such a choice, municipalities in Alaska have turned to their state legislators to ask for limited tort immunity to ensure the continuation of essential local services, such as fire, building and health programs, at a cost which is within the reach of local government taxpayers.

TDB:kh

CITY OF KENAI

RESOLUTION NO. 77-35

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, PETITIONING THE KENAI PENINSULA LEGISLATIVE DELEGATION TO SPONSOR AND ENACT LEGISLATION TO LIMIT TORT LIABILITY OF THE MUNICIPALITIES.

WHEREAS, recent State Supreme Court decisions have held municipalities liable for failure to fully exercise and implement inspection procedures, and

WHEREAS, there is no acknowledgement of a good faith effort, and

WHEREAS, the now presumed legal liability threatens the very existence of a municipality.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Kenai, Alaska, that the Honorable Clem Tillion, Leo Rhode, Hugh Malone are hereby petitioned to seek legislative action to limit the tort liability of those municipalities engaged in inspection activities.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 16th day of March, 1977.

James A. Elson
JAMES A. ELSON, MAYOR

ATTEST:

Sue C. Peter
Sue C. Peter, City Clerk

The Premiums On City Life

Liberalized negligence laws and generous juries have made municipal liability insurance hard and expensive to get. Who pays? The taxpayers, of course.

By LAWRENCE MINARD

On a clear, dry night in 1974, 20-year-old Thomas J. Garchar cruised down a straightaway on Broward County's (Fla.) University Drive and smashed his car headlong into a 560-pound decorative limestone boulder lying on the road's median. Paralyzed from the neck down as a result of his accident, Garchar sued the retirement town of Tamarac (population: 31,000), essentially on the grounds that Tamarac's city fathers knew that the boulder was there, but had not removed it.

In court Garchar admitted to having been up 18 hours straight and to having downed three drinks just prior to the accident. Yet last November, a local jury found Tamarac guilty of negligence and awarded Garchar and his wife \$4.7 million in damages. (Broward County, responsible for maintaining the road, and a real estate developer, responsible for placing the boulder on the median, settled out of court for another \$1.15 million.) The town is appealing the case, and \$1 million of the judgment is covered by liability insurance, but meanwhile, Tamarac faces the prospect of raising taxes to pay the award.

Cases like this are making a nightmarish quagmire of what once was thought to be an insurance underwriter's gold mine: municipal liability. When it comes to buying liability insurance, only doctors have been harder hit than state, county and city governments. Some can no longer buy liability coverage at any price. For those that can, premiums have soared.

Take California, where the problem is (naturally) especially severe. In Sacramento, full liability coverage premiums increased 193% in three years. General liability premiums for 20 cities in Southern California's Orange County climbed an average of 117% between 1974 and 1976. Santa Ana paid \$309,000 last year for "first-dollar" coverage, under which all claims—regardless of the amount—are insured. This year, Santa Ana's



underwriter refused to renew the policy. Had it been available, said the city's broker, the premium would have been nearly \$1 million.

In Florida, according to a recent study, cities with populations of between 20,000 and 50,000 have been socked with average premium increases of 126%. Pompano Beach paid \$61,024 for its general liability coverage in 1974. In 1976 the town paid \$242,642!—despite the fact that claims in Pompano Beach have declined by one half since 1974. In Boulder, Colo. property and liability premiums were \$1 per resident in 1975. By 1976 the rate had climbed to \$2.60, with one policy's premiums soaring from \$8,500 to \$61,000.

Politicians like to blame—who else?—the insurance companies. But the fact is, many companies have dropped a bundle underwriting government liability. Vice President J. Creighton White of American Express Co.'s Fireman's Fund estimates that from 1971 to 1975 his company paid out some \$120 for every \$100 of mu-

nicipal liability premiums written. To arrest losses on its municipal liability coverage in California, the Culf Insurance Group's Insurance Co. of the Pacific figured it had to increase premiums by around 200%. Instead it pulled out of the market in 1975.

Underwriters don't separate their municipal risks from their general liability experience, so no one really knows the aggregate losses. ("Insufficient statistics is one of the reasons we're in this crisis," concedes one executive.) The only feel for a trend insurance men get is from their "miscellaneous liability" experience. Some trend! In 1966 the industry earned \$39 million on premiums of \$1.2 billion. In 1975 it lost \$631 million on premiums of \$3.8 billion. Actuaries say last year was probably somewhat better, but not much.

Companies don't really know how much they have dropped on the public-entity business for another reason—the delay in settling claims. "I'm still bleeding to death on all that municipal business we wrote during the

1960s and early 1970s," wails Dunning Lennihan, head of Chubb Corp.'s Pacific Indemnity's San Francisco operations. Lennihan cites the example of a 1973 claim for which his company received \$10,000. Today, with the claim still inching toward trial, the reserve has been upped to \$50,000.

For decades municipal liability was easy—and cheap—to get. For one thing, public entities were protected by sovereign immunity laws, based on the medieval theory that kings can do no wrong. Probably most important, society's litigation mania was but a gleam in trial lawyers' eyes. So eagerly did Pacific Indemnity go after public-entity insurance that by 1974 it had some 70% of the California market. The Insurance Co. of the Pacific had most of the rest.

But sovereign immunity laws were struck down with increasing frequency throughout the 1960s. Even the few immunities that have survived have been narrowed drastically in the courts by such plaintiff superstars as Melvin Belli.

widow is suing, for negligence, the manufacturer of the model, the utility that owns the power lines, the town on whose property the lines are, and the county that issued a construction permit for the lines.

• A gang of motorcyclists tanked up on beer back in 1974 and roared off up a highway in Sonoma, Calif. One fellow drove his bike off the road. He is suing Sonoma for a poorly designed highway.

Under increasingly generous interpretations of "comparative negligence," both the widow and the motorcyclist have good chances of collecting. Comparative negligence says plaintiffs can collect if they are able to persuade juries that the defendants had at least *something* to do with an accident. Thus, in Garchar's suit against Tamarac, the jury found that Garchar's drinking and fatigue prior to his accident contributed 30% to his smashing into the boulder. So Garchar's initial award of \$6.75 million was cut by 30%.

"The problem isn't just municipal

maintenance. "Maybe God can predict limbs falling off trees, and rocks rolling down hills, but my company can't," says the underwriter. "So maybe He can underwrite the public-entity liability insurance."

The question now is: What can the governments do? Some are going the way companies went years ago—hiring risk and safety managers, people with responsibility for determining, say, whether a state park can afford to run the liability risk of allowing hang-gliding from cliffs.

Others are going to self-insurance. Reno, Nev., for example, paid \$248,000 in premiums in 1975 for first-dollar liability insurance. Its underwriter, International Telephone & Telegraph's Hartford Fire, wanted \$900,000 to renew the policy. Instead, Reno now self-insures for individual claims up to \$100,000; it carries excess coverage for claims of \$101,000 to \$5 million. Cost: \$158,000 in premiums for the excess coverage, plus a \$200,000 reserve fund established from tax revenues.

Across the country, self-insurance is catching on. Los Angeles County self-insures. So do Miami, Minneapolis and St. Louis. But the trend worries some observers. "New York can't pay its policemen or its interest," says one underwriter. "Do you really think they'll spend money to establish reserves?" If governments do *not* have reserves adequate to meet settlement costs, then taxpayers could pay even more than if their managers purchased insurance.

Where *will* it end? Long range, the best hope seems to be a thorough overhaul of the nation's staggeringly costly tort system. Insurance men enviously eye the Canadian system, which they say requires trial lawyers to pay a tax on the difference between what they ask a jury to award, and what the jury actually awards.

"Tort law today has become theater," says a trial lawyer who recently won a multimillion-dollar award from a city. "Applause is measured by the amount of money the juries award. The solution is to reform the tort system by putting limits on general types of damages allowed."

Perhaps tort reform *will* come, as taxpayers—like consumers—find taxes and prices escalating to pay for drunk motorcyclists and inept model airplane flyers. In the meantime, municipalities will be stuck with greater and greater premiums, if not higher taxes to pay off insured damages.

It's a funny thing. No one likes such anachronisms as "Kings can do no wrong." On the other hand, no one likes to pay the cost of putting kings on an equal footing with the masses. ■

"... 'Maybe God can predict limbs falling off trees, and rocks rolling down hills, but my company can't,' says the underwriter. 'So maybe He can underwrite the public-entity liability insurance'..."

On top of it all, "Sue the bastard!" has become something of a national mind-set, hitting governments as well as companies and individuals.* According to a recent survey of California cities, general liability claims nearly doubled between 1973 and 1975, to an average of 132 claims per city. Settlement costs nearly tripled over the same period, to an average \$87,421 per city.

"You wouldn't *believe* what people now sue us for," says an exasperated official in a small town city manager's office. "If they trip on the curb, they sue. If they hit a pothole, they sue. It has become outlandish!"

If some claims are reasonable, others are, well... preposterous. Items:

• In 1975, a grown man flew his string-controlled model airplane into some overhead high-tension power lines and electrocuted himself. His

*A *Forbes* reporter recently rode a Manhattan subway. When the car lurched, the reporter, thrown off balance, put his hand through a window. Three elderly citizens rushed over. With handkerchiefs? Condoleances? Hardly. They congratulated him on the great settlement he was sure to get from the city. The reporter's hand, as it happened, was bruised but not cut. He did not sue.

liability," says Chubb & Son Senior Vice President Robert C. Reiss. "It's really the whole third-party liability field, including medical malpractice and product liability." Each of those lines is being hit by a developing ethos that says, in effect, that society at large is responsible for the unfortunate few.

In some ways municipal liability is even harder to write than product or malpractice coverage. For one thing, politicians like to spend their tax revenues on highly visible items—police and firemen, for example. So they set up on expenses like insurance. In practice, this has meant letting a municipality's liability coverage to competitive bidding by the companies, usually every one, two or three years. "This continual bidding situation means we cannot establish long-term relationships," complains Jeremiah Mulhall, vice president of Home Insurance Co. "You can't recoup your losses over one or three years."

Moreover, the actuarial mind boggles at the sheer number of things that can go wrong. One company executive tells of a tree limb falling onto a convertible passing underneath. The driver was paralyzed, and is suing the local town for faulty road

Test
Items

SB 249

Does not apply to fact proprietary in nature e.g. driving a truck
" " " " public property

Does affect fact of mun which are regulatory in nature
Bldg, fire safety are not reqd, but are done for public benefit

done Rose

Attorneys prob not happy w/249

Sec d(4) is different from other portions of bill, in that it addresses a course of action rather than inaction.

May want to qualify (4) in some way - dollar limit?

Individual immunity not affected by bill

Most suits do not go thru for settlement

L.B. Jacobson - Representing several small cities in SE

A& Sup Ct. has abrogated sovereign immunity for municipalities

↳ Wadale vs Cold Rush Hotel was final straw

↳ premise was that high settlements would not force state out of fire insur business - it did!

Insurance rates are being raised - a number of reasons

Petersburg

Bell vs Peters ^{sup Ct} - wrongful arrest - won, but cost \$K

Rose vs Peter ^{sup Ct} - doctor submitted guess credit card - requested

further documents - sued for defam of char - settled for \$4.5K + 2K cost

Marysville vs Peter - bldg insur case (bldg fell over onto another)

- not ~~the~~ resolved yet

e.g. will not go in whistate for ever. fire response outside of city limits - nothing but pften headaches.

Rake - advised not to adopt bldg/fire codes because of high

(2)

Craig - no coop in fire safety because of ~~no~~ liability

Skagway - zoning problems

Yakutat - repealed fire preven. code due to Jennings case -
also have no police

Summary - Muni could comply w/ standards set by Sup Ct,
but why at great expense

Jim Arling, F. H. H.

11/74 - 1/76 out of Ct settled 8 cases of ~~police~~ false arrest, etc

How much respon. should govt take for allowing govt busin
& actions to take place?

Rem. Law - Dome - Muni League Pres

Climate too good for suit - superabundance of
capable attys - opposes elim of (4)

Jim Elson - Kenai

insurance cos. looking @ Alaskans + Ak muni
Fire man. rate lowered by insp - if this makes
muni liable, then rates raised again - dropping
insp would go from Class 7 to Class 9, cost \pm \$4M

Sharp - Juneau

Juneau downtown is Ct 5; drop insp would go to Ct 6 -
cause a 10% premium increase - cost = ? \$60 K

Insurers are pulling out of mkt - largely due
to Sup Ct decisions in these cases.

When there is authority & should have known of
problem then are liable - expenses to defend
Ak has limited liab for discretionary powers

Poten for Sup Ct to deny repeal of ordinances, a cessation of
other discretionary govt fact

In sec(4) - may want to limit by type (degree) of physical
activity.

Out-of-court settlements can hurt employee morale

TELEGRAM

HCA ALASKA COMMUNICATIONS ~~INC~~

PHONE: 586-6440

FUNEAU, ALASKA 99801

1977 APR 5 AM 12 42

02 124 NL TDA BETHEL AK 51 04-04 510P AST

PMS SENATOR JOSEPH ORSINI (1213)

JUN

PURSUANT TO SENATE BILL 249 (HB354) A BILL LIMITING MUNICIPAL
LIABILITY IN CERTAIN ACTIONS, THE MAYOR AND CITY MANAGER OF
THE MUNICIPALITY OF BETHEL STRONGLY SUPPORT AND URGE YOUR
ENDORSEMENT OF THE BILL DURING CURRENT LEGISLATIVE HEARINGS ON
THE BILL. THANK YOU AND BEST WISHES,

GENE R PELTOLA, MAYOR AND

BRUCE L BARTLETT, CITY MANAGER

TELEGRAM

BCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02137 NL TDA HOMER AK 50 24-24 600P AST

1977 APR 5 AM 1 58

PMS SENATOR ORSINI

11223

JUN

URGENTLY REQUEST THAT YOU SUPPORT SB249. SITUATION SAME
AS MEDICAL MALPRACTIC FOR MUNICIPAL LIABILITY INSURANCE.
URGENT SOME LIMITS BE PLACED ON EXPOSURE.

LARRY C. FARREN, CITY MANAGER

HOMER, ALASKA

Test. in Form of SB 249

Anchorage

Fairbanks

Juneau

Several small Southeast communities
Kake, Petersburg, Gray, Skagway

Nome

Kenai

Valdez

Bob McVitty

Arch

Jenni Lee Brown

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